Subject: Flagrant Problems with the EU Commission

Dear President Schulz,
Honourable Members of Parliament,

I wish to make all of the Members of Parliament and the media aware of flagrant problems that are fuelling a massive suspicion of corruption within the Commission and ask for you to intervene. The present case has been pending before the Commission and the Parliament since 2006 and has come to be known as the "Affaire atmed", having been so christened by former Commission President Barroso himself in 2007.

Former Commissioners and current MEPs Antonio Tatjani and Viviane Reding should also be personally knowledgeable of this case as it was addressed during their tenure on the Commission. To save further explanation in this letter, I reference Petition no. 0473/2008 which I filed with the Committee on Petitions and the relevant decision taken by the Parliament on 19.01.2011, as found online at

http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+B7-2011-0026+0+DOC+XML+V0//DE

and the previous written opinion of the Legal Affairs Committee "JURI" in June 2010, found online at

http://www.europarl.europa.eu/meetdocs/2009_2014/documents/peti/lt/819/819333/819333de.pdf

as well as the Parliamentary Report "European Added Value Assessment", where pages 9-10 describe the "Affaire atmed" as the worst case of poor administration and blatant abuses within the Commission in the history of the EU, found online at

http://www.europarl.europa.eu/RegData/etudes/etudes/join/2012/494457/IPOL-JOIN_ET%282012%29494457_DE.pdf

Since 2011, this case against the Commisison has been pending before the European Court of Justice, where the Commission has been using unfair means to injure both fundamental and human rights and to fight against the so-called level playing field, as also reflected in the most recent ECJ judgement T-309/10 RENV released 28.09.2016, which partially ignores or contradicts the court's own decision in C-120/14 P.

To date, I have been granted assistance with the court costs three times, which itself is unique in the history of European jurisprudence, but the amounts granted are so low that they do not allow me to hire specialist legal representation. And then to speak of a level playing field before the court is an impudence without measure. I am deeply shocked and consider it naked cynicism when the EU speaks of the rule of law, human rights, and transparency. And this has all been taking place for years in the plain sight of the Parliament, which is actually tasked with monitoring and supervising the work of the Commission.

Since early 2011, the Commission has been deliberately ignoring the unambiguous resolution of the Parliament in January 2011 and has failed to implement it, although it has had the means and the opportunity to add teeth to the decision, for example, by freezing Commissioners' salaries for six months and/or setting up a committee of inquiry immediately, as previously recommended by the Legal Committee to the Petitions Committee back in 2010.

Obviously, certain forces within the Parliament do not want transparency, information, and monitoring, which I also find deeply shocking and which is the primary reason for my letter today, where I once again officially ask all Members of Parliament for their assistance and support, because ultimately this case affects the credibility of the entire European Parliament.

As I see it, the Members of Parliament have an exclusive obligation to the people of Europe and their election mandate, but have not been elected to turn a blind eye to such blatant abuses within the Commission for years on end. Nor have you been elected to remain silent, especially, when some 70 million people in the EU are at risk of major damage to their lungs through the systematic prevention of a medical product that has been shown a safe way to improve the health of millions. Nor should you be silent in the face of massive economic damage to the people of the EU amounting to some €50 billion from 1997 to 2012 just because there appears to be no room on the agenda with all of the many political crises plaguing the Union. I do not expect any sympathy from you, but instead transparency, justice, and fairness, as befits a supposedly democratic system governed by the rule of law.

My Core Concern

Currently, an objection to No. 445/2016/JAS has been pending before the European Ombudsperson, where I point out that I have been refused access to the Commission's files on this matter for almost a year on these primary grounds given by Directors General and Secretaries General:

"The distribution of the requested documents under Regulation 1049/2001 would, at the present time, allow parallel public debate about a matter pending before the court and would therefore complicate the court's role and be in breach of the principle of an equal playing field."

It should thus be clear that the Commission is deliberately suppressing incriminating evidence under the guise of the Parliament in order to thwart my efforts to provide evidence in court to further prove my case. For them to invoke the notion of a level playing field represents an unsurpassed level of cynicism and impudence, as well as a deliberate manipulation of the court proceedings, even though the administrative authorities are allegedly committed to the absolute truth. The manipulation of the proceedings to date can be seen in the fact that Court completely ignored our request in Case T-309/10 RENV for access to the Commission's files to find evidence and also our request to question a key witness. It is quite clear that a fair trial was not desirable and that the truth should not come out. This connotes the refusal of a fair trial as defined in Art. 6 of the ECHR and Art. 47 of the Charter of Fundamental Rights of the European Union.

