



Brussels, 24.3.2021  
C(2021) 9006 final

**DECISION OF THE EUROPEAN COMMISSION**

**on Former Commissioner Elzbieta Bienkowska's post term of office activity as member  
of the 'Commission on the Future of Mobility'**

## DECISION OF THE EUROPEAN COMMISSION

### **on Former Commissioner Elżbieta Bieńkowska's envisaged post term of office activity as member of the 'Commission on the Future of Mobility'**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on European Union,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to the Commission Decision of 31 January 2018 (C(2018) 700 final) on a Code of Conduct for the Members of the European Commission, and in particular Article 11(3) thereof,

Whereas:

- 1) According to Article 245(2) of the Treaty on the Functioning of the European Union, the Members of the Commission, when entering upon their duties, 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.
- 2) Article 339 of the Treaty on the Functioning of the European Union provides that the Members of the institutions of the Union shall be required, even after their duties have ceased, not to disclose information of any kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.
- 3) Article 11 of the Code of Conduct for the Members of the European Commission establishes a specific procedure for the assessment of planned professional activities which the Members or former Members of the Commission intend to take up after they have ceased to hold office. 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. If the planned activity is related to the portfolio of the Member or former Member, the Commission shall decide only after having consulted the Independent Ethical Committee unless the planned activity falls within the exceptions set out in paragraph 3, second subparagraph, lit. (a) to (f).
- 4) On 26 August 2020, Former Commissioner Elżbieta Bieńkowska notified to the Commission her envisaged post term of office activity as member of the 'Commission on the Future of Mobility'. She included overall information on this 'Commission', namely as regards its goal and core business, the role of the 'Commissioners' and the funding of the 'Commission'. The information forwarded by Ms Bieńkowska stated that she would have her expenses covered for travel to meetings that occur in person while there would be no other compensation for participation in the 'Commission'. Ms Bieńkowska's added that the 'Commission on the Future of Mobility' aimed to reshape global transportation policy to improve safety, opportunity and efficiency. Through research and advocacy, the 'Commission on the Future of Mobility' aims at creating a

cleaner environment, enhance security, greater economic opportunity, safer roads and improved access. Ms Bieńkowska further informed that the 'Commission on the Future of Mobility' is a new initiative of 'SAFE', an existing organisation funded by foundations, individual philanthropists and companies active in promoting advanced-fuel adoption (specifically electric vehicles).

- 5) Ms Bieńkowska underlined her awareness of the obligations deriving from the Code of Conduct for the Members of the Commission, notably the obligation to refrain from lobbying the Commission on matters for which she was responsible.
- 6) In view of Ms Bieńkowska's presentation of the 'Commission on the Future of Mobility', the Commission noted that this envisaged activity appeared to have a link with her former portfolio on Internal Market, Industry, Entrepreneurship and SME's. Therefore, in line with Article 11(3) of the Code of Conduct for the Members of the Commission, the Commission requested, on 28 September 2020, the Independent Ethical Committee's opinion on its compatibility with Article 245 of the Treaty on the Functioning of the European Union.
- 7) On 26 October 2020, upon request from the Independent Ethical Committee, the Commission wrote to Ms Bieńkowska inviting her to provide additional information on several aspects. The request concerned the activities that the 'Commissioners' of the 'Commission on the Future of Mobility' would be expected to pursue in relation to research in the first phase of the Commission's work in view of possible advocacy. Ms Bieńkowska was also invited to provide information on the specific topics of research that will be pursued, under which authority, how the research will be carried out and what the role of the 'Commissioners' will be in this regard. The Commission also relayed the Committee's question whether Ms Bieńkowska considered that she would be able to act as a 'Commissioner' of the 'Commission on the Future of Mobility' without engaging in lobbying activities towards the European Commission during the period of two years after the end of her mandate as Member of the European Commission, knowing that one of her main tasks would be to 'advocate inside and outside the EU', 'participate in conferences' and engage in 'networking'. Finally, Ms Bieńkowska was asked whether she considered if her function could be performed without using or sharing sensitive information or insights that she gained during her term of office as Member of the Commission.
- 8) Ms Bieńkowska provided the Commission with the requested information on 24 November 2020. She underlined the objectives, priorities and focus areas of the 'Commission on the Future of Mobility', the names of 'Commissioners' already confirmed, the role of 'Commissioners' who are current or former regulators, the 'Commission's' working methods, the timeframe and the first output expected, the 'Commission's' expectation regarding the 'Commissioners' participation and involvement, information about staffing and funding of the 'Commission on the Future of mobility' and its link with the established organisation 'SAFE'.
- 9) The Committee delivered its opinion on 12 February 2021. The Committee took account of all the information received in the context of Former Commissioner Elżbieta Bieńkowska's notification but also in the context of the notification of another Former Member of the Commission who had notified an identical activity as member of the 'Commission on the Future of Mobility'.

