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CASES

BARROSO
KROES

March 2017

CONTENT

Illustration by Philippe Joisson - “La Libre“ du 15 July 2016 - Comment empêcher Barroso de devenir lobbyiste?

Syndicat du Personnel des Institutions Européennes

Bruxelles, le 7 mars 2017

NOTE À L'ATTENTION DE MONSIEUR JEAN-CLAUDE JUNCKER

PRÉSIDENT DE LA COMMISSION EUROPÉENNE

OBJET: **Affaire Barroso - Décision du 24 février 2017 de la Médiatrice européenne d'ouvrir une enquête en invitant la Commission à répondre à la lettre du 16 octobre dernier du collectif des membres du personnel à l'origine de la pétition "Pas en notre nom" et à vérifier la gestion de ce cas de pantouflage par notre institution**

RÉF. : **Dossier Barroso** (cf. Dossier novembre 2016)

Nos notes concernant l'affaire Barroso

Note à votre attention : Affaire Barroso, votre réponse du 9 septembre dernier à la Médiatrice européenne -14 septembre 2016

Note à votre attention Affaire Barroso - 09 septembre 2016

Note à votre attention : Nomination de M. Barroso en tant que conseiller et président non exécutif des activités internationales auprès de la banque d'affaires international Goldman Sachs - 04 août 2016

Note aux membres du Collège - 12 juillet 2016

Lettre ouverte à M. Barroso – 12 juillet 2016

La décision de la Médiatrice européenne reprise en objet ***(Complaint 194/2017/EA),*** n'est que la dernière étape en date d'un processus que notre institution a géré d'une manière absolument insatisfaisante en mettant en cause tant sa crédibilité que la confiance de son personnel.

C'est avec tristesse que nous avons pris acte que la Médiatrice européenne a dû intervenir en vous invitant à répondre avant le 31 mars prochain à la demande émanant de nos collègues que vous avez reçue il y a déjà 5 mois.

Nous vous invitons, à notre tour, à ne pas vous limiter à répondre à leur lettre mais à rencontrer les représentants du collectif des collègues à la base de la pétition "Pas en notre nom"

En effet, il est désolant de devoir constater que vous n'avez toujours pas trouvé le temps de recevoir une délégation de ce collectif alors que, par exemple, lors du dépôt de la pétition, le Président Schulz lui avait réservé un accueil très chaleureux et une écoute très attentive.

Il s'agit pourtant de milliers de membres de votre personnel qui ont fait appel à votre sensibilité en vous manifestant leur confiance.

Les recevoir, c'est la meilleure démonstration du respect, de l'admiration et de la reconnaissance pour son dévouement sans faille que vous confirmez à chaque occasion à votre personnel, comme vous venez de le faire en dernier lieu lors de la présentation de votre Livre Blanc concernant l'avenir de l'Union européenne.

Rappel des faits

Dès le déclenchement de l'affaire Barroso et Kroes, tout en soutenant avec conviction les prises de position très claires de la Médiatrice européenne, **R&D** a attiré toute votre attention sur le besoin urgent et l'obligation d'assurer une gestion rapide, efficace et rigoureuse de ces dossiers qui ont suscité des réactions plus que virulentes et qui ont profondément mis en cause la crédibilité de notre institution ***(cf. dossier Barroso-Kroes).***

Parallèlement, et dans le plus grand respect de l'autonomie du collectif des collègues qui en sont à l'origine, **R&D** a immédiatement soutenu la pétition "Pas en notre nom" qui a recueilli plus de 153.000 signatures en faveur d'une action de la Commission devant la Cour de justice de l'UE à l'encontre de M. Barroso.

Nous avons regretté **l'attitude léthargique** de notre institution qui a donné l'impression de cultiver l'illusion - tant par son inaction que par ses réactions, de toute évidence inadéquates - que ces affaires s'estomperaient et ceci malgré toutes les sollicitations du personnel et de leurs représentants ainsi que les réactions politiques au sein de tous les Etats membres.

Par la suite, nous nous sommes réjouis des premières réactions et actions mises en œuvre. Néanmoins, elles demeurent **inadéquates, insuffisantes et incomplètes** pour faire face à la gravité de la crise de crédibilité qui a atteint notre institution.

Cette attitude n'a pas manqué d'exacerber les réactions des citoyens, de votre personnel, de la presse et de provoquer des prises de position de plus en plus fermes et critiques du Parlement européen.

Concernant le caractère insuffisant des procédures en vigueur pour éviter les conflits d'intérêt des membres et anciens membres de la Commission

Il est, malgré tout, appréciable qu'après avoir prétendu à l'exemplarité de son caractère, sous votre impulsion, le collège ait enfin décidé de réformer le code de bonne conduite applicable aux membres et anciens membres de la Commission.

Néanmoins, comme tous les observateurs l'indiquent et comme le confirme le Parlement européen par sa résolution adoptée à une très écrasante majorité le 1er décembre dernier (2016/2080(INI)), les procédures en vigueur concernant la gestion des conflits d'intérêts des membres et anciens membres de la Commission **demeurent largement insuffisantes** pour permettre à la Commission de gérer de telles affaires qui ont un effet dévastateur sur la crédibilité de notre institution et du projet européen. Ceci concerne avant tout le rôle du comité d'éthique *ad hoc.*

La gestion décevante de ces affaires

Mais, c'est dans la prise de décisions concernant ces affaires que l'attitude de notre institution a été plus que décevante.

Affaire Kroes

D'une part, concernant l'affaire Kroes nous avons déjà dû constater le caractère risible des arguments que Mme Kroes a invoqué pour justifier les faits qui lui étaient reprochés et le caractère peu crédible des décisions de la Commission adoptées en catimini le 21 décembre dernier, en l'occurrence. Il suffit de rappeler les propos de l'eurodéputé Pascal Durand, rapporteur du texte adopté par le Parlement européen le 1er décembre 2016 sur les déclarations d'intérêts des membres de la Commission (2016/2080 (INI) ainsi que de la motion adoptée par le PE concernant le gel des indemnités… (*cf.* Résolution du PE du 26 octobre 2016… point 69 2016/2047 (BUDG)) sur la décision de de la Commission : « *C'est vraiment un scandale, un foutage de gueule!*", en dénonçant que les commissaires *"ne se rendent pas compte à quel point ils sont en train de détériorer l'image de l'Europe" (cf. article de l'AFP—UE: après Barroso, la transparence à l'épreuve du cas Kroes 4°paragraphe).*

De nouveau, il est inutile de dénoncer **cette éthique à double vitesse** : l'indulgence sans limite réservée à l'égard de Mme Kroes n'est en aucun cas comparable aux sanctions qui seraient rendues par l'AIPN -pour des faits similaires- à un quelconque membre du personnel.

Sans oublier que le personnel ne profite pas de la bienveillance sans limites du comité d'éthique ad hoc. Dès le premier soupçon de violation des règles en vigueur, il est soumis à de lourdes et pénibles enquêtes diligentées par l'OLAF et/ou par l'IDOC.

Affaire Barroso

D'autre part, nous avons dû constater que l'avis du 28 octobre dernier rendu par le comité d'éthique ad hoc sur l'affaire Barroso, digne de Ponce Pilate, a été absolument inadéquat par rapport à la gravité des conséquences pour la crédibilité de notre institution (Ethique et intégrité des commissaires européens). Notre analyse avait d'ailleurs été confortée par l'avis tout aussi critique de la Médiatrice européenne (Ombudsman reacts to opinion of Ethical Committee on Barroso)

Le comité d'éthique ad hoc se limitant à émettre un avis, nous vous avions sollicité afin que notre institution adopte une décision claire concernant cette affaire. Or, après plusieurs mois, nous sommes toujours dans l'attente de cette décision pour laquelle nous avions sollicité votre intervention afin que celle-ci soit adoptée pour faire toute la clarté sur la situation.

Cette même demande vous a été adressée en dernier lieu le 16 octobre dernier par le collectif à la base de la pétition "Pas en notre nom".

Face au manque de réponse de la Commission, le 24 février dernier, la Médiatrice européenne a décidé :

> ***1) d'ouvrir une enquête formelle concernant la manière dont notre institution a géré le pantouflage de notre ancien président Barroso (Complaint 194/2017/EA):***
>
> Dans la motivation à l'appui de sa décision, la Médiatrice européenne confirme toutes les critiques que nous avions émises concernant la gestion du dossier, notamment sur l'absence d'une véritable enquête de la part du comité d'éthique ad hoc:
>
> *« Je m'attendais à une enquête bien plus approfondie. Il n'y a aucune preuve qu'ils aient entendu qui que ce soit, qu'ils aient demandé à voir le contrat de Barroso chez Goldman Sachs ou qu'ils aient enquêté sur l'étendue des tâches qui lui seront confiées ».*

La Médiatrice européenne annonce donc qu'elle va se pencher sur le fonctionnement du comité d'éthique ad hoc et qu'à cet effet ses services vont mener une inspection auprès de la Commission concernant le dossier Barroso mais aussi les autres quatre derniers dossiers ayant donné lieu à un avis de la part dudit comité.

2) de vous inviter à répondre avant le 31 mars prochain à la demande du collectif du personnel, du 16 octobre dernier, à la base de la pétition "Pas en notre nom"

Nous vous invitons à ne pas vous limiter, seulement, à répondre à leur lettre mais aussi à rencontrer sans plus tarder les représentants de ce collectif, à écouter leurs demandes et à répondre à leurs questions et interrogations.

Il n'est pas trop tard!

Il serait vraiment triste que le dialogue entre notre Président et son personnel passe par un échange bureaucratique de lettres et qu'il ait même besoin de l'intervention de la Médiatrice européenne dont nous tenons à remercier, encore une fois, pour toutes les démarches qu'elle a mises en œuvre depuis le début de ces affaires.

Copies: Mmes et MM les membres du Collège
Mme E. O' REILLY, Médiatrice européenne
M. Pascal Durant Membre du PE
Le personnel de la Commission

Cartoon drawn by Nicolas Vadot illustrating the article "Kroes, guilty but not sanctioned" published in the newspaper "L'Echo" of 23 December 2016: an example of the very sharp reactions following the announcement of Commission's decision

Syndicat du Personnel des Institutions Européennes

Brussels, 17 January 2017

NOTE TO THE ATTENTION OF MR JEAN-CLAUDE JUNCKER

PRESIDENT OF THE EUROPEAN COMMISSION

Subject: **Kroes case**

Commission Decision of last 21 December to hand a reprimand to former Vice-President Kroes for the lack of diligence she demonstrated by failing to declare the income received for 2015 in the early 2016 declaration, while still accepting to receive the transitional allowance set out in the Commission's Code of Good Practice (cf. PV(2016) 2194)

Ref. : **Dossier Barroso-Kroes (see November 2016 file)**

Our notes on the Kroes case

15 November 2016: Reform of the Code of Conduct applicable to members and former members of the Commission

23 September 2016: « Bahamas Papers » and articles in the European press about the situation of the former Vice Presidente Neeli Kroes

From the outset of the Barroso and Kroes cases, **R&D** firmly supported the European Ombudsman's very clear positions and drew your attention to the need and urgency to ensure rapid, effective and rigorous management of these cases which have provoked violent reactions, and have seriously undermined the credibility of our institution ***(Barroso-Kroes cases).***

At the same time, and in full respect of the autonomy of the colleagues collective who initiated it, **R&D** immediately supported the petition "not in our name" which collected over 153,000 signatures.

We deplored the lethargic attitude of our institution, which gave the impression of fostering the illusion that, through its inadequate inaction and reactions, these cases would fade away, despite all the sollicitations of the staff and their representatives and political reactions within all member states.

Subsequently, we welcomed the first reactions and actions implemented. Nevertheless, they remain **inadequate, insufficient and incomplete** to cope with the seriousness of the credibility crisis that has hit our institution.

These measures continue to appear to us as way below the mission of the "*last chance Commission*" which is first of all, as you confirmed, to "*regain the confidence of citizens*".

It is nevertheless significant that, after having claimed to the exemplary nature of its character, at your instigation, the College finally decided to reform the code of conduct applicable to members and former members of the Commission.

Nevertheless, it is inadequate for the Commission to have increased the duration of the cooling-off period for the Commissioners by only six months.

Mrs Kroes "Unaware"... of her position... as director of Mint Holdings... without her informed knowledge

It must be remembered that documents published at the end of September by several European media, on the “Bahamas Leaks”, revealed that Mrs Kroes has continued to act as an administrator with Mint Holdings Ltd., an offshore company in the Bahamas, between 2000 and 2009.

Between 2004 and 2009 Mrs Kroes held the post of Competition Commissioner and, as a result, the EU Code of Conduct forbade her to engage in “*any other occupation, whether gainful or not*”.

Moreover, at the beginning of their mandates, the Commissioners must notify in a public register all activities carried out during the previous ten years. However, at the time of her assumption of office, Mrs Kroes had failed to declare her directorship of Mint Holdings.

It was noted that the case seemed all the more sensitive since Mint Holdings was intended to buy back large-scale assets in the energy sector, whereas Mrs Kroes was defending in Brussels, on behalf of the Commission, the liberalization of the gas market.

In response to the more than virulent reactions to the revelations of the "Bahamas Leaks", Mrs Kroes explained that she " *did not know she was still listed as holding the unpaid post.”*

These remarks immediately aroused very sharp reactions stressing the fact that it was not credible that Mrs. Kroes "*could not know the social mandates that she exercised and that it was simply laughable that, unbeknown to oneself, one can be director of a company that is useless at the other side of the world in a tax haven” …*"

Mrs Kroes and the "Bahamas Leaks" ... guilty but not sanctioned

By its decision of last 21 December, the Commission finally acknowledges Mrs Kroes' failings, which were, moreover, indisputable.

However, even if, following the advice of the Ad Hoc Ethics Committee, the Commission acknowledges that Mrs Kroes is guilty of breaching the Code of Good Conduct, it has decided not to sanction her because it seems to accept her version according to which she would have been Director of Mint Holdings ... unbeknown to herself…

Therefore, we would like to observe that Commission's decision is, to say the least, surprising, that it seems obviously inadequate and is difficult to understand.

This is all the more the case as, despite several questions raised about that at the Commission's daily press conference of 22 December and a written reminder from AFP, the spokes-

person's service simply limited itself to confirm that "*the Commission had all the information it needed* to decide" and without specifying whether the Commission had investigated the Company or relied solely on the advice of the Ad Hoc Ethics Committee who appears to have been satisfied with Mrs Kroes' statements.