A whistleblower on the Commission had confided in me that the matter was no longer about my invention, but instead was exclusively a political matter, which makes sense, given that the pharmaceuticals industry would lose a massive amount of sales and profit if the product had been allowed on the market. It has also come to light that the Commission had prepared a draft decision under Art. 8 of Directive 93/42/EEC only in mid-2007, which classified the prohibition order of the German authorities as unjustified as there was no evidence of risk. Had the decision been officially sent to the German government in July 2007, instead of the "analysis" per Art. 18 of the Directive, the ban on my product would have been lifted immediately and the product would have been immediately allowed to be sold to other countries. This would also have prevented the insolvency of atmed AG and the patents and rights for the disputed medical product and other innovative products would not have been lost due to a lack of revenues and financial resources.

The whistleblower also told me that there was an unofficial agreement with Commissioner Verheugen and factually competent staff at the Commission and the German government to design a specific application under Art. 18 of the Directive to conceal their years of inaction. The goal was clearly to prevent my access to legal redress by failing to provide a final decision at the Commission level and to destroy my livelihood, which, without a doubt, they have successfully achieved.

It was for this reason that it was only in the last year that I requested access to the Commission files as part of the on-going legal proceedings in Case T-309/10 RENV in order to secure incriminating evidence behind the Commission's grounds for refusing both my first and second petition. I wanted at least to know if there had been such a draft decision and whether there had been an agreement. After I filed a complaint with the ombudsperson for being refused access to the files twice, the Commission submitted these drafts of the actual decision per Art. 8 of the Directive to the Court.

It was only then that we had definite evidence that this draft decision had been made, as indicated by the whistleblower, and that his information could be considered trustworthy.

Since the draft decision was released for the ombudsperson, my complaint was dismissed, even though I had asked for access to the complete file. This forced me to have to start again in my efforts to confirm what the whistleblower had told me about an unlawful agreement that had been between the Commission and the German government, which is the basis of my specific complaint with the ombudsperson.

Since documents may not be made public during on-going legal proceedings, the Commission pre-empted the ombudsperson from publishing this extremely incriminating piece of evidence by quickly adding to the court's dossier. The Commission is therefore deliberately hiding extremely incriminating evidence from the public under the guise of EU procedural law. I strongly doubt that this reflects effective supervision and transparency.

In notes 41 and 58 in the Court's ruling in Case T-309/10 RENV, the Court only superficially addresses the evidence suppressed by the Commission to date and explicitly fails to address the essential content in the drafts decisions submitted by the Commission. This may well be because, if the public knew what the Commission's actual, correct decision had been in the deliberately suppressed draft decision per Art. 8 of Directive 93/42/EEC, surely questions of possible corruption would arise, asking why a demonstrably "safe medical product" was banned and why this ban has been tolerated by the Commission since early 1998 by its failure to act.

Media and journalists may request access to files in the court dossier for Case T-309/10 RENV, which must be granted if there is a substantiated public interest to do so. This access may very well deliver considerable findings that will raise questions about the Court itself.

For your information, I am attaching the most recent correspondence on 07.07.2016 from the ombudsperson concerning the opening of the case. I had assured the ombudsperson of its confidentiality, because otherwise the case would not have been opened so quickly. This means that only I and Members of Parliament can view the files and not release the documents publicly, but only if the Commission allows such access, which is highly unlikely given the constant reference to on-going court proceedings. The ombudsperson set a deadline of today for the President of the Commission, i.e. Mr Juncker, to justify why access to the files is being denied.

So far I have received no response from Commission President Juncker. I therefore wrote an email to the ombudsperson yesterday and asked her not to grant the Commission President an extended deadline, but instead to report directly to the Parliament. It should be obvious that this is a delay tactic on the part of the Commission so that it can continue to suppress evidence and gain further advantages in still pending litigation, because, theoretically, an appeal could still be filed with the ECJ against the court's ruling.

I urge you therefore to close your eyes no longer to this massive injustice and scandal, but instead to get actively involved and take appropriate measures to ensure that justice and rule of law be restored with a full investigation in the interest of all EU citizens so that these blatant abuses and corruption can be stopped immediately. How is one supposed to place confidence in a European Union that apparently tolerates or even supports such unacceptable conditions over many years through its inaction? I hereby expressly give you permission to forward this letter to media and publishers.

Sincerely,

Christoph Klein

Der Europäische Bürgerbeauftragte

Emily O'Reilly
Europäische Bürgerbeauftragte

Herrn Christoph Klein

E-Mail: info@modern-art-exhibition.com

Straßburg, 07.07.2016

Beschwerde 445/2016/JAS

Sehr geehrter Herr Klein,

ich beziehe mich auf Ihr Schreiben vom 22. März 2016, in dem Sie eine Beschwerde gegen die Europäische Kommission in Bezug auf die Weigerung, Ihnen Zugang zu Dokumenten bezüglich der "Affäre Atmed" zu gewähren, einbrachten.

