



Alliance for Lobbying Transparency and Ethics Regulation
Rue d'Edimbourg 26
1050 Brussels

29 September 2016

Dear President Juncker,

We write to express our strong concerns about the European Commission's handling of revolving door moves by former commissioners.

In summary:

1. We strongly criticise the delay in taking action regarding former President Barroso's move to Goldman Sachs
2. We make a formal complaint of maladministration regarding the Commission's inaction on the job moves by ex-commissioners Neelie Kroes (Uber, Salesforce) and Karel De Gucht (ArcelorMittal)
3. We argue that, collectively, these three cases show the ineffectiveness of the Code of Conduct for Commissioners in implementing the provisions of Treaty article 245, and consider that it is now an urgent matter for the Commission to revise the Code
4. We make a formal complaint of maladministration regarding the appointment of two Commission special advisers to the Ad hoc Ethical Committee

1. Commission delay in acting on Barroso case

As you will know, there has been criticism voiced far and wide across Europe regarding the appointment of Mr Barroso as chairman and adviser at Goldman Sachs International. The French Presidentⁱ, the European Ombudsmanⁱⁱ, various MEPsⁱⁱⁱ, EU staff members^{iv} and thousands of European citizens^v have expressed their concern and asked you to take firm action.

ALTER-EU is very disappointed that it took two months for you to seek further information from Mr Barroso and to refer this matter to the Ad hoc Ethical Committee. In our view, this action is insufficient and comes too late for it to be an adequate response to the Commission's duty to uphold Treaty article 245 and its ongoing requirement for all former commissioners to act with "integrity and discretion" regarding future employment.

Alliance for Lobby Transparency and Ethics Regulation (ALTER-EU)
Rue d'Edimbourg 26, 1050 Brussels, Tel: +32 2 8931062-
Email: coordinator@alter-eu.org - www.alter-eu.org
EUTR registration number: 2694372574-63

It is important that the Commission is seen to be proactive in investigating matters of ethics and integrity, and not pushed into belated action by political and public opinion. We do not think that Mr Barroso's ongoing duty to act with "integrity and discretion" is compatible with his new roles at Goldman Sachs. Goldman Sachs has been associated with too many scandals^{vi}, has been too closely associated with the origins of the financial crisis^{vii}, and is too active as an EU lobbyist^{viii}, for it to be appropriate for Mr Barroso to take paid employment there. **We urge you to act urgently on this case and to launch a case at the Court of Justice with the purpose of revoking Mr Barroso's pension entitlement, and thus fulfilling the Commission's duty under TFEU 245.**

2. Commission inaction on Kroes and De Gucht cases

As you will know, Mr Barroso is not the only former commissioner to have taken a controversial new role following the ending of the 18 month notification period for ex-commissioners on 30 April 2016. In the view of ALTER-EU, Commission action is urgently required to implement TFEU 245 in relation to the following cases.

In May 2016, Ms Neelie Kroes joined the public policy advisory board of Uber^{ix} and the board of directors of Salesforce^x. These are paid roles and both corporations are major players in the tech world; both are high-spending active EU lobbyists; and it is not hard to comprehend why either firm would wish to recruit the services of the former Digital agenda commissioner. Specifically, Salesforce has more than doubled its EU lobby spending to €700,000+ in the past year^{xi}, while Uber has had 16 lobby meetings with senior Commission officials since December 2014^{xii}. Both companies clearly have an agenda to promote to the EU institutions, especially at a time when digital matters are centre-stage for the Commission.

Furthermore, during her time in office as Digital agenda commissioner, Kroes was vocal in her support for Uber. In a blog^{xiii}, hosted by the European Commission and published in Kroes' name in April 2014, just two years ago, Kroes wrote: "I am outraged at the decision today by a Brussels court to ban Uber, the taxi-service app." She went on: "I've met the founders and investors in Uber. My staff have used the service around the world to stay safe and save taxpayers money. Uber is 100% welcome in Brussels and everywhere else as far as I am concerned." She even announced via Twitter that she wanted to "start a new # tag ... #UberIsWelcome in Brussels and everywhere."

We consider that as a former Digital agenda commissioner, Ms Kroes' moves to Uber and Salesforce cannot be compatible with her ongoing duty to act with "integrity and discretion".

In May 2016, Mr Karel De Gucht joined the board of ArcelorMittal.^{xiv} ArcelorMittal is a major EU lobbyist^{xv}, spending over €1,500,000 a year on EU lobbying, and holding 27 high-level meetings with the Commission since December 2014. The corporation is a global actor when it comes to steel and this gives it an important foothold in the automotive, construction and other sectors. As a former trade

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commissioner who led DG Trade during negotiations with the US, Canada, India, and others, it seems clear that Mr De Gucht's insights would be of great value to such a major global corporation.

We consider that as a former Trade commissioner, Mr De Gucht's move to ArcelorMittal cannot be compatible with his duty to act with "integrity and discretion".

ALTER-EU considers that it is maladministration that the Commission has not taken any action on these important revolving door cases. All three of the above appointments started within days of the 18 month notification period in the present Code ending, and four months later the Commission has yet to undertake any investigations, let alone wider action. In fact a Commission spokesperson recently implied that no action had been taken specifically on the Kroes case because of the lack of public interest.^{xvi} This surely is a failure to uphold TFEU 245, which applies in all cases, and not just when there is a public petition on a particular job move. We further note that you have decided that Mr Barroso will now only be received at the Commission as an interest representative; we consider that the same arrangement should be put in place for Ms Kroes and Mr De Gucht.

