

REGISTER NUMBER: 131

NOTIFICATION FOR PRIOR CHECKING

Date of submission: 03/12/2006

Case number: 2006-544

Institution: OLAF

Legal basis: article 27-5 of the regulation CE 45/2001⁽¹⁾

(1) OJ L 8, 12.01.2001

INFORMATION TO BE GIVEN⁽²⁾

(2) Please attach all necessary backup documents

1/ Name and address of the controller

2) Name and First Name of the Controller: GONZALEZ GONZALEZ Joaquin

3) Title: Head of Unit

4) Directorate, Unit or Service to which the Controller is attached: .04

5) Directorate General to which the Controller is attached: OLAF

2/ Organisational parts of the institution or body entrusted with the processing of personal data

26) External Company or Directorate General to which the Processor is attached:

25) External Company or Directorate, Unit or Service to which the Processor is attached:

3/ Name of the processing

Judicial follow-up

4/ Purpose or purposes of the processing

OLAF's judicial follow-up is intended to facilitate the responsible authority's investigation and judicial proceedings. It also allows OLAF to monitor the activities undertaken by those authorities, which helps assure that appropriate actions are taken following the conclusions and recommendations of OLAF's investigations.

5/ Description of the category or categories of data subjects

14) Data Subject(s) concerned:

Staff of the EU institutions, bodies, offices and agencies who are involved in the matters which are the subject of follow-up activities.

Persons outside of the EU institutions, authorities, bodies, offices and agencies who are involved in the matters which are the subject of follow-up activities.

16) Category(ies) of Data Subjects:

Persons of the EU institutions, bodies, offices and agencies who are involved in the matters underlying follow-up activities, including officials, temporary agents, national experts, stagiaires, service providers and contractors.

Persons outside of the EU institutions, authorities, bodies, offices and agencies who are involved in the matters underlying follow-up activities, including national civil servants, subcontractors, manager, employees and citizens.

6/ Description of the data or categories of data (including, if applicable, special categories of data (article 10) and/or origin of data)(including, if applicable, special categories of data (article 10) and/or origin of data)

17) Data field(s) of Data Subjects:

Attention: Please indicate and describe in the answer to this question also data fields which fall under article 10

Surname, forename, nickname, birthday, birthplace, case involvement, comments to the person, street, postcode, city, country, profession, organisation, function, telephone number, fax number, e-mail address, activities related to matters which are the subject of follow-up activities.

No data fields which fall under article 10.

18) Category(ies) of data fields of Data Subjects:

Attention: Please indicate and describe in the answer to this question also categories of data fields which fall under article 10

Identification and contact data, professional background, case involvement.

No data fields which fall under article 10.

7/ Information to be given to data subjects

15a) Which kind of communication(s) have you foreseen to inform the Data Subjects as described in articles 11 - 12 under 'Information to be given to the Data Subject'

The communications foreseen are specified in paragraph 8 of the Data Protection Guidelines for OLAF investigators, attached to the OLAF Director General's instructions to staff conducting investigations following from opinion of the EDPS on prior checking on internal investigations. An excerpt of these instructions containing paragraph 8, and the relevant forms, are attached.

8/ Procedures to grant rights of data subjects (rights of access, to rectify, to block, to erase, to object)(rights of access, to rectify, to block, to erase, to object)

15b) Which procedure(s) did you put in place to enable Data Subjects to exert their rights: access, verify, correct, etc., their Personal Data as described in articles 13 - 19 under 'Rights of the Data Subject' :

Please see paragraph 8 of Data Protection Guidelines for OLAF investigators, referred to in the answer to question 15(a).

9/ Automated / Manual processing operation

7) Description of Processing:

Attention: Please describe in the answer to this question if you process personal data falling under article 27 "Prior-Checking (by the EDPS - European Data Protection Supervisor)"

Where an investigation reveals evidence of possible criminal acts, the Interim or Final Case Report should so indicate. The Investigations and Operations Executive Board may decide to open a judicial follow-up path, in which case the matter is referred to the magistrates' unit for judicial follow-up. The steps of judicial follow-up include appointment of a follow-up agent; preparing a legal analysis setting out details of the alleged criminal activity and the supporting evidence for transmission to the relevant national judicial authority; providing such legal or investigative assistance as is required by the competent national judicial authorities; maintaining regular contacts with the competent national judicial authorities to ensure that the recommendations contained in the follow-up report are followed; monitoring the progress of the case in the Member States from

8) Automated Processing operation(s):

A central database, the Case Management System (CMS), is used to manage all OLAFs operational cases. All follow-up stage documents including reports, notes, correspondence, decisions and all other events related to a case are recorded in the CMS. Each follow-up agent is responsible for updating the system in a timely manner and monitoring the completeness of details and documentation for his case. Access rights to the CMS are assigned to follow-up agents on an individual basis according to the responsibility and function of the agent concerned, based on the need to know principle. Further information about the CMS is available in the CMS notification and in section 4.2 of the OLAF Manual. For further details, see the CMS notification (DPO-73).

9) Manual Processing operation(s):

The OLAF Greffe maintains the official cases in paper form in a uniform manner, in compliance with the Commission Decision 2002/47/EC, ECSC, Euratom, OJ L 21.

