

Brussels, 13 February 2014

EDPS Decision concerning the transfers of personal data carried out by OLAF through the Investigative Data Consultation Platform pursuant to Article 9(7) of Regulation (EC) No 45/2001 2001

THE EUROPEAN DATA PROTECTION SUPERVISOR,

Having regard to Regulation (EC) No 45/2001 of the European Parliament and 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 data¹ (the “Regulation”), and in particular Article 9(7) thereof,

Whereas:

- (1) Transfers of personal data from the European Anti-Fraud Office (OLAF) to third countries or international organisations not ensuring an adequate level of protection of personal data within the meaning of paragraphs 1 and 2 of Article 9 of Regulation (EC) No 45/2001, by means of the Investigative Data Consultation Platform necessitate an authorisation from the European Data Protection Supervisor (EDPS) pursuant to Article 9(7) of the Regulation.
- (2) OLAF considers that: (i) fraud and corruption are global phenomena which must be addressed at an international level with flexible, swift and efficient instruments and with reinforced cooperation and exchange of information between investigative services; (ii) cooperation with third countries and international organisations is a crucial element of OLAF's activities; (iii) when carrying out its mission to protect EU financial interests, OLAF should rely on a network of investigative, administrative and judicial partners and equivalent partners in international organisations; (iv) in such cases the success of an investigation depends to a large extent on OLAF's ability to gather the necessary information from its international counterparts.
- (3) With a view to guaranteeing protection of personal data transferred to its partners, OLAF has negotiated and concluded a set of data protection clauses for the exchange of information with third countries and international organisations in the framework of an Administrative Cooperation Arrangement (“ACA”). The EDPS has analysed these safeguards and considered them essentially as a good platform for transfers based on the exceptions provided for in Article 9(6) of the Regulation given the limited number of transfers foreseen by OLAF. The EDPS considered that, should the frequency and scope of exchanges significantly grow in the future, OLAF should request a specific

¹ OJ L 8, 12.01.2001, p. 1.

authorisation pursuant to Article 9(7) of the Regulation. Finally, the EDPS issued a number of recommendations to reinforce the safeguards provided for in the ACAs.

- (4) In March 2012, OLAF notified for a Prior Check under Article 27 of the Regulation, the Investigative Data Consultation Platform project database (IDCP). The IDCP is a database developed by means of the iBase technology which will contain a subset of data from the investigative files of OLAF and its selected international partners (IDCP partners). These data will include, for each investigative file, information concerning the main elements of the investigation (e.g. name and number, brief description, allegations, geographic zone, etc.) persons concerned, organisations/companies, locations, address, and communication data. OLAF and its IDCP partners will thus be able to search (by means of a free text search) and consult investigative information included in the IDCP. The IDCP will show links between a specific entity found in the search results and other correlated investigation, communication, address and organisation/company entities.
- (5) On 18 July 2013, the EDPS issued a Prior Check Opinion on the IDCP notification. The Opinion contains the full description of the processing activity and includes a number of important recommendations to be implemented by OLAF to ensure compliance with the Regulation. In the Opinion, the EDPS noted that the IDCP will introduce an information sharing tool which is permanent, structural and systematic. Therefore, it does not, as a matter of principle, qualify for an exception based on Article 9(6)(d) of the Regulation. An authorisation under Article 9(7) should therefore be considered for the platform to be lawfully implemented.
- (6) The provisions agreed in the ACA Data Protection Clauses constitute a good basis in terms of adequate safeguards with respect to the protection of personal data. In particular, OLAF has committed itself to put in place a number of important actions. It has undertaken inter alia to carefully select its partners, to verify to the extent possible the correct implementation of the ACAs, to periodically report to the EDPS, and to make best efforts to solve, together with its IDCP partners, any complaints by data subjects. Furthermore, OLAF has undertaken to bear responsibility in accordance with Article 32 of the Regulation for any damage suffered by the data subject as a result of a violation of the Clauses, including violations committed by its partners in cases where the data subject was not able to reasonably obtain redress from the latter. This public unilateral undertaking shall bind OLAF vis-à-vis data subjects and constitutes the ultimate guarantee of redress in favour of data subjects.
- (7) The EDPS Prior Check Opinion contains additional recommendations that OLAF is bound to apply in order to ensure compliance with the Regulation. In particular, the EDPS recommended that OLAF adopt a more specific legal basis, carry out frequent reviews of data to ensure respect of data quality, significantly limit the scope of the database in order to ensure adequate and proportionate processing, guarantee the transparency of the processing and reinforce security measures. The implementation of these recommendations is an absolute precondition for the adoption and continuation in force of the present Decision.
- (8) The EDPS considers that OLAF and its IDCP partners should enter into a specific IDCP agreement setting out the main elements of the processing and the main data protection and security principles and safeguards. This should include, among others, a binding reference to the ACA's provisions and mandatory confidentiality undertakings for the persons authorised to process IDCP data. The IDCP agreement should contain an explicit prohibition against using the IDCP to make any automated decisions concerning data subjects. In addition, it should provide for binding mediation or arbitration mechanisms in

case of complaints from data subjects. Finally, the IDCP agreement should be complemented by a detailed User Manual setting out specific implementation rules.

