



Wednesday 5 April 2023

Dear President Metsola,

We are writing to raise our significant concerns regarding **Dr. Prof. Angelika Niebler MEP's** outside interests and her activities on the Corporate Sustainability and Due Diligence Directive (CSDDD). In the light of Qatargate, we trust that the European Parliament will take all necessary steps to ensure that no outside interests will be allowed to influence the work of the Parliament in ways that are not compatible with the Code of Conduct. We urge you therefore to undertake an urgent investigation into our concerns as set out below and to refer these matters to the Advisory Committee on the Code of Conduct.

Prof. Dr. Angelika Niebler's outside interests and background

Prof. Dr. Angelika Niebler (a CSU member of the EPP) declares a monthly income of €1001-€5000 each month from her side-job as a member of the Board of Trustees of the TÜV SÜD Foundation.¹ According to its website, the TÜV SÜD Foundation is "one of the two owners of TÜV SÜD AG ... The majority of the Foundation's funding is derived from dividends from TÜV SÜD AG and donations from companies in the TÜV SÜD Group."² This implies that the Foundation's financial interests are closely tied to the interests of the TÜV SÜD business.

TÜV SÜD is a German-based company whose website reports that it "protects people, the environment and assets from technology-related risks".³ It is a "global provider of auditing and certification services" and it says that "we focus on helping you become more consistent, efficient and compliant – which means you bring products to market faster, avoid liabilities and boost profits."⁴

¹https://www.europarl.europa.eu/mepdif/4289_DFI_LEG9_rev4_DE.pdf

²<https://www.tuvsud.com/en-gb/themes/sustainability/our-commitment/social-commitment>

³<https://www.tuvsud.com/en/about-us/mission-and-vision>

⁴https://www.tuvsud.com/en/services/auditing-and-system-certification?intlnk_group=navigation&intlnk_target=auditing&intlnk_origin=mainnavi-services

One of the projects that TÜV SÜD certified was a dam at an iron ore mine owned by Vale near Brumadinho, in Brazil. In January 2019 the dam burst, killing at least 270 people and releasing toxic sludge into the Paraopeba River, poisoning the drinking water of thousands.⁵ Only four months earlier, the Brazilian subsidiary of TÜV SÜD had confirmed the dam's safety.

Since then five affected persons and NGOs ECCHR (the European Center for Constitutional and Human Rights) and MISEREOR have filed a criminal complaint against a TÜV SÜD employee, as well as a law infringement complaint against TÜV SÜD.⁶ According to Coopération Internationale pour le Développement et la Solidarité (CIDSE), the Munich Public Prosecutor's Office is currently conducting investigations in order to clarify the potential criminal responsibility of German actors from TÜV SÜD for the dam failure.⁷

Additionally, the Municipality of Brumadinho and six affectees have also filed a lawsuit in the Munich Regional Court against TÜV SÜD AG. This civil action seeks the payment of damages based on TÜV SÜD AG's alleged liability under Brazilian tort and environmental law.⁸

So far not a single person has yet been tried over the collapse of the Brumadinho dam.⁹ However, in January 2023 it was reported that the Brazilian Federal Court has accepted a complaint filed by the Brazilian Federal Public Ministry (MPF) against 16 people as well as the companies Vale and TÜV SÜD for the rupture of the Brumadinho dam.¹⁰ TÜV SÜD denies liability.¹¹

TÜV SÜD is registered in the EU lobby transparency register and one of the files that it says that it is active on is the "Sustainability and due diligence law". It employs a lobby consultancy firm and has one European Parliament passholder.¹²

In addition, Prof. Dr. Niebler declares a side-job at the Munich office of the US law firm Gibson, Dunn & Crutcher. For this work she currently declares receiving €1001-€5000 each month. No further information is provided by Prof. Dr. Niebler as to her clients or the topics worked on, save that she undertakes "Freelance activity (Of Counsel)".¹³

The website of Gibson, Dunn & Crutcher indicates that Prof. Dr. Niebler "is a member of the firm's Media, Entertainment and Technology and the Privacy, Cybersecurity and Data Innovation Groups. Ms. Niebler focuses on *providing legal and strategic advice on European and international law to companies with European and global interests.*"¹⁴ [emphasis added]. This clearly implies that Prof. Dr. Niebler has direct contact with corporate clients.