The same questions concerning the absence of any verification of the remarks and documents transmitted by the former members of the college had been made concerning the opinion given by the Ad Hoc Ethics Committee on the Barroso case (cf. note to the Members of the College—15 November 2016).

In this regard, we are waiting to hear what action the Commission will take on the matter.

BUT THAT'S NOT ALL... Mrs Kroes is handed a reprimand for failing to report her income for 2015 to the Commission, while still agreeing to receive her transitional allowance

Having read your decision, we have learned about another case related to Mrs Kroes' income tax return for 2015.

In addition to her term with Mint Holdings, it appears that Mrs Kroes also failed to report her income for 2015 to the Commission, while agreeing to receive the transitional allowance received by the former Commissioners during the three years after they leave office.

Probably not being able to claim, again, to have received this income unbeknown to herself, it was only a few days after the revelations of the "Bahamas Leaks" that Mrs Kroes finally informed the PMO of her income for 2015. This enabled the Commission to recover the amount paid to her in respect of the transitional allowance and to which she was not entitled.

Under these circumstances your decision to follow once again the advice of the Ad Hoc Ethics Committee and to limit the sanction to a mere blame does not seem adequate to the seriousness of the breach found.

Very sharp reactions... to the point of calling the Commission's decision "an insulting mockery "

It is appreciable that, by adopting its decision of 21 December, the Commission decided to disclose its decision "*given that the facts concerning Mrs. Kroes have been widely taken up in the press*".

However, if the objective was to try to reassure once again the outside world of the rigor and exemplary nature of the Commission's management of these cases and thus help to regain confidence in our institution ... in such a case, the failure was complete.

As it was absolutely easy to foresee it the first reactions following the Commission Decision were very critical, pointing to the absolutely inadequate nature of the decisions adopted and the fact that they were "*made public on the sly, on the eve of the end of year holidays, in the middle of a dozen other announcements* ".

In order to appreciate the magnitude of these critical reactions, it should also be noted that MEP Pascal Durand, rapporteur for the text adopted by the European Parliament on 1 December 2016 on the declarations of interest of the members of the Commission (2016/2080 (INI) and the motion adopted by the EP on the freezing of allowances ... (EP Resolution of 26 October 2016… point 69 2016/2047 (BUDG)) immediately described the decision as " *it's really a scandale, an insulting mockery*" by denouncing that the Commissioners "*do not realize to what extent they are damaging the image of Europe*" (*AFP—UE: après Barroso, la transparence à l'épreuve du cas Kroes 4°paragraphe).*

Two-speed ethics and justice

We have to acknowledge, unfortunately, that the absence of any sanction relating to her role in the context of the facts revealed by the Bahamas Leaks and the mere blame inflicted to Mrs Kroes for failing to declare her income for 2015, can in no way stand comparison with the sanctions which would be imposed by the Appointing Authority on similar acts to any staff member.

Not to mention that staff does not benefit from the unlimited benevolence of the Ad Hoc Ethics Committee. From the first suspicion of violation of the rules in force, they are subjected to heavy and arduous investigations by OLAF and / or IDOC.

Thus, in addition to the critical reactions mentioned above, your decision will not fail to amplify the feeling of demotivation and frustration of your staff which through the afore mentioned petition had appealed to you and your sensitivity to ensure that such cases are managed strictly in order to restore the image and credibility of our institution, which we are all proud to serve.

The importance of reforming the existing procedures

In any event, it is clear that the existing procedures for dealing with conflicts of interest of members and former members of the Commission are in no way adequate to enable Commission to manage such cases, which have a devastating effect on the credibility of our institution and the European project..

This concerns, above all, the role attributed to the Ad Hoc Ethics Committee, which seems to consistently confuse its mandate with that of a true judicial body, moreover, merely deliberating on the documents transmitted by the concerned members of the College. This is all the more inadequate considering the fact that the Commission keeps on simply and systematically following the opinions given by the Ad Hoc Ethics Committee and thus renounces to invoke Article 245 of the Treaty.

Radically reforming the Code of Conduct and strengthening the provisions for declarations of interest by members of the Commission is also what the European Parliament is asking the Commission by its resolution [2016/2080 (INI)], adopted on 1 December with an overwhelming majority

In particular, considering in its turn as absolutely insufficient the measures hitherto adopted by the Commission the EP, by its resolution, calls on the Commission to take account of its recommendations made in its latest resolutions and the evolution of the general standards in matters of ethics and transparency applicable to all the institutions of the Union, in particular:

- that **Commissioners declare all their interests** (as shareholders, company board members, advisors and consultants, members of associated foundations, etc.) as regards all the companies in which they have been involved, including close family interests, as well as the changes that took place at the time their candidacy was made known (*point 28. b*);

- that **the code of conduct be amended**, in line with Article 245 TFEU, to extend **Commissioners' post-office employment restriction to a period of at least three years** and not shorter than the length of time during which former Commissioners are eligible for a transitional allowance as defined in Regulation No 422/67/EEC (*point 28.g*);

- that **criteria are defined for compliance** with Article 245 TFEU, which imposes on Commissioners a 'duty to behave with **honesty and discretion** as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits' (*point 28.o*);

- that the **Ad Hoc Ethical Committee** is composed of **independent** experts who have not themselves held the position of Commissioner (*point 28.q*).

R&D calls on the Commission to cooperate with the European Parliament on this file

R&D, the most representative union at interinstitutional level, convinced of the richness of the European project and of interinstitutional collaboration, calls on the Commission to cooperate with the European Parliament on the basis of the resolution adopted on 1 December.

In conclusion, faced to all these invitations to the Commission, we can only call on your spur to reform, finally and in depth, the enforcement mechanism for the management of the conflicts of interest of members and former members of the Commission and to carry out 'till the very end' the ongoing cases; this is what the "last chance Commission" must do to start regaining the confidence of citizens and meeting the expectations of its staff.

Copies: Honourable Members of College
Ms E. O' REILLY, European Ombudsman
Mr P. Durand, MEP
Commission staff

Le Renard Déchainé

UPDATE : Barroso & Kroes Cases

November 2016

« Le Renard déchaîné» special Barroso & Kroes cases— UPDATE

On 4 October, the European Parlement **called into question all the limits of the mechanism put in place to avoid conflicts of interest of current and former members of the Commission**

On 26 October 2016 , faced with the lack of reaction from the Commission in relation to the Barroso and Kroes cases, EP acted and voted the freezing of the allowances of outgoing commissioners! Never seen before!

On 28 October 2016: the opinion of the *ad hoc* Ethical Committee on the Barroso case was given: no offence committed, but a very serious lack of judgment

On 30 October 2016, the European Ombudsman highlights the limitations of the opinion of the ad hoc Ethical Committee on the Barroso case and plans to launch an ad hoc survey

On 5 November 2016, in his interview on the newspaper « Le Soir » President Juncker acknowledged for the first time the limits of the code of conduct and announced his willingness to reform it.

R&D invites the President Juncker to pursue with determination his approach by going to the bottom of the Barroso and Kroes cases and reforming the whole system set up for the management of conflicts of interests of commissioners.

What will it happen now?

Le Renard Déchaîné

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UPDATE

Barroso & Kroes Cases

Faced with the refusal of the Commission

to reform the system put in place to avoid conflicts of interest of members of the former Commission, the European Parliament has acted and voted for the freezing of the allowances of outgoing Commissioners.

And

The opinion of the ad-hoc Ethical Committee was given: no offence was committed, but a very serious lack of judgment

R&D reiterates its call for a fundamental reform of the code of conduct, and welcomes the announcement to that effect made by President Juncker in his interview with "Le Soir".

Illustration byPhilippe Joisson for “La Libre“ of 15 July 2016 - “Comment empêcher Barroso de devenir lobbiyste?”

Edito

Regarding these cases that have raised so many critical reactions, destroying the image and credibility of our institution, we provided a detailed state of play of the initiatives already implemented (see our "Renard déchainé" of 25 October 2016.)

We also were committed to immediately notify staff about any new developments. This is what we are now doing through this new "Renard déchainé".

Really, thank you again for your support and encouragement!

Cristiano Sebastiani
President

SOMMAIRE

On 4 october, the European Parlement

called into question all the limits of the mechanism put in place to avoid conflicts of interest of current and former members of the Commission

Since the beginning of these cases and striking against the inaction of our institution, also through its section in the EP, **R&D** has consistently drawn MEP's attention to the need for an adequate response to the expectations of European citizens expressed through the petition "Not in our name" that exceeded 153,000 signatures... It should be noted that, unlike the Commission, the EP, like the European Ombudsman, has proven to be perfectly in line with these expectations.

In the first place, in our last "Renard déchainé", we reported the results of the hearing on **4 October** of Mr Moscovici before the EP including the anger, for once unanimous, of MEPs due to the lack of reaction from the Commission over the increasing cases of revolving doors of former President Barroso and other members of the college he had chaired.

On this occasion, Mr Moscovici confirmed that, as regards the management of conflicts of interests is concerned, the Juncker Commission intended to fully respect the principles of ***"exemplarity and transparency"***, and that the code of conduct is absolutely adequate and meets the highest standards within national states, without it being necessary to toughen it.

We had already noted with regret that this code does not meet the exemplary character as far as the length of the "cooling-off period" is concerned, but also because it was lagging behind the obligations imposed on any member of our staff. As for the best State practice, just remember, for example, that in Canada the "cooling-off period" is 5 years.

During the debate held on 4 October, several MEPs had also stressed the lack of independence of the Ethical Committee and had particularly raised the following critics:

- The **code of conduct** which commits the Commissioners and on which members of the Ethical Committee based their opinion is written by the commissioners themselves. What is more, t was also the Barroso Commission which in 2011 was responsible for revising the code of conduct currently in force.

- The **cooling-off period**, during which former commissioners can join the private sector without asking permission from the Ethical Committee, is far too short. Currently, it is eighteen months and several MEPs have confirmed that legislation for which the Commissioners may be influenced by pressure groups have a much longer life: three, five and sometimes, as in the case of RNP, even ten years.

- The **ad hoc Ethical Committee** which sets the Code of Conduct for Commissioners is an informal body. Its opinion can be sought only by the Commission; its opinions are advisory only and cannot be made public by the Commission, which appoints, by itself, its three members.

All these points contravene the criteria that should be those of an independent committee.

Several MEPs have confirmed their view that a **high independent authority is needed** so as to avoid the Commission being judged itself by its peers, lengthen the period of prohibition of public-private connections and impose exemplary sanctions when commissioners lie or conceal from the public, interests that are in conflict with the functions they perform.

Moreover, we confirm again the very positive character arising from the meeting held **last 13 October** between the delegation in charge of the tabling of the petition and President Schulz who showed absolutely sensitivity to the arguments raised by the petitioners. President Schulz in particular confirmed the commitment of EP to ensuring that it will invite the Commission to promptly adapt its code of conduct, which EP confirms is absolutely insufficient.

Parlement européen

On 26 October 2016, faced with the lack of reaction *from the Commission in relation to the Barroso and Kroes cases, EP acted and voted the freezing of the allowances of outgoing commissioners! Never seen before!*

Not being clearly convinced by the reassurances from Mr Moscovici, at its plenary session **on 26 October**, the European Parliament decided to take action and **suspend payments received by former Commissioners**.

In particular, the amendment adopted states that the EP:

European Parliament resolution of 26 October 2016 on the Council position ont the draft general budget of the European Union for the fianancial year 2017—Point 69

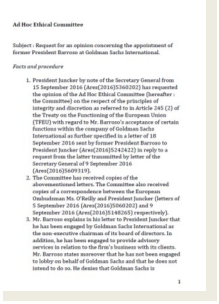
The Parliament "budgetary blackmail" is for a freeze for 2017 of approximately **500,000 thousand euros** planned for the allowances of former commissioners.

The EP wants to push the Commission to act against the proliferation of conflicts of interest, including **by tightening the code of conduct for Commissioners** that it considers quite rightly too permissive, but that our institution persists inexplicably tin defending.

.

"Decides, in the light of recent revelations and to regain the trust of European citizens and the credibility of the Union institutions, to retain in reserve 20% of the appropriations for transitional allowances of former members until the Commission applies a stricter code of conduct for Commissioners to prevent conflicts of interest and "revolving doors".

It should be noted that the decision was adopted by a very large majority, no group opposed it or even abstained, the EP having this time proved itself to be perfectly in line with the expectations and anger European citizens and staff.


Ad Hoc Ethical Committee

Opinion

On 28 October 2016: the opinion of the ad hoc Ethical Committtee

on the Barroso case was given: no offence committed, but a very serious lack of judgment

We recall that in September, faced with the wave of indignation triggered by the Barroso and Kroes cases, we appreciated the decision of President Juncker to finally refer to the ad hoc Ethical Committee for a decision on these cases.

The Ethical Committee has just presented its analysis of the Barroso case. It believes that the regulation was not breeched.

Nevertheless, the Committee notes that:

"Mr Barroso should have been informed and aware that in doing so it would trigger critics and could prejudice the reputation of the Commission and of the Union in general"

And that Mr Barroso

"did not exercise the good judgment one might expect from someone who has held a high responsibility position for so many years."

Similarly, the Committee recognized that the extent of the media storm is

"certainly a relevant indication, but not sufficient in itself to conclude that ethical rules have been reached"

Moreover, contrary to what Mr Barroso seemed to claim, the Committee recognized that the new functions which he is intended to carry out will ***"certainly"*** *be related to his previous term as head of the Commission, especially as Mr Barroso has had to deal with the reform of the banking sector in crisis.*

It is also important to note that the Committee insisted that:

"It is not up to the committee to know whether the code is strict enough"

thus avoiding joining the thesis that only our institution still insists inexplicably in defending, namely that those provisions meet the highest international standards and would be even exemplary.

On 30 October 2016, The European Ombudsman

highlights the limitations of the opinion of the ad hoc Ethical Committee on the Barroso case and plans to launch an ad hoc survey

In its very critical reaction to the opinion of the Ethical Committee, the European Ombudsman immediately highlighted the limitations of checks allegedly carried out by the Committee that would be limited to rely on the documents transmitted (*Ombudsman reacts to opinion of Ethical Comittee on Barroso*).

Moreover, noting that the Commission continues to refuse to change its code of conduct when it proves absolutely inadequate, the Ombudsman announced plans to launch a proper survey.

Limited capacity of the ad-hoc Ethical Committee to detect conflicts of interest of former commissioners...

R&D shares the analysis of the Ombudsman and that of European legal experts who have challenged the Ethical Committee's interpretation on the scope of Article 245 of the Treaty on the Functioning of the Union requiring commissioners, without time limit, to observe the duty to behave with integrity and discretion.

