

Case T-320/09

Planet AE

v

European Commission

(Action for annulment — Protection of the financial interests of the European Union — Early Warning System (EWS) allowing the identification of the level of risk associated with an entity — Investigation by OLAF into the execution of a public procurement contract regarding an institutional modernisation project in Syria — Decisions to request the activation of W1a and W1b warnings — Subject-matter of the dispute — Reviewable measures — Admissibility)

Order of the General Court (Sixth Chamber), 13 April 2011 II - 1677

Summary of the Order

1. *Procedure — Application initiating proceedings — Formal requirements — Identification of the subject-matter of the dispute*
(*Statute of the Court of Justice, Art. 21; Rules of Procedure of the General Court, Art. 44*)
2. *Actions for annulment — Actionable measures — Definition — Measures producing binding legal effects — Processing of data by the administration for purely internal purposes — Admissibility — Conditions*
(*Art. 230 EC; Commission Decision 2008/969*)

3. *Actions for annulment — Pleas in law — Lack of competence of the institution which adopted the contested measure — Plea raising an issue of public policy*
(Art. 230 EC)
4. *Actions for annulment — Natural or legal persons — Measures producing binding legal effects — Measures altering the legal situation of an applicant — Warning in an early warning system for the use of authorising officers of the Commission and the executive agencies — Action by an entity affected by that warning — Admissibility*
(Art. 230 EC; Commission Decision 2008/969)

1. According to Article 21 of the Statute of the Court of Justice and Article 44 of the Rules of Procedure of the General Court, the application initiating proceedings must indicate, inter alia, the subject-matter of the dispute and contain the forms of order sought by the applicant. Furthermore, the forms of order sought must be set out in a precise and unequivocal manner, since otherwise the Court would risk giving a ruling *infra petita* or *ultra petita* and disregarding the rights of the defendant. However, the contested measure can be identified by implication from the statements and from the whole argument. An application formally brought against a decision which is part of a group of decisions forming a whole could be regarded as directed also, so far as necessary, against the others.
2. An action for annulment is available in the case of all measures adopted by the institutions, whatever their nature or form, which are intended to have legal effects. In particular, any measure the legal effects of which are binding on, and capable of affecting the interests of, the applicant by bringing about a distinct change in its legal position is considered to be subject to review within the meaning of Article 230 EC. On the other hand, actions directed against decisions which only constitute measures internal to the administration and which as a consequence have no effect which is external to the administration are inadmissible.

In that regard, the fact that the administration processed data for purely internal purposes, inter alia by collecting that data, by managing it and by using it, in no way rules out the possibility that such activities may damage the interests of the persons concerned. The existence of

(see paras 22-23)

such damage depends on several factors, *inter alia*, on the nature of the data processed, on the specific objective of that processing, on the precise consequences to which that processing may give rise and on the correspondence between, on the one hand, the objective and the consequences of the processing in question and, on the other hand, the applicable provisions which define the powers of the administration.

system (EWS), even in the W1 category, cannot be confined within the institutions, organs and agencies of the European Union and such a warning necessarily affects relations between the authorising officers concerned and such an entity. It is apparent from the wording of Article 16 and from the structure of the decision that the fact that there is a W1 warning in reality results in a duty of the authorising officer concerned to adopt reinforced monitoring measures.

(see paras 37-39)

3. The lack of competence of the author of contested measures constitutes an issue of public policy which, as such, must be raised by the Court of its own motion.

Thus, the entities seeking the commitment of financial resources of the European Union are affected by a warning in the EWS, in so far as they are obliged, in order to be able to pursue their financial interests, to comply with the conditions or precautionary measures, which are specific to them and imposed by the authorising officers concerned. Such conditions and precautionary measures can take the form of new contractual obligations and unforeseen economic burdens or even, as in the present case, of repercussions on the internal organisation of a consortium to which they belong.

(see para. 41)

4. Having regard to the objective of Decision 2008/969, on the early warning system for the use of authorising officers of the Commission and the executive agencies, which is to protect the financial interests of the European Union in the context of the implementation of budgetary measures, the impact of a warning about an entity in the early warning

Accordingly, to deny an applicant the possibility of obtaining a judicial review of the truth of the matters on which the contested measures were based would not be compatible with a European Union governed by the rule of law. This follows *a fortiori* if account is taken of the fact that Decision 2008/969 does not provide for any right for legal and natural persons to be informed, still less to

be heard, before their registration in the EWS by the activation of W1, W2, W3, W4 and W5b warnings.

dure, namely the registration of an entity in a 'warning' list without it being heard with regard to the reasons for its registration, a procedure which is distinct from the decisions implementing the various specific requirements laid down by Decision 2008/969.

Not only do those measures reflect the legal characteristics of decisions which can be challenged, but they also constitute the conclusion of a special proce-

(see paras 44-45, 48, 51-53)