


DOCUMENT 1

 Ref. Ares(2016)5486115 - 21/09/2016

From: (CAB-JUNCKER) on behalf of JUNCKER Jean-Claude
(CAB-JUNCKER)
Sent: 21 September 2016 16:59
To: CAB JUNCKER ARCHIVES
Subject: FW: . - Letter Mrs. Kroes to President Juncker

From: I [[mailto:](#)]
Sent: Friday, September 16, 2016 12:42 PM
To: JUNCKER Jean-Claude (CAB-JUNCKER)
Subject: - Letter Mrs. Kroes to President Juncker

Mr. J.C. Juncker,
President of the European Commission

Dear Mr. President,

The Guardian is considering publishing an article which refers to my directorship of Mint Holding Limited and my relationship to its beneficial owner Dr. Amin Badr-El-Din. This company was set up for the purpose of investigating the possibility of raising funds for or for buying certain assets of Enron. In the summer of 2000, negotiations broke down, the company never became operational. An administrative error was made. At the time instructions were set out to lawyers to the effect of closing down the company. These instructions have not been followed up. My assumption was that I no longer was the director after the company was no longer needed. It seems that I remained registered. I can confirm there were never any board meetings or businesses that I participated in.

Holding the post of director at Mint Holdings during my tenure as a commissioner is in breach of the code of conduct. My declaration in 2004 however was made in good faith and to the best of my knowledge. But indeed upon investigation following these allegations it appears that my statement in that time was not correct. I kindly ask you to accept my apologies for this administrative error.

Enclosed you'll find the letter my lawyer sent to the Guardian as well as to the other newspapers involved.

Respectfully yours,
Neelie Kroes

DOCUMENT 1.1

Van: ()
Datum: 16 september 2016 11:34:37 CEST
Aan: "

Kopie: , Neelie Kroes

Onderwerp: Mrs Neelie Kroes

Dear

I am acting as a lawyer on behalf of Mrs Neelie Kroes, former Vice-President of the European Commission.

I understand that The Guardian is considering publishing an article which makes reference of Mrs Kroes' directorship of Mint Holdings Limited and her relationship to Dr. Amin Badr-El-Din.

Mrs Kroes received similar requests from the International Consortium of Investigative Journalists from Washington en two Dutch newspapers (Financieel Dagblad and Trouw).

On behalf of Mrs. Kroes I will answer your questions by sending back your questions with the answers of Mrs. Kroes indicated in bold font.

I would like to inform you that I will send your questions with these answers also to the other newspapers involved.

We have seen evidence that you were a director of this company from July 2000 until October 2009.

It is correct that Mrs. Kroes has been appointed as a non-executive director of this company on July 4th 2000.

We can find no reference to this directorship in your declarations of interest filed with the European Commission, where you held posts as a commissioner from 2004 until 2014.

It is correct that you can find no reference to this directorship in the declaration of Mrs. Kroes. The company involved was set up for the purpose of investigating the possibility of raising funds for buying, inter alia, certain assets of Enron. It never came through. In the summer of 2000, negotiations broke down. The company never became operational. There has been made an administrative error: At the time, instructions were sent out to the lawyers to that effect. However, on closer inspection, thanks to you, it seems that there was a clerical oversight which was not corrected until 2009.

Our concern is that, in holding the post of director at Mint Holdings Limited during your tenure as a commissioner, you may have been in breach of the code of conduct in two respects.

The code suggests you should not have held an outside directorship:

“Commissioners may not engage in any other professional activity, whether paid or unpaid.”

and

“Commissioners may hold honorary, unpaid posts in political, cultural, artistic or charitable foundations or similar bodies. They may also hold such posts in educational institutions. “Honorary posts” means posts in which the holder has no decision-making power in the management of the body in question...They shall be listed in a declaration, laid down according to the model in annex to this Code.”

You may also have been in breach of the code by failing to declare this directorship.

The declaration Mrs. Kroes made in good faith was made to the best of her knowledge, but indeed upon investigation following your allegation it appears that you are indeed correct. The assumption was that she was no longer a director after the company was no longer needed. It seems that, due to administrative error, Mrs. Kroes remained registered even though there were never any board meetings or business that she participated in. Mrs. Kroes will inform the President of the European Commission of this oversight and will take full responsibility for it.

Our information indicates that Mint Holdings Limited is a company controlled by Amin Khaled Sh. B. Badr-El-Din, who has been a director of the company from 4 July 2000 to the present.

That is the understanding of mrs. Kroes.

Our information suggests that Mint Holdings Limited was established in connection with offset funds from the 2000 agreement signed between the United Arab Emirates and the US arms firm Lockheed Martin for the purchase of F16 fighter jets.

Mrs. Kroes has no knowledge at all of Mint Holdings Ltd being involved in this matter. And for that reason, cannot confirm the facts.

We understand that a deal for \$160m of offset cash was negotiated, with the money to be invested by Badr Investments.

Mrs. Kroes has no knowledge at all of Mint Holdings Ltd being involved in this matter. And for that reason, cannot confirm the facts.

Indeed, one of the other directors of Mint Holdings Limited, , who

Mrs. Kroes has no knowledge at all of Mint Holdings Ltd being involved in this matter. And for that reason, cannot confirm the facts.

You have declared being hired as a consultant by Lockheed Martin in 1996 and 1997, with a remit to promote its products to the Dutch airforce. This time period coincides with a key moment in the negotiations between Lockheed and the UAE.

Mrs. Kroes can confirm that she was hired as a consultant by Lockheed Martin in 1996 and 1997 with a remit to promote its products to the Dutch airforce, but only for the Netherlands.

In this year, Lockheed is reported to have abandoned a plan to pay offset cash to the entrepreneur Ross Perot in the desert city of Al Ain. A decision was taken instead to hand the money to the UAE, which then asked Badr-El-Din's group to invest it.

Mrs. Kroes has never been involved in this matter and therefore cannot confirm that this is factually correct.

Additionally, we have information suggesting that Mint Holdings Limited whose other shareholders included

Both and are unknown to Mrs. Kroes.

There is no apparent link between the companies and although Bahamas registered companies were used

Mrs. Kroes has never been aware of those facts.

We understand that you are well acquainted with Mr. Badr-El-Din. You were both directors at Nyenrode University, and we understand that

Dr. Badr-El-Din has been a great friend of Mrs. Kroes since 1994 and it is correct that at the time that Mrs. Kroes was President of Nyenrode University Dr. Badr-El-Din was on the international advisory board, together with the dean of Harvard Business School, the dean of IESSE University, the dean of Bocconi University, Bill Gates and others.

It is not correct and as far as she knows, anywhere in the European Commission.

We would like to give you the opportunity to comment on the information set out above. Do you accept that these matters are factually correct? If not please let us know and indicate what you disagree with.

Thank you for giving me the opportunity. In general, Mrs. Kroes has no knowledge at all of Mint Holdings being involved in this matter and for that reason she cannot confirm that this information is factually correct.

See the aforementioned.

Further, we would in light of the information above, additionally welcome your response to the following questions:

Were you a director of Mint Holdings Limited between July 2000 and October 2009?

Yes, see the aforementioned.

If so, why did you not declare this directorship to the EU commission?

Yes, see the aforementioned.

For what purpose was Mint Holdings Limited incorporated?

See the aforementioned.

What was your role in this company?

See the aforementioned.

Did you benefit financially from your directorship of Mint Holdings Limited or any of its subsidiaries?

No.

Were you a shareholder in Mint Holdings Limited or any of its subsidiaries?

No.

Did your work for Lockheed Martin involve you in any conversations or negotiations regarding the UAE's 2000 contract to purchase its fighter jets, or in any conversations or negotiations regarding the use of the offset cash from this deal?

No.

Did you benefit financially from any work connected to the UAE's purchase of fighter jets in 2000 from Lockheed Martin?

No.

Did _____, come to your offices at the commission _____

No.

Finally, at the time of your appointment as competition commissioner in 2004, you undertook in a letter to the commission president "not to engage in any business activity following the end of my term". You are now an adviser to Uber, Bank of America Merrill Lynch and Salesforce.

Do you accept that you reneged on your pledge?

It is true that Mrs. Kroes made this pledge at the beginning of her first term with the European Commission. Having fulfilled this term, Mrs. Kroes fulfilled this pledge and did not enter into business activity. In stead, she was honored with a second term in a completely different field. Having now finished her second term, she no longer feels bound by the commitment made prior to taking her first post, whilst continuing to be able to add value to institutions that are consistent with the values that she has held throughout her professional and public career.

Your actions have led to criticisms that former commissioners are conflicted by ties to the private sector, and that the code of conduct needs tightening. Do you accept these criticisms as fair?

Mrs Kroes does not accept that any actions of her have lead to criticism, nor that she was ever conflicted by ties to the private sector.

Are you currently in receipt of a pension from the EU commission or do you expect to claim one?

Mrs Kroes is receiving her statutory rights as a former EU commissioner.

