

José Manuel Duarão Barroso

1 February 2018

Emily O'Reilly
European Ombudsman
1 avenue du Président Robert Schuman
CS 30403
F-67001 Strasbourg Cedex
France

Dear Ms O'Reilly

Joint inquiry into complaints 194/2017/EA, 334/2017/EA and 543/2017/EA

You wrote to me on 22 January to share with me the views of your team. I take note that your inquiry is not specifically directed at me, rather at the way Commission handled the post-mandate activities of its former members. It is important therefore that it does not depart from its purpose. Any criticism of my decision to join Goldman Sachs would be entirely unjustified.

My appointment has already been the subject of extensive scrutiny by the Ad Hoc Ethical Committee, which is the correct body to opine on these matters, and which has confirmed that the law was respected. You may not know this but, in addition, my case was subject to a wholly exceptional and detailed investigation by OLAF, which is charged specifically with investigating misconduct in the European institutions. The conclusion was clear. OLAF found no evidence of any wrongdoing on my part. Any further accusations in this matter would amount to an unacceptable *ad personam* political attack.

The role of the EU Ombudsman is to protect the rights of EU citizens against the European institutions. I am sure you would agree that it is not part of that mandate to reach legal conclusions about my behaviour as an EU citizen, when those matters have already been determined by the appropriate institutional bodies. Some of the comments in your letter would amount to transforming an inquiry about the actions of the Commission into an inquiry about my own actions. This violates my right to due process. Attached to this letter you will find an opinion from Professor Miguel Poiares Maduro¹, former Advocate General at the European Court of Justice, which sets out important legal and institutional arguments as to why you are not entitled to take a decision on my conduct, or to make an assessment of its compatibility with my duties under European law.

¹ Miguel Poiares Maduro is Professor of Law and Director of the School of Transnational Governance at the European University Institute. He is a former Advocate General at the European Court of Justice. He has been regular visiting Professor at Yale Law School, the College of Europe and Universidade Católica de Portugal.

It is alleged by your team that my actions generated significant public disquiet. Those actions are of course open to debate and people are entitled to their opinions. In all fairness, we must recognise that working for international financial institutions provokes different views across different national cultures and different political parties and ideologies. This means that it is especially important to avoid reaching conclusions based on prejudice. Certainly there were people who criticised my decision but there were also many others who accepted or supported it. Indeed the Government of my own country and its Prime Minister publicly expressed surprise at the criticism levelled at me and felt that it was discriminatory. Differing points of view cannot possibly form the basis for an accusation that I failed to act with discretion.

Your inquiry team seems to believe that my working with Goldman Sachs in and of itself raises questions of integrity that are of public concern. These claims have no foundation in the facts and are wholly unmerited. To publish such assertions would be discriminatory against Goldman Sachs International, a regulated company operating in the Internal Market, and it would be discriminatory against me.

Some comments in your letter suggest that it was predictable that my appointment would generate the public disquiet that is alleged. I disagree. Several former members of the Commission have taken up positions in financial services organisations, including Goldman Sachs, without adverse comment. Goldman Sachs is a company with a substantial and diverse client base including public institutions and governments across the European Union and EU bodies.

I would like to reiterate that my primary role is as the non-executive chairman of the board of directors of Goldman Sachs International. That is a role that the UK regulators have specified as a senior manager function, which brings with it several prescribed responsibilities in relation to the oversight of the management of the company, for which I am accountable to the regulators. These responsibilities include leadership of the board in its scrutiny of the performance of executive management and the development of the culture of the firm. It is of the essence of that role that I conduct myself with integrity and discretion. I was not engaged by Goldman Sachs to lobby on their behalf. I have not done so; I have given assurances to the Commission that I will not do so.

I regret to say that your team is ignoring not only prior decisions that have been taken by the competent EU bodies, but also public guarantees that I have given about my conduct.

For all of these reasons it is impossible to conclude that my actions should be considered as a failure to comply with my duty to behave with discretion. In institutions and societies that are subject to the rule of law, public opinion and political criticism do not drive legal conclusions. These matters have to be decided in accordance with applicable norms and due process. To do otherwise would be an infringement of my right to a private professional life and would create a very dangerous precedent.

Let me repeat to you what I said to President Juncker 16 months ago. As someone who has dedicated his life to a career in public service at the highest levels of government, I have always respected the highest ethical standards, I am very clear about my ongoing responsibilities to the European institutions and I am committed to pursuing my role at Goldman Sachs with integrity and discretion.

I am sure you will take into account my concerns before reaching a final conclusion which reflects European law and the values that we share.

Yours sincerely



José Manuel Durão Barroso

Since I mention them in this letter, I am copying it to:

President of the European Commission Jean-Claude Juncker
Prime Minister of Portugal António Costa