

ADMINISTRATIVE COOPERATION ARRANGEMENT

BETWEEN

THE “EUROPEAN ANTI-FRAUD OFFICE” (OLAF)

AND

THE PROSECUTOR GENERAL S OFFICE

The European Anti-Fraud Office (OLAF), and
The Prosecutor General’s Office of Ukraine
(hereinafter referred to as the “Sides”, each a “Side”)

in view of OLAF’s mission to counter fraud, corruption and other illegal activities affecting the financial interests of the European Union, as well as serious misconduct of members and staff of the European Union’s institutions, bodies, offices and agencies,

in view of the powers of the Prosecutor General’s Office as the central body of Ukraine for international cooperation in criminal proceedings during pre-trial investigation and functions of the prosecution bodies for organisation and procedural guidance of pre-trial investigation; representation of the state in court in exceptional cases and in the manner defined by law; as well as support of public prosecution in court,

in view of the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part, in particular Title VI “Financial Cooperation, with Anti-Fraud Provisions”,

intend to cooperate as set out below.

L Purpose of the Arrangement

This administrative cooperation arrangement (hereinafter referred to as the “Arrangement”) sets out the framework for the cooperation between the Sides within their respective mandates¹ with a view to protecting the interests of the European Union by fighting fraud, corruption and any other illegal activities.

¹ OLAF mandate: Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) (OJ L 248, 18.9.2013, p. 1) as last amended by Regulation (EU, Euratom) 2020/2223 of the European Parliament and of the Council of 23 December 2020 amending Regulation (EU, Euratom) No 883/2013, as regards cooperation with the European Public Prosecutor’s Office and the effectiveness of the European Anti-Fraud Office investigations (OJ L 437, 28.12.2020, p. 49) and Commission Decision 1999/352/EC, ECSC, Euratom of 28 April 1999 establishing the European Anti-fraud Office (OLAF) (OJ L 136, 31.05.1999, p. 20).

The mandate of the Prosecutor General’s Office: Article 131-1 of the Constitution of Ukraine, the Law of Ukraine “On the Public Prosecution Service”, the Criminal Procedure Code of Ukraine.



2. Nature of the Arrangement

The Arrangement does not intend to create or modify any rights or obligations under international law or European Union law². Nothing in this Arrangement or in its implementation may be construed as a waiver of any of the privileges and immunities in relation to the European Union. In accordance with the nature of the Arrangement, the Sides intend to apply it on a voluntary basis.

3. Exchange of information

3.1 The Sides intend to, spontaneously or upon request, exchange information that may be relevant to the other Side in terms of the purpose of this Arrangement. In particular, the Prosecutor General's Office should notify OLAF as soon as possible if they become aware of the existence of credible allegations of fraud, corruption or any other illegal activities that might affect the interests of the European Union.

3.2 The Sides intend to provide each other, upon request, information, including documents and computerised data, in conformity with the applicable rules on confidentiality, professional secrecy and data protection of the Side providing the information, as outlined in sections 7 and 8 below. Such information may include personal data and, where available, information on bank accounts.

3.3 The Sides will exchange any information via the contact persons referred to in section 9 below. In the case of an information request, the requested Side should reply to the request as soon as possible and no later than 15 working days from the date of reception thereof. If the information cannot be provided within that timeframe, the requested Side should inform the other Side of the reasons for the delay and the expected date of the reply.

4. Cooperation in investigative activities

4.1 Without prejudice to OLAF's prerogatives esp. under Article 6 of Annex XLIII to the Association Agreement, OLAF officials may, upon request from OLAF and with the prior consent of the Prosecutor General's Office and subject to the conditions laid down by the latter, be present at investigative activities carried out on specific cases by pre-trial investigation bodies of Ukraine.



4.2 Where possible and in accordance with the Ukrainian legislation, the Prosecutor General's Office will provide OLAF with the data from information systems and databases on the territory of Ukraine of which it is the holder (administrator).

5. Exchange of strategic information and risk analysis

5.1 The Sides intend to exchange relevant strategic information either spontaneously or upon 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;

² In particular, but not limited to, the provisions of the Association Agreement between the European Union and its Member States and Ukraine (the EU-UA Association Agreement) (OJ L 161 of 29.5.2014, p. 163), article 459 and Annex XLIII thereof.



- Strategies, modi operandi, techniques and the financing of these organisations.

5.2 The Sides also intend to cooperate in the field of threat assessment and risk analysis. For this purpose and in conformity with the applicable rules, the Sides may share their technical tools and materials.

6. Other areas of cooperation

Subject to the availability of resources, the Sides may cooperate in the area of training, including staff exchange. They may 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.

7. Confidentiality, use of information by the Sides and in relation to third parties

7.1 Information communicated or acquired under this Arrangement is protected by professional secrecy in accordance with the national legal rules applicable to the Prosecutor General's Office and, as regards OLAF, in accordance with Article 10 of Regulation (EU, Euratom) 883/2013 and subsequent amendments.

7.2 The Sides will not exchange information and documents, if disclosure to the other Side is prohibited by the law governing the Side possessing the information and documents.

