

Le Renard Déchaîné

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Top US economist quits EU job after Macron speaks out

Fiona Scott Morton withdraws from candidacy after backlash to the appointment of a non-European.

"Midsummer Night's Nightmare"?

The procedure for appointing DG COMP's Chief Economist: Chronicle of a political crisis that our institution and our civil service ought to have done without!

Can we consider this case closed? Not quite!

Controversy, l'américaine Fiona Scott Morton renonce à son poste à la Commission européenne

L'économiste Fiona Scott Morton a annoncé qu'elle renonçait à briguer une poste clé de l'UE pour la régulation des géants de la tech après une polémique sur sa nationalité américaine et les craintes sur ses conflits d'intérêts.

Antitrust: Google Adtech

Commission européenne European Commission

ALERTE INFO

IONA SCOTT MORTON RENONCE À SON POSTE A SEIN DE LA DIRECTION GÉNÉRALE DE LA CONCURRENCE DE LA COMMISSION EUROPÉENNE

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Thank you for your trust!

Many of you at the Commission and also from other European institutions have expressed your disappointment and indignation regarding the chaotic management in appointing the American economist Fiona Scott Morton to the post of Chief Economist at DG COMP, which triggered strong reactions at both political level and within public opinion ([see attached press release listing several hundred articles published on this dossier](#)).

Indeed, it is clear that this case has aroused strong reactions from all parts. Which, on the one hand, is proof of the sense of belonging that citizens and civil society feel towards the European Union, as well as the concern to preserve our fundamental values, and this is a very positive point for the future of the European project. On the other hand, it is a pity that, given the initial reactions of our institution rejecting all criticism, these same stakeholders felt, once again, that they had not been heard, seeing their apprehensions and claims simply ignored or even ridiculed.

An undeserved gift for the enemies of the European project and our civil service ?

First and foremost, you shared with us your fears about the consequences this case could have just a year ahead of the upcoming European elections, which, also because of Qatargate, are shaping up to be increasingly crucial for the defence of the European project.

In these circumstances, you have once again called on R&D to voice your opinion and to provide you with our own analysis, while acknowledging that we have always been very

attuned to your calls to defend the image of our institution and the credibility of its appointment procedures by denouncing in the firmest terms any cases likely to undermine the trust of European citizens (cf. the Qatargate, Barroso & Kroes, parachutage, Appointment of the Secretary General of the European Commission...etc).



As we thank you once again for your trust, we feel that it is necessary to stress that this appointment procedure has become all the more unfortunate in view of the arguments put forward by the Commission to defend it in the face of criticism from all sides.

While it was unprecedented for a non-European candidate to be selected for a senior position of such importance, the Commission's responses, which dismissed all criticism and almost trivialised this decision, raise fears that our institution could even generalise this approach in the future.

If this really were to be the case, we could only confirm all our misgivings by forcefully reaffirming two key principles:

1. *The European Union (EU) is not a multinational company recruiting the best talents worldwide, but a supranational entity made up of Member States that have confirmed their commitment to the European project. That is precisely why the Staff Regulations require candidates for any post to be nationals of one of the Member States of the Union in order to be recruited, thus confirming the exceptional nature of any derogation from this basic principle, which must therefore be duly justified.*
2. *Staff of the European institutions are not a body of soulless "stateless people" at the service of any political project. European civil service is, and must remain, a "civil service with a mission" based on the "loyalty-identity" of each staff member with the European project and the institutions that are called upon to implement it.*

This is how staff act at all times to defend the values and interests of the European project.

The Staff Regulations are based on this identity-based approach, whereby staff are intended to devote themselves entirely to their task, to their mission, almost as a gift of self, by making themselves available to their institution at all times.

It is for these reasons that the staff of the institutions can never be perceived as a body of "mercenaries" who are indifferent to and disconnected from the European project.

¹ Article 28 SR: "An official may be appointed only on condition that: (a) he is a national of one of the Member States of the Union, unless an exception is authorized by the appointing authority, and enjoys his full rights as a citizen"

² Article 11.1 CEOS: "The engagement of temporary staff shall be directed to securing for the institution the services of persons of the highest standard of ability, efficiency and integrity, recruited on the broadest possible geographical basis from among nationals of Member States of the Union"

³ Article 12.2. CEOS: "A member of the temporary staff may be engaged only on condition that: (a) he is a national of one of the Member States of the Union, unless an exception is authorised by the authority referred to in the first paragraph of Article 6, and enjoys his full rights as a citizen"

And it is for these reasons that article 28¹ of the Staff Regulations (SR) and article 12.1² and 12.2³ of the Conditions of Employment of Other Servant (CEOS) require staff to be European citizens in order to be recruited, and that exceptions must be strictly limited and duly justified. And it is still for these reasons that so far these exceptions have been extremely limited and have never concerned such an important post as the Chief Economist of DG COMP.

