

**UPDATE**

## Barroso & Kroes Cases

### Faced with the refusal of the Commission

to reform the system put in place to avoid conflicts of interest of members of the former Commission, the European Parliament has acted and voted for the freezing of the allowances of outgoing Commissioners.

And

The opinion of the ad-hoc Ethical Committee was given: no offence was committed, but a very serious lack of judgment

**R&D** reiterates its call for a fundamental reform of the code of conduct, and welcomes the announcement to that effect made by President Juncker in his interview with "Le Soir".





# Edito

***Regarding these cases that have raised so many critical reactions, destroying the image and credibility of our institution, we provided a detailed state of play of the initiatives already implemented (see our "Renard déchainé" of 25 October 2016.)***

***We also were committed to immediately notify staff about any new developments. This is what we are now doing through this new "Renard déchainé".***

***Really, thank you again for your support and encouragement!***

***Cristiano Sebastiani  
President***

## SOMMAIRE

On 4 October, the European Parliament called into question all the limits of the mechanism put in place to avoid conflicts of interest of current and former members of the Commission	3
On 26 October 2016, faced with the lack of reaction from the Commission in relation to the Barroso and Kroes cases, EP acted and voted the freezing of the allowances of outgoing commissioners! Never seen before!	4
On 28 October 2016: the opinion of the <i>ad hoc</i> Ethical Committee on the Barroso case was given: no offence committed, but a very serious lack of judgment	5
On 30 October 2016, the European Ombudsman highlights the limitations of the opinion of the <i>ad hoc</i> Ethical Committee on the Barroso case and plans to launch an <i>ad hoc</i> survey	6
On 5 November 2016, in his interview on the newspaper « Le Soir » President Juncker acknowledged for the first time the limits of the code of conduct and announced his willingness to reform it.	7
R&D invites the President Juncker to pursue with determination his approach by going to the bottom of the Barroso and Kroes cases and reforming the whole system set up for the management of conflicts of interests of commissioners.	7
What will it happen now?	8

## On 4 October, the European Parliament *called into question all the limits of the mechanism put in place to avoid conflicts of interest of current and former members of the Commission*

Since the beginning of these cases and striking against the inaction of our institution, also through its section in the EP, R&D has consistently drawn MEP's attention to the need for an adequate response to the expectations of European citizens expressed through [the petition "Not in our name"](#) that exceeded 153,000 signatures... It should be noted that, unlike the Commission, the EP, like the European Ombudsman, has proven to be perfectly in line with these expectations.

In the first place, in our last "Renard déchaîné", we reported the results of the hearing on **4 October** of Mr Moscovici before the EP including the anger, for once unanimous, of MEPs due to the lack of reaction from the Commission over the increasing cases of revolving doors of former President Barroso and other members of the college he had chaired.

On this occasion, Mr Moscovici confirmed that, as regards the management of conflicts of interests is concerned, the Juncker Commission intended to fully respect the principles of **"exemplarity and transparency"**, and that the code of conduct is absolutely adequate and meets the highest standards within national states, without it being necessary to toughen it.

We had already noted with regret that this code does not meet the exemplary character as far as the length of the "cooling-off period" is concerned, but also because it was lagging behind the obligations imposed on any member of our staff. As for the best State practice, just remember, for example, that in Canada the "cooling-off period" is 5 years.

***During the debate held on 4 October, several MEPs had also stressed the lack of independence of the Ethical Committee and had particularly raised the following critics:***

- The **code of conduct** which commits the Commissioners and on which members of the Ethical Committee based their opinion is written by the commissioners themselves. What is more, it was also the Barroso Commission which in 2011 was responsible for revising the code of conduct currently in force.
- The **cooling-off period**, during which former commissioners can join the private sector without asking permission from the Ethical Committee, is far too short. Currently, it is eighteen months and several MEPs have confirmed that legislation for which the Commissioners may be influenced by pressure groups have a much longer life: three, five and sometimes, as in the case of RNP, even ten years.
- The **ad hoc Ethical Committee** which sets the Code of Conduct for Commissioners is an informal body. Its opinion can be sought only by the Commission; its opinions are advisory only and cannot be made public by the Commission, which appoints, by itself, its three members.

All these points contravene the criteria that should be those of an independent committee.

Several MEPs have confirmed their view that a **high independent authority is needed** so as to avoid the Commission being judged itself by its peers, lengthen the period of prohibition of public-private connections and impose exemplary sanctions when commissioners lie or conceal from the public, interests that are in conflict with the functions they perform.

