



**Friends of
the Earth
Europe**



CASE ANALYSIS ANGELIKA NIEBLER

Angelika Niebler is a German EPP MEP, who has been in the European Parliament since 1999. In her Declaration of Financial Interest, submitted in July 2014, at the beginning of the current legislative term, Ms Niebler registered her activity as "of counsel" for the law firm Bird & Bird, declaring a monthly income of €1000 to €5000 from her activities.¹ ² Ms Niebler started to work for Bird & Bird in 2004 in the IT and media department of the firm.³ Bird & Bird has a Brussels office and advises on EU competition law, but is currently not registered in the EU's transparency register.⁴ The firm had been registered until 28 April 2015, when the Register's secretariat removed its entry due to the failure to update it.⁵ According to the website Lobbyfacts, Bird & Bird had declared lobby costs of € 10 million for 2013.⁶

Ms Niebler terminated her work for Bird & Bird in the summer of 2015 when she moved to the globally operating law firm Gibson, Dunn & Crutcher.⁷ In her Declaration of Financial Interest submitted on 31 August 2015 and updated on 20 January 2016⁸, Ms Niebler declares a monthly income of €1000 to €5000 from her work as "of counsel" for Gibson, Dunn & Crutcher.⁹

In a press release, the firm announced that Ms Niebler will join 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.*"¹⁰ Gibson, Dunn & Crutcher is not registered in the EU's Transparency Register.

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

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

² http://www.europarl.europa.eu/mepdif/4289_DFI_LEG8_rev1_DE.pdf

³ <http://www.twobirds.com/de/news/press-releases/2004/angelika-niebler-wechselt-zu-bird-bird>

⁴ <http://www.twobirds.com/en/regions/western-europe/belgium>

⁵ <http://www.transparencyinternational.eu/2015/04/gazprom-airfrance-twitter-etc-1552-organisations-deleted-from-eu-lobby-register/>

⁶ <http://archive.lobbyfacts.eu/news/29-01-2015/finance-industry-uks-biggest-lobbyist-brussels>

⁷ <http://www.juve.de/nachrichten/namenundnachrichten/2015/09/muenchen-europa-abgeordnete-verstaerkt-medien-und-it-praxis-von-gibson-dunn>

⁸ http://www.europarl.europa.eu/mepdif/4289_DFI_LEG8_rev2_DE.pdf

⁹ The position of an "of counsel" describes a lawyer with a "close, continuing, and personal" with a particular law firm. <http://www.mass.gov/obcbo/ofcounsel.htm>

¹⁰ <http://www.gibsondunn.com/Offices/Brussels>, emphasis by the author

was lobbying EU institutions.¹¹ 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,¹² though it is impossible to verify in how far it was a lobby meeting nor on whose behalf the meeting took place.

In the United States, where Gibson, Dunn & Crutcher is registered for providing lobby services, it has declared an income of \$800,000 from its lobby services in 2015 (in 2010 its lobby income reached more than \$3 million).¹³ Among its clients are major business lobby groups (like the US Chamber of Commerce and the Business Roundtable) as well as several hedge funds and the financial firm GE Capital.¹⁴

The Brussels office further highlights its operation in exactly the same areas Ms Niebler focuses on: "In the communications sector, we advise both major market actors and regulators across the European Union on the processes of market definition and market analysis made in accordance with competition rules. The Brussels team has extensive experience handling intellectual property, security and privacy issues, especially as they relate to the Internet. We also have deep capabilities in net and search neutrality and interoperability matters."¹⁵ On its website, the firm also mentions that its media, entertainment and technology practice – the same Ms Niebler works for - handles "regulatory issues."¹⁶

In the announcement of Ms Niebler's move, 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." Ms Niebler is further quoted that she will "provide legal advice on European and international law, in particular for companies facing critical privacy and technology issues."¹⁷

The quotes above 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, insights 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 its clients, raises the question if her side job creates a potential conflict of interest.

This concern is further substantiated by Ms Niebler's recent parliamentary activity. She is currently a member of the Committee on Industry, Research and Energy and the Committee on Women's Rights

¹¹ E-mail from Gibson, Dunn & Crutcher to Lobbycontrol on 11 May 2016.