I am available on my office if you need further information,

Yours Sincerely

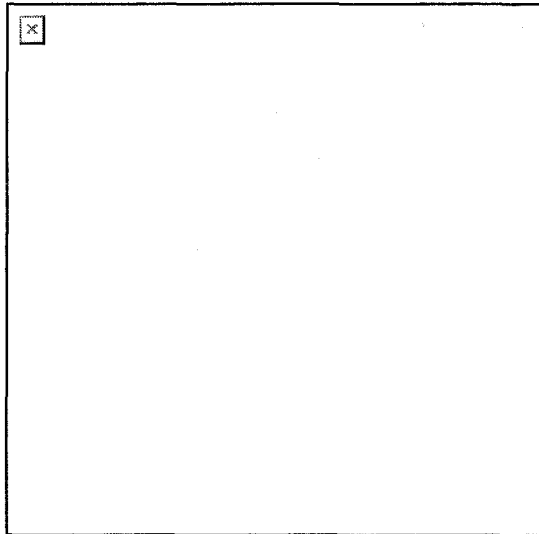
Hammerstein Advocaten N.V.

Recipients:

International Consortium of Investigative Journalists

Financieel Dagblad & Trouw

The Guardian





Jean-Claude JUNCKER
President of the European Commission

Rue de la Loi, 200
B-1049 Brussels
Tel. +32 2 295 50 33
jean-claude.juncker@ec.europa.eu

Brussels, 22 September 2016
Ares sv(2016)6012473

Dear Ms Kroes, *Dear Neelie,*

Thank you for your message of Friday 16 September 2016 concerning your directorship of Mint Holding Limited.

You indicate in your message that your declaration of interests of 2004, based on the obligations foreseen by the Code of conduct for Commissioners, was made in good faith and to the best of your knowledge. You will understand that I would need further information in order to assess the situation and decide on the possible actions that the Commission should take as regards your activities as Commissioner and the respect of your obligations under the Treaties and the Code of conduct for Commissioners.

First of all, as regards your directorship of Mint Holding Limited, I would like to ask you to send me the document with the instructions given to lawyers in 2000 so that they would close down the company. In this context, your declaration of interest of 2004, which covered the posts held over the previous ten years to 2004, did not refer to your position as Director of Mint Holding Limited that you indicate in your message you held for some time during the period before 2004. I would invite you to explain and comment on this point.

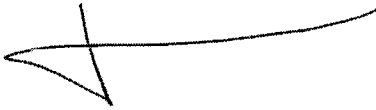
Secondly, I would like you to confirm that since 2000 you have never received any kind of remuneration for having acted as a Director of this company.

Thirdly, I would appreciate if you could explain how the "administrative error" you refer to in your message was corrected in 2009 and whether you were informed then, or at any other time since then, of that correction, and if yes, why you did not inform the Commission at that time.

Mrs Neelie Kroes
(sent by e-mail)

As a final point, the letter from your lawyer to the journalists indicates that you were hired as a consultant by Lockheed Martin in 1996 and 1997 with a remit to promote its products to the Dutch air force. However, I note that this company does not appear in your declaration of interests either, contrary to the obligations set out in the Code of conduct for Commissioners, and I would like to know why. I would also like to have assurances that your involvement with this company had completely ceased when you took office as Commissioner and to receive information on the possible contacts you may have had with this company during your terms of office as Commissioner.

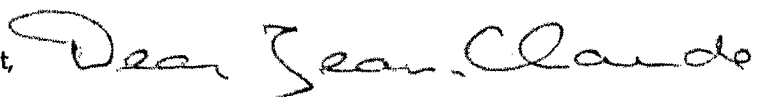
Yours sincerely,

A handwritten signature consisting of a stylized, elongated horizontal stroke with a vertical line intersecting it near the left end, forming a unique mark.

Jean-Claude Juncker
President of the European Commission
Rue de la Loi 200
B-1049 Brussels

Amsterdam, 26 September 2016 BY E-MAIL: jean-claude.juncker@ec.europa.eu

Dear Mr. President,



Concerning: my directorship of Mint Holdings Limited
Your reference: Ares sv(2016)6012473

With reference to your letter of 22 September 2016 I would like to answer your questions and reply to the final point you made about Lockheed Martin.

Regarding your first point concerning my directorship of Mint Holdings Limited: I am sorry that I can not supply you with a document containing the instructions given to the lawyers in 2000 to close down the company. The staff of Dr. Badr-El-Din is doing the utmost to find these documents. They were made sixteen years ago and I am not sure if they will be able to dig them up.

However, it is on public record that the negotiations concerning the acquisition of certain assets of Enron were abandoned in the first week of August of 2000. In anticipation of that acquisition I have been registered as a director of Mint Holdings Limited on July 4th, 2000. I was recruited in case that these negotiations would have been successful. Mint Holdings never acquired any assets of Enron. Directly after the negotiations have been abandoned, Dr. Badr-El-Din expressed his gratitude for the fact that I have been available for this function. But since the negotiations ended, he also

expressed the intention that the company would be liquidated and de-registered. For that reason I de facto never became a board member.

In my opinion it was not necessary to mention any function I was recruited for but I never actually fulfilled. However, when I would have been aware I was registered with Mint Holdings at any time, I would have put it on the list nevertheless.

According to Dr. Badr-El-Din, he gave instructions for the de-registration of the company shortly after the negotiations concerning the acquisition of assets from Enron were ended and that this never happened due to a clerical error. When he found out, four years later, that Mint Holdings still existed, he used this company as a vehicle for a completely new acquisition. I would like to emphasize that I was not aware of nor involved in any activities of Mint Holdings that have occurred later than August 2000 and that I have never been recruited again for any other function. I also did not receive any information, not about the clerical error and also not that the persons involved found out that the company was still registered and I as its director. Only since in 2004 was found out that the company still existed, the company started activities and opened a bank account, as Dr. Amin told me only last week.

Furthermore I confirm that in 2000 or ever since, de facto I have never acted as a director of Mint Holdings and I have not received any remuneration from Dr. Amin or any of his companies.

Concerning your third question: I regret that I have never been informed about the correction made in 2009. Dr. Amin explained to me that he wasn't aware of this fact either. His staff is trying to find out who was involved in this correction and for what reason Dr. Amin himself was not informed.

Your final point is that Lockheed Martin does not appear in my declaration of interest either. I am afraid you are mistaken because in the letter from you predecessor Mr

Barosso and myself, dated 30 November 2004 [SEC(2004)1541] you will find Lockheed Martin mentioned. For your convenience I have enclosed this document and have marked Lockheed Martin with an X. My involvement with Lockheed Martin had completely ceased in by the end of 1997. And as a commissioner or in any other time after 1997 I have never had any further contact with this company.

I regret this chain of events but I have always acted in good faith. Except for a formal violation, I have always acted conscientiously in accordance with the regulations imposed on me when I assumed office in 2004 as a member of the European Commission.

Sincerely yours,

Neelie Kroes



COMMISSION EUROPEENNE SECRETARIAT GENERAL

Le Secrétaire Général

Bruxelles,
SG/B3/ SJ Ares(2016)

Note aux Membres du Comité Ethique Ad Hoc

M. Christiaan Timmermans
M. Dagmar Roth-Behrendt
M. Heinz Zourek

Suet: Consultation du Comité Ethique Ad Hoc, notamment en vertu de l'article 2.3 du Code de Conduite des Commissaires

Le Président de la Commission souhaite recevoir l'avis du Comité Ethique Ad Hoc sur deux situations qui concernent Madame Kroes, ancienne Vice-Présidente de la Commission, et en particulier l'appréciation du Comité en ce qui concerne la conformité de telles situations avec le Code de conduite des Commissaires et les obligations dérivant du Traité.

1. Déclaration d'intérêt prévue par le Code de Conduite des Commissaires

Pour mémoire, l'article 245 TFUE et le Code de Conduite des Commissaires interdisent à ces derniers l'exercice de toute activité extérieure pendant la durée du mandat (sauf quelques exceptions non pertinentes ici). En outre, le Code de Conduite prévoit la déclaration des activités exercées pendant les 10 ans qui précèdent la prise de fonctions du Commissaire, ainsi que la mise à jour de celle-ci en cas de modification.

Le 16 septembre Mme Kroes s'est adressée au Président afin de lui annoncer que le journal The Guardian allait publier un article dans lequel il ferait référence au fait que Mme Kroes était Directeur de l'entreprise Mint Holdings Limited à partir de 2000 et que cette activité n'avait pas été incluse dans la Déclaration d'intérêts que l'ancienne Membre de la Commission avait fait en 2004.

Dans ce courrier et dans sa lettre du 26 septembre en réponse à la demande de clarifications du Président du 22 septembre, Mme Kroes a répondu que Mint Holdings Limited avait été créé en 2000 (et enregistrée au Bahamas) afin d'acheter certains actifs de l'entreprise Enron. Les négociations ayant échoué, l'opération a été abandonnée. Mme Kroes avait été engagée comme Directeur de Mint Holdings Limited le 4 juillet 2000, pour le cas où les négociations auraient abouti. Comme cela n'a pas été le cas, de facto elle n'a jamais exercé cette fonction.

