

## **Dalligate testimony highlights 'outrageous' errors by commission and OLAF**

Written by Gerald Callaghan and Brian Johnson on 14 July 2014 in News  
News

EU commission president José Manuel Barroso is applying double standards in the case against John Dalli, says Ingeborg Grässle.



Commenting on the two day hearing before the European court of justice early last week, Grässle said that despite the fact that the central issue in the case, a conversation between Barroso and Dalli two years ago took only 90 minutes, "In court this week, it took two days of unhurried rumination and repeated close observation of only a few moments of the 90 minute conversation. Hats off to the judges".

What is clear she suggested is that the reason for Dalli's loss of office as presented by the commission president has "changed again".

"It wasn't [Dalli's] knowledge about the bribe, Barroso emphasised, but all the meetings with the tobacco industry; by the way, meetings in which the lobbyist did not say that she even worked for the

tobacco industry.

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"This constant change of argument shows that the case rests on clay feet. The errors and infringements committed by the commission and OLAF are outrageous."

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MEP

Barroso testified before the European court of justice, in a case filed by the former EU health commissioner John Dalli over a claim of unfair dismissal.

The Maltese official 'resigned' as commissioner in charge of health and consumer policy in October 2012 just before the commission launched the revision of the tobacco products directive.

Earlier in 2012, tobacco producer Swedish Match had complained to the commission that a Maltese businessman had asked for money in exchange for influencing the EU's prohibition of snus (an oral tobacco product only sold legally in Sweden).

He claimed to be acting on behalf of Dalli. The commission informed the European anti-fraud office OLAF, which launched an investigation. Dalli maintains that he was forced to resign when commission president Barroso presented him with a covering letter to an investigation by OLAF claiming awareness of an attempt to bribe the former commissioner to influence the tobacco directive.

In a statement to the General Court, a constituent court of the European court of justice, Barroso insisted that "Dalli resigned of his own will in my office on 16 October 2012 in an unambiguous manner".

He continued, "Very serious accusations had been made against Mr Dalli, accusations of improper contacts with the tobacco lobby and knowledge of attempted bribery. It was important for me to protect the commission as an institution, in particular because Mr Dalli was the person responsible for the tobacco products directive that was being prepared as part of the 2012 commission work programme."

Citing the OLAF report, the Portuguese official stated, "Commissioner Dalli interacted on several occasions with representatives of the tobacco industry in unofficial and confidential meetings, which were conducted without the knowledge and involvement of the competent services. These meetings were all organised by Mr Silvio Zammit, who is a Maltese entrepreneur from outside the institutions, and a close friend of commissioner Dalli."

However, the OLAF report reads, "Although there is no conclusive evidence of the direct participation of commissioner John Dalli either as the instigator or the mastermind of the operation of requesting money, there are a number of unambiguous and converging circumstantial pieces of evidence gathered in the course of the investigation, indicating that he was indeed aware of the machinations of Mr Silvio Zammit, and of the fact that he was using his name and position to gain financial advantages."

On reading the report to Dalli, Barroso told the court, "While protesting his innocence emphatically, he did not deny having met with representatives of the tobacco industry through Mr Zammit. In fact he acknowledged that it was imprudent for a commissioner to have such contacts. He did not give a convincing explanation for these strange contacts. I could not understand how someone with responsibility for preparing legislation on tobacco products could have meetings with people from the tobacco lobby, outside the commission... using a bar and restaurant owner to establish contacts. This was bizarre to say the least. In any case it was not in keeping with the proper conduct of a commissioner."

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"I told Mr Dalli it would be better for him to resign on his own initiative, to clear his name. If he did not follow that path, I told him that as president of the commission, I would have to ask him to resign in keeping with article 17 (6) of the treaty. We had a long discussion on the pros and cons and I gave him a very clear choice between two alternatives. I asked him what he intended to do and he decided that it was better for him to resign on his own initiative."

"I found it necessary to clarify more than once with him that he had resigned voluntarily. He confirmed that he had. There was absolutely no ambiguity about that", Barroso concluded.

Dalli reacted to the court sittings held on Monday and Tuesday of last week. He said in a statement that although Barroso issued press statements during the hearings, he chose to maintain full media silence as he did not feel that he should in any way interfere in the court proceedings.

The statement claimed that "Barroso admitted that the secretary general Catherine Day was in communication with OLAF about the progress of the report". The Maltese official said "this revelation shatters the often repeated assertion that OLAF is independent from the commission".

"This contradicts statements made earlier by Barroso that he had no contact whatsoever with OLAF about the progress of this report," Dalli said, adding that Barroso also admitted that he relied on the covering letter and intimated that he hardly read the report.

"A reading of the report shows that the conclusions in this letter were not substantiated. Also the report shows total submissiveness of OLAF to the tobacco industry."

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Dalli added that if he had the report he could have "easily given a full and convincing explanation" about the meetings, the accusation that he was minimising contacts with Zammit, the circumstantial evidence that had been put together by OLAF chief Giovanni Kessler and the timeline which came out from the statements by Swedish Match and Estoc employees themselves about the "entrapment that they planned and executed".

Furthermore, Dalli said that the commission had prepared two press statements on the report's

outcome and his "termination", with both statements handed to the commission's spokesperson services before his meeting with Barroso.

The former health commissioner also noted that Barroso admitted that "he did not even think about seeking the comfort of a scrutiny of the OLAF report by the supervisory committee before acting on it".

In such exceptional circumstances, Dalli said, "someone acting in good faith and in a proper precautionary manner would have done so. The precautionary principle is an important practice in the decision making process of the commission."

According to Dalli, Barroso failed to wait for the scrutiny by the committee because he "knew that the report he had from OLAF would not hold water" and the commission president "was afraid that a review by the supervisory committee would prevent him from pursuing his objective of terminating me".

### **About the author**

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