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Ms LAUDATI Laraine
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Dear Ms LAUDATI,

I am writing about the prior check Notification on the FIDE database (Customs Files Identification Database) which you notified to the EDPS on 19 March 2007.

For the reason described below, we consider that at present the FIDE database is not subject to prior checking under Article 27 of the Regulation (EC) No 45/2001¹.

As you know, the FIDE database was created in 2003 pursuant to Title VI of the Treaty of the European Union, thus, falling under the third pillar for the purpose of improving the effectiveness of custom law enforcement and cooperation against cross border crime². OLAF has developed and manages FIDE under this framework.

According to both Article 3 and 27 of Regulation (EC) No 45/2001 processing operations which (i) *fall within the scope of Community law* and (ii) *present specific risks to the rights and freedoms of data subjects by virtue of their nature, scope or their purposes* shall be subject to prior checking by the EDPS. Whereas the FIDE database fulfils the second requirement (ii), particularly it contains data relating to suspected offences, offences criminal convictions or security measures, it does not at the present fulfil the first requirement (i).

¹ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

² In particular, FIDE was created by a Council Act of 8 May 2003 drawing up a Protocol amending, as regards the creation of a customs files identification database, the Convention on the use of information technology for customs purposes (2003/C 139/1).

The EDPS is aware of the existence of a Proposal for a Regulation on Mutual Assistance between the Member States for application of the Law on Customs and Agricultural Matters³ which provides a legal basis for the use of FIDE as a Community tool ("Proposal"). The Proposal is currently making its way through the legislative process towards its potential final adoption as a Regulation of the European Parliament and of the Council. If/when this Proposal is adopted as a formal Regulation and enters into force, then, the data processing that occurs in the context of the FIDE database will fall under Community law. As a consequence, as of this moment, the conditions for the application of Article 3 and 27 of the Regulation (EC) No 45/2001 will exist.

In accordance with the above, we consider that OLAF should re-submit this Notification for prior check under Article 27 of the Regulation (EC) No 45/2001 after the formal adoption of the Regulation and before it has set up the procedures for the use of the FIDE database for purposes falling under the Community pillar.

I remain at your disposal should you have any questions concerning this matter.

Yours sincerely,

Joaquin BAYO-DELGADO

³ Proposal for a Regulation of the European Parliament and the Council amending Council Regulation (EC) No 515/97 on mutual assistance between administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (COM(2006) 866 final). On 22 February 2007 the EDPS adopted an Opinion on this Proposal (see EDPS Opinion on the proposal for a Regulation amending Council Regulation (EC) No 515/97 on mutual assistance between administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (COM(2006) 866 final)