PETITION TO THE EUROPEAN PARLIAMENT

ILLEGAL FUNCTIONING OF THE COURTS OF THE EUROPEAN UNION

1. I, Mr Paulo Sequeira Wandschneider, currently residing in rue de la Violette 35, bte 9, 1000 Brussels, was a Commission official from 01.09.1994 to 30.04.2009. My pensioner number is 137265. On 29.03.2010, I lodged a complaint in accordance with Article 90(2) of the *Staff Regulations of officials of the European Communities* (hereinafter *Staff Regulations*) in order to obtain the annulment of all my Career Development Reports (hereinafter 'CDRs') signed by the former director of trade defence, Mr Fritz-Harald Wenig. Furthermore, I requested the European Commission to immediately open a disciplinary proceeding against Mr Wenig and to appoint a committee of independent experts from outside the Community institutions to: (i) investigate the outcome of all complaints concerning Mr Wenig before the publication in the *Sunday Times* of 07.09.2008 of an article with the heading *"Revealed: how Eurocrat leaked trade secrets over lavish dinners"*, (ii) determine why a disciplinary proceeding against Mr Wenig was not opened soon after the Commission's decision to suspend Mr Wenig, and (iii) recommend the opening of those disciplinary proceedings the committee may consider appropriate. Finally, I requested the Commission to take several measures regarding the courts of the European Union.

2. On 09.08.2010, I lodged a complaint with the Ombudsman (1757/2010/KM – annex 1) covering those issues raised in my Article 90(2) complaint which came to my knowledge in the last two years prior to the submission of my complaint to the Ombudsman. In his letter S2010-127952 of 21.10.2010, the Ombudsman closed my complaint (annex 2). As regards the points concerning Mr Wenig, the Ombudsman found that there were insufficient grounds for an inquiry, taking into account that he could not use the accelerated procedure. Nevertheless, I followed the suggestion in his letter of 21.10.2010 and I addressed, on 28.10.2010, an e-mail to Mr José Manuel Barroso, President of the Commission, concerning Mr Wenig. As I did not receive a reply, I sent another e-mail to Mr Barroso on 09.01.2011. The Ombudsman stated in his letter of 21.10.2010 that, should I not receive a satisfactory reply within a reasonable period, I could resubmit my complaint. On 24.01.2011, I received an e-mail from the Commission attaching a reply dated 30.11.2010. This reply was not satisfactory. I, therefore, resubmitted my complaint and the Ombudsman opened an inquiry (0362/2011/KM – annex 3).

3. As regards the points in my complaint 1757/2010/KM concerning the courts of the European Union, the Ombudsman considered that my *"claims are inadmissible because they do not concern a possible instance of maladministration, but the merits of Union legislation"* (Ombudsman's letter of 21.10.2010). The Ombudsman stated that, should I *"wish to pursue these claims,* [I] *could consider submitting a petition to the European Parliament"* (Ombudsman's letter of 21.10.2010). I am thus submitting a petition to the European Parliament.

4. Nevertheless, I find it strange that an Ombudsman cannot deal with alleged violations of the *Charter of Fundamental Rights of the European Union of 7 December 2000* (hereinafter 'the *Charter*') and the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (hereinafter 'the *Convention*'), which are legally binding since the entry into force of the *Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community* (this latter treaty is now known as the *Treaty on the Functioning of the European Union* – hereinafter '*TFEU*'), signed in Lisbon on 13.12.2007. I come to the conclusion that as long as the European institutions violate the *Treaty on European Union* (hereinafter '*TEU*') and the *TFEU* by proposing and approving legislation that violates these treaties, the concept of maladministration does not apply even if one of the Commission's main tasks is to propose legislation that does not violate the treaties: as stated, for example, in Article 17(2) of the *Treaty on European Union*, *"Union legislative acts may only be adopted on the basis of a Commission proposal, except where the Treaties provide otherwise. Other acts shall be adopted on the basis of a Commission proposal where the Treaties so provide."* Since the institution proposing legislation violating the treaties (the European Commission) and those approving it (the Council, ie the member states, and the European Parliament) will obviously not bring an action in any of the courts of the European Union to annul such legislation, and an action brought by any other legal or natural person would probably be considered inadmissible in court, and the Ombudsman adopts a rather conservative position regarding his powers, legislation in the European Union which violates the treaties is almost impossible to annul. This petition is thus an attempt to ensure that the European Parliament acts so that legislation that violates the *Charter* and the *Convention*, and therefore violates the treaties, is annulled.

5. The courts of the European Union have become a threat to the rule of law and it has become urgent to ensure that they are deeply reformed (the European Union Civil Service

Tribunal – hereinafter 'EUCST' – should simply be disbanded). In fact, the absence of checks and balances in the European Union, which is the result of a merely formal separation of powers, is undermining democracy and the rule of law. Since the entry into force on 01.12.2009 of the *Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community*, the Court of Justice (hereinafter 'CJ'), the General Court (hereinafter 'GC', which until 30.11.2009 was known as the Court of First Instance) and the EUCST have been functioning illegally. According to Article 17(2) of the *TEU*, *"Union legislative acts may only be adopted on the basis of a Commission proposal, except where the Treaties provide otherwise."* As regards the courts of the European Union, the Commission has the legal obligation to propose legislation repealing all legislation still in force that violates the *TEU* and the *TFEU*.

6. Article 2 of the *TEU* establishes that *"The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail."* According to Article 6(1) of the *TEU*, *"The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties."* Article 6(3) of the *TEU* states that *"Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law."* According to Article 20 of the *Charter*, *"Everyone is equal before the law."* Article 47 of the *Charter* states that *"Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented."* Article 6(1) of the *Convention* establishes that, *"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."*

7. Article 253 of the *TFEU* establishes that *"The Judges and Advocates-General of the*

Court of Justice shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are jurisconsults of recognised competence". Article 254 of the *TFEU* states that *"The members of the General Court shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to high judicial office"*. Finally, according to Article 257 of the *TFEU*, *"The members of the specialised courts shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to judicial office."* The CJ, the GC and the EUCST are not independent and impartial; fair hearings are currently impossible. Former officials and other workers of the European institutions and bodies are judges of the EUCST. The treaties are beyond doubt being undermined.

8. At the time I lodged my complaint 1757/2010/KM with the Ombudsman, Judge Horstpeter Kreppel had been a *"national expert to the Legal Service of the Commission of the European Communities (1993 to 1996 and 2001 to 2005)"*. Judge Heikki Kanninen had been *"legal secretary at the Court of Justice of the European Communities"*. Judge Haris Tagaras had been *"Administrator at the Court of Justice of the European Communities and at the Commission of the European Communities (1986 to 1990)"*. Judge Sean Van Raepenbusch had been an *"official of the Commission of the European Communities (Directorate General for Social Affairs, 1984 to 1988* [and] *member of the Legal Service of the Commission of the European Communities (1988 to 1994)"*. Judge Stéphane Gervasoni had been *"Legal Secretary at the Court of Justice of the European Communities (September 2001 to September 2005)"*. Meanwhile, Judge Van Raepenbusch was promoted from President of Chamber to President of the EUCST while Judge Kreppel has remained President of Chamber of the EUCST. Judges Kanninen, Tagaras and Gervasoni left, but there are new judges who worked for the European institutions and bodies. Judge Maria Isabel Rofes i Pujol was thus *"member of the Board of Appeal of the Community Plant Variety Office (2006-09)"* and worked for several years as *"Administrator, then Principal Administrator, in the Research and Documentation Division of the Court of Justice of the European Communities (1986-94); Legal Secretary at the Court of Justice (Chamber of Advocate General Ruiz-Jarabo Colomer, January 1995 to April 2004; Chamber of Judge Lõhmus, May 2004 to August 2009)"*. Judge Ezio Perillo was *"Legal Secretary to Advocate General Mancini (1984-88); Legal Adviser to the Secretary-General of the*

European Parliament, Mr Enrico Vinci (1988-93); also, at the same institution: Head of Division in the Legal Service (1995-99); Director for Legislative Affairs and Conciliations, Inter-Institutional Relations and Relations with National Parliaments (1999-2004); Director for External Relations (2004-06); Director for Legislative Affairs in the Legal Service (2006-11)". Judge René Barents was *"Legal Secretary at the Court of Justice of the European Communities (1981-86), then Head of the Employee Rights Unit at the Court of Justice (1986-87); Member of the Legal Service of the Commission of the European Communities (1987-91); Legal Secretary at the Court of Justice (1991-2000); Head of Division (2000-09) in and then Director of the Research and Documentation Directorate of the Court of Justice of the European Union (2009-11)".* Judge Kieran Bradley was *"Administrator in the Secretariat of the Committee on Legal Affairs of the European Parliament (Luxembourg, 1981-88); Member of the Legal Service of the European Parliament (Brussels, 1988-95); Legal Secretary at the Court of Justice (1995-2000); Lecturer in European law at Harvard Law School (2000); Member of the Legal Service of the European Parliament (2000-03), then Head of Unit (2003-11) and Director (2011)".* (These quotations were taken from the EUCST's website and are attached as annex IV.)

9. If this was not enough, many officials of the courts of the European Union, including many of its top officials, are members of the Amicale des référendaires et anciens référendaires de la Cour de justice, du Tribunal de première instance et du Tribunal de la fonction publique des Communautés européennes (hereinafter 'Amicale'). Legal secretaries (*référendaires*), ie assistants of judges, and even members of cabinets of judges are thus members of an association which also includes former officials of these courts: some are retired, others still practise law and are thus able to plead in cases before any of these courts, others are officials of other institutions and bodies of the European Union that are part in cases brought before these courts. (The list of members of the Conseil d'administration of the Amicale at the time of my complaint to the Ombudsman and the current list, which are attached as annex V, are quite illustrative.) The judges whose independence must be beyond doubt have thus legal secretaries who prepare judgments and members of their cabinets meeting within the Amicale with officials of other institutions and lawyers in active duty at the same time that cases where these officials and lawyers may have an interest, and the institutions and bodies of the European Union which employ them do have an interest, are going on. A *référendaire* who becomes a judge may also belong to the Amicale. Therefore, former judges Kanninen and Gervasoni, as well as current

judges Rofes i Pujol, Perillo, Barents and Bradley may belong or have belonged to the Amicale.

10. It is clear that the EUCST, a tribunal with jurisdiction in disputes between the Communities and their servants where, out of seven judges, three worked for the Legal Service of the Commission, one was a member of the Board of Appeal of a Commission body and two worked for the Legal Service of the European Parliament, does not give the guarantee of independence and impartiality mentioned in Article 47 of the *Charter*, a document with the same legal value as the treaties, and Article 6(1) of the *Convention*. Four of the current seven judges of the EUCST worked at the Court of Justice of the European Communities. Six out of the current seven judges of the EUCST had never been judges before and would probably be barred from that profession in virtually all member states. All the judges of the EUCST were appointed after consultation of a committee *"composed of seven persons chosen from among former members of the Court of Justice and the Court of First Instance and lawyers of recognised competence"* (point 1 of the Annex of Council Decision of 18 January 2005 concerning the operating rules of the committee provided for in Article 3(3) of Annex I to the Protocol on the Statute of the Court of Justice (2005/49/EC, Euratom), OJEU L 21 of 25.01.2005, p. 13). This framework, which can be perceived as an elaborate system of cronyism and trafficking of influence, is illegal because Council decisions cannot violate the treaties.

11. These judges cannot continue to participate in cases where the institutions and bodies of the European Union are involved. The guarantee of independence and impartiality is further undermined by the fact that the officials of the courts of the European Union can be members of associations such as the Amicale: no one can guarantee that this type of association is not used to unduly influence the judgments of these courts. Any system where the rule of law is taken seriously ensures that a strict statute of incompatibilities is applicable and enforced in the selection of judges and personnel for a court. Unfortunately, the functioning of these courts shows that the Commission and the other institutions of the European Union merely pay lip service to the rule of law, a fundamental concept in a democracy. Contrary to Article 20 of the *Charter*, the citizens of the European Union are not equal before the law. The judge of a court of the European Union can be, for example, a former official of the Legal Service of the Commission and have in front of him, as one of the parties in a case, his former colleagues of the

Legal Service representing the Commission[1].

12. The system currently in place has been designed to deter the officials of the European institutions from bringing a case before the EUCST in blatant violation of the *Charter*. To bring a case before this court, an official must hire a lawyer (an official is not allowed to lodge an application without a lawyer), which can easily reach EUR 20 000 in fees, while Article 47 of the *Charter* clearly states that *"Everyone shall have the possibility of being advised, defended and represented"*: the possibility of hiring a lawyer cannot be an obligation. But even if an official is obliged to hire a lawyer, he may be impeded by the courts of the European Union from being defended and represented by that lawyer. In fact, in case an official has hired an experienced lawyer and, as is usually the case, that lawyer works with an inexperienced young lawyer, the court may oblige an official to be defended by the inexperienced young lawyer at the hearing if the experienced lawyer is not available to plead on the day chosen by the court[2]. An official may also have to pay a huge amount to the Community institution brought to court in case he/ she loses (Article 7(5) of Annex I to the Council Decision of 2 November 2004 establishing the European Union Civil Service Tribunal (2004/752/EC, Euratom), OJEU L 333 of 09.11.2004, p. 7): to treat an European institution and an official as if they had the same financial clout is absurd and a violation of Article 20 of the *Charter*, which states that *"Everyone is equal before the law."* (The costs of the European institutions are negligible for the institutions and in any case borne by the European taxpayers whether it wins or loses; the costs of officials may easily destroy them financially. But this is probably the understanding of the principle of non-discrimination and equality of treatment at the institutions of the European Union.) In case an official wins against

[1] This is not a merely theoretical issue. It happens in most cases. At the EUCST, I had two judgments on CDRs signed by Mr Wenig delivered by a former official of the Legal Service of the Commission, judge Sean Van Raepenbusch, whose cabinet included at the time at least one member of the Conseil d'administration of the Amicale, whose vice-president was then Mr Wenig. Curiously, the EUCST, which dismisses virtually all the Commission's procedural infringements when raised by Commission officials, managed to annul the Commission decision to suspend Mr Wenig on the basis that the decision which gave Commissioner Siim Kallas the power to suspend an official of Mr Wenig's grade had not been published in the administrative notices and the suspension of Mr Wenig should thus have been decided by the *"collège des commissaires"*. Mr Wenig was also the assistant to the German Judge Bahlmann of the CJ from 1984 to 1987.

[2] I can provide a striking example. In fact, this happened to me in cases F-65/05 and F-28/06, in which my lawyer's request to postpone the date of the hearing – the same in both cases – was rejected by the EUCST and I had to be represented by an inexperienced young lawyer, while the Court of First Instance found another date for the hearing in case T-110/04 when the Commission, which was being represented by two lawyers, requested so arguing that its main lawyer could not be present in the date initially determined by the Court of First Instance.

all the odds and the court orders, for example, the institution to pay the costs, the latter may decide not to pay and the official has to go again to court and incur additional costs to contest such decision[3].

13. The rights of defence of an official in the courts of the European Union are systematically undermined. There is a rather low limit of pages for what an official can write, which means that an official may not be able to duly present his case or contest all the arguments of the other party. The EUCST can close the written procedure without allowing an official to lodge a reply (*réplique*), ie an official will probably not be able to contest the other party's arguments in writing (Article 7(3) of Annex I to the Council Decision of 2 November 2004 establishing the European Union Civil Service Tribunal (2004/752/EC, Euratom)). Lawyers will have a limit of time to plead, usually no longer than 15 minutes, ie basically they will have no time to raise several important issues. These rules show that the access to justice for the officials of the European Union has been curtailed and the right to a fair trial is a mockery.

14. If the infrastructure of corruption at the institutions of the European Union, ie the mechanisms that favour the emergence of unethical and illegal behaviour, is not dismantled, concepts such as democracy and the rule of law risk becoming as meaningful as in the People's Republic of China. The Ombudsman's draft recommendation of 06.12.2011 concerning my complaint 2365/2009/(MAM)KM shows that the Commission enforces a systematic policy of censorship and is protecting Germany, a country which evaluates top German Commission officials. This petition shows that it is time to disband the EUCST and deeply reform the other courts of the European Union according with the principles set out in this petition.

15. I think that the arguments I raised should lead the European Parliament, in accordance with Article 225 of the *TFEU*, to request the Commission:

1. to propose legislation reforming the courts of the European Union by creating a statute of incompatibilities that excludes any person who worked for other institutions and bodies of the European Union from becoming a judge of a court of the European Union and barring officials of the courts from belonging to associations such as the Amicale;

[3] The Commission took one year to accept the reimbursement of my costs in case T-110/04; it paid me the money after the deadline I had to appeal on cases F-65/05 and F-28/06 had expired.

2. to propose legislation repealing or at least amending existing legislation such as Annex I to the Council Decision of 2 November 2004 establishing the EUCST (2004/752/EC, Euratom) in order to allow officials to lodge an application without a lawyer, to make the institutions and bodies of the European Union pay their own costs in cases where officials are one of the parties concerned and to ensure the right to lodge a reply (*réplique*), to oblige an institution or body of the European Union to promptly pay the costs incurred by an official in case the latter wins unless it can prove that such costs have not been incurred, to abolish the limit of pages that can be written during a court case, to ensure that the limit of time to plead in a hearing is at least 60 minutes, to ensure that an official has the right to be defended in a hearing by the most experienced lawyer he/ she hired even if this implies that the court will have to set another date than the one originally envisaged.

