Investigations by the European Anti-Fraud Office (OLAF)

2006/0084(COD) - 27/10/2006 - Document attached to the procedure

OPINION OF THE EUROPEAN DATA PROTECTION SUPERVISOR on the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1073/1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF).

This Proposal contains revisions to most of the articles of Regulation (EC) No 1073/1999, which sets forth the operational rules to be followed by those involved in OLAF investigations and, as such, constitutes the legal basis for OLAF's operational activities.

The EDPS welcomes this Proposal insofar as it makes more explicit the procedural guarantees of individuals concerned by OLAF investigations, including the protection of personal data of such individuals. From the perspective of the protection of individuals' rights to the protection of their personal data and privacy, the EDPS considers that, for the most part, the Proposal contains improvements vis-à-vis the current legal framework. In addition, the EDPS welcomes the Proposal's recognition that Regulation (EC) No 45/2001 applies to all data processing activities carried out in the context of OLAF investigations.

However, the EDPS is concerned by the fact that most of the proposed amendments do not reach the minimum data protection standards contained in Regulation (EC) No 45/2001. He is concerned that if the Proposal could be deemed to take precedent over the application of the general data protection framework contained in the Regulation, this would entail an unacceptable watering down of the data protection standards in the context of OLAF investigations. This is particularly worrisome in the light of the sensitive nature of the type of data that may be collected. In order to avoid this outcome, the EDPS requests the Community legislator to take into account the following issues and make the related amendments in the Proposal in order to address them:

1) Shortcomings regarding the right of information: providing information to individuals to ensure fair processing constitutes an indispensable safeguard which should not be unduly compromised. To avoid it, the Proposal should be amended as follows:

- Articles 7a2 first paragraph and 8a should include an explicit reference to Articles 11 and 12 of Regulation (EC) No 45/2001 in order to ensure fair processing;
- the limitation to the right of information of Articles 7a2 first paragraph and 8a second paragraph should be linked to the safeguards of Article 20 of Regulation (EC) No 45/2001.

2) Shortcomings regarding the right of access: a new provision should be added recognising as a general principle the right of access to personal information gathered in the context of OLAF investigations which could be inserted between the first and second paragraph of Article 7a.2. Such a provision could read as follows:

- ‘Any person implicated in an investigation has the right to access personal data related to him/her which are gathered in the course of the investigation. Such right(s) may be subject to the limitations foreseen in Article 20 of Regulation (EC) No 45/2001’.

3) Shortcomings regarding the right of rectification: restrictions to the right of rectification should only be provided to the extent that they are permitted under Regulation (EC) No 45/2001. The Proposal contains additional restrictions that should be avoided as follows:

- a provision should be added stating that suspected individuals have a general right to have their views known regarding any piece of information that referred to them, except if an exception under Regulation (EC) No 45/2001 applies. In particular, after having stated that any person implicated in an investigation has 'at any time the right to access personal data related to him/her gathered in the course of the investigation', it should be added that an individual has the subsequent right 'to make his views known on whether the personal data is inaccurate or incomplete';
- the EDPS suggests that the limitation to the right of access and rectification foreseen in Article 7a2, 3rd paragraph be linked to the guarantees of Article 20 Regulation (EC) No 45/2001.

Lastly, the EDPS is also of the view that it would be appropriate for this Proposal to include a new paragraph guaranteeing the confidentiality of whistleblowers.