- 10) The Committee first noted that, according to publicly available information, the ‘Commission on the Future of Mobility’ is a new initiative established by the organisation ‘SAFE’ (Securing America’s Future Energy) aiming to address global transportation policies. The Committee then examined the nature of ‘SAFE’ and of the ‘Commission on the Future of Mobility’, their organisational structure, Former Commissioner Elżbieta Bieńkowska’s envisaged position in the ‘Commission on the Future of Mobility’, the funding of ‘SAFE’ and of the ‘Commission on the Future of Mobility’, and the links of both ‘SAFE’ and the ‘Commission on the Future of Mobility’ with the European Commission.
- 11) The Committee noted that ‘SAFE’ is a non-profit, non-partisan organisation founded in 2006 in the United States of America by its current President and CEO, and acts as an independent organisation. ‘SAFE’ has historically been funded primarily by foundations and individual philanthropists, with some support from companies whose values align with SAFE. Significant foundation support has come from those that want to promote advanced-fuel vehicle adoption (specifically electric vehicles) and see alignment in their environmental goals.
- 12) According to information made publicly available, ‘SAFE’’s field of activities encompasses energy, economy, national and global security, transportation and mobility. ‘SAFE’ stated goals are twofold. It aims to ‘unite prominent military and business leaders to develop and advocate for policies that improve America’s energy security’ and to combat the country’s dependency on oil. In addition, the organisation advocates for the developing of transformative transportation and mobility technologies. ‘SAFE’ has already launched four initiatives related to its fields of activity and created the ‘SAFE’ Energy Security Leadership Council, a group of business leaders and retired military officers dedicated to combatting the US dependency on oil. Members of this Council include CEOs of global corporations.
- 13) According to the information provided by Former Commissioner Elżbieta Bieńkowska, the Committee then noted that the ‘Commission on the Future of Mobility’ is a new research and advocacy coalition initiated by ‘SAFE’, expected to be launched in February 2021. The ‘Commission on the Future of Mobility’s’ general long-term goal is to ‘reshape global transportation policy to improve safety, opportunity and efficiency’. The ‘Commission on the Future of Mobility’ will consequently work on topics related to mobility, such as security, safety, economics, environmental protection and access to transportation.
- 14) In order to reach these objectives, the ‘Commission on the Future of Mobility’, in a first phase, aims to conduct ‘useful research on key questions’ related to the transportation and mobility sectors and, in a second phase, ‘recommend common sense solutions that may be of use to industries seeking to form best practices guidelines or to inform policymakers’. As specified by Former Commissioner Bieńkowska, the ‘Commission’s’ activities would primarily focus on research over the next 24 months, in order to ‘fill the gaps in existing understanding of cross-cutting transportation topics’. The ‘Commission’ will be formally launched with informal virtual panels taking place through the fall 2021. According to Ms Bieńkowska’s notification, the area of research could encompass ‘the impact of goods delivery’, ‘the role of drones and vertical take-off and landing systems in the

mobility systems’, ‘the intersection of land use and equity and the role of transportation’, ‘the economic impacts of low emission zones in urban areas’, ‘electric-vehicle battery and the electrification of the global fleet’, ‘a reframing of transportation safety’, ‘policies and the changing business of mobility’ and ‘transportation infrastructure funding’. Only once the research phase completed, the ‘Commission’ will start ‘advocacy outreach to various levels of government globally’, which the Commission understands to include possible advocacy towards EU institutions.