3. Reform of the code of conduct

The Barroso, Kroes and De Gucht cases all illustrate the problem with the Code of Conduct for Commissioners, namely that it does not adequately implement TFEU 245. So far, the Commission has failed to publicly recognise this, and failed to announce a timetable for the revision of the Code.

The current Code's specific obligations to require authorisation for new roles and not to undertake any lobbying only extend for 18 months. The Code's reference to Article 245 and how it applies beyond the 18 months after leaving office is clearly insufficient as it is not backed by any concrete rule and thus can be considered meaningless. In our view, the ethics rules for commissioners need to implement TFEU 245 in order to prevent former commissioners from taking on new roles which represent a threat to the integrity and reputation of EU decision-making, in the years after leaving office.

Our proposals for reform of the revolving doors rules in the Code would be that:

- The current 18 month ban (cooling-off period) on former commissioners undertaking lobbying activities should be extended to at least three years (five years for Commission presidents) and should cover all issues for which the Commission had taken collective decisions, as well as any other proposed new role which could create a conflict of interest.
- The ban on lobbying should be defined in more detail and should include both direct and indirect lobbying such as the provision of lobbying advice.

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- The Commission should overhaul the current Ad hoc Ethical Committee and replace it with a permanent, professional, transparent and fully independent ethics body which would be entirely responsible for the assessment of commissioners' proposed new roles, as well as other ethics matters relating to commissioners and wider integrity issues across the Commission. This body would be proactive, have investigatory powers, and also have the authority to sanction rule-breaking or other misconduct.

The recent Bahamas Leaks revelations about Neelie Kroes' failure to declare, via her declaration of financial interests, her directorship of an offshore company aiming to purchase Enron assets^{xvii} require swift action. **It now seems clear that Ms Kroes' actions constitute a breach of commissioners' ethics rules^{xviii} and we urge you to apply sanctions promptly.** Furthermore, this case adds weight to the argument to reform commissioners' ethics rules and the procedures to enforce them. The Commission does not appear to have the capacity to properly scrutinise and verify the risk of conflicts of interest of commissioners on an ongoing basis. A September 2014 research report written for the European Parliament^{xix} drew similar conclusions:

"Overall, the [Commissioners' Code of Conduct] is characterised by its poor checks and balances, the absence of a coherent implementation system, and opacity surrounding its operation (eg with regard to the Ad hoc Ethical Committee). Whilst other ethics systems contribute to enhance public trust in government, the EC's system appears tilted towards the Commissioners' political and career interests".

All of these scandals undermine trust in the Commission's ability to manage ethical matters. **A full review of commissioners' ethics rules and procedures is the only effective response to the widespread political and public concern.**

4. Ad hoc Ethical Committee

Finally, we would like to make a formal complaint about the decision of the Commission on 13 July 2016^{xx} to appoint two Commission special advisers (Mr Zourek and Ms Roth-Behrendt) to the Ad hoc Ethical Committee.

Ms Roth-Behrendt is a special adviser to Commissioner Andriukaitis (Health & Food Safety), focussing on "assessing the situation of executive agencies of DG SANTE".^{xxi} Additionally, Ms Roth-Behrendt's husband is Horst Reichenbach who, among his other roles, is a special adviser to Commissioner Moscovici.^{xxii} Meanwhile, Heinz Zourek was also a special adviser (on the financial transactions tax) to Commissioner Moscovici^{xxiii} (until 31 July 2016), was director-general at DG Taxud until December 2015, and previously director-general at DG Enterprise, roles which would have brought him into considerable contact with members of the Barroso II Commission and the Juncker Commission.

Special advisers (and recent ex-directors-general) can be expected to owe a duty of loyalty to the commissioners they work for, and perhaps the wider college too. By contrast, surely the role of members of the Ad hoc Ethical Committee requires clear independence from all 28 individual commissioners, and indeed from the Commission itself, as set out in Commission decision SEC(2003) 3750.^{xxiv} This would mean not appointing to the committee either special advisers or former directors-general who have left the Commission only recently. Additionally we note that the Commission's own rules for special advisers say, "Throughout the period of their appointment, [special advisers] may not have direct or indirect contractual links with the Commission other than those arising from their appointment as special advisers."^{xxv} It would appear to us that this rule has been breached.

Moreover, appointments to the Ad hoc Ethical Committee last for three years and it is highly conceivable that members of this committee might need to advise the Commission on the career moves of other Barroso II commissioners; recently departed Juncker Commission members (for example, Commissioner Hill); or indeed current members of the Juncker Commission, who could decide to leave in the coming years. These committee members could have long-standing professional or even social relationships with many of these commissioners. And in the hypothetical scenario that Commissioner Moscovici were to leave, any proposed career moves would be assessed by his former special adviser and the wife of another of his special advisers!

Considering the uproar caused by the re-appointment of Michel Petite as chairman of the Ad hoc Ethical Committee in 2012 and the subsequent critical opinion of the European Ombudsman to that appointment^{xxvi}, it seems especially careless that the college should appoint such close colleagues to this sensitive role. **We consider the decision to appoint these advisers to the Ad hoc Ethical Committee constitutes maladministration.**

We look forward to hearing from you regarding all four of these specific issues.

Yours sincerely,

ALTER-EU steering committee:

Helen Darbshire, Access Info Europe; Paul de Clerck, Friends of the Earth Europe; William Dinan, SpinWatch; Olivier Hoedeman, Corporate Europe Observatory; Nina Katzemich, LobbyControl; Jorgo Riss, Greenpeace European Unit; Yuklan Wong, European Federation of Journalists

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