

John Dalli

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The Speaker,  
House of Representatives  
Valletta  
Malta

Honourable Speaker,

I have read in the media that the Opposition asked for Mr. Giovanni Kessler to be called as a witness in front of the Privileges Committee which is examining the ruling that you gave against Dr. Simon Busuttil, Leader of the Opposition when he failed to substantiate or withdraw comments that he made about political interference in the legal process relating to a report issued by the same Giovanni Kessler on allegations made by Swedish Match.

Over the past year and a half, Mr Kessler has been called in front of the European Parliament Budget Committee a number of times and has been evasive when asked specifics about the investigation, the report, his conduct and about the manner in which he conducted this investigation. He has also been given three sets of extensive questions in writing most of which he has avoided to answer mainly on the excuse that there are pending legal procedures in Malta or that the information is restricted and confidential.

As the legal procedures are still in progress I wonder whether he will change his tack to accommodate Dr. Busuttil. The question is whether Mr. Kessler is being called by Dr. Busuttil as witness to testify on the issue in question – interference – or whether he has been called in a last ditch attempt by Dr. Busuttil to buttress the President of the European Commission, Jose Manuel Barroso by setting the stage for Kessler to repeat the theatrics of the press conference that he had held on the 17<sup>th</sup> October 2012 in which he threw overboard all semblance of respect for confidentiality and presumption of innocence.

If he is being called on the substance of the issue being discussed – political interference – it would be interesting to see what first hand information he has on this count.

He is supposed to have adopted a hands off attitude after he passed the report to the local authorities. However the opposite has been the case.

1. In an interview he gave to a Croatian Online Magazine reported in “in-Nazzjon Tagħna” on the 23<sup>rd</sup> November 2013, Kessler parroted Dr. Busuttil in stating that there was political interference in Malta. The report carried in Malta quoted the source as coming from Hungary, showing that this piece of journalism was not a result of research by that paper’s newsroom.

Was Kessler instigated to make this interview? If so by whom? Was the report sent to “In-Nazzjon Tagħna” by Kessler, someone in OLAF or someone in the Commission? The conclusion is that this interview was planted and that it found its way to the Maltese Paper through the connections that OLAF has with it.

This collusion further puts a very low credibility factor to any declaration by Kessler.

2. We know from statements made by Johann Gabrielsson, an employee of Swedish Match, that OLAF was with the Maltese police when the latter visited Brussels and talked to Johann Gabrielsson. They did not interview Mr. Gabrielsson to enquire about his involvement in the plot that was devised and implemented by the Tobacco Industry and which he directed. They did not interview him to establish the truth and his motivation to report what proved to be a falsity.

They had the audacity to suggest to him to keep maintaining this false statement “not to disturb the investigation in Malta”.

They suggested to Mr. Gabrielsson, the person responsible for the efforts to influence me and the originator of the allegations that gave rise to the investigation, to continue to maintain that Dr. Gayle Kimberly had a meeting with me on the 10<sup>th</sup> February 2012 and to keep repeating the phantasmagorical report of that meeting, and which they all knew was false. Even though Kessler is still hiding the report by Swedish Match containing the allegations against me, I presume that it was on this lie that Kessler went through a phoney assessment process in such a hurried way to begin the investigation (very much a replica of the fraud committed against me in 2004). It was this lie that they tried to salvage, in one way or another in order to obtain their ordained objective.

OLAF had to give an excuse to Barroso to terminate me and the local collaborators were to give him comfort in front of his critics worldwide that even the local authorities in Malta found a reason to chastise me.

This is why political pressure was made in December 2012 to have the police arraign me, as reported by the press on the 16<sup>th</sup> December 2012 and as stated under oath by John Rizzo when he said that he had pressure from Parliament.

Apart from all this, Giovanni Kessler has been heavily criticised on the way he started and conducted the investigation and accused of having disregarded and breached several rules and procedures covering such investigations. A list of reasons, albeit not exhaustive, is listed in appendix 1. His resignation has been demanded repeatedly by members of the European Parliament.

Kessler has always stated that he never advanced any criminal accusations in my regard? Is he now changing the tune?

A further fact to be noted is that the European Court of Justice has appointed the 7<sup>th</sup> July 2014 for the first oral hearing of the case that I instituted against the Commission. Mr. Barroso and I are called to make our submissions and answer questions. Is the “evidence” of Mr. Kessler three days before this hearing a coincidence? Or as stated above, has Dr. Busuttil set the stage for another Kessler Theatrical Performance as he did on the 17<sup>th</sup> October 2012 when he breached all procedures of confidentiality and presumption of innocence in my regard?