Mme Kroes signale également qu'en 2000 des instructions avaient été données aux avocats afin de liquider l'entreprise et la supprimer du registre. Ce n'est que récemment, à une date non précisée, qu'elle a appris que cela n'avait pas été fait en raison d'une erreur administrative et qu'elle avait continué à figurer dans le registre comme Directeur de l'entreprise jusqu'à 2009. Elle déclare qu'elle n'était pas au courant que son nom continuait à figurer comme Directrice de Mint Holdings Limited et que cette 'erreur administrative' avait été corrigée en 2009, et ajoute ne jamais avoir reçu de rémunération de Mint Holdings Limited. Madame Kroes présente cependant ses excuses pour ne pas avoir notifié ce poste dans sa déclaration d'intérêts en 2004 (ou à une date ultérieure), et affirme ne pas avoir été au courant des faits et ajoute que, de toute manière à son avis, elle ne devait pas déclarer un poste qu'elle n'a jamais exercé. Les communications intervenues entre Mme Kroes et la Commission sont jointes en annexe.

Sur la base des informations à notre disposition, même si effectivement le fait d'avoir figuré dans le registre après août 2000 était dû à une erreur administrative dont Mme Kroes n'avait pas connaissance, reste à examiner s'il fallait qu'elle déclare son "activité" entre juillet et août 2000, compte tenu du fait qu'elle n'a pas exercé ce poste ni reçu de rémunération de Mint Holdings Limited (ou de la part d'autres entreprises du Dr Amin Badr-El-Din, le propriétaire).

Eu égard aux faits décrits ci-dessus et aux documents communiqués par Madame Kroes, le Comité Ethique ad Hoc est invité à se prononcer sur l'existence d'une éventuelle violation du Code de Conduite des Commissaires, dans des circonstances où i) un/une Commissaire ne déclare pas comme activité antérieure une activité qui n'a pas été exercée de facto et qui n'a pas été rémunérée et ii) cette activité, même si elle n'a pas été exercée de facto et n'a pas été rémunérée, a continué, au moins formellement, pendant une partie du mandat du/de la Commissaire.

2. Indemnité transitoire – déclaration des revenus

En vertu de l'article 7 du Règlement 422/67, un ancien membre de la Commission a droit à une indemnité transitoire mensuelle pendant trois ans après la cessation de ses fonctions. Au cas où le total de l'indemnité transitoire et de la rémunération d'une nouvelle fonction dépasse les montants perçus comme Commissaire, ce surplus vient en déduction de l'indemnité transitoire.

Afin de pouvoir calculer l'indemnité transitoire, l'art. 7(4) du Règlement 422/67 prévoit que le concerné, au moment de la cessation de ses fonctions, puis au 1er janvier de chaque année et lors de chaque modification de sa situation pécuniaire, doit faire la déclaration de l'ensemble des éléments de rémunération d'origine professionnelle qu'il perçoit, à l'exception de ceux correspondant à un remboursement de frais. A cette fin, le PMO envoie chaque année aux concernés un formulaire de déclaration à remplir.

Mme Kroes est titulaire d'une indemnité transitoire depuis novembre 2014. A la fin de son mandat, elle avait déclaré ne pas encore savoir si elle allait avoir une future activité professionnelle. Dans sa déclaration de janvier 2015, elle n'a déclaré aucun revenu pour 2014 et dans sa déclaration du janvier 2016, elle n'a déclaré aucun revenu pour 2015.

Toutefois, le 20 septembre 2016, Mme Kroes a contacté le PMO et lui a fait parvenir via son consultant fiscal un tableau récapitulatif de ses revenus en 2015, ainsi que ses revenus en 2016 (annexé). Cette communication indique que Mme Kroes a perçu en 2015 des revenus, alors que la déclaration signée en janvier 2016 ne mentionnait aucun revenu.

alors que l'art. 7(4) du Règlement applicable demande de communiquer toute modification dans la situation pécuniaire. La réglementation applicable, ainsi que les échanges de correspondance entre la Commission se trouvent en annexe.

Sur la base des faits décrits ci-dessus, il y a lieu de constater qu'en omettant de déclarer ses revenus pour 2015 au début l'année 2016, alors qu'elle avait opté pour bénéficier de l'indemnité transitoire, Mme Kroes a enfreint le règlement 422/67, obligation qui continue à découler de sa charge en tant qu'ancienne Commissaire. Elle aurait donc enfreint aussi l'article 245 du TFUE.

se pose la question d'évaluer la gravité du manquement et, par conséquent, l'opportunité pour la Commission d'entamer des actions supplémentaires, que ce soit d'ordre politique ou judiciaire. L'avis du comité est donc demandé sur la question de l'appréciation de la gravité d'une infraction présumée à l'article 245 dans les circonstances décrites ci-dessus.

Alexander Italianer

Annexes:

1. Courriel de Mme Kroes au Président Juncker du 16 septembre 2016
2. Lettre du Président Juncker à Mme Kroes du 22 septembre 2016
3. Réponse de Mme Kroes au Président Juncker du 26 septembre

4. Règlement 422/67 portant fixation du régime pécuniaire des Membres des Institutions
5. Lettre du PMO à Mme Kroes septembre 2014
6. Déclaration de Mme Kroes lors de la cessation de ses fonctions
7. Déclaration annuelle de janvier 2015 (revenus 2014)
8. Déclaration annuelle de janvier 2016 (revenus 2015)
9. email et annexe envoyée par son conseiller fiscal le 20 septembre 2016

Cc: Président Juncker



EUROPEAN COMMISSION
OFFICE FOR THE ADMINISTRATION AND PAYMENT OF INDIVIDUAL
ENTITLEMENTS

The Director

Brussels, 12 SEP. 2014
PMO/ ARES(2014)

(File handled by

Mrs Neelie Kroes
Vice-President of the European
Commission

BERL 10 / 222

Subject: Transitional allowance (Article 7 of Regulation 422/67/EEC, 5/67/Euratom
and subsequent amendments)

Dear Vice-President,

As the Commission's term of office comes to an end on 31 October 2014, I should like to draw your attention to the detailed rules for implementing the provisions of Article 7 of the above-mentioned Regulation.

In accordance with these provisions, you are entitled to a transitional allowance for a maximum of three years from the end of your term of office. It is important to note, however, that this allowance is subject to anti-cumulation provisions, which require recipients of the allowance to declare all income received elsewhere for other activities.

Furthermore, in accordance with the Code of Conduct for Commissioners C(2011) 2904, if you intend to engage in an occupation during the 18 months after you cease to hold office, you are required to inform the Commission in good time, if possible with four weeks' notice, so that it can decide whether the planned occupation is compatible with Article 245 of the Treaty (TFEU).

You will find a number of forms in annex which you are kindly requested to complete, sign and return to PMO at your earliest convenience to enable us to deal with your file.

As soon as we receive these documents, your entitlements will be established and you will receive a notice of establishment showing how your allowance was calculated.

My departments, and _____ in particular (tel: _____), remain at your full disposal, should you require any additional information.

Yours faithfully,

Copy:

Annexes: Annex I (Transitional allowance declaration)
 Annex II (Joint Sickness Insurance Scheme (JSIS) declaration)
 Financial identification form
 Application for resettlement allowance
 Application for reimbursement of travel expenses on termination of service



Jean-Claude JUNCKER
President of the European Commission

Rue de la Loi, 200
B-1049 Brussels
Tel. +32 2 295 50 33
jean-claude.juncker@ec.europa.eu

Brussels, 3 October 2016
Ares (2016)

Dear Ms Kroes,

Thank you for your letter of 26 September 2016 concerning your directorship of Mint Holdings Limited.

As regards your situation as consultant of Lockheed Martin, I note that this company whilst not formally included in your declaration of interests, was listed amongst those taken into account in the Information Note SEC(2004)1541 on the identification of actual or potential conflicts of interest. I thank you for having clarified the issue.

As regards your directorship of Mint Holdings Limited, I take note of the information that you provide in your letter.

In order for the Commission to be in a position to assess the situation and decide on the possible actions to be taken, I have decided to consult the Ad hoc Ethical Committee foreseen by the Code of Conduct for Commissioners, concerning your situation as regards the respect of your obligations under the Treaties and the Code of Conduct for Commissioners.

Yours sincerely,

Mrs Neelie Kroes

Mr. J.C. Juncker
President of the European Commission
Rue de la Loi 200
B-1049 Brussels

7 October 2016

BY E-MAIL: jean-claude.juncker@ec.europa.eu

Concerning: my directorship of Mint Holdings Limited
Your reference: Ares sv(2016)6012473

Dear Mr. President,

Thank you for your letter of the 3rd of October 2016 concerning my directorship of Mint Holdings Limited.