- (9) It is necessary to specify the exceptional circumstances in which the suspension or termination of data flows may be justified.

HAS ADOPTED THIS DECISION:

Article 1

For the purposes of the present Decision:

- (a) **EDPS** shall mean the European Data Protection Supervisor;
- (b) **OLAF** shall mean the European Anti-Fraud Office, the EU office in charge of the fight against fraud, corruption and other illegal activity affecting the financial interests of the European Union;
- (c) **IDCP** shall mean the Investigative Data Consultation Platform;
- (d) **IDCP partner** shall mean OLAF and/or any third country authority or international organisation participating to and having the right to use the International Data Consultation Platform;
- (e) **ACA** shall mean the Administrative Cooperation Arrangement entered into by OLAF and third country authorities and international organisations, which is based on the model template provided to the EDPS and annexed to the present Decision;
- (f) **ACA Data Protection Clauses** shall mean the Annex to the ACA containing specific provisions and clauses concerning the rules to be observed when transferring or otherwise processing personal data in the framework of the ACA, as annexed to the present Decision;
- (g) **IDCP Prior Check Opinion** shall mean the Opinion of the European Data Protection Supervisor of 18 July 2013 on the notification for prior checking from the Data Protection Officer of OLAF regarding the IDCP.

Article 2

1. Subject to the conditions laid down in Articles 3, 4, 5 and 6 below, the EDPS takes note that OLAF has provided sufficient safeguards in respect of transfers of personal data carried out through the Investigative Data Consultation Platform to third countries or international organisations not ensuring an adequate level of protection of personal data within the meaning of paragraphs 1 and 2 of Regulation (EC) No 45/2001.
2. Transfers of personal data from OLAF to its IDCP partners within the meaning of paragraph 1 are therefore authorised.

Article 3

OLAF shall enter into an ACA with each IDCP partner based on the ACA model template notified to the EDPS and annexed to this Decision.

Article 4

1. OLAF shall implement all recommendations issued by the EDPS in the IDCP Prior Check Opinion.
2. The IDCP shall become operational and be used only when and if all the recommendations set out in the IDCP Prior Check Opinion and the conditions set out in the present Decision are fulfilled.

Article 5

OLAF shall enter into a specific IDCP agreement with each IDCP partner setting out in accordance with the relevant ACA additional elements concerning the processing and the main data protection and security principles, including the following provisions: (i) a binding reference to the ACA provisions; (ii) the prohibition against using the IDCP to make any automated decision concerning data subjects within the meaning of Article 19 of the Regulation; (iii) binding mediation or arbitration mechanisms in case of complaints from data subjects.

Article 6

1. OLAF shall issue a detailed User Manual setting out the specific implementation rules concerning the use of the IDCP, with particular regard to the safeguards aimed at ensuring respect for the principles of necessity, proportionality and data quality in the processing of personal data.
2. OLAF shall not duplicate or export IDCP data to create separate databases or use in this context automated consultation means of large amounts of personal data, e.g. for intelligence purposes.

Article 7

The EDPS may exercise the existing powers conferred under Article 47 of Regulation (EC) No 45/2001, and in particular the power to impose a temporary or definitive ban on processing carried out through the IDCP database. Such powers may be exercised in particular where:

- (a) the EDPS or another competent data protection authority or court has determined that OLAF or the recipient is in breach of the applicable standards of protection; or
- (b) there is a substantial likelihood that the standards of protection are being infringed; or

(c) there are reasonable grounds to believe that one of the conditions set out by the present Decision are not complied with.

Article 8

1. OLAF shall provide the EDPS with the complete list of IDCP partners and notify the identity of new partners as soon as they join the system.
2. OLAF shall report on the implementation of the present Decision on a regular basis, at least once a year.

Article 9

OLAF shall take all the measures to comply with this Decision and submit the first report to the EDPS in this regard within three months of the adoption of this Decision.

Article 10

This Decision is addressed to OLAF.

Done at Brussels, 13 February 2014

(signed)

Giovanni BUTTARELLI
Assistant European Data Protection Supervisor

Annex: Model text for ACA