



Brussels, 20 February 2018

**Dear Secretary-General Italianer,**

I write on behalf of the Alliance for Lobby Transparency and Ethics Regulation in the EU (ALTER-EU) to express our strong concerns following confirmation (letter attached) that on 25 October 2017 Vice-President for Jobs, Growth, Investment and Competitiveness Jyrki Katainen held a lobby meeting with former President of the Commission José Barroso who was representing his new employer, Goldman Sachs International.

The fact that a former President of the European Commission was allowed to lobby the current European Commission on behalf of the investment bank is symptomatic of the problems regarding the Commission's handling of the post-public office employment of former commissioners.

This meeting was first reported in *Politico's* Brussels Playbook<sup>1</sup> on 26 October 2017. The media outlet reported that it had "spotted" former President Barroso and Vice-President Katainen "catching up at the Silken Berlaymont hotel Wednesday [25 October 2017] afternoon. Playbook looks forward to confirming the meeting has been added to the EU transparency register".

The lobby meeting was first reported in the media, followed up on social media, where several people, including members of ALTER-EU, directly asked Vice-President Katainen why that meeting had not been registered. Later during that day, the meeting was added to his public list of lobby meetings<sup>2</sup> which listed the company involved, Goldman Sachs, the date and the issues discussed: "Trade and Defence Policy".

On 27 October 2017 Corporate Europe Observatory placed an access to documents request<sup>3</sup> asking for all documents relating to contacts between Vice-President Katainen and Goldman Sachs, dating back to when the investment bank announced the recruitment of former President Barroso.

The Commission finally replied to this request in December identifying a batch of emails setting up meetings. We were particularly surprised that there was no documents relating to the lobby meeting of 25 October. Hence, we directly contacted Vice-President Katainen and finally received confirmation (attached) that: "Indeed, I met with Mr Barroso from Goldman Sachs in the Silken Berlaymont Hotel in Brussels on 25 October 2017. Mr Barroso and I were the only participants to this meeting, where we mostly discussed trade and defence matters."

We were particularly stunned that the meeting had been arranged by phone at the request of former President Barroso; there had been no one else in attendance, not even Katainen's assistants or cabinet members; and there were no minutes of either the call, emails between Katainen and his office or the meeting itself as Vice-President Katainen told us: "I usually do not take notes in meetings and I did not do so at this meeting either. For these reasons, there are no documents regarding this event."

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<sup>1</sup><https://www.politico.eu/newsletter/brussels-playbook/politico-brussels-playbook-presented-by-epp-group-glyphodrama-uk-is-screwed-harassment-fallout/>

<sup>2</sup><http://ec.europa.eu/transparencyinitiative/meetings/meeting.do?host=d4efd679-b6bf-4ef8-a077-a041991378c7&d-6679426-p=3>

<sup>3</sup>[https://www.asktheeu.org/en/request/exchanges\\_with\\_goldman\\_sachs#incoming-15751](https://www.asktheeu.org/en/request/exchanges_with_goldman_sachs#incoming-15751)

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In the light of the controversial hiring of former President Barroso by Goldman Sachs International and President Juncker's instruction on how to deal with lobbyists, plus public instructions that former President Barroso should be treated just like any other lobbyist, we are formally lodging a complaint of maladministration. In particular we argue:

- 1) This information confirms that Mr. Barroso has not kept his commitment to not lobby on behalf of Goldman Sachs which was the main basis for the Ad-Hoc Ethical Committee (AHEC) opinion that Mr. Barroso had not broken his duty of integrity and discretion as per TFEU. Given that Mr. Barroso has not kept this commitment, we consider that the opinion of the AHEC must be deemed null and Mr. Barroso's activities on behalf of Goldman Sachs should once again be assessed.
- 2) By meeting with former President Barroso alone, in a hotel and without keeping notes, we consider that Vice-President Katainen broke President Juncker's instructions on how to treat former President Barroso and failed to act according to best administrative practices.
- 3) This meeting adds weight to our previous complaint, currently being assessed by the European Ombudsman, that the assessment of the former President's new role was too limited and inadequate to implement Article 245 of the TFEU. Addressing this problem will undoubtedly require reforming the powers and tools available to ethics investigations.

