Fight against fraud: investigations by the European Anti-Fraud Office OLAF

1998/0329(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).

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 particular, certain measures aim to contribute to the respect of the right of information or confirm the application of the partial right of access and rectification in the context of OLAF investigations.

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, as it will contribute to ensuring a consistent and homogeneous application of the rules regarding the protection of individuals' fundamental rights and freedoms with regard to the processing of personal information.

Although the EDPS is appreciative of the amendments aimed at boosting procedural and data protection rights outlined above, he 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. The EDPS is concerned that if the proposal could be deemed to take precedent over the application of the general data protection framework contained in Regulation (EC) No 45/2001, this would entail an unacceptable watering down of the data protection standards in the context of OLAF investigations. In the EDPS's opinion this is particularly worrisome in the light of the sensitive nature of the type of data that may be collected in the framework of OLAF investigations. 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:

- ***Shortcomings regarding the right of information in the context of OLAF investigations***: the amendment aim to provide information to individuals to ensure fair processing constitutes an indispensable safeguard which should not be unduly compromised, as the proposal does.

- ***Shortcomings regarding the right of access in the context of OLAF investigations***: to ensure effective access rights, the proposal should include a new provision recognising as a general principle the right of access to personal information gathered in the context of OLAF investigations.

- ***Shortcomings regarding the right of rectification in the context of OLAF investigations***: (i) 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 ex Article 20 of Regulation (EC) No 45/2001 applies.

In addition to the above, the EDPS is of the view that it would be appropriate for this proposal to include a new paragraph guaranteeing the confidentiality of whistleblowers.