

## **ANNEX**

### **DATA PROTECTION CONTRACTUAL CLAUSES**

#### **RELATED TO THE ADMINISTRATIVE ARRANGEMENT**

#### **BETWEEN OLAF AND [PARTNER<sup>1</sup>]**

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 Arrangement importing personal data from the other partner.

1.5. "exporting partner" shall mean the partner to the Administrative 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 the Administrative 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

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<sup>1</sup> May include Former Yugoslav Republic of Macedonia, Serbia and Turkey.

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 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 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 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 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.

## **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.