16. The European Parliament can use this petition to try to safeguard fundamental rights and to ensure that the rule of law becomes a fundamental principle in the functioning of the European Union. The EUCST in particular is a mere *tribunal de fonctionnaires* who are called judges, an obscene and grotesque playground for a masquerade of justice worthy of a banana republic. I hope that the European Parliament will play its part in ensuring that the treaties of the European Union are taken seriously. In case the European Parliament continues to condone this farce, then it should find a better way to make a mockery of justice at a lower cost, thus saving a huge amount of money and an illusion of justice. It is time to stop playing with the citizens of the European Union.

Brussels, 31 January 2012

Paulo Sequeira Wandschneider

Annexes:

Annex 1 – My complaint to the Ombudsman of 09.08.2010 (1757/2010/KM)

Annex 2 – Ombudsman's letter S2010-127952 of 21.10.2010 addressed to me

Annex 3 – Ombudsman's opening notice on case 0362/2011/KM

Annex 4 – Printouts from the EUCST's website

Annex 5 – List of members of the Conseil d'administration of the Amicale

Annex 1

COMPLAINT TO THE OMBUDSMAN

1. I, Mr Paulo Sequeira Wandschneider, currently residing in rue de la Violette 35, bte 9, 1000 Brussels, was a Commission official from 01.09.1994 to 30.04.2009. My pensioner number is 137265. On 29.03.2010, I lodged a complaint (annex I) in accordance with Article 90(2) of the *Staff Regulations of officials of the European Communities* (hereinafter *Staff Regulations*) in order to obtain the annulment of all my CDRs signed by the former director of trade defence, Mr Fritz-Harald Wenig. Furthermore, I requested the Commission to immediately open a disciplinary proceeding against Mr Wenig and to appoint a committee of independent experts from outside the Community institutions to: (i) investigate the outcome of all complaints concerning Mr Wenig before the publication in the *Sunday Times* of 07.09.2008 of an article with the heading *"Revealed: how Eurocrat leaked trade secrets over lavish dinners"*, (ii) determine why a disciplinary proceeding against Mr Wenig was not opened soon after the Commission's decision to suspend Mr Wenig, and (iii) recommend the opening of those disciplinary proceedings the committee may consider appropriate. Finally, I requested the Commission to take several measures regarding the courts of the European Union.

2. As stated in the Commission's letter of 31.03.2010 (annex II), I *"should receive a reasoned decision within four months of the date of submission of* [my] *complaint. If it is not possible to meet that deadline, the absence of a reply by the end of the period will be deemed to constitute a decision implicitly rejecting* [my] *complaint"*. As I have not received a reasoned decision and the four-month deadline has already expired, I am lodging this complaint with the Ombudsman as I consider that the issues I raised constitute clear examples of maladministration. However, this complaint only covers those issues raised in my Article 90(2) complaint which came to my knowledge in the last two years prior to the submission of my current complaint to the Ombudsman.

3. On 07.09.2008, the *Sunday Times* published an article concerning a director of DG TRADE with the heading *"Revealed: how Eurocrat leaked trade secrets over lavish dinners"* and the subheading *"A top EU official passed on sensitive information potentially worth millions to a company"*. The official concerned, Mr Fritz-Harald Wenig, had been director of trade defence since December 2000 (he was acting director from 1998 to 2000) before becoming

director of market access and industry on 16.04.2008. His permanence at the head of trade defence beyond the five-year period after which mobility is mandatory for officials in sensitive positions would hardly be possible without strong support among some members of the Commission and top Commission officials.

4. On 05.09.2008, two days before the article was published in the *Sunday Times*, the Commission issued a press release stating that it had been *"approached by a British newspaper alleging it was in possession of covertly recorded tapes of a Commission official on the occasion of contacts sought by journalists posing as businessmen and during which a transfer of money was supposedly offered in exchange for advice and information"*. The Commission immediately *"opened an investigation to establish the facts and the appropriate consequences"*. The Commission stressed that at that stage the *Sunday Times* had *"not made available to the Commission the physical evidence it claims to possess"* and the *"Commission therefore calls on the newspaper to make all the elements in its possession available to the competent authorities"*. The Commission then stated that it *"follows a policy of zero tolerance vis-à-vis unethical and illegal behaviour"*.

5. The European Union Civil Service Tribunal (hereinafter 'EUCST') summarised the article in the *Sunday Times* in point 10 of the judgment of 30.11.2009 on case F-80/08 (hereinafter 'the judgment') as follows: *"Le 7 septembre 2008, l'hebdomadaire britannique Sunday Times a publié dans son journal écrit et sur son site internet un article intitulé « Révélations : comment un eurocrate divulgue des secrets commerciaux lors de somptueux dîners » (« Revealed : how Eurocrat leaked trade secrets over lavish dinners »). Dans cet article, il était fait état de trois dîners que le requérant aurait eu, entre les mois de mars et de septembre 2008, dans des restaurants de Bruxelles (Belgique), avec des journalistes du Sunday Times s'étant présentés à lui comme les correspondants d'un exportateur chinois ayant un intérêt dans certaines procédures antidumping diligentées par la Commission. Toujours selon cet article, le requérant aurait transmis à ses interlocuteurs, au cours de ces dîners et lors d'entretiens téléphoniques, des informations relatives à des procédures en cours devant la Commission, informations qu'il n'était pas autorisé à diffuser. Il aurait également été proposé à l'intéressé, en échange de ces informations, de collaborer aux activités du prétendu exportateur chinois pour une rémunération annuelle de 600 000 euros, mais, selon l'article, le requérant n'aurait envisagé une telle*

collaboration qu'après sa mise à la retraite. Enfin, à la proposition qui lui avait été faite, lors du deuxième dîner, de lui verser une somme de 100 000 euros, l'intéressé aurait répondu qu'une telle somme pourrait lui être virée sur un compte bloqué auquel il aurait accès une fois mis à la retraite, précisant néanmoins que le versement ne pourrait intervenir qu'au vu des résultats obtenus par le prétendu exportateur chinois grâce à la transmission des informations."

6. According to point 11 of the judgment, *"Dans le cadre d'une enquête administrative ouverte par la Commission, le requérant a été entendu le 10 septembre 2008 par deux fonctionnaires de l'Office d'investigation et de discipline de la Commission (IDOC). Au cours de cette audition, le requérant, qui était assisté de son avocat, a admis avoir été invité et s'être rendu aux trois dîners décrits dans l'article du Sunday Times sans en avoir informé sa hiérarchie. Il a également reconnu avoir communiqué à ses interlocuteurs plusieurs informations concernant, en particulier, le nom de deux sociétés chinoises productrices de bougies susceptibles d'obtenir, à l'issue d'une procédure antidumping alors en cours, le statut de société opérant dans les conditions d'une économie de marché. Toutefois, le requérant a souligné que ces informations auraient été semi-publiques et, en tout cas, dépourvues de toute valeur commerciale. Enfin, si l'intéressé a indiqué aux fonctionnaires de l'IDOC que, lors du deuxième dîner, ses interlocuteurs avaient proposé, en échange de la communication de ces informations, de lui verser une somme d'argent sur un compte bancaire dans un pays à régime fiscal privilégié, il a nié avoir accepté cette proposition et a souligné avoir seulement envisagé, lors de ces contacts, la possibilité de collaborer à l'activité de l'exportateur chinois après sa mise à la retraite."*

7. At this point, it is clear that as early as 10.09.2008 the Commission knew as facts confirmed by Mr Wenig himself that he had attended three dinners without informing his hierarchy; had given information concerning ongoing anti-dumping investigations; had received a proposal to be paid for the information provided; and had accepted to think about (*"envisagé"*) working for a Chinese exporter after retirement.

8. According to point 18 of the judgment, *"Pour justifier la décision litigieuse, le membre de la Commission chargé du personnel s'est fondé sur la circonstance, révélée par les informations publiées « dans différents articles de presse, en particulier dans le Sunday Times », et lors des auditions du requérant devant les fonctionnaires de l'IDOC et devant lui-même, que l'intéressé*

aurait méconnu les dispositions des articles 11, 12 et 17, paragraphe 1, du statut. En effet, selon la décision litigieuse, le requérant aurait transmis des informations confidentielles à des personnes auxquelles elles ne pouvaient être communiquées, se serait montré disposé à être ultérieurement recruté par ces personnes pour un salaire substantiel en échange d'une collaboration qui aurait débuté avant même sa mise à la retraite et n'aurait ni informé sa hiérarchie du fait qu'il aurait été approché par de tels interlocuteurs ni demandé l'autorisation à celle-ci de maintenir ces contacts répétés. Enfin, la décision litigieuse soulignait que de tels agissements, s'ils devaient être établis, seraient constitutifs d'une « faute professionnelle grave de la part du requérant », compte tenu notamment de l'« atteinte majeure à la réputation de la Commission » qu'ils auraient entraînée et de la position élevée de l'intéressé au sein de la Commission."

9. In spite of the fact that the Commission itself considered that Mr Wenig's acts, *"s'ils devaient être établis, seraient constitutifs d'une « faute professionnelle grave de la part du requérant », compte tenu notamment de l'« atteinte majeure à la réputation de la Commission » qu'ils auraient entraînée et de la position élevée de l'intéressé au sein de la Commission"*, the Commission did not promptly open a disciplinary proceeding. The facts had been well established: as early as 10.09.2008 the Commission had already established as facts the situations mentioned in point 7 above; facts confirmed by Mr Wenig and strong enough to immediately open a disciplinary proceeding. Instead the Commission accepted Mr Wenig's request to retire on 01.05.2009. Apparently, according to Article 9(2) of Annex IX of the *Staff Regulations*, the Commission can only reduce Mr Wenig's pension and his income cannot be less than the minimum subsistence figure laid down in Article 6 of Annex VIII, with the addition of any family allowances payable. This can hardly be understood as *"a policy of zero tolerance vis-à-vis unethical and illegal behaviour"* (press release of 05.09.2008).

10. It should be noted that the facts against Mr Wenig are strengthened by the EUCST's conclusions. In point 68 of the judgment, the EUCST considers that the article published in the *Sunday Times* is credible: *"l'article du Sunday Times (...) est rédigé de manière très circonstanciée et rapporte à de nombreuses reprises, et entre guillemets, les réponses de l'intéressé aux questions qui lui auraient été posées par les journalistes"*. The EUCST then adds in point 69 of the judgment that Mr Wenig *"a reconnu, alors qu'il était assisté de son avocat,*

une partie des faits rapportés dans l'article du Sunday Times. Il a ainsi concédé avoir communiqué à ses interlocuteurs, au cours des dîners auxquels il avait été convié ou lors d'entretiens téléphoniques, certains renseignements, en particulier le nom de deux sociétés chinoises productrices de bougies qui étaient susceptibles d'obtenir, à l'issue d'une procédure antidumping alors en cours, le statut de société opérant dans les conditions d'une économie de marché. À cet égard, le requérant ne saurait sérieusement contester le caractère confidentiel de ces informations ou soutenir que celles-ci auraient été « semi-publiques », dès lors qu'elles étaient de nature à conférer un avantage certain à un opérateur désireux, avant le terme de la procédure antidumping, de conclure des contrats avec ces sociétés. Du reste, il importe de relever que les deux sociétés en question ont effectivement obtenu le statut de société opérant dans les conditions d'une économie de marché et n'ont été soumises à aucun droit antidumping par le règlement (CE) n° 1130/2008 de la Commission, du 14 novembre 2008, instituant un droit antidumping provisoire sur les importations de certains types de bougies, chandelles, cierges et articles similaires originaires de la République populaire de Chine (JO L 306, p. 22)."

11. But the EUCST does not only conclude that the information provided by Mr Wenig was confidential, a conclusion that the Commission could itself have arrived at as early as 10.09.2008. In point 70 of the judgment, the EUCST stresses that, although Mr Wenig did not receive any payment, he did not interrupt the contacts and had another dinner following the one in which a payment was offered: *"alors que le requérant a indiqué aux fonctionnaires de l'IDOC que, lors du deuxième dîner, le versement d'une somme d'argent sur un compte ouvert à son nom dans un pays à régime fiscal privilégié lui avait été proposé en échange de la transmission d'informations, il est constant que l'intéressé n'a ni informé sa hiérarchie de tels faits ni interrompu les contacts avec ses interlocuteurs, mais a même accepté de ceux-ci une nouvelle invitation à dîner".*

12. At this point, it is useful to compare Mr Wenig's case with the one involving Ms Marta Andreasen, accused of acts which pale when compared with those mentioned in the Commission's decision to suspend Mr Wenig. The Commission opened a disciplinary proceeding against Ms Andreasen on 02.07.2002, adopted the decision to suspend her on 28.08.2002 and fired her on 13.10.2004. Mr Wenig was suspended on 18.09.2008, retired on 01.05.2009 and a disciplinary proceeding has not yet been opened. According to OLAF (Ms Claudia Khortals's e-

mail of 25.02.2010), the opening of a disciplinary proceeding against Mr Wenig *"will depend on the outcome of our procedure and our recommendation"*, a procedure that seems to have no end in sight. It is difficult to understand what additional facts the Commission needs to open the disciplinary proceeding. Point 22 of the judgment states that *"Le 29 janvier 2009, l'OLAF a clôturé l'enquête et a transmis ses conclusions aux autorités judiciaires belges le 12 février suivant."* In spite of this inquiry, OLAF is now pretending that it needs to complete an additional investigation on the functioning of the Directorate of trade defence, which is going on since at least April 2009, before deciding whether to recommend the opening of a disciplinary proceeding against Mr Wenig. This clearly shows that the Commission does not want to open a disciplinary proceeding against Mr Wenig and breached the principle of equal treatment established in Article 1(d) of the *Staff Regulations*. The reasons behind such lenient treatment should be investigated by a committee of independent experts. The committee should in particular look at factors such as Mr Wenig's nationality, political affiliation, and the fact that the Commission approved mechanisms that open the door to unethical and illegal behaviour and spent years defending Mr Wenig despite the serious irregularities I had pointed out long before the publication of the article in the *Sunday Times*. Part of the accusations summarised in points 12 to 17 of my Article 90(2) complaint date back more than two years (I raised some of them repeatedly since 2003) and, therefore, I am not requesting the Ombudsman's opinion on the issues raised in my Article 90(2) complaint whenever they are more than two years old.

13. Despite my complaints dating back to 2003, OLAF waited until April 2009 to open an investigation on the functioning of the Directorate of trade defence[1]. This shows the unwillingness of OLAF to seriously investigate anything that involves top Commission officials. Also, investigations carried out by OLAF usually start so late and take so many years that they are rather an exercise in window dressing than a basis for punishment or dissuasive mechanisms against unethical and illegal behaviour. Before the publication of the article in the *Sunday Times*,

[1] On 22.09.2008, I sent an e-mail to Mr Barroso, President of the European Commission, requesting him if I could transmit several documents, which raised several problems regarding OLAF, DG ADMIN, DG TRADE, and in particular Mr Wenig and the functioning of the Directorate of trade defence, to the President of the European Parliament and the leaders of the political groups in the European Parliament. Mr Chêne, then director general of DG ADMIN, informed me on behalf of Mr Barroso (note ref. 454 of 17.02.2009) that Article 22(b) of the *Staff Regulations "does not permit* [me] *to disclose the information to the leaders of the political groups"*. As I do not trust the President of the European Parliament to do anything on his own on accusations regarding top Commission officials and especially in a case where many officials are German, I did not transmit the documents and preferred to wait for developments concerning this issue.

Mr Wenig probably had hundreds of unreported meetings with or without meals in his ten years at the head of the Directorate of trade defence. The main difference between these contacts and those reported by the *Sunday Times* is that we will never know the date of many of these meetings, whom Mr Wenig met and the content of the conversations. This shows the tortuous, and in my opinion illegal, functioning of the Directorate of trade defence and explains the unwillingness of the Commission to finalise a credible investigation that could destroy the reputations of many top Commission officials besides Mr Wenig. In fact, if an investigation were to confirm as facts the events reported in the *Sunday Times* (and the judgment shows that the events reported are accurate), it would be surprising for a person with nearly twenty years in trade defence to be punished without revealing similar cases in which other senior officials may be involved. This is another reason to believe that the Commission does not want to open a disciplinary proceeding against Mr Wenig.

14. It should not be forgotten that Articles 6.5 and 21.3 of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community establish that interested parties in an anti-dumping investigation might be heard if they so request. In such a hearing, the participation of the case-handlers involved in the investigation is essential. The Regulation does not foresee the possibility for interested parties in an investigation to meet, for example, with the director of trade defence without the presence of the officials responsible for the investigation. However, many members of the Commission, senior officials of DG TRADE, DG ADMIN, OLAF and many others considered perfectly legal meetings where the persons carrying out the investigation do not participate. The dinners attended by Mr Wenig and reported by the *Sunday Times* should not thus have come as a surprise. I consider that meetings that bypass the purpose of the hearing process are not transparent and are illegal: no one can guarantee that some interested parties do not get information not yet disclosed to all interested parties and that those meetings do not unduly influence the decision-making process and thus the results of an investigation. The meetings reported by the *Sunday Times* are a clear example of the possibility of such a perverse outcome and, therefore, a committee of independent experts should assess whether disciplinary proceedings should be opened against those who endorsed this type of contacts.

