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ACTIVITES APRES CESSATION DE FONCTION  
D'UN MEMBRE DE LA COMMISSION

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Communication de M. le PRESIDENT

Cette question est inscrite à l'ordre du jour de la 1946<sup>ème</sup> réunion de la Commission le 2 février 2011.

Destinataires : Membres de la Commission  
Directeurs généraux et chefs de service

## MEMORANDUM FROM THE PRESIDENT TO THE COMMISSION

According to Article 245(2) of the Treaty on the Functioning of the European Union, the members of the Commission, when taking up 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. Further to this Treaty provision, the Code of Conduct for Commissioners adopted on 24 November 2004 (SEC (2004) 1487/2) enacted a specific procedure for the assessment of the activities to be performed by former Commissioners. Under the Code, when Commissioners intend to engage in an occupation during the year after they have ceased to hold office, whether at the end of their term or upon resignation, they shall inform the Commission in good time. The Commission shall, then, examine the nature of the planned occupation and, if the activity is related to the content of the Commissioner's portfolio during his or her full term of office, it shall seek the opinion of an ad hoc ethical committee.

The Commission was informed via press articles at the end of August 2010 of the creation by Mr. Günter Verheugen of a consultancy company. Following a request for information, Mr. Günter Verheugen informed the Commission on 1<sup>st</sup> September 2010 that he had co-founded "The European Experience Company GmbH", of which he had also become a non-executive director, explaining that the different business areas of The European Experience Company would probably develop over time, covering European and international policy matters.

Mr. Verheugen indicated that the main lines of The European Experience Company's strategic company profile were the following: (a) briefing sessions and written briefings for top leaders of public and private institutions and enterprises; (b) intensive management seminars for institutions and enterprises in cooperation with experts from European institutions; (c) analytical background papers and strategy recommendations in the area of EU policy and other political matters; (d) support for public relations endeavours in European affairs; (e) conflict mediation; and (f) speeches and other contributions at conferences, seminars and other events organized by institutions and enterprises.

Mr. Verheugen underlined that any kind of lobbying would be excluded and expressed the view that the activity of the 'The European Experience Company's was not relevant with regard to the above referred provision of the Code of Conduct for Commissioners insofar as The European Experience Company does not compensate him for his role as non-executive director.

The Commission nevertheless requested, on 1 September 2010, the Ad hoc Ethical Committee's opinion on the compatibility of Mr. Verheugen's new activity with the Code of conduct for Commissioners and article 245(2) of the TFEU, and the Committee delivered its opinion on 2 November 2010.

The Committee indicated that in the presentation in its website The European Experience Company clearly implies that the services offered by the company will be delivered by either or both of its co-founders. It considered that it was indifferent whether Mr. Verheugen is employed by the company or co-owns it, and may be remunerated as

shareholder; what matters is that his services are offered as an economic activity to the operators. This led the Committee to consider that Mr. Verheugen would engage in an occupation within the scope of article 245(2) of the TFEU.

The Committee noted the very broad spectrum of the services offered by The European Experience Company, covering briefings, recommendations, support for public relations in European affairs in an unspecified manner, in such a way that it could cover very general services as well as very specific issues which Mr. Verheugen could have come across in his previous function as Member of the Commission.

Considering the broad and indiscriminate description of the services offered, the Committee felt unable to assess the exact relations with Mr. Verheugen's previous functions as Commissioner. The Committee was of the view that, as described, there was a risk that such a wide activity could at some point directly intersect with the scope of the Mr. Verheugen's former activity as Member of the Commission, in a manner which could not be dealt with by abstaining on a case-by-case basis. The Ad hoc Ethical Committee came thus to the conclusion that, "as presently so indiscriminately described", the considered activity could not be viewed as in conformity with article 245(2) of the TFEU.

Following the Ad hoc Ethical Committee's opinion, the Secretary General of the Commission wrote to Mr. Verheugen on 11 November 2010, inviting him: (1) to specify in more detail the scope of the envisaged activity and, in particular, the possible exclusion of any file related to companies with which he had had contact during his mandate, in particular in relation to individual decisions prepared by his former services; (2) to clarify how, in practice, he would ensure that any kind of lobbying would be excluded.

Mr. Verheugen replied to the Commission on 2 December 2010, stressing his full commitment to respect the Code of Conduct and underlining his non-executive and honorary role in the European Experience Company, without any kind of compensation, repeating his opinion that the Code of Conduct does not apply in this case, without providing additional information concerning the scope of the activities of the European Experience Company, nor precision concerning the exclusion of lobbying activities.

Taking into consideration the Code of conduct for Commissioners and in particular the necessity for the Commission to adopt a decision whether the planned occupation is compatible with the last paragraph of Article 245(2) of the Treaty (TFEU), the Commission should now decide on the basis of all the information at its disposal, taking also into account the opinion of the ad hoc ethical Committee.

In this context, it is important to note that conditions were imposed on the former Head of cabinet of Mr. Verheugen, who became co-founder and Managing Director of The European Experience Company, for a period of eighteen months as from the decision. The decision having been adopted on 7 October 2010, the conditions it sets are therefore applicable until April 2012. In the course of her new professional activities it was prohibited to establish contacts with or approach the services that came under the authority of Vice-President Verheugen, and to advise companies who have been addressees or beneficiaries of any individual decision prepared by those services under the authority of the Vice-President.

Those conditions were deemed necessary in order to avoid any risk of conflict of interests.

Having regard to the higher responsibility of a Commissioner, the Commission should decide if similar conditions are sufficient to avoid conflict of interests while preserving a proportionate measure of freedom of employment.

Considering the potentially wide scope of the non-executive and honorary role of Mr. Verheugen in this new company and bearing in mind that former Commissioners remain bound by article 245 (2) and, as far as professional secrecy is concerned, article 339 of the Treaty (TFEU), it is proposed - after consultation of the competent Commission services - that the Commission could decide that Mr. Verheugen's implication with The European Experience Company is compatible with article 245(2) of the TFEU only subject to the following conditions:

- The European Experience Company will not have professional contacts with the Commission Services over which Mr. Verheugen had authority during his second Commission mandate for a period of 26 months as from the end of Mr. Verheugen's term of office (This period coincides with the limitation period mentioned above as concerns the managing director of The European Experience Company, former head of cabinet of Mr. Verheugen);
- During this period, the European Experience Company will not provide its services to any company or person who has been the addressee or who has benefitted from individual decisions, grants or contracts prepared or handled by the Commission's Directorate General "Enterprise and Industry" during Mr. Verheugen's second Commission mandate.

The Commission is requested to examine the nature of the above mentioned envisaged occupation and to conclude that it is compatible with Article 245(2) of the TFEU subject to the conditions indicated above.