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Ombudsman: Commission needs to review the “Early Warning System”

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The European Ombudsman investigates complaints about maladministration in the EU institutions and bodies. Any EU citizen, resident, or an enterprise or association in a Member State, can lodge a complaint with the Ombudsman. The Ombudsman offers a fast, flexible and free means of solving problems with the EU administration.

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The European Ombudsman, P. Nikiforos Diamandouros, has called on the European Commission to ensure that the computerised “Early Warning System” (EWS), an internal mechanism, which identifies persons deemed to pose a threat to the financial interests of the European Union, respects fundamental rights, such as the right to be heard. This follows an inquiry and a public consultation by the Ombudsman on the EWS.

Mr Diamandouros commented: “The EWS is clearly an important tool in helping to protect EU funds. However, the Commission must introduce adequate checks and balances so as to ensure that the EWS complies with the Charter of Fundamental Rights of the European Union which is now legally binding on all EU institutions.”

Commission has to guarantee the “right to be heard”

The EU administration may block or suspend contracts or payments to persons or companies listed on the EWS. The EWS has five different categories. These range from W1 warnings (suspicions of fraud or irregularities) to W5 warnings (entities sanctioned by the UN and by the Council in the framework of the Common Foreign and Security Policy).

The Ombudsman received several complaints about the operation of the EWS. He therefore launched an inquiry, including a public consultation to which many stakeholders contributed. Among the concerns raised was the fact that individuals and companies are not systematically informed that they have been listed in the EWS. It is also unclear how to lodge an appeal against such a listing. For the Ombudsman’s investigation, only listings under

categories W1 to W4 inclusive were relevant.

In its opinion, the Commission confirmed that entities listed in the EWS are not normally informed of this fact, unless they are listed under a W5 warning category. Furthermore, it acknowledged that the system has no formal appeals mechanism.

The Ombudsman’s analysis concluded that the scope of certain EWS warnings is not clearly defined. This should be corrected, he said. He also called on the Commission to guarantee the right to be heard before any decisions to include persons or companies in the EWS are taken. Further, the right of access to the file should be respected. In addition, affected persons or companies should be informed of their right to complain to the Ombudsman or to seek judicial redress. He asked the Commission to send a detailed opinion by 31 March 2012.

The full text of the Ombudsman’s recommendations is available at:
<http://www.ombudsman.europa.eu/en/cases/draftrecommendation.faces/en/11126/html.bookmark>