15. It is nevertheless ironic to see that Mr Wenig, who once considered himself an

"employee" of the Community industry, would envisage working for a Chinese (bogus, but he did not know) company after retirement. Perhaps Mr Wenig came to the conclusion that he should benefit from the close links between the Commission and the People's Republic of China (hereinafter 'PRC'). In fact, it could be argued that DG TRADE, and therefore the Commission, does not defend the interests of the European Union, but those of the PRC and foreign investors there. According to a special report on international banking published by *The Economist* on 19.05.2007, UBS *"employs Leon Brittan, the former European Union commissioner who negotiated China's entry into the World Trade Organisation, to take tea with the country's leaders in Beijing. These attentions paid off earlier this year when UBS won permission to take control of its joint-venture partner, Beijing Securities. If everything goes as planned, that will make it the only foreign bank besides Goldman Sachs to manage underwriting in the local market."* (The consequences for the European industry of the PRC's accession to the WTO are today painfully obvious.)

16. On 26.09.2008, Rt. Hon. Lord Mandelson, who, according to *Wikipedia*, *"acquired the nickname "The Prince of Darkness""*, was the protagonist of another episode[2]: *"In 2008, melamine added to Chinese milk caused kidney stones and other ailments in tens of thousands of Chinese children, and killed at least six. To show his confidence in Chinese dairy products, Mandelson drank a glass of Chinese milk in front of reporters. Nine days later, he was hospitalized for a kidney stone."* On 26.09.2008 Lord Mandelson was still Mr Peter Mandelson, the commissioner responsible for trade, representing the Commission in the World Economic Forum conference in Tianjin. The Commission had imposed a ban on imports of Chinese dairy products on that same day and had even issued a press release on 25.09.2008 announcing that ban. At that time, the Code of Conduct for Commissioners required the members of the Commission *"to discharge their duties in the general interest of the Community". "In addition, the general interest requires that in their official and private lives Commissioners should behave in a manner that is in keeping with the dignity of their office."* Article 217(1) of the *Treaty*

[2] This episode was also reported by other media sources such as *The Australian* and *The Mail*.

establishing the European Community (as amended by the *Treaty of Nice*), applicable at that time, established that *"The Commission shall work under the political guidance of its President, who shall decide on its internal organisation in order to ensure that it acts consistently, efficiently and on the basis of collegiality."* Article 217(4) established that *"A Member of the Commission shall resign if the President so requests, after obtaining the approval of the College."* The fact that nobody even argued whether the president should have requested the resignation of Mr Mandelson is another proof that there are no checks and balances in the institutions of the European Union. Its future seems, however, simple: mass unemployment and poverty for many; tea, milk and honey (ie well paid-jobs) for the few with the right connections. A committee of independent experts should thus carefully investigate how the Commission has used trade defence instruments.

17. The Commission promised *"a policy of zero tolerance vis-à-vis unethical and illegal behaviour"* (press release of 05.09.2008). I am very sceptical of this kind of statements. The problems at the Commission are systemic problems which are very difficult to solve, as there is not a system of checks and balances. Also, the nationalities and ranks of the officials responsible for the Commission's trade policy hardly make any meaningful investigation possible. As I told Mr Barroso in my e-mail of 22.09.2008, it is not possible that either OLAF, a body within the Commission, or IDOC, a directorate in DG ADMIN, which have ignored all my allegations concerning Mr Wenig, despite the fact that they were supported by solid documentary evidence, are in a position to carry out an unbiased investigation following the publication of the article in the *Sunday Times*. Furthermore, Mr Wenig is close to Germany's Liberal Party (FDP) – a party that is currently a member in a coalition government with the CDU at federal level and is often present in coalitions with Germany's main parties at state level.

18. In an article of 11.09.2008, *Der Spiegel* states, under the subheading *"Good reputation in Berlin"* (*"Guter Ruf in Berlin"*), that *"The EU top official is highly esteemed in Berlin. When the current foreign minister Frank-Walter Steinmeier was still the head of the Chancellery of Gerhard Schröder, he constituted a group of state secretaries and ministry directors which from time to time rated the German top personnel working in international organisations such as the UN in New York, the OECD in Paris, but also the EU in Brussels. The government changed, the personnel rating system stayed, and a lot was always expected from Wenig. He regularly was*

among the ones who received a positive mark: fit for higher international tasks." Top German Commission officials are thus assessed by the German government with criteria that have not been made public. Article 11 of the *Staff Regulations* establishes that *"An official shall carry out his duties and conduct himself solely with the interests of the Communities in mind; he shall neither seek nor take instructions from any government, authority, organisation or person outside his institution. He shall carry out the duties assigned to him objectively, impartially and in keeping with his duty of loyalty to the Communities."* Unfortunately, the Commission refused to investigate whether the situation reported by *Der Spiegel* has undermined the obligation of top German Commission officials to carry out their duties in accordance with Article 11 of the *Staff Regulations* and to bring an action before the appropriate court against Germany for evaluating Commission officials and thus undermining fundamental principles of the European civil service such as independence, loyalty and impartiality. I therefore addressed a complaint to the Ombudsman on this particular issue (registration number 2365/2009/MAM). The late Mr Franz-Hermann Brüner, director general of OLAF from 1999 until his death in early 2010 (another example of how a German official is kept in a sensitive position beyond the five-year period after which mobility is mandatory), Mr Horst Reichenbach, who opposed any investigation as director general of DG ADMIN, and Mr Wenig were top German Commission officials.

19. In this context, the only credible solution to promote the Commission's *"policy of zero tolerance vis-à-vis unethical and illegal behaviour"* is for the Commission to appoint a committee of independent experts from outside the Community institutions to: (i) investigate the outcome of all complaints concerning Mr Wenig before the publication of the article in the *Sunday Times* of 07.09.2008, (ii) determine why a disciplinary proceeding against Mr Wenig was not opened soon after the Commission's decision to suspend Mr Wenig, and (iii) recommend the opening of those disciplinary proceedings the committee may consider appropriate.

20. Furthermore, since the courts of the European Union have become a threat to the rule of law, it has become urgent to ensure that they are deeply reformed (the EUCST should simply be disbanded). In fact, the absence of checks and balances in the European Union, which is the result of a merely formal separation of powers, is undermining democracy and the rule of law. Since the entry into force on 01.12.2009 of the *Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community* (this latter treaty is now known as the

Treaty on the Functioning of the European Union – hereinafter '*TFEU*'), signed in Lisbon on 13.12.2007, the Court of Justice (hereinafter 'CJ'), the General Court (hereinafter 'GC', which until 30.11.2009 was known as the Court of First Instance) and the EUCST have been functioning illegally. According to Article 17(2) of the *Treaty on European Union* (hereinafter '*TEU*'), *"Union legislative acts may only be adopted on the basis of a Commission proposal, except where the Treaties provide otherwise."* As regards the courts of the European Union, the Commission has the legal obligation to propose legislation repealing all legislation still in force that violates the *TEU* and the *TFEU*.

21. Article 2 of the *TEU* establishes that *"The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail."* According to Article 6(1) of the *TEU*, *"The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties."* Article 6(3) of the *TEU* states that *"Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law."* According to Article 20 of the *Charter of Fundamental Rights of the European Union* (hereinafter 'the *Charter*'), *"Everyone is equal before the law."* Article 47 of the *Charter* states that *"Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented."* Article 6(1) of the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (hereinafter 'the *Convention*') establishes that *"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."*

22. Article 253 of the *TFEU* establishes that *"The Judges and Advocates-General of the Court of Justice shall be chosen from persons whose independence is beyond doubt and who*

possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are jurisconsults of recognised competence". Article 254 of the *TFEU* states that *"The members of the General Court shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to high judicial office"*. Finally, according to Article 257 of the *TFEU*, *"The members of the specialised courts shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to judicial office."* The CJ, the GC and the EUCST are not independent and impartial; fair hearings are currently impossible. Former Commission officials and other people who worked for the Commission are judges of the EUCST. The theory is beyond doubt undermined by the practice. Judge Horstpeter Kreppel was thus a *"national expert to the Legal Service of the Commission of the European Communities (1993 to 1996 and 2001 to 2005)"*. Judge Haris Tagaras was *"Administrator at the Court of Justice of the European Communities and at the Commission of the European Communities (1986 to 1990)"*. Judge Sean Van Raepenbusch was an *"official of the Commission of the European Communities (Directorate General for Social Affairs, 1984 to 1988* [and] *member of the Legal Service of the Commission of the European Communities (1988 to 1994)"*. (These quotations come from the EUCST's website – http://curia.europa.eu/jcms/jcms/T5_5240/.) If this was not enough, many officials of the courts of the European Union, including many of its top officials, are members of the Amicale des référendaires et anciens référendaires de la Cour de justice, du Tribunal de première instance et du Tribunal de la fonction publique des Communautés européennes (hereinafter 'Amicale'). Assistants of judges and even members of cabinets of judges are thus members of an association which also includes former officials of these courts: some are retired, others still practise law and are thus able to plead in cases before any of these courts, others still are officials of other institutions and bodies of the European Union that are part in cases brought before these courts. (The list of members of the Conseil d'administration of the Amicale, which was attached as annex I of my observations of 25.05.2010 on the commission's opinion regarding my complaint to the Ombudsman 2365/2009/(MAM)KM, is quite illustrative.) The judges whose independence must be beyond doubt have thus assistants who prepare judgments and members of their cabinets meeting within the Amicale with officials of other institutions and lawyers in active duty at the same time that cases where these officials and lawyers may have an interest and the institutions and bodies of the European Union which employ them do have an interest are going on. A

référendaire who becomes a judge may also belong to the Amicale.

23. It is clear that the EUCST, a tribunal with jurisdiction in disputes between the Communities and their servants where three out of seven judges worked for the Commission – including its Legal Service – and participate in cases where the Commission is involved, does not give the guarantee of independence and impartiality mentioned in Article 47 of the *Charter*, a document with the same legal value as the treaties, and Article 6(1) of the *Convention*. This guarantee is further undermined by the fact that the officials of the courts of the European Union can be members of associations such as the Amicale: no one can guarantee that this type of association is not used to unduly influence the decision-making process and thus the results of the judgments of these courts. Any system where the rule of law is taken seriously ensures that a strict statute of incompatibilities is applicable and enforced in the selection of judges and personnel for a court. Unfortunately, the functioning of these courts shows that the Commission and the other institutions of the European Union merely pay lip service to the rule of law, a fundamental concept in a democracy. Contrary to Article 20 of the *Charter*, the citizens of the European Union are not equal before the law. The judge of a court of the European Union can be a former official of the Legal Service of the Commission and have in front of him, as one of the parties in a case, his former colleagues of the Legal Service representing the Commission[3].

24. The system currently in place has been designed to deter the officials of the European institutions from bringing a case before the EUCST in blatant violation of the *Charter*. To bring a case before this court, an official must hire a lawyer (an official is not allowed to lodge an application without a lawyer), which can easily reach EUR 20 000, while Article 47 of the *Charter* clearly states that *"Everyone shall have the possibility of being advised, defended and represented"*: the possibility of hiring a lawyer is not an obligation. But even if an official hires a lawyer, he may be impeded by the courts of the European Union from being defended and

[3] This is not a merely theoretical issue. It happens in many cases. At the EUCST, I had two judgments on CDRs signed by Mr Wenig delivered by a former official of the Legal Service of the Commission, judge Sean Van Raepenbusch, whose cabinet includes at least one member of the Conseil d'administration de l'Amicale, whose vice-president at the time was Mr Wenig. Curiously, the EUCST, which dismisses virtually all the Commission's procedural infringements when raised by Commission officials, managed to annul the Commission decision to suspend Mr Wenig on the basis that the decision which gave Mr Siim Kallas the power to suspend an official of Mr Wenig's grade had not been published in the administrative notices and the suspension of Mr Wenig should thus have been decided by the *"collège des commissaires"*. Mr Wenig was also the assistant to the German judge Bahlmann of the CJ from 1984 to 1987.

represented by that lawyer. In fact, in case an official has hired an experienced lawyer and, as is usually the case, that lawyer works with an inexperienced young lawyer, the court may oblige an official to be defended by the inexperienced young lawyer at the hearing if the experienced lawyer is not available to plead on the day chosen by the court[4]. An official may also have to pay a huge amount to the Community institution brought to court in case he/ she loses (Article 7(5) of Annex I to the Council Decision of 2 November 2004 establishing the European Union Civil Service Tribunal (2004/752/EC, Euratom)): to treat an European institution and an official as if they had the same financial clout is absurd and a violation of Article 20 of the *Charter*, which states that *"Everyone is equal before the law."* (The costs of the European institutions are negligible for the institutions and in any case borne by the European taxpayers whether it wins or loses; the costs of officials may easily destroy them financially. But this is probably the understanding of the principle of non-discrimination and equality of treatment at the institutions of the European Union.) In case an official wins against all the odds and the court orders, for example, the institution to pay the costs, the latter may decide not to pay and the official has to go again to court and incur additional costs to contest such decision[5].

25. The rights of defence of an official in the courts of the European Union are systematically undermined. There is a limit of pages for what an official can write, which means that an official may not be able to contest all the arguments of the other party. The EUCST can close the written procedure without allowing an official to lodge a reply (*réplique*), ie an official will probably not be able to contest the other party's arguments in writing (Article 7(3) of Annex I to the Council Decision of 2 November 2004 establishing the European Union Civil Service Tribunal (2004/752/EC, Euratom)). Lawyers will have a limit of time to plead, usually no longer than 15 minutes, ie basically they will have no time to raise several important issues. These rules show that the access to justice for the officials of the European Union has been curtailed and the right to a fair trial is a mockery.

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[4] I can provide a striking example. In fact, this happened to me in two cases F-65/05 and F-28/06, in which my lawyer's request to postpone the date of the hearing – the same in both cases – was rejected by the EUCST and I had to be represented by an inexperienced young lawyer, while the Court of First Instance found another date for the hearing in case T-110/04 when the Commission, which was being represented by two lawyers, requested so arguing that its main lawyer could not be present in the date initially determined by the Court of First Instance.

[5] The Commission took one year to accept the reimbursement of my costs in case T-110/04; it paid me the money after the deadline to appeal on cases F-65/05 and F-28/06 had expired.

26. If the infrastructure of corruption at the institutions of the European Union, ie the mechanisms that favour the emergence of unethical and illegal behaviour, is not dismantled, concepts such as democracy and the rule of law risk becoming as meaningful as in the PRC. It is time to stop protecting top German Commission officials; it is time to outsource investigations such as the one I am requesting to a committee of independent experts, persons whose competence and independence is beyond doubt and do not need to make favours; it is time to disband the EUCST and deeply reform the other courts of the European Union according with the principles set out in this complaint. Otherwise, *"a policy of zero tolerance vis-à-vis unethical and illegal behaviour"* will sound as a purely Orwellian slogan. In this context, I am interested to know the opinion of the Ombudsman on the substance of the issues of maladministration I am now raising and to see what will be the outcome.

27. I think that the arguments I raised should lead the Commission:

1. to immediately open a disciplinary proceeding against Mr Wenig;

2. to appoint a committee of independent experts from outside the Community institutions to: (i) investigate the outcome of all complaints concerning Mr Wenig before the publication of the article in the *Sunday Times* of 07.09.2008, (ii) determine why a disciplinary proceeding against Mr Wenig was not opened soon after the Commission's decision to suspend Mr Wenig, and (iii) recommend the opening of those disciplinary proceedings the committee may consider appropriate.

3. to propose legislation reforming the courts of the European Union by creating a statute of incompatibilities that excludes any person who has worked for other institutions and bodies of the European Union from becoming a judge of a court of the European Union and barring officials of the courts from belonging to associations such as the Amicale;

4. to propose legislation repealing or at least amending existing legislation such as Annex I to the Council Decision of 2 November 2004 establishing the EUCST (2004/752/EC, Euratom) to allow officials to lodge an application without a lawyer, to condemn the

institutions and bodies of the European Union to pay their own costs in cases where officials are one of the parties concerned and to ensure the right to lodge a reply (*réplique*), to oblige an institution or body of the European Union to promptly pay the costs incurred by an official in case the latter wins unless it can prove that such costs have not been incurred, to abolish the limit of pages that can be written during a court case, to ensure that the limit of time to plead in a hearing is at least 60 minutes, to ensure that an official has the right to be defended in a hearing by the most experienced lawyer he/ she hired even if this implies that the court will have to set another date than the one originally envisaged.

28. I think that the Commission should not be allowed to violate with impunity the rule of law, fundamental rights and principles of public service. I hope that the Ombudsman will use this complaint to try to safeguard fundamental rights, to ensure that European Union citizens are entitled to an open and accountable administration and that the rule of law becomes a fundamental principle in the functioning of the European Union. I hope that the Ombudsman will play his part in ensuring that the Community rules are taken seriously.

