



## **The General Court annuls the entry of a Greek company in the Early Warning System put in place by the Commission to protect the EU's financial interests**

*The Commission did not, in fact, have the power to put such a system in place, particularly since the rights of the defence of the company in question were disregarded*

By a decision of 2008,<sup>1</sup> the Commission put into place an Early Warning System (EWS) which seeks to ensure the circulation within the Commission and its executive agencies of information concerning third parties which could represent a threat to the EU's financial interests and reputation. The EWS relies on warnings allowing the identification of the level of risk associated with an entity according to categories ranging from W1, corresponding to the lowest level of risk, to W5, corresponding to the highest level of risk. The entry of such warnings may be requested, inter alia, by the European Anti-Fraud Office (OLAF) as part of its investigations. In particular, OLAF may request the registration of W1a or W1b warnings where its investigations give sufficient reason to believe that final findings of serious administrative errors or fraud are likely to be recorded in the EWS in connection with third parties, particularly where those third parties are benefiting or have benefited from funds financed by the EU. Unlike other warnings, W1 warnings have the consequence only of reinforced monitoring measures and not the exclusion of the entity from the project in question.

Planet AE Anonymi Etairia Parochis Simvouleftikon Ipresion ('Planet') is a Greek company which provides advisory services in the field of the administration of companies. Since 2006, it has been engaged in three projects in Syria financed by the Commission. Since 2007, it has been the subject of an enquiry carried out by OLAF into suspected irregularities within the framework of these three projects. The progress of the investigations led OLAF to request Planet's entry in the EWS by activation of a W1a warning and then a W1b warning, which the Commission did.

In 2008, Planet was successful in a call for tenders to lead a consortium in a project with a potential grant of more than €3 000 000 financed by the EU. Since the Commission had become aware, shortly before the signing of the grant agreement, of the warnings requested by OLAF, it made signing the agreement subject to the opening by Planet of a blocked bank account. Once Planet did so, the Commission signed the agreement. Planet brought an action before the General Court seeking the annulment of the decisions pursuant to which OLAF and the Commission entered it in the EWS.

By today's judgment,<sup>2</sup> **the General Court upholds the action brought by Planet and annuls the contested decisions.**

The General Court notes, firstly, that **the Commission, without a legal basis, did not have the power to adopt the 2008 decision putting in place the EWS.** It does not follow either from the

<sup>1</sup> Commission Decision 2008/969/EC, Euratom of 16 December 2008 on the Early Warning System for the use of authorising officers of the Commission and the executive agencies (OJ 2008 L 344, p. 125).

<sup>2</sup> The length of the proceedings is explained by the fact that the General Court had to rule on a plea of inadmissibility filed by the Commission and suspended the proceedings following the appeal lodged by the Commission against the rejection of the plea of inadmissibility. When the Court of Justice had dismissed the Commission's appeal, the General Court then had to rule on an application by the Commission for a declaration that there was no need to adjudicate, which was also rejected.

provisions of the Treaties or those of the Financial Regulation that the Commission has the express power to adopt such a decision. Those texts do not make reference to a system such as the EWS (that is to say, a database concerning the natural or legal persons suspected of constituting a risk to the financial interests of the EU), but provide only for the institution of a central database relating to mandatory exclusions. Most EWS warnings (including the W1a and W1b warnings) do not lead to the exclusion of the entity concerned from the award of the contract.<sup>3</sup> Furthermore, the General Court points out that the W1a and W1b warnings concern a situation where the investigations are still ongoing and thus in which no judge has yet established the guilt of the entity concerned. Accordingly, if the Commission considers it necessary to take preventive measures at an early stage, it needs a legal basis in order to respect the rights of the defence, the principle of proportionality and the principle of legal certainty.

Moreover, **the General Court annuls the contested decisions on the basis of a failure to state reasons and infringement of the rights of the defence.** The decisions of OLAF and the Commission were not notified to Planet, so that it did not have the opportunity of expressing its views in that regard and nor was it aware of the grounds justifying its entry in the EWS. In addition, the fact that Planet was informed of the investigations opened by OLAF concerning it does not permit the Commission to take the view that Planet could 'deduce' from that information the reasons for its entry in the EWS. Finally, Planet was not informed either before or after its entry in the EWS.

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**NOTE:** An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

**NOTE:** An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery

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<sup>3</sup> However, the General Court considers that there is a legal basis for warnings W1d, W5a and W5b, since those are exclusion warnings.