



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

The Secretary-General

Brussels,

Dear Professors

Thank you for your e-mail of 31 December 2016 and your "Memorandum". I have taken note of your comments and suggestions.

Former President Barroso joined Goldman Sachs twenty months after the end of his mandate as President of the European Commission and two months after the end of the eighteen-month period of compulsory notification of former Commissioners post-mandate activities. In spite of the fact that this activity had not been notified, but given the sensitivity of the issue which concerned a former President of the Institution, the Commission requested the Ad hoc Ethical Committee's opinion on its compatibility with the Treaty on the Functioning of the European Union (TFEU).

The Ad Hoc Ethical Committee is composed of three personalities selected for their competence, experience and professional qualities, in particular their independence. They deliver their independent opinions to the Commission which takes position in the light of the Committee's findings. The mandate of the Committee is public¹.

The Committee delivered its opinion on 26 October 2016². In its opinion it took into account that Article 245 TFEU is applicable without any time limit (see point 9 of the opinion) and that Commissioners remain at all times bound by the obligation of confidentiality under Article 339 TFEU (see point 8 of the opinion). It concluded that, on the basis of the Code of Conduct for Commissioners as it currently stands, there were not sufficient grounds to establish a violation of the duty of discretion and integrity set out in article 245 of the TFEU. Regarding the duration of the cooling-off period, the Committee observed that it was not its role to give its view on whether the Code is sufficiently strict in this respect.

Following the delivery of Ad hoc Ethical Committee's opinion, this issue was discussed by the Commission during its 2190th meeting of 22 November 2016. The President of the Commission considered that the recent controversies around the professional activities of

¹ http://ec.europa.eu/transparency/ethics-for-commissioners/pdf/decision-comite-adhoc2009_en.pdf

² http://ec.europa.eu/transparency/ethics-for-commissioners/pdf/opinion-comite-adhoc-2016-10-26_en.pdf

former members of the Commission were evidence that the time was ripe for an amendment of the Code of Conduct for Commissioners and suggested to extend the "cooling-off" period set out in the Code of Conduct for Commissioners to two years for Commissioners and three years for Commission Presidents. The discussion held by the Commission on 22 November 2016 is accessible to the public³.

On the basis of the Commission's discussion of 22 November, President Juncker wrote to the European Parliament on 23 November 2016, informing the President of the European Parliament of the Commission's intention to tighten the Code of Conduct for Commissioners extending the cooling-off period as proposed by the President.

Let me also clarify that the ethical framework applicable to Commissioners and former Commissioners is based on the provisions of the Treaties and on the Code of Conduct for Commissioners. This framework is in line with international requirements and stricter than the rules applicable in most of the Member States and in the other EU Institutions. In this respect, you will be aware that the OECD Report on "Post Public Employment: Good Practices for Preventing Conflict of Interest" states that rules and criteria should be proportionate to the risk and aim at preventing actual or potential conflict of interest in public office from materialising⁴.

As regards your comments on lobbying activities, please note that the current Commission adopted at the beginning of its mandate new compulsory rules on transparency: interest representatives must be registered in the Transparency register in order to interact with the Commission; and Members of the Commission, their cabinet members and Directors-General systematically make public all meetings held by them with those representatives. These rules equally apply to former Members of the Commission (including former Presidents) when acting as interest representatives. Moreover, former President Barroso made clear that his contract with Goldman Sachs does not foresee any lobbying activities towards the Commission services.

Yours sincerely,

Alexander Italianer

³ <http://ec.europa.eu/transparency/regdoc/rep/10061/2016/EN/PV-2016-2190-F1-EN-MAIN.PDF>

⁴ http://www.oecd-ilibrary.org/governance/post-public-employment_9789264056701-en