Brussels, 9 August 2010

Paulo Sequeira Wandschneider

Paulo Sequeira Wandschneider

Annexes:

Annex I – My complaint lodged in accordance with Article 90(2) of the *Staff Regulations*

Annex II – Commission's letter of 31.03.2010

Annex I

COMPLAINT

ARTICLE 90(2) OF THE STAFF REGULATIONS

1. I, Mr Paulo Sequeira Wandschneider, pensioner number 137265, on invalidity since 01.05.2009, am lodging a complaint in order to obtain the annulment of all my CDRs signed by the former director of trade defence, Mr Fritz-Harald Wenig. Furthermore, I request the Commission to immediately open a disciplinary proceeding against Mr Wenig and to appoint a committee of independent experts from outside the Community institutions to: (i) investigate the outcome of all complaints concerning Mr Wenig before the publication in the *Sunday Times* of 07.09.2008 of an article with the heading *"Revealed: how Eurocrat leaked trade secrets over lavish dinners"*, (ii) determine why a disciplinary proceeding against Mr Wenig was not opened soon after the Commission's decision to suspend Mr Wenig, and (iii) recommend the opening of those disciplinary proceedings the committee may consider appropriate. Finally, I request the Commission to take several measures regarding the courts of the European Union.

2. On 07.09.2008, the *Sunday Times* published an article concerning a director of DG TRADE with the heading *"Revealed: how Eurocrat leaked trade secrets over lavish dinners"* and the subheading *"A top EU official passed on sensitive information potentially worth millions to a company"*. The official concerned, Mr Fritz-Harald Wenig, had been director of trade defence since December 2000 (he was acting director from 1998 to 2000) before becoming director of market access and industry on 16.04.2008. It is difficult to believe that his permanence at the head of trade defence beyond the five-year period after which mobility is mandatory for officials in sensitive positions would be possible without strong support among some members of the Commission and top Commission officials.

3. On 05.09.2008, two days before the article was published in the *Sunday Times*, the Commission issued a press release stating that it had been *"approached by a British newspaper alleging it was in possession of covertly recorded tapes of a Commission official on the occasion of contacts sought by journalists posing as businessmen and during which a transfer of money was supposedly offered in exchange for advice and information"*. The Commission immediately *"opened an investigation to establish the facts and the appropriate consequences"*. The Commission stressed that at that stage the *Sunday Times* had *"not made available to the*

Commission the physical evidence it claims to possess" and the *"Commission therefore calls on the newspaper to make all the elements in its possession available to the competent authorities"*. The Commission then stated that it *"follows a policy of zero tolerance vis-à-vis unethical and illegal behaviour"*.

4. The European Union Civil Service Tribunal (hereinafter 'EUCST') summarised the article in the *Sunday Times* in point 10 of the judgment of 30.11.2009 on case F-80/08 (hereinafter 'the judgment') as follows: *"Le 7 septembre 2008, l'hebdomadaire britannique Sunday Times a publié dans son journal écrit et sur son site internet un article intitulé « Révélations : comment un eurocrate divulgue des secrets commerciaux lors de somptueux dîners » (« Revealed : how Eurocrat leaked trade secrets over lavish dinners »). Dans cet article, il était fait état de trois dîners que le requérant aurait eu, entre les mois de mars et de septembre 2008, dans des restaurants de Bruxelles (Belgique), avec des journalistes du Sunday Times s'étant présentés à lui comme les correspondants d'un exportateur chinois ayant un intérêt dans certaines procédures antidumping diligentées par la Commission. Toujours selon cet article, le requérant aurait transmis à ses interlocuteurs, au cours de ces dîners et lors d'entretiens téléphoniques, des informations relatives à des procédures en cours devant la Commission, informations qu'il n'était pas autorisé à diffuser. Il aurait également été proposé à l'intéressé, en échange de ces informations, de collaborer aux activités du prétendu exportateur chinois pour une rémunération annuelle de 600 000 euros, mais, selon l'article, le requérant n'aurait envisagé une telle collaboration qu'après sa mise à la retraite. Enfin, à la proposition qui lui avait été faite, lors du deuxième dîner, de lui verser une somme de 100 000 euros, l'intéressé aurait répondu qu'une telle somme pourrait lui être virée sur un compte bloqué auquel il aurait accès une fois mis à la retraite, précisant néanmoins que le versement ne pourrait intervenir qu'au vu des résultats obtenus par le prétendu exportateur chinois grâce à la transmission des informations."*

5. According to point 11 of the judgment, *"Dans le cadre d'une enquête administrative ouverte par la Commission, le requérant a été entendu le 10 septembre 2008 par deux fonctionnaires de l'Office d'investigation et de discipline de la Commission (IDOC). Au cours de cette audition, le requérant, qui était assisté de son avocat, a admis avoir été invité et s'être rendu aux trois dîners décrits dans l'article du Sunday Times sans en avoir informé sa hiérarchie. Il a également reconnu avoir communiqué à ses interlocuteurs plusieurs informations*

concernant, en particulier, le nom de deux sociétés chinoises productrices de bougies susceptibles d'obtenir, à l'issue d'une procédure antidumping alors en cours, le statut de société opérant dans les conditions d'une économie de marché. Toutefois, le requérant a souligné que ces informations auraient été semi-publiques et, en tout cas, dépourvues de toute valeur commerciale. Enfin, si l'intéressé a indiqué aux fonctionnaires de l'IDOC que, lors du deuxième dîner, ses interlocuteurs avaient proposé, en échange de la communication de ces informations, de lui verser une somme d'argent sur un compte bancaire dans un pays à régime fiscal privilégié, il a nié avoir accepté cette proposition et a souligné avoir seulement envisagé, lors de ces contacts, la possibilité de collaborer à l'activité de l'exportateur chinois après sa mise à la retraite."

6. At this point, it is clear that as early as 10.09.2008 the Commission knew as facts confirmed by Mr Wenig himself that he had attended three dinners without informing his hierarchy; had given information concerning ongoing anti-dumping investigations; had received a proposal to be paid for the information provided; and had accepted to think about (*"envisagé"*) working for a Chinese exporter after retirement.

7. According to point 18 of the judgment, *"Pour justifier la décision litigieuse, le membre de la Commission chargé du personnel s'est fondé sur la circonstance, révélée par les informations publiées « dans différents articles de presse, en particulier dans le Sunday Times », et lors des auditions du requérant devant les fonctionnaires de l'IDOC et devant lui-même, que l'intéressé aurait méconnu les dispositions des articles 11, 12 et 17, paragraphe 1, du statut. En effet, selon la décision litigieuse, le requérant aurait transmis des informations confidentielles à des personnes auxquelles elles ne pouvaient être communiquées, se serait montré disposé à être ultérieurement recruté par ces personnes pour un salaire substantiel en échange d'une collaboration qui aurait débuté avant même sa mise à la retraite et n'aurait ni informé sa hiérarchie du fait qu'il aurait été approché par de tels interlocuteurs ni demandé l'autorisation à celle-ci de maintenir ces contacts répétés. Enfin, la décision litigieuse soulignait que de tels agissements, s'ils devaient être établis, seraient constitutifs d'une « faute professionnelle grave de la part du requérant », compte tenu notamment de l'« atteinte majeure à la réputation de la Commission » qu'ils auraient entraînée et de la position élevée de l'intéressé au sein de la Commission."*

8. In spite of the fact that the Commission itself considered that Mr Wenig's acts, *"s'ils devaient être établis, seraient constitutifs d'une « faute professionnelle grave de la part du requérant », compte tenu notamment de l'« atteinte majeure à la réputation de la Commission » qu'ils auraient entraînée et de la position élevée de l'intéressé au sein de la Commission"*, the Commission did not promptly open a disciplinary proceeding. The facts had been well established: as early as 10.09.2008 the Commission had already established as facts the situations mentioned in point 6 above; facts confirmed by Mr Wenig and strong enough to immediately open a disciplinary proceeding. Instead the Commission accepted Mr Wenig's request to retire on 01.05.2009. Apparently, according to Article 9(2) of Annex IX of the *Staff Regulations of Officials of the European Communities* (hereinafter '*Staff Regulations*'), the Commission can only reduce Mr Wenig's pension and his income cannot be less than the minimum subsistence figure laid down in Article 6 of Annex VIII, with the addition of any family allowances payable. This can hardly be understood as *"a policy of zero tolerance vis-à-vis unethical and illegal behaviour"* (press release of 05.09.2008).

9. It should be noted that the facts against Mr Wenig are strengthened by the EUCST's conclusions. In point 68 of the judgment, the EUCST considers that the article published in the *Sunday Times* is credible: *"l'article du Sunday Times (...) est rédigé de manière très circonstanciée et rapporte à de nombreuses reprises, et entre guillemets, les réponses de l'intéressé aux questions qui lui auraient été posées par les journalistes"*. The EUCST then adds in point 69 of the judgment that Mr Wenig *"a reconnu, alors qu'il était assisté de son avocat, une partie des faits rapportés dans l'article du Sunday Times. Il a ainsi concédé avoir communiqué à ses interlocuteurs, au cours des dîners auxquels il avait été convié ou lors d'entretiens téléphoniques, certains renseignements, en particulier le nom de deux sociétés chinoises productrices de bougies qui étaient susceptibles d'obtenir, à l'issue d'une procédure antidumping alors en cours, le statut de société opérant dans les conditions d'une économie de marché. À cet égard, le requérant ne saurait sérieusement contester le caractère confidentiel de ces informations ou soutenir que celles-ci auraient été « semi-publiques », dès lors qu'elles étaient de nature à conférer un avantage certain à un opérateur désireux, avant le terme de la procédure antidumping, de conclure des contrats avec ces sociétés. Du reste, il importe de relever que les deux sociétés en question ont effectivement obtenu le statut de société opérant*

dans les conditions d'une économie de marché et n'ont été soumises à aucun droit antidumping par le règlement (CE) n° 1130/2008 de la Commission, du 14 novembre 2008, instituant un droit antidumping provisoire sur les importations de certains types de bougies, chandelles, cierges et articles similaires originaires de la République populaire de Chine (JO L 306, p. 22)."

10. But the EUCST does not only conclude that the information provided by Mr Wenig was confidential, a conclusion that the Commission could itself have arrived at as early as 10.09.2008. In point 70 of the judgment, the EUCST stresses that, although Mr Wenig did not receive any payment, he did not interrupt the contacts and had another dinner following the one in which a payment was offered: *"alors que le requérant a indiqué aux fonctionnaires de l'IDOC que, lors du deuxième dîner, le versement d'une somme d'argent sur un compte ouvert à son nom dans un pays à régime fiscal privilégié lui avait été proposé en échange de la transmission d'informations, il est constant que l'intéressé n'a ni informé sa hiérarchie de tels faits ni interrompu les contacts avec ses interlocuteurs, mais a même accepté de ceux-ci une nouvelle invitation à dîner".*

11. At this point, it is useful to compare Mr Wenig's case with the one involving Ms Marta Andreasen, accused of acts which pale when compared with those mentioned in the Commission's decision to suspend Mr Wenig. The Commission opened a disciplinary proceeding against Ms Andreasen on 02.07.2002, adopted the decision to suspend her on 28.08.2002 and fired her on 13.10.2004. Mr Wenig was suspended on 18.09.2008, retired on 01.05.2009 and a disciplinary proceeding has not yet been opened. According to OLAF (Ms Claudia Khortals's e-mail of 25.02.2010), the opening of a disciplinary proceeding against Mr Wenig *"will depend on the outcome of our procedure and our recommendation"*. It is difficult to understand what additional facts the Commission needs to open the disciplinary proceeding. Point 22 of the judgment states that *"Le 29 janvier 2009, l'OLAF a clôturé l'enquête et a transmis ses conclusions aux autorités judiciaires belges le 12 février suivant."* In spite of this enquiry, OLAF is now pretending that it needs to complete an additional investigation, which is going on since at least April 2009, before deciding whether to recommend the opening of a disciplinary proceeding against Mr Wenig. This clearly shows that the Commission does not want to open a disciplinary proceeding against Mr Wenig and breached the principle of equal treatment established in Article 1(d) of the *Staff Regulations*. The reasons behind such lenient treatment should be investigated by

a committee of independent experts. The committee should in particular look at factors such as Mr Wenig's nationality, political affiliation, and the fact that the Commission approved mechanisms that open the door to unethical and illegal behaviour and spent years defending Mr Wenig despite the serious accusations I made against him long before the publication of the article in the *Sunday Times*.

12. The major beneficiaries in the Community of trade defence instruments are the chemical and steel sectors. In his dialogue of 20.03.2003 with me on the CDR 2001-2002, in the presence of Mr Rijnoudt, then a member of the Local Staff Committee – Brussels, Mr Wenig did not question the excellence of my analysis, but said that my efficiency was just *"good"* because I failed to manage the anti-dumping case AD 453 – GOES *"smoothly"*, i.e. to avoid an *"acrimonious"* discussion with the Community industry. According to Mr Wenig, the officials in the then DG TRADE B, which was in charge of *inter alia* the analysis of injury in anti-dumping investigations, were also the *"employees"* of the Community industry, and EUROFER (the association representing steel producers) represented a significant part of the work of DG TRADE B. In case the Community industry did not launch complaints, DG TRADE B would have to close. Mr Wenig alleged in point 8.2.4 of the CDR 2003 (this allegation had initially been made in the CDR 2001-2002) that there was a *"problème de relation professionnelle de PSW avec l'industrie communautaire"*. In fact, what happened was that AD 453 was terminated at provisional stage (probably the first investigation ever to be terminated at that stage due to lack of injury to the Community industry) because, despite enormous pressure from my hierarchy, I did not change my findings. Therefore, the Community industry (three out of four companies belonged to the steel group ThyssenKrupp and one to Corus), which met Mr Wenig without the presence of any investigator, did not benefit from the imposition of anti-dumping measures and had to withdraw the complaint to avoid the publication of the findings. The Court of First Instance, in its judgment T-110/04 of 07.03.2007, considered the so-called *"problème de relation professionnelle de PSW avec l'industrie communautaire"* to be a manifest error of assessment. But I understood the message: a competent, independent and honest official is not welcome.

13. It is, however, ironic to see that the man who considered himself an *"employee"* of the Community industry would envisage working for a Chinese (bogus, but he did not know) company after retirement. Perhaps Mr Wenig came to the conclusion that he should benefit from

the close links between the Commission and the People's Republic of China (hereinafter 'PRC'). In fact, it could be argued that DG TRADE, and therefore the Commission, does not defend the interests of the European Union, but those of the PRC and foreign investors there. According to a special report on international banking published by *The Economist* on 19.05.2007, UBS *"employs Leon Brittan, the former European Union commissioner who negotiated China's entry into the World Trade Organisation, to take tea with the country's leaders in Beijing. These attentions paid off earlier this year when UBS won permission to take control of its joint-venture partner, Beijing Securities. If everything goes as planned, that will make it the only foreign bank besides Goldman Sachs to manage underwriting in the local market."* (The consequences for the European industry of the PRC's accession to the WTO are today painfully obvious.) On 26.09.2008, Rt. Hon. Lord Mandelson, who, according to *Wikipedia*, *"acquired the nickname "The Prince of Darkness""*, was the protagonist of another episode: *"In 2008, melamine added to Chinese milk caused kidney stones and other ailments in tens of thousands of Chinese children, and killed at least six. To show his confidence in Chinese dairy products, Mandelson drank a glass of Chinese milk in front of reporters. Nine days later, he was hospitalized for a kidney stone."* On 26.09.2008 Lord Mandelson was still Mr Peter Mandelson, the commissioner responsible for trade, representing the Commission in the World Economic Forum conference in Tianjin. The Commission had imposed a ban on imports of Chinese dairy products on that same day and had even issued a press release on 25.09.2008 announcing that ban. At that time, the Code of Conduct for Commissioners required the members of the Commission *"to discharge their duties in the general interest of the Community"*. *"In addition, the general interest requires that in their official and private lives Commissioners should behave in a manner that is in keeping with the dignity of their office."* Article 217(1) of the *Treaty establishing the European Community* (as amended by the *Treaty of Nice*), applicable at that time, established that *"The Commission shall work under the political guidance of its President, who shall decide on its internal organisation in order to ensure that it acts consistently, efficiently and on the basis of collegiality."* Article 217(4) established that *"A Member of the Commission shall resign if the President so requests, after obtaining the approval of the College."* The fact that nobody even argued whether the president should have requested the resignation of Mr Mandelson is another proof that there are no checks and balances in the institutions of the European Union. Its future seems, however, simple: mass unemployment and poverty for many; tea, milk and honey (ie well

paid-jobs) for the few with the right connections. A committee of independent experts should thus carefully look into these matters and investigate how the Commission used trade defence instruments in the five years before the arrival of Mr Mandelson at the Commission and during his mandate as Commissioner responsible for trade.

14. The dinners attended by Mr Wenig should not have come as a surprise. In 2003, I had already informed Mr Neil Kinnock, then the vice-president for Administrative Reform, the management of DG TRADE and DG ADMIN, the Joint Evaluation Committee (hereinafter 'JEC') and OLAF that Mr Wenig had met, without the presence of the officials responsible for the investigation, the director general of EUROFER, Mr von Hülsen, to discuss the findings of case AD 453 (several members and former members of the Commission have also become aware of this situation). OLAF initially informed me that it had *"decided not to open an investigation"* and not to refer *"this matter to IDOC"* (note 10868 of 11.08.2003), but then stated in its note 17107 of 05.12.2003 that *"In OLAF's view,* [I] *have shown in* [my] *Note* [of 29.10.2003] *that* [my] *hierarchy may have committed irregularities by unjustifiably favouring the interests of Community producers over those of exporters."* OLAF considered in its note of 05.12.2003 *"that a referral to IDOC is justified"* and reversed its decision of 11.08.2003 although partly maintaining the position already adopted, ie that the *"principal reason why OLAF has not opened an investigation is that none of the matters raised appear to affect the financial interests of the European Community"*. This reason is unacceptable, but it gives a good image on the functioning of OLAF: it finally opened an investigation on the functioning of the Directorate of trade defence in April 2009 (Mr Claude Chêne's note 9159 of 22.04.2009).