**1) It appears that former President Barroso is actively lobbying the European Commission on behalf of the investment bank, Goldman Sachs International. Yet, permission for him to take up this role from the Ad-Hoc Ethical Committee was based on Mr Barroso's promise to not lobby. As a result we consider that that opinion must be deemed null and Mr Barroso's activities on behalf of Goldman Sachs should be reviewed, presumably now by the Independent Ethics Committee.**

When former President Barroso took up his new job at Goldman Sachs International in 2016 it was highly controversial and led to a wave of public criticism that mobilised MEPs, leaders of state, citizens and current and retired EU officials.

At the time, ALTER-EU and other groups, including Commission staff, complained about the way that Mr. Barroso's post-public employment authorisation was handled. These complaints were not taken up by the Commission and we were told that our claims were unfounded.

One of our concerns was that Mr. Barroso was hired for his know-how, network of contacts and influence that he had developed while holding the Commission presidency for 10 years. There were concerns that his privileged position would be used by the investment bank to influence EU policy-making, as the bank is a large and active lobbyist in Brussels.

Two months after the appointment was announced and following mounting public concern, President Juncker<sup>4</sup> forwarded the case to the Ad-Hoc Ethical Committee to be assessed and he also instructed all Commission employees to treat former President Barroso as a lobbyist.

Former President Barroso replied to President Juncker on 13 September 2016 in a letter that was published by media outlets. That letter included the following statement<sup>5</sup>: "I have not been engaged to lobby on behalf of Goldman Sachs and I do not intend to do so."

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<sup>4</sup><https://www.ft.com/content/76a3a722-7839-11e6-97ae-647294649b28>

<sup>5</sup>[http://www.politico.eu/wp-content/uploads/2016/09/Letter-to-Juncker\\_13Sept20161.pdf](http://www.politico.eu/wp-content/uploads/2016/09/Letter-to-Juncker_13Sept20161.pdf)

Former President Barroso's commitment to not lobby on behalf of Goldman Sachs was the main reason why the Ad-Hoc Ethical Committee found that Mr. Barroso had not broken his duty under Article 245 to act with "integrity" and "discretion". This is clear in the following paragraphs of the AHEC opinion<sup>6</sup> (emphasis added):

18. ...The Committee considers this commitment as responding to the duty of integrity and discretion imposed by the Treaty.

19. The Ad Hoc Ethical Committee, after having weighed the various elements mentioned above including the fact that **Mr. Barroso has not shown the considerate judgment** one may expect from someone having held the high office he occupied for so many years, is of the opinion that:

**-on the basis of the information provided by Mr. Barroso in a letter addressed to President Juncker** and taking into account the Code of Conduct for Commissioners there are not sufficient grounds to establish a violation of the duty of integrity and discretion, as imposed by Article 245 (2) TFEU, with regard to the acceptance by former President Barroso of the positions of non executive chairman of the board of Goldman Sachs International and adviser in relation to the firm's business with its clients;  
**- the commitment of Mr. Barroso not to lobby on behalf of Goldman Sachs responds to the duty of integrity and discretion imposed by the Treaty.**

Vice-President Katainen's confirmation that he had a lobby meeting with former President Barroso is proof the latter did not keep his commitment to not lobby on behalf of his new employer. This new information invalidates the conclusions of the Ad-Hoc Ethical Committee. Consequently, the case and Mr Barroso's newly confirmed lobbying activities must be re-assessed now by the Independent Ethics Committee. This time, the body should conduct a more thorough investigation into Mr. Barroso's roles with Goldman Sachs and assess whether the former President has misled President Juncker.

We consider that a new assessment is due as to whether President Barroso is respecting his duties as per Article 245.

**2) By meeting with former President Barroso alone, in a hotel, and without keeping notes, we consider that Vice-President Katainen broke President Juncker's instructions on how to treat the former President and failed to act according to best administrative practices.**

As mentioned above, in September 2016, President Juncker announced<sup>7</sup> that former President Barroso was henceforth to be treated as a lobbyist: "As for taking up his employment, Mr Barroso will be received in the Commission not as a former President but as an interest representative and will be submitted to the same rules."

While the exact guidelines were not clear, it was reported this would include all Commission employees, which undoubtedly includes commissioners, and that they would need to apply the transparency rules when meeting Barroso, and specifically to "maintain notes of any dealings with him".<sup>8</sup>

It is our view that, by holding this meeting alone, outside the Commission premises, without taking notes and following one telephone request, Vice-President Katainen has clearly broken these guidelines. Mr. Barroso was not treated just like any other lobbyist but, instead, was granted privileged access to one of the most senior people in the Commission.