Indeed, the interpretation adopted by the Ethical Committee in its opinion is so restrictive that it deprives those provisions of any useful effect and may prevent any real analysis of the conflict of interest after the end of the cooling period.

To further appreciate the context in which this opinion was given, it should be remembered first of all the limited capacity of action of the ad hoc Ethical Committee.

Indeed, unlike similar bodies set up at the state level, the Ethical Committee is an internal body appointed by the college, has no real powers of investigation and, as in this case, is limited to decide on basis of the documents transmitted to it.

To these more than obvious structural limitations of the Ethical Committee adds the character quite vague and inadequate of the code of conduct based on which the Committee is called upon to rule.
In these circumstances it is not surprising that the Ethical Committee was able to deliver opinions almost always excluding any conflict of interest on the part of the former members of the college.

A double standard on ethics…

R&D has already denounced **this double standard ethical approach** to the extent that staff is not only subject to stricter rules than those established by the Code of Conduct but, in case of any suspicion of infringement, it is subject to investigation by IDOC which, unlike the college, is not at all lethargic when cases involve simple staff. Not to mention that IDOC has powers and investigative capabilities that are not even comparable with those of the Ethical Committee.

On 5 November 2016, in his interview on the newspaper "Le Soir"

President Juncker acknowledged for the first time the limits of the code of conduct and announced his willingness to reform it.

R&D is happy to note the intention of President Juncker to increase the length of the cooling-off period to 3 years for Presidents and 2 years for the Commissioners.

This is a real change of approach from the positions held so far by the Commission.

It is nevertheless disappointing that President Juncker says he is not sure that the Commissioners could accept his absolutely minimalist proposal, although he does for his own part.

These fears may strengthen the criticism during the EP debate on the endogamous character of this mechanism. Indeed, the Commissioners would be in a conflict of interest ... being called to decide for themselves the rules that will apply to their management of conflicts of interest ... after the end of their mandate and they would therefore naturally be little inclined to tightening these rules

R&D invites Président Juncker

to pursue with determination his approach by going to the bottom of the Barroso and Kroes cases and reforming the whole system set up for the management of conflicts of interests of commissioners.

Even if the Juncker Commission is not responsible for the mistakes of former members of the Barroso Commission, its inaction with regard to the increasing of cases and its obstinacy in the now untenable defence of the Code of Conduct are in the process of giving the impression that it endorses the decisions of the former members of the college.

Worse, the refusal to reform rules that are clearly inadequate is perceived by the outside world as evidence that the Juncker Commission does not change the code of conduct to prevent that more restrictive rules should apply to it at the end of its term.

For **R&D**, it is essential that the Commission leaves its purely defensive approach that has contributed to tarnish its image besides the reform of the code of conduct, Commission should also strengthen the procedures that verify compliance with these rules and punish proven violations. To deal with cases concerning the Barroso Commission the Juncker Commission is viewed as the "last chance Commission" which should have reacted immediately to such cases and must urgently do so before it's too late

We must not forget that the issue goes beyond the management mistakes of former commissioners. This is primarily to restore citizens' trust in our institution and hence that of the European project in such a crucial phase for its future

What will it happen now?

Concerning the Barroso case, it should be recalled that the opinion of the Ethical Committee is advisory, not binding.

The Commission confirmed that it would now give itself time to carefully consider the Opinion of the Ethical Committee before taking any decision on appropriate follow-up.

Concerning the Kroes case, we still await the Commission's position on this indisputable violation of the code of ethics.

Concerning the reform of the Code of Conduct, **R&D** encourages President Juncker to present College his proposal to the Commission immediately so that the Commissioners could express their views.

Concerning the EP Petitions Committee taking up the case, a public hearing will be held in the coming days ... We will continue to work in perfect harmony, supporting the group behind the petition "Not in our name" in the largest respect of its autonomy.

R&D will certainly continue to keep you updated on any developments of these cases.

Le Renard Déchainé

Barroso & Kroes Cases

October 2016

« Le Renard déchaîné» special Barroso & Kroes cases

Background

R&D welcomes the conclusions of the debate on these cases that took place in the European Parliament on 4 October with Commissioner Moscovici ...

R&D recognizes that the observations made by Commissioner Moscovici during the debate in the EP, though still far below to what could be expected considering the seriousness of the situation, are finally taking the right direction

On 13 October, in the greatest respect for their independence, we were alongside the collective of colleagues at the presentation of the petition - with signatures being duly anonymized - ,to the three institutions and under the scrutiny of the media

For once, citizens and press stand together with the staff

Next steps

Le Renard Déchaîné

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Barroso & Kroes cases

Edito

In all institutions and agencies, many of you expressed your appreciation with respect to the steps we have taken on these cases.

You asked us a detailed inventory that would allow staff to be informed about the evolution of these initiatives, our analysis of the latest events and the upcoming deadlines.

You will be able to find the requested information hereafter.

We will keep on following this case with the upmost determination and remain at the staff disposal for further information. We will keep you posted on any upcoming news.

Thank you again for your support and encouragement!

Cristiano Sebastiani
President

Background

R&D immediately denounced the Barroso and Kroes cases...

*Ever since the announcement of the appointment of Mr Barroso with the investment bank Goldman Sachs, **R&D** immediately denounced this incredible change of career, these so not insignificant revolving doors, and asked President Juncker to take the steps needed to defend the credibility of institutions and, beyond, that of the European project (12 July, 4 August, 9 and 14 September)!*

Simultaneously, we also personally addressed Mr Barroso, inviting him to give up his contract signed with the investment bank, in order to avoid disastrous effects for the credibility of institutions and the European project, which have never been so in danger (12 July). We still waiting for his answer.

Similarly, we immediately denounced the deal "Bahamas Papers" concerning the situation of former Vice-President Mrs Neelie Kroes (23 September).

*On the same time, we welcomed the steps initiated by the **European Ombudsman** who reacted strongly to these cases. She had already found, in her decision of 30 June 2016, a clear case of maladministration on how the Barroso Commission had treated the returning to work of another former commissioner.*

R&D immediately asked for a deep amendment of the Code of Conduct

In addition to the requests to get to the bottom of these cases, faced with the inadequacy of rules that are supposed to prevent them, and with the insufficient controls that should detect them, we have invited the Commission to reform in depth the Code of Conduct applicable to the members of the College and to implement the appropriate measures to guarantee respect of the code, whatever the case.

Meanwhile, within the greatest respect for the autonomy of the collective of colleagues who are responsible for the PETITION "NOT IN OUR NAME", R&D immediately supported this petition which eventually collected more than 152,000 signatures!

A lethargic Commission

Despite all these efforts, despite all the political reactions to the highest level in all Member States, we have to regret the lack of reaction from the Commission, the initial non-reassuring statements made by the spokesman service… In short, the flagrant underestimation of the political and media consequences of such cases.

Our institution has therefore given the impression to foster the illusion that its inaction and obviously inadequate reactions would have allowed the cases to fade away.

As a consequence, the situation became more and more unsustainable, giving the impression that the Juncker Commission condoned the unfortunate actions underlying these cases. Under these circumstances, President Juncker taking insufficient distance pretty lately, the decision to refer the matter to the ad hoc ethics committee and Mr Moscovici statements before the EP… appeared to the outside world as being first of all the result of the external reactions to the cases, to which it had become impossible to resist.

R&D welcomes the conclusions of the debate on these cases that took place in the European Parliament on 4 October with Commissioner Moscovici ...

In particular, as stated in the press release issued after the audition***: "Members of European Parliament called for a significant strengthening of the Code of Conduct for Commissioners, but also that the 'cooling-off period' applying to former commissioners wishing to join the private sector is extended, that sanctions and clear penalties should be introduced in cases of obvious infringement of the rules and that Commission's ad hoc ethics committee becomes an independent body able to make final decisions on adequate functions for former commissioners."***

Click here

Click here

R&D recognizes that the observations made by Commissioner Moscovici during the debate in the EP, though still far below to what could be expected considering the seriousness of the situation, are finally taking the right direction

"The Commission wants all EU citizens to be assured that its Commissioners act exclusively in the interests of Europe. Any conflict of interest therefore needs to be avoided, and there are very strict rules for this already in place. But the rules should also go hand in hand with personal responsibility. The Commission is therefore looking into whether these issues can be addressed further".

In particular, Mr Moscovici indicated that **acting as a role model and being transparent** / **exemplarity and transparency** are the first priorities of the Juncker Commission, in order to meet the expectations of the European citizens. (choisir le terme préféré!!)

Facta et non verba : let us notice that the positions taken by the Commission within the frame of these cases don't necessarily seem to match its declarations.

As a matter of fact, despite all the unanimous requests going in that direction, coming from all actors and environments, the Juncker Commission refuses to change even slightly the Code of Conduct and thus seems to be the only institution in the world to keep on believing that it is not necessary to reform these rules and procedures. This position was confirmed by Mr Moscovici before the EP.

To realise the completely inadequate nature of the rules concerning in particular the length of the cooling-off period, you just have to remember that these rules are less stringent than those applying to each staff member.

In other words, the Commission seems to keep on denying the seriousness of these cases, while, as stated by the EP, such cases "***are actually a real slap in the face of European citizens who have lost faith in the political elites and in the institutions. "***

On 13 October, in the greatest respect for their independence, we were alongside the collective of colleagues at the presentation of the petition - with signatures being duly anonymized - ,to the three institutions and under the scrutiny of the media

At the Commission, we regretted that President Juncker did not find the time to receive the delegation responsible for the handover of the petition. Nevertheless, we appreciated the welcome and attentiveness of the Secretary-General who received the petition on behalf of our institution

At the Council, the signatures were received by the Head of Protocol.

Remise de la pétition au Secrétaire général de la Commission

Remise de la pétition à M. Schulz, Président du Parlement européen

At the European Parliament, the meeting with President Schulz was fully satisfactory and encouraging. In particular, President Schulz confirmed with admirable clarity to have been shocked by this succession of cases regarding former members of the Barroso Commission and that he had been very sensitive to the elements at the origin of the petition.

President Schulz reported on the outcome of the abovementioned debate of 4 October, and on the determination of EP to take all the necessary steps aiming at the urgent and in-depth reform of the Code of Conduct by the Commission, by confirming in particular the absolute inadequacy of the cooling-off period.

Especially in connection with the Kroes case and the personal liability of college members also on the occasion of their appointment, Mr. Schultz mentioned the ongoing reflection in the EP regarding the establishment of a procedure of a **EP individual vote of confidence** for each Commissioner. This proposal would exclude applicants who do not offer all the necessary guarantees, without forcing the EP to be compelled to refuse the whole nomination package of the new Commission, thus generating a major political crisis.

For once, citizens and press stand together with the staff

Through its various contacts with the press, **R&D** released our "Barroso-Kroes" file, illustrating all our initiatives and we have been honoured by the quality of the reception that was given to it.

In the same way, during the handover of the petition, it has been extremely gratifying to see the extent of the media coverage as well as the extremely positive remarks from journalists towards the staff of the institutions.

For once, it was not about doubting our Staff Regulations, our wages and our working conditions, but about appreciating the commitment and courage of colleagues at the origin of this initiative (press review)

The citizens' reactions published on the newspapers' websites also showed a very positive feedback to the institutions' staff.

This clearly demonstrates that, despite what the institution thinks that every time it refuses to react to the attacks of the press against its staff, it is not true that the press is always against us, whatever the initiative.

Next steps

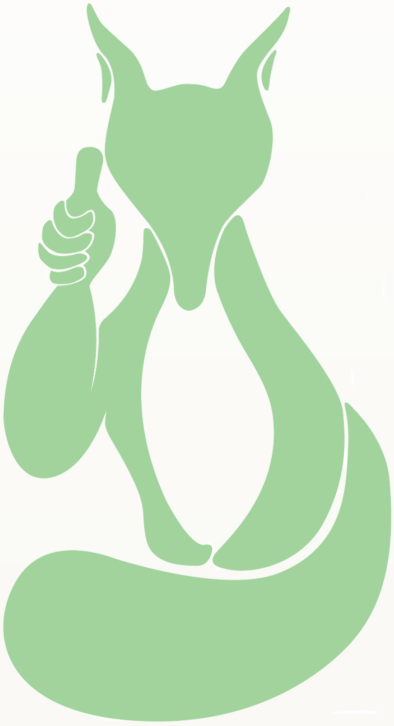
The Petitions Committee of the European Parliament is seized of the file and there will be a public hearing...

The Petitions Committee of the European Parliament is seized of the file and there will be a public hearing...

We welcome this decision that was confirmed by President Schultz at our meeting and we will keep on working in perfect harmony and supporting the collective behind the petition in the greatest respect for their autonomy.

We await the decision of the ad hoc Ethics Committee...

We expect the decision to be made shortly by the Commission's ad hoc Ethics Committee, before which President Juncker brought both Barroso and Kroes cases.



R&D always ready to listen to you and at your service

Syndicat du Personnel des Institutions Européennes
Le Président

Brussels, 23 September 2016

NOTE TO MR JEAN-CLAUDE JUNCKER,
PRESIDENT OF THE EUROPEAN COMMISSION

Subject: **"Bahamas Papers" and articles in the European press about the situation of the former Vice-President Neeli Kroes**

No one can doubt that the Barroso Commission will remain forever in the annals of the European Union because of its lack of respect for the code of conduct on transparency and prevention of conflicts of interest of former members of the College.

The affairs of the Barroso Commission: one, two, three....

In the first place, as a result of its investigation, by decision of 30 June 2016, the European Ombudsman had already found a clear case of maladministration regarding the way in which the Barroso Commission dealt with the resumption of a professional activity by a former Commissioner. Indeed, the investigation found that the Barroso Commission had failed to meet its obligations regarding the prevention of conflict of interest of the former Commissioner.

To evaluate once again the lack of reactivity of our organization in the context of such cases, it is sufficient to note that the European Ombudsman is still waiting for your response to her letter and that she has already had to send you a new reminder.

Secondly, we will not return to the Barroso case because it has already been the subject of many of our letters to your attention (14 September; 9 September; 4 August; 12 July); a petition "Not in our name" initiated by a group of colleagues exceeding to date 150,000 signatures, outraged reactions of the entire European press, fierce declarations by the highest political authorities in the Member States, etc.

Thirdly, as if all this did not seem enough, the European press has just revealed that the former European Competition Commissioner Neeli Kroes, responsible in this respect for monitoring business, was the director of a company in The Bahamas during her mandate, in breach of European rules.

