

## **Ad Hoc Ethical Committee**

Subject : Request for an opinion concerning the appointment of former President Barroso at Goldman Sachs International.

### *Facts and procedure*

1. President Juncker by note of the Secretary General from 15 September 2016 (Ares(2016)5360202) has requested the opinion of the Ad Hoc Ethical Committee (hereafter : the Committee) on the respect of the principles of integrity and discretion as referred to in Article 245 (2) of the Treaty on the Functioning of the European Union (TFEU) with regard to Mr. Barroso's acceptance of certain functions within the company of Goldman Sachs International as further specified in a letter of 18 September 2016 sent by former President Barroso to President Juncker (Ares(2016)5242422) in reply to a request from the latter transmitted by letter of the Secretary General of 9 September 2016 (Ares(2016)5609319).
2. The Committee has received copies of the abovementioned letters. The Committee also received copies of a correspondence between the European Ombudsman Ms. O'Reilly and President Juncker (letters of 5 September 2016 (Ares(2016)5060202) and 9 September 2016 (Ares(2016)5148265) respectively).
3. Mr. Barroso explains in his letter to President Juncker that he has been engaged by Goldman Sachs International as the non-executive chairman of its board of directors. In addition, he has been engaged to provide advisory services in relation to the firm's business with its clients. Mr. Barroso states moreover that he has not been engaged to lobby on behalf of Goldman Sachs and that he does not intend to do so. He denies that Goldman Sachs is

employing him as an adviser in relation to the forthcoming Brexit discussions: “Although my appointment was announced after the UK referendum, the board resolved to appoint me before the referendum took place. (...) In fact, at the time of the referendum my appointment was awaiting approval of the UK regulators (...).” Mr. Barroso further states that he is very clear about his ongoing responsibilities to the European Institutions and naturally will maintain his commitment to act with integrity and discretion.

4. It is not in dispute that Mr. Barroso’s appointment occurred twenty months after he ended his term of office as President of the Commission. Therefore, the obligation for former commissioners under the Code of Conduct for Commissioners to inform the Commission whenever they intend to engage in an occupation during the eighteen months after they have ceased to hold office, did not apply.
5. The Committee in its new composition met on 27 September and 19 October 2016 to deliberate on the request.

### *Appreciation*

6. As is stated in the note transmitting the request: as a rule the Committee is consulted on activities notified by former commissioners related to their portfolio during the eighteen month period foreseen in the Code of Conduct. However, in this specific case which concerns a former President of the Commission President Juncker has decided to exceptionally seek the advice of the Committee. The Committee has decided to respond to the request and give its opinion on the question raised.
7. That question concerns the duty of a former member of the Commission to behave with integrity and discretion as regards the acceptance, after having ceased to hold office, of certain appointments or benefits as imposed by Article

245 (2) TFEU. This duty is a legal obligation the violation of which may be subject to financial sanctions imposed by the Court of Justice on request of the Council or the Commission.

8. The precise scope and contents of the notions of integrity and more particularly that of discretion, which would appear to be the most relevant for the case submitted, are unclear. They are vague notions, the interpretation of which the Court of Justice has as yet not had the occasion to fully clarify. The case of Mr. Bangemann concerned the duty of discretion. However, the Court has not been able to decide this case, it being removed from the register because Mr. Bangemann had renounced the position he envisaged (Case C-290/99). The Council in its decision to submit the case to the Court of Justice expressed the view that Mr. Bangemann had violated that duty by accepting a function in a telecommunication company, the sector for which he had been responsible as commissioner. This approach has also been followed and further elaborated in the Code of Conduct. If an envisaged occupation notified within the eighteen months period is related to the content of the portfolio of the commissioner, it is made subject to stricter scrutiny. Lobbying activities of a former commissioner during the eighteen months period with members of the Commission and their staff on matters for which he has been responsible within his portfolio as member of the Commission are prohibited. Obvious reasons explain this focus on a link between the new occupation envisaged by a former commissioner and his specific responsibilities during the time he was a member of the Commission. In case of such a link, there will be a greater risk of conflicts of interest, of passing on or commercially exploiting experience and knowledge, of sharing networks. Former commissioners remain of course bound by the obligation of confidentiality under Article 339 TFEU but that might not be sufficient to counter these risks.

9. These risks will diminish over time. Therefore the justification for a cooling-off period. Moreover, a balance must be struck between the need to protect the interests of the Commission and the Union more generally, and the legitimate interest of former commissioners to continue their career, also in the private sector. However, Article 245 is applicable without any time limit. Consequently, respect of the cooling-off period neither puts an end to the obligations of Art. 245 nor does it imply that they have been complied with.
10. These general observations having been made, did Mr. Barroso violate his duty of integrity and discretion by accepting the appointment at Goldman Sachs International? This acceptance has received a stormy reception in the media and been severely criticized. As far as the Committee can see, the main objections made are the following:
  - a. Not so much the appointment as non-executive chairman of the board of a bank, but of the bank of Goldman Sachs International. In much of the criticisms Goldman Sachs is seen as the exponent of aggressive investment banking, more particularly criticized because of its role in triggering the financial crisis (subprime mortgages) and for advising on financial constructs enabling to occult the reality of the debt position of Greece. The fact that a former President of the European Commission accepts to become the chairman of the board is seen as associating the Commission and the Union with the negative image of financial greed ascribed to the Bank.
  - b. The supposed acceptance of the role of adviser to Goldman Sachs International on questions concerning Brexit.
  - c. More generally, the change from high public office with important political responsibilities and the inside

knowledge following there from, to the private sector (revolving doors argument).