<sup>6</sup>[https://ec.europa.eu/info/sites/info/files/opinion-comite-adhoc-2016-10-26\\_en.pdf](https://ec.europa.eu/info/sites/info/files/opinion-comite-adhoc-2016-10-26_en.pdf)

<sup>7</sup><http://www.politico.eu/wp-content/uploads/2016/09/Letter-President-Juncker-to-Ms-OReilly.pdf>

<sup>8</sup><https://www.ft.com/content/76a3a722-7839-11e6-97ae-647294649b28>

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The lack of paper trail relating to this meeting is particularly disturbing. It is widely recognized that good administrative practice requires records of all meetings with interest representatives, and to generally handle these interactions in a way that does not cause reputational risk. This precaution is even inscribed in the Practical Guide to Staff Ethics and Conduct<sup>9</sup>:

[W]here meetings with interest group representatives are considered appropriate, these should be held in a professionally correct manner, if possible on Commission premises, in the presence of another colleague, i.e. in a way which cannot give rise to any reputational issues. Staff should inform their hierarchy in advance and also afterwards about the outcome. A written record of such meetings should be ensured where these contain important information or may involve action by the Commission. Such reports should be registered and filed.

A meeting with Goldman Sachs would fall under this description, especially if it involved former President Barroso and dealing with such sensitive topics as trade and defence.

There is a clear need to remind Commission employees, including commissioners, of standard practices relating to dealings with interest representatives generally (ie keep notes, meet them in the Commission building, be accompanied by another colleague) and clarify that this treatment must be applied to Mr Barroso as well.

**3) This meeting adds weight to our previous complaint, currently being assessed by the European Ombudsman, that the remit of the assessment of former President's new role was too limited and inadequate to implement Article 245 of the European Treaties. Addressing this problem will undoubtedly require reforming the powers and tools available to ethics investigations.**

ALTER-EU submitted an official complaint<sup>10</sup> to President Juncker regarding the Commission's handling of former President Barroso's new job in September 2016. In our complaint we highlighted problems with the role, composition and powers of the then Ad-Hoc Ethics Committee, now the Independent Ethics Committee. As you will know, that complaint<sup>11</sup> is currently part of an ongoing inquiry by the European Ombudsman.<sup>12</sup>

One of the problems we reported with the assessment of Mr Barroso's new role related to the limited remit of the investigation. The AHEC committee took into consideration only three documents that were already publicly available – a letter from President Juncker to former President Barroso (9 September 2016), Mr Barroso's reply to President Juncker (13 September 2016), and President Juncker's note to the AHEC requesting its opinion (15 September 2016).

ALTER-EU argued that the information in these three documents was far too limited to adequately assess potential conflicts of interest as there was no analysis of the role Mr Barroso was to fulfil for his new employer, nor any scrutiny of the detail of his contract with his new employer. There was no interview with Mr. Barroso or any other apparent follow up. However, such scrutiny was clearly needed in several areas, including with regard to Mr. Barroso's commitment to not lobby on behalf of Goldman Sachs International. It is clear that our concerns were valid.

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9 <https://www.asktheeu.org/en/request/5092/response/16072/attach/html/3/Practical%20Guide%20to%20Staff%20Ethics%20and%20Conduct.pdf.html>

10 <https://www.alter-eu.org/sites/default/files/documents/ALTER-EU%20Barroso%20Complaint%20Sep%202016.pdf>

11 <https://www.alter-eu.org/sites/default/files/documents/ALTER-EU%20complaint%20about%20maladministration%20regarding%20Commission%20handling%20of%20revolving%20doors%20cases.pdf>

12 <https://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/80345/html.bookmark>

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Since then, the European Commission has adopted a new Code of Conduct for Commissioners which has revised the Ad-Hoc Ethics Committee into the “Independent Ethics Committee”. We note, however, that the limited remit of the committee remains. Indeed, the new Code of Conduct fails to make explicit the need for its assessments to be thorough and to use a variety of investigative tools such as requesting work contracts or terms of reference, or undertaking interviews.

By not empowering its advisory body on ethics issues to conduct thorough investigations, the European Commission continues to run the risk that its approach fails to respect the European Treaties, particularly Article 245.

We look forward to hearing from you regarding our concerns.

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