

José Manuel Durão Barroso

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

12 March 2018

Dear Ms O'Reilly,

Re: Recommendations of the European Ombudsman in joint inquiry into complaints 194/2017EA, 334/2017/EA and 543/2017/EA.

Thank you for your letter of 6 March informing me of your Recommendations to the European Commission in the case in reference.

I must convey to you my great surprise and grave concern at some of the points that you make and which form part of your Recommendations.

Firstly, I note, with regret, that you appear to have taken no account of the letter that I sent to you on 1 February, in particular relating to the fact that a specific legal framework exists for the employment of Commissioners after their mandate; something which I have scrupulously respected, as confirmed by two competent independent authorities, the Ad Hoc Ethical Committee (AHEC) and the European Anti-Fraud Office (OLAF). The same respect for that specific legal framework has, to my knowledge, been shown by the Commission. However, nowhere in the 17 pages of your Recommendations do you summarise or set out your assessment of the arguments and views presented in my letter. Such a partisan approach belies any sense of due process.

This legal framework is the only context in which my personal case could be evaluated by the Commission. As the Ombudsman, your role is to investigate possible maladministration by EU institutions for the benefit of EU citizens, and to make recommendations to relevant institutions in the event that maladministration is identified. As I understand it, your role in this matter is, therefore, to ensure that the relevant legal framework has been respected by the Commission and, where necessary, to suggest improvements to the relevant framework (such as, for example, the Code of Conduct). It is, therefore, unacceptable that your Recommendations appear to include a review and critique of the evaluation made by an independent competent authority of my individual situation.

In this respect, I am surprised that you appear to consider yourself free to contradict the conclusions reached by the independent AHEC, namely that there was, in my case, no violation of the legal obligations laid down in article 245 of the TFEU. I also note that you make no reference at all to the independent investigation of OLAF, mentioned to you in my letter, and which found no evidence of wrongdoing on my part and was duly closed without recommendation for any follow-up.

Secondly, your Recommendations now seem to be built significantly on the meeting that I had with Vice-President Katainen in the fall of last year. In your letter of 22 January 2018, you rightly stated that you considered it "*appropriate and fair*" to give me the opportunity to provide my views before you reached conclusions in your inquiry. However, your Recommendations proceed largely on the basis of your assessment of my meeting with Mr Katainen without having sought or received my comments on this meeting at all. That is unfortunate because I could have dispelled any concerns. In this regard, the content of your Recommendations again goes beyond what is required in the context of your function of addressing possible maladministration on the part of EU institutions and assesses my individual situation. Unlike the Commission, as the subject of your inquiry, I, as a named and affected third party, appear to have no formal right to reply to your Recommendations.

As to the substance, you appear to have automatically inferred from the fact that the meeting was entered by Mr Katainen's office on his meeting list as a meeting with Goldman Sachs that I was engaged in lobbying on its behalf. However, this ignores the explanations given by Mr Katainen himself, including in a European Parliament debate (on 28 February), that this was a private meeting of a personal nature and did not involve any lobbying on behalf of Goldman Sachs. Indeed, in the interview (on 20 February) to which you refer, Mr Katainen also says that he intended that my name appear on the meeting list rather than Goldman Sachs and that he would have had someone from the cabinet taking notes if he had regarded the meeting as one which might involve lobbying. He did not do so because plainly this was not such a meeting.

Your comments also ignore the fact that the current President of the European Commission has stated that he was of the view that the meeting fully respected the rules of the Commission. Goldman Sachs has also stated publicly that any meetings I may have with EU officials are in my personal capacity and that I have recused myself from representing the bank in any interactions with EU officials.

I confirm that I fully concur with Mr Katainen's comments as to the nature and content of this meeting and I find it remarkable that you do not appear to accept these. Further, I cannot help noting that your approach would mean that it would be virtually impossible for me to meet on a private basis with any of my friends and former colleagues of ten years at the Commission, for an undetermined period. That cannot be correct. Indeed, the current President has stated that I am not in any way prevented from having meetings with current Commissioners.

In any event, given that your inquiry is concerned with the Commission's handling in late 2016 of my appointment to Goldman Sachs, it is plain that my meeting with Mr Katainen some 12 months later cannot properly bear on the subject matter of your inquiry.

There are numerous other issues with the Recommendations which, in my view, constitute a thinly veiled *ad personam* political attack. It is a bitter irony that you have sought to use your office in this way.

More generally, insofar as your Recommendations assess my individual actions and affect my individual rights, I think I am entitled to be informed by you as to what legal remedies are available to me, in particular having regard to the fact that, as I understand it, recommendations of the Ombudsman cannot be challenged in Court. If, however, your Recommendations do not involve any legal assessment of my actions then I think you should make that clear; at present, it is not.

For my part, I stand by the assurances I have given to the Commission; I have not and will not engage in any lobbying activity with the European institutions on behalf of Goldman Sachs.

Yours sincerely,

José Manuel Durão Barroso

cc. Jean-Claude Juncker, President of the European Commission