15. DG ADMIN then decided to come to the rescue of Mr Wenig. In his note 6633 of 09.03.2004, Mr Horst Reichenbach stated that *"it appears that the practice followed by the anti-dumping services over the last 30 years has been to engage into a deeper exchange of views and information than the mere reply to questionnaires and the holding of hearings"*. Mr Wenig probably had hundreds of unreported meetings with or without meals in his ten years at the head of the Directorate of trade defence. The main difference between these contacts and those reported by the *Sunday Times* is that we will never know the date of many of these meetings, whom Mr Wenig met and the content of the conversations.

16. Articles 6.5 and 21.3 of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community establish that interested parties in an anti-dumping investigation might be heard if they so request. In such a hearing, the participation of the case-handlers involved in the investigation is essential. The Regulation does not foresee the possibility for interested parties in an investigation to meet, for example, with the director of trade defence without the presence of the officials responsible for the investigation. OLAF and IDOC should have elaborated on the legality of a meeting where the persons carrying out the investigation do not participate. I consider that meetings that bypass the purpose of the hearing process are not transparent and are illegal: no one can guarantee that some interested parties do not get information not yet disclosed to all interested parties and that those meetings do not unduly influence the decision-making process and thus the results of an investigation. But the Commission did not raise any problem concerning the fact that such meetings were being held (as Mr Reichenbach's note 6633 of 09.03.2004 proves). A committee of independent experts should thus assess whether disciplinary proceedings should be opened against those who endorsed this type of contacts, in particular the members of the Commission responsible for personnel and trade, top Commission officials at OLAF, DG ADMIN (including IDOC), DG TRADE and the members of the JEC since 2003.

17. There is no accountability in the Directorate of trade defence. The fact that the calculations in the investigations carried out by this Directorate can be easily manipulated without the knowledge of all interested parties and the other institutions of the Communities should have led the Commission to have mechanisms in place to minimise the risks of manipulation and to support whistleblowers. Instead, all my allegations were simply dismissed and I was punished with worse CDRs year after year. All the conditions for a climate of impunity are thus created. The minimum that the Commission can do at this stage is to annul my CDRs 2003, 2004, 2005, 2006 and 2007 (the CDR 2001-2002 was already annulled by the Court of First Instance), which were signed by Mr Wenig. I hope that the Commission will not engage in utter cynicism and argue that my evaluations have nothing to do with the accusations I made against Mr Wenig. Any unbiased person who read my CDRs and the correspondence dealing with my complaints to OLAF (a chronology of this correspondence is shown in annex 1) would have no doubt that my independence and honesty are the reasons why, after being in the second

place on DG TRADE's promotion list to A6 (Administrative Notice 44-2001 of 16.05.2001), I got 13 merit points in the CDR 2001-2002, 12 merit points in the CDR 2003, the CDR 2004 and the CDR 2005 and 11.5 merit points in the CDR 2006 and the CDR 2007. As I complained each year about Mr Wenig, the number of merit points fell.

18. The Commission promised *"a policy of zero tolerance vis-à-vis unethical and illegal behaviour"* (press release of 05.09.2008). I am very sceptical of this kind of statements. The problems at the Commission are systemic problems which are very difficult to solve, as there is not a system of checks and balances. Also, the nationalities and ranks of the officials responsible for the Commission's trade policy hardly make any meaningful investigation possible. As I told Mr Barroso in my e-mail of 22.09.2008, it is not possible that either OLAF, a body within the Commission, or IDOC, a directorate in DG ADMIN, which have ignored all my allegations concerning Mr Wenig, despite the fact that they were supported by solid documentary evidence, are in a position to carry out an unbiased investigation at this stage. Furthermore, Mr Wenig is close to Germany's Liberal Party (FDP) – a party that is currently a member in a coalition government with the CDU at federal level and is often present in coalitions with Germany's main parties at state level.

19. In an article of 11.09.2008, *Der Spiegel* states, under the subheading *"Good reputation in Berlin"* (*"Guter Ruf in Berlin"*), that *"The EU top official is highly esteemed in Berlin. When the current foreign minister Frank-Walter Steinmeier was still the head of the Chancellery of Gerhard Schröder, he constituted a group of state secretaries and ministry directors which from time to time rated the German top personnel working in international organisations such as the UN in New York, the OECD in Paris, but also the EU in Brussels. The government changed, the personnel rating system stayed, and a lot was always expected from Wenig. He regularly was among the ones who received a positive mark: fit for higher international tasks."* Top German Commission officials are thus assessed by the German government with criteria that have not been made public. Article 11 of the *Staff Regulations* establishes that *"An official shall carry out his duties and conduct himself solely with the interests of the Communities in mind; he shall neither seek nor take instructions from any government, authority, organisation or person outside his institution. He shall carry out the duties assigned to him objectively, impartially and in keeping with his duty of loyalty to the Communities."* Unfortunately, the Commission refused to

investigate whether the situation reported by *Der Spiegel* has undermined the obligation of top German Commission officials to carry out their duties in accordance with Article 11 of the *Staff Regulations* and to bring an action before the appropriate court against Germany for evaluating Commission officials and thus undermining fundamental principles of the European civil service such as independence, loyalty and impartiality (see Decision of the Appointing Authority of 27.05.2009 in response to my complaint R/185/09). I therefore addressed a complaint to the Ombudsman on this particular issue (registration number 2365/2009/MAM). The late Mr Franz-Hermann Brüner, director general of OLAF from 1999 until his death in early 2010 (another example of how a German official is kept in a sensitive position beyond the five-year period after which mobility is mandatory), Mr Reichenbach and Mr Wenig were top German Commission officials.

20. In this context, the only credible solution to promote the Commission's *"policy of zero tolerance vis-à-vis unethical and illegal behaviour"* is for the Commission to appoint a committee of independent experts from outside the Community institutions to: (i) investigate the outcome of all complaints concerning Mr Wenig before the publication of the article in the *Sunday Times* of 07.09.2008, (ii) determine why a disciplinary proceeding against Mr Wenig was not opened soon after the Commission's decision to suspend Mr Wenig, and (iii) recommend the opening of those disciplinary proceedings the committee may consider appropriate.

21. Furthermore, since the courts of the European Union have become a threat to the rule of law, it has become urgent to ensure that they are deeply reformed (the EUCST should simply be disbanded). In fact, the absence of checks and balances in the European Union, which is the result of a merely formal separation of powers, is undermining democracy and the rule of law. Since the entry into force on 01.12.2009 of the *Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community* (this latter treaty is now known as the *Treaty on the Functioning of the European Union* – hereinafter '*TFEU*'), signed in Lisbon on 13.12.2007, the Court of Justice (hereinafter 'CJ'), the General Court (hereinafter 'GC', which until 30.11.2009 was known as the Court of First Instance) and the EUCST have been functioning illegally. According to Article 17(2) of the *Treaty on European Union* (hereinafter '*TEU*'), *"Union legislative acts may only be adopted on the basis of a Commission proposal, except where the Treaties provide otherwise."* As regards the courts of the European Union, the

Commission has the legal obligation to propose legislation repealing all legislation still in force that violates the *TEU* and the *TFEU*.

22. Article 2 of the *TEU* establishes that *"The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail."* According to Article 6(1) of the *TEU*, *"The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties."* Article 6(3) of the *TEU* states that *"Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law."* According to Article 20 of the *Charter of Fundamental Rights of the European Union* (hereinafter 'the *Charter*'), *"Everyone is equal before the law."* Article 47 of the *Charter* states that *"Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented."* Article 6(1) of the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (hereinafter 'the *Convention*') establishes that *"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."*

23. Article 253 of the *TFEU* establishes that *"The Judges and Advocates-General of the Court of Justice shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are jurisconsults of recognised competence"*. Article 254 of the *TFEU* states that *"The members of the General Court shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to high judicial office"*. Finally, according to Article 257 of the *TFEU*, *"The members of the specialised courts shall be chosen from persons whose independence is beyond doubt and who possess the*

ability required for appointment to judicial office." The CJ, the GC and the EUCST are not independent and impartial; fair hearings are currently impossible. Former Commission officials and other people who worked for the Commission are judges of the EUCST. The theory is beyond doubt undermined by the practice. Judge Horstpeter Kreppel was thus a *"national expert to the Legal Service of the Commission of the European Communities (1993 to 1996 and 2001 to 2005)"*. Judge Haris Tagaras was *"Administrator at the Court of Justice of the European Communities and at the Commission of the European Communities (1986 to 1990)"*. Judge Sean Van Raepenbusch was an *"official of the Commission of the European Communities (Directorate General for Social Affairs, 1984 to 1988* [and] *member of the Legal Service of the Commission of the European Communities (1988 to 1994)"*. (These quotations come from the EUCST's website – http://curia.europa.eu/jcms/jcms/T5_5240/.) If this was not enough, many officials of the courts of the European Union, including many of its top officials, are members of the Amicale des référendaires et anciens référendaires de la Cour de justice, du Tribunal de première instance et du Tribunal de la fonction publique des Communautés européennes (hereinafter 'Amicale'). Assistants of judges and even members of cabinets of judges are thus members of an association which also includes former officials of these courts: some are retired, others still practise law and are thus able to plead in cases before any of these courts, others still are officials of other institutions and bodies of the European Union that are part in cases brought before these courts. (The list of members of the Conseil d'administration of the Amicale is quite illustrative.) The judges whose independence must be beyond doubt have thus assistants who prepare judgments and members of their cabinets meeting within the Amicale with officials of other institutions and lawyers in active duty at the same time that cases where these officials and lawyers may have an interest and the institutions and bodies of the European Union which employ them do have an interest are going on.

24. It is clear that the EUCST, a tribunal with jurisdiction in disputes between the Communities and their servants where three out of seven judges worked for the Commission – including its Legal Service – and participate in cases where the Commission is involved, does not give the guarantee of independence and impartiality mentioned in Article 47 of the *Charter*, a document with the same legal value as the treaties, and Article 6(1) of the *Convention*. This guarantee is further undermined by the fact that the officials of the courts of the European Union

can be members of associations such as the Amicale: no one can guarantee that this type of association is not used to unduly influence the decision-making process and thus the results of the judgments of these courts. Any system where the rule of law is taken seriously ensures that a strict statute of incompatibilities is applicable and enforced in the selection of judges and personnel for a court. Unfortunately, the functioning of these courts shows that the Commission and the other institutions of the European Union merely pay lip service to the rule of law, a fundamental concept in a democracy. Contrary to Article 20 of the *Charter*, the citizens of the European Union are not equal before the law. The judge of a court of the European Union can be a former official of the Legal Service of the Commission and have in front of him, as one of the parties in a case, his former colleagues of the Legal Service representing the Commission. At the EUCST, I had two judgments on CDRs signed by Mr Wenig delivered by a former official of the Legal Service of the Commission, judge Sean Van Raepenbusch, whose cabinet includes at least one member of the Conseil d'administration de l'Amicale, whose vice-president at the time was Mr Wenig. Curiously, the EUCST, which dismisses virtually all the Commission's procedural infringements when raised by Commission officials, managed to annul the Commission decision to suspend Mr Wenig on the basis that the decision which gave Mr Siim Kallas the power to suspend an official of Mr Wenig's grade had not been published in the administrative notes and the suspension of Mr Wenig should thus have been decided by the *"collège des commissaires"*. Mr Wenig was also the assistant to the German judge Bahlmann of the CJ from 1984 to 1987.

25. Furthermore, the system currently in place has been designed to deter the officials of the European institutions from bringing a case before the EUCST in blatant violation of the *Charter*. To bring a case before this court, an official must hire a lawyer (an official is not allowed to lodge an application without a lawyer), which can easily reach EUR 20 000, while Article 47 of the *Charter* clearly states that *"Everyone shall have the possibility of being advised, defended and represented"*: the possibility of hiring a lawyer is not an obligation. But even if an official hires a lawyer, he may be impeded by the courts of the European Union from being defended and represented by that lawyer. In fact, in case an official has hired an experienced lawyer and, as is usually the case, that lawyer works with an inexperienced young lawyer, the court may oblige an official to be defended by the inexperienced young lawyer at the hearing if the experienced lawyer is not available to plead on the day chosen by the court. This happened to me in cases F-

65/05 and F-28/06, in which my lawyer's request to postpone the date of the hearing – the same in both cases – was rejected by the EUCST, while the Court of First Instance found another date for the hearing in case T-110/04 when the Commission, which was being represented by two lawyers, requested so arguing that its main lawyer could not be present in the date initially determined by the Court of First Instance. An official may also have to pay a huge amount to the Community institution brought to court in case he/ she loses (Article 7(5) of Annex I to the Council Decision of 2 November 2004 establishing the European Union Civil Service Tribunal (2004/752/EC, Euratom)): to treat an European institution and an official as if they had the same financial clout is absurd and a violation of Article 20 of the *Charter*, which states that *"Everyone is equal before the law."* (The costs of the European institutions are negligible for the institutions and in any case borne by the European taxpayers whether it wins or loses; the costs of officials may easily destroy them financially. But this is probably the understanding of the principle of non-discrimination and equality of treatment at the institutions of the European Union.) In case an official wins against all the odds and the court orders, for example, the institution to pay the costs, the latter may decide not to pay and the official has to go again to court and incur additional costs to contest such decision (the Commission took one year to accept the reimbursement of my costs in case T-110/04; it paid me the money after the deadline to appeal on cases F-65/05 and F-28/06 had expired).

26. The rights of defence of an official in the courts of the European Union are systematically undermined. There is a limit of pages for what an official can write, which means that an official may not be able to contest all the arguments of the other party. The EUCST can close the written procedure without allowing an official to lodge a reply (*réplique*), ie an official will probably not be able to contest the other party's arguments in writing (Article 7(3) of Annex I to the Council Decision of 2 November 2004 establishing the European Union Civil Service Tribunal (2004/752/EC, Euratom)). Lawyers will have a limit of time to plead, usually no longer than 15 minutes, ie basically they will have no time to raise all important issues. These rules show that the access to justice for the officials of the European Union has been curtailed and the right to a fair trial is a mockery.

27. If the infrastructure of corruption at the institutions of the European Union, ie the mechanisms that favour the emergence of unethical and illegal behaviour, is not dismantled,

concepts such as democracy and the rule of law risk becoming as meaningful as in the PRC. It is time to outsource investigations such as the one I am requesting to a committee of independent experts, persons whose competence and independence is beyond doubt and do not need to make favours; it is time to disband the EUCST and deeply reform the other courts of the European Union according with the principles set out in this complaint. Otherwise, *"a policy of zero tolerance vis-à-vis unethical and illegal behaviour"* will sound as a purely Orwellian slogan. I would not be surprised to receive a reply to this complaint written in Newspeak. Remember *1984*? *"He was a lonely ghost uttering a truth that nobody would ever hear. But so long as he uttered it, in some obscure way the continuity was not broken. It was not by making yourself heard but by staying sane that you carried on the human heritage."*

For these reasons, I request the Commission:

1. to annul the CDRs 2003, 2004, 2005, 2006 and 2007 (the CDR 2001-2002 was already annulled by the Court of First Instance), which were signed by Mr Wenig;

2. to immediately open a disciplinary proceeding against Mr Wenig;

3. to appoint a committee of independent experts from outside the Community institutions to: (i) investigate the outcome of all complaints concerning Mr Wenig before the publication of the article in the *Sunday Times* of 07.09.2008, (ii) determine why a disciplinary proceeding against Mr Wenig was not opened soon after the Commission's decision to suspend Mr Wenig, and (iii) recommend the opening of those disciplinary proceedings the committee may consider appropriate.

4. to propose legislation reforming the courts of the European Union by creating a statute of incompatibilities that excludes any person who has worked for other institutions and bodies of the European Union from becoming a judge of a court of the European Union and barring officials of the courts from belonging to associations such as the Amicale;

5. to propose legislation repealing or at least amending existing legislation such as Annex I to the Council Decision of 2 November 2004 establishing the EUCST (2004/752/EC,

Euratom) to allow officials to lodge an application without a lawyer, to condemn the institutions and bodies of the European Union to pay their own costs in cases where officials are one of the parties concerned and to ensure the right to lodge a reply (*réplique*), to oblige an institution or body of the European Union to promptly pay the costs incurred by an official in case the latter wins unless it can prove that such costs have not been incurred, to abolish the limit of pages that can be written during a court case, to ensure that the limit of time to plead in a hearing is at least 60 minutes, to ensure that an official has the right to be defended in a hearing by the most experienced lawyer he/ she hired even if this implies that the court will have to set another date than the one originally envisaged.

