

# **DRAFT**

## **ADMINISTRATIVE COOPERATION ARRANGEMENT**

**BETWEEN**

**THE "EUROPEAN ANTI-FRAUD OFFICE" (OLAF)**

**AND**

**[THE PARTNER]**

### **1. Purpose of the Arrangement**

1.1. OLAF and [the partner] (hereinafter referred to as the “partners”),

Having regard to their common interest to:

- § protect the financial interests of the European Union [and the financial interests protected by the partner] by combating fraud, corruption and any other illegal activities ;

Agree to cooperate within the scope of their respective mandates as set out under point 2.

1.2. This administrative cooperation arrangement (hereinafter referred to as the “Arrangement”) sets out the framework for the working relationship between the partners subject to available resources. It is not intended to create any obligations under international law or European Union law, to modify any existing legal rules or to interfere with the legal frameworks governing the partners. This Arrangement does not cover mutual legal assistance.

### **2. Cooperation activities**

2.1. The cooperation between the partners will include the following activities:

- § exchange of information;
- § operational assistance;
- § joint or parallel investigations;
- § technical assistance;
- § access to information systems and databases;
- § strategic analysis;
- § training and staff exchange.

### **2.2. Exchange of information**

2.2.1. The partners will provide each other, spontaneously or upon request, with information which might be relevant for the other partner in terms of the purpose of this Arrangement, in conformity with the relevant rules on confidentiality and data protection. In particular, they will notify one another as soon as possible if they become aware of the existence of credible allegations of fraud, corruption, any other illegal activities that might impact upon the interests of the partners. Based on this notification the partners will identify cases for further cooperation.

2.2.2. When cooperating on a specific case, the partners will exchange any relevant information, including personal data, in order to achieve the purpose of this Arrangement. This information exchange should contain sufficient elements to identify:

- § the persons, companies or entities suspected of being involved;
- § the nature of fraud, corruption or other illegal activities and
- § any other relevant circumstances.

2.2.3. The partners will exchange any information via the contact persons referred to in point 4. In case of an information request, the requested partner will provide an initial reply to the request as soon as possible and no later than 15 days from the reception of the request.

### **2.3. Operational assistance**

2.3.1. The partners will support one another in operational activities of common interest including assistance in the performance of on-the-spot checks and inspections<sup>1</sup>[or: assistance in identifying the authorities which are competent to assist OLAF in the performance of on-the-spot checks and inspections] on the territory of [the MS or the third country concerned].

2.3.2. When appropriate and at the request of either partner, the partners will help each other to facilitate the performance of operational activities with third parties.

### **2.4. Joint or parallel investigations**

2.4.1. When appropriate and at the request of either partner, the partners may agree to set up ad hoc joint or parallel investigations in order to conduct on-the-spot checks and inspections or other operational activities.

### **2.5. Technical assistance**

2.5.1. In conformity with the relevant rules and subject to the available resources, the partners will provide each other with technical assistance, including exchange of best practices and exchange of any necessary technical information. This exchange may include:

- § Technical investigation tools;
- § Methods in treatment and analysis of investigation data;
- § IT equipment or knowledge for investigation purposes.

### **2.6. Access to information systems and databases**

[2.6.1. In accordance with the [legal basis] and subject to the available resources OLAF grants [the partner] access to the following [database(s)]:

In accordance with the [legal basis] and subject to the available resources [the partner] grants OLAF access to the following [database(s)]:

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<sup>1</sup> Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities, OJ L 292, 15.11.1996, p. 2-5.

2.6.2. The terms and conditions of this access are as follows ...e.g. limitations on the use of data (purpose limitation), technical issues, etc.]

## **2.7. Strategic analysis**

2.7.1. The partners will exchange relevant strategic information either spontaneously or on request. Examples of strategic information may include:

- § Operational structures of the organisations involved in the fraudulent activities, as well as the links between these organisations operating inside or outside the European Union;
- § Strategies, modi operandi, techniques and the financing of these organisations.

2.7.2. The partners will cooperate also in the field of threat assessment and risk analysis. For that purpose, and in conformity with the relevant rules, the partners may share their specific technical tools and materials.

## **2.8. Training and staff exchange**

Subject to the availability of resources, the partners will cooperate in the area of training, including staff exchange. They will inform each other of, and invite each other to seminars, workshops, conferences and other similar activities. Staff exchange may also be foreseen subject to a separate arrangement.

## **3. General rules**

### **3.1. Confidentiality, use of information by the partners and in relation to third parties**

3.1.1. Information communicated or acquired under this Arrangement is protected by professional secrecy in terms of the national legal rules applicable to [the partner] and as regards of OLAF in terms of Article 8 of Regulation (EC) 1073/1999<sup>2</sup>.

3.1.2. The partners will not exchange information, if disclosure to the other partner is prohibited by the law governing the partner possessing the information, or contrary to its interests.

3.1.3. The partners will only disclose information to third parties in agreement with the partner which has provided the information.

### **3.2. Data protection**

3.2.1. All transfers of personal data held by OLAF to [the partner] and the processing of personal data received from [the partner] are subject to the requirements of Regulation (EC) 45/2001 pertaining to the protection of individuals.<sup>3</sup>

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<sup>2</sup> OJ L 136, 31.5.1999, p.1.

