

**REPORT ON THE EUROPEAN OMBUDSMAN'S INSPECTION OF DOCUMENTS IN
COMPLAINT 1928/2014/MHZ**

Name of complainants: Ms Ana Maria Rosa Martins Gomes, MEP

Institution involved: The European Commission

Subject matter of the case:

Infringement complaint against Portugal concerning offset in a defence contract concluded by the Portuguese government with the German Submarine Consortium for supply of two submarines

The inspection

Object of the inspection: To inspect the Commission's file on the complaint.

Date: 27 January 2015, at 14:30

Location: European Commission, DG GROW, FISMA ROOM SP201/A030, Rue de Spa 2, 1000 Brussels, Belgium, from 14:30 to 17:00

Present: a) Commission services:

Ana RODRIGUEZ PEREZ

Mirjam SODERHOLM

Lukasz MICHALSKI

Paulo SILVA

Pascal LEFEVRE

b) Ombudsman services:

Ms Marta HIRSCH-ZIEMBINSKA

Juliano FRANCO

Introductory and procedural aspects

The inspection started with introductions of those present, a brief description of the object of the inspection and of the nature of the inspection of documents as a measure of inquiry that would facilitate the Ombudsman's assessment of the administrative handling of the complaint. In this context, Ms Hirsch-Ziembinska informed the Commission's services that if the Ombudsman's services ask for and obtain copies of any documents that the

Commission's services declare to be confidential, no access may be granted to those copies, either to the complainant or to any other person outside the Ombudsman's office¹.

The documents on the Commission's file

The Commission's file consisted of the documents related to the complaint filed by Ms Gomes, MEP and to the infringement procedure for non-communication of national transposition measures of Directive 2009/81/EC (hereinafter the 'Defence Procurement Directive'), as follows:

- i. Summary documentation of the complaint to the European Commission filed by Ms Gomes, MEP on 20 December 2010, registered on 5 January 2011 under CHAP: CHAP(2011)00038 (13 pages);
- ii. Acknowledgement of receipt sent to the complainant, dated 18 January 2011 (7 pages);
- iii. Acknowledgement of transfer to EU-Pilot sent to the complainant, dated 9 February 2011 (4 pages);
- iv. Commission's communication to the Portuguese authorities in EU-Pilot database requesting their opinion in the subject matter, dated 4 May 2011 (5 pages);
- v. Response of the Portuguese authorities in the EU-Pilot, dated 8 July 2011 (31 pages);
- vi. E-mail correspondence between the Commission's DG MARKT and the complainant discussing a possibility of holding a meeting on 14 July 2011 (8 pages)
- vii. Letter of formal notice (ex officio) from the Commission to the Portuguese authorities for non-communication of national measures transposing the Defence Procurement Directive, dated 30 September 2011 (5 pages);
- viii. Response from the Portuguese authorities to the letter of formal notice under vii., dated 10 October 2011 (2 pages);
- ix. Internal communication and assessment between the Commission's services related to links between the EU-Pilot case and the transposition of the Defence Procurement Directive, dated 10 October 2011 (1 page);
- x. Additional reply of the Portuguese authorities in the EU-Pilot case, dated 21 October 2011 (3 pages);
- xbis. Additional reply from the Portuguese authorities to the letter of formal notice under vii., dated 9 December 2011 (XX pages);

¹ Articles 13(3) and 14(2) of the EO Implementing Provisions.

- xi. Communication between DG MARKT and the complainant discussing a possibility of holding another meeting on 11 January 2012 (3 pages);
- xii. Request for additional information in the EU-Pilot case sent by the Commission's services to the Portuguese authorities, dated 26 January 2012 (1 page);
- xiii. Print-out of the Commission's file highlighting the Portuguese authorities' request for an extension until 21 March 2012, dated 21 February 2012 (2 pages);
- xiv. Update note by DG MARKT in the EU-Pilot case, dated 6 March 2012 (1 page);
- xv. Reply of the Portuguese authorities to the Commission's request for supplementary information in EU-Pilot, dated 15 March 2012 (8 pages);
- xvi. First pre-closure letter sent to the complainant, dated 10 May 2012 (5 pages);
- xvii. Reply of the complainant to the Commission's pre-closure letter, dated 8 June 2012 (4 pages);
- xviii. Draft report of TiPiK (external contractor) on the transposition of the Defence Procurement Directive in Portugal, dated 29 June 2012 (345 pages);
- xix. DG MARKT's comments concerning the draft report on the transposition of the Defence Procurement Directive in Portugal sent to TiPiK, dated 8 August 2012 (3 pages);
- xx. Commission's request for supplementary information sent to the Portuguese authorities in relation to the EU-Pilot case, dated 18 October 2012 (1 page);
- xxi. Response of the Portuguese authorities to the additional information request, dated 2 November 2012 (4 pages);
- xxii. Reasoned opinion of the Commission for non-communication of national measures transposing the Defence Procurement Directive, dated 22 March 2013 (13 pages);
- xxiii. Reply of the Portuguese authorities to the reasoned opinion, with several attachments including the relevant national transposition measures for Defence Procurement Directive, dated 30 April 2013 (181 pages);
- xxiv. Second pre-closure letter sent by DG MARKT to the complainant, dated 16 September 2013 (4 pages);
- xxv. Internal consultation between the Public Procurement division of DG-MARKT and other Commission departments associated to the EU-Pilot case (DG COMP and DG JUST) concerning the closure letter to be addressed to the complainant referred to as 'agreement from other services to pre-closure of the infringement case' (4 pages);

xxvi. Print-out of the Commission's file - closure of the infringement case, dated 26 September 2013 (1 page);

xxvii. Closure letter sent to the complainant, dated 6 November 2013 (2 pages);

xxviii. Print-out of the Commission's file highlighting the closing date of the case: 7 November 2013 (2 pages);

xxix. Complainant's letter to the President of the European Commission, J. M. Barroso, dated 2 December 2013 (4 pages);

xxx. Internal comments of DG MARKT on the complainant's letter to the Commission President, dated 16 December 2013 (5 pages);

xxxi. Answer given by the Commissioner Michel Barnier to a parliamentary question, dated 30 January 2014;

xxxii. Reply of the Commissioner Michel Barnier to the complainant's letter addressed to the Commission President, dated 5 March 2014 (3 pages);

xxxiii. E-mail correspondence between the complainant's office and DG-MARKT discussing holding a meeting on 14 April 2014 (1 page), and

xxxiv. E-mail internal correspondence between DG MARKT and DG COMP, dated 30 May - 1 June 2012, and internal DG MARKT, dated 17 October 2012.

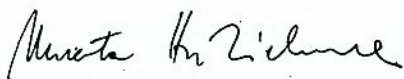
Ms Hirsch-Ziembinska received copies of all the documents listed above, totalling 681 pages, and thoroughly examined the documents.

The Commission identified these documents as confidential.

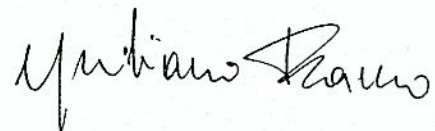
Conclusion of the inspection

Upon conclusion of the inspection, copies of the documents inspected were taken away by Ms Hirsch-Ziembinska after having been duly stamped 'CONFIDENTIEL' by the Commission's services.

Strasbourg 16 February 2015



Ms Marta Hirsch-Ziembinska



Juliano Franco