¹² <http://alter-eu.org/dg-fismas-lobby-meetings-corporate-bias-and-access-for-unregistered-lobbyists>,

<https://www.asktheeu.org/en/request/2149/response/7763/attach/html/2/MB%20events%20v5%20pdf%20092015.pdf.html>

¹³ <https://www.opensecrets.org/lobby/firmsum.php?id=D000000686&year=2015>

¹⁴ <https://www.opensecrets.org/lobby/firmsum.php?id=D000000686&year=2015>

¹⁵ <http://www.gibsondunn.com/offices/office.aspx?oid=Brussels>

¹⁶ <http://www.gibsondunn.com/industries/pages/MAE.aspx>

¹⁷ <http://www.gibsondunn.com/news/Pages/European-Parliament-Member-Angelika-Niebler-Joins-Gibson-Dunn-in-Munich.aspx>

and Gender Relations as well as a substitute member of the Legal Affairs Committee and the Committee of Inquiry into Emission Measurement in the Automotive Sector.

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 rights in the information society" ("Reda report"), which was discussed in the Parliament in the first half of 2015. 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.¹⁸ The report's rapporteur Julia Reda claimed that Niebler's introduction of the amendment was in contravention of the agreement reached with the EPP's chief negotiator.¹⁹

There is no information available on Ms Niebler's clients, either at Bird & Bird or at Gibson, Dunn & Crutcher, and hence it is impossible to evaluate if Ms Niebler's amendments to the resolution were in any way related to her clients and legal work in general. However, the overlap between her specialisation on IT and media issues in her legal work and her amendments to the Reda report raises questions if there has been a potential conflict of interest between her public mandate and her side job for Bird & Bird. At a minimum Ms Niebler should have declared this potential conflict of interest before intervening in the discussion on the report. At least in her intervention in the plenary debate on the report, this was not the case.²⁰

In response to a detailed list of questions on the issues raised above, Ms Niebler confirmed her arrangements with Bird & Bird and Gibson, Dunn & Crutcher, but did not provide any information on her activities for the firms and/or its clients. She does mention, however, that her focus is "strategic advice to the firm." She also ascertains that she "has been guided in her political positions by the interests of the region that elected her."²¹

Apart from her positions at Bird & Bird and Gibson, Dunn & Crutcher, Ms Niebler's most recent Declaration of Financial Interests dated 20 January 2016 also lists several other side occupations. Since 2004, Ms Niebler has been chairman of the supervisory board of Metabion, a medium-sized bio-tech company located in Bavaria.²² In 2015 she joined the supervisory board of the insurance company LVM with revenues of more than 3 billion Euros. Both companies are not on the EU lobby register, but LVM is a member of the Gesamtverband der Deutschen Versicherungswirtschaft,²³ the trade association of the German insurance industry, which employs 22 lobbyists (14 full time equivalents) in Brussels and spends between 2,750,000 € and 2,999,999 € lobbying the EU.²⁴

¹⁸ <http://www.euractiv.com/sections/infosociety/copyright-meps-ditch-plans-google-tax-tourist-photo-ban-316177>

¹⁹ <https://juliareda.eu/2015/07/last-minute-snippet-tax/> The amendment was interpreted by some as an endorsement of ancillary copyright law – or snippet or Google tax – that would have allowed media companies to charge aggregators or other internet platforms for linking to news media articles or provide snippets from them.

²⁰ mms://vod.europarl.europa.eu/wmv/nas/nasvod01/vod0907/2015/wm/VODChapter_20150709_09571800_11375900_375f437414e6cf9ba41680e.wmv?wmcache=0

²¹ Translation from German based on an e-mail sent by Ms Niebler to Friends of the Earth Europe on 11 April 2016, see Annex.

²² <http://www.angelika-niebler.de/phpwcmis/index.php?ueber-mich-1>

²³ <http://www.gdv.de/mitglieder/?l=l>

²⁴ <http://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=6437280268-55>