Brussels, 29 March 2010

Paulo Sequeira Wandschneider

Annex 1

Date	Type of document	Reference	Sender's surname	Sender's first name	Job	DG	Dir	Unit	Receiver's surname	Receiver's first name	Job	DG	Dir	Unit	Receiver's status	Observations
20 June 2003	Note + annexes		Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	3	Brüner	Franz-Hermann	Director General	OLAF			Addressee	First complaint to OLAF on TDI directorate. The note (without attachments) was also sent by e-mail at 10:20 on 23.06.2003.
14 July 2003	Note	9878	Carl	Mogens Peter	Director General	DG TRADE			Brüner	Franz-Hermann	Director General	OLAF			Addressee	Reaction of DG TRADE to my first complaint to OLAF.
14 July 2003	Note	9878	Carl	Mogens Peter	Director General	DG TRADE			O'Sullivan	David	Secretary General	SG			Copy	Reaction of DG TRADE to my first complaint to OLAF.
14 July 2003	Note	9878	Carl	Mogens Peter	Director General	DG TRADE			Thiery		Head of Cabinet Lamy				Copy	Reaction of DG TRADE to my first complaint to OLAF.
14 July 2003	Note	9878	Carl	Mogens Peter	Director General	DG TRADE			Le Bail	Françoise	Director	DG TRADE	A		Copy	Reaction of DG TRADE to my first complaint to OLAF.
14 July 2003	Note	9878	Carl	Mogens Peter	Director General	DG TRADE			Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	3	Copy	Reaction of DG TRADE to my first complaint to OLAF.
15 July 2003	E-mail	13:20	Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	3	Brüner	Franz-Hermann	Director General	OLAF			Addressee	My reaction to Mr Carl's note of 14.07.2003. E-mail sent at 13:20 on 15.07.2003.
23 July 2003	Note + annexes		Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	3	Brüner	Franz-Hermann	Director General	OLAF			Addressee	Additional evidence to my first complaint to OLAF. The note (without attachments) was also sent by e-mail at 14:44 on 23.07.2003.
11 August 2003	Note	10866	Perduca	Alberto	Director	OLAF	B		Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	3	Addressee	OLAF decides not to open an investigation.
16 September 2003	E-mail	11:45	Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	3	Perduca	Alberto	Director	OLAF	B		Addressee	My reaction concerning OLAF's decision not to open an investigation. E-mail sent at 11:45 on 16.09.2003.
16 September 2003	E-mail	11:45	Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	3	Brüner	Franz-Hermann	Director General	OLAF			Copy	My reaction concerning OLAF's decision not to open an investigation. E-mail sent at 11:45 on 16.09.2003.
06 October 2003	Note	13587	Perduca	Alberto	Director	OLAF	B		Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	3	Addressee	OLAF confirms decision not to open an investigation.
29 October 2003	Note		Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	3	Brüner	Franz-Hermann	Director General	OLAF			Addressee	My reaction concerning OLAF's decision not to open an investigation. The note was also sent by e-mail at 16:46 on 29.10.2003.
29 October 2003	Note		Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	3	Kinnock	Neil	Vice-President Administrative Reform				Copy	My reaction concerning OLAF's decision not to open an investigation. Sent only by e-mail at 16:46 on 29.10.2003.
29 October 2003	Note		Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	3	Reichenbach	Horst	Director General	DG ADMIN			Copy	My reaction concerning OLAF's decision not to open an investigation. Sent only by e-mail at 16:46 on 29.10.2003.
29 October 2003	Note		Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	3	Perduca	Alberto	Director	OLAF	B		Copy	My reaction concerning OLAF's decision not to open an investigation. Sent only by e-mail at 16:46 on 29.10.2003.
29 October 2003	E-mail	21:08	Brüner	Franz-Hermann	Director General	OLAF			Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	3	Addressee	E-mail sent at 21:08 on 29.10.2003.
29 October 2003	E-mail	21:08	Brüner	Franz-Hermann	Director General	OLAF			Reichenbach	Horst	Director General	DG ADMIN			Copy	E-mail sent at 21:08 on 29.10.2003.
05 November 2003	E-mail	9:36	Thomson	Neil	Investigator - Head of Operations/Administration	OLAF	B	2	Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	3	Addressee	E-mail sent at 09:36 on 05.11.2003.
05 November 2003	E-mail	9:36	Thomson	Neil	Investigator - Head of Operations/Administration	OLAF	B	2	Brüner	Franz-Hermann	Director General	OLAF			Copy	E-mail sent at 09:36 on 05.11.2003.
05 November 2003	E-mail	9:36	Thomson	Neil	Investigator - Head of Operations/Administration	OLAF	B	2	Kinnock	Neil	Vice-President Administrative Reform				Copy	E-mail sent at 09:36 on 05.11.2003.
05 November 2003	E-mail	9:36	Thomson	Neil	Investigator - Head of Operations/Administration	OLAF	B	2	Reichenbach	Horst	Director General	DG ADMIN			Copy	E-mail sent at 09:36 on 05.11.2003.
05 November 2003	E-mail	9:36	Thomson	Neil	Investigator - Head of Operations/Administration	OLAF	B	2	Perduca	Alberto	Director	OLAF	B		Copy	E-mail sent at 09:36 on 05.11.2003.
05 December 2003	Note	17107	Perduca	Alberto	Director	OLAF	B		Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	3	Addressee	OLAF considers that a referral to IDOC is justified.
09 February 2004	Note		Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	3	Kinnock	Neil	Vice-President Administrative Reform				Addressee	The note was also sent by e-mail at 16:40 on 09.02.2004.
09 February 2004	Note		Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	3	Prodi	Romano	President Commission				Copy	Sent only by e-mail at 16:40 on 09.02.2004.
09 March 2004	Note	6633	Reichenbach	Horst	Director General	DG ADMIN			Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	3	Addressee	Mr Reichenbach considers that an administrative enquiry is not warranted.
09 March 2004	Note	6633	Reichenbach	Horst	Director General	DG ADMIN			van Lier	Hendrik	Director	DG ADMIN	IDOC		Copy	Mr Reichenbach considers that an administrative enquiry is not warranted.

09 March 2004	Note	6633	Reichenbach	Horst	Director General	DG ADMIN		Superti	Valentina	Cabinet Kinnock				Copy	Mr Reichenbach considers that an administrative enquiry is not warranted.
26 March 2004	E-mail	12:33	Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	3 van Lier	Hendrik	Director	DG ADMIN	IDOC		Addressee	E-mail sent at 12:33 on 26.03.2004.
26 March 2004	E-mail	12:33	Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	3 Kinnock	Neil	Vice-President Administrative Reform				Copy	E-mail sent at 12:33 on 26.03.2004.
26 March 2004	E-mail	12:33	Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	3 Reichenbach	Horst	Director General	DG ADMIN			Copy	E-mail sent at 12:33 on 26.03.2004.
26 March 2004	E-mail	12:33	Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	3 Lowe	Philip	Director General	DG COMP			Copy	E-mail sent at 12:33 on 26.03.2004.
29 March 2004	E-mail	15:51	van Lier	Hendrik	Director	DG ADMIN	IDOC	Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	3	Addressee	E-mail sent at 12:33 on 26.03.2004.
11 May 2004	Note + annexes		Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	3 Brüner	Franz-Hermann	Director General	OLAF			Addressee	Second complaint to OLAF on steel safeguards investigation. The note (without attachments) was also sent by e-mail at 11:44 on 11.05.2004.
08 June 2004	Note	7999	Pragnell	Robert Bruno	Head of Unit	DG TRADE	A	1 Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	3	Addressee	Mr Pragnell accuses me of statements defamatory of Mr Carl.
08 June 2004	Note	7999	Pragnell	Robert Bruno	Head of Unit	DG TRADE	A	1 Carl	Mogens Peter	Director General	DG TRADE			Copy	Mr Pragnell accuses me of statements defamatory of Mr Carl.
08 June 2004	Note	7999	Pragnell	Robert Bruno	Head of Unit	DG TRADE	A	1 Wenig	Fritz-Harald	Director	DG TRADE	B		Copy	Mr Pragnell accuses me of statements defamatory of Mr Carl.
08 June 2004	Note	7999	Pragnell	Robert Bruno	Head of Unit	DG TRADE	A	1 Le Bail	Françoise	Director	DG TRADE	A		Copy	Mr Pragnell accuses me of statements defamatory of Mr Carl.
08 June 2004	Note	7999	Pragnell	Robert Bruno	Head of Unit	DG TRADE	A	1 Brüner	Franz-Hermann	Director General	OLAF			Copy	Mr Pragnell accuses me of statements
08 June 2004	Note	7999	Pragnell	Robert Bruno	Head of Unit	DG TRADE	A	1 Perduca	Alberto	Director	OLAF	B		Copy	Mr Pragnell accuses me of statements defamatory of Mr Carl.
08 June 2004	Note	7999	Pragnell	Robert Bruno	Head of Unit	DG TRADE	A	1 van Lier	Hendrik	Director	DG ADMIN	IDOC		Copy	Mr Pragnell accuses me of statements defamatory of Mr Carl.
11 June 2004	E-mail	18:46	Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	3 Brüner	Franz-Hermann	Director General	OLAF			Addressee	E-mail sent at 18:46 on 11.06.2004.
11 June 2004	E-mail	18:46	Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	3 Perduca	Alberto	Director	OLAF	B		Copy	E-mail sent at 18:46 on 11.06.2004.
11 June 2004	E-mail	20:16	Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	3 van Lier	Hendrik	Director	DG ADMIN	IDOC		Addressee	E-mail sent at 20:16 on 11.06.2004.
11 June 2004	E-mail	20:16	Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	3 Brüner	Franz-Hermann	Director General	OLAF			Copy	E-mail sent at 20:16 on 11.06.2004.
11 June 2004	E-mail	20:16	Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	3 Perduca	Alberto	Director	OLAF	B		Copy	E-mail sent at 20:16 on 11.06.2004.
16 June 2004	Note	6209	Perduca	Alberto	Director	OLAF	B	Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	3	Addressee	OLAF forwards my second complaint to IDOC and the IAS.
18 June 2004	Note		Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	3 Pragnell	Robert Bruno	Head of Unit	DG TRADE	A	1	Addressee	My reply to Mr Pragnell's accusations of defamatory statements. The note was also sent by e-mail at 12:07 on 18.06.2004.
18 June 2004	Note		Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	3 Carl	Mogens Peter	Director General	DG TRADE			Copy	My reply to Mr Pragnell's accusations of defamatory statements. Sent only by e-mail at 12:07 on 18.06.2004.
18 June 2004	Note		Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	3 Brüner	Franz-Hermann	Director General	OLAF			Copy	My reply to Mr Pragnell's accusations of defamatory statements. Sent only by e-mail at 12:07 on 18.06.2004.
18 June 2004	Note		Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	3 Perduca	Alberto	Director	OLAF	B		Copy	My reply to Mr Pragnell's accusations of defamatory statements. Sent only by e-mail at 12:07 on 18.06.2004.
18 June 2004	Note		Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	3 van Lier	Hendrik	Director	DG ADMIN	IDOC		Copy	My reply to Mr Pragnell's accusations of defamatory statements. Sent only by e-mail at 12:07 on 18.06.2004.
18 June 2004	Note		Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	3 Smadja	Danièle	Director	DG RELEX	B		Copy	My reply to Mr Pragnell's accusations of defamatory statements. Member of the JEC. Sent only by e-mail at 12:07 on 18.06.2004.
18 June 2004	Note		Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	3 Priebe	Reinhard	Director	DG RELEX	D		Copy	My reply to Mr Pragnell's accusations of defamatory statements. Member of the JEC. Sent only by e-mail at 12:07 on 18.06.2004.
18 June 2004	Note		Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	3 Le Bail	Françoise	Director	DG TRADE	A		Copy	My reply to Mr Pragnell's accusations of defamatory statements. Member of the JEC. Sent only by e-mail at 12:07 on 18.06.2004.

18 June 2004	Note		Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	3 Walker	David	Director	DG SCIC	B		Copy	My reply to Mr Pragnell's accusations of defamatory statements. Member of the JEC. Sent only by e-mail at 12:07 on 18.06.2004.
18 June 2004	Note		Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	3 Egelund	Elisabeth	Head of Unit	DG SCIC	B	4	Copy	My reply to Mr Pragnell's accusations of defamatory statements. Member of the JEC. Sent only by e-mail at 12:07 on 18.06.2004.
18 June 2004	Note		Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	3 Cona	Cristina	LA	DGT	B-IT	3	Copy	My reply to Mr Pragnell's accusations of defamatory statements. Member of the JEC. Sent only by e-mail at 12:07 on 18.06.2004.
18 June 2004	Note		Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	3 Copette	Alice	Head of Unit	DG EAC	C	3	Copy	My reply to Mr Pragnell's accusations of defamatory statements. Member of the JEC. Sent only by e-mail at 12:07 on 18.06.2004.
18 June 2004	Note		Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	3 Ragonig	Reinhard	B	DG TRADE	B	2	Copy	My reply to Mr Pragnell's accusations of defamatory statements. Member of the JEC. Sent only by e-mail at 12:07 on 18.06.2004.
18 June 2004	Note		Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	3 Maebe	Paul	B	DG INFSO	C	4	Copy	My reply to Mr Pragnell's accusations of defamatory statements. Member of the JEC. Sent only by e-mail at 12:07 on 18.06.2004.
21 June 2004	E-mail	11:16	van Lier	Hendrik	Director	DG ADMIN	IDOC	Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	3	Addressee	E-mail sent at 11:16 on 21.06.2004.
28 July 2004	E-mail	12:54	Thomson	Neil	Investigator - Head of Operations/Administration	OLAF	B	2 Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	3	Addressee	E-mail sent at 12:54 on 28.07.2004.
28 July 2004	E-mail	12:54	Thomson	Neil	Investigator - Head of Operations/Administration	OLAF	B	2 Brüner	Franz-Hermann	Director General	OLAF			Copy	E-mail sent at 12:54 on 28.07.2004.
28 July 2004	E-mail	12:54	Thomson	Neil	Investigator - Head of Operations/Administration	OLAF	B	2 Perduca	Alberto	Director	OLAF	B		Copy	E-mail sent at 12:54 on 28.07.2004.
28 July 2004	E-mail	12:54	Thomson	Neil	Investigator - Head of Operations/Administration	OLAF	B	2 Baader	Peter	Head of Unit	OLAF	B	2	Copy	E-mail sent at 12:54 on 28.07.2004.
06 August 2004	Note	10117	Perduca	Alberto	Director	OLAF	B	Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	3	Addressee	
06 October 2004	Note + annexes		Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	2 van Lier	Hendrik	Director	DG ADMIN	IDOC		Addressee	The note was also sent by e-mail (without attachments) at 15:24 on 06.10.2004.
06 October 2004	Note + annexes		Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	2 Kinnock	Neil	Vice-President Administrative Reform				Copy	The note (without attachments) was sent only by e-mail at 15:24 on 06.10.2004.
06 October 2004	Note + annexes		Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	2 Wallström	Margot	Commissioner Environment				Copy	The note (without attachments) was sent only by e-mail at 15:24 on 06.10.2004.
06 October 2004	Note + annexes		Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	2 Chêne	Claude	Director General	DG ADMIN			Copy	The note (without attachments) was sent only by e-mail at 15:24 on 06.10.2004.
06 October 2004	Note + annexes		Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	2 Reichenbach	Horst	Director General	DG ENTR			Copy	The note (without attachments) was sent only by e-mail at 15:24 on 06.10.2004.
06 October 2004	Note + annexes		Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	2 Brüner	Franz-Hermann	Director General	OLAF			Copy	The note (without attachments) was sent only by e-mail at 15:24 on 06.10.2004.
06 October 2004	Note + annexes		Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	2 Perduca	Alberto	Director	OLAF	B		Copy	The note (without attachments) was sent only by e-mail at 15:24 on 06.10.2004.
04 November 2004	Note	27513	van Lier	Hendrik	Director	DG ADMIN	IDOC	Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	2	Addressee	
04 November 2004	Note	27513	van Lier	Hendrik	Director	DG ADMIN	IDOC	Perduca	Alberto	Director	OLAF	B		Copy	
05 November 2004	E-mail	17:23	Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	2 van Lier	Hendrik	Director	DG ADMIN	IDOC		Addressee	E-mail sent at 17:23 on 05.11.2004.
05 November 2004	E-mail	17:23	Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	2 Perduca	Alberto	Director	OLAF	B		Copy	E-mail sent at 17:23 on 05.11.2004.
08 November 2004	E-mail	14:48	Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	2 van Lier	Hendrik	Director	DG ADMIN	IDOC		Addressee	Additional information sent to IDOC. I personally gave the attachments to Mr van Lier's secretariat. E-mail sent at 14:48 on 08.11.2004.
03 December 2004	Note	16147	Wenig	Fritz-Harald	Director	DG TRADE	B	Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	2	Addressee	Mr Wenig accuses me of making defamatory statements in a meeting with Mr Mandelson.
07 December 2004	E-mail	13:12	Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	2 Wenig	Fritz-Harald	Director	DG TRADE	B		Addressee	Reply to Mr Wenig's accusations. E-mail sent at 13:12 on 07.12.2004 .
07 December 2004	E-mail	13:12	Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	2 Mandelson	Peter	Commissioner Trade				Copy	Reply to Mr Wenig's accusations. E-mail sent at 13:12 on 07.12.2004 .