<sup>3</sup> OJ L 8 of 12.01.2001, p. 1.

3.2.2. All transfers of personal data held by [the partner] to OLAF and the processing of personal data received from OLAF by [the partner] are made in conformity with the contractual data protection clauses annexed to this Arrangement.

#### **4. Contact persons**

4.1. Each partner will designate a contact person within their own organisation for the implementation of this Arrangement, in particular for the exchange of information and any other communication related to the cooperation activities under this Arrangement.

4.2. The partners will designate the contact persons by means of exchange of letters at the time of signature of this Arrangement. Any change of the designated contact persons will be notified promptly in writing.

#### **5. Evaluation of cooperation**

5.1. The partners intend to evaluate when necessary the application of this Arrangement.

#### **6. Start of application, modification and termination**

The present Arrangement is applicable as from the date of its signature. It can be modified by mutual consent through exchange of letters or terminated by either partner by giving a written notice.

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Director of [the partner]

Director-General of OLAF

In case of administrative cooperation arrangements with third countries and international organisations:

**DATA PROTECTION ANNEX**

## ANNEX

### DATA PROTECTION CONTRACTUAL CLAUSES RELATED TO THE ADMINISTRATIVE COOPERATION ARRANGEMENT BETWEEN OLAF AND [PARTNER]

OLAF and [PARTNER], acting in good faith, warrant and undertake that they will meet all obligations specified in the clauses that follow, and that they have the legal authority to do so.

#### 1. DEFINITIONS

For the purposes of these clauses:

1.1. “personal data”, “special categories of data”, “processing of personal data”, “controller”, “processor”, “data subject”, and “adequate protection” have the same meaning as in Regulation (EC) 45/2001<sup>4</sup>.

1.2. "OLAF personal data" means personal data which are transferred by OLAF to [PARTNER] in the context of this administrative cooperation arrangement.

1.3. "[PARTNER] personal data" means personal data which are transferred by [PARTNER] to OLAF in the context of this administrative cooperation arrangement.

1.4. "importing partner" shall mean the partner to the Administrative Cooperation Arrangement importing personal data from the other partner.

1.5. "exporting partner" shall mean the partner to the Administrative Cooperation Arrangement exporting personal data to the other partner.

1.6. “clauses” means these contractual clauses.

#### 2. JOINT OBLIGATIONS

2.1. The importing partner will process personal data of the exporting partner only for purposes described in Point 1 of the Administrative Cooperation Arrangement.

2.2. The importing partner has in place appropriate technical and organisational measures to protect the exporting partner's personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and which provide a level of security appropriate to the risk represented by the processing and the nature of the data to be protected. The importing partner will process all data received from the exporting partner on its own premises, and will not process the data by means of services provided by external service providers.

2.3. The importing partner has in place procedures to ensure that any third party which it has authorised to have access to the exporting partner's personal data, including processors, will respect and maintain the confidentiality and security of such data. Any person acting under

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<sup>4</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council, OJ L 8, 12.1.2001, p. 1.

the authority of the importing partner, including a data processor, will be required to process the personal data only on instructions from the importing partner and only on the premises of the importing partner.

2.4. The importing partner will disclose personal data provided by the exporting partner to government authorities, including non-EU government authorities, only with the express agreement of the exporting partner. Such agreement must be obtained from the exporting partner on each occasion of a proposed disclosure, before the disclosure is made.

(i) Such government authorities shall be obliged by the express terms of disclosure to:

- (1) use the personal data only for the purpose of protection of financial interests,
- (2) ensure the orderly disposal of any personal data received, consistent with such authority's record retention procedures, and
- (3) obtain the exporting partner's express permission for any further dissemination.

(ii) Failure to respect the conditions for transfer may be investigated and reported to the exporting partner and make such government authority ineligible to receive subsequent transfers from the importing partner of the exporting partner's personal data.

2.5. Upon request, each of the partners shall provide either the other partner, or an independent/impartial inspection agent or auditor, which the inspecting partner selects and which is not reasonably objected to by the inspected partner, or the competent court, as the case may be, with sufficient evidence of compliance, and shall demonstrate the effectiveness of measures taken.

### **3. OBLIGATIONS OF OLAF**

OLAF warrants and undertakes that:

3.1. [PARTNER] personal data will be processed and further transferred by OLAF in accordance with the law applicable to OLAF, in particular Articles 7 and 8 EU Charter of Fundamental Rights and Regulation (EC) No. 45/2001.

3.2. OLAF personal data have been collected, processed and transferred in accordance with the law applicable to OLAF, and in particular in accordance with Article 9 of Regulation 45/2001.

3.3. OLAF has used reasonable efforts to determine that [PARTNER] is able to satisfy its legal obligations under these clauses.

3.4. OLAF has provided [PARTNER] with a copy of Regulation (EC) 45/2001 and will provide it, when so requested, with copies of any other relevant data protection laws or references to them of the EU, and will keep it informed of any changes to such laws relevant to OLAF's obligations concerning this Administrative Cooperation Arrangement.