Follow-up agents may keep their own working files for the cases assigned to them, containing only copies of documents, while the follow-up is ongoing. When the follow-up phase is closed, the follow-up agent hands over to the Greffe all case-related documents. The Greffe staff will compare the two sets of files (original and copies), ensuring that the Greffe file is complete and destroying duplicate documents. Chronological files are maintained in the follow-up units, containing copies of all documents produced by each follow-up Unit and recorded in the CMS. These procedures are described in section 3.1.4 of the OLAF Manual.

10/ Storage media of data

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CMS electronic data is stored in an Oracle database protected by a special OLAF firewall. Paper data is stored in the OLAF Greffe and in working files of the follow-up agents. For further details see notifications for the CMS (DPO-73) and IT infrastructure (DPO-97).

11/ Legal basis and lawfulness of the processing operation

11) Legal basis of Processing:

The judicial follow-up phase is an essential aspect of OLAF's task to fight fraud, corruption, and any other illegal activity affecting the financial interests of the European Community, and serious matters relating to the discharge of professional duties, as established in Article 1 of Regulation (EC) No 1073/99.

Article 10 of the EC Treaty establishes a duty of loyal cooperation between the Community and the Member States to fulfill the obligations arising from the Treaty (principle of loyalty as developed by the case-law of the ECJ), and Article 280(3) obliges the Community and Member States to organise close and regular cooperation to protect the financial interests of the Community against fraud.

Article 9(3) of Regulation (EC) No 1073/99 is the legal basis for forwarding OLAF investigation report and any useful related documents to the competent authorities of the Member States in question.

Article 10(1) and (2) of Regulation (EC) No 1073/99 is the legal basis for forwarding information obtained by

12) Lawfulness of Processing:

Answering this question please also verify and indicate if your processing has to comply with articles 20 "Exemptions and restrictions" and 27 "Prior checking (by the EDPS)"

The processing operations are necessary for the performance of tasks carried out by OLAF pursuant to its mandate, as discussed in response to question 11, and thus lawful pursuant to Article 5 (a) of the Regulation (EC) No 45/2001.

Exemptions and restrictions pursuant to Article 20 (1) (a) and (b) of the Regulation (EC) No 45/2001 are applicable to this processing activity.

This processing is risk-level one and subject to prior checking according to Article 27 of the Regulation (EC) No 45/2001.

12/ The recipients or categories of recipient to whom the data might be disclosed

20) Recipient(s) of the Processing:

21) Category(ies) of recipients:

EU institutions, bodies, offices or agencies;

Competent Member State authorities;

Competent third country authorities and international organisations.

13/ retention policy of (categories of) personal data

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OLAF may keep both electronic and paper files relating to follow-up activities for up to 20 years after the date on which the follow-up has been completed.

13 a/ time limits for blocking and erasure of the different categories of data (on justified legitimate request from the data subject) (Please, specify the time limits for every category, if applicable)
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22 b) Time limit to block/erase data on justified legitimate request from the data subjects

The time limits for blocking and erasure of the different categories of data is one month.

14/ Historical, statistical or scientific purposes

If you store data for longer periods than mentioned above, please specify, if applicable, why the data must be kept under a form which permits identification,

22 c) Historical, statistical or scientific purposes - If you store data for longer periods than mentioned above, please specify, if applicable, why the data must be kept under a form which permits identification

In order to allow for the comparison of precedents and the compilation of statistics, "closure of follow-up" notes may be kept in anonymised form for 50 year.

15/ Proposed transfers of data to third countries or international organisations

27) Legal foundation of transfer:

Only transfers to third party countries not subject to Directive 95/46/EC (Article 9) should be considered for this question. Please treat transfers to other community institutions and bodies and to member states under question 20.

Transfers may be made to competent third countries and international organisations, as explained in detail in OLAFs memorandum to the EDPS, D/04668 of 13.6.2005 (and as spelled out in section 3.5.6 of the OLAF Manual).

28) Category(ies) of Personal Data or Personal Data to be transferred:

All categories specified in response to questions 16-17.

16/ The processing operation presents specific risk which justifies prior checking (please describe): *(please describe)*:

7) Description of Processing:

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Article 27.2.(a) Processing of data relating to health and to suspected offences, offences, criminal convictions or security measures,

Processing may involve suspected offences or offences.

Article 27.2.(b) Processing operations intended to evaluate personal aspects relating to the data subject,

Not applicable.

Article 27.2.(c) Processing operations allowing linkages not provided for pursuant to national or Community legislation between data processed for different purposes,

Not applicable.

Article 27.2.(d) Processing operations for the purpose of excluding individuals from a right, benefit or contract,

Processing may involve exclusion of individuals from a right, benefit or contract.

Other (general concept in Article 27.1)

None.

17/ Comments

1) Date of submission:

10) Comments if applicable:

NONE

36) Do you publish / distribute / give access to one or more printed and/or electronic directories?

Personal Data contained in printed and/or electronic directories of users and access to such directories shall be limited to what is strictly necessary for the specific purposes of the directory.

If Yes, please explain what is applicable.

37) Complementary information to the different questions if applicable, including attachments to this notification which should not be public :

NONE

PLACE AND DATE:22/12/2006

DATA PROTECTION OFFICER: LAUDATI Laraine

INSTITUTION OR BODY:OLAF