- 15) On the organisational structure of these two entities, the Committee noted that, according to information made publicly available by ‘SAFE’, this organisation relies on a structure composed of a President and CEO, a Vice-President for Operations and Finance, a Vice-President of Development, a Board and a team of ‘four-star retired military officers, companies CEOs and expert staff’. Former Commissioner Bieńkowska notified that the ‘Commission on the Future of Mobility’ would be composed of non-corporate and corporate ‘Commissioners’. To this date, the ‘Commission’ confirmed the participation of 3 non-corporate ‘Commissioners’. In addition, CEOs of 7 corporations will act as corporate ‘Commissioners’, namely from Ford Motor Company, TransDev, Qualcomm, FedEx, Cox Automotive Group, Hyundai Motor Company and Goodyear. Former Commissioner Bieńkowska notified that, as the ‘Commission on the Future of Mobility’ is still in a set-up phase, the process of recruiting corporate and non-corporate ‘Commissioners’, an Executive Director, a Director of Policy and Research and a Research Team is still ongoing.
- 16) As regards Former Commissioner Bieńkowska’s position on the ‘Commission on the Future of Mobility’, the Committee noted that the Former Commissioner had informed the European Commission that she had been invited to join the ‘Commission on the Future of Mobility’ as a non-corporate ‘Commissioner’. In this position, during the first phase of the ‘Commission’s’ work, Ms Bieńkowska would be expected to meet with other members of this ‘Commission’ twice a year, in order to give feedback to the Executive Director and the Research Team on their ongoing research. She would be asked to provide ‘high-level feedback and insight on the proposals shared by the Research Team’ to ensure that ‘the outcome of the research is thorough and addresses issues that are of current concern’. The second phase would start once research is complete and findings are published. During this phase, ‘Commissioners’ are expected to ‘determine areas of mutually desirable advocacy’ and to ‘support advocacy according to their own area of expertise’. However, according to information provided by Ms Bieńkowska, non-corporate ‘Commissioners’ are not required to engage in advocacy activities ‘if they are unable’. Additionally, Ms Bieńkowska assured the European Commission that ‘Commissioners’ who are ‘current or former regulators are not expected to share confidential’ and sensitive information acquired during their former mandate.
- 17) Former Commissioner Bieńkowska informed the European Commission that her travel expenses would be covered in order to attend meetings occurring in person. She will receive no other pecuniary compensation for participating in the ‘Commission’.
- 18) On the funding of ‘SAFE’ and the ‘Commission on the Future of Mobility’, the Committee noted that, according to information provided by Former Commissioner Bieńkowska, ‘SAFE’ is funded by donations and grants from foundations and

individual philanthropists, as well as individual companies whose values align with those of 'SAFE'. Among those organisations, Former Commissioner Bieńkowska referred in her notification to the Oak Foundation, William & Flora Hewlett Foundation, Hewlett Foundation, Energy Foundation, Climate Works, A Chance Fund and the Stuart Family Foundation.

- 19) Former Commissioner Bieńkowska informed the European Commission that 70% of the funding for the 'Commission on the Future of Mobility' would be paid by the 7 corporate 'Commissioners', listed above. Foundations would pay for the remaining 30%. Former Commissioner Bieńkowska informed the European Commission that the process of fundraising is still ongoing.
- 20) The Committed indicated that, according to the Financial Transparency System of the European Commission, neither 'SAFE' nor the 'Commission on the Future of Mobility' received EU funds from the European budget implemented directly by the Commission departments, its staff in the EU delegations or other bodies such as executive agencies.
- 21) Finally, on the links between 'SAFE' and the 'Commission on the Future of Mobility' with the European Commission, the Committee noted that neither 'SAFE' nor the 'Commission on the Future of Mobility' are currently registered in the Joint Transparency Register of the European Parliament and the Commission.
- 22) On the basis of the facts established, the Committee assessed the compatibility of Former Commissioner Bieńkowska's notified position against the framework of the applicable legal context.
- 23) First, and in line with previous opinions, the Committee recalled that former Members of the Commission had a right to engage in work and to pursue a freely chosen or accepted occupation after the term of their office, while this right needed to be balanced with the obligations set out in Article 245 of the Treaty on the Functioning of the European Union and in the Code of Conduct for the Members of the European Commission.
- 24) Concerning Ms Bieńkowska's specific position, the Committee underlined the basic elements of the factual description stated above and noted that the envisaged activity is directly linked to the Former Commissioner's portfolio. The Committee considered nonetheless that the activity does not represent a serious risk with regard to the interests of the Commission and the European Union. Ms Bieńkowska would not be remunerated for her position and would only meet twice a year with other members of the 'Commission on the Future of Mobility'. Furthermore, the envisaged studies or field of research are not linked to a specific interest of an individual stakeholder, and seem globally in line with the European Commission's policies and objectives.
- 25) The Committee noted however that the position of non-corporate 'Commissioner', by 'providing high-level feedback', might constitute by its nature a risk that specific information or insights that former Commissioner Bieńkowska obtained during her mandate could be relevant to the work of the 'Commission on the Future of Mobility'. In that respect, the Committee recommended that the European Commission's decision should emphasise that former Commissioner Elżbieta

Bieńkowska must respect the obligations set out in the Treaty and in the Code of Conduct and not share any sensitive information acquired during her term of office. The Committee would have considered it appropriate if the former Commissioner had provided assurances in this regard already in her replies to the written questions of the Committee