With regard to this directorship my lawyer Hammerstein received a letter from Schillings International LLP on behalf of Dr Amin Badr-El-Din, with an opinion on the facts concerning my appointment and resignation of Mints Holding Limited. Please find enclosed a copy of this letter.

As this letter not only confirms the facts of my earlier letters but also gives a clarification of facts missing, I kindly ask you to forward this letter also to the Ad hoc Ethical Committee.

Respectfully yours,
Neelie Kroes

Encl.: Letter Schillings International LLP to Hammerstein 6th of October 2016

[SCHILLINGS]

Hammerstein Advocaten

BY EMAIL:

Our Ref:

6 October 2016

Dear Sirs

Dr Amin Badr-El-Din

We write in response to your email of 3 October 2016, concerning Mint Holdings Ltd and your client, Mrs Neelie Kroes.

Our client wishes to provide as much assistance as he can to your client and the European Commission, who we understand has asked for further information in relation to Mrs Kroes' connection with Mint Holdings.

We have set out below the steps our client has taken to ascertain as full a picture as possible in relation to this matter.

Our client used the law firm to establish Mint Holdings in 2000. The deal for which Mint Holdings was set up fell through in the summer of 2000 and the company was not used for that purpose.

[SCHILLINGS]

We have seen an email from [REDACTED] in 2002 which advised our client to dissolve the structure set up for the Enron deal. As our client had no use at that time for the structure, his recollection is that he intended to follow [REDACTED] advice and for all of the structure to be dissolved. Due to a clerical oversight, only part of the structure, but not Mint Holdings, was dissolved in 2003.

Lawyers in the UK typically keep paper/electronic files for six years after a case has closed or they cease acting for a client, as this is the limitation period for negligence claims against them. The deal for which Mint Holdings was established fell through in the summer of 2000 and part of the structure was subsequently dissolved in 2003.

Our client has requested copies of all documents held by [REDACTED] concerning Mint Holdings. [REDACTED] has confirmed that it does not hold any physical documents. It has also said that no electronic documents are available due to the firm having upgraded or changed its IT systems a number of times in the intervening years.

The individual lawyers who were working on this matter at [REDACTED] have long since left the firm. Our client has however spoken with a number of them to seek their recollection. Given these events occurred more than 16 years ago, unfortunately none of the lawyers have any particular memory of Mint Holdings or Mrs Kroes' involvement in it.

Our client has also asked his Bahamian advisers for all of the documentation which they hold in respect of Mint Holdings and all of the documentation in respect of Mint Holdings which is available from the Bahamian corporate registry. Despite the fact that these are historic events, a small number of relevant documents and emails have been found.

Our client believes that he has carried out as extensive a search for information and documents as he can reasonably be expected to. Where any answers to your questions below are based upon documents, these are referenced. Where no documents or information has been uncovered despite our client's extensive search, he has answered the questions in good faith, to the best of his recollection and to the fullest extent possible.

- 1. Who gave instructions in 2000 to have Mrs. Kroes registered in a public register in the Bahama's?**
- 2. Is the form available by which Mrs. Kroes was registered as director of Mint Holdings Limited?**

A sole shareholder in a Bahamian company has the power to resign and appoint Directors. We understand that, when a resolution has been passed by a sole shareholder to appoint a Director, in addition that Director must confirm their consent to act as a Director.

This understanding is supported by a draft fax which would have been sent from a director of Mint to _____ in 2000. This director was appointed at the same time as Mrs Kroes and the other directors of Mint Holdings.

That fax contains their consent to act as a Director and information such as their contact details and identification. Our client does not have a similar document from Mrs Kroes, but expects that she would have signed something similar and/or confirmed her consent to act as a Director of Mint Holdings in a similar manner.

As set out above, our client has sought all documentation available from _____ his Bahamian advisers and the Bahamian corporate registry. No form registering Mrs Kroes as a director of Mint Holdings has been discovered.

- 3. Who gave instructions to lawyers in 2000 that the company would be closed down and de-registered?**
- 4. To whom were this instructions given?**
- 5. Is there a document available with these instructions?**

As explained in the introduction to this letter, our client has found an email from 2002 from _____ advising him to dissolve the structure set up for the Enron deal.

As our client had no use at that time for the structure, his recollection is that he intended to follow _____ advice and for all of the structure to be dissolved. Such instruction would have been given to _____. This could have been verbally or in writing. _____ has confirmed that it does not hold any physical or electronic documents about Mint Holdings.

Part of the structure, but not Mint Holdings, was dissolved in 2003. This strongly suggests, if not confirms, that such an instruction was in fact given. Mint Holdings was not dissolved due to a clerical oversight.

6. Who discovered in 2004 that Mint Holdings Limited was not liquidated and de-registered?

In 2004, our client earned/bought shares in another company and wished to transfer them to a holding company. It then transpired that Mint Holdings had not in fact been dissolved and remained in existence.

Our client does not have any documents confirming exactly who discovered Mint Holdings had not in fact been liquidated. No documents relating to this have been uncovered following our client's requests to his advisers.

The purpose for which Mint Holdings became active in 2004 (to hold shares in companies our client either earned or bought a stake in) is a wholly different purpose than the one which Mint Holdings was originally established for in 2000 (to acquire assets of Enron).

7. Do you know if Mrs. Kroes was still registered in 2004 and for what reason this has not been noticed?

Mrs Kroes was registered as a director of Mint Holdings from 4 July 2000 to 1 October 2009.

As described above, in 2004, Mint Holdings became active for a different purpose to the one for which it was established in 2000. All decisions taken in relation to Mint Holdings from 2004 until 2009 were made by the sole shareholder.

Our client was operating under the impression that the Enron structure had been dissolved and all directors' appointments had been terminated.

No decisions were required to be made, or actions required to be taken, by the Directors of Mint Holdings until 2009. This explains why it was not noticed in 2004 that Mrs Kroes - and others - erroneously remained Directors of Mint Holdings.

- 8. Who discovered that Neelie Kroes was still registered as a director of Mint Holdings Limited in 2009?**
- 9. To whom was reported that Neelie Kroes was still registered?**
- 10. Who gave instructions in 2009 to de-register Neelie Kroes?**

In April 2008, our client's Personal Assistant received a copy of the Register of Directors and Officers from [REDACTED]. One email between the Personal Assistant and another Director reveals their surprise that he remained a Director of Mint Holdings and their understanding that he had resigned from that company. Our client was not informed of this in 2008.

In 2009, [REDACTED] requested that Mint Holdings complete [REDACTED] 'Business Acceptance Form' and have this signed by all of the directors of the company. It was then that the fact that Mrs Kroes and two others erroneously remained directors of Mint Holdings was brought to the attention of our client.

As described above, the sole shareholder of Mint Holdings is able to resign directors. On 1 October 2009, upon being made aware of the clerical oversight, the sole shareholder resolved to resign Mrs Kroes and the two other directors who erroneously remained directors.

- 11. Is the document available with which Neelie Kroes was de-registered in 2009?**

The resolution of the sole shareholder of Mint Holdings dated 1 October 2009 described above, removes Neelie Kroes, [REDACTED] as Directors of Mint Holdings. It is signed by the sole shareholder. Whilst this document is confidential and not publicly available, we would be happy to provide a copy on the basis that it remains strictly confidential.

The Register of Directors and Officers which was obtained and published by the International Consortium of Investigative Journalists confirms that all three directors named above were de-registered on 1 October 2009.

- 12. Do you know why Neelie Kroes was not informed of any of this in 2004 and 2009?**

As described above, it was not known in 2004 that Mrs Kroes remained a director of Mint Holdings. It was therefore not possible for Mrs Kroes to be informed of this then.

[SCHILLINGS]

In 2009, when our client discovered the erroneous continuing registrations of Mrs Kroes, he passed a resolution, in his capacity as sole shareholder, to resign the three directors. As this was a purely administrative decision and Mrs Kroes' signature was not required, our client did not believe it was necessary to inform Mrs Kroes.

We trust that the steps taken by our client to ascertain as much information and as many documents as possible, and his answers to your questions, are satisfactory.

Whilst the answers above are as thorough as our client is able to provide on the information and documents available, should you or your client have any further questions in respect of this matter, please let us know.

Yours faithfully

SCHILLINGS



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

The Secretary-General

DOCUMENT 7

Brussels,
SG/B3 Ares(2016)

Note to the Members of the Ad-Hoc Ethical Committee

Mr Christiaan Timmermans
Mrs Dagmar Roth-Behrendt
Mr Heinz Zourek

Dear Members of the Ad-Hoc Ethical Committee,

Subject: Additional information from Mrs Kroes, received on 7 October 2017

I write further to my ARES note of 3 October 2016 and my request for you to provide an opinion to the Commission on questions regarding Mrs Kroes.

The President received today complementary information from Mrs Kroes asking him to forward this information to the Ad hoc Ethical Committee.