These three objections will now be considered separately.

11. Ad a. It could and has been said that it is unwise and blameworthy for a former President of the Commission, taking into account his political status and public exposure, to accept a position like the one in question. Indeed, Mr. Barroso should have been aware and appraised that by doing so he would give rise to criticism and risk to cause reputational damage to the Commission and the Union more generally. If not, he would in this respect have shown negligence. Whether justified or not, this damage has now been done. However, the Committee is requested to give an opinion not about the wise or blameworthy nature of the action in question but whether Mr. Barroso has violated his legal obligation to respect the duty of integrity and discretion imposed by Article 245 (2) TFEU as further substantiated by the Code of Conduct.
12. Is there a link between Mr. Barroso's former responsibilities as President of the Commission and his activities at Goldman Sachs International? That will certainly be the case. As President of the Commission Mr. Barroso has been directly and closely involved with the financial crisis, the banking crisis, the euro crisis and their consequences for the Union, the EMU particularly. He has participated in developing crisis policies and the creation of new instruments combating the consequences of these crises, such as setting-up a Banking Union, and preventing the outbreak of new ones. His experience and knowledge on these matters will be precious for Goldman Sachs. But precisely for such situations the Code of Conduct has provided for the cooling-off period of eighteen months. The Code apparently starts from the presumption that once that period has expired, a former commissioner is in principle entitled also to accept occupations related to matters for which he has been responsible as

commissioner. In principle, because the Code confirms at the same time, as results already from Article 245(2) TFEU itself, that the duty to behave with integrity and discretion continues to apply beyond the cooling-off period of eighteen months. Nevertheless, it clearly results from the Code that the termination of the cooling-off period means a caesura in this respect. This is moreover confirmed by the fact that a former commissioner's obligation to inform the Commission of his intention to engage in a new occupation ceases to exist at the end of the cooling-off period. Whether the Code is sufficiently strict in these respects is not for the Committee to answer. It must base its opinions on the Code of Conduct as it stands.

13. Should not the mere fact of causing such a turmoil damaging the reputation of the Commission and the EU be sufficient to conclude at a violation of the duty imposed by Article 245(2) TFEU? It certainly is a relevant indication but not sufficient by itself. It should also be considered that Goldman Sachs is a company lawfully operating on the internal market. It will have prejudiced its standing like other banks did by contributing to the outbreak of the financial crisis (subprime mortgage operations). Goldman Sachs may be considered at the vanguard of aggressive capitalism but as long as it respects the rule of law, it is in itself not against the law to accept a position at the bank.
14. In weighing 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, the Committee has arrived at the conclusion that the first mentioned objection is not sufficient to establish that Mr. Barroso has violated his duty of integrity and discretion as imposed by the Treaty, justifying the possible imposition of financial sanctions. In arriving at this conclusion the Committee has more particularly taken into account the balance struck between the interests involved by the

imposition of a cooling-off period as foreseen and further regulated by the Code of Conduct.

15. Ad b. Mr. Barroso denies in his letter to President Juncker that he has also been engaged by Goldman Sachs International as adviser on Brexit (see par. 3 above). The Committee has no reason to doubt this. However, being engaged as adviser in relation to the firm's business with its clients, as stated by Mr. Barroso in that same letter, it might not be excluded that future advice on these matters might touch upon issues related to Brexit. However, the same arguments related to the effect of the cooling-off period as already mentioned with regard to the first objection apply in this context and this the more so because Brexit issues are new and not related to the terms of office of the Barroso Commission. Therefore, the Committee has arrived with regard to this second objection to the same conclusion as with regard to the first.
16. Ad c. This equally applies for the third objection, that of the revolving doors. The main reason, again, is the function of the cooling-off period as provided for by the Code of Conduct. In principle, once that period has ended, a former commissioner must be free to accept an occupation in the private sector. This is the consequence, as already observed, of the balance struck by the Code of Conduct between the interests of the Commission and the legitimate interest of a former commissioner to be able to continue his career.
17. For these reasons, taking into account the information submitted by Mr. Barroso in his letter to President Juncker, the Committee has not found sufficient grounds to establish a violation of the duty of integrity and discretion.
18. In his letter to President Juncker Mr. Barroso states the following: "I have not been engaged to lobby on behalf of Goldman Sachs and I do not intend to do so". The

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

*Opinion*

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.

Christiaan Timmermans

Dagmar Roth-Behrendt

Heinz Zourek

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