

José Manuel Barroso
President of the European Commission

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Dear President,

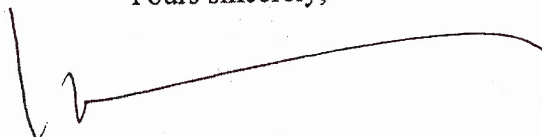
Thank you for your letter of 24 February, in which you ask me to provide Parliament with detailed information concerning the rules and procedures set up within the Commission, in order to deal with possible conflicts of interests.

As you acknowledge yourself, I already addressed this issue during my intervention before the plenary on 17 November 2004. I am, however, ready to provide Parliament with further details, in order to clarify this important issue. To this end, I am pleased to enclose an explanation of the general and specific rules, which have been decided by the Commission in this field and which are currently implemented. I am firmly convinced that these rules allow each Commissioner to fully respect the general obligation of independence which is enshrined in the Treaty. In the light of the experience, I will make any further changes that prove necessary.

As well as asking to be informed of the existing rules, Parliament also wishes to be informed directly of any future decision of re-allocation of an individual case. I am willing to respond in a positive way to this request. Whenever I decide to re-allocate a case, due to a conflict of interest, during the term of office of this Commission, I commit myself to inform you, immediately and in writing, of the decision taken. This commitment could be included in the revised text of the Framework Agreement, which regulates the relations between our Institutions.

I sincerely hope that this commitment, together with the full explanations provided in the annex, will pave the way for a successful conclusion of our negotiations for the revision of the Framework Agreement. I am looking forward to discussing the outstanding issues during the Conference of Presidents tomorrow, which I will attend together with the Vice-President in charge of inter-institutional relations.

Yours sincerely,



José Manuel BARROSO

Mr J. Borrell Fontelles
President of the European Parliament

**GENERAL AND SPECIFIC RULES SET UP IN ORDER TO PREVENT AND DEAL WITH POTENTIAL
CASES OF CONFLICT OF INTERESTS**

1. The general rules established in the Code of Conduct

Under Article 213 of the Treaty establishing the European Community, all Members of the Commission must, in the general interest of the Community, be completely independent in the performance of their duties and refrain from any action incompatible with those duties. In the performance of their duties they must neither seek, nor take instructions, from any government or from any other body.

Ruling out any risk of conflicts of interests is therefore a pre-condition, which helps to ensure the independence of the Commissioners. To this effect, the Commission has already taken a number of measures, both of a general and a specific nature.

Under the Code of Conduct, adopted on 24 November 2004, all Commissioners are obliged to declare any financial interest or asset which may create a conflict of interests in the performance of their duties; this declaration shall also include any holdings by the Commissioner's spouse which may entail a conflict of interest.

The Code of Conduct addresses, in detail, the categories of financial interests which must be declared. This covers any form of individual holding in company capital (not exclusively shares, but also any other form of holding such as convertible bonds or investment certificates). Conversely, units in unit trusts, which do not constitute a direct interest in company capital, do not have to be declared.

All Commissioners must also declare any property owned either directly or through a real estate company, with the exception of homes reserved for the exclusive use of the owner or his/her family; other property whose possession could create a conflict of interests, especially from a tax point of view, must also be declared. Furthermore, it is worth underlining that Commissioners are also under the obligation to declare the professional activities of their spouses, which include the nature of the activity, the title or the position held and, where relevant, the name of the employer.

Finally, the Code of Conduct imposes on all Commissioners specific rules concerning the activities that they may exercise outside their role of Members of the Commission.

All these information shall be provided by means of a declaration of interests, which must be revised during the term of office of a Commissioner, whenever the information provided needs to be updated. Before making them public, the declarations are scrutinised under the authority of the Commission President, with due regard to the Commissioner's area of responsibility.

While the obligation to present the declaration of interests is valid only from the moment of the entry into force of the Commission, President Barroso requested all the Commissioners-designate to present their declarations of interests before the start of the hearings' process, in order to provide Parliament with all relevant information at an early stage. All declarations of interests are public and are available on the web site of the European Commission.