I enclose the letter and the annex in order to provide you with the updated information so that you can take it into account in your opinion.

Please do not hesitate to contact me should you need any further information.

Alexander Italianer

Encl: 2 annexes

Copy: President Juncker

Ad Hoc Ethical Committee

Subject: Two requests for an opinion concerning former Vice-President Kroes.

Facts and procedure

1. President Juncker by note of the Secretary General from 3 October 2016 (Ares(2016)5717567) has requested the opinion of the Ad Hoc Ethical Committee (hereafter: the Committee) on two different cases concerning former Vice-president of the Commission Mrs. Kroes. The first case concerns on the one hand the Declaration of Interests a Commissioner-designate according to the Code of Conduct must submit, more particularly relating to all activities engaged in over the last ten years before taking up office, and on the other hand the prohibition for a Member of the Commission imposed by Article 245 TFEU to engage in any other occupation, whether gainful or not. The second case concerns the yearly declaration of revenues a former Member of the Commission receiving the transitional allowance provided for by Article 7 of Regulation 422/67 must submit according to paragraph 4 of that same Article.
2. With regard to the first case the Committee has received a copy of the mail from Mrs Kroes of 16 September 2016 addressed to President Juncker informing him of the fact that her Declaration of Interests from 2004 did not mention her directorship of a company named Mint Holding Limited (hereafter: MHL) and that she had continued to hold this position during part of her tenure as Commissioner. The Committee also received copies of the mail exchange of Mrs. Kroes' lawyer with newspapers investigating that situation as well as of the correspondence between President Juncker and Mrs. Kroes purporting to clarify the situation. The Committee also received a copy of the information note of the President (Barroso) and Mrs. Kroes concerning the Identification of actual or potential conflict of interest concerning the Commissioner for Competition (OJ1681-point 7 of 30.Nov 2004). Finally, the Committee received a note of the Secretary General (Ares(2016)5817893) transmitting a further mail of Mrs. Kroes of 7 Oct

- 2016 with complementary information on her directorship of the company MHL she had received from Schillings International LLP on 6 October 2016.
3. In her correspondence with President Juncker Mrs. Kroes explains that the company MHL was set up and registered in the Bahamas in July 2000 for one specific investment project only. That project having been abandoned in August 2000 *de facto* she has never acted as a director of that company. To her knowledge already in 2000 instructions were given to liquidate the company. However, because of a clerical error this did not happen. Therefore she continued to be registered as a director of MHL until the correction of this error in 2009 without having being aware of that. She adds that she has never received any remuneration from MHL. Mrs. Kroes considers that it was not necessary to mention any function she was recruited for but never actually fulfilled.
 4. The Committee is invited to give its opinion on a possible violation of the Code of Conduct in circumstances in which (i) a Commissioner does not declare as prior activity an activity that *de facto* neither has been executed nor remunerated and (ii) such an activity, even if *de facto* neither executed nor remunerated, has at least formally continued to exist during a part of the mandate as Commissioner.
 5. With regard to the second case the Committee received a copy of Regulation 422/67 CEE (hereafter the Regulation) determining the emoluments, in particular of Members of the Commission, and of the letter of PMO of 12 September 2014 informing Mrs. Kroes about her entitlement to a transitional allowance and the conditions linked to it as foreseen by Article 7 of the Regulation. The Committee also received a copy of the Declaration signed by Mrs. Kroes in October 2014 for obtaining the transitional allowance and of two Annual Declarations requesting in particular information about income received elsewhere for professional activities. Finally, the Committee received copy of a mail (Ares (2016)5511405-22/09/2016) sent by Mrs. Kroes' tax advisor to the PMO listing the monthly income from professional services in the period from November 2014 to September 2016 including a projection to year end 2016. The Committee did not receive copies of the most recent tax assessments of Mrs. Kroes as requested by each Annual Declaration.

6. According to Article 7 of the Regulation a former member of the Commission is entitled to receive a transitional allowance during 3 years after the end of his or her term in office. In case such a transitional allowance together with other income from a new activity is higher than the remuneration he or she has received while in office it will be reduced by the exceeding amount. For the purpose of calculating the actual entitlement the beneficiaries have to mention in an Annual Declaration all income received from professional activities in the preceding year to the PMO. They also have to submit their most recent tax assessment.
7. Since the end of her mandate as Member of the Commission Mrs. Kroes is receiving such a transitional allowance. She has signed two Annual Declarations about revenues earned elsewhere. In her declaration for the year 2015 she did not mention any revenues for that year at all. However on 20 September 2016 Mrs. Kroes contacted the PMO via her tax advisor submitting a Table showing her revenues for the period from November 2014 until September 2016 as well as a preview until year end of 2016. This communication shows that Mrs. Kroes has in fact earned income in 2015, although she has declared the contrary in her Declaration of January 2016. The Table indicates substantially higher revenues for 2016. Article 7(4) of the Regulation stipulates that any change in the income situation of the beneficiary must be communicated. According to the competent services of the Commission (PMO) Mrs. Kroes has violated the Regulation by not stating her revenues in the year 2015 in her Declaration signed in January 2016 while opting for the transitional allowance. By this infringement she also violated art 245 TFUE. The opinion of the Committee is requested on the seriousness of a presumed infringement of art.245 under the described circumstances.

Assessment

8. In the first case concerning Mrs. Kroes the Committee is asked two questions about the interpretation of the Code of Conduct. The first question relates to the scope of application of par. 1.1. together with par. 1.5. and Annex 1 (Declaration of Interests) of the Code of Conduct. Do these provisions of the Code oblige a Commissioner-designate to also

mention in his or her Declaration of Interests a post held as non-executive director of a company only during a short period of time when that function has not at all been exercised and no remuneration has been received. In other words need only activities effectively exercised and remunerated be mentioned? The Code does not provide for any exception excluding non-remunerated activities from the obligation to report previous activities in the Declaration of Interests. The text of the Code and the Model Declaration of Annex 1 is somewhat ambiguous about the question whether only activities, which are effectively exercised, must be included in the Declaration. Indeed, the English version of par. 1.1 of the Code refers to "activities engaged in", the Model Declaration to "Posts held", the French version to "activités exercées" and "Fonctions exercées" respectively. However, when taking into account the purpose of the Declaration there exist good reasons to mention also functions held but not exercised. The Declaration of Interests intends to reveal possible conflicts of interest which could arise for a Commissioner once in office when in the exercise of that office he or she is confronted with policy issues with regard to which the interests of the company in which that function has been held, are directly involved. In such circumstances there exist a risk for the independence of the Commissioner being affected and his or her judgment biased. That risk cannot be excluded even with regard to a company in which a position as non-executive director has been held but not effectively exercised. The transparency ensured by the Declaration should make the Commissioner vigilant about those risks and allow at the same time an outside control. For these reasons the Committee considers that par. 1.1. together with par. 1.5. and Annex 1. (Declarations of Interests) of the Code of Conduct should be interpreted as also covering a function held but not exercised under circumstances such as those in the case in question.

9. The second question concerns the interpretation of par. 1.1., first sentence, of the Code of Conduct: Commissioners may not engage in any other professional activity, whether gainful or not. This provision repeats the prohibition already imposed by the Treaty itself (Article 245 (2)), according to which the Members of the Commission may not engage in any other occupation, whether gainful or not. The Committee considers that the risks

of possible conflicts of interest as just mentioned are still more manifest with regard to functions held during the term of office of a Commissioner, also when the function is not effectively exercised. Whether the Commissioner is still aware or not of holding the function, should be irrelevant for the prohibition to apply. The prohibition as imposed by the Code and the Treaty itself is unconditional and should be strictly applied. Another question is whether in a given case a Commissioner may be blamed for having breached the prohibition. That will not be so if, as seems to have been the situation in the case of Mrs. Kroes, the Commissioner has not been and could not reasonably have been aware of still holding a function not effectively exercised.

10. The second case regarding Mrs. Kroes concerns the presumed breach of Article 7 of the Regulation, more particularly the seriousness of that presumed breach. The Committee is asked to give its opinion on the question of the assessment of that seriousness taking into account the circumstances of the case. This question arises in order for the Commission to assess the case for further action, whether of a political or legal nature.
11. According to the general rule stipulated by Article 245 (2) TFEU the Members of the Commission shall, both during and after their term of office, respect the obligations arising from their duties. The present case more particularly concerns the obligation imposed on former Commissioners when receiving the transitional allowance, to respect the conditions prescribed by Article 7 (4) of the Regulation. Thus, the Committee is not being questioned about the duty of Commissioners to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits. The question raised concerns the respect of obligations, which have not been elaborated by the Code of Conduct but have been imposed by separate legislation. Presuming that the conditions imposed by the Regulation have been violated, the Committee is requested to pronounce itself on the seriousness of such violation. The Committee considers that such a question, which requires to assess the seriousness of a violation taking into account the circumstances of the case, so as to enable appreciating the

proportionality of a possible sanction to be proposed, falls outside its remit as defined by the Code of Conduct and the Commission Decision establishing the ad hoc ethical committee foreseen by the Code of Conduct for Commissioners.

