



JOHANNES HAHN
MEMBER OF THE EUROPEAN COMMISSION

Brussels, 16 November 2022

Dear Ms Cann,
Dear Members of Corporate Europe Observatory
and the ALTER-EU Steering Committee

On behalf of the President of the Commission, I reply to your letter of 14 July 2022.

Let me recall that the ethical obligations of Members of the Commission have been established by the European Treaties and further clarified by the Commission in the Code of Conduct for the Members of the Commission. The Treaties and the Code require Members of the Commission to promote the general interest of the Union, to be completely independent and not to seek or take instructions from any government or other institution, body, office or entity. In doing so, they shall observe the highest standards of ethical conduct. Therefore, President von der Leyen stressed in her Political Guidelines for the Commission that, if Europeans are to have faith in our Union, its institutions should be open and beyond reproach on ethics, transparency, and integrity.

While the Commission trusts in the commitment of its former Members to respect the high ethical standards required from them, even after the end of their mandate, the Commission takes the recent media reports seriously and its services were therefore currently looking into the matter. As a first step, they sought clarifications and comments from former Vice-President Kroes herself. In the meantime, following a preliminary evaluation of allegations brought to OLAF's attention, OLAF has opened an investigation. The Commission is cooperating with OLAF. The purpose of the OLAF investigation is to gather evidence, either inculpatory or exculpatory, in order to confirm or deny the allegations. OLAF investigations are conducted objectively and impartially and in accordance with the principle of the presumption of innocence.

Once OLAF has concluded its investigation, the Commission will assess the matter comprehensively against the framework of the Code of Conduct for Commissioners of 2011, which was applicable at the time of the alleged events, and the ethical obligations of Members of the Commission set out in the Treaties.

Therefore, before all elements have been investigated and assessed in a proper and fair procedure, any call for sanctions such as the financial penalties for which you call are premature and precipitous.

As regards your call for an investigation into how the Commission handled the matter between 2014 and 2016, the facts are very simple. As reported by the media, Ms Kroes notified her intention to engage in an activity with the private company Uber in 2015. The Commission consulted the then Ad Hoc Ethical Committee which issued a negative opinion. The President of the Commission duly informed Ms Kroes that a negative decision might be taken by the Commission on the compatibility of this activity with Article 245 of the Treaty on the Functioning of the European Union. Ms Kroes decided subsequently to withdraw her notification. Consequently, the procedure was devoid of purpose and closed.

I would like to inform you that all documents related to the approval by the Commission of post-mandate activities by former Members of the Commission under the second mandate of President Barroso have already been disclosed partially and/or in their entirety to the public, including those regarding post-mandate activities of former Vice-President Kroes.

The procedure put in place by the Code of Conduct aims at identifying post-mandate activities of former Commissioners that could be incompatible with Article 245 of the Treaty on the Functioning of the European Union (TFEU) and the duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits.

As regards requests for advice or applications that were subsequently withdrawn before a procedure was formally concluded, the Commission considers that notifications only reflect initial intentions of a former Commissioner to exercise a professional activity after the end of the mandate. When a notification to exercise a professional post-mandate activity is withdrawn, the Commission does not publish information, or the documents related to the intended activity. Only actual decisions of the Commission and the related opinions of the Independent Ethical Committee are published, in accordance with Article 11(7) of the Code of Conduct for the Members of the Commission.

Any withdrawn notification – regardless of the reason for the withdrawal – and all related documents fall, and remain afterwards, within the sphere of the former Commissioner's private life and cannot be released. Their release would harm the privacy and integrity of the former Commissioners concerned. They would reveal to the public, information and detailed exchanges on merely intended post-mandate professional activities that did not materialise following a withdrawal. Consequently, they are without relevance for the above-mentioned obligations of former Commissioners and the public interests these obligations aim to protect.

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The publication of information and related exchanges on withdrawn activities would also potentially harm the privacy and integrity of third persons who might have accepted the declined position instead of the former Commissioner, and potentially also the reputation of the entity or entities for which a former Commissioner may have decided to perform a professional activity instead.

For more detailed explanations, I kindly refer you to the second part of this reply regarding the handling of CEO's access-to-documents request (registered under reference 'Gestdem 2016/2552'). I would also like to recall that CEO has been fully informed of the Commission position on withdrawn notifications in the past, through the confirmatory decision on earlier access-to-documents applications (registered under references Gestdem 2015/3715 and 2015/3703 of 28 February 2015).

You also enquire about Ms Kroes' access rights to Commission buildings. As is the case for all former Members of the College, Ms Kroes is in possession of a badge that gives her access to certain parts of the Commission buildings. More precisely, like other former Commissioners, she can have access between 7.00 am and 8.00 pm on weekdays (excluding Commission holidays). The access does not extend to secure zone such as the floors hosting the Commissioners' Cabinets. I currently see no risk in Ms Kroes having this limited access and no justification to withdraw this general access right.

