

EUROPEAN COMMISSION
SECRETARIAT-GENERAL

The Secretary-General

Brussels,
SG/B3 Ares(2017)

ALTER-EU Steering Committee
Rue d'Edimbourg, 26
1050 Brussels

by e-mail to:
coordinator@alter-eu.org

Dear Members of the ALTER-EU Steering Committee,

President Juncker asked me to reply to your letters of 29 September and 15 November 2016 registered ARES(2016)5664864 and ARES(2016)6433018. On 12 October 2016, I received the petitions in relation to Mr Barroso and your e-mail of 25 October 2016 addressed jointly with Transparency International. I also refer to your complaint dated 1 February 2017, registered ARES(2017)554580.

The delay in replying to your letters is due to the necessary internal consultations given the nature of your letters.

The President's Cabinet is aware of your remarks concerning former Commissioners post-mandate activities and concerning the Code of Conduct for Commissioners and the Ad Hoc Ethical Committee.

The existing rules concerning former Commissioners' post-employment activities are designed to avoid risks of conflict of interest, while preserving the fundamental right to engage in work and to choose freely an occupation. While certain types of employment might create a conflict of interest immediately after leaving the Commission, it cannot be maintained that such a conflict of interest would continue to exist in the long term, even though certain restrictions such as the non-disclosure of commercially sensitive information are indefinite.

The Treaty provisions and the Code of Conduct for Commissioners set ethical standards for the Commission in line with international requirements and are stricter than the rules applicable in most of the Member States and the other EU Institutions.

As regards Mr Barroso's activity with Goldman Sachs, President Juncker made clear that, even though it was a choice he would not have envisaged himself, former President Barroso's acceptance of this appointment was not in breach of the Code of Conduct for Commissioners. However, taking into account the implications of this case, which concerns a former President of the Commission, he decided to seek the opinion of the Ad Hoc Ethical Committee.

The Committee delivered its opinion on 26 October 2016. 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. President Juncker decided to render the opinion public¹.

As concerns your request for an urgent revision of the Code of Conduct for Commissioners, please note that this issue was discussed by the Commission during its 2190th meeting of 22 November 2016 and that on 23 November 2016, President Juncker has informed the President of the European Parliament of the Commission's intention to tighten the Code of Conduct for Commissioners extending the cooling-off period from currently 18 months to 2 years for Commissioners and to 3 years for the President of the Commission.

The Commission takes note of your remarks as regards the post-mandate activities of former Vice-President Kroes and former Commissioner De Gucht mentioned in your letter. Any allegation of maladministration is unfounded: I recall that those activities were undertaken after the 18-month period foreseen in the Code of Conduct for Commissioners. Those activities were therefore not to be submitted to the Commission for authorisation.

The Commission adopted a decision on 21 December 2016 regarding Ms Kroes, on two different issues: (1) Concerning the non-inclusion in her declaration of interests of 2004 of the fact of having held a post as Director of Mint Holdings, the Commission concluded that this conduct was in breach of the Code of Conduct for Commissioners. Concerning the fact of continuing to feature in the register as a director, the Commission took note of the opinion of the Ad Hoc Ethical Committee of 16 November 2016 that this is a violation of article 245 of the TFEU for which however Ms Kroes cannot be blamed, if she has not been and could not reasonably have been aware of still holding the post not effectively exercised. The Commission took note of Ms Kroes' apologies expressed in her letters of 16 September and 26 September 2016; (2) Concerning Ms Kroes' omission to declare her 2015 income whilst having accepted the transitional allowance, the Commission concluded that Ms Kroes did not act with the necessary diligence and was in breach of Article 7(4) of Council Regulation 422/67 in conjunction with article 245 of the TFEU. The Commission further concluded that, while it did not have sufficient elements nor legal ground to seize the Court regarding these breaches and to seek a financial sanction- notably in view of the fact that the Commission recovered immediately the money and thus prevented any loss for the budget of the Union following the information later provided by Ms Kroes, Ms Kroes deserves a reprimand which the Commission expressed through the minutes of its meeting².

As regards the risks linked to the possibility that former Commissioners would become lobbyists, I recall that this Commission has adopted at the beginning of its mandate new compulsory transparency rules. Interest representatives should be registered in the Transparency register and the Members of the Commission, their Cabinet members and Directors-General are obliged to make public all meetings with those representatives. These rules equally apply to meetings with former Members of the Commission (including former Presidents) when acting as interest representatives; when dealing with

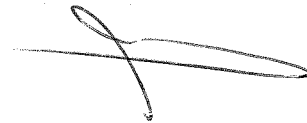
¹ http://ec.europa.eu/transparency/ethics-for-commissioners/pdf/opinion-comite-adhoc-2016-10-26_en.pdf

² <http://ec.europa.eu/transparency/regdoc/rep/10061/2016/EN/PV-2016-2194-F1-EN-MAIN-PART-1.PDF>

the Commission or with the Commission's services for their new employers, they will be treated as representatives of interests groups.

As regards the Ad Hoc Ethical Committee, the Commission considers that, in its current format, it corresponds to the Commission's needs, avoiding additional red-tape and cost for the Budget of the Union. Your complaint of maladministration regarding the appointment of the members of the Ad Hoc Ethical Committee is unfounded. The Committee is composed of three personalities selected for their competence, experience and professional qualities and their independence is beyond doubt. There is no room for conflict of interest vis-à-vis their responsibilities as members of the Committee. If a risk of conflict of interests were to arise impairing their independence or even the appearance of such a situation the member concerned would inform the other members and decline to intervene in the case.

Yours sincerely,

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke, positioned above the name Alexander Italianer.

Alexander Italianer