



European Ombudsman

Emily O'Reilly
European Ombudsman

Mrs Ana Maria Gomes
MEP
Rue Wiertz 60
1047 BRUSSELS
BELGIQUE

Strasbourg, 12/06/2015

Complaint 1928/2014/MHZ

Dear Mrs Gomes,

On 15 November 2014, you submitted a complaint against the European Commission concerning its handling of your infringement complaint against Portugal (1712/11/MARK). That complaint related to offsets in a defence contract concluded by the Portuguese government with the German Submarine Consortium ('the GSC') for the supply of two submarines.

On 18 December 2014, I opened an inquiry into your complaint against the European Commission, concerning its handling of your infringement complaint against Portugal (1712/11/MARK).

Having carried out, on 27 January 2015, an inspection of the Commission's file related to your infringement complaint 1712/11/MARK, I have come to the conclusion that further inquiries are necessary.

I have, therefore, asked the Commission to provide an opinion, by 30 September 2015, on the following allegation and claim:

Allegation:

The Commission failed to provide a satisfactory reply to the infringement complaint.

In support of her allegation, the complainant argued that the Commission failed to



reply to the following points/queries made by her:

a) In 2012, that is after Directive 2009/81/EC on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security entered into force and was already transposed in Portugal, and the DG Internal Market guidance "Directive 2009/81/EC on the award of contracts in the fields of defence and security Guidance Note Offsets" was published, the projects covered by offsets agreed in 2004, were replaced by new projects in the civil sector (hotel in Algarve and the company Koch Portugal). In its replies, the Commission did not make it clear whether it considered that the new offsets were justified on the basis of essential security interests. The complainant further argued that, in 2014, the offsets contracts were renegotiated for the second time (the hotel project in Algarve was replaced by the project to construct a wind power platform.)

b) The Commission did not explain why it did not act upon the renegotiation of the offset contracts.

c) The closure of the infringement procedure shows that the Commission has opted to "cover up" the contracts.

Claim:

The Commission should (i) require the Portuguese authorities to use all possible legal means to return to a situation of legality, or, as a minimum, (ii) make it clear whether it considers that the new offset projects, agreed after the entry into force of the Directive and the publication of the Internal Guidance, were justified by "an essential security interest." The Commission should explain why it did not act upon the offsets which were renegotiated on two occasions, in 2012 and in 2014.

As soon as I receive the Commission's opinion, I will forward it to you with an invitation to make observations. Any observations you wish to make should be submitted to my office within one month of receiving the opinion.

Once my office receives your observations, or the deadline has passed, the Head of Complaints and Inquiries Unit 1, responsible for your case, Ms Marta Hirsch-Ziembinska (telephone: 33 388 172746), will then examine your file.



I will inform you if I need to inquire further into your complaint before making a decision on it.

Yours sincerely,

Emily O'Reilly