According to documents in the possession of the German newspaper "Süddeutsche Zeitung" and the "International Consortium of journalists ICIJ investigation," Ms. Kroes was Director of Mint Holdings Ltd., an offshore company based in the Bahamas, "from 4 July 2000 to 1 October 2009".

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In the Barroso Commission, she served as Commissioner of Competition from 2004 to 2009 (before becoming Vice President of the European Commission until 2014) while the Code of Conduct of the European Union provides that "the Commission members cannot exercise any other occupation, whether gainful or not."

It must be remembered that the European Commissioners should, at the beginning of their term, not only renounce all management functions but also notify in a public register all those functions, whether paid or not, performed In the previous ten years.

Furthermore, Ms Kroes recognized in two newspapers that she had been "formally in violation of the Code of Conduct for Commissioners".

The lawyers of the former European Commissioner have, for their part, told the British newspaper "The Guardian" that their client "officially agrees she should have declared her position as director" and that "Mrs Kroes will inform the President of the European Commission of this omission and will assume full responsibility".

For her part, a spokesperson from the Commission, said that the former Commissioner had now informed the European authorities on this case. She added: "We will check and analyse this information before taking a decision".

While it is commendable that Mrs Kroes has confirmed that she will "take full responsibility for her actions and accept the consequences", it remains true that this new case will amplify the political repercussions of the other cases mentioned above , causing significant damage to the image and credibility of our institution at a critical time for our future.

... A lethargic Commission....

In the current context and given the severity of the crisis that the European project is going through, as you have so well stated in your speech to the Union of 14 September, it is essential that our institution moves away from this lethargic approach based on vague and purely formal replies and appearing to act according to the vain hope that the various crises will fade away, or worse, appearing to condone the mistakes of the Barroso Commission.

Ethical double standards...

On the one hand, this attitude is all the more unacceptable at the same time as the institution demonstrates its determination to implement persecutory measures against its staff, denounced by trade unions , as part of the ongoing discussion on the new draft "anti-leaks" code. This code obliges staff, amongst other things, to sign an annual declaration of ethics with a series of vague rules that open the door to all the risks of abuse, without mentioning the investigations carried out urgently by IDOC services (that are not at all lethargic when cases concern the normal staff) in cases where the slightest infringement is believed.

Your Commission must first set a good example: we must begin by urgently reforming the code of conduct for members of the College...

However, faced with the most worrying succession of such cases, rather than implementing measures which are disproportional and insulting for its staff, it is urgent that the institution comprehensively reforms the code of conduct for members of the College, as requested by all parties, which have clearly proven to be not suitable for their purpose.. It is not enough to change the rules; we must also ensure their enforcement by sanctioning violations.

Facing the credibility crisis that the European project is going through, affecting also our institutions, it is essential to reassure citizens about the role of the Commission, which is still and always the guarantor of the general interest, without bending to the interests and the pressures of lobbies of all kinds.

Again, we express the hope that under your guidance, our institution can finally demonstrate the determination and ability of reaction and action that have failed so far and that your staff and the outside world ask you.

Cristiano SEBASTIANI
President

Syndicat du Personnel des Institutions Européennes
Le Président

Brussels, 14 September 2016

NOTE TO MR JEAN-CLAUDE JUNCKER,
PRESIDENT OF THE EUROPEAN COMMISSION

Subject: **Barroso case, your reply of 9 September to the European Ombudsman**

We thank you for your reply of 9 September to the European Mediator.

Your letter requests confirmation from Mr Barroso of the terms and conditions of his contract with Goldman Sachs in order to submit his case to the ad hoc Ethics Committee.

However, it is highly regrettable that your letter should come long after Mr Barroso agreed to being hired by Goldman Sachs.

We had asked you several times in the past (12 July, 4 August and 9 September) to take position on this matter and to engage action.

We can regret that you only reacted on this issue after a petition was filled (a petition: *(« Not in our name »)*, which was initiated by a group of colleagues and is now exceeding 140,000 signatures). But you also acted after the outraged reactions of the entire European press, as well as the fiercer pronouncements of the highest political authorities of the Member States (we will limit ourselves and just recall the reaction of the President of the French Republic who called Mr Barroso's conduct « immoral »…).

In addition, we can't avoid mentioning the two reports from the European Ombudsman (12 July and 5 September) demanding you to outline the position of the Commission.

For weeks, we sadly had to realise that the attitude of the Commission seemed to target a trivialisation of the case, hoping that the media-political crisis would fade away over summer break.

However, such attitude actually got the exact opposite effect, and caused increasingly violent reactions that led to believe that our institution was fully endorsing the actions of its former President.

On the contrary, a clear firewall between the actions, more than questionable and politically irresponsible of Mr. Barroso, and the Commission's position should have been set.

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It was especially necessary on the political front, without hiding behind the sometimes acrobatic "*juridisms*" that neither your staff nor the outside world has been willing to understand and accept.

It is now indisputable that the political repercussions of this case have already created significant damage to the image and credibility of our institution, at a critical time for our future.

In this respect, we once again had to sadly and regretfully acknowledge the guarantees you gave in your answer to the European Ombudsman, according to which, Mr Barroso would be treated by the services without favouritism and like any other lobbyist, within the frame of his new missions.

Given the conception we have of the role of our institution and the pride we feel when serving it, it is inconceivable to us that a former President of the Commission, after the end of its mandate, could actually become, act and be treated as any average lobbyist.

And despite your guarantees, neither your staff, nor the outside world will be reassured by such commitments.

As to the fact that, as you mention in your response to the European Ombudsman, the rules on conflicts of interest, that apply to former presidents and commissioners who ended their mandate, are already very restrictive and meet the highest international standards, may we please kindly remind you that these rules are less constraining than those applying to the staff members of our own institution.

In this regard, we share the disappointment of the European Ombudsman about the fact that the main issues she raised in her letter on the reform of the code of conduct, including the introduction of sanctions, remained unanswered and are still pending.

We thus welcome the position taken by the European Ombudsman who wishes to receive a comprehensive answer on this, when the Commission will send her a reply with its decision out the investigation it conducted on how the Barroso Commission had dealt with the resumption of a professional activity by a former commissioner. As a matter of fact, the investigation showed that the Barroso Commission had breached its obligations on the prevention of conflicts of interest of the former Commissioner. The European Ombudsman had, among others, already invited our institution to adapt the rules to make them clearer and binding.

To conclude: as far as we are concerned, any judgment on the Barroso case and the measures to be taken immediately have been perfectly summarized in the conclusion of the article "Barroso, the anti-Europeanist" published on 16 July in the newspaper "Le Monde" ("*The Commission must condemn this appointment and change its rules: lifetime ban for former members to "go peacefully working" in a field they once used to regulate. This is about the image of the EU, or at least, about what is left of it.* "

As you mentioned during your term of office, you are chairing the "last chance Commission", because we observe with concern and sadness that the gap between the peoples of Europe and their public opinion on the one hand, and the political action, very often incomprehensible, that we take in Europe, on the other hand, keeps growing. Citizens actually moved away from Europe, and they did because Europe moved away from citizens.

Significant efforts will be required to close the huge gap between Europe and those who inhabit it.

We fully share your comments and wish for our institution, stimulated by you, to be able to demonstrate the determination and ability of reaction and action that missed hitherto and that your staff and the outside world have been asking you, about the ongoing management of Barroso Case.

Cristiano SEBASTIANI
Président

Syndicat du Personnel des Institutions Européennes
Le Président

Bruxelles, le 09 septembre 2016

NOTE À L'ATTENTION DE MR JEAN-CLAUDE JUNCKER, PRÉSIDENT DE LA COMMISSION EUROPÉENNE

Objet: Affaire Barroso

Le 4 août dernier, nous vous avions rappelé notre courrier du 12 juillet par lequel nous vous avions saisi de la situation de votre prédécesseur, M. Barroso, au regard des règles et des principes relevant de la morale et de l'éthique à l'occasion de sa nomination au sein de la banque d'affaires américaine Goldman Sachs.

Or, un mois plus tard, force est de constater l'absence de réponse à cette note ainsi qu'au courrier initial alors que d'autres instances et la presse ne cessent de suivre cette affaire.

Parallèlement, comme nous l'avions indiqué dans notre lettre, une pétition en ligne "Pas en notre nom" avait été lancée à l'adresse des présidents des trois institutions par un collectif de collègues, ouverte aux citoyens européens.

Alors que, comme indiqué dans notre lettre en juillet, cette pétition avait recueilli 4000 signatures, le nombre de signataires n'a cessé d'augmenter de jour en jour et d'heure en heure pour atteindre 135.941 signatures au moment de la rédaction de cette note et ce, malgré la période estivale. Preuve s'il en est de la mobilisation des collègues et des citoyens face à la situation.

Cette démarche répond à la demande faite par Madame Kristalina Georgieva, Vice-présidente, au personnel de s'exprimer et de s'engager activement aussi sur des thèmes politiques dépassant le simple cadre du travail.

Néanmoins, il ne suffit pas d'inviter les collègues à s'exprimer. Il est essentiel de donner une suite adéquate aux opinions exprimées en prenant en compte, dans les faits, la voix du personnel.

Or, nous sommes toujours dans l'attente d'une prise de position claire de votre part.

Qui plus est, le Médiateur européen, Mme Emily O'Reilly, vient de vous adresser une lettre en date du 5 septembre sur le sujet, vous enjoignant de préciser la position de la Commission afin de décider des suites à donner. Cette lettre a d'ailleurs été relayée une fois de plus par la presse internationale.

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A nouveau, nous approuvons et nous associons pleinement à la démarche du Médiateur européen et vous demandons de répondre au plus vite à nos préoccupations exprimées dans nos courriers du 12 juillet et du 4 août dernier.

Néanmoins, il nous est simplement inconcevable que la seule instance qui ne s'est toujours pas prononcée de manière claire sur cette affaire soit notre institution, alors qu'elle est concernée en tout premier chef s'agissant de l'ancien président et qu'il faille en arriver à l'injonction du Médiateur européen.

Il en va de la crédibilité de l'Institution tant vis-à-vis de tous les fonctionnaires et agents qui la servent au quotidien que vis-à-vis des citoyens européens à un moment crucial pour notre avenir.

Cristiano SEBASTIANI
Président

Syndicat du Personnel des Institutions Européennes
Le Président

Brussels, 4 August 2016

NOTE TO Mr JEAN-CLAUDE JUNCKER,
PRESIDENT OF THE EUROPEAN COMMISSION

SUBJECT: Appointment of Mr Barroso as advisor and non-executive chairman in the international arm of the international investment bank Goldman Sachs

Mr President,

By our letter of 12 July, we had drawn your attention to the appointment of Mr Barroso as advisor and non-executive chairman of international operations to the international investment bank Goldman Sachs, asking for the College to take position under Article 245 TFEU.

That same day, we also sent a letter to Mr Barroso asking him to reconsider his decision for morality and ethical reasons.

Similarly, it is worthless mentioning again the outraged reactions of the European press and the very clear position of the European Ombudsman, which we welcome.

Nevertheless, beyond the reactions and the external pressures, it is essential for our institution to reassure staff and citizens as to its ability to react, and to demonstrate that it is able to fully take charge of this file.

In this regard, we welcome the position on the recruitment of Mr Barroso, that you adopted during the France 2 TV-show "*Les 4 Vérités*" broadcasted on 25 July 2016: when G. Bornstein asked you "*Does it shock you?*", your answer was: "***I wouldn't have done that***", despite the fact that you declared that "*Mr Barroso has complied with all procedures laid down.*"(reference to Article 1(2) of the code of conduct for Commissioners).

President of the French Republic Francois Hollande also strongly condemned the decision of Mr Barroso, calling it "***morally unacceptable***" in his annual interview of National Day on 14 July.

Meanwhile, an online petition "***Not in our name!***", addressed to the presidents of the three Institutions, was launched by a group of colleagues and has already collected almost **4,000 signatures** to date.

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On this occasion, colleagues denounced this new example of *"irresponsible revolving-door practices, which are highly damaging to the EU institutions and, even if not illegal, morally reprehensible"*.

In this context, they ask "*Not to merely ascertain that Mr Barroso left office more than 18 months ago*" but "*Examine in detail and in all transparency whether Mr Barroso has respected his duties of integrity and discretion towards the European Union*" and, where relevant, "*Take (…) appropriately strong and exemplary measures against José Manuel Barroso, such as the suspension of his pension allowance (…) and (…) of all possible honorary titles linked to the European Institutions*". In addition, they ask to *"reinforce the ethical rules to fight such revolving-door practices that apply to former Members of the Commission, in proportion to the damage that their future behavior can bring to the European civil service and the European Union (…)"*.

R&D strongly supports this petition that has already received a positive response from the press, as clear evidence of the ethical sensitivity of our institutions' staff.

This initiative actually meets the request of Vice President Kristalina Georgieva, who asked the staff to express their mind and to also actively engage on political issues that go beyond the working environment.

However, inviting colleagues to speak is not enough. It is essential to give appropriate effect to the views expressed, by taking into consideration the voice of the staff.

Given the above, we reiterate all the requests put forward in our letter of 12 July, not only the ones regarding measures to be adopted as to this unacceptable revolving doors case, but also the ones about the urgency to adapt the rules in this area, that have proven absolutely inadequate in front of the more than regrettable lack of sensitivity and restraint shown by Mr Barroso.

Copy: College of Commissioners
Commission staff

Syndicat du Personnel des Institutions Européennes
Le Président

Brussels, 12 July 2016

Mister President,
Distinguished Vice-Presidents,
Distinguished Commissioners,

We are concerned to learn of the appointment of former Commission President, Mr Barroso, as advisor and non-executive chairman of the activities of the US investment bank Goldman Sachs.

All the press across the European Union recalled the role of the bank especially in the context of the 2007 financial crisis and the Greek crisis and stressed the disastrous consequences for Commission and more broadly European Institutions image of your decision, in the particularly delicate and Europhobic political context of Brexit.

The staff of this Institution is thus the victim of an unilateral decision when common decency should never have led a former president of the Commission to accept such a function.

However, we cannot stop there.

In the first instance, we are requesting to know the College's position on this matter, under Article 245 TFEU which provides that: "*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.*"

And even if, in this case, the eighteen-months rule which appears in the Code of Conduct for Commissioners in the context of post-employment activities have been respected, Point 1.2 of the Code provides that "duty to behave with integrity and discretion pursuant to Article 245 of the Treaty (TFEU) even beyond the period of 18 months after ceasing to hold office" shall remain in effect.