7.3 The Sides should only disclose information, which was exchanged under this Arrangement, to third parties in agreement with the Side which has provided the information. Where such disclosure is required due to the statutory duties of one of the Sides, the Sides will inform each other beforehand.

8. Data protection

8.1 For the transfer of personal data, the data protection rules of the transferring Side apply. Any transfer of personal data from OLAF to the Prosecutor General's Office will be accompanied by a transfer clause setting out the framework for the processing of such personal data. An example of a transfer clause is provided in Annex 1.

8.2 OLAF will process all personal data received from the Prosecutor General's Office in accordance with Regulation (ELF) 2018/1725³ and Commission Decision (EU) 2018/1962⁴.

8.3 The Prosecutor General's Office will process all personal data received from OLAF in accordance with the Law of Ukraine "On Personal Data Protection", taking into consideration the specifications of the transfer clause.

9. Contact persons

9.1 The Sides designate a contact person within their respective organisations for the implementation of this Arrangement, in particular for the exchange of information and

³ O J L 295, 21.11.2018, p.39.

⁴ O J L 315, 12.12.2018, p. 41.



documents and any other communication related to the cooperation activities under this Arrangement.

9.2 The Sides intend to exchange information and documents via the designated contact persons and, in the course of an investigation, via the relevant heads of investigative units (as far as OLAF is concerned) and units in charge of organisation and procedural guidance of pre-trial investigation (as far as the Prosecutor General's Office is concerned), or other persons delegated by them.

9.3 The designated contact persons are specified in Annex 2. Any change of the designated contact persons will be notified in writing without delay.

10. Miscellaneous

10.1 The Sides endeavour to meet regularly and evaluate the application of this Arrangement. The Arrangement may be modified by way of exchange of letters between the Sides or may be discontinued by either Side upon written notice to the other Side.

10.2 The present Arrangement is applicable from the date of its signature.

Signed in Brussels on 11 February 2021.

For
the Prosecutor General's Office



Iryna Venediktova
Prosecutor General

For
OLAF



Ville Itälä
Director-General

EXAMPLE OF TRANSFER CLAUSE (FOR THE TRANSFER OF PERSONAL DATA FROM OLAF TO THE OFFICE OF THE PROSECUTOR GENERAL OF UKRAINE)

The transfer of personal data to you falls within Article 50 of Regulation No 2018/1725 on the protection of natural persons with regard to the processing of personal data by Union Institutions, bodies, offices and agencies and of the free movement of such data and repealing Regulation (EC) 45/2001 and Decision № 1247/2002/EC. Accordingly, as the Controller of the personal data hereby transmitted, you are responsible for ensuring that they are used only for the purpose for which they are transmitted. Processing in a way incompatible with that purpose, such as further transmission or publication, is contrary to the conditions upon which the data has been transferred to you.

Your processing of any personal data transferred must be in accordance with the following data protection safeguards. Processing in a way incompatible with these clauses would impede our ability to make any future transmissions of personal data to you.

1. Purpose limitation: Personal data may be processed and subsequently used or further communicated only for the following purpose: [specify] 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.
3. Transparency: Data subjects must be provided with information necessary to ensure fair processing (such as information about the purposes of processing and about the transfer), unless such information has already been given by the data exporter.
4. Security and confidentiality: Technical and organisational security measures must be taken by the 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 Controller, including a processor, must not process the data except on instructions from the Controller.
5. In accordance with Regulation 2018/1725 (Chapter III) the controller of the data shall ensure the implementation of the data subject rights of information access, rectification, erasure or restriction of the processing of its personal data. Exemptions and restrictions may apply in accordance with the Regulation.

The burden of proof for any refusal rests on the data importer, and the data subject may always challenge a refusal before the data protection authority.

6. Sensitive data: The data importer shall take such additional measures (e.g. relating to security) as are necessary to protect such sensitive data in accordance with its obligations under paragraph 4.
7. Automated decisions: For purposes hereof “automated decision” shall mean a decision by the data exporter or the data importer which produces legal effects concerning a data subject or significantly affects a data subject and which is based solely on automated processing of personal data intended to evaluate certain personal aspects relating to him, such as his conduct.

The data importer shall not make any automated decisions concerning data subjects, except where expressly provided by the law of the data exporter and where the measures exist to safeguard data subjects' legitimate interests, such as arrangements allowing data subjects to express their point of view.

8. Storage limits: Personal data which have been provided to the data importer shall be kept only for the time necessary to achieve the purpose for which they were transferred.

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CONTACT PERSONS

In accordance with Point 9 of the Arrangement, the Sides designate the following contact persons:

Within the European Anti-Fraud Office (OLAF):

for initial contacts: the Head of Unit 0.1 “Selection, Investigation and Operations Review” (contact details: OLAF-FMB-SPE@ec.europa.eu)

for case related follow-up: OLAF will provide the Prosecutor General’s Office with the details of the relevant contact person

Within the Prosecutor General’s Office:

for initial contacts: Head of the Department for International Legal Cooperation (contact details: indