

Opinion
of the
Independent Ethical Committee
established
by the European Commission
10 December 2020

Subject: Request for an opinion on former Commissioner Avramopoulos's envisaged post term of office activity as Member of the Honorary Board of the 'Association Against Impunity and for Transitional Justice'

On request of the President of the European Commission, the Independent Ethical Committee, composed of Ms Dagmar Roth-Behrendt, Mr Allan Rosas and Mr Heinz Zourek, delivers the present opinion:

Procedure

1. On 4 September 2020, the Secretary-General of the Commission asked the Committee, on behalf of the President of the Commission, to deliver an opinion on the compatibility of former Commissioner Dimitris Avramopoulos' envisaged activities as Member of the Honorary Board of the 'Association Against Impunity and for Transitional Justice' (hereafter AITJ) with Article 245 of the Treaty on the Functioning of the European Union.
2. On 9 October 2020, following his notification, Mr Avramopoulos provided additional information to the Secretariat-General as regards his position and remuneration.
3. On 26 October 2020, the Secretariat-General, on behalf of the Committee, sent an email to former Commissioner Avramopoulos to ask for more detailed information on the specific missions and tasks he would be expected to perform as Member of the Honorary Board, to which he replied on 18 November 2020.

Facts

General information on the Association Against Impunity and for Transitional Justice

4. The Association Against Impunity and for Transitional Justice is a non-profit association registered under Belgian law, which was created in September 2019 by former Member of Parliament Pier Antonio Panzeri. AITJ's headquarter is based in Brussels.

5. The Association's declared goal is to 'fight against impunity for serious violations of human rights and crimes against humanity' and make the principle of accountability 'a central pillar of the architecture of international justice'. According to information provided by former Commissioner Avramopoulos, the association aims to 'address the most sensitive issues in the international human rights law context as well as the needs of the most vulnerable groups'. Although there are already international and regional mechanisms in place, the association aims to 'strengthen the actions and measures existing in order to increase their effectiveness'.
6. According to the statutes of the organisation, AITJ activities encompass advocacy, communication, political and engagement campaigns as well as research. Its main activities are listed as follows in the statutes:
 - Promote the fight against impunity together with war crimes, crimes against humanity and genocide as a fundamental principle for the rule of law, functioning democratic institutions and good governance.
 - Support and reinforce the efficiency of existing national and international systems related to the fight against impunity and transitional justice as well as human rights.
 - Promote a global strategy on impunity and transitional justice to ensure a more comprehensive vision of the matter.
 - Fill the gap between existing judicial mechanisms and the victims, by ensuring their rights are respected and by identifying responsibility and reparation mechanisms to be implemented.
 - Reinforce the impact and visibility of actions and initiatives on the matter, by building on already existing networks and creating multilateral partnerships.
 - Support the EU's role as regards the fight against impunity and violations of international human rights and as regards the EU's promotion of democratic values and fundamental rights principles.
 - Contribute to the 2030 UN Agenda for Sustainable Development.
 - Support international judicial jurisdictions such as the International Criminal Court or Ad-Hoc Courts in pursuing their goal through (1) the organisation of information campaigns, conferences, debates, study visits (2) partnerships with similar associations and (3) researches and studies.

In addition, according to AITJ's website, the association supports the work of the European Genocide Network that aims to develop cooperation between national parliaments, the European Parliament, third countries' parliamentary assemblies and civil society organisations. Finally, AITJ wants to enhance the profile and visibility of the EU engagement in the fight against impunity through an annual high-level event (e.g. the European Days to Combat Impunity), targeted campaigns, publication of reports and partnerships.

The organisational structure of the Association Against Impunity and for Transitional Justice

7. According to the association's statutes, the governance structure of the Association Against Impunity and for Transitional Justice consists of a President, a Management Board and a General Assembly. In addition, AITJ is assisted by an Honorary Board, which is however not registered in the statutes of the association.
8. The President and founder of the association, Pier Antonio Panzeri, is a former Member of Parliament who held several positions in parliamentary committees and delegations during his term of office. He was Vice-Chairman of the Committee on Employment and Social Affairs, Member of the Internal Market Committee and was a Member of several delegations.
9. The President of the Management Board is the highest-ranking executive and legal representative of the association and is responsible for making corporate decisions and managing the overall operations and resources. Founder Pier Antonio Panzeri is currently the President of the Managing Board.
10. The Managing Board of the association is composed of three administrators, including the President, Mr. Panzeri, as well as a Secretary-General and a Treasurer. The Board is in charge of helping the association set its goals, supporting executive duties and ensuring the organisation has adequate resources at its disposal. The Board is overall responsible for the managerial tasks and transactions of the associations.
11. The General Assembly is the governing body of the association, as it provides strategies and directions and controls the activities of the Management Board.
12. As regard the Honorary Board, according to information provided by former Commissioner Avramopoulos, its tasks and responsibilities consist in the 'promotion of the values and the activities of the association, in particular its annual report on the global state of impunity'. More specifically, the Honorary Board members are responsible for the following tasks:
 - Advocating inside and outside the EU regarding the fight against impunity and the principle of accountability in international justice;
 - Participating in targeting campaign;
 - Taking part in conferences;
 - Networking;
 - Participating to the Board annual meetings;
 - Publishing articles.

According to these information provided by Mr Avramopoulos, as of 9 October, five high-ranking personalities have already agreed to sit on the Board, a former Prime Minister of France, an Italian former European Commissioner, a former Minister of Interior of Italy, a UN expert on Yemen and a Nobel Peace Prize Laureate. In addition, former Commissioner Avramopoulos informed the Commission that one former

Commissioner and two former Members of the European Parliament agreed to join the Board but had not yet confirmed their official participation.

Former Commissioner Avramopoulos's position at the Association Against Impunity and for Transitional Justice

13. Former Commissioner Avramopoulos has been invited by AITJ's President to join the Honorary Board of the association. In this position, he would be expected to fulfil the tasks listed above and would act as a promoter of the values and activities of the associations, namely the fight against impunity, the protection of human rights and the principle of accountability. As such, former Commissioner Avramopoulos would be expected to participate in conferences, networking events, the annual Board meeting and advocate for the cause. Mr Avramopoulos provided additional information as regards the specificities of his tasks: he would be expected to engage in 'advocacy and sensibilisation campaigns, as for example publication of articles, participation to conferences, launching events, giving interviews, discussing with governmental and non-governmental organisation' the goals of AITJ.
14. Former Commissioner Avramopoulos informed the European Commission that this position of member of the Honorary Board would be remunerated for a period of one year as of 1st October, as it 'entail(s) an active promotion of the activities of the organisation at international level', leading him to be more involved in AITJ's activities than the other members of the Board.
15. Regarding his duties as former Member of the European Commission, Mr Avramopoulos indicated that he was fully aware of his obligations under the Treaties and the Code of Conduct for Members of the Commission. He ensured this activity would 'take place without using sensitive information or insights gained during (his) mandate as Commissioner and without engaging in lobbying activities towards the European Commission'. Finally, Mr Avramopoulos specified that his activity would lead him to work in different fields than what had been under his responsibility during his mandate.

Funding of the Association Against Impunity and for Transitional Justice

16. According to former Commissioner Avramopoulos, the sources of funding of the association are mostly donations. As of today, the most important donor is the Sekunjalo Development Foundation.
17. According to the Financial Transparency System of the European Commission, the Association Against Impunity and for Transitional Justice has not received funds from the European Union budget.

18. The Association Against Impunity and for Transitional Justice is not registered in the Joint Transparency Register of the European Parliament and the Commission. However, Mr Avramopoulos provided additional information to the Commission and declared that AITJ plans to register ‘as soon as they will resume working and having physical presence in Brussels post Covid-19’.

Legal context

19. Article 245 of the Treaty on the Functioning of the European Union (TFEU) provides:

The Members of the Commission shall refrain from any action incompatible with their duties. Member States shall respect their independence and shall not seek to influence them in the performance of their tasks.

The Members of the Commission may not, during their term of office, engage in any other occupation, whether gainful or not. When entering upon their duties they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits. In the event of any breach of these obligations, the Court of Justice may, on application by the Council acting by a simple majority or the Commission, rule that the Member concerned be, according to the circumstances, either compulsorily retired in accordance with Article 247 or deprived of his right to a pension or other benefits in its stead.

20. Article 339 of the Treaty on the Functioning of the European Union (TFEU) provides:

The members of the institutions of the Union, the members of committees, and the officials and other servants of the Union shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.

21. Article 15(1) and (2) of the Charter of Fundamental Rights of the European Union provides:

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.

2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.

22. Article 2(7) of the Code of Conduct for the Members of the European Commission (hereafter the ‘Code of Conduct’) provides:

7. Former Members shall respect the obligations arising from their duties that continue to have an effect after their term, in particular the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits in line with Article 245 of the Treaty on the Functioning of the European Union, and the obligations specified in this Code of Conduct.

23. Article 5 of the Code of Conduct provides:

1. Members shall comply with the duty of loyalty towards the Commission and discretion in discharging their duties. They shall act and express themselves with the restraint that their office requires.

2. Members shall refrain from disclosing what is said at meetings of the Commission.

3. Without prejudice to the disciplinary provisions applicable to officials and other agents, Members are responsible for the proper handling and any external transmission by members of their Cabinets of classified documents, of sensitive information or of confidential documents submitted to the College for adoption or information.

4. Members shall not make any comment that would call into question a decision taken by the Commission or which may harm the Commission's reputation.

24. Article 11 of the Code of Conduct provides:

1. After ceasing to hold office, former Members shall continue to be bound by their duty of integrity and discretion pursuant to Article 245 of the Treaty on the Functioning of the European Union. They shall continue to be bound by the duties of collegiality and discretion, as laid down in Article 5, with respect to the Commission's decisions and activities during their term of office.

2. Former Members shall inform the Commission with a minimum of two months' notice of their intention to engage in a professional activity during a period of two years after they have ceased to hold office. For the purposes of the present Code, ‘professional activity’ means any professional activity, whether gainful or not, other than any unpaid activity which has no link with the activities of the European Union and which does not give rise to lobbying or advocacy vis-à-vis the Commission and its services such as:

(a) charitable or humanitarian activities;

(b) activities deriving from political, trade unionist and/or philosophical or religious convictions;

(c) cultural activities;

(d) the mere management of assets or holdings or personal or family fortune, in a private capacity;

(e) or comparable activities.

3. The Commission shall examine the information provided in order to determine whether the nature of the planned activity is compatible with Article 245 of the Treaty on the Functioning of the European Union, and if the planned activity is related to the portfolio of the former Member, it shall decide only after having consulted the Independent Ethical Committee.

Without prejudice to the possibility for the President to seek its opinion in cases of doubt, the Independent Ethical Committee does not need to be consulted where former Members intend to:

(a) continue to serve the European interest in an Institution or Body of the European Union;

(b) take up functions in the national civil service of a Member State (at national, regional or local level);

(c) engage with international organisations or other international bodies dealing with public interests and in which either the EU or one or several of its Member States are represented;

(d) engage in academic activities;

(e) engage in one-off activities for a short duration (1 or 2 working days);

(f) accept honorary appointments.

4. Former Members shall not lobby (17) Members or their staff on behalf of their own business, that of their employer or client, on matters for which they were responsible within their portfolio for a period of two years after ceasing to hold office.

5. In the case of a former President, the periods set out in paragraphs (2) and (4) shall be three years.

6. The duties set out in paragraphs (2) and (4) shall not apply where the former Member is engaging in public office.

7. Decisions taken under paragraph (3) determining compatibility with Article 245 of the Treaty on the Functioning of the European Union and related opinions of the Independent Ethical Committee shall be made public with due consideration to the protection of personal data.

Opinion

25. The Committee notes that Members of the Commission have a right to engage in work and to pursue a freely chosen or accepted occupation after the term of their office. This right needs to be balanced with the obligations set out in Article 245 TFEU and the Code of Conduct for the Members of the European Commission, which develops these obligations in more detail.
26. Former Commissioner Avramopoulos intends to accept a position as Member of the Honorary Board of the Association Against Impunity and for Transitional Justice. In that capacity, he would be expected to ‘promote the values and the activities of the association, in particular its annual report on the global state of impunity’. Mr Avramopoulos would also be expected to participate in conferences, networking events, meeting of the Honorary Board and advocate for the association’s cause. As an active member of the Board, Mr Avramopoulos would have additional responsibilities such as the ‘active promotion’ of AITJ as well as ‘the publication of articles, giving interviews and discussing with governmental and non-governmental organisations’
27. In this position, former Commissioner Avramopoulos would be remunerated for a period of one year. This membership however does not preclude any responsibility as regard the day-to-day management of the association and as regards the acquisition or management of funds.
28. The Committee has taken note of Mr Avramopoulos general assurance that he was aware of his obligations under the treaties and the Code of Conduct and would respect them at all times in this position as set out above.
29. With regard to the envisaged post-mandate activity, the Committee does not see any legal or other impediments to accepting the functions as long as former Commissioner Avramopoulos respects the obligations set out in the Treaties and the Code of Conduct.
30. The Committee highlights in this regard in particular Article 11(4) of the Code of Conduct, i.e. the obligation not to lobby Members or staff of the Commission on behalf of AITJ on matters for which he was responsible within his portfolio for a period of two years after ceasing to hold office. This includes lobbying in view of obtaining funds from EU programmes falling within his previous portfolio responsibilities. However, the prohibition to lobby (i.e. the promotion of certain interests with the objective to influence the formulation of implementation of policy or legislation, or the decision-making process of the Commission *directly* or *indirectly*) does not affect a possible participation in public events or general exchanges of, and on, publicly available information with Members of the Commission or Commission staff.

31. The Commission's decision should recall that former Commissioner Avramopoulos must strictly respect Article 339 TFEU, which provides that *'The members of the institutions of the Union, the members of committees, and the officials and other servants of the Union shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.'*
32. Finally, the decision should recall that former Commissioner Avramopoulos remains bound by the duties of collegiality and discretion, as laid down in Article 5, with respect to the Commission's decisions and activities during his terms of office. He must not disclose anything, which was said at meetings of the Commission, or call into question decisions taken by the Commission during these periods.
33. In addition, the decision should recall that former Commissioner Avramopoulos must show in general a high sense of discretion with regard to the use of information and insights that he obtained in the performance of his duties.
34. Therefore, based on the above-mentioned information and considerations, the Committee concludes that the envisaged activity would be compatible with Article 245 TFEU, subject to the respect of the commitments and the conditions specified in this opinion.

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