



PETER HUSTINX
SUPERVISOR

Mr Franz-Hermann BRUENER
Director-General
European Commission
European Anti-Fraud Office
(OLAF)
B-1049 Brussels

Brussels, 6 May 2009
PH/MVPA/ktl D(2008)661 C 2009-0308

Dear Mr Bruener,

Thank you very much for your letter dated 6 April 2009 where you raised some questions concerning the treatment of personal data transfers by OLAF.

In this letter you mentioned that OLAF's intention is to maintain a central register of all transfers of personal data relating to DS1s, DS2s and DS3s which take place in the context of OLAF's external or internal investigations. You further said that, however, for transfers occurring in other types of processing operations (coordination cases, criminal assistance cases, monitoring actions, non-cases and prima facie non-cases, judicial follow-up and financial follow-up), where the role of OLAF is to coordinate and facilitate the work of the national authorities, there will be a case-by-case consideration of the necessity of the transfer and of the competence of the recipient to receive the data. These reasons will be recorded in the communication to the recipient, along with the appropriate data protection statement, and recorded in the Case Management System (CMS) and the Adonis system, as well as in the case file in the archives. You concluded that you believe that this approach meets your legal obligations and avoids having to create a central register of such transfers (which you believe is not necessary for OLAF's operational and management purposes).

First of all, let me welcome the measures you have adopted for the transfers taking place in the context of "other types of processing operations". Indeed, the analysis of the "necessity" is one of the main aspects to be taken into account. The other registration measures you described are important tools to prove the implementation of the legal obligation.

However, I would like to draw your attention to the importance of the implementation of a central register, particularly in the case of OLAF, due to the large amount of transfers taking place as well as the sensitive nature of the data transferred. Moreover, from a data protection

Postal address: rue Wiertz 60 - B-1047 Brussels

Offices: rue Montoyer 63

E-mail : edps@edps.europa.eu - Website: www.edps.europa.eu

Tel.: 02-283 19 00 - Fax : 02-283 19 50

point of view, there is no difference *vis-à-vis* the type of operation (*id est*, internal and external investigation *versus* the "other types"). In both cases OLAF is a data controller, and there is no reason to make a difference in the use of the implementing tools. Indeed, the Data Protection Module, integrated into the CMS, has a transfers tab, the use of which does not constitute a considerable burden. This tab would not only allow the EDPS to conduct a verification of the legal obligations' implementation, but would also allow OLAF to easily check which transfers have been made in the context of a given case.

For these reasons, I encourage you to use the CMS Data Protection Module to register the transfers (transfers tab), thus creating a central register of all OLAF transfers.

Yours sincerely,

(signed)

Peter HUSTINX

Cc : Ms Laraine Laudati, Data Protection Officer, OLAF