2. Specific rules relating to the competition portfolio

The rules explained above are applicable to all Commissioners. They are particularly sensitive for the Commissioner responsible for Competition policy, since the principal characteristic of the duties of this Commissioner is adopting or proposing to the College individual decisions which directly affect specific undertakings. The combination of those specific duties of the Commissioner responsible for Competition policy and the nature and scope of the former activities of Mrs Kroes gives rise to a particular sensitivity in so far as potential conflicts of interest may ensue.

Against this background, the Commission has adopted specific internal rules to obviate any potential risk of a conflict of interest.

2.1 List of companies

Mrs Kroes has disclosed the full list of companies which, for the last ten years, she served on their supervisory board, governing board and advisory board, or as advisor. This list is public and is available on the web site of the Commissioner.

2.2 Internal arrangements for the identification of actual or potential conflicts of interest

On 1 December 2004, the College decided the internal arrangements for the identification of actual or potential conflicts of interests concerning the specific area of competition policy. These internal arrangements set out the criteria which are employed for identifying a potential or actual conflict of interests, the procedure applied, and the responsibilities for full enforcement of the internal rules.

2.3 Criteria for identifying conflicts of interests

Three categories of conflict of interests have been identified and for each of them the Commissioner responsible for Competition policy undertook the commitment not to participate in the investigation, negotiation, discussion or decision-making of specific cases:

- throughout her term of office concerning any particular matter which relates to factual circumstances involving any specific undertaking enumerated in the list, during the time that the Commissioner served on its supervisory board, governing board, advisory board, board, or as its adviser ("Category 1");
- for a period of one year from 22 November 2004, on any particular matter which relates to factual circumstances involving any specific undertaking enumerated in the list, although at the time of the facts concerned she was not serving on its supervisory board, governing board, advisory board, board, or as its adviser ("Category 2").
- these commitments are without prejudice to the general obligation, applying throughout her term of office, to inform the President immediately of any other situation giving rise to any risk of potential conflict of interest ("Category 3").

Furthermore, the Commissioner committed herself not to engage into any business activity following the end of her term as Competition Commissioner.

2.3 The internal procedure

At the beginning of any investigation carried out by the Directorate-general for Competition, the Director-General is responsible for assessing the facts and determining whether an investigation relates to one of the categories referred to above. To this effect, and in addition to the general instruction on ethics and integrity, the Director-General for Competition has taken the necessary arrangements within his services in order to instruct all staff about the procedures to be implemented for identification of cases of actual or potential conflict of interests to be identified as from the very early stages of the investigation (leniency application, complaint, decision to launch an ex-officio investigation, notifications).

Should the Competition Directorate-general identify an actual or potential case of conflict of interests, in agreement with the Legal Service, the Director-General shall, without delay, address a note containing his assessment to the President, Mrs Kroes and the Secretary General of the Commission.

2.4 Re-allocation of a dossier

For cases falling under Category 1, the decision of reallocating a dossier is automatic and is taken by the President. For Category 2 or 3 situations, the President will decide whether the identified potential conflict of interests justifies a reallocation of the case.

These decisions by the President are directly linked with his exclusive responsibility to organise the work of the Commission and to allocate responsibilities among its Members, as foreseen by Article 217 of the Treaty establishing the European Community.

A case can be reallocated to another Commissioner or directly to the President. The usual rules of procedures for the adoption of a decision of the Commission will apply; the College will always be informed of decisions on reallocation of cases.

From that moment on, all acts that would normally have required the information of the Commissioner responsible for Competition policy, or request an orientation or a decision from her, shall be referred to the President of the Commission, or to the Commissioner to whom the case has been reallocated. The Commissioner in charge of Competition policy shall not be kept informed of the processing of the case and shall abstain from intervening in whatever form, in the handling of the case. This includes in particular all formal acts for which the Commissioner responsible for Competition is empowered to act by the College.

The Commissioner responsible for Competition policy will abstain from participating in the vote or the discussion within the College regarding any Commission decision taken by the College on any of the cases referred to above (usually final Commission decisions).