Moreover, we confirm again the very positive character arising from the meeting held **last 13 October** between the delegation in charge of the tabling of the petition and President Schulz who showed absolutely sensitivity to the arguments raised by the petitioners. President Schulz in particular confirmed the com-

mitment of EP to ensuring that it will invite the Commission to promptly adapt its code of conduct, which EP confirms is absolutely insufficient.



## **On 26 October 2016, faced with the lack of reaction from the Commission in relation to the Barroso and Kroes cases, EP acted and voted the freezing of the allowances of outgoing commissioners! Never seen before!**

Not being clearly convinced by the reassurances from Mr Moscovici, at its plenary session **on 26 October**, the European Parliament decided to take action and **suspend payments received by former Commissioners**.

In particular, the amendment adopted states that the EP:

[European Parliament resolution of 26 October 2016 on the Council position on the draft general budget of the European Union for the financial year 2017—Point 69](#)

The Parliament "budgetary blackmail" is for a freeze for 2017 of approximately **500,000 thousand euros** planned for the allowances of former commissioners.

The EP wants to push the Commission to act against the proliferation of conflicts of interest, including **by tightening the code of conduct for Commissioners** that it considers quite rightly too permissive, but that our institution persists inexplicably in defending.

***"Decides, in the light of recent revelations and to regain the trust of European citizens and the credibility of the Union institutions, to retain in reserve 20% of the appropriations for transitional allowances of former members until the Commission applies a stricter code of conduct for Commissioners to prevent conflicts of interest and "revolving doors".***

It should be noted that the decision was adopted by a very large majority, no group opposed it or even abstained, the EP having this time proved itself to be perfectly in line with the expectations and anger European citizens and staff.

**Ad Hoc Ethical Committee**

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

**Facts and procedure**

1. President Juncker by note of the Secretary General from 15 September 2014 (Ares(2014)25402302) 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 2014 and former President Barroso to President Juncker (Ares(2014)242422) in reply to a request from the latter transmitted by letter of the Secretary General of 8 September 2014 (Ares(2014)24091319).

2. The Committee has received copies of the aforementioned letters. The Committee also received copies of a correspondence between the European Commissioner Mr. O'Reilly and President Juncker (letters of 5 September 2014 (Ares(2014)24042027) and 6 September 2014 (Ares(2014)24052128)) respectively.

3. Mr. Barroso explains to 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 the clients. Mr. Barroso states moreover that he has been engaged to advise on behalf of Goldman Sachs and that he does not intend to do so. He states that Goldman Sachs is

# On 28 October 2016: the opinion of the ad hoc Ethical Committee on the Barroso case was given: no offence committed, but a very serious lack of judgment

## Ad Hoc Ethical Committee

### Opinion

We recall that in September, faced with the wave of indignation triggered by the Barroso and Kroes cases, we appreciated the decision of President Juncker to finally refer to the ad hoc Ethical Committee for a decision on these cases.

The Ethical Committee has just presented its analysis of the Barroso case. It believes that the regulation was not breached.

Nevertheless, the Committee notes that:

***"Mr Barroso should have been informed and aware that in doing so it would trigger critics and could prejudice the reputation of the Commission and of the Union in general"***

And that Mr Barroso

***"did not exercise the good judgment one might expect from someone who has held a high responsibility position for so many years."***

Similarly, the Committee recognized that the extent of the media storm is

***"certainly a relevant indication, but not sufficient in itself to conclude that ethical rules have been reached"***

Moreover, contrary to what Mr Barroso seemed to claim, the Committee recognized that the new functions which he is intended to carry out will **"certainly"** be related to his previous term as head of the Commission, especially as Mr Barroso has had to deal with the reform of the banking sector in crisis.

thus avoiding joining the thesis that only our institution still insists inexplicably in defending, namely that those provisions meet the highest international standards and would be even exemplary.

It is also important to note that the Committee insisted that:

***"It is not up to the committee to know whether the code is strict enough"***



## On 30 October 2016, The European Ombudsman *highlights the limitations of the opinion of the ad hoc Ethical Committee on the Barroso case and plans to launch an ad hoc survey*

In its very critical reaction to the opinion of the Ethical Committee, the European Ombudsman immediately highlighted the limitations of checks allegedly carried out by the Committee that would be limited to rely on the documents transmitted ([Ombudsman reacts to opinion of Ethical Committee on Barroso](#)).

