Fight against fraud: mutual administrative assistance for the protection of the financial interests of the Community

2004/0172(COD) - 13/11/2006 - Document attached to the procedure

Opinion of the European Data Protection Supervisor on the Amended Proposal for a Regulation of the European Parliament and of the Council on mutual administrative assistance for the protection of the financial interests of the European Community against fraud and any other illegal activities.

The EDPS considers that on the whole the Amended Proposal maintains the level of protection of personal data contained in the EU data protection framework, namely Directive 95/46/EC and Regulation (EC) No 45/2001. Nevertheless, the EDPS notes that whether such standards of data protection will indeed be maintained will depend on the specific content of implementing legislation for which the Amended Proposal creates a legal basis. Since implementing legislation will be crucial for the protection of personal data in this context, the EDPS particularly welcomes the inclusion in the amended proposal of the obligation to consult him on the drafting of such implementing legislation.

- ***Effect on the Protection of Personal Data: Clarification of Article 17.1***: the EDPS notes that at least in one case, the amended proposal contains a provision which may have a negative effect as far as the protection of personal data is concerned. This is Article 17 of the Amended Proposal which was formerly Article 18 of the Proposal as adopted by the Commission. Point 4 of the EDPS Opinion of 2004 noted that Article 18 (1) second paragraph should not affect the rights of data subjects to have access to their personal data. The EDPS assumes that this is the intention of the legislator, however, in the current language, this is not entirely clear. For this reason, the EDPS suggests adding the following sentence at the end of Article 17.1., second paragraph: 'This shall not affect the rights of data subjects to have access to personal data relating to them, in accordance with Directive 95/46 and Regulation 45/2001';

- ***Proposal for Alternative Language in accordance with the existing rules on consultation***: the EDPS welcomes the fact that the amended proposal takes into account some of the remarks made by the EDPS in his opinion of 2004. For example, in view of the mandatory character of Article 28 (2) of Regulation (EC) No 45/2001, the EDPS welcomes the explicit reference in the amended proposal to this consultation exercise. However, the EDPS considers that this reference should be made in the Preamble of the Proposal. The following shall be inserted: 'After consulting the European Data Protection Supervisor', in line with standard practice.

Otherwise, the EDPS is satisfied with the content of the amended proposal and does not see the need for additional changes to it.