07 December 2004	E-mail	13:12	Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	2 van Lier	Hendrik	Director	DG ADMIN	IDOC		Copy	Reply to Mr Wenig's accusations. E-mail sent at 13:12 on 07.12.2004 .
07 December 2004	E-mail	13:12	Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	2 Perduca	Alberto	Director	OLAF	B		Copy	Reply to Mr Wenig's accusations. E-mail sent at 13:12 on 07.12.2004 .
13 December 2004	E-mail	17:32	van Lier	Hendrik	Director	DG ADMIN	IDOC	Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	2	Addressee	E-mail sent at 17:32 on 13.12.2004.
17 March 2005	Note	6536	van Lier	Hendrik	Director	DG ADMIN	IDOC	Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	2	Addressee	Mr van Lier confirms Mr Reichenbach's opinion that an administrative enquiry is not warranted.
17 March 2005	Note	6536	van Lier	Hendrik	Director	DG ADMIN	IDOC	Chêne	Claude	Director General	DG ADMIN			Copy	Mr van Lier confirms Mr Reichenbach's opinion that an administrative enquiry is not warranted.
15 April 2005	Note		Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	2 van Lier	Hendrik	Director	DG ADMIN	IDOC		Addressee	My reaction to IDOC's decision not to open an administrative enquiry. The note was also sent by e-mail at 16;39 on 15.04.2005.
15 April 2005	Note		Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	2 Barroso	José Manuel	Commission President				Copy	My reaction to IDOC's decision not to open an administrative enquiry. Sent only by e-mail at 16;39 on 15.04.2005.
15 April 2005	Note		Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	2 Wallström	Margot	Vice-President Institutional relations and communication strategy				Copy	My reaction to IDOC's decision not to open an administrative enquiry. Sent only by e-mail at 16;39 on 15.04.2005.
15 April 2005	Note		Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	2 Kallas	Siim	Vice-President Administrative affairs, audit and anti-fraud				Copy	My reaction to IDOC's decision not to open an administrative enquiry. Sent only by e-mail
15 April 2005	Note		Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	2 Mandelson	Peter	Commissioner Trade				Copy	My reaction to IDOC's decision not to open an administrative enquiry. Sent only by e-mail at 16;39 on 15.04.2005.
15 April 2005	Note		Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	2 Chêne	Claude	Director General	DG ADMIN			Copy	My reaction to IDOC's decision not to open an administrative enquiry. Sent only by e-mail at 16;39 on 15.04.2005.
15 April 2005	Note		Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	2 Lowe	Philip	Director General	DG COMP			Copy	My reaction to IDOC's decision not to open an administrative enquiry. Sent only by e-mail at 16;39 on 15.04.2005.
15 April 2005	Note		Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	2 Brüner	Franz-Hermann	Director General	OLAF			Copy	My reaction to IDOC's decision not to open an administrative enquiry. Sent only by e-mail at 16;39 on 15.04.2005.
15 April 2005	Note		Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	B	2 Perduca	Alberto	Director	OLAF	B		Copy	My reaction to IDOC's decision not to open an administrative enquiry. Sent only by e-mail at 16;39 on 15.04.2005.
22 September 2008	E-mail	13:08	Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	H	5 Barroso	José Manuel	President Commission				Addressee	Message regarding Mr Wenig. E-mail sent at 13:08 on 22.09.2008.
06 October 2008	E-mail	19:14	Thebault	Jean-Claude	Cabinet Barroso			Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	H	5	Addressee	E-mail sent at 19:14 on 06.10.2008. Decision to forward e-mail of 22.09.2008 to Mr Kallas.
06 October 2008	E-mail	19:14	Thebault	Jean-Claude	Cabinet Barroso			Hololei	Henrik	Head of Cabinet Kallas				Copy	E-mail sent at 19:14 on 06.10.2008. Decision to forward e-mail of 22.09.2008 to Mr Kallas.
06 October 2008	E-mail	19:14	Thebault	Jean-Claude	Cabinet Barroso			Fitch	Keir	Cabinet Kallas				Copy	E-mail sent at 19:14 on 06.10.2008. Decision to forward e-mail of 22.09.2008 to Mr Kallas.
06 October 2008	E-mail	19:14	Thebault	Jean-Claude	Cabinet Barroso			Dandoy	Olivier	Cabinet Barroso				Copy	E-mail sent at 19:14 on 06.10.2008. Decision to forward e-mail of 22.09.2008 to Mr Kallas.
18 November 2008	E-mail	18:15	Thomson	Neil	Investigator - Head of Operations/Administration	OLAF	A	1 Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	H	5	Addressee	E-mail sent at 18:15 on 18.11.2008.
18 November 2008	E-mail	18:15	Thomson	Neil	Investigator - Head of Operations/Administration	OLAF	A	1 Korthals	Claudia	Investigator	OLAF	A	1	Copy	E-mail sent at 18:15 on 18.11.2008.
18 November 2008	E-mail	18:15	Thomson	Neil	Investigator - Head of Operations/Administration	OLAF	A	1 Mainy	Yves	Investigator	OLAF	A	1	Copy	E-mail sent at 18:15 on 18.11.2008.
18 November 2008	E-mail	18:15	Thomson	Neil	Investigator - Head of Operations/Administration	OLAF	A	1 Cretin	Thierry	Director ad interim	OLAF	A		Copy	E-mail sent at 18:15 on 18.11.2008.
21 November 2008	E-mail	12:44	Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE		Thomson	Neil	Investigator - Head of Operations/Administration	OLAF	A	1	Addressee	E-mail sent at 12:44 on 21.11.2008.
24 November 2008	E-mail	18:05	Thomson	Neil	Investigator - Head of Operations/Administration	OLAF	A	1 Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	H	5	Addressee	E-mail sent at 18:05 on 24.11.2008.
25 November 2008	E-mail	15:39	Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE		Thomson	Neil	Investigator - Head of Operations/Administration	OLAF	A	1	Addressee	E-mail sent at 15:39 on 25.11.2008.
05 December 2008	E-mail	13:03	Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE		Thomson	Neil	Investigator - Head of Operations/Administration	OLAF	A	1	Addressee	E-mail sent at 13:03 on 05.12.2008.

05 December 2008	E-mail	15:42	Thomson	Neil	Investigator - Head of Operations/Administration	OLAF	A	1	Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	H	5	Addressee	E-mail sent at 15:42 on 05.12.2008.
02 February 2009	E-mail	12:47	Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE			Thomson	Neil	Investigator - Head of Operations/Administration	OLAF	A	1	Addressee	E-mail sent at 12:47 on 02.02.2009.
05 February 2009	E-mail	17:18	Thomson	Neil	Investigator - Head of Operations/Administration	OLAF	A	1	Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	H	5	Addressee	E-mail sent at 17:18 on 05.02.2009.
17 February 2009	Note	454	Chêne	Claude	Director General	DG ADMIN			Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	H	5	Addressee	Reply to the e-mail of 22.09.2008.
24 March 2009	E-mail	13:48	Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE			Chêne	Claude	Director General	DG ADMIN			Addressee	E-mail sent at 13:48 on 24.03.2009.
24 March 2009	E-mail	13:48	Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE			Barroso	José Manuel	President Commission				Copy	E-mail sent at 13:48 on 24.03.2009.
24 March 2009	E-mail	13:48	Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE			Thomson	Neil	Investigator - Head of Operations/Administration	OLAF	A	1	Copy	E-mail sent at 13:48 on 24.03.2009.
22 April 2009	Note	9159	Chêne	Claude	Director General	DG ADMIN			Sequeira Wandschneider	Paulo	A - case-handler	DG TRADE	H	5	Addressee	Reply to the e-mail of 24.03.2009. OLAF opens investigation of TDI Directorate.
17 September 2009	E-mail	21:52	Sequeira Wandschneider	Paulo	Pensioner				Thomson	Neil	Investigator - Head of Operations/Administration	OLAF	A	3	Addressee	E-mail sent at 21:52 on 17.09.2009.
23 September 2009	E-mail	15:07	Thomson	Neil	Investigator - Head of Operations/Administration	OLAF	A	3	Sequeira Wandschneider	Paulo	Pensioner				Addressee	E-mail sent at 15:07 on 23.09.2009
25 January 2010	E-mail	22:54	Sequeira Wandschneider	Paulo	Pensioner				Korthals	Claudia	Investigator	OLAF	A	1	Addressee	E-mail sent at 22:54 on 25.01.2010.
28 January 2010	E-mail	10:44	Korthals	Claudia	Investigator	OLAF	A	1	Sequeira Wandschneider	Paulo	Pensioner				Addressee	E-mail sent at 10:44 on 28.01.2010
15 February 2010	E-mail	22:43	Sequeira Wandschneider	Paulo	Pensioner				Korthals	Claudia	Investigator	OLAF	A	1	Addressee	E-mail sent at 22:43 on 15.02.2010.
16 February 2010	E-mail	14:46	Korthals	Claudia	Investigator	OLAF	A	1	Sequeira Wandschneider	Paulo	Pensioner				Addressee	E-mail sent at 14:46 on 16.02.2010
25 February 2010	E-mail	11:56	Korthals	Claudia	Investigator	OLAF	A	1	Sequeira Wandschneider	Paulo	Pensioner				Addressee	E-mail sent at 11:56 on 25.02.2010

Annex II

EUROPEAN COMMISSION
DIRECTORATE-GENERAL
HUMAN RESOURCES AND SECURITY
Directorate D – Legal affairs, Communication and Stakeholder Relations
Appeals and Case Monitoring

Brussels, 31 March 2010
HR.D.2/AW/db Recart90-296/10/1

Mr. P. Sequeira Wandschneidner
rue de la Violette, 35/9
1000 BRUXELLES

Subject : Complaint No. R/296/10

Dear Sir,

Your complaint under Article 90(2) of the Staff Regulations of Officials of the European Communities was registered by the Unit "Appeals and Case Monitoring" (HR.D.2) on 29/03/2010 under the above number. [1]

I should like to inform you that I have been asked to assess your complaint. You may send me – within 15 calendar days as from receipt of this letter – any new document(s) relating to your complaint.

You should receive a reasoned decision within four months of the date of submission of your complaint. If it is not possible to meet that deadline, the absence of a reply by the end of the period will be deemed to constitute a decision implicitly rejecting your complaint, against which you may appeal to the European Union Civil Service Tribunal, in accordance with Article 91 of the Staff Regulations.

To obtain more information regarding the way complaints are dealt with and the possibilities of appeal, I suggest that you consult our website https://myintracomm-ext.ec.europa.eu/hr_admin/en/appeals/Pages/index.aspx

Finally, you may consider the possibility of contacting the Commission Mediation Service, which is at the disposal of active and retired staff members to help resolve conflicts (site https://intracomm.ec.europa.eu/mediation/i/index_en.htm).

Yours faithfully,

p.o.

Angelika WIEDNER

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[1] Personal data notified will be dealt with in accordance with Regulation (EC) No 45/2001 on the protection of personal data. The person responsible for processing such data is the head of the Unit "Appeals and Case Monitoring". Data received will be used only for processing your complaint. In order to prepare a reply from the competent authority, the data may be sent to the department(s) involved in the decision that is being challenged, the Legal Service and, where appropriate, units B1, B2 and B4 of DG HR and the Commission Mediation Service. The Commission Data Protection Officer has been notified that processing is taking place. Under Regulation (EC) No 45/2001, you are free to consult data that concern you or to have corrections made by applying to the head of the Unit "Appeals and Case Monitoring".

European Ombudsman

P. Nikiforos Diamandouros
European Ombudsman

1757/2010/KM
S2010-127952

Mr Paolo Sequeira Wandschneider
Rue de la Violette 35, bte 9
1000 Brussels
BELGIQUE

psw1967@hotmail.com

Strasbourg, 21 -10- 2010

Complaint 1757/2010/KM

Dear Mr Sequeira Wandschneider,

I am writing in reply to your letter of 9 August 2010 in which you complained that the Commission failed to commence disciplinary proceedings against Mr Fritz Harald Wenig. You also claimed that the Commission should propose legislation reforming the composition of the European Union courts and their procedural rules. On 30 September 2010, you sent me the Commission's reply to your Article 90(2) complaint.

(1) Allegation of failure to commence disciplinary proceedings

The Treaty on the Functioning of the European Union and the Statute of the European Ombudsman set certain conditions as to the opening of an inquiry by the Ombudsman. One of these conditions is:

Article 228 of the Treaty on the Functioning of the European Union:
"In accordance with his duties, the Ombudsman shall conduct inquiries for which he finds grounds (...)"

The Commission dismissed your complaint as inadmissible, given that it did not concern an act adversely affecting you within the meaning of the Staff Regulations. This approach would appear to be correct.

However, the Commission has thus not yet addressed the substance of your grievances. I therefore contemplated the possibility of contacting the Commission in order to ask it to complement its reply in the same way it would do if the request had been submitted by a journalist or an ordinary citizen rather than by way of an Article 90(2) complaint by an official or a former official, i.e., to use an accelerated procedure aiming at obtaining the Commission's answer to the substantive questions you raised in this case. After

1 avenue du Président Robert Schuman
CS 30403
F-67001 Strasbourg Cedex

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F. + 33 (0)3 88 17 90 62

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eo@ombudsman.europa.eu

having received a copy of this reply, I would then have considered whether there remained any grounds for further inquiry into this aspect of your case.

However, you informed me, upon receiving the acknowledgment of receipt of your complaint, that you expressly object to the Ombudsman sending an anonymised version of this decision to the Commission in case he were to find insufficient grounds for an inquiry. However, when the accelerated procedure I described above is used, the relevant institution always receives a copy of the decision closing the case. Thus, if this case had to be closed with a finding that there were insufficient grounds for further inquiry after the telephone procedure was used, I would have had to inform the Commission of this fact, contrary to your wishes.

After careful examination of your complaint, and in order to respect your wishes concerning the non-communication of an insufficient grounds decision to the Commission, I decided not to use the accelerated procedure. I have, therefore, closed your complaint on the basis that there are insufficient grounds for an inquiry. In accordance with your request, the Commission will not be informed of this decision.

I would also like to inform you that you could consider addressing your concerns to the Commission in an ordinary letter to its President, as any normal citizen can do. Please also note that, should you not receive a satisfactory reply within a reasonable period, you could consider resubmitting your complaint.

(2) Claims that the Commission should propose legislation reforming the composition of the European Union courts and their procedural rules

I decided that these claims are inadmissible because they do not concern a possible instance of maladministration, but the merits of Union legislation.

Should you wish to pursue these claims, you could consider submitting a petition to the European Parliament. You can do so using the online form, which is available under the following link:

https://www.secure.europarl.europa.eu/parliament/public/petition/secured/submit.do?language=EN

Alternatively, you could write to the following address:

Mr Jerzey Buzek
President of the European Parliament
Rue Wiertz
1047 Brussels
BELGIUM

Yours sincerely,

P. Nikiforos Diamandouros

Annex 3

European Ombudsman

Decision of the Commission to refrain from starting disciplinary procedures against one of its officials

Available languages: en

This complaint was treated as confidential. This document has therefore been anonymised.

Related documents

- Case: 0362/2011/KM

Contents

- Case: 0362/2011/KM
  Opened on **11 Mar 2011**
- Institution(s) concerned: **European Commission**
- Field(s) of law: **General, financial and institutional matters**
- Types of maladministration alleged – (i) breach of, or (ii) breach of duties relating to: **Duty to state the grounds of decisions and the possibilities of appeal [Articles 18 and 19 ECGAB]**
- Subject matter(s): **Administration and Staff Regulations**

Allegation(s)

The Commission failed to provide a satisfactory reply to the complainant's e-mail to President Barroso of 28 October 2010.

Claim(s)

1) The Commission should commence disciplinary proceedings against Mr X.

2) In case the Commission does not intend to commence disciplinary proceedings against Mr X, it should explain the reasoning behind this decision.

3) The Commission should appoint a committee of independent experts from outside the EU institutions to (i) investigate the outcome of all complaints concerning Mr X submitted before the publication of the Sunday Times article dated 7 September 2008; (ii) determine why disciplinary proceedings were not opened immediately after the Commission's decision to suspend Mr X; and (iii) recommend the opening of those disciplinary proceedings that the committee may consider appropriate.

Annex 4

P. Mahoney	President
H. Kreppel	President of Chamber
S. Van Raepenbusch	President of Chamber
I. Boruta	Judge
H. Kanninen	Judge
H. Tagaras	Judge
S. Gervasoni	Judge
W. Hakenberg	Registrar

up up

Paul J. Mahoney
Born in 1946; law studies (Master of Arts, Oxford University, 1967; Master of Laws, University College London, 1969); lecturer, University College London (1967 to 1973); Barrister (London, 1972 to 1974); Administrator/Principal Administrator, European Court of Human Rights (1974 to 1990); Visiting Professor at the University of Saskatchewan, Saskatoon, Canada (1988); Head of Personnel, Council of Europe (1990 to 1993); Head of Division (1993 to 1995), Deputy Registrar (1995 to 2001), Registrar of the European Court of Human Rights (2001 to September 2005); President of the Civil Service Tribunal since 6 October 2005.

Horstpeter Kreppel
Born in 1945; university studies in Berlin, Munich, Frankfurt-am-Main (1966 to 1972); First State examination in law (1972); Court trainee in Frankfurt-am-Main (1972 to 1973 and 1974 to 1975); College of Europe, Bruges (1973 to 1974); Second State examination in law (Frankfurt-am-Main, 1976); specialist adviser in the Federal Labour Office and lawyer (1976); presiding judge at the Labour Court (Land Hesse, 1977 to 1993); lecturer at the Technical College for Social Work, Frankfurt-am-Main, and at the Technical College for Administration, Wiesbaden (1979 to 1990); national expert to the Legal Service of the Commission of the European Communities (1993 to 1996 and 2001 to 2005); Social Affairs Attaché at the Embassy of the Federal Republic of Germany in Madrid (1996 to 2001); presiding judge at the Labour Court of Frankfurt-am-Main (February to September 2005); Judge at the Civil Service Tribunal since 6 October 2005.