⁵<https://www.independent.co.uk/news/brazil-berlin-munich-minas-gerais-lawyers-b1928591.html>

⁶<https://www.ecchr.eu/en/case/the-safety-business-tuev-sueds-role-in-the-brumadinho-dam-failure-in-brazil/>

⁷<https://www.cidse.org/?event=four-years-of-impunity-after-dam-collapse-in-brumadinho>

⁸<https://www.reuters.com/article/germany-tuvsud-dam-lawsuit-idUSL8N2JV5H9>

⁹<https://www.cidse.org/?event=four-years-of-impunity-after-dam-collapse-in-brumadinho>

¹⁰<https://www.mining.com/vale-tuv-sud-and-16-people-become-defendants-for-the-brumadinho-disaster/>

¹¹<https://www.reuters.com/world/americas/germanys-tv-sd-shirking-responsibility-over-2019-brazil-dam-burst-court-hears-2021-09-28/>

¹²<https://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=433521917360-12>

¹³https://www.europarl.europa.eu/mepdif/4289_DFI_LEG9_rev4_DE.pdf

¹⁴<https://www.gibsondunn.com/lawyer/niebler-Prof. Dr. Prof. Dr. Angelika/>

We are aware that Gibson, Dunn & Crutcher is “one of the go-to law firms for giant American companies. The firm’s client base features some of the most notable US players including Apple, Meta (formerly Facebook), Intel, Kraft, NBCUniversal and Walmart.”¹⁵ Gibson, Dunn & Crutcher’s own entry in the EU lobby transparency register states that “In Europe, our established, internationally networked group of qualified U.S., English, French, Spanish and German lawyers have considerable experience in representing clients with international business interests that require a coordinated and seamless response within and across European national borders.”¹⁶ [emphasis added].

Gibson, Dunn & Crutcher has attracted significant criticism in its handling of cases for large corporate clients, including defending fossil fuel giant Chevron against an environmental law suit brought by communities in Ecuador,¹⁷ and defending Dole against a lawsuit brought by Nicaraguan banana plantation workers.¹⁸ Concerns have been raised about the specific tactics used by the law firm in such cases against local communities.¹⁹

In 2022, an opinion article in *The Nation* stated: “Like many of its peers, Gibson Dunn profits from squashing class action lawsuits and labor organizing drives, keeping shareholders from reforming corporate practices and debtors from getting their day in court, and shielding US companies from accountability for their actions overseas and from regulation at home.”²⁰ [emphasis added]

Gibson, Dunn & Crutcher also represented energy giant Uniper in its arbitration case against the Dutch Government under the Energy Charter Treaty (ECT).²¹ Uniper tried to argue that the Dutch law to phase out coal-generated energy by 2030 should not have been introduced without proper compensation. However, a Dutch court ruled that the measures taken by the Government to reduce greenhouse gas emissions had been proportionate.²² Ultimately Uniper’s case was dropped in 2023 after the German Government took majority ownership of the company following the upheaval in energy markets after the Russian invasion of Ukraine.²³ Moreover, several EU member states, including France, Germany, Spain, Luxembourg, Slovenia, and the Netherlands, have recently decided to leave the ECT because it is not in line with EU climate goals and policies. The European Parliament also agreed that the ECT is not aligned with the Paris Agreement, the EU Climate Law or the objectives of the European Green Deal.²⁴ Gibson, Dunn & Crutcher, the law firm that Prof. Dr. Niebler works for, is using the ECT to challenge climate measures of the Dutch Government. The law firm has also recently lobbied the Commission on matters related to the ECT.²⁵

According to *Bloomberg Law*, a group called Law Students for Climate Accountability have promoted a boycott of Gibson, Dunn & Crutcher over the firm’s “work shielding corporate polluters from climate accountability.” The group says that Gibson Dunn’s legal tactics had

¹⁵<https://www.legalcheek.com/firm/gibson-dunn/>

¹⁶<https://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=625676346274-87>

¹⁷<https://www.business-humanrights.org/en/latest-news/federal-judge-sanctions-chevron-lawyers-at-gibson-dunn-for-harassing-witness-in-ecuador-case/>

¹⁸<https://www.mindthegap.ngo/harmful-strategies/avoiding-liability-through-judicial-strategies/abusing-judicial-process-to-avoid-meaningful-remedy/example-dole-foods-strategy-to-discredit-nicaraguan-plantation-workers/>

¹⁹<https://www.greenpeace.org/international/story/16448/chevrons-slapp-suit-against-ecuadorians-corporate-intimidation/>

²⁰<https://www.thenation.com/article/activism/law-firms-climate-change/>

²¹<https://www.iareporter.com/arbitration-cases/uniper-v-the-netherlands/>

²²<https://www.iisd.org/itn/en/2022/12/26/dutch-court-denies-compensation-to-rwe-and-uniper/>