As regards the rules for post-mandate activities more generally, I would like to underline that the allegations do not refer to a problem of rules, but to an alleged non-compliance with the rules. These are two different issues.

As you rightly mention in your letter, the Commission's rules on post term of office activities were reinforced with the new Code of Conduct for the Members of the European Commission adopted on 31 January 2018. The Commission avails itself of a comprehensive set of rules and procedures which protect the public interest. The new Code of Conduct extended the period for mandatory notification of post-mandate activities and the automatic ban to lobby the Commission on portfolio-related matters to two years for former Commissioners and to three years for the President of the Commission. This period is appropriate given that risks diminish over time and that information and contacts become less relevant. Moreover, it corresponds to the maximum period of two years during which a transitional allowance can be paid to former Members of the Commission under the relevant Council regulation adopted in 2016. It is important to note however, that even after this period, the general ethical obligations of Article 245 TFEU continue to apply, although without a notification obligation.

As regards the restriction on lobbying of Article 12(4) of the Code that you mention, it is a general rule which does not prevent the Commission from imposing broader restrictions where necessary. The Commission made use of this possibility in a number of cases, based on opinions of the Independent Ethical Committee, and imposed restrictions beyond Article 12(4) of the Code as you can see yourself from several Commission decisions on post-mandate activities adopted after 2018.

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As regards your request for a special provision in the Code on 'job offers received while in office', the current rules on the independent performance of the duties and the avoidance of conflicts of interest cover this situation already and they are sufficient to address such situations appropriately.

As regards awareness, in the last Commission, Members received, for the first time, guidance on the handling of post-mandate activities, including while they were still in office. The Commission will build on this practice and strengthen this approach before the end of the mandate in November 2024.

As regards the Commission's handling of CEO's request for access to documents registered under reference Gestdem 2016 /2552, let me recall the wording of your request by which you had applied at the time (5 May 2016) for access to:

'copies of applications by former Commissioner Neelie Kroes which seeks Commission authorisation for new professional activities with Uber under the commissioner code of conduct:

[https://Anedium.com/@UberPubPolicy/announcing-ubers-vublic-policy-advisory-boardf7e6758ba9bd#.ucwtseomS.](https://Anedium.com/@UberPubPolicy/announcing-ubers-vublic-policy-advisory-boardf7e6758ba9bd#.ucwtseomS)

You had further requested access to:

'any emails, correspondence and meeting notes which relate to this application, all opinions from the ad hoc ethical committee and copies of the Commission's final decision.'

The 2016 request referred explicitly, via a hyperlink, to an alleged activity announced in the media and performed for the private company 'Uber' after the end of the cooling-off period. The alleged activity started after the end of the period covered by the obligation to notify post-mandate activities. Consequently, there was no notification or Commission decision on this activity.

Accordingly, the Commission's initial reply of 27 May 2016 (registered under reference Ares(2016) 2469175) to the request, informed CEO that no documents falling under the scope of the request could be identified, since no notification had been received by the Commission, the cooling-off period having expired. Based on the wording of the request, the latter was not considered to cover any documents linked to any previous notifications.

In any case, even if the temporal scope of the 2016 request had been interpreted as covering also notifications related to intended post-mandate activities to be initiated before the end of the 'cooling off period' (which, as explained above, was not the case given the wording of the request which was limited to the period following the 'cooling-off period'), the Commission would not have been in a position to grant access to the withdrawn notification given that it pertained to the private sphere of the former Vice-President, for the reasons explained above.

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CEO's second request for access to documents introduced in 2016, registered at the time under reference Gestdem 2016 /5365, requested access to:

'all exchanges between the Commissioner Kroes, her office and her Cabinet, with the companies Uber and / or Salesforce from 1 January 2012 to 31 October 2014. Specifically, I would like to request any emails, correspondence, meeting notes or telephone call notes.'

As stated in the Commission's initial reply sent to you on 15 December 2016 (Ares(2016) 6984498), and since the request concerned a former Commissioner, the Commission services carried out a search at the time. As a result of this search, four documents were identified in relation to two meetings, one with Uber and one with private entity 'Salesforces', as falling within the scope of CEO's request. Wide partial access was granted, subject to the protection of personal data, to all four documents identified.

Finally, as regards your request aimed at suspending Uber's registration in the Transparency Register, please note that the Commission is not in a position to suspend any entity from the Transparency Register as this falls within the remit of the Transparency Register's interinstitutional Secretariat. In line with the provisions of Annex III to the Interinstitutional Agreement¹, the registration can be suspended as a precautionary measure in case of the opening of an investigation. The latter can be opened on the Secretariat's own initiative or following a complaint. As far as the Commission is aware, the Secretariat is not conducting any own-initiative investigations against Uber and has not received any complaint against it.

Yours sincerely,

(e-signed)
Johannes Hahn

¹ Interinstitutional Agreement of 20 May 2021 between the European Parliament, the Council of the European Union and the European Commission on a mandatory transparency register, OJ L 2021, 11.6.2021, p. 1.