



Martin Schulz
President
European Parliament
60 Rue Wiertz
1047 Brussels
Brussels, 13 July 2016

Subject: Request for investigation into potential case of conflict of interest

Dear President Schulz,

Our respective organisations, Friends of the Earth Europe, LobbyControl and Corporate Europe Observatory, are writing to express our concerns about a case of potential conflicts of interest concerning a Member of the European Parliament (MEP) and to ask you to initiate an investigation.

The case relates to Angelika Niebler. An MEP since 1999, she has combined her work as an MEP with her career as a lawyer with various law firms. She has worked in law firms that were (at least part of the time) not registered in the EU transparency register and that are involved in lobbying activities at the EU level. It is our opinion that Angelika Niebler's additional paid work in the legal sector places her in a position of a potential conflict of interest and also represents a lack of due respect for Parliament's reputation.

Background In her Declaration of Financial Interests, submitted in July 2014, Angelika Niebler registered her activity as 'of counsel' for the IT and media department of the law firm Bird & Bird (with a monthly salary of €1000 to €5000).¹ Bird & Bird is currently not registered in the EU's transparency register.² The firm had been registered until 28 April 2015, when the register's secretariat removed its entry due to the failure to update it.³ According to Lobbyfacts, Bird & Bird had declared lobby costs of €10 million for 2013.⁴

Ms Niebler left Bird & Bird in the summer of 2015 to join Gibson, Dunn & Crutcher.⁵ In her Declaration of Financial Interests submitted on 31 August 2015 and updated on 20 January 2016⁶,

¹ http://www.europarl.europa.eu/mepdif/4289_DFI_rev0_DE.pdf

² <http://www.twobirds.com/en/regions/western-europe/belgium>

³ <http://www.transparencyinternational.eu/2015/04/gazprom-airfrance-twitter-etc-1552-organisations-deleted-from-eu-lobby-register/>

⁴ <http://archive.lobbyfacts.eu/news/29-01-2015/finance-industry-uks-biggest-lobbyist-brussels>

⁵ <http://www.juve.de/nachrichten/namenundnachrichten/2015/09/muenchen-europa-abgeordnete-verstaerkt-medien-und-it-praxis-von-gibson-dunn>

⁶ http://www.europarl.europa.eu/mepdif/4289_DFI_LEG8_rev2_DE.pdf

Ms Niebler declared a monthly income of €1000 to €5000 from her work ‘as counsel’ for the law firm.⁷ Ms Niebler joined Gibson, Dunn & Crutcher to support the work of ‘the Media, Entertainment & Technology Group as well as the Privacy, Cybersecurity and Consumer Protection Group’. Gibson, Dunn & Crutcher is a large international law firm with offices around the globe. While Ms Niebler joined the Munich office, Gibson, Dunn & Crutcher also operates an office in Brussels, which focuses on competition law and “provide[s] expert advice on all aspects of European Union and EU national competition law, *including competition advocacy*” [emphasis added].⁸ At the time of writing, Gibson, Dunn & Crutcher is not registered in the EU’s transparency register. It is however registered in the US transparency register where it declares \$150,000 lobbying income for the year 2015.⁹ When asked about whether its activities in Brussels included lobbying, the respondent – Gibson, Dunn & Crutcher’s Brussels founding partner – was not able to confirm whether or not the law firm was lobbying EU institutions.¹⁰ But he conceded that “the story varies with each individual partner, depending on the nature of their business (...)”.

The firm’s Brussels office has been using the revolving door to recruit its staff.¹¹ Indeed, nine of its current eighteen registered lawyers were previously working for the European Commission, including seven from DG Competition.¹² Moreover, the firm is an example of how unregistered lobbyists can continue to have meetings with Commission officials: an access to documents request revealed that Gibson, Dunn & Crutcher held a meeting with the Directorate-General for Financial Markets in January 2015 on Iceland’s capital controls.¹³

In the announcement of Ms Niebler’s move to Gibson, Dunn & Crutcher, her position as a Member of the European Parliament is highlighted in the title of the press release (“European Parliament Member Angelika Niebler joins Gibson Dunn in Munich”). Michael Walther the partner leading the law firm’s Munich office is quoted saying “Angelika has a profound legal background and knowledge of the European dimension of intellectual property and data privacy questions that matter to our clients, and we are looking forward to benefit exceptionally from her expertise, insights and experience.” The press release says that she will “provide legal advice on European and international law, in particular for companies facing critical privacy and technology issues.”¹⁴ The quotes openly advertise Ms Niebler’s position as an MEP as a benefit for Gibson, Dunn & Crutcher. Since Ms Niebler has been a Member of the European Parliament since 1999, her “expertise, insight and experience” and “knowledge of the European dimension of intellectual property and data privacy questions” must, at least to a considerable degree, refer to her position as an MEP. Openly advertising that position as a benefit to Gibson, Dunn & Crutcher and/or to its clients raises the question of whether her side job has created a potential conflict of interest. This is firstly because she might be providing paid advice to companies that are involved in lobbying EU institutions (including the Parliament itself), and secondly because she might be expected to serve the interest of clients of Gibson, Dunn & Crutcher in her role as an MEP.