Moreover, noting that the Commission continues to refuse to change its code of conduct when it proves absolutely inadequate, the Ombudsman announced plans to launch a proper survey.

### *Limited capacity of the ad-hoc Ethical Committee to detect conflicts of interest of former commissioners...*

**R&D** shares the analysis of the Ombudsman and that of European legal experts who have challenged the Ethical Committee's interpretation on the scope of Article 245 of the Treaty on the Functioning of the Union requiring commissioners, without time limit, to observe the duty to behave with integrity and discretion.

Indeed, the interpretation adopted by the Ethical Committee in its opinion is so restrictive that it deprives those provisions of any useful effect and may prevent any real analysis of the conflict of interest after the end of the cooling period.

To further appreciate the context in which this opinion was given, it should be remembered first of all the limited capacity of action of the ad hoc Ethical Committee.

Indeed, unlike similar bodies set up at the state level, the Ethical Committee is an internal body appointed by the college, has no real powers of investigation and, as in this case, is limited to decide on basis of the documents transmitted to it.

To these more than obvious structural limitations of the Ethical Committee adds the character quite vague and inadequate of the code of conduct based on which the Committee is called upon to rule.

In these circumstances it is not surprising that the Ethical Committee was able to deliver opinions almost always excluding any conflict of interest on the part of the former members of the college.

### *A double standard on ethics...*

**R&D** has already denounced **this double standard ethical approach** to the extent that staff is not only subject to stricter rules than those established by the Code of Conduct but, in case of any suspicion of infringement, it is subject to investigation by IDOC which, unlike the college, is not at all lethargic when cases involve simple staff. Not to mention

that IDOC has powers and investigative capabilities that are not even comparable with those of the Ethical Committee.

On 5 November 2016, in his interview on the newspaper "Le Soir" **President Juncker acknowledged for the first time the limits of the code of conduct and announced his willingness to reform it.**

R&D is happy to note the intention of President Juncker [to increase the length of the cooling-off period to 3 years for Presidents](#) and 2 years for the Commissioners.

This is a real change of approach from the positions held so far by the Commission.

It is nevertheless disappointing that President Juncker says he is not sure that the Commissioners could accept his absolutely minimalist proposal, although he does for his own part.

These fears may strengthen the criticism during the EP debate on the endogamous character of this mechanism. Indeed, the Commissioners would be in a conflict of interest ... being called to decide for themselves the rules that will apply to their management of conflicts of interest ... after the end of their mandate and they would therefore naturally be little inclined to tightening these rules



**R&D invites President Juncker to pursue with determination his approach by going to the bottom of the Barroso and Kroes cases and reforming the whole system set up for the management of conflicts of interests of commissioners.**

Even if the Juncker Commission is not responsible for the mistakes of former members of the Barroso Commission, its inaction with regard to the increasing of cases and its obstinacy in the now untenable defence of the Code of Conduct are in the process of giving the impression that it endorses the decisions of the former members of the college.

Worse, the refusal to reform rules that are clearly inadequate is perceived by the outside world as evidence that the Juncker Commission does not change the code of conduct to prevent that more restrictive rules should apply to it at the end of its term.

For R&D, it is essential that the Commission leaves its purely defensive approach that has contributed to tarnish its image besides the reform of the code of conduct, Commission

should also strengthen the procedures that verify compliance with these rules and punish proven violations. To deal with cases concerning the Barroso Commission the Juncker Commission is viewed as the "last chance Commission" which should have reacted immediately to such cases and must urgently do so before it's too late

We must not forget that the issue goes beyond the management mistakes of former commissioners. This is primarily to restore citizens' trust in our institution and hence that of the European project in such a crucial phase for its future



## What will it happen now?

**Concerning the Barroso case**, it should be recalled that the opinion of the Ethical Committee is advisory, not binding.

The Commission confirmed that it would now give itself time to carefully consider the Opinion of the Ethical Committee before taking any decision on appropriate follow-up.

**Concerning the Kroes case**, we still await the Commission's position on this indisputable violation of the code of ethics.

**Concerning the reform of the Code of Conduct, R&D** encourages President Juncker to present College his proposal to the Commission immediately so that the Commissioners could express their views.

**Concerning the EP Petitions Committee taking up the case**, a public hearing will be held in the coming days ... We will continue to work in perfect harmony, supporting the group behind the petition "Not in our name" in the largest respect of its autonomy.

**R&D** will certainly continue to keep you updated on any developments of these cases.