For exactly these reasons, the argument put forward by the Commission claiming that restricting this to Euro-

pean citizens would limit the possibility of recruiting the best candidates from the global market is absolutely unacceptable, as it seeks to deny the true nature of our civil service and the missions entrusted to it and it contradicts the above-mentioned provisions of the Staff Regulations.

It would obviously be unacceptable to claim that compliance with the Staff Regulations would deprive the institutions of the possibility of recruiting the best candidates.

Insofar as it is a question of defending the values of the European civil service to illustrate the future dangers that could arise from this case and to draw all the lessons from it, it is important to recall all the stages of this "Midsummer Night's Nightmare".



Reminder of the facts and chronology of events

Vacancy notice...

On 7 March 2023 the vacancy notice of post [COM/2023/10427](#) for the position of Chief Economist for competition in DG COMP as TA grade AD 14 was published with a closing date of 14 April 2023 at 12h00 (noon).

The derogation from the provisions of Article 12.2 of the CEOS concerning the nationality of candidates...

When launching this procedure, the

Commission decided "*to authorise a derogation from the provisions of Article 12 (2)(a) of the Conditions of Employment of Other Servants of the European Union as regards the requirement to be a national of one of the Member States in order to be hired as a member of the temporary staff*".

It should be noted that it was underlined that this derogation had never been applied before when filling this same position.

Has Bloomberg Law stolen R&D's crystal ball?

On 21 April 2023, using R&D's "crystal ball", which has enabled us many times to announce the cabinet member who would have been appointed as part of the organised "parachuting", Bloomberg Law claims to know that it is Ms Fiona Scott Morton who will be appointed to this post. "[EU to Tap Former Obama Enforcer as Top Antitrust Economist](#)".

April 21, 2023, 7:51 PM

EU to Tap Former Obama Enforcer as Top Antitrust Economist

Leah Nylen Bloomberg News · Stephanie Bodoni Bloomberg News

- Fiona Scott Morton would be first woman to hold position
- Yale economist was DOJ's top competition economist under Obama

The European Commission is poised to name former Obama administration antitrust enforcer Fiona Scott Morton as its next top competition economist, according to three people familiar with the appointment.

The Yale University academic would replace Pierre Réguibeau, who's held the role since September 2019, said the people, who asked not to be named because the process isn't public.

Scott Morton served as the top antitrust economist at the Justice Department during Barack Obama's presidency and founded the Thurman Arnold Project at Yale focused on research into competition policy. She also worked as an economic consultant at CRA International Inc. ...

On 2 May 2023, six European organisations, called on the Commission, stating that they already knew the name of the candidate who would be appointed and expressing their reservations, asking the Commission not to appoint Ms Fiona Scott Morton to the post ([link](#))

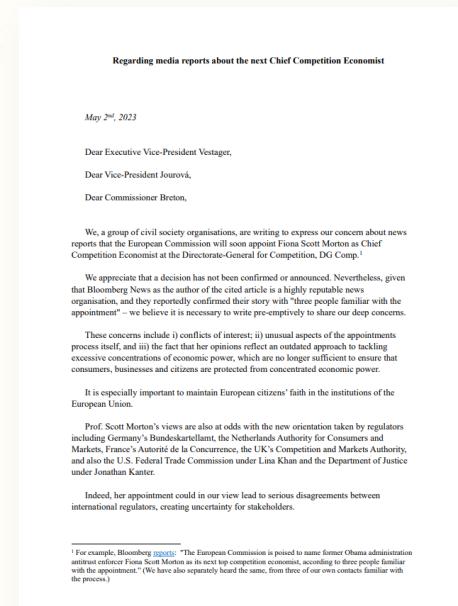
In particular, the Balanced Economy Project, Corporate Europe Observatory, European Digital SME Alliance, Irish Council for Civil Liberties, Lobby Control and Open Markets Institute (Europe) have expressed their deep concerns about the recruitment process and notably about potential conflicts of inter-

rest arising from Ms Fiona Scott Morton's past consultancy services to Apple, Amazon, Microsoft, Sanofi and Pfizer, and expressed their fears that her proximity to major tech companies could hamper her ability to apply EU competition law neutrally and effectively in this area.

Not least at a time when the EU is preparing to launch the “*Digital Market Act*” and several antitrust investigations are ongoing into Apple, Google and other major tech companies.

