

Press Release

This English translation of the German press release is only for information purposes.
The German version is the official press release.

Airbus files legal submission to Vienna Public Prosecutor in Eurofighter case

- Eurofighter aircraft were delivered as ordered by Austria
- Austria was neither deceived about the delivery capability and offset business costs, nor was there any error in this respect.
- Costs for offset transactions which needed to be stated were non-existent, and offset business costs were irrelevant for the award of the final contract
- The Defence Minister's public accusations violate fundamental rights – misuse of the judiciary system

Vienna/Toulouse, 18 September 2017 – On Monday, Airbus (stock exchange symbol: AIR) filed a submission to the Vienna Public Prosecutor in response to allegations of deception in the procurement of Eurofighter combat aircraft in 2003, which have been made by Austrian Defence Minister Hans Peter Doskozil. In this submission, the company (Airbus Defence and Space GmbH) denies all allegations made by the Minister in his 16 February 2017 press conference and in his submission of a criminal “statement of (alleged) facts” to the Vienna Public Prosecutor.

Airbus' initial criticism is about the highly questionable manner which the Defence Minister chose to file the criminal “statement of (alleged) facts”, and the prejudicial information policy which he pursued in this context. These actions constitute violations of economic and fundamental rights.

To raise such allegations, combined with damage claims running into the millions, 16 years after the tender and eight years after delivery of the last Eurofighter aircraft, appears highly abstruse and politically motivated. This is why the Defence Minister refrained from confronting Eurofighter Jagdflugzeug GmbH directly with the allegations before publicly shaming and blaming the company. This characterisation also holds true for the Minister's attempt to circumvent the statute of limitations, and to justify the unconstitutional retroactive application of the Corporate Criminal Liability Act of 2006 by construing an alleged *continuing* deception over many years.

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“This is a flagrant violation of European principles of the rule of law and of fundamental constitutional principles,” said Airbus Senior Counsel Dr Peter Kleinschmidt.

Government officials must adhere to the principles of objectivity, truthfulness and fairness in their public statements, particularly when – as in this case – the state acts as the alleged victim, the prosecutor and the judge at the same time. “The Defence Minister’s sole intent here is to create a scenario of intimidation in order to generate civil law concessions which would otherwise not be achievable through a proper legal process,” Dr Kleinschmidt said.

More specifically, the Defence Minister raised the following two accusations: Eurofighter Jagdflugzeug GmbH was “*neither able nor willing*” to deliver the aircraft at the time of the contract’s conclusion in 2003. Furthermore, the Minister alleges that the costs for the offset transactions to be placed by Eurofighter were not stated separately in a proposal dated 2002. On that account, the Defence Minister asserts that he was deceived.

“These accusations are factitious and legally groundless,” Dr Peter Kleinschmidt said. “There was neither any deception, nor any error.”

1. The aircraft were delivered as specified in the contract. From the beginning, the contract allowed the supplier to deliver either aircraft from the earlier production run, known as Tranche 1 (with a defined upgrade obligation) or from a later production run, the so called Tranche 2. As all parties involved were aware that the production Tranches were defined by the Eurofighter Core Nations (United Kingdom, Germany, Italy, Spain), which had invested billions in the development of the Eurofighter programme. Both the ability and the willingness to deliver were given at all times. Delivery began following a reduction in the order quantity from 18 to 15 Tranche 1 aircraft, which was agreed at Austria’s request in 2007. Delivery was completed – as required by the contract – in 2009. It is thus absurd to claim that the manufacturer of Europe’s most modern combat aircraft would not have wanted to deliver such aircraft to its first export customer. It is the business model of Eurofighter Jagdflugzeug GmbH to deliver Eurofighter aircraft.
2. There were no costs for offset transactions beyond the lump sum price (it was only such costs which item 40 of the Request for Proposal referred to) and therefore no such costs could be stated. Furthermore, it was commonly known that offset transactions would trigger operational expenses and had to be included in the overall lump sum price. The Austrian government never specifically asked for any information on the cost of offset transactions during the long-running tender process. That alone speaks for itself. Additionally, the

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offset transactions were no relevant criterion for the selection of the best bidder and thus could not have an impact on the evaluation of the offers.