²³<https://www.iareporter.com/arbitration-cases/uniper-v-the-netherlands/>

²⁴https://www.europarl.europa.eu/doceo/document/RC-9-2022-0498_EN.html

²⁵<https://corporateurope.org/sites/default/files/2023-03/minutes%20of%20the%20meeting%20FISMA%2014355.pdf>

caused “immense harm to the climate and frontline communities, particularly Indigenous communities.”²⁶ It awarded Gibson, Dunn & Crutcher, among other US-based law firms, the lowest score (F) in its 2022 climate change scorecard.²⁷

Prof. Dr. Niebler’s work on the CSDD file

Prof. Dr. Niebler is a Shadow Rapporteur on the ITRE opinion on the CSDDD. She is also a substitute member of the JURI committee which leads on the CSDDD. The file is expected to have significant implications for large European companies and their EU and non-EU supply chains. The intentions of the file include to provide legal redress for overseas communities which have suffered human or environmental abuses as a result of the activity of multinational companies and their supply chains (civil liability), as well as to provide some climate crisis-related responsibilities for companies and their directors.

The following amendments are tabled in Prof. Dr. Niebler’s name, sometimes jointly with other MEPs in the EPP group, which relate to civil liability, the climate crisis, and other proposals to generally weaken the scope of the CSDDD. These amendments are in line with and could be beneficial for the interests of TÜV SÜD and / or Gibson, Dunn & Crutcher and its clients.

- Amendment 484, Recital 62, proposes to remove the right of member states to impose more stringent or further measures than the CSDDD as they see fit. This is then backed up by Amendment 528, Article 1 – paragraph 2 a (new), which attempts to concretise the removal of member states’ rights to legislate further.

- Amendment 1313 proposes to delete the entirety of Article 15 on the requirement for companies to adopt a plan to ensure that the business model and strategy of the company are compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5 °C in line with the Paris Agreement, and proposes to remove the link with directors’ remuneration.

- Amendment 766, Article 3 – paragraph 1 – point n, downgrades the definition of stakeholders affected by the products, services and operations of the company. This is reinforced by Amendment 1159, Article 9 – paragraph 2 – point a, which weakens the proposed definition of those adversely affected by a company’s operations etc and Amendment 1168, Article 9 – paragraph 2 – point c, which removes civil society organisations from the scope.

- Amendment 785, Article 3 – paragraph 1 – point q, proposes to weaken the overall responsibility of companies within the Directive, specifically that they are not required to guarantee specific results. This is reinforced by Amendment 990, Article 7 – paragraph 5, and Amendment 1027, Article 8 – paragraph 2.

- Amendment 1239, Article 11 – paragraph 2 a (new), proposes that companies should not be obliged to divulge so-called trade secrets.

- Amendment 1309, Article 14 c (new), proposes that voluntary industry initiatives should be given a central role in fulfilment of the company’s obligations under the directive, even

²⁶<https://news.bloomberglaw.com/business-and-practice/law-students-group-wants-gibson-dunn-boycott-over-energy-work>

²⁷<https://www.ls4ca.org/>

though voluntary initiatives have been consistently revealed to fail to enforce due diligence among their members.

- Amendment 1470 proposes fully removing civil liability from the scope of the directive by deleting Article 22 in its entirety.

From what we can see, looking at the online versions of the above mentioned amendments, none make clear that Prof. Dr. Niebler holds paid side-jobs which are related to the content of these parliamentary activities.

Our conclusions

In our opinion, there are several risks of conflicts of interest outlined above:

1. Prof. Dr. Niebler's paid side-job with the TÜV SÜD Foundation seems directly relevant to her activities as an MEP formally active on the CSDDD. As clarified above, the TÜV SÜD Foundation has a strong financial interest in the TÜV SÜD AG as it is an owner of, and receives its funding from, that company. According to the EU lobby transparency register, TÜV SÜD AG is actively working to influence EU decision-makers on the CSDDD file.

The multiple amendments tabled in Prof. Dr. Niebler's name - which are about minimising the duties, responsibilities, and liabilities of EU companies and their directors in their overseas operations - could benefit TÜV SÜD and its clients. While the CSDDD could offer a new and additional channel to hold companies legally liable for their overseas operations, Prof. Dr. Niebler's amendments seek to remove that avenue. We therefore conclude that Prof. Dr. Niebler's side-job places her in a situation of a conflict of interest with her work as an MEP.

2. Similarly, Prof. Dr. Niebler's side-job with Gibson, Dunn & Crutcher, a law firm known to represent clients facing civil liability claims from communities overseas and clients which are climate polluters, could represent a conflict of interest with her role as an MEP scrutinising the CSDDD proposal. The multiple amendments tabled in Prof. Dr. Niebler's name which are about minimising the duties, responsibilities, and liabilities of EU companies and their directors in their overseas operations, alongside those that seek to minimise or remove climate crisis responsibilities of companies, could benefit Gibson, Dunn & Crutcher and its clients.