In addition, the organisations point out that the requirement to be a citizen of a Member State had always been included in the vacancy notices published for this post in the past, and consider that it is not credible that among the 450 million European citizens there is not a single other candidate with the required skills who could be recruited to this post.

They also stress the importance of maintaining the faith of European citizens in the institutions of the European Union.



On 11 July 2023, taking the view that the arguments set out in the letter from these organisations and the criticisms raised were not likely to call into question the procedure organised, the Commission finally decided at the college meeting of 11 July 2023 to appoint **Ms Fiona Scott Morton as Chief Economist of DG Competition.**

On 14 July 2023, the Presidents of four political groups in the European Parliament asked the Commission to reopen the nomination procedure!

Stéphane Séjourné (Renew Europe Group), Manfred Weber (European People’s Party Group), Iratxe García Pérez (Progressive Alliance of Socialists and Democrats Group), Philippe Lamberts (Greens/European Free Alliance Group), the presidents of the parliamentary groups, sent [a letter of protest](#) to the European Commission.

On behalf of the political groups they represent, which account for a very

large majority of the European Parliament, they are firmly opposed to the recruitment of Fiona Scott Morton and are calling on the Commission to reconsider its decision taken at the College meeting on 11 July for the following reasons:

- Incomprehension as to why a non-EU candidate was considered;
- Conflicting views of the candidate in relation to the implementation of the

DMA (Digital Market Acts) legislation and possible conflicts of interest between her new role and her previous positions within a large number of *American tech* companies;

- Commitment to an independent industrial policy, in particular digital sovereignty on our continent.

*Margrethe Vestager
Executive Vice-President of the
European Commission*

Brussels, 14 July 2023

Dear Executive Vice-President,

We learnt with dismay the appointment of Mrs Fiona Scott Morton as Chief Economist of DG Competition.

Though we recognize the European Commission's prerogative for its internal recruitments, it cannot contradict with the general principles, interests and objectives of our Union.

At a time of intense scrutiny of our Institutions vis-a-vis foreign interference, we fail to understand the consideration of non-EU candidates for such a high-ranking and strategic position.

At a time of the important implementation of the DMA, we are very concerned about the opposite views she publicly expressed and the potential conflict of interests between her new role and her previous functions with large American tech companies.

At a time of worldwide economic competition, we remain very attached to an independent industrial policy as well as the digital sovereignty of our continent.

Based on these considerations and on behalf of the European Parliament, our political groups oppose the appointment of Mrs Fiona Scott Morton and ask the Commission to reverse the decision taken by the College on 11 July.

*Yours sincerely,
Stéphane Séjourné
President of the Renew Europe Group*

*Manfred Weber
President of the European People's Party group*

*Iratxe García Pérez
President of the Progressive Alliance of Socialists and Democrats group*

*Philippe Lamberts
Co-President of the Greens/European Free Alliance group*

European Parliament - 60 rue Wiertz - 1047 Brussels

On 18 July 2023, Vice-President Margrethe Vestager was heard by the EP's ECON committee: a hearing that did not convince the MEPs ! ([video link](#))

Prior to the hearing, Emmanuel Macron, President of the French Repub-



Fiona Scott Morton à Bruxelles : Emmanuel Macron se dit « dubitatif » au sujet de cette nomination

blic, had already declared himself "skeptical" about this choice, pointing out that "if we don't have any (European) researchers of this level to be recruited by the Commission, it means that we have a very big problem with all European academic systems" ([video link](#)).

Addressing the MEPs, Ms Vestager reminded them that it is a 3-year fixed-term post with a 2-year extension, aimed at providing economic advice, stressing the need to recruit an expert in the economics of industrial organisation, a renowned academic who is familiar with the realities of today's market and strongly committed to civil service. The Chief Economist's role is that of an advisor with no decision-making powers who reports to the Director General of COMP. He/she does not decide whether an antitrust case should be opened or closed, whether a merger should be authorised or whether state aid should be approved or declared incompatible. With regard to the criticisms levelled at the EU citizenship requirement, she considered that it would have been wrong to deprive the Commission and Europeans of the best possible economic advice, pointing out that this is a rare highly specialist profile and that for these reasons the Commission had taken the decision to open up the post to candidates of all nationalities.



With regard to the risks of conflicts of interest, Ms Vestager stressed that the candidate and the Commission had always been transparent on this point, including the fact that some of the consultants were TECH companies, but that the experience acquired should be considered an asset and not a disadvantage. In any case, she confirmed that the Commission would strictly comply with the relevant application procedures.