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In this case, the compatibility of the acceptance of this function within Goldman Sachs with the duties of integrity and discretion pursuant this Article clearly arises.

Beyond the application of these provisions, we wish to emphasize the flagrant inequalities between treatment of Commission members and Commission staff regarding the possibility of exercising external activities. After leaving the service, we are always subject to certain obligations and, in particular, we must continue to act with integrity and discretion and cannot accept tasks or professional activities that would conflict with the interests of the institution pursuant to Article 16 of the Staff Regulations. Furthermore, the lengthy delays to which we are subjected (2 years) are longer than those applying to former members of the Commission (18 months) while their degree of responsibility is incomparable to ours. At the very least, similar treatment should be guaranteed.

To this end and in view of the political and moral responsibility of members of the Commission in the light of general interest vis-à-vis European citizens, we ask you to review as quickly as possible ethical rules on the appointment of high-ranking officers of the institution, to prevent the recurrence of such a precedent.

This is also the request just made by the European Ombudsman, today.

Cristiano SEBASTIANI
Président

Syndicat du Personnel des Institutions européennes

Brussels, 12 July 2016

Open letter to President Barroso

Mister President,

We were concerned to learn of your appointment as advisor and non-executive chairman of the activities of the US investment bank Goldman Sachs.

All the press across the European Union recalled the role of the bank, particularly in the context of the 2007 financial crisis and the Greek crisis and stressed the disastrous consequences for Commission and more broadly European Institutions image of your decision, in the particularly delicate and Europhobic political context of Brexit.

The staff of the institution that you chaired for ten years is thus a victim of your decision that takes only into account your own private interests, while common decency should have led you to refuse such a function.

However, we cannot stop there and we ask you to renounce this appointment, notably under Article 245 TFEU which provides that:
"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."

Even if you have respected the eighteen-months rule which appears in the Code of Conduct for Commissioners, in the context of post-employment activities, Point 1.2 of the Code provides that the "duty to behave with integrity and discretion pursuant to Article 245 of the Treaty (TFEU) even beyond the period of 18 months after ceasing to hold office" shall remain in effect.

In this case, the compatibility of the acceptance of this post with Goldman Sachs with the duties of integrity and discretion covered by the above Article, clearly arises.

This is also the opinion of European Ombudsman who has moreover requested to revise the ethical rules in the light of recent events. However, beyond a legal debate, it is a moral question first.

Given the political and moral responsibility of the members, former members and *a fortiori* former President of the Commission, we ask you to reconsider your decision.

Cristiano SEBASTIANI
Président

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ANNEXES

European Ombudsman

Emily O'Reilly
European Ombudsman

Mr Jean Claude Juncker
President
European Commission

Strasbourg, 24/02/2017

Complaint 194/2017/EA

Dear Mr President,

On 3 February 2017, I received a complaint from a group of current and former EU employees (the complainant). It launched an online petition in July 2016 asking for action to be taken in relation to former Commission President Barroso's decision to join an investment bank.[1] It handed this petition to the Commission, with a cover letter, on 12 October 2016.

The complainant makes the following two allegations:

a) The Commission has not answered its letter of 12 October 2016 relating to its online petition;
b) The Commission has failed to take a formal decision regarding former Commission President Barroso's new activity.

I will inform the complainant that its complaint is admissible and that I have decided to inquire into it.

Regarding the complainant's first allegation, I would request that you reply to the complainant's correspondence of 12 October 2016 relating to its petition and address the points raised therein.

Regarding the complainant's second allegation, as far as I am aware the Commission has not, to date, issued a reasoned decision following the provision of

[1] The petition is shared on Change.org and is available at the following link: https://www.change.org/p/for-strong-exemplary-measures-to-be-taken-against-jm-barroso-for-joining-goldman-sachs-international

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an opinion by its Ad Hoc Ethical Committee (AHEC), dated 26 October 2016[2]. Relevant Commission College minutes do not contain any indication that this case was discussed by the College following the AHEC opinion.

I would therefore invite you to inform the complainant in your reply (i) of whether the matter was discussed by the College after the AHEC adopted its opinion; (ii) of whether the Commission has taken a reasoned decision in this case; and (iii) if no decision has been taken, why the Commission did not consider it necessary or appropriate to make a reasoned decision in this case. If the Commission has, in fact, made a reasoned decision in this case, I would be grateful to receive a copy of that decision from the Commission.

I would be grateful also to receive a copy of your reply to the complainant. Given that the complainant's correspondence concerns an issue of public interest, I would be grateful to receive your reply at your earliest convenience and in any event by 31 March 2017.

It is clear that, in considering issues relating to the occupational activities of Commissioners (including Presidents) after they leave office, the Commission has regard to opinions provided, at the request of the Commission, by the AHEC. Any understanding of the approach adopted by the Commission in such cases will necessarily require an understanding of the role of the AHEC and of how it conducts its assessments. For this reason, I consider it important that my inquiry in this case should be informed by relevant information on the role of the AHEC and of how it conducts its work.

Accordingly, I would be grateful if the Commission would facilitate an inspection[3] by my Office of any file held by the Commission relating to the AHEC opinion on the case of the former Commission President. In order to understand, more generally, how the AHEC conducts its work, I would be grateful for the Commission's cooperation also in inspecting the files on the other five most recent opinions adopted by the AHEC. I believe it would be helpful also, in conjunction with our inspection of these files, for my representatives to meet with relevant Commission officials to discuss issues arising.

Please note that, in accordance with Article 4(8) of the Implementing Provisions of the European Ombudsman, my Office will not disclose to the public any information that the Commission identifies as confidential during the inspection/meeting, without the prior agreement of the Commission.

I should be grateful if the Commission would contact Ms Elpida Apostolidou (+32 2 284 18 76), from my Office in order to agree on a convenient date for the meeting/inspection. Depending on the Commission's availability, I

[2] I am aware of the answers given in reply to MEP questions: http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2016-005629&language=EN
[3] In accordance with Article 3(2) of the Statute of the European Ombudsman.

would envisage the meeting taking place in the final week of March 2017.

Attached to this e-mail, please find a copy of the complaint.

Yours sincerely,

Emily O'Reilly
European Ombudsman

Ad Hoc Ethical Committee

Subject : Request for an opinion concerning the appointment of former President Barroso at Goldman Sachs International.

Facts and procedure

1. President Juncker by note of the Secretary General from 15 September 2016 (Ares(2016)5360202) has requested the opinion of the Ad Hoc Ethical Committee (hereafter : the Committee) on the respect of the principles of integrity and discretion as referred to in Article 245 (2) of the Treaty on the Functioning of the European Union (TFEU) with regard to Mr. Barroso's acceptance of certain functions within the company of Goldman Sachs International as further specified in a letter of 18 September 2016 sent by former President Barroso to President Juncker (Ares(2016)5242422) in reply to a request from the latter transmitted by letter of the Secretary General of 9 September 2016 (Ares(2016)5609319).
2. The Committee has received copies of the abovementioned letters. The Committee also received copies of a correspondence between the European Ombudsman Ms. O'Reilly and President Juncker (letters of 5 September 2016 (Ares(2016)5060202) and 9 September 2016 (Ares(2016)5148265) respectively).
3. Mr. Barroso explains in his letter to President Juncker that he has been engaged by Goldman Sachs International as the non-executive chairman of its board of directors. In addition, he has been engaged to provide advisory services in relation to the firm's business with its clients. Mr. Barroso states moreover that he has not been engaged to lobby on behalf of Goldman Sachs and that he does not intend to do so. He denies that Goldman Sachs is

employing him as an adviser in relation to the forthcoming Brexit discussions: "Although my appointment was announced after the UK referendum, the board resolved to appoint me before the referendum took place. (...) In fact, at the time of the referendum my appointment was awaiting approval of the UK regulators (...)." Mr. Barroso further states that he is very clear about his ongoing responsibilities to the European Institutions and naturally will maintain his commitment to act with integrity and discretion.

4. It is not in dispute that Mr. Barroso's appointment occurred twenty months after he ended his term of office as President of the Commission. Therefore, the obligation for former commissioners under the Code of Conduct for Commissioners to inform the Commission whenever they intend to engage in an occupation during the eighteen months after they have ceased to hold office, did not apply.
5. The Committee in its new composition met on 27 September and 19 October 2016 to deliberate on the request.

Appreciation

6. As is stated in the note transmitting the request: as a rule the Committee is consulted on activities notified by former commissioners related to their portfolio during the eighteen month period foreseen in the Code of Conduct. However, in this specific case which concerns a former President of the Commission President Juncker has decided to exceptionally seek the advice of the Committee. The Committee has decided to respond to the request and give its opinion on the question raised.
7. That question concerns the duty of a former member of the Commission to behave with integrity and discretion as regards the acceptance, after having ceased to hold office, of certain appointments or benefits as imposed by Article

245 (2) TFEU. This duty is a legal obligation the violation of which may be subject to financial sanctions imposed by the Court of Justice on request of the Council or the Commission.

8. The precise scope and contents of the notions of integrity and more particularly that of discretion, which would appear to be the most relevant for the case submitted, are unclear. They are vague notions, the interpretation of which the Court of Justice has as yet not had the occasion to fully clarify. The case of Mr. Bangemann concerned the duty of discretion. However, the Court has not been able to decide this case, it being removed from the register because Mr. Bangemann had renounced the position he envisaged (Case C-290/99). The Council in its decision to submit the case to the Court of Justice expressed the view that Mr. Bangemann had violated that duty by accepting a function in a telecommunication company, the sector for which he had been responsible as commissioner. This approach has also been followed and further elaborated in the Code of Conduct. If an envisaged occupation notified within the eighteen months period is related to the content of the portfolio of the commissioner, it is made subject to stricter scrutiny. Lobbying activities of a former commissioner during the eighteen months period with members of the Commission and their staff on matters for which he has been responsible within his portfolio as member of the Commission are prohibited. Obvious reasons explain this focus on a link between the new occupation envisaged by a former commissioner and his specific responsibilities during the time he was a member of the Commission. In case of such a link, there will be a greater risk of conflicts of interest, of passing on or commercially exploiting experience and knowledge, of sharing networks. Former commissioners remain of course bound by the obligation of confidentiality under Article 339 TFEU but that might not be sufficient to counter these risks.

9. These risks will diminish over time. Therefore the justification for a cooling-off period. Moreover, a balance must be struck between the need to protect the interests of the Commission and the Union more generally, and the legitimate interest of former commissioners to continue their career, also in the private sector. However, Article 245 is applicable without any time limit. Consequently, respect of the cooling-off period neither puts an end to the obligations of Art. 245 nor does it imply that they have been complied with.
10. These general observations having been made, did Mr. Barroso violate his duty of integrity and discretion by accepting the appointment at Goldman Sachs International? This acceptance has received a stormy reception in the media and been severely criticized. As far as the Committee can see, the main objections made are the following:

    a. Not so much the appointment as non-executive chairman of the board of a bank, but of the bank of Goldman Sachs International. In much of the criticisms Goldman Sachs is seen as the exponent of aggressive investment banking, more particularly criticized because of its role in triggering the financial crisis (subprime mortgages) and for advising on financial constructs enabling to occult the reality of the debt position of Greece. The fact that a former President of the European Commission accepts to become the chairman of the board is seen as associating the Commission and the Union with the negative image of financial greed ascribed to the Bank.
    b. The supposed acceptance of the role of adviser to Goldman Sachs International on questions concerning Brexit.
    c. More generally, the change from high public office with important political responsibilities and the inside

knowledge following there from, to the private sector (revolving doors argument).

These three objections will now be considered separately.

11. Ad a. It could and has been said that it is unwise and blameworthy for a former President of the Commission, taking into account his political status and public exposure, to accept a position like the one in question. Indeed, Mr. Barroso should have been aware and appraised that by doing so he would give rise to criticism and risk to cause reputational damage to the Commission and the Union more generally. If not, he would in this respect have shown negligence. Whether justified or not, this damage has now been done. However, the Committee is requested to give an opinion not about the wise or blameworthy nature of the action in question but whether Mr. Barroso has violated his legal obligation to respect the duty of integrity and discretion imposed by Article 245 (2) TFEU as further substantiated by the Code of Conduct.

12. Is there a link between Mr. Barroso's former responsibilities as President of the Commission and his activities at Goldman Sachs International? That will certainly be the case. As President of the Commission Mr. Barroso has been directly and closely involved with the financial crisis, the banking crisis, the euro crisis and their consequences for the Union, the EMU particularly. He has participated in developing crisis policies and the creation of new instruments combating the consequences of these crises, such as setting-up a Banking Union, and preventing the outbreak of new ones. His experience and knowledge on these matters will be precious for Goldman Sachs. But precisely for such situations the Code of Conduct has provided for the cooling-off period of eighteen months. The Code apparently starts from the presumption that once that period has expired, a former commissioner is in principle entitled also to accept occupations related to matters for which he has been responsible as

commissioner. In principle, because the Code confirms at the same time, as results already from Article 245(2) TFEU itself, that the duty to behave with integrity and discretion continues to apply beyond the cooling-off period of eighteen months. Nevertheless, it clearly results from the Code that the termination of the cooling-off period means a caesura in this respect. This is moreover confirmed by the fact that a former commissioner's obligation to inform the Commission of his intention to engage in a new occupation ceases to exist at the end of the cooling-off period. Whether the Code is sufficiently strict in these respects is not for the Committee to answer. It must base its opinions on the Code of Conduct as it stands.

13. Should not the mere fact of causing such a turmoil damaging the reputation of the Commission and the EU be sufficient to conclude at a violation of the duty imposed by Article 245(2) TFEU? It certainly is a relevant indication but not sufficient by itself. It should also be considered that Goldman Sachs is a company lawfully operating on the internal market. It will have prejudiced its standing like other banks did by contributing to the outbreak of the financial crisis (subprime mortgage operations). Goldman Sachs may be considered at the vanguard of aggressive capitalism but as long as it respects the rule of law, it is in itself not against the law to accept a position at the bank.

14. In weighing the various elements mentioned above including the fact that Mr. Barroso has not shown the considerate judgment one may expect from someone having held the high office he occupied for so many years, the Committee has arrived at the conclusion that the first mentioned objection is not sufficient to establish that Mr. Barroso has violated his duty of integrity and discretion as imposed by the Treaty, justifying the possible imposition of financial sanctions. In arriving at this conclusion the Committee has more particularly taken into account the balance struck between the interests involved by the

imposition of a cooling-off period as foreseen and further regulated by the Code of Conduct.

