



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.



- 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