Special Report of the European Ombudsman concerning his inquiry into complaint 2591/2010 /GG against the European Commission (Vienna Airport)

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The European Parliament adopted a resolution on the Special Report of the European Ombudsman concerning his inquiry into complaint 2591/2010/GG against the European Commission (Vienna Airport).

Context: Parliament recalls that that the case concerns the way in which the Commission handled a complaint submitted to it in 2006 concerning the **expansion of Vienna airport**, when the latter considered that the relevant works had been carried out without the obligatory environmental impact assessment ("EIA") required by Directive 2011/92/EU, and it agreed that Austria would carry out an ex post EIA. The complainants were **critical of the way in which the ex post EIA was carried out**, specifying (i) that the authority in charge of the relevant procedure was the same authority that had granted permits for the relevant works and thus found itself in a manifest conflict of interest and (ii) that they did not have access to a review procedure.

In 2008, they turned to the Ombudsman who took the view that the complainants' arguments appeared to be well founded. However, **given that the procedure was ongoing** and that the Commission had stated that it would only close the infringement case when it was satisfied that the Austrian authorities had taken the necessary steps, the Ombudsman closed his inquiry, making it clear that he trusted that the Commission would take his findings into account.

In 2010, the complainants returned to the Ombudsman stating: (i) that the Commission failed properly to conduct its infringement proceedings against Austria, in particular by failing to ensure that the EIA was carried our properly, and (ii) the Commission should ensure that a proper ex post EIA was carried out, including a monitoring mechanism in which the complainants would have the right to be involved or, should this not be possible, bring the case before the Court of Justice.

The Ombudsman opened a **second inquiry**, and concluded that **the Commission had failed to take his findings from the first inquiry into account.** He issued a draft recommendation urging the Commission to reconsider its position. This draft recommendation was not successful, and the matter is brought to the attention of the European Parliament.

Ombudsman's recommendations: Parliament welcomes the Ombudsman's special report, which **highlights important issues** relating to problems concerning the application of the EIA Directive and the conduct of the infringement proceedings. It states that Parliament:

- shares the Ombudsman's concern about the potential negative impact of conflicts of interest in the carrying out of EIAs while at the same understanding the Commission's worries about exceeding its competences;
- feels competent authorities in Member States should pay attention to **potential conflicts of interest** within the present state of the law and prepare for eventual changes in EU law in this respect;
- considers that, in its negotiations with the Austrian authorities, the Commission could have made greater efforts with regard to the **availability of a judicial review**;

- believes that, in cases where projects are highly likely to infringe basic requirements of the EIA Directive, the public concerned should have **effective legal instruments available to seek immediate clarification by the EIA authority responsible** concerning the compliance of the projects with EU rules;
- points out that the Vienna Airport case highlights **weaknesses in the current EIA Directive,** such as how to deal with projects which are practically irreversible because they have already been implemented, and the problem of conflicts of interest within responsible authorities;
- welcomes the Commission's proposal for a revision of the EIA Directive since this offers a good opportunity to introduce requirements and provisions regarding the objectivity and impartiality of the authorities responsible in these cases;
- considers that clearer procedures are required for infringement proceedings, preferably through the adoption of a general regulation on administrative procedures for the EU's administration, thereby strengthening the position of the complainant.