At this stage therefore I request to be a party to the proceeding in the Privileges

Committee as the request by the Opposition is clearly aimed at smearing me. **I am requesting that I confront Kessler when he is called to give evidence in the Privileges Committee.**

I am also requesting that the Maltese Parliament orders Kessler to present the documents listed in Appendix 2 and which should be laid on the table of the house one week before his testimony so that there is enough time to go through them.

This is important information that Kessler is suppressing from me, as the victim of his actions and from all those interested in examining his conduct, and this to protect himself. This suppression of evidence is also disturbing the proper course of justice in any police investigation or court proceedings currently in progress or that may be initiated in the future.

Thank you for your consideration.

John Dalli  
17<sup>th</sup> June 2014.

## **Breaches of Procedure and illegalities by OLAF**

**1. Kessler manipulated information.**

Information furnished by me has been manipulated in order to trump up the unfounded and absurd conclusion in the Final Report of "unambiguous and converging circumstantial pieces of evidence" that I was aware of the communications taking place between Mr Silvio Zammit and Swedish Match/ESTOC. (see 5.1.6 of the Report). Reference is made, by way of example, to the first paragraph of Part 5.1.5 where my request, in the course of my interview of the 16 July, 2012, to refer to my diary for precise details of meetings and my subsequent clarification by way of letter dated 24<sup>th</sup> July, 2012 was purposely distorted in order to make up for the absolute lack of evidence regarding my involvement. When asked about this by the European Parliament, Kessler refused to answer claiming that there are legal proceedings in Malta.

**2. Kessler's intentions are put into questions by the media campaign that even now he is pushing against me.** Apart from Kessler's histrionics in the press conference held on the 17th October, 2012 where my reputation was trampled upon on the basis of bogus conclusions in my regard, there have been a recent string of incidents in which Kessler breached the confidentiality principle under which he should be operating.

**3. Kessler should explain, in the light of his notorious conclusion of "unambiguous and converging circumstantial pieces of evidence", why no reference was made to potentially fundamental and exculpatory pieces of evidence?** The following are but a few examples:

- (a) Dr. Kimberly's assertion to the effect that in the meeting of the 6<sup>th</sup> January, 2012 she did not present herself as representing Swedish Match was omitted from the body of the Report. OLAF failed to check whether Dr. Kimberly was in fact registered as a lobbyist by Swedish Match. OLAF disregarded the vast number of meetings held between Commission and European Parliament Officials and Personnel with Tobacco Lobbyists. Then Kessler proceeded to use the pretext of my meeting with lobbyists as the basis for his conjecture.
- (b) His propensity to brush aside any evidence from witnesses which did not fit his preordained conclusions.
- (c) OLAF does not give any importance to the evidence given by the Director General SANCO that Mr Dalli was always consistent in his position to drive for a tough directive against tobacco;
- (d) The transcript of a call between Inge Delfosse of ESTOC and Silvio Zammit on the 3rd July 2012 was omitted and hidden by Kessler.
- (e) The original complaint by Swedish Match was omitted from the Report and is still being hidden by Kessler since in most probability, it is based on a lie.
- (f) The Opinion of the Supervisory Committee about the way the investigation was made forwarded to him (Opinion No 2/2012) is still being hidden by Kessler.
- (g) Mr. Michel Petit was not interrogated after his name came up in the

interviews of Fredrik Peyron by OLAF as the person who introduced the allegations to Catherine Day. Why is Kessler protecting this tobacco lobbyist?

- (h) Mrs Catherine Day was not interrogated to explain her handling of the allegations after they were sent to her on the 14<sup>th</sup> May 2012 and why she advised Petit to send the complaint to her and not directly to OLAF? Also Mrs Day should have been called to testify on my coherence on the directive and explain her efforts to delay the tobacco directive.