15. Ad b. Mr. Barroso denies in his letter to President Juncker that he has also been engaged by Goldman Sachs International as adviser on Brexit (see par. 3 above). The Committee has no reason to doubt this. However, being engaged as adviser in relation to the firm's business with its clients, as stated by Mr. Barroso in that same letter, it might not be excluded that future advice on these matters might touch upon issues related to Brexit. However, the same arguments related to the effect of the cooling-off period as already mentioned with regard to the first objection apply in this context and this the more so because Brexit issues are new and not related to the terms of office of the Barroso Commission. Therefore, the Committee has arrived with regard to this second objection to the same conclusion as with regard to the first.
16. Ad c. This equally applies for the third objection, that of the revolving doors. The main reason, again, is the function of the cooling-off period as provided for by the Code of Conduct. In principle, once that period has ended, a former commissioner must be free to accept an occupation in the private sector. This is the consequence, as already observed, of the balance struck by the Code of Conduct between the interests of the Commission and the legitimate interest of a former commissioner to be able to continue his career.
17. For these reasons, taking into account the information submitted by Mr. Barroso in his letter to President Juncker, the Committee has not found sufficient grounds to establish a violation of the duty of integrity and discretion.
18. In his letter to President Juncker Mr. Barroso states the following: "I have not been engaged to lobby on behalf of Goldman Sachs and I do not intend to do so". The

Committee considers this commitment as responding to the duty of integrity and discretion imposed by the Treaty.

Opinion

19. The Ad Hoc Ethical Committee, after having weighed the various elements mentioned above including the fact that Mr. Barroso has not shown the considerate judgment one may expect from someone having held the high office he occupied for so many years, is of the opinion that:

- on the basis of the information provided by Mr. Barroso in a letter addressed to President Juncker and taking into account the Code of Conduct for Commissioners there are not sufficient grounds to establish a violation of the duty of integrity and discretion, as imposed by Article 245 (2) TFEU, with regard to the acceptance by former President Barroso of the positions of non executive chairman of the board of Goldman Sachs International and adviser in relation to the firm's business with its clients;
- the commitment of Mr. Barroso not to lobby on behalf of Goldman Sachs responds to the duty of integrity and discretion imposed by the Treaty.

Christiaan Timmermans

Dagmar Roth-Behrendt

Heinz Zourek

Date: 26 October 2016

European Ombudsman

Ombudsman reacts to opinion of Ethical Committee on Barroso

Available languages: en

Press release no. 13/2016

31 October 2016

The European Ombudsman, Emily O'Reilly, has noted the advisory opinion of the ad-hoc ethical committee in relation to the decision of former Commission President Jose Manuel Barroso to take up a senior position with Goldman Sachs bank. A number of issues in particular are noteworthy at this stage.

1. The Committee acknowledges that reputational damage was done both to the Commission and to the wider EU yet states that, legally, Mr Barroso did not breach the Code of Conduct

2. The Committee says that it is not its role to determine if the Code of Conduct is sufficiently strict.

3. The Committee appears to have based its inquiry solely on its reading of three documents already in the public domain[1]. There is no evidence, at least in the opinion, of any other relevant records being requested, received, or any interviews with relevant people undertaken.

The Commission is expected now to decide what, if any, action to take following the opinion but in light of recent communications between the Commission and the Ombudsman it would appear that the Commission does not intend to revise the current Code of Conduct.

Taking all of the above into account, and given the concern that continues to be expressed about Mr Barroso's appointment and the existing Code of Conduct, the Ombudsman will now reflect on the next steps – including a possible inquiry - she will take in relation to this important issue.

[1] The letter from the Ombudsman to President Juncker calling for him to ask the Committee for an opinion; President Juncker's reply to the Ombudsman, and a subsequent letter from Mr Barroso to President Juncker seeking to explain his role with Goldman Sachs and his views on President Juncker's actions.

The Ombudsman investigates complaints about maladministration in the EU institutions, agencies and bodies. Any EU citizen, resident, or an enterprise or association in the EU, can lodge a complaint with the Ombudsman. The Ombudsman's powers include the right to inspect EU documents, call officials to testify, and to open strategic inquiries on her own initiative. For more information: www.ombudsman.europa.eu

For press inquiries: Ms Gundi Gadesmann, Head of Communication, tel.: +32 2 284 26 09, Twitter: @EUombudsman

European Parliament

Press release

MEPs call for Commissioners' code of conduct to be tightened up

Plenary sessions [04-10-2016 - 18:51]

The code of conduct for European Commissioners needs to be thoroughly tightened up, in order to prevent conflicts of interest for Commission members, and to help restore the faith of European citizens in today's political institutions. This was the key message agreed by most MEPs during Tuesday evening's debate with EU economic affairs Commissioner Pierre Moscovici, on the business ties of past and present Commissioners and the recent "Bahamas" leaks.

"The Commission wants all EU citizens to be assured that its Commissioners act exclusively in the interests of Europe. Any conflict of interest therefore needs to be avoided, and there are very strict rules for this already in place. But the rules should also go hand in hand with personal responsibility. The Commission is therefore looking into whether these issues can be addressed further", said Mr Moscovici.

Many MEPs pointed out that the recent "Bahamas" leaks, which showed that former Dutch competition Commissioner Neelie Kroes did not declare her directorship of an offshore firm in the Bahamas while serving in Brussels, came as a serious blow to EU citizens, who are already losing faith in the "political elites and institutions".

They called for a radical tightening up of the code of conduct for EU Commissioners, but also for the "cooling off period" before former Commissioners may join the private sector to be prolonged, clear penalties and sanctions to be introduced for obvious infringements of the rules and for the Commission's Ad Hoc Ethics Committee to be made an independent body, able to take final decisions on suitable jobs for former Commissioners.

Background information

Former Commission President José Manuel Barroso has also been criticised this summer for taking up a post with the investment bank Goldman Sachs, as the non-executive chairman of its London-based international operations, the bank's largest subsidiary.

This move has prompted an intervention by the EU Ombudsman.

Further information

- Video recording of debate will be available here (04.10.2017): http://www.europarl.europa.eu/ep-live/en/plenary/video?debate=1475594157944
- EbS+ (click on 04.10.2016) : http://ec.europa.eu/avservices/ebs/schedule.cfm?sitelang=en&page=3&institution=0&date=10/04/2016
- Audiovisual material for professionals : http://audiovisual.europarl.europa.eu/default.aspx
- Letter from EU Ombudsman Emily O'Reilly to Commission president Jean-Claude Juncker - on move by Mr Barroso to Goldman Sachs : http://www.ombudsman.europa.eu/resources/otherdocument.faces/en/70847/html.bookmark

Political groups

- Press release by the EPP group: http://bit.ly/2cNWm6F
- News pages of the S&D group: http://bit.ly/1WWG6F4
- News pages of the ECR group: http://bit.ly/1Y0YFrj
- News pages of the ALDE group: http://bit.ly/1XbSQs6

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European Ombudsman

Ombudsman welcomes further scrutiny of Barroso appointment

Available languages: en.fr

Press release no. 11/2016

11 September 2016

The European Ombudsman, **Emily O'Reilly**, has welcomed Commission President Jean-Claude Juncker's decision to refer the issue of Mr Barroso's appointment as adviser and non-executive chairman at Goldman Sachs to the Commission's Ad Hoc Ethical Committee.

In reply to Ms O'Reilly's letter last week expressing concern about the appointment, Mr Juncker pledged to ask for details of Mr Barroso's responsibilities as well as the terms of reference of his contract which will then be assessed by the Ad Hoc Ethical Committee.

Ms O'Reilly stated: *"I am pleased to see that President Juncker has responded to the widespread concerns about this appointment and particularly in agreeing as a first step to my suggestion that the Ad Hoc Ethical Committee should play a role in assessing those concerns.*

I am also pleased that President Juncker has very importantly noted that the Treaty obligation on former Commissioners to behave with integrity goes beyond the 18-month notification period concerning new positions, as per the Code of Conduct."

In light of the high public concerns around this issue, the Ombudsman urges the Ad Hoc Ethical Committee to form an opinion as soon as possible. Ms O'Reilly also stressed the need for the Commission to act on any advice of the Committee. A recent Ombudsman inquiry found maladministration as the Commission had failed to investigate the compatibility of a former Commissioner's contract with the EU treaty, despite concerns raised by the Ad Hoc Ethical Committee.

"The Ad Hoc Ethical Committee will now have a very serious obligation placed upon it fully to inform itself of all relevant matters concerning this appointment. Citizens should expect that the outcome of this assessment, and the reaction of the Commission to it, will lay the basis for increased citizen trust in the integrity of the relationship between public service and private interest. There is much at stake in terms of public trust, this matter must be thoroughly and adequately dealt with. It is important also that such an assessment is completed as soon as is reasonably possible, within weeks and not months."

Ms O'Reilly also noted that key issues raised in her letter concerning an eventual reform of the Code of Conduct, including by introducing sanctions, remain open. The Ombudsman looks forward to receiving a fuller reply on this when the Commission considers its response to her Decision concerning the Commission's handling of a former Commissioner's post term-of-office paid position.

The European Ombudsman's letter to President Juncker can be found here.

President Juncker's letter to the European Ombudsman can be found here.

The Ombudsman's Decision concerning the handling of a former Commissioner's post term-of-office paid position can be found here.

The website for the Ad Hoc Ethical Committee is here.

The Ombudsman investigates complaints about maladministration in the EU institutions, agencies and bodies. Any EU citizen, resident, or an enterprise or association in the EU, can lodge a complaint with the Ombudsman. The Ombudsman's powers include the right to inspect EU documents, call officials to testify, and to open strategic inquiries on her own initiative. For more information: www.ombudsman.europa.eu

ARES 2016/5148265

European Commission

Jean-Claude JUNCKER
President of the European Commission

Rue de la Loi, 200
B-1049 Brussels

Brussels, **09 SEP. 2016**
Ares (2016) 5609319

Dear Ms O'Reilly,

Thank you for your letter of 5 September 2016 on former President Barroso's appointment with Goldman Sachs, which was made public as an annex to your Press Release n° 10/2016 related to the same issue.

There is no doubt that, in the fulfilment of their duties, the Members of the Commission must work only in the interest of the Union. This is clearly foreseen by the Treaties and the Code of Conduct for Commissioners. There is also a clear duty, established by Article 245 of the Treaty on the Functioning of the European Union, "(..) to respect (...) 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".

Concerning the questions raised in your letter, I would like to make the following points.

As of taking up his employment, Mr Barroso will be received in the Commission not as a former President but as an interest representative and will be submitted to the same rules as all other interest representatives as regards the Transparency Register; the Members of the Commission and all Commission Staff, when meeting with Mr Barroso, will have to comply with the existing rules as regards transparency and contacts with the representatives of interest groups.

As a rule, the Ad Hoc Ethical Committee is consulted on activities notified by former Commissioners related to their portfolio during the 18-month period foreseen in the Code of Conduct for Commissioners. This 18-month period is in line with the best

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Ms Emily O' REILLY
European Ombudsman
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existing standards. Mr Barroso's appointment at Goldman Sachs twenty months after his term of office was therefore not to be notified to the Commission.

Concerning the 18-month notification period, I would like to recall that it was initially of one year, and was extended to 18 months in 2011, in view to keeping the Commission's standards at the highest level. This period concerns the period during which the obligation to notify to the Commission applies. However, the analysis by the Commission on the full respect of the principles of discretion and integrity, as referred to in Article 245 TFEU, has no time-limit and is performed in all cases.

This is the reason why I am pleased to inform you that, although in my contacts with Mr Barroso, he confirmed his standing commitment to behave with integrity and discretion also within his new position with Goldman Sachs, I have asked that, in this specific case, because it involves a former President of the Commission, the Secretary-General sends him a letter asking him to provide clarifications on his new responsibilities and the terms of reference of his contract, on which I will seek the advice of the Ad Hoc Ethical Committee.

Yours sincerely,

European Ombudsman

Emily O'Reilly
European Ombudsman

Mr Jean-Claude Juncker
President
European Commission

Strasbourg, 05/09/2016

Re: Concerns regarding former Commission President, Mr Barroso

Dear Mr President,

I am writing to you in connection with the recent much-publicised appointment of your predecessor as Commission President, Mr Barroso, to a senior position with Goldman Sachs International, that of non-executive Chairman. You will be aware of the widespread concerns expressed about the appointment and I have noted comments you yourself have made about it.

Since taking up office, you have set a high-level of transparency as a cornerstone of your Commission which I welcome very much. Indeed through our several conversations I believe you share my view of the vital importance of the maintenance of citizen trust in the institutions of the EU. The single most important element of that trust is, I think you will also agree, that public servants are seen to be working solely in the public interest. At a time when, globally, and particularly since the economic crisis dating from 2007, citizens' trust both in their governments and in their public administrations has been severely shaken, no institution can risk eroding that trust further.

Since 2014 we have corresponded a number of times in relation to the monitoring of former Commissioners' occupational activities after leaving office. The main points I have raised, and recommendations I have made, include the following:

- Article 245 TFEU requires Commissioners to behave with integrity both during and after their term of office.

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- The Commission should ensure that its actions in this area reassure EU citizens that it is prepared to take all necessary steps to uphold Article 245 TFEU.
- The Commission should revise its Code of Conduct; a revised Code could include a range of specific sanctions where there has been a breach of obligations by a serving or former Commissioner.
- In one case, I found that the Barroso Commission's decision regarding the compatibility of a former Commissioner's new job with Article 245 TFEU was not based on an adequate investigation of the facts and thus amounted to maladministration.
- The Ad Hoc Ethical Committee performs an important, albeit advisory, role in order to ensure public trust. The assessments it carries out should be available for public scrutiny to allow that public to judge if the system the Commission has put in place is robust and working well.

While much of the work in this regard, and indeed many of the activities taken up by former Commissioners go largely unremarked, your predecessor's action has generated understandable international attention given the importance of his former role and the global power, influence, and history of the bank with which he is now connected. The controversy has also given rise to parliamentary questions and I find it particularly relevant that EU staff have also launched their own petition in protest at the appointment.

Having observed the reaction to the appointment, and very carefully noted various statements from Commission spokespersons and others in relation to it, I now wish fully to understand the Commission's position on the matter. Below are questions to which I would appreciate having your response. Once I have your response, I will be in a position to decide whether there are further steps I should take on the matter.

1. Can the Commission set out what measures if any it has taken or may take to ascertain the conformity of this appointment and any relevant issues concerning it with the obligations within Article 245 TFEU, including whether the Ad Hoc Ethical Committee has, or will be consulted? The Committee can be consulted at any time, and not only following a notification within the 18 month period.