Ich entnehme Ihrer Beschwerde den folgenden Beschwerdepunkt und die folgende Forderung:

Beschwerdepunkt:

Die Kommission hat den Zugang zu Dokumenten bezüglich eines medizinischen Produkts unrechtmäßig verweigert.

Forderung:

Die Kommission sollte Zugang zu den beantragten Dokumenten gewähren.

Ich habe den Präsidenten der Kommission über Ihre Beschwerde unterrichtet und ihn ersucht, zum genannten Beschwerdepunkt und zu der Forderung bis spätestens 30. September 2016 Stellung zu nehmen.

Sobald die Stellungnahme der Kommission eingetroffen ist, werde ich sie Ihnen übermitteln und Ihnen die Gelegenheit geben, meinem Büro innerhalb eines Monats ab Übermittlung der Stellungnahme Ihre Anmerkungen mitzuteilen, falls Sie dies wünschen sollten. Ich bitte Sie, zu berücksichtigen, dass sich die Übermittlung der Stellungnahme leicht verzögern kann, wenn sich die Notwendigkeit ergibt, eine Übersetzung ins Deutsche anzufertigen.

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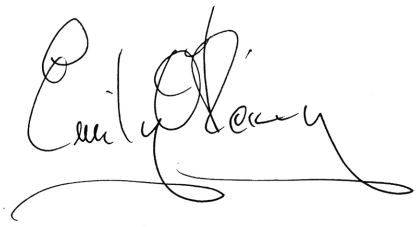
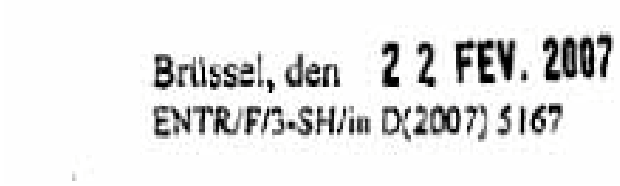
Sobald Ihre Anmerkungen eingetroffen sind oder sobald die dafür gewährte Frist verstrichen ist, wird der Fall von dem für die Prüfung Ihres Falles zuständigen Sachbearbeiter, Herrn Jan Stadler (+32 228 43586), untersucht werden. Herr Stadler gehört dem Referat 2 Koordinierung von Untersuchungen an, das von Herrn Fergal Ó Regan geleitet wird. Sollte es sich als notwendig erweisen, weitere Informationen einzuholen, bevor über Ihre Beschwerde entschieden werden kann, werde ich Sie darüber unterrichten.

Ihre Beschwerde enthält auch den Vorwurf, die Kommission würde versuchen, Hinweise auf Korruption zu verschleiern, sowie die Aufforderung, entsprechende Beweissicherungsmaßnahmen vorzunehmen. Ich habe entschieden, dass keine ausreichenden Gründe vorliegen, diese Aspekte in meine Untersuchung einzuschließen. Insbesondere betrifft dieser Teil Ihrer Beschwerde ein anhängiges Gerichtsverfahren (T-309/10 RENV). Ich bin deshalb nicht befugt, mich mit den damit zusammenhängenden Fragen Ihrer Beschwerde zu befassen.

Es wird alles getan, um Beschwerden so schnell wie möglich zu bearbeiten. Ich versuche, binnen eines Jahres nach der Eröffnung einer Untersuchung zu einer Beschwerde zu einer vorläufigen Schlussfolgerung in dieser Sache zu kommen.

Mit freundlichen Grüßen





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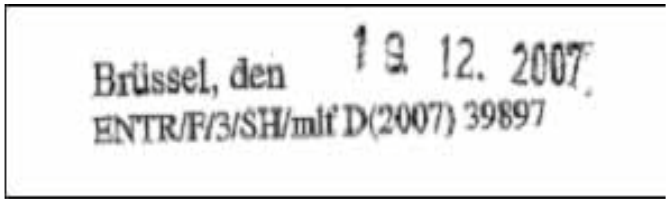

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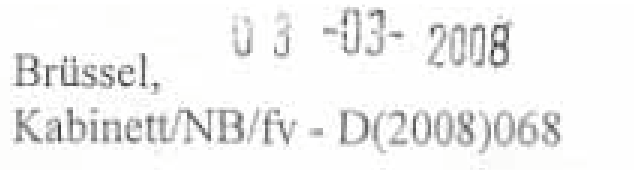

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