

Brussels, 20 July 2016

To: Ms Emily O'Reilly - European Ombudsman

Dear Ms O'Reilly,

On 8 July 2016, Goldman Sachs International announced the appointment of Mr José Manuel Barroso as non-executive chairman of Goldman Sachs International (GSI). He will also be an advisor to Goldman Sachs¹. Mr Barroso Barroso was Portugal's prime minister from 2002 to 2004, and later served as president of the European Commission from 2004 to 2014.

Mr Barroso led the Commission that acted at the heart of the financial and economic crisis of 2007-2008, and was involved in the economic adjustment programmes promoted by the so-called "Troika", as also highlighted in the Resolution of the European Parliament of 13 March 2014 "on the enquiry on the role and operations of the Troika (ECB, Commission and IMF) with regard to the euro area programme countries".

On 11 April 2016, the United States Department of Justice announced a \$5.06 billion settlement with Goldman Sachs related to Goldman's conduct in the packaging, securitization, marketing, sale and issuance of residential mortgage-backed securities (RMBS) between 2005 and 2007. According to the Department of Justice, "the resolution requires Goldman to pay \$2.385 billion in a civil penalty under the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) and also requires the bank to provide \$1.8 billion in other relief, including relief to underwater homeowners, distressed borrowers and affected communities, in the form of loan forgiveness and financing for affordable housing. Goldman will also pay \$875 million to resolve claims by other federal entities and state claims. Investors, including federally-insured financial institutions, suffered billions of dollars in losses from investing in RMBS issued and underwritten by Goldman between 2005 and 2007"².

Article 245(2) of the Treaty on the Functioning of the European Union states "*The Members of the Commission may not, during their term of office, engage in any other occupation, whether gainful or not. When entering upon their duties they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits. In the event of any breach of these obligations, the Court of Justice may, on application by the Council acting by a simple majority or the Commission, rule that the Member concerned be, according to the circumstances, either compulsorily retired in accordance with Article 247 or deprived of his right to a pension or other benefits in its stead*".

¹ <http://www.goldmansachs.com/media-relations/press-releases/current/jose-manuel-barroso-appointed.html>

² <https://www.justice.gov/opa/pr/goldman-sachs-agrees-pay-more-5-billion-connection-its-sale-residential-mortgage-backed>

Accordingly, article 1.2. of the Code of Conduct for Commissioners (C(2011)2904) provides that *“The above rules are without prejudice to the duty to behave with integrity and discretion pursuant to Article 245 of the Treaty (TFEU) even beyond the period of 18 months after ceasing to hold office”*.

Considering the prominent role played, at that time, by the European Commission in dealing with the consequences of the economic and financial crisis at the European level, we ask the European Ombudsman to investigate whether the appointment of Mr Barroso as non-executive chairman of Goldman Sachs International can constitute a violation of the duty to behave with integrity and discretion according to article 245 TFEU. At the same time, we ask to the European Ombudsman to evaluate if the response given by the current European Commission to such an appointment can constitute a violation of article 41(2.c) of the Charter of fundamental rights of the European Union (obligation of the administration to give reasons for its decisions).

Article 16 of the Staff Regulations of official of the European Communities establishes *“An official shall, after leaving the service, continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits. Officials intending to engage in an occupational activity, whether gainful or not, within two years of leaving the service shall inform their institution thereof. If that activity is related to the work carried out by the official during the last three years of service and could lead to a conflict with the legitimate interests of the institution, the Appointing Authority may, having regard to the interests of the service, either forbid him from undertaking it or give its approval subject to any conditions it thinks fit [...]”*.

Unlike the Code of Conduct for Commissioners, the Staff Regulations of officials of the European Communities provide for a “cooling-off” period of 2 years applicable to all the personnel working in the EU Institutions. Hence, there is an evident difference in treatment between Commissioner and the rest of the staff.

Therefore, we ask the European Ombudsman to assess if this different regime is in compliance with the principle of equality and non-discrimination enshrined in the Treaties and the Charter of fundamental rights. If not, we ask to evaluate if the appointment of Mr Barroso could be deemed legitimate having regard to the “standard” cooling-off period of 24 months as per the Staff Regulations of officials of the European Communities.

Finally, we reiterate the request, already made by the European Ombudsman, to revise the Code of Conduct for Commissioners in order to strengthen its transparency and to align it with the Treaty rules.

Best regards,

Barbara Spinelli – GUE/NGL Group

Kateřina Konečná – GUE/NGL Group

Nessa Childers – S&D Group
Bart Staes – Greens/EFA Group
Patrick Le Hyaric – GUE/NGL Group
Ivo Vajgl – ALDE Group
Sabine Lösing – GUE/NGL Group
Fabio De Masi – GUE/NGL Group
Marina Albiol Guzmán – GUE/NGL Group
Miguel Urbán Crespo – GUE/NGL Group
Ana Maria Gomes – S&D Group
Isabella Adinolfi – EFDD Group
Paloma López Bermejo – GUE/NGL Group
Paul Tang – S&D Group
Molly Scott Cato – Greens/EFA Group
Benedek Jávor – Greens/EFA Group
Tomáš Zdechovský – EPP Group
Yannick Jadot – Greens/EFA Group
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Marco Zanni – EFDD Group
Marco Zullo – EFDD Group
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