Irena Boruta
Born in 1950; law graduate of the University of Wrocław (1972), doctorate in law (Łodz, 1982); lawyer at the Bar of the Republic of Poland (since 1977); visiting researcher (University of Paris X, 1987 to 1988; University of Nantes, 1993 to 1994); expert of 'Solidarność' (1995 to 2000); professor of labour law and European social law at the University of Łodz (1997 to 1998 and 2001 to 2005), associate professor at Warsaw School of Economics (2002), professor of labour law and social security law at Cardinal Stefan Wyszynski, Warsaw (2000 to 2005); Deputy Minister of Labour and Social Affairs (1998 to 2001); member of the negotiation team for the accession of the Republic of Poland to the European Union (1998 to 2001); representative of the Polish Government to the International Labour Organisation (1998 to 2001); author of a number of works on labour law and European social law; Judge at the Civil Service Tribunal since 6 October 2005.

Heikki Kanninen
Born in 1952, graduate of the Helsinki School of Economics and of the faculty of law of the University of Helsinki; legal secretary at the Supreme Administrative Court of Finland; general secretary to the committee for reform of legal protection in public administration; principal administrator at the Supreme Administrative Court; general secretary to the committee for reform of administrative litigation, counsellor in the legislative

department of the Ministry of Justice; Assistant Registrar to the EFTA Court; legal secretary at the Court of Justice of the European Communities; judge at the Supreme Administrative Court (1998 to 2005); member of the Asylum Board; vice-president of the committee on the development of the Finnish courts; Judge at the Civil Service Tribunal since 6 October 2005.

Haris Tagaras
Born in 1955; graduate in law (University of Thessaloniki, 1977); special diploma in European law (Institute for European Studies, Free University of Brussels, 1980); doctorate in law (University of Thessaloniki, 1984); lawyer linguist at the Council of the European Communities (1980 to 1982); researcher at the Thessaloniki Centre for International and European Economic Law (1982 to 1984); Administrator at the Court of Justice of the European Communities and at the Commission of the European Communities (1986 to 1990); professor of Community law, international private law and human rights at Athens Panteion University (since 1990); external consultant for European matters at the Ministry of Justice and member of the Permanent Committee of the Lugano Convention (1991 to 2004); member of the national Postal and Telecommunications Commission (2000 to 2002); member of the Thessaloniki Bar, lawyer to the Court of Cassation; founder member of the Union of European Lawyers (UAE); associate member of the International Academy of Comparative Law; Judge at the Civil Service Tribunal since 6 October 2005.

Sean Van Raepenbusch
Born in 1956; graduate in law (Free University of Brussels, 1979); special diploma in international law (Brussels, 1980); Doctor of Laws (1989); head of the legal service of the Société anonyme du canal et des installations maritimes (Canals and Maritime Installations company), Brussels (1979 to 1984); official of the Commission of the European Communities (Directorate General for Social Affairs, 1984 to 1988); member of the Legal Service of the Commission of the European Communities (1988 to 1994); Legal Secretary at the Court of Justice of the European Communities (1994 to 2005); lecturer at the University of Charleroi (international and European social law, 1989 to 1991), at the University of Mons Hainault (European law, 1991 to 1997), at the University of Liège (European civil service law, 1989 to 1991; institutional law of the European Union, 1995 to 2005; European social law, 2004 to 2005); numerous publications on the subject of European social law and constitutional law of the European Union; Judge at the Civil Service Tribunal since 6 October 2005.

Stéphane Gervasoni
Born in 1967; graduate of the Institute for Political Studies of Grenoble (1988) and the École nationale d'administration (1993); member of the Conseil d'État (contentious proceedings, 1993 to 1997; social affairs, 1996 to 1997; maître des requêtes since 1996); maître de conférences at the Institut d'études politiques, Paris (1993 to 1995); commissaire du gouvernement attached to the special pensions appeal commission (1994 to 1996); legal adviser to the Ministry of the Civil Service and to the City of Paris (1995 to 1997); Secretary General of the Prefecture of the

	Department of the Yonne, Sub-Prefect of the district of Auxerre (1997 to 1999); General Secretary to the Prefecture of the Département of Savoie, Sub-Prefect of the district of Chambéry (1999 to 2001); Legal Secretary at the Court of Justice of the European Communities (September 2001 to September 2005); titular member of the NATO appeals commission (2001 to 2005); Judge at the Civil Service Tribunal since 6 October 2005.
	**Waltraud Hakenberg** Born 1955; studied law in Regensburg and Geneva (1974-79); first State examination (1979); postgraduate studies in Community law at the College of Europe, Bruges (1979-80); trainee lawyer in Regensburg (1980-83); Doctor of Laws (1982); second State examination (1983); lawyer in Munich and Paris (1983-89); official at the Court of Justice of the European Communities (1990-2005); Legal Secretary at the Court of Justice of the European Communities (in the Chambers of Judge Jann, 1995-2005); teaching for a number of universities in Germany, Austria, Switzerland and Russia; Honorary Professor at Saarland University (since 1999); member of various legal committees, associations and boards; numerous publications on Community law and Community procedural law; Registrar of the Civil Service Tribunal since 30 November 2005.

up up

Order of precedence

07.10.2011 > 30.09.2014

President	**S. Van Raepenbusch**
President of Chamber	H. Kreppel
President of Chamber	M.I. Rofes i Pujol
Judge	I. Boruta
Judge	E. Perillo
Judge	R. Barents
Judge	K. Bradley
Registrar	W. Hakenberg

Presentation of the Members

Sean Van Raepenbusch
Born in 1956; law graduate (Free University of Brussels, 1979); Special Diploma in International Law (Brussels, 1980); Doctor of Laws (1989); Head of the Legal Service of the Société anonyme du canal et des installations maritimes (Canals and Maritime Installations Company), Brussels (1979-84); official of the Commission of the European Communities (Directorate-General for Social Affairs, 1984-88); member of the Legal Service of the Commission of the European Communities (1988-94); Legal Secretary at the Court of Justice of the European Communities (1994-2005); Lecturer at the University of Charleroi (international and European social law, 1989-91), at the University of Mons Hainault (European law, 1991-97), at the University of Liège (European civil service law, 1989-91; institutional law of the European Union, 1995-2005; European social law, 2004-05); numerous publications on the subject of European social law and constitutional law of the European Union; Judge at the Civil Service Tribunal since 6 October 2005; President of the Civil Service Tribunal since 7 October 2011.

Horstpeter Kreppel
Born in 1945; university studies in Berlin, Munich, Frankfurt-am-Main (1966-72); first State examination in law (1972); court trainee in Frankfurt-am-Main (1972-73 and 1974-75); College of Europe, Bruges (1973-74); second State examination in law (Frankfurt-am-Main, 1976); specialist adviser in the Federal Labour Office and lawyer (1976); presiding Judge at the Labour Court (Land Hesse, 1977-93); Lecturer at the Technical College for Social Work, Frankfurt-am-Main, and at the Technical College for Administration, Wiesbaden (1979-90); national expert to the Legal Service of the Commission of the European Communities (1993-96 and 2001-05); Social Affairs Attaché at the Embassy of the Federal Republic of Germany in Madrid (1996-2001); presiding Judge at the Labour Court of Frankfurt-am-Main (February to September 2005); Judge at the Civil Service Tribunal since 6 October 2005.

Irena Boruta
Born in 1950; law graduate of the University of Wroclaw (1972), Doctorate in Law (Łodz, 1982); lawyer at the Bar of the Republic of Poland (since 1977); Visiting Researcher (University of Paris X, 1987-88; University of Nantes, 1993-94); expert of Solidarność (1995-2000); Professor of Labour Law and European Social Law at the University of Łodz (1997-98 and 2001-05), Associate Professor at Warsaw School of Economics (2002), Professor of Labour Law and Social Security Law at Cardinal Stefan Wyszynski University, Warsaw (2000-05); Deputy Minister for Labour and Social Affairs (1998-2001); member of the negotiation team for the accession of the Republic of Poland to the European Union (1998-2001); representative of the Polish Government to the International Labour Organisation (1998-2001); author of a number of works on labour law and European social law; Judge at the Civil Service Tribunal since 6 October 2005.

Maria Isabel Rofes i Pujol
Born in 1956; study of law (law degree, University of Barcelona, 1981); specialisation in international trade (Mexico, 1983); study of European integration (Barcelona Chamber of Commerce, 1985) and of Community law (School of Public Administration, Catalonia, 1986); official of the Government of Catalonia (member of the Legal Service of the Ministry of Industry and Energy, April 1984 to August 1986); member of the Barcelona Bar (1985-87); Administrator, then Principal Administrator, in the Research and Documentation Division of the Court of Justice of the European Communities (1986-94); Legal Secretary at the Court of Justice (Chamber of Advocate General Ruiz-Jarabo Colomer, January 1995 to April 2004; Chamber of Judge Lõhmus, May 2004 to August 2009); Lecturer on Community Cases, Faculty of Law, Autonomous University of Barcelona (1993-2000); numerous publications and courses on European social law; member of the Board of Appeal of the Community Plant Variety Office (2006-09); Judge at the Civil Service Tribunal since 7 October 2009.

Ezio Perillo
Born in 1950; Doctor of Laws and lawyer at the Padua Bar; Assistant lecturer and senior researcher in civil and comparative law in the law faculty of the University of Padua (1977-82); Lecturer in Community law at the European College of Parma (1990-98), in the law faculties of the University of Padua (1985-87), the University of Macerata (1991-94) and the University of Naples (1995), and at the University of Milan (2000-01); Member of the Scientific Committee for the Master's in European Integration at the University of Padua; Official at the Court of Justice, in the Library, Research and Documentation Directorate (1982-84); Legal Secretary to Advocate General Mancini (1984-88); Legal Adviser to the Secretary-General of the European Parliament, Mr Enrico Vinci (1988-93); also, at the same institution: Head of Division in the Legal Service (1995-99); Director for Legislative Affairs and Conciliations, Inter-Institutional Relations and Relations with National Parliaments (1999-2004); Director for External Relations (2004-06); Director for Legislative Affairs in the Legal Service (2006-11); author of a number of publications on Italian civil law and European Union law; Judge at the Civil Service Tribunal since 6 October 2011.

René Barents
Born in 1951; graduated in law, specialisation in economics (Erasmus University Rotterdam, 1973); Doctor of Laws (University of Utrecht, 1981); Researcher in European law and international economic law (1973-74) and lecturer in European law and economic law at the Europa Institute of the University of Utrecht (1974-79) and at the University of Leiden (1979-81); Legal Secretary at the Court of Justice of the European Communities (1981-86), then Head of the Employee Rights Unit at the Court of Justice (1986-87); Member of the Legal Service of the Commission of the European Communities (1987-91); Legal Secretary at the Court of Justice (1991-2000); Head of Division (2000-09) in and then Director of the Research and Documentation Directorate of the Court of Justice of the European Union (2009-11); Professor (1988-2003) and Honorary Professor (since 2003) in European law at the University of Maastricht; Adviser to the Regional

Court of Appeal, 's-Hertogenbosch (1993-2011); Member of the Royal Netherlands Academy of Arts and Sciences (since 1993); numerous publications on European law; Judge at the Civil Service Tribunal since 6 October 2011.

Kieran Bradley
Born in 1957; law degree (Trinity College, Dublin, 1975-79); Research assistant to Senator Mary Robinson (1978-79 and 1980); Pádraig Pearse Scholarship to study at the College of Europe (1979); postgraduate studies in European law at the College of Europe, Bruges (1979-80); Master's degree in law at the University of Cambridge (1980-81); Trainee at the European Parliament (Luxembourg, 1981); Administrator in the Secretariat of the Committee on Legal Affairs of the European Parliament (Luxembourg, 1981-88); Member of the Legal Service of the European Parliament (Brussels, 1988-95); Legal Secretary at the Court of Justice (1995-2000); Lecturer in European law at Harvard Law School (2000); Member of the Legal Service of the European Parliament (2000-03), then Head of Unit (2003-11) and Director (2011); author of numerous publications; Judge at the Civil Service Tribunal since 6 October 2011.

Waltraud Hakenberg
Born in 1955; studied law in Regensburg and Geneva (1974-79); first State examination (1979); postgraduate studies in Community law at the College of Europe, Bruges (1979-80); trainee lawyer in Regensburg (1980-83); Doctor of Laws (1982); second State examination (1983); lawyer in Munich and Paris (1983-89); official at the Court of Justice of the European Communities (1990-2005); Legal Secretary at the Court of Justice of the European Communities (in the Chambers of Judge Jann, 1995-2005); teaching for a number of universities in Germany, Austria, Switzerland and Russia; Honorary Professor at Saarland University (since 1999); member of various legal committees, associations and boards; numerous publications on Community law and Community procedural law; Registrar of the Civil Service Tribunal since 30 November 2005.

Annex 5

Amicale des référendaires et anciens référendaires de la Cour de Justice et du Tribunal de première instance des Communautés européennes

page last modified: 24.05.2007; go to main page.

Conseil d'administration de l'Amicale

Président: *M. Pierre Mathijsen* (avocat, Bruxelles)
Vice-Présidents: *MM. Martin Johansson* (avocat, Bruxelles), *Harald Wenig* (Commission, Bruxelles)

Secrétaire général: *M. William Valasidis* (CJ, cabinet du Président)
Secrétaire général adjoint: *M^me^ Bettina Kotschy* (CJ, cabinet Jann)

Trésorier: *M^me^ Imola Streho* (CJ, cabinet Lõhmus)
Administrateur du site Internet/Trésorier adjoint: *M. Dieter Kraus* (CJ, cabinet du Président)

Membres du Conseil d'Administration:
MM. Luigi La Marca (BEI), *Tristan Baumé* (TPI, cabinet Meij), *Felix Ronkes Agerbeek* (CJ, cabinet Poiares Maduro), *Peter Ohrlander*, *M^mes^ Katrine Sawyer* (CJ, cabinet Borg Barthet), *Yolanda De Muynck* (CJ, cabinet Meij), *Paola Saba* (TFP, cabinet Van Raepenbusch), *M. Dirk Buschle* (Cour AELE).

Commissaires au compte: *MM. A. Stathopoulos* (CJ, cabinet Juhász), *J. Wohlfahrt* (CJ).

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Amicale des référendaires et anciens référendaires de la Cour de justice, du Tribunal et du Tribunal de la fonction publique de l'Union européenne

page last modified: 23.04.2011; go to main page.

Conseil d'administration de l'Amicale

Président: *M. Pierre Mathijsen* (avocat, Bruxelles)
Vice-Présidents: *M. Jean-François Bellis* (avocat, Bruxelles), *M^me^ Yolanda De Muynck* (T, cabinet Wahl)

Secrétaire général: *M. William Valasidis* (CJ, cabinet du Président)
Secrétaire général adjoint: *M. Martin Johansson* (avocat, Bruxelles)

Trésorier: *M^me^ Julie Brohée* (CJ, cabinet Arabadjiev)

Administrateur du site Internet: *M. Dieter Kraus* (CJ, cabinet du Président)

Membres du Conseil d'Administration:
MM. Milan Kristof (CJ, cabinet Mazák), *Antoine Masson* (TFP, cabinet Boruta), *Michel Trapani* (CJ, cabinet Arestis), *Georges Vallindas* (T, cabinet Soldevila Fragoso), *Carsten Zatschler* (CJ, cabinet Schiemann).

Commissaires au compte: *.

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Petition 0084/2012 by P.S.W. (Portuguese) on the workings of the courts of the European Union, specifically its Civil Service Tribunal

The petitioner was a European Commission official from 1994 to 2009 and is now retired. In brief, the petitioner has brought a number of actions in the General Court, complaining about his staff report, which was written by a Director-General of the Commission, who has since been suspended from his duties. The petitioner claims to have had his complaints heard before the General Court, but not the Civil Service Tribunal which in 2005 became a specialised jurisdiction in the field of European Union civil service disputes; this competence had previously been exercised by the Court of Justice and, after its creation in 1989, by what is now the General Court. The petitioner believes that the way in which judges are recruited, particularly for the Civil Service Tribunal, does not meet impartiality criteria, since the majority are recruited from amongst ex-officials of the institutions, such as the European Commission and the European Parliament, making them interested parties in hearings on European Union civil service and employee disputes. In the petitioner's opinion, judges who are ex-officials cannot give impartial judgments on cases involving the institutions for which they used to work.

Information

– Appended to this petition is an opinion of the Legal Service of the European Parliament, following a request from the Registry pursuant to a request by a third party who wishes to access the content of this petition. Informed of this, the petitioner has no objections to his petition being made public and its content being made accessible to any interested party, despite the accusations that he makes concerning a number of people, particularly judges, whom he identifies individually. The opinion of the legal service is in line with the wishes of the third party and the petitioner to make public this petition, but it stipulates that the name of involved parties that have not authorised publication of their names, pursuant to the applicable legislation should not be disclosed.

Recommendations

– Declare admissible.
– Forward to the Committee on Legal Affairs to for opinion.