Opinion

The Ad Hoc Ethical Committee is of the opinion that:

- par.1.1. together with par. 1.5. and Annex 1. (Declaration of Interests) of the Code of Conduct should be interpreted as also covering a function held but not exercised under circumstances such as those in the case in question;
- par. 1.1., first sentence, of the Code of Conduct prohibiting Commissioners to engage in any other professional activity, whether gainful or not, should be interpreted as also applying to a function held during the term of office of a Commissioner, which has been neither effectively exercised nor remunerated, and irrespective of whether the Commissioner has been aware or not of holding that function. However, the Commissioner cannot be blamed for the violation of the prohibition if he or she has not been and could not reasonably have been aware of still holding a function not effectively exercised.
- the question raised in the second case does not fall within the remit of the Committee as defined by the Code of Conduct and the Commission Decision establishing the ad hoc ethical committee foreseen by the Code of Conduct for Commissioners.

Christiaan Timmermans

Brussels, 16 November 2016

Dagmar Roth-Behrendt

Heinz Zourek



EUROPEAN COMMISSION
Secretariat-General

The Secretary-General

Brussels, 06 DEC. 2016

Dear Ms Kroes,

The Commission has consulted the Ad Hoc Ethical Committee further to your e-mail to President Juncker dated 16 September 2016 concerning your directorship of Mint Holdings Limited and the additional information you provided on 26 September and on 7 October 2016. The Committee was invited to give its opinion on the existence of a possible violation of the Code of Conduct for Commissioners in a case where: i) a Commissioner does not declare a prior activity which, de facto, was never carried out, nor paid; ii) the activity, albeit never effectively carried out nor paid, was still ongoing, at least 'formally', during part of the Commissioner's mandate.

The Committee was also invited to provide an opinion on a possible breach of article 245 TFEU, in conjunction with Article 7 of Regulation n° 422/67, in view of the fact that you omitted to declare your 2015 income in your declaration of 7 January 2016 whilst having opted to receive the transitional allowance. As you know, the obligation to declare all professional earnings every year, or whenever there is a change in the financial situation, continues to apply to former Commissioners benefitting from the transitional allowance.

The consultation of the Ad Hoc Ethical Committee was done in order to allow the Commission to benefit from an independent expert opinion before taking position on possible further action by the Commission.

In this context, the President has asked me to transmit to you the opinion of the Ad Hoc Ethical Committee.

I would like to give you the opportunity to submit any comments you might have on this opinion as well as on any circumstances surrounding the declaration of income you signed on 7 January 2016.

Ms Neelie Kroes

(sent by email)

I would appreciate receiving your answer by Friday 9 December 16.00 hrs.

Please note also that the conclusions of the decision the Commission might take on those issues will be made public through the minutes of the College.

Yours sincerely,

Alexander Italiancr

Enclosure: Report from the Ad Hoc Ethical Committee

Ad Hoc Ethical Committee

Subject: Two requests for an opinion concerning former Vice-President Kroes.

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Christiaan Timmermans

Brussels, 16 November 2016

Dagmar Roth-Behrendt

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EUROPEAN COMMISSION
Secretariat-General

The Secretary-General

Brussels, 06 DEC. 2016

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Yours sincerely,



Alexander Italianer

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Ad Hoc Ethical Committee

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2. With regard to the first case the Committee has received a copy of the mail from Mrs Kroes of 16 September 2016 addressed to President Juncker informing him of the fact that her Declaration of Interests from 2004 did not mention her directorship of a company named Mint Holding Limited (hereafter: MHL) and that she had continued to hold this position during part of her tenure as Commissioner. The Committee also received copies of the mail exchange of Mrs. Kroes' lawyer with newspapers investigating that situation as well as of the correspondence between President Juncker and Mrs. Kroes purporting to clarify the situation. The Committee also received a copy of the information note of the President (Barroso) and Mrs. Kroes concerning the Identification of actual or potential conflict of interest concerning the Commissioner for Competition (OJ1681-point 7 of 30. Nov 2004). Finally, the Committee received a note of the Secretary General (Ares(2016)5817893) transmitting a further mail of Mrs. Kroes of 7 Oct

- 2016 with complementary information on her directorship of the company MHL she had received from Schillings International LLP on 6 October 2016.
3. In her correspondence with President Juncker Mrs. Kroes explains that the company MHL was set up and registered in the Bahamas in July 2000 for one specific investment project only. That project having been abandoned in August 2000 *de facto* she has never acted as a director of that company. To her knowledge already in 2000 instructions were given to liquidate the company. However, because of a clerical error this did not happen. Therefore she continued to be registered as a director of MHL until the correction of this error in 2009 without having being aware of that. She adds that she has never received any remuneration from MHL. Mrs. Kroes considers that it was not necessary to mention any function she was recruited for but never actually fulfilled.
 4. The Committee is invited to give its opinion on a possible violation of the Code of Conduct in circumstances in which (i) a Commissioner does not declare as prior activity an activity that *de facto* neither has been executed nor remunerated and (ii) such an activity, even if *de facto* neither executed nor remunerated, has at least formally continued to exist during a part of the mandate as Commissioner.
 5. With regard to the second case the Committee received a copy of Regulation 422/67 CEE (hereafter the Regulation) determining the emoluments, in particular of Members of the Commission, and of the letter of PMO of 12 September 2014 informing Mrs. Kroes about her entitlement to a transitional allowance and the conditions linked to it as foreseen by Article 7 of the Regulation. The Committee also received a copy of the Declaration signed by Mrs. Kroes in October 2014 for obtaining the transitional allowance and of two Annual Declarations requesting in particular information about income received elsewhere for professional activities. Finally, the Committee received copy of a mail (Ares (2016)5511405-22/09/2016) sent by Mrs. Kroes' tax advisor to the PMO listing the monthly income from professional services in the period from November 2014 to September 2016 including a projection to year end 2016. The Committee did not receive copies of the most recent tax assessments of Mrs. Kroes as requested by each Annual Declaration.

6. According to Article 7 of the Regulation a former member of the Commission is entitled to receive a transitional allowance during 3 years after the end of his or her term in office. In case such a transitional allowance together with other income from a new activity is higher than the remuneration he or she has received while in office it will be reduced by the exceeding amount. For the purpose of calculating the actual entitlement the beneficiaries have to mention in an Annual Declaration all income received from professional activities in the preceding year to the PMO. They also have to submit their most recent tax assessment.
7. Since the end of her mandate as Member of the Commission Mrs. Kroes is receiving such a transitional allowance. She has signed two Annual Declarations about revenues earned elsewhere. In her declaration for the year 2015 she did not mention any revenues for that year at all. However on 20 September 2016 Mrs. Kroes contacted the PMO via her tax advisor submitting a Table showing her revenues for the period from November 2014 until September 2016 as well as a preview until year end of 2016. This communication shows that Mrs. Kroes has in fact earned income in 2015, although she has declared the contrary in her Declaration of January 2016. The Table indicates substantially higher revenues for 2016. Article 7(4) of the Regulation stipulates that any change in the income situation of the beneficiary must be communicated. According to the competent services of the Commission (PMO) Mrs. Kroes has violated the Regulation by not stating her revenues in the year 2015 in her Declaration signed in January 2016 while opting for the transitional allowance. By this infringement she also violated art 245 TFUE. The opinion of the Committee is requested on the seriousness of a presumed infringement of art.245 under the described circumstances.

Assessment

8. In the first case concerning Mrs. Kroes the Committee is asked two questions about the interpretation of the Code of Conduct. The first question relates to the scope of application of par. 1.1. together with par. 1.5. and Annex 1 (Declaration of Interests) of the Code of Conduct. Do these provisions of the Code oblige a Commissioner-designate to also

mention in his or her Declaration of Interests a post held as non-executive director of a company only during a short period of time when that function has not at all been exercised and no remuneration has been received. In other words need only activities effectively exercised and remunerated be mentioned? The Code does not provide for any exception excluding non-remunerated activities from the obligation to report previous activities in the Declaration of Interests. The text of the Code and the Model Declaration of Annex 1 is somewhat ambiguous about the question whether only activities, which are effectively exercised, must be included in the Declaration. Indeed, the English version of par. 1.1 of the Code refers to "activities engaged in", the Model Declaration to "Posts held", the French version to "activités exercées" and "Fonctions exercées" respectively. However, when taking into account the purpose of the Declaration there exist good reasons to mention also functions held but not exercised. The Declaration of Interests intends to reveal possible conflicts of interest which could arise for a Commissioner once in office when in the exercise of that office he or she is confronted with policy issues with regard to which the interests of the company in which that function has been held, are directly involved. In such circumstances there exist a risk for the independence of the Commissioner being affected and his or her judgment biased. That risk cannot be excluded even with regard to a company in which a position as non-executive director has been held but not effectively exercised. The transparency ensured by the Declaration should make the Commissioner vigilant about those risks and allow at the same time an outside control. For these reasons the Committee considers that par. 1.1. together with par. 1.5. and Annex 1. (Declarations of Interests) of the Code of Conduct should be interpreted as also covering a function held but not exercised under circumstances such as those in the case in question.