3.5 OLAF shall implement appropriate and effective measures to ensure that the principles and obligations set out in Regulation 45/2001 are satisfied, and shall demonstrate compliance to the EDPS on its request.

3.6. OLAF will respond to enquiries from data subjects and the European Data Protection Supervisor (EDPS) concerning processing of OLAF personal data by [PARTNER], unless the partners have agreed in a particular case that [PARTNER] will so respond. In that event, OLAF will respond to the extent reasonably possible and with the information reasonably available to it if [PARTNER] is unwilling or unable to respond. Responses will be made within three months.

3.7. OLAF will make available to data subjects, upon request, a copy of this Administrative Cooperation Arrangement and its Annex.

3.8. OLAF will record each transfer or series of transfers of OLAF personal data, and each of OLAF's onward transfers of [PARTNER] personal data to a third party. It will also record each request from [PARTNER] for an onward transfer of OLAF personal data, and OLAF's reply. The records will specify the data subjects and categories of data subjects, purpose of the transfer, categories of data transferred, recipient, whether special categories of data are concerned, and any other relevant and necessary information.

#### **4. OBLIGATIONS OF [PARTNER]**

4.1. To enable OLAF to meet its obligation to adduce adequate safeguards for the protection of the personal data which it exports to a recipient not subject to the EU data protection regime, [PARTNER] warrants and undertakes that it will process OLAF personal data in accordance with the Data Protection Principles set forth in the Appendix to these clauses.

4.2. [PARTNER] warrants and undertakes that it has no reason to believe, at the time of entering into these clauses, in the existence of any laws to which it is subject that would have a substantial adverse effect on the guarantees provided for under these clauses, and it will inform OLAF if it becomes aware of any such laws.

#### **5. INTERPRETATION OF THE CLAUSES**

These clauses shall be construed in accordance with OLAF's obligations under applicable EU law, as interpreted by the courts of the EU.

#### **6. RESOLUTION OF DISPUTES WITH DATA SUBJECTS OR THE EDPS**

6.1. In the event of a dispute or claim brought by a data subject or the European Data Protection Supervisor (EDPS) concerning the processing of the personal data against either or both of the partners, the partners will inform each other, and will cooperate with a view to an amicable settlement in a timely fashion.

6.2. The partners agree to respond to any generally available non-binding mediation procedure initiated by a data subject or by the EDPS. If they participate in the proceedings, the partners may elect to do so remotely (such as by telephone or other electronic means). The partners also agree to consider participating in any other non-binding arbitration, mediation or other dispute resolution proceedings developed for data protection disputes.

6.3. In the event that all efforts on dispute resolution as set out under points 6.1 and 6.2 fail, OLAF must bear responsibility in accordance with Article 32 of Regulation (EC) 45/2001 for any damage suffered by the data subject as a result of a violation of these clauses. Such responsibility covers damages resulting from violations committed by [PARTNER] in cases where the data subject was not able reasonably to obtain redress from [PARTNER].

**7. SUSPENSION AND TERMINATION**

7.1. In the event that either partner fails to respect its undertakings under these clauses, the other partner may temporarily suspend the transfer of its personal data until the breach is repaired or the Administrative Cooperation Arrangement is terminated.

7.2. In the event that the transfer of personal data is suspended by either partner, or that the Administrative Cooperation Arrangement is terminated pursuant to Point 6 therein, the EDPS shall be so informed. Such suspension or termination does not exempt the partners from the obligations and/or conditions under the clauses as regards the processing of the personal data already transferred.

[PARTNER]  
.....  
Date:

Director-General  
European Anti-Fraud Office (OLAF)



## **APPENDIX DATA PROCESSING PRINCIPLES**

1. Purpose limitation: Personal data may be processed and subsequently used or further communicated only for purposes described in Point 1 of the Administrative Cooperation Arrangement or subsequently authorised by the data subject.
2. Data quality and proportionality: Personal data must be accurate and, where necessary, kept up to date. The personal data must be adequate, relevant and not excessive in relation to the purposes for which they are transferred and further processed. The data should be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or further processed.
3. Transparency: The controller must provide data subjects with specified information in accordance with Articles 11 and 12 of Regulation 45/2001. The provision of such information may be deferred in accordance with Article 20.
4. Security and confidentiality: Technical and organisational security measures must be taken by the data controller that are appropriate to the risks, such as against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, presented by the processing. Any person acting under the authority of the data controller, including a processor, must not process the data except on instructions from the data controller.
5. Rights of access, rectification, deletion and objection: Data subjects must have access to their personal data and must be able to have the personal data about them rectified, blocked or erased in accordance with Articles 13-16 of the Regulation. Notification of any rectification, blocking or erasure to third parties to whom the data have been disclosed need not be made when this involves a disproportionate effort. A data subject must also be able to object to the processing of the personal data relating to him if there are compelling legitimate grounds relating to his particular situation. The burden of proof for any refusal rests on the data importer, and the data subject may always challenge a refusal before the EDPS.
6. Special categories of data: The controller shall take such additional measures (e.g. relating to security) as are necessary to protect such special categories of data in accordance with its obligations under clause 2.2.