Eurofighter clearly won the tender both technically and commercially and was identified as the best bidder (including the purchase price). This was re-affirmed just recently by former Austrian Chancellor Dr. Wolfgang Schüssel. In June 2017, he testified before the Parliamentary Investigative Committee in Vienna that the Eurofighter had come out “lightyears” better in the bidding process than the competing Swedish product. “The Eurofighter was ahead in the ‘must-have’ criteria, and miles ahead in the discretionary criteria. So, it is entirely wrong to believe that these two aircraft are types that are able to operate on more or less the same level [...] The offset transactions were, of course, extremely interesting, but they were not decisive for the decision, which was based solely on the military quality of the aircraft and, of course, on the reasonable price,” Dr. Schüssel said.

Today, Airbus is convinced that the offset volume, which has already been submitted, exceeds its obligations under the offset business contract with the Republic of Austria; this was also confirmed before the Parliamentary Investigative Committee by the representative of the Ministry of Economy, which is responsible for the offset transactions.¹

The requirement to provide offset business was imposed by the Republic of Austria. The offset transactions have greatly helped Austrian companies to achieve a lasting and successful involvement in the aeronautics business which is a growing industry. Just to mention one example among many, Austrian-based FACC recently signed a contract with Airbus worth over € 500 million as a technology partner for the new A320 “Airspace” cabin.

About Airbus

Airbus is a global leader in aeronautics, space and related services. In 2016, it generated revenues of € 67 billion and employed a workforce of around 134,000. Airbus offers the most comprehensive range of passenger airliners from 100 to more than 600 seats. Airbus is also a European leader providing tanker, combat, transport and mission aircraft, and is one of the world's leading space companies. In helicopters, Airbus provides the most efficient civil and military rotorcraft solutions worldwide.

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¹ See the testimony of Friedrich Machinek, the responsible administrative staff member at the Austrian Ministry of Economy, as quoted in the 11 July 2017 issue of the Austrian newspaper *Der Standard*, who emphasised before this year's investigative committee that the Eurofighter offset transactions amounted to “certainly over four billion” euros.
<http://derstandard.at/2000061150759/Eurofighter-Vorhalte-trotz-praechtiger-Gegengeschaefte>

Information for editors:

Timeline of Eurofighter type decision		
2002	24 June	Lockheed Martin is ruled out due to non-fulfilment of two "must-have" criteria.
	25 June	Final report of the evaluation committee empanelled by the Austrian Federal Ministry of National Defence and Sport (BMLVS) comes out in favour of the Eurofighter combat aircraft.
	2 July	Official type decision in favour of the Eurofighter in the form of a resolution of the Council of Ministers.
2003	19 May	National Security Council recommends the purchase of Eurofighter aircraft (the quantity had been previously reduced from 24 to 18 aircraft).
	1 July	Signature of the Eurofighter purchase contract.
2005	1 November	Pursuant to Item 2.5 Part B of the contract, notice by Eurofighter GmbH of intent to initially deliver six aircraft in the older Tranche 1/block 5 configuration and subsequently upgrade them to the Tranche 2/block 8 configuration at its own expense.
2007	24 June	Quantity reduced from 18 to 15 Eurofighter aircraft.
July 2007 to September 2009		Delivery of 15 aircraft to Austria.
(Source: http://www.bundesheer.at/download_archiv/pdfs/ef_beschaffung_timeline.pdf)		
Offset obligations between Eurofighter GmbH and the Republic of Austria	Offset volume: 204% (approx. €4 billion); to be fulfilled over 15 years (2003-2018);	
	After the reduction from 18 to 15 Eurofighters, the offset volume declined to €3.5 billion.	
	According to the Austrian Ministry of Economy, the offset status for the period 2003-2010 was around €3.3 billion. This corresponded to 1,376 transactions with 280 enterprises in Austria.	
	The assumed obligations have been substantially over-fulfilled.	
Important facts and figures about the Eurofighter combat aircraft:	Eurofighter is the largest military defence project/cooperation project in Europe. It secures over 100,000 jobs in more than 400 businesses.	
	599 aircraft for 8 nations are currently under contract.	
	The Eurofighter is flown by five European nations – Europe's dominant combat aircraft.	
	Eurofighters have accumulated a total of over 400,000 flight hours.	
	The Eurofighter is the world's safest modern combat aircraft (incidents per 100,000 flight hours). High availability in operational front-line deployment of >80%.	