9. The second question concerns the interpretation of par. 1.1., first sentence, of the Code of Conduct: Commissioners may not engage in any other professional activity, whether gainful or not. This provision repeats the prohibition already imposed by the Treaty itself (Article 245 (2)), according to which the Members of the Commission may not engage in any other occupation, whether gainful or not. The Committee considers that the risks

of possible conflicts of interest as just mentioned are still more manifest with regard to functions held during the term of office of a Commissioner, also when the function is not effectively exercised. Whether the Commissioner is still aware or not of holding the function, should be irrelevant for the prohibition to apply. The prohibition as imposed by the Code and the Treaty itself is unconditional and should be strictly applied. Another question is whether in a given case a Commissioner may be blamed for having breached the prohibition. That will not be so if, as seems to have been the situation in the case of Mrs. Kroes, the Commissioner has not been and could not reasonably have been aware of still holding a function not effectively exercised.

10. The second case regarding Mrs. Kroes concerns the presumed breach of Article 7 of the Regulation, more particularly the seriousness of that presumed breach. The Committee is asked to give its opinion on the question of the assessment of that seriousness taking into account the circumstances of the case. This question arises in order for the Commission to assess the case for further action, whether of a political or legal nature.
11. According to the general rule stipulated by Article 245 (2) TFEU the Members of the Commission shall, both during and after their term of office, respect the obligations arising from their duties. The present case more particularly concerns the obligation imposed on former Commissioners when receiving the transitional allowance, to respect the conditions prescribed by Article 7 (4) of the Regulation. Thus, the Committee is not being questioned about the duty of Commissioners to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits. The question raised concerns the respect of obligations, which have not been elaborated by the Code of Conduct but have been imposed by separate legislation. Presuming that the conditions imposed by the Regulation have been violated, the Committee is requested to pronounce itself on the seriousness of such violation. The Committee considers that such a question, which requires to assess the seriousness of a violation taking into account the circumstances of the case, so as to enable appreciating the

proportionality of a possible sanction to be proposed, falls outside its remit as defined by the Code of Conduct and the Commission Decision establishing the ad hoc ethical committee foreseen by the Code of Conduct for Commissioners.

Opinion

The Ad Hoc Ethical Committee is of the opinion that:

- par.1.1. together with par. 1.5. and Annex 1. (Declaration of Interests) of the Code of Conduct should be interpreted as also covering a function held but not exercised under circumstances such as those in the case in question;
- par. 1.1., first sentence, of the Code of Conduct prohibiting Commissioners to engage in any other professional activity, whether gainful or not, should be interpreted as also applying to a function held during the term of office of a Commissioner, which has been neither effectively exercised nor remunerated, and irrespective of whether the Commissioner has been aware or not of holding that function. However, the Commissioner cannot be blamed for the violation of the prohibition if he or she has not been and could not reasonably have been aware of still holding a function not effectively exercised.
- the question raised in the second case does not fall within the remit of the Committee as defined by the Code of Conduct and the Commission Decision establishing the ad hoc ethical committee foreseen by the Code of Conduct for Commissioners.

Christiaan Timmermans

Brussels, 16 November 2016

Dagmar Roth-Behrendt

Heinz Zourek

DOCUMENT 10

Alexander Italianer
Secretary-General of the European Commission
Rue de la Loi 200
B-1049 Brussels

Amsterdam, 9 December 2016

Dear Mr. Secretary-General,

Concerning: my directorship of Mint Holdings Limited
Your reference: Ares sv(2016)6012473

With reference to your letter of 6 December 2016 I would like to comment on the findings of the Ad Hoc Ethical Committee.

The Ad Hoc Ethical Committee was invited to give its opinion on the existence of a possible violation of the Code of Conduct for Commissioners, which it gave on 16 November 2016. Regarding my registration as director of Mint Holdings, the Committee gave its opinion on the issues that:

- i) I did not declare as prior activity any activity that *de facto* neither has been executed nor remunerated, and
- ii) the activity, *de facto* never executed nor remunerated, has at least formally continued to exist during a part of my mandate as Commissioner.

Ad i) declaration of interests

The Committee is of the opinion that the obligation for Commissioners to declare prior activities should be interpreted as also covering my function as director of Mint Holdings, which I held but did not exercise. The Committee reaches this conclusion by

considering that, even though the text of the Code of Conduct and the Model Declaration of Annex 1 are ambiguous about the question whether only activities which are effectively exercised must be declared, there exist good reasons to mention those activities, taking into account the purpose of the declaration of interests. The purpose of the declaration of interests is to reveal possible conflicts of interest arising when a Commissioner is confronted with policy issues in which the interest of the company in which a function has been held are directly involved. Such conflicts of interest create the risk that the independence of the Commissioner is affected and his or her judgement biased. According to the Committee, that risk cannot be excluded even with regard to a company in which a position as non-executive director has been held but not effectively exercised.

I agree with the Committee on the points that the Code of Conduct and the Model Declaration of Annex 1 are ambiguous about the question whether only activities are effectively exercised must be declared, and that activities should be declared nevertheless when, taking into account the purpose of the declaration of interest, there exist good reasons to do so. However, I disagree with the Committee's conclusion that my function as director of Mint Holdings is covered by this obligation. In 2000, Mint Holdings was a so-called *special purpose vehicle* incorporated for the purpose of investigating the possibility of raising funds for the acquisition of certain assets from Enron. At the time when I was recruited, the negotiations were at an advanced stage and my function would be to advise on the company strategy after the assets were acquired. The negotiations were subsequently abandoned and Mint Holdings never became operational. I have never been involved in any negotiations, never attended a board meeting, and did not receive any form of compensation. I therefore, contrary to the Committee's assumption, never assumed the position for which I was recruited. A parallel can be drawn between my situation and that a woman who is engaged to be married but whose marriage is cancelled. As you could not reasonably impose on her an obligation to declare that she has been married, you could not require of me to declare that I have been a director of Mint Holdings.

Furthermore, I was and could reasonably be under the impression that the company had been liquidated in 2000, which is why I, when in office, could never have been confronted with policy issues in which the interests of Mint Holdings were directly involved. A liquidated company does not have interests. Therefore, taking into account the purpose of the declaration of interest, at the time when I assumed office as Commissioner, there did not exist good reasons for me to be obligated to declare my directorship of Mint Holdings.

Ad ii) holding a function during my mandate as Commissioner

The Committee is of the opinion that the Code of Conduct prohibits Commissioners to engage in any other professional activity, even one which is neither effectively exercised nor remunerated, irrespective of whether the Commissioner has been aware or not of holding that function, but that I cannot be blamed for this violation because I was not and could not reasonably have been aware of still holding the function of director of Mint Holdings.

I could not agree more.

Sincerely yours,

Neelie Kroes



COMMISSION EUROPÉENNE

SECRÉTARIAT GÉNÉRAL

Bruxelles, le 21 décembre 2016

C(2016) 8715

OJ 2194

**DÉCISION DE LA COMMISSION CONCERNANT LES DÉCLARATIONS
D'INTÉRÊTS ET DE REVENUS D'UN ANCIEN MEMBRE DE LA COMMISSION**

Communication de M. le PRESIDENT

Cette question est prévue à l'ordre du jour de la 2194^{ème} réunion de la Commission le 21 décembre 2016.

Destinataires : Membres de la Commission

COMMISSION DECISION

Declaration of interests and declaration of income of a Member of the Commission

1. Declaration of Interests foreseen in the Code of Conduct for Commissioners

1. According to Article 245, second paragraph, TFEU "*the Members of the Commission may not, during their term of office, engage in any other occupation, whether gainful or not*".
2. The Code of Conduct for Commissioners recalls the obligations falling on Members of the Commission and contains a number of provisions aimed at implementing them (Sections 1.1 and 1.5). In particular, the Code requires Commissioners-designate to fill in and make available before the hearing by the European Parliament a Declaration of Interests, which will need to be revised during the Commissioner's term of office if the information changes, and at least every year. The Declaration requires, *inter alia*, to indicate any post held over the last 10 years in the governing, supervisory and advisory organs of companies and other bodies devoted to commercial or economic activities (Annex 1 to the Code).
3. On 16 September 2016 Ms Kroes wrote to the President to inform him that the newspaper "*The Guardian*" was going to publish an article reporting that she had been a Director of Mint Holdings Ltd since 2000, and that this activity had not been included in the Declaration of Interests which she had made, as Member of the Commission, in 2004.
4. In this message, and in her letter of 26 September responding to the President's request for clarifications sent on 22 September, Ms Kroes explained that Mint Holdings Ltd had been created in 2000 (and registered in the Bahamas), with a view to acquiring certain assets of Enron. Negotiations to this effect had failed, and the plan was abandoned in the first week of August 2000. Ms Kroes had been hired as a Director of Mint Holdings Ltd on 4 July 2000, in case the negotiations would have been successful. As this was not the case, she *de facto* never carried out this activity.
5. Ms Kroes indicated also that in 2000 some lawyers had been instructed to wind up the firm and to remove it from the register. Only recently - at a date which has not been specified -, Ms Kroes discovered that this had not been done due to a clerical error and that she had continued to feature in the register as a Director until 2009. She declared that she was not aware that her name continued to feature as Director of Mint Holdings Limited and that the administrative error had been corrected in 2009, and she added that she never received any remuneration from Mint Holdings Ltd.
6. Ms Kroes nevertheless apologised for not having included this directorship in her Declaration of Interests of 2004 (nor at any other time ever since) and stated that she was unaware of the situation of the register. She also added that, in her view, she did not have to declare an activity which she had never carried out.
7. On the basis of the available information, even if her listing in the register after August 2000 was due to an administrative error of which she was unaware, it still remained to be assessed whether she should have declared this "activity held" during July and August 2000, considering that she did not effectively perform it nor receive any remuneration from Mint Holdings.