#### **4. There are other shortcomings by OLAF**

- (a) A whole string of breaches conducted by OLAF in the course of investigations and highlighted by the Supervisory Authority and in various fora and the media including but not limited to the conflict of interest Kessler had in the course of the investigation;
- (b) The extreme haste in which the assessment of the allegations were made, even if the originator of the allegations should have raised immediate suspicion about its motivation. It must be noted that these allegations were proven to be a lie.
- (c) The extreme haste with which the conclusive report was handed over;
- (d) The breach of procedure when the conclusive report was not submitted to the Supervisory Committee for evaluation and approval;
- (e) The reason for Kessler taking over the investigation eliminating all internal controls in the system designed to protect interviewees. Whether the Prospect of becoming European Prosecutor had anything to do with this?
- (f) The legal basis for telephonic intercepts and data collection, especially those organised by Kessler with the intent to fabricate data?
- (g) The fact that in the course of criminal proceedings held in Malta one witness confirmed under oath that a statement was elicited from her by Kessler after he had offered her lunch and wine;
- (h) The fact that in the course of criminal proceedings held in Malta another witness confirmed the aggressive way in which the interview with Mr. Silvio Zammit was conducted in a clear indication that his sole interest was to bring me down.
- (i) Ample evidence of constant breaches of confidentiality and leakage of information;
- (j) Official OLAF press conferences with global coverage being held about me offering tendentious and defamatory remarks suggesting actual criminal wrongdoing at a time when OLAF's conclusive report was confidential and to which Mr Dalli did not have access. It should be noted that the Commission are still insisting that the report has not been published officially and in its representations to the ECJ it is also suggesting that the leaked report should not be taken in evidence. This means that they are intentionally suppressing evidence that could be used by me to clear my name.
- (k) The OLAF investigation was criticised and flawed mainly due to the fact that:
  - i. No due diligence was made on the source of the allegations and conflicts of interest persons involved and witnesses may have had;
  - ii. It appears from the OLAF Report that certain interviews of the people involved in the allegations were carried en masse in each other's presence;
  - iii. Certain pertinent facts arising from the interviews with Swedish Match and ESTOC were never pursued by OLAF
  - iv. The fact that it was reported that Johan Gabrielsson of Swedish Match was

advised by OLAF and the Malta Police to continue to repeat his 'original' version of 'facts' regarding an alleged meeting of the 10<sup>th</sup> February 2012 which they knew never took place so as not to disturb investigations in Malta.

## **Documents to be requested from OLAF**

- (a) The report by Swedish Match/ESTOC containing allegations against Mr. Dalli and on which he decided to start his investigations within a few hours from when it is said that he received this report.
- (b) The documentation relating to the assessment of this report, the conclusions and subsequent amendments to these conclusions.
- (c) The final report issued by him and handed to President Barroso and the local authorities.
- (d) The correspondence between him and the attorney general of Malta on which basis he sent the report to Rita Schembri of AFCOS Malta.
- (e) The communication between himself and the office of the prime minister of Malta from May 2012 onwards especially the chats and emails of the 15<sup>th</sup> October 2012 and 22<sup>nd</sup> October 2012.
- (f) The communication between Rita Schembri and Mr. ANTONIO MICELI (Acting Director Investigations) and GONZALEZ-HERRERO GONZALEZ (Adviser - Case and Board Management) of OLAF between July 2012 and 5<sup>th</sup> October 2012 containing an attachment “Raport Dalli”.
- (g) A copy of the communication he sent to the person responsible for the file on the 11th October 2012 (coincidentally the same day that Barroso requested the meeting with me) requesting a meeting on the 15<sup>th</sup> October 2012 to close the investigation.
- (h) A copy of the letter he sent to President Barroso summarising the report.
- (i) A copy of the letter he sent to the Local Authorities with the report.
- (j) A copy of the correspondence between OLAF and the Attorney General in Malta on the basis of which a copy of the report was sent to Ms Rita Schembri when it was being hidden from everyone.
- (k) The recording of the telephone call between Inge Delfosse and Mr. Zammit on the 29<sup>th</sup> March 2012.
- (l) The recording and transcript of the telephone call organised by OLAF between Inge Delfosse and Mr. Zammit on the 3<sup>rd</sup> July 2012. A copy of the legal advice he received that such entrapment phone calls to fabricate data are permitted.
- (m) The recording and transcripts of any interviews conducted by OLAF during their investigations.
- (n) Opinion 2.2102 sent by the Supervisory Committee to him as DG OLAF regarding the investigation on the Swedish Match allegations.
- (o) The minutes of the meetings held between him and Commissioner of Police John Rizzo while the latter was in Brussels.
- (p) The record of the interviews held by OLAF and the Malta Police when the latter was in Brussels, especially the one with Mr. Gabrielsson where the latter alleges that he was advised not to change his story about the meeting which Gayle Kimberly reported to have taken place in Malta on the 10<sup>th</sup> February 2012 and which all of them knew was a fabrication.
- (q) The DVD supplied by the Commission to OLAF in June 2012 with information about John Dalli.