2. In its public statements to date, the Commission has stated that the former President complied with the Code of Conduct. This raises the obvious question as to whether the Code is deficient, particularly in relation to the apparent arbitrariness of the 18 month notification period. The obligation to behave with integrity laid down in Article 245 TFEU, is, in contrast, open-ended.

Certain cases will not cease to be problematic simply because 18 months or longer has passed. It could therefore be more appropriate for the Commission to decide on the merit of individual cases on a case-by-case basis taking into account all relevant issues and not just the quantity of time that has passed since a Commissioner left office.

The current approach, in certain cases, not alone may fail to comply with the spirit of the law but may also permit a 'no rules broken' approach to defending certain appointments that increases rather than decreases public concern. It may also render the Commission less likely to inquire into the wider issues of integrity surrounding a particular appointment. While this proposed new approach may be a more challenging process, it would avoid the potential reputational damage caused by cases such as this one, when the claim that no rules have been broken fails to satisfy public unease at what has occurred. Would the Commission be willing to amend its Code accordingly?

3. This public unease will be exacerbated by the fact that Mr Barroso has publicly stated that he will be advising on the UK's decision to leave the EU. In this context, has the Commission considered issuing guidance to current Members, to Chief Negotiator Barnier and to staff in relation to how and whether they will engage with the former Commission President in his new role? Such advice is important given the need to ensure that their work is not affected by any possible failure on Mr Barroso's part to comply with his duty to act with integrity.

Finally, when I closed my most recent inquiry in this area (OI/2/2014) I considered that the end of the year would be an adequate timeline to inform me of any action in relation to my findings and suggestions. Given recent events however, I find it appropriate to bring forward that timeline to 14 October 2016 by which time I would welcome a full response to all the issues now raised.

I am of course also happy to discuss these matters at our next opportunity to meet.

Yours sincerely,

Emily O'Reilly
European Ombudsman

European Ombudsman

Ombudsman calls for strengthened ethics rules for ex-Commissioners

Available languages: en.fr

Press release no. 8/2016

12 July 2016

The European Ombudsman, **Emily O'Reilly**, has called on the European Commission to strengthen the rules that govern work that Commission Presidents and former Commissioners undertake after leaving office. She notes the latest controversy, and the most recent relevant case dealt with by her office.

Referencing the recent appointment to a major bank of a former President of the Commission shortly after the 'cooling-off' period stipulated in the Code of Conduct for Commissioners, the Ombudsman asks whether the rules are sufficient to protect the public interest.

"Former Commissioners technically need to notify the Commission only if they plan to engage in an occupation within 18 months after their term of office so that potential conflicts of interests can be assessed. But technical adherence to rules drawn up and implemented by the Commission itself may or may not fully conform to Treaty Article 245 which deals with the need for Commissioners to behave with integrity, including after leaving office. The Article makes no reference to a timescale in this regard." said Ms O'Reilly.

Ms O'Reilly continued: *"Any suggestion that the spirit of the law is being ignored risks undermining public trust in the EU. It also undermines the positive steps the Commission has taken so far on ethical issues and does a great disservice to every conscientious and hard working EU official. The 'right to work' has to be balanced with the public's right to an ethical administration and particularly when it comes to those holding, or having held, very senior positions."*

"The EU treaty states that former Commissioners should behave with integrity and discretion when it comes to certain appointments or benefits. Just as citizens expect the highest standards when it comes to the conduct of public officials, they need clarity on what precisely this means in practice."

"I have recently called on the Commission to revise the Code of Conduct to so that it reflects the Treaty rules on how former Commissioners should behave. I have also said there should be sanctions for breaches of the Code."

The Ombudsman has conducted several inquiries into the post office activity of Commissioners and senior EU officials.

The most recent case concerns a paid position held by a former EU Commissioner. Ms O'Reilly found that the Barroso Commission had failed adequately to deal with the former Commissioner's breach of the Code of Conduct and had not properly investigated the compatibility of the Commissioner's contract with the EU treaty, despite concerns raised by the advisory committee that deals with these matters.

Ms O'Reilly therefore proposed that the Juncker Commission revise its Code of Conduct, making its rules more explicit and more easily implementable. The Ombudsman also proposed that a revised Code include sanctions for any breach of obligations by a serving or former Commissioner.

"It is worth noting that the Code of Conduct was drawn up by the Commission. It would now seem appropriate that the Code be re-assessed in light of recent events," said the Ombudsman.

The Ombudsman will continue to monitor these matters and will revert with further possible proposals.

Editors' Note

Article 245 TFEU requires Commissioners to "*behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits.*"

The Code of Conduct for Commissioners states that "*former Commissioners who intend to engage in an occupation during the 18 months after they have ceased to hold office, shall inform the Commission in good time.*"

The Ombudsman investigates complaints about maladministration in the EU institutions, agencies and bodies. Any EU citizen, resident, or an enterprise or association in the EU, can lodge a complaint with the Ombudsman. The Ombudsman's powers include the right to inspect EU documents, call officials to testify, and to open strategic inquiries on her own initiative. For more information: www.ombudsman.europa.eu

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European Ombudsman

Decision of the European Ombudsman closing her own-initiative inquiry into the European Commission's handling of a former Commissioner's occupational activities after leaving office (OI/2/2014/PD)

Available languages: en

This complaint was treated as confidential. This document has therefore been anonymised.

- **Case: OI/2/2014/PD**
  Opened on **10 Apr 2014** - Decision on **30 Jun 2016**
- Institution(s) concerned: **European Commission**
- Field(s) of law: **General, financial and institutional matters**
- Types of maladministration alleged – (i) breach of, or (ii) breach of duties relating to: **Lawfulness (incorrect application of substantive and/or procedural rules) [Article 4 ECGAB]**
- Subject matter(s): **Institutional and policy matters**

Contents

Former Commissioners are required, for a period after leaving office, to inform the European Commission in advance of any occupational activity they intend to take up. The Commission must then check whether the proposed activity gives rise to a conflict of interest in relation to the former role as a European Commissioner. In carrying out this examination, the Commission may take advice from its Ad Hoc Ethical Committee made up of three independent experts.

In May 2013 the Ombudsman was made aware, by way of an anonymous communication, that a former Commissioner had taken up a remunerated position with a company without, apparently, having informed the Barroso Commission. Following contact from the Ombudsman, the Commission sought the advice of its Ad Hoc Ethical Committee.

The Committee advised that, if it had been consulted on the matter in advance, it would have taken the view that the contract (a copy of which had been sent to the Ombudsman) did not offer sufficient guarantees that the former Commissioner's activity would comply with Article 245 of the Treaty on the Functioning of the European Union (TFEU). This requires that Commissioners behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits. The Committee added that it would have advised the Commission to require further commitments from the former Commissioner, in particular in relation to the scope of the work envisaged for the company.

The Barroso Commission then requested a statement from the former Commissioner who replied that the contract allowed for the refusal of tasks that would be in breach of the former Commissioner's obligations under Article 245 TFEU. The company concerned provided a statement to the same effect. Subsequently, on the basis of these statements, the Barroso Commission took the retrospective decision that, while the former Commissioner should have informed it in advance of the proposed contract, that contract could nevertheless "be considered as compatible with Article 245(2) of the TFEU".

The Ombudsman decided to inquire into this situation on her own initiative. The Ombudsman considers that the steps taken by the Barroso Commission were insufficient. In particular, the Ombudsman believes that the actions of the Commission failed to reflect the seriousness of the breach by the former Commissioner of the duty to inform the Commission in advance of the occupational activity. This failure creates the risk that ordinary citizens of the EU will feel that, when it came to its former colleagues, the Barroso Commission was unduly lenient. Ordinary citizens could feel that the Barroso Commission did not take sufficiently seriously the need to ensure that former Commissioners met their obligations and that, in effect, they could behave with impunity. This can erode trust in the EU institutions generally. Accordingly, the Ombudsman finds that the Barroso Commission's handling of this matter amounted to maladministration. The Ombudsman finds also that the retrospective decision of the Barroso Commission, regarding the compatibility of the contract with Article 245 TFEU, was based on an inadequate investigation of the facts and thus that it amounted to maladministration. Finally, the Ombudsman suggests to the Juncker Commission that it should revise its Code of Conduct for Commissioners in order to make its rules more explicit and more easily implemented.

Background

1. On 6 May 2013 the Ombudsman received, from an anonymous source, an envelope containing a copy of a contract for the supply of professional services, agreed between a private company and a former European Commissioner ("the former Commissioner"). The contract, which provided for remuneration for the former Commissioner, was agreed in February 2010 and was to run for a period of four years. The contract did not contain any mitigation provisions dealing with possible conflicts of interest in relation to the portfolio of the former Commissioner.

2. On 4 July 2013, the Ombudsman sent a copy of the contract to the Commission and asked it to report on any follow-up action it might take in relation to that contract. On 19 July 2013 the Commission informed the Ombudsman (a) that the former Commissioner had never notified this contract to the Commission and (b) that the Commission had now written to the former Commissioner "to request information about the document". The Commission had received from the former Commissioner advance notifications regarding other proposed occupational activities.

3. On 25 February 2014, the Commission informed the Ombudsman that it had inquired into the matter of the former Commissioner's contract and had reached a conclusion on that matter. In the course of its inquiry, the Commission had sought an opinion from the Ad Hoc Ethical Committee[1] and had been in communication with the former Commissioner and with the company in question. The Barroso Commission's overall conclusion was that no further action was necessary on its part. The main points of its detailed letter are set out below.

4. Once it had been confirmed that the document provided to the Ombudsman was a true copy of a contract between the former Commissioner and the company in question, the Commission asked its Ad Hoc Ethical Committee for an opinion. That Committee provided its opinion on 1 October 2013. The Ad Hoc Ethical Committee took the view that the contract should have been notified to the Commission "in good time". On the question of whether the activities covered in the contract were compatible with the former Commissioner's Treaty obligations, the Committee considered that some of those activities "could be difficult to reconcile with Article 245(2) TFEU". In particular, the Committee would be concerned should the former Commissioner's consultancy role have involved more than strategic and general advice. The Committee said that, had it been consulted in advance, it would have advised the Commission to require "further commitments"[2] from the former Commissioner before approving the proposed activity.

5. The Commission then sought additional information, both from the former Commissioner and from the company concerned. The former Commissioner at that stage informed the Commission that the contract had been terminated in February 2012. (The contract actually ended on 27 February 2013.[3]) Furthermore, the former Commissioner sought to assure the Commission that the contract was in line with the Code of Conduct for Commissioners (the Code) and that the former Commissioner had sought to act under the contract in a manner which respected the compatibility clause in that Code. The company concerned wrote separately to the Commission to support the account given by the former Commissioner. The Commission then concluded that there was no need for any further action in relation to this matter. The Commission explained that it had regard to the following in reaching this decision. First, the former Commissioner should have notified the contract in question in good time, as required by the Code. Second, in view of the clarifications provided by the former Commissioner and the company concerned, the contract could be "considered as compatible with Article 245(2) of the TFEU". Third, the contract had in the meantime been terminated. This decision of the Barroso Commission was made public in the normal way through the minutes of the Commission meeting.

6. After a careful examination of this reply, the Ombudsman decided, on 10 April 2014, to open an own-initiative inquiry into the Commission's handling of the post-office activities of the former Commissioner based on the contract in question.

The inquiry

7. The Ombudsman inspected the Commission's confidential file on the matter, including the Ad Hoc Ethical Committee's opinion and the correspondence exchanged with the former Commissioner and the company concerned. Following this inspection, the Ombudsman asked the Commission for its opinion. That opinion was received on 8 July 2015; in it, the Commission contended that it had handled the matter diligently. The Ombudsman also invited the former Commissioner to provide observations in relation to the inquiry and received these observations on 13 April 2016. In inviting observations from the former Commissioner, the Ombudsman made it very clear that the actions into which she was inquiring were the actions of the Commission and **not** the actions of the former Commissioner.

8. The former Commissioner complained[4] to the European Data Protection Supervisor (EDPS) regarding the processing of personal data by the Ombudsman in the course of the Ombudsman's inquiry. In his decision, the EDPS set out the kind of identifying information which should not be contained in any publication of the Ombudsman's decision; the EDPS set out also the type of secondary information which could legitimately be included in any publication of the Ombudsman's decision. The former Commissioner sought a review by the EDPS of his decision. That review upheld the original EDPS decision. The former Commissioner then commenced court proceedings against the EDPS and those proceedings have not yet been concluded. In these circumstances, the Ombudsman has decided not to follow the decision of the EDPS regarding the kind of information which could legitimately be included in the publication of this decision. The Ombudsman has decided that the decision, including in its published form, should not unfairly disclose any identifying personal data of the former Commissioner. In order to ensure the protection of the personal data of the former Commissioner, certain relevant details are not dealt with explicitly in this inquiry decision. The Ombudsman's inquiry, however, is informed by a fuller knowledge of the facts than is apparent from this published decision.

The Ombudsman's assessment

9. Article 245 TFEU imposes on Members of the Commission "*the duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits*". A breach of this duty may have serious consequences. Article 245 TFEU provides that, "*in the event of any breach of these obligations, the Court of Justice may, on application by the Council … or the Commission, rule that the Member concerned be, according to the circumstances, either compulsorily retired … or deprived of his right to a pension or other benefits in its stead*".

10. The Code of Conduct for Commissioners is intended to give procedural effect to the Article 245 obligations. In relation to former Commissioners, the Code provides as follows: "***Whenever Commissioners intend to engage in an occupation during the year after they have ceased to hold office, whether this be at the end of their term or upon resignation, they shall inform the Commission in good time. The Commission shall examine the nature of the planned occupation. If it is related to the content of the portfolio of the Commissioner during his/her full term of office, the Commission shall seek the opinion of an ad hoc ethical committee. In the light of the committee's findings it will decide whether the planned occupation is compatible with the last paragraph of Article [245] of the Treaty.***" It is clear from this provision, and from the Code more generally, that the Treaty obligation to behave with integrity and discretion concerns in particular the need to avoid a situation of conflict of interest.

11. In order to maintain EU citizens' trust in the Commission, and in the EU as a whole, it is crucial for the Commission to ensure that the procedure set out above is respected. An absolutely critical feature is that the Commission's assessment is completed in advance of a former Commissioner taking up an occupational activity. It must, through this procedure, diligently establish the facts, so as to enable a thorough assessment in each individual case. It must then carefully assess these facts, with the assistance of the Ad Hoc Ethical Committee. The role of the Committee is important. The fact that it is made up of three independent experts helps ensure that the assessment is objective and independent. Once this assessment has been completed, the Commission must draw the necessary conclusions and take whatever measures are appropriate to ensure that the former Commissioner will meet his or her Treaty obligations. In this context, appropriate measures could include requesting the former Commissioner not to take up the activity at all; requesting that some aspects of the proposed activity be excluded; or requesting the former Commissioner to accept the imposition of certain conditions on how the contract (or aspects of it) is implemented. Should a former Commissioner decline to act on such a request, the Commission would have to decide if the case warranted a referral to the Court of Justice.