8. In view of the above and the documents provided by Ms Kroes, on 3 October 2016 the Ad Hoc Ethical Committee was invited to give its opinion on the existence of a possible violation of the Code of Conduct for Commissioners.
9. On 16 November 2016 the Ad Hoc Ethical Committee issued its Opinion.
10. The Committee first examined the question of the scope of application of the obligation to present a Declaration of Interests under the Code of Conduct. It concluded that the Code does not provide for any exception which would exclude non-remunerated activities from the obligation to report previous activities in the Declaration of Interests. It argued that, whilst the text of the Code is somewhat ambiguous, in particular when comparing the English and French versions, taking into account the purpose of the Declaration, there exist good reasons to mention functions held but not exercised. The Committee added that the risk of a conflict of interest cannot be excluded even with regard to a company in which a position as non-executive Director has been held but not effectively exercised. The transparency ensured by the Declaration should make the Commissioner vigilant about that risk and allow at the same time an outside control.
11. For these reasons, the Committee concluded on this point that Sections 1.1 and 1.5 and Annex 1 of the Code of Conduct should be interpreted as also covering a function held but not exercised under circumstances such as those in the case in question.
12. The Committee also examined the question how the prohibition laid down in Article 245 TFEU not to engage in any other professional activity should be interpreted. It considered that the risk of possible conflicts of interest is more manifest with regard to functions held during the term of office of a Commissioner, also when the function is not effectively exercised. It concluded that the prohibition imposed by the Treaty and the Code of Conduct is unconditional and should be strictly applied.
13. However, the Committee added that another question is whether in a given case a Commissioner may be blamed for having breached the prohibition, and took the view that this will not be so if, as seems to have been the situation in the case of Ms. Kroes, the Commissioner has not been and could not reasonably have been aware of still holding a function not effectively exercised.
14. On 6 December 2016 the Secretary-General of the Commission transmitted the Opinion of the Ad Hoc Ethical Committee to Ms Kroes in order to give her the opportunity to submit any comments she might have.
15. Ms Kroes replied by letter of 9 December. As regards the first point of the Opinion, Ms Kroes reiterated that, since the negotiations for the purchase of certain assets of Enron were abandoned and Mint Holdings never became operational, she was never involved in any negotiations, never attended a board meeting and did not receive any form of compensation. Therefore, contrary to what in her view was the Committee's assumption, she never assumed the position for which she was recruited. She added that she was under the impression that the company had been liquidated in 2000, which is why she could have never been confronted with a conflict of interests with Mint Holdings. For that reason, she considered that the obligation to declare this Directorship when she assumed office did not apply. As regards the second point of the Opinion, she agreed and confirmed that she was not aware of still holding the function.

2. Transitional allowance – declaration of income

16. Pursuant to article 7 of Regulation No 422/67 of the Council determining the emoluments of the President and Members of the Commission and of the President, Judges, Advocates-General and Registrar of the Court of Justice, a former Member of the Commission is entitled to a monthly transitional allowance, during the three years after the end of his or her term of office. In the event that the combined total of the transitional allowance and income earned from a new professional activity exceeds the amount paid whilst in office, the excess is deducted from the transitional allowance.
17. With a view to calculating the transitional allowance, Article 7(4) of Regulation 422/67 provides that former Commissioners, at the end of their term of office and again every 1 of January, or whenever there is a change in their financial situation, have to file a declaration of all of their professional earnings, except for those which represent reimbursement of expenses. For this purpose, the Paymaster's Office (PMO) sends them, once a year, a form to fill in.
18. Ms Kroes had been receiving the transitional allowance since November 2014. At the end of her term of office, she declared that she did not yet know whether she would carry out a professional activity in the future. In her declaration of January 2015, she declared no income for 2014 and in her declaration of January 2016, she declared no income for 2015.
19. However, on 20 September 2016, Ms Kroes contacted the PMO and communicated, through her tax adviser, a table setting out her 2015 income as well as her income for 2016. The information provided shows that she did receive income in 2015, while the declaration signed in January 2016 did not mention any income. Furthermore,
Article 7(4) of Regulation 422/67 requires any changes in the financial situation to be communicated to the PMO,
20. On the basis of the facts described above, on 3 October 2016 the Commission services, considering that Ms Kroes could possibly be in breach of article 245 TFEU in conjunction with Article 7(4) of Regulation 422/67, sought the opinion of the Ad Hoc Ethical Committee as regards the seriousness of the possible breach of Article 245, taking account of the circumstances described above.
21. In its Opinion of 16 November 2016, mentioned above, the Committee considered that the question raised concerned the respect of obligations which have not been elaborated by the Code of Conduct, but have been imposed by separate legislation and concluded that it fell outside its remit.
22. Having omitted to declare her 2015 income in her declaration to PMO at the beginning of 2016 whilst having accepted to receive the transitional allowance, Ms. Kroes was in breach of Article 7 (4) of Regulation 422/67, in the knowledge that she continues to be bound by this obligation as a former Commissioner. Therefore, it must be considered that Mrs. Kroes also breached Article 245 TFEU.
23. In the meantime, after further contacts between the competent service of the Commission (the PMO) and Ms Kroes and her tax adviser,

24. Having been given the possibility to explain the circumstances surrounding her declaration of income of January 2016 in the letter from the Secretary-General mentioned above, Ms Kroes replied by letter of 9 December

3. Conclusion

The Commission is invited to:

- take note of Ms Kroes' apology in her letters of 16 and 26 September 2016, concerning the non-inclusion of her directorship of Mint Holdings Ltd since 2000 in her declaration of interests of 2004;
- take note of the Ad Hoc Ethical Committee's Opinion of 16 November 2016 that the fact of continuing to feature in the register is a violation of Article 245 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;
- take note of the letters of Ms Kroes of 9 December 2016;
- conclude, first, that Ms Kroes, by not including in her Declaration of interests of 2004 the fact of having held a post as Director of Mint Holdings Limited since 4 July 2000, even if this activity was not effectively exercised nor paid for, and irrespective of the fact that the Commissioner was unaware that she continued to feature as Director of the company until 2009, was in breach of the Code of Conduct for Commissioners;
- conclude, second, that Ms Kroes, by having omitted to declare her 2015 income in her declaration at the beginning of 2016 whilst having accepted to receive the transitional allowance, did not act with the necessary diligence and was in breach of Article 7(4) of Regulation 422/67 of the Council determining the emoluments of the President and Members of the Commission and of the President, Judges, Advocates-General and Registrar of the Court of Justice, in conjunction with Article 245 TFEU;
- take note of the fact that it was Ms Kroes herself who informed the Paymaster's Office, albeit belatedly, of the correct figures of her financial situation in 2015 and 2016;
- take note that the Commission, on the basis of the information provided belatedly by Ms Kroes, recovered immediately the money and thus prevented any financial loss for the budget of the Union;
- conclude, third, that in view of the circumstances including the fact that Ms Kroes never assumed the position for which she was recruited and the absence of financial loss for the budget, the Commission does not have sufficient elements nor legal grounds to seize the Court regarding the abovementioned breaches of obligations and seek a financial sanction in accordance with Article 245 TFEU;

- conclude, fourth, that the lack of diligence shown by Ms Kroes for having omitted to declare her 2015 income in her declaration of professional earnings at the beginning of 2016 whilst having accepted to receive the transitional allowance, conduct which is in breach of Article 7(4) of Regulation 422/67 read in conjunction with Article 245 TFEU, deserves a reprimand which is hereby expressed by the Commission;
- make the conclusions of this decision public through the minutes of the meeting in order to clarify facts which have been widely reported by the press and give a full account of the Commission's position on the case;
- ask the Secretary-General to inform Ms Kroes of this decision.