Ms Niebler is currently a member of the Committee on Industry, Research and Energy and the Committee on Women’s Rights and Gender Relations, as well as substitute of the Legal Affairs Committee and the Committee of Inquiry into Emission Measurement in the Automotive Sector.

⁷ The position of an “of counsel” describes a lawyer with a “close, continuing, and personal” with a particular law firm. <http://www.mass.gov/obcbbbo/ofcounsel.htm>

⁸ <http://www.gibsondunn.com/Offices/Brussels>

⁹ <http://disclosures.house.gov/ld/ldsearch.aspx>

¹⁰ Email from Gibson, Dunn & Crutcher to LobbyControl on 11 May 2016.

¹¹ http://alter-eu.org/sites/default/files/documents/Lawfirmsstudy31052016_0.pdf

¹² <http://www.gibsondunn.com/lawyers/pages/lawyerssearch.aspx?oid=Brussels#FindLawyers>

¹³ <http://alter-eu.org/dg-fismas-lobby-meetings-corporate-bias-and-access-for-unregistered-lobbyists>

¹⁴ <http://www.gibsondunn.com/news/Pages/European-Parliament-Member-Angelika-Niebler-Joins-Gibson-Dunn-in-Munich.aspx>

As a substitute member of the Legal Affairs Committee, Ms Niebler has played a very active role in the committee's own-initiative report "on the harmonisation of certain aspects of copyright and related right in the information society" (also known as the "Reda report"), which was discussed in the Parliament in the first half of 2015 covering an area of work that seems relevant for (clients of) both Bird & Bird, and Gibson, Dunn & Crutcher. Overall, Ms Niebler submitted 25 amendments to the Reda report, the vast majority of which aimed to strengthen or protect copyright provisions. Particularly controversial was an amendment she introduced in the plenary, after a compromise had been reached in the legal affairs committee.¹⁵ If her intervention at the plenary was linked to her clients' and/or firm's interest and she has not disclosed these links, she could be in breach of the code of conduct.¹⁶

For all those reasons, we call on you to:

- Investigate the above in order to clarify the situation of the member and whether she is acting in full compliance with the provisions of the code of conduct. Ms Niebler should be asked to clarify the nature of her activities as a lawyer, the names and interests of her clients, and what overlap exists between their interests and her work as an MEP. It should be investigated whether she has violated article 1, which states that an MEP should act solely in the public interest; article 2, which says that MEPs should not receive any direct or indirect financial benefit for influencing legislation; and article 3, which states that an MEP should disclose any actual or potential conflict of interest in relation to the matter under consideration, if it is not evident from the declaration of interest. At least in her intervention in the plenary debate on the Reda report, we understand that Ms Niebler did not make such statement. When we asked her if she had ever declared a potential conflict of interest due to her activity as an 'of counsel' before intervening/voting in the European Parliament at committee level or in the plenary, we did not receive any response.
- Investigate if Ms Niebler observed the principle of showing 'respect for Parliament's reputation' by undertaking paid work for an organisation which appears to engage in EU lobbying while not being part of the EU transparency register. It harms the EP if its own members are even not taking the transparency register seriously.
- Ask the member to clarify the section of her declaration of interests about outside professional activities (section C) so as to provide the public with the necessary details, such as a list of the firm's clients and services that Ms Niebler provides for them, to understand the nature of these activities.

Moreover, we are asking you to:

- Ensure that all MEPs' declarations of interests are updated so that they properly reflect the nature and the details of their outside activities and interests.
- Ensure that the European Parliament remains firm in its resolve to support a legally-binding lobby transparency register so that all EU lobbyists are forced to declare their lobby spending, the issue they lobby on, and the full list of lobby clients.

We recognise that the code of conduct does not prevent MEPs from having a second job. But when MEPs put themselves in the situation of having a second job with companies which lobby the EU and where the MEP works on issues which are relevant to the second employer, it creates a conflict of interest risk, between the interests of the employer on the one hand, and the public interest as

¹⁵ <http://www.euractiv.com/sections/infosociety/copyright-meps-ditch-plans-google-tax-tourist-photo-ban-316177>

¹⁶ <http://www.gibsondunn.com/news/Pages/European-Parliament-Member-Angelika-Niebler-Joins-Gibson-Dunn-in-Munich.aspx>

represented by MEPs on the other hand. This is why we firmly believe that the code of conduct needs amending to prevent MEPs from having additional paid work with organisations that lobby the EU, in order to prevent conflicts of interest.

We look forward to your response on this important matter.

Yours sincerely,

Magda Stoczkiewicz
Friends of the Earth Europe

Olivier Hoedeman
Corporate Europe Observatory

Nina Katzemich
Lobby Control

Annex: Friends of the Earth Europe, correspondence with Ms Niebler's office

Copy: Advisory Committee on the Conduct of Members