12. Once the Commission became aware of the existence of the contract in this case, it took steps to establish the facts. Once the facts had been established, the matter first facing the Commission was that of the former Commissioner's failure to inform it in advance (or at all) of this particular contract. In addition, and despite the fact that it was already too late to take any preventative action, the Commission also sought to assess whether the contract, or any aspect of it, was incompatible with the former Commissioner's Treaty obligation to "behave with integrity and discretion" after leaving office as a European Commissioner. If the Commission were to conclude that the contract gave rise to a breach of the former Commissioner's obligations under Article 245 TFEU, it would have been open to it to refer the matter to the Court of Justice seeking the imposition of a sanction.

Failure to Inform the Commission △

13. It is a fact that the former Commissioner failed to notify the Commission, either in advance of entering into it or during its course, of the contract in question. It seems very probable that the Commission would never have been informed of the contract had the Ombudsman (on the basis of a copy of the contract provided anonymously) not alerted it to the matter. The Commission accepts that the former Commissioner should have informed it of the contract and that the failure to do so was a breach of the Code. In reply to the Commission's inquiries, the former Commissioner is reported to have accepted that the contract should probably have been notified to the Commission. In fact, the former Commissioner is reported by the Commission as having expressed regret for the "awkward situation" which arose because of this failure. Having established that the former Commissioner had breached this specific obligation, the question arises of how the Commission should have dealt with this breach. This question is relevant irrespective of whether the contract itself was, or was not, compatible with the former Commissioner's Treaty obligations.

14. In reply to a specific question from the Ombudsman, the Commission agreed that "[any] failure to notify a post-mandate activity is a breach of the obligations set out in the Code of Conduct for Commissioners (CCC) and that any such failure should be subject to appropriate follow-up in order to preserve the *'effet utile'* of the system." In this case, the follow-up undertaken by the Commission focused on a retrospective assessment of whether or not the contract was compatible with the former Commissioner's Treaty obligations to behave "with integrity and discretion as regards the acceptance ... of certain appointments or benefits". The Ombudsman takes the view that, in its own right and irrespective of the compatibility of the contract with the Treaty obligations, the failure to notify the Commission of the contract was a serious matter. In the Ombudsman's view, the Commission was obliged to consider whether a sanction was warranted. There is no evidence that the Commission looked seriously at the breach of the obligation to notify it of the contract and that it considered whether it would be appropriate to seek to impose some sanction in that regard.

15. The Ombudsman accepts that, in considering how to deal with the former Commissioner's failure to notify it of the contract, the Commission was required to allow the former Commissioner the opportunity to explain this failure. The Commission gave the former Commissioner this opportunity and the Ombudsman has heard the case made by the former Commissioner for the failure to notify the contract in question. In the event, the former Commissioner ultimately accepted that the Commission should have been informed of the contract and offered the opportunity, in advance, to decide whether the contract was compatible with the Treaty obligations on former Commissioners. However, the former Commissioner put forward various reasons for the failure to inform the Commission of the contract. The Ombudsman is fully informed of the reasons put forward by the former Commissioner[6] but fails to understand why the Commission did not find it necessary to interrogate these reasons more closely. Paragraph 1.1.1 of the Code is clear and unambiguous; details of a proposed occupational activity **must** be notified to the Commission "(w)henever Commissioners intend to engage in an occupation during the year after they have ceased to hold office ...". It is not plausible that this could be misread as anything other than a mandatory requirement.

16. Where a former Commissioner fails to inform the Commission in advance of a proposed occupational activity, the Commission is deprived of the opportunity to ensure that the former Commissioner will, in fact, "behave with integrity and discretion" in taking up that occupational activity. In this case, four years after the contract had been agreed and one year after the contract had ended, the Barroso Commission found itself deciding on a retrospective basis whether the terms of the contract in question were compatible with the former Commissioner's Treaty obligations. Clearly, this was a very unsatisfactory situation for the Commission. If it found that the contract terms (or some of them) were not compatible with the former Commissioner's obligations, it was already too late to seek to prevent behaviour which would have the effect of undermining a fundamental Treaty value. Even if it found that the contract terms were not problematic, and that they were compatible with the duties of a Commissioner, this outcome would have been a matter of chance or good fortune rather than the result of the Commission's Code of Conduct having operated correctly.

17. Citizens' trust in the EU, and specifically in the European Commission, depends upon being satisfied that all those who achieve very high office will behave impeccably both while in office and subsequently. European

Commissioners, in particular, have onerous duties for which they are well remunerated. Having left office, former Commissioners have attractive pension and benefits packages which compensate them for any temporary restrictions on their occupational activities. EU citizens are entitled to expect that all former Commissioners will behave properly in this regard and that, if not, the current Commission will act with the wider interests of the EU as its priority. Above all, the Barroso Commission should have been aware of the great risk that any failure in this regard on its part was likely to be perceived negatively by EU citizens, thereby eroding trust in the EU institutions. The risk, in particular, was of a perception by ordinary citizens that former Commissioners enjoy privileged treatment, that a lesser standard of compliance with their obligations was expected of them than would be the case generally. The Ombudsman has no particular insight into the motivation of the anonymous person who provided a copy of the former Commissioner's contract. However, it is reasonable to assume that that person was aware of the former Commissioner's obligations on leaving office and was concerned that the former Commissioner had not met those obligations.

18. Based on the facts of this case, it would be reasonable for the ordinary citizen to conclude that the Barroso Commission failed to deal adequately with the former Commissioner's breach of an obligation. It would be reasonable for the ordinary citizen to conclude that future similar breaches of obligation may be dealt with similarly. The sanctions provided for in Article 245 TFEU, in the case of a breach of that Article, are expressed in broad terms. This Treaty provision is given procedural effect by way of the Code of Conduct for Commissioners. The Ombudsman is aware of the view that the present Code is inadequate and lacks a coherent set of arrangements for its implementation.[7] The Ombudsman believes that the rules in the Code should be revised to make them more explicit and to improve implementation. For example, a revised Code could include a non-exhaustive list of the types of circumstances or of actions which would be likely to lead to a referral to the Court of Justice or to some lesser sanction at an administrative level.

19. While the Code should be revised for the future, this does not imply that the Code as it existed at the relevant time, or in its present form, precluded appropriate action by the Commission arising from the former Commissioner's breach of the Code. If the will to take appropriate action were there, the Ombudsman believes that the Commission could have found an appropriate way in which to deal with the situation.

20. Having considered the matter carefully, and in the absence of evidence suggesting otherwise, the Ombudsman finds that the Barroso Commission failed adequately to deal with the former Commissioner's breach of paragraph 1.1.1 of the Code. This constituted maladministration by the Barroso Commission.

Compatibility of the Contract with Treaty △

21. Given that the contract had already ended some months before it even became aware of its existence, any consideration of the contract's terms by the Commission had to be a retrospective exercise. This retrospective exercise would inform the Commission as to what action it should take in relation to the breach of obligation under the Code, that is, the failure to notify the Commission of the contract in advance. It was not at that late stage open to the Commission to refuse permission for the activity, or for parts of it, or to seek to impose any conditions. However, it would have been open to the Commission to refer the case to the Court of Justice if it took the view that the former Commissioner's occupational activities, under the contract, breached the obligations under Article 245 TFEU.

22. It is relevant that that the Ad Hoc Ethical Committee, from its retrospective assessment, concluded that, if the contract had been notified to it in time, it would have taken the view that it did not offer sufficient guarantees as to its compatibility with Article 245 TFEU. The Committee was concerned in particular regarding the scope of the services that the former Commissioner would provide to the company. The opinion of the Ad Hoc Ethical Committee is both reasonable and convincing. The obvious conclusion is that, if the contract had been notified to it before the former Commissioner had accepted the job offer, the Commission should have asked the former Commissioner to limit the scope of the activities covered by the contract. This would have limited the risk that some of the former Commissioner's activities under the contract would have infringed Article 245 TFEU.

23. In the light of the views expressed by the Ad Hoc Ethical Committee, in November 2013 the Commission wrote to the former Commissioner seeking further information on the issue of the compatibility of the contract's terms with Article 245 TFEU. In reply, the former Commissioner stated that the contract contained a clause reflecting the need to avoid a conflict of interest and that the former Commissioner had interpreted this in the spirit of Article 245. On this basis, it was open to the former Commissioner to refuse a task or mission which was incompatible with the obligations under Article 245 TFEU. This view was expressed also by the company concerned in a letter of the same date (18 December 2013) to the Commission. On that basis, and apparently without further information, the Commission decided that the scope of the former Commissioner's contract with the company concerned "can be considered as compatible with Article 245(2)". The Commission told the Ombudsman that it "was precisely on the basis of the clarifications received from the former

Commissioner and [the company] that the Commission was able to conclude that the scope of the service contract was compatible with Article 245(2) TFEU, in particular taking into account the way in which it was actually implemented".

24. The advice of the Ad Hoc Ethical Committee was stated in terms of what it would have recommended had it been consulted in advance. At the point when it was actually consulted, it was already too late for the Commission to take appropriate mitigation measures; but it was not too late to refer the matter to the Court of Justice or to impose some administrative sanction. The position of the Ad Hoc Ethical Committee was that the contract was problematic in terms of compliance with Article 245 TFEU yet the Commission, in its retrospective decision, found that the contract was compatible with the Treaty. On the face of it, the Commission decision is at odds with the advice of the Committee. The Ombudsman accepts that the Commission was not bound by the advice of the Committee. But if the Commission chooses to depart from that advice, it must be able to justify that decision. In this case, the Ombudsman is not satisfied that the Commission has justified its decision to take a contrary position.

25. In fact, it appears that the Barroso Commission had a rather limited engagement with the former Commissioner on the compatibility issue. The Commission did not seek detailed information regarding the specific tasks undertaken under the contract, with a view to determining if those specific tasks were in compliance with Article 245 TFEU. Rather, it limited itself to requesting the former Commissioner to submit written confirmations that the contract allowed the former Commissioner to refuse, on a case-by-case basis, to undertake a specific task or mission that would be incompatible with the integrity and discretion required by Article 245 TFEU. Such a step does not, in the Ombudsman's view, satisfy the Commission's duty of diligence. The position adopted by the Commission implies that it was for the former Commissioner to self-assess whether or not there was a conflict of interest as regards a specific task or mission undertaken by the former Commissioner. If the Commission wished to establish whether the contract tasks were in all cases compatible with Article 245, the Commission should have sought much more detailed information regarding the tasks actually undertaken and then conducted its own analysis of their compatibility with Article 245. In particular, the Ombudsman believes the Commission should have considered very carefully an apparent contradiction between one clause in the written contract and the explanation given to the Commission by the former Commissioner (supported by the company) as to how the contract operated in practice. In one of the contract clauses, the former Commissioner provides an assurance that there is nothing to prevent the former Commissioner from carrying out the required duties. However, in replying to the Commission's request for information, the former Commissioner referred to an understanding which allowed the former Commissioner to refuse duties if they gave rise to a conflict with Article 245 TFEU.

26. The Ombudsman finds that the steps taken by the Barroso Commission in this regard were insufficient and unsatisfactory. On the basis of the limited information it received regarding the tasks performed by the former Commissioner, the Commission did not have enough information to take a view one way or the other. Reaching a decision on the basis of a limited engagement with the former Commissioner was not justified. This is even more the case where the former Commissioner was almost put in the position of doing a self-assessment. In all the circumstances the Ombudsman finds that the Barroso Commission's decision, regarding the compatibility of the contract with Article 245 TFEU, was not based on an adequate investigation of the facts and that it thus amounted to maladministration.

Conclusion

On the basis of the inquiry, the Ombudsman makes the following findings and suggestions:

(1) The Ombudsman finds that the Barroso Commission failed adequately to deal with the former Commissioner's breach of paragraph 1.1.1 of the 2004 Code of Conduct for Commissioners. This constituted maladministration by the Commission.

(2) The Ombudsman finds that the Barroso Commission's decision, regarding the compatibility of the former Commissioner's contract with Article 245 TFEU, was not based on an adequate investigation of the facts and thus amounted to maladministration.

The Ombudsman suggests that where, in the future, the Commission must deal with the failure of a former Commissioner to inform it, in good time, of an occupational activity it should ensure that its actions in relation to that former Commissioner reflect the gravity of the failure in question. In particular, it should ensure that its actions will re-assure EU citizens that the Commission is prepared to take all appropriate steps to uphold Article 245 TFEU.

The Ombudsman suggests to the Commission that it should revise its Code of Conduct for Commissioners with a view to making the rules more explicit. In order to improve implementation, a

revised Code could include a range of sanctions to be imposed, at the administrative level, where there has been a breach of obligations either by a serving or a former Commissioner. A revised Code could also clarify the type of circumstances in which the Commission will apply those sanctions.

The European Commission will be informed of this decision.

Strasbourg, 30/06/2016

Emily O'Reilly
European Ombudsman

[1] The Ad Hoc Ethical Committee[1] is made up of three independent experts who advise the Commission on ethical matters, especially about the compatibility with the Treaties of former Commissioners' envisaged post-office activities.

See http://ec.europa.eu/transparency/ethics-for-commissioners/ad-hoc-ethical-committee_en.htm

[2] This appears to be a reference to a clause in the contract in which the former Commissioner provided an assurance that there was nothing to prevent the former Commissioner from carrying out the required duties. The Committee, had it been consulted in advance, would have advised the Commission to seek further commitments including a narrower definition of the scope of the tasks to be undertaken (see Paragraph 25 below).

[3] The Ombudsman queried this with the Commission and, in reply to a question from the Commission, the former Commissioner corrected the matter.

[4] Under Article 46(a) of Regulation (EC) 45/2001.

[5] Decision SEC(2004)1487/2, which has since been replaced by decision C(2011)2904.

[6] The Ombudsman has decided not to publish details of the reasons given by the former Commissioner - see Paragraph 8 above.

[7] See, for example, the European Parliament's 2014 study available at http://www.europarl.europa.eu/RegData/etudes/STUD/2014/490697/IPOL_STU%282014%29490697_EN.pdf

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