- 26) The Committee noted that the ‘Commission on the Future of Mobility’ plans to engage in advocacy activities as from 2023. These advocacy activities would occur after the end of the two years cooling-off period imposed by Article 11 of the Code of Conduct for Members of the Commission on former members of the European Commission. Moreover, Ms Bieńkowska guaranteed that non-corporate ‘Commissioners’ are not expected to pursue any advocacy if their former positions prevent them to do so. She declared that the ‘Commission on the Future of Mobility’ would work to ensure that the ‘Commissioners’ who are current or former government officials will respect any boundaries required by their current or former roles.
- 27) The Committee noticed furthermore that the ‘Commission on the Future of Mobility’ is currently not registered in the Joint Transparency Register of the European Parliament and the European Commission. The Committee considered therefore that the Commission decision should ask former Commissioner Bieńkowska to ensure the registration of the ‘Commission on the future of Mobility’ in the Joint Transparency Register as a prerequisite condition to a positive Commission decision. Ms Bieńkowska should insist that this registration must be concluded by the ‘Commission on the future of Mobility’ before starting any activity.
- 28) The Committee came eventually to the conclusion that the envisaged activity would be compatible with Article 245 TFEU, subject to the full and strict respect of several conditions and restrictions mentioned in its opinion.
- 29) The Commission shares the conclusions of the Independent Ethical Committee and notes Ms Bieńkowska’s statement that she is fully aware of the obligations deriving from the Code of Conduct for the Members of the Commission.

HAS DECIDED AS FOLLOWS:

#### *Article 1*

Former Commissioner Elżbieta Bieńkowska’s envisaged activity as member of the ‘Commission on the Future of Mobility’ is compatible with Article 245(2) of the Treaty on the Functioning of the European Union, subject to the strict respect, by Ms Bieńkowska, of the general obligations which apply to the former Members of the Commission and, in particular, subject to the following conditions and restrictions:

- In line with Article 11(1), in conjunction with Article 5, of the Code of Conduct for the Members of the Commission, Former Commissioner Bieńkowska remains bound by the duties of collegiality and discretion with respect to the Commission’s decisions and

activities during her term of office. This includes refraining from sharing any sensitive information acquired during her term of office and from disclosing what was said at meetings of the Commission but also a general duty to apply a high sense of discretion with regard to the use of information and insights that she has obtained during her mandate, be it within her portfolio responsibilities or within the College. In particular, Ms Bieńkowska shall adopt a prudent approach when providing ‘high-level feedback’ and advice to the ‘Commission on the Future of Mobility’ and to the organisation ‘SAFE’;

- In accordance with Article 11(4) of the Code of Conduct for the Members of the Commission, during a period of two years following her term of office, Former Commissioner Bieńkowska shall refrain from lobbying the Members of the Commission or Commission staff on behalf of the ‘Commission on the Future of Mobility’ on matters for which she was responsible during her mandate. ‘Lobbying’ includes indirect lobbying in the sense of influencing the Commission ‘through the use of intermediate vectors such as media, public opinion, conferences or social events, targeting the EU institutions’ as set out in paragraph 7 of the Agreement between the European Parliament and the European Commission on the transparency register for organisations and self-employed individuals engaged in EU policy-making and policy implementation. This would also cover any potential activity with a view to obtaining EU funding;
- After the two-year period following the end of her mandate at the European Commission, Ms Bieńkowska shall ensure that any possible contacts between herself and the European Commission and its staff, on behalf of the ‘Commission on the Future of Mobility’, shall respect the general duties of integrity and discretion established by Article 245 of the Treaty on the Functioning of the European Union, which continue to apply;
- In accordance with Article 339 of the Treaty on the Functioning of the European Union, Former Commissioner Biekowska shall refrain from participating in any activity or decision-making procedure within the ‘Commission on the Future of Mobility’ which might involve using information of the kind covered by the obligation of professional secrecy regarding, in particular, undertakings, their business relations or their cost components. This obligation remains beyond the end of the two-year period following the end of Ms Bieńkowska’s mandate as Member of the European Commission;
- In line with Article 13(2) of the Code of Conduct for the Members of the Commission, Former Commissioner Bieńkowska shall inform the President of the Commission, in a timely manner, if and when she has a doubt with regard to the application of the present decision or to her obligations deriving from the Treaty on the Functioning of the European Union and the Code of Conduct for the Members of the Commission before acting on the matter in relation to which the doubt arises.



*Article 2*

Former Commissioner Bienkowska shall work for an adequate registration of the ‘Commission on the Future of Mobility’ in the Joint Transparency Register of the European Parliament and the European Commission and shall refrain from engaging herself in any advocacy activity before this registration is complete. She shall share a copy of the present decision with the ‘Commission on the Future of Mobility’, insisting upon this prerequisite condition raised by the European Commission for her involvement with the ‘Commission on the Future of Mobility’.

Done at Brussels, on 24 March 2021.

*The President*  
*Ursula von der Leyen*