She confirmed that the Commission had received eleven applications, four of which met the eligibility criteria, three of which were EU nationals, and that Professor ...had been selected following all stages of the selection procedure.

The MEPs were not convinced by these explanations and confirmed all their reservations.

Indeed, the MEPs repeatedly raised the need to protect the trust in European institutions, to ensure at all times respect, transparency and credibility of the appointment procedures in order to protect the interests of the European Union and its citizens.

They were keen to recognise all the merits of the action taken by the Commission and Ms Vestager in this area, which allowed to blow the final whistle putting an end to the Far West, while finding it nonetheless incomprehensible that this has resulted in the appointment of an "American sheriff".

R&D fully shares this highly positive assessment of the results achieved, which, in our opinion, must absolutely be included among the most remarkable successes of the Von der Leyen College, as our President has rightly underlined in her State of the Union address.

Similarly, at no time were the candidate's qualifications questioned, but

they did raise the issue of **conflicts of interest** in relation to her former activities as a consultant for the " Big Five " at a time when the European Union is in the process of implementing two regulations in this area.

They also insisted on the issue of **security clearance**, pointing out that as Chief Economist, Ms Scott Morton will have access to confidential EU information, which requires security clearance from a Member State. In this respect, she argued that this could be a blocking point insofar as the United States will not be able to issue such authorisation. Furthermore, the American authorities require candidates for equivalent positions within their administration to be of American nationality, precisely for reasons of domestic security.

By openly asking the question: "**By imposing American nationality for applicants to posts of this type, are the Americans being anti-European or are we being naive?**"

Ms Vestager replied that Ms Scott Morton did not need security clearance because she would not necessarily be called upon to work with information that required it and that, in any case, if there were any difficulties, the Commission would have been able to deal with them.

At the end of the debate, confirming all their reservations, the MEPs in turn reiterated their objection that it was not credible that the Commission had not been able to find a qualified candidate for the post from one MS among the 450 million European citizens.

According to press reports, on 19 July 2023, i.e. the day after the hearing, five European Commissioners wrote to President von der Leyen to request a reassessment of the appointment

The EU High Representative for European Affairs, Josep Borrell, the Commissioners for Industry, Thierry Breton, for Economic Affairs, Paolo Gentiloni, for Cohesion, Elisa Ferreira, and for

Employment, Nicolas Schmit, in a letter to President Ursula von der Leyen asked for the recruitment to be "re-evaluated" ([link](#)).

The same day, Fiona Scott Morton resigned from the post.

In a letter to Ms Vestager ([link](#)), she announced that "*given the political controversy caused by the selection of a non-European to fill this post, and the importance for the Directorate-General [for Competition] to have the full support of the European Union [...], I felt that the best thing for me to do was to step down*".

With her decision, Ms Scott Morton has put an end to a crisis that was in danger of escalating at all levels and which in any case made her activity within DG COMP problematic.

We can only thank her for her choice, which also demonstrated her political sensitivity.

Dear Mrs. Vestager,

I am honored to have been selected as Chief Economist of DG Competition.

However, given the political controversy that has arisen because of the selection of a non-European to fill this position, and the importance that the Directorate General has the full backing of the European Union as it enforces, I have determined that the best course of action is for me to withdraw and not take up the Chief Economist position.

The work of enforcing modern competition laws and important new tools such as the Digital Markets act is critical, both for citizens of the EU and those in other countries. I wish you and your team the best in carrying out this important task.

Thank you so much for considering me for this important position, I look forward to working with you in the future.

With my best wishes,

Fiona Scott Morton

Can we consider this case closed? Not quite!

It took a week to shuffle the cards and put them back on the table!

Was it worth adopting such a politically sensitive decision, just a few days before political holidays, giving rise to such an avalanche of controversy, new criticisms of the appointment procedures and doubts about our institution's ability to apprehend and/or manage conflicts of interest?

Whatever the answer is to these questions, no one can doubt whatsoever that we definitely didn't need all this just a few months ahead of the next European elections.

R&D requests that :

- the arguments put forward in defence of this appointment do not constitute the announcement of a "new approach" aimed at departing widely from the conditions imposed by the Staff Regulations on the grounds of recruiting "*the best candidates from across the world*" and "*demonstrating openness*", whatever their nationality, without duly taking into account the requirements laid down in the Staff Regulations and for the nature and mission of our European civil service.**
- all lessons be drawn from this case also in the context of the organisation of the new procedure which will be relaunched for this post.**

Cristiano SEBASTIANI,
President

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27/06

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