3. We have approached Prof. Dr. Niebler for a response to these concerns and she has told us:

- “As a member of the Board of Trustees of the TÜV SÜD foundation, I do not supervise, control or influence the operative activities of TÜV SÜD AG and its corporate entities. Instead, I supervise and advise the TÜV SÜD foundation and its Management Board in pursuing and fulfilling its charitable purposes.”
- “Further, I am “Of Counsel” in the Munich office of Gibson, Dunn & Crutcher since 2015. I do not represent Gibson Dunn & Crutcher vis-à-vis European institutions. There are no conflict of interests as regards my parliamentary work and my “Of Counsel” activity. I am primarily engaged with in-house activities at Gibson Dunn & Crutcher, such as female lawyers' empowerment and diversity management.”

However, we do not argue that Prof. Dr. Niebler is influencing TÜV SÜD or Gibson, Dunn & Crutcher. We argue that her paid side-jobs with TÜV SÜD Foundation and Gibson, Dunn & Crutcher require her to act in the interests of these organisations and that when she undertakes legislative work on topics that are relevant to the interests of these companies that she risks being in a position of a structural conflict of interest. Specifically, we consider that Prof. Dr. Niebler's specific amendments to the CSDDD as set out above could benefit her two side-job employers. We do not allege that Prof. Dr. Niebler specifically tabled these amendments to benefit her side-job employers: we do not have such evidence. But her intentions are not relevant here: the situation of simultaneously being an MEP active on the CSDDD and holding these specific side-jobs is the relevant fact.

4. We could not find any evidence online that Prof. Dr. Niebler had recognised and / or disclosed either above-mentioned conflict of interest risks, let alone sought to address them.

Proposed next steps

This situation is of great concern to us. The CSDDD file is heavily lobbied by the corporate sector and it is vital to ensure that all MEPs are free from conflicts of interest. The file remains under discussion as we write.

The Code of Conduct for MEPs²⁸ says the following *inter alia* [emphasis added]:

“Any Member who finds that he or she has a conflict of interest shall immediately take the necessary steps to address it, in accordance with the principles and provisions of this Code of Conduct. If the Member is unable to resolve the conflict of interest, he or she shall report this to the President in writing. In cases of ambiguity, the Member may seek advice in confidence from the Advisory Committee on the Conduct of Members, established under Article 7.”

“Without prejudice to paragraph 2, Members shall disclose, before speaking or voting in plenary or in one of Parliament's bodies, or if proposed as a rapporteur, any actual or potential conflict of interest in relation to the matter under consideration, where such conflict is not evident from the information declared pursuant to Article 4. Such disclosure shall be made in writing or orally to the chair during the parliamentary proceedings in question.”

“The declaration of financial interests shall contain the following information, which shall be provided in a precise manner: ...

(c) any regular remunerated activity which the Member undertakes alongside the exercise of his or her office, whether as an employee or as a self-employed person”

As a result we ask that you request the Advisory Committee on the Code of Conduct to investigate the following:

²⁸http://www.europarl.europa.eu/pdf/meps/Code%20of%20Conduct_01-2017_EN.pdf

- The exact circumstances of Ms Niebler's role with the TÜV SÜD Foundation and its links to the business TÜV SÜD
- The clients and interests of TÜV SÜD including its own EU influencing activities on the CSDDD or any other EU files worked on by Prof. Dr. Niebler
- The exact circumstances of Prof. Dr. Niebler's side-job with Gibson, Dunn & Crutcher including clients, topics worked on, the month to month nature of the work, as well as the contract of work
- The clients and interests of Gibson, Dunn & Crutcher including any direct connection with the CSDDD or any other EU files worked on by Prof. Dr. Niebler
- The extent to which Prof. Dr. Niebler has declared these potential conflicts of interest or sought advice on them from European Parliament authorities
- The extent to which these side-jobs and Prof. Dr. Niebler's amendments to the CSDDD represent direct conflicts of interest
- The extent of any wider conflicts of interest between Prof. Dr. Niebler's work as an MEP and these paid side-jobs.

If you find that Prof. Dr. Niebler is in a position of a conflict of interest we trust that you will address this immediately and levy all appropriate sanctions.

More generally we urge you to fully implement the existing ban on MEPs simultaneously holding lobby side-jobs. In the light of Qatargate, the European Parliament is under pressure like never before to ensure that its ethics rules are as robust as possible and are enforced well. We trust that you will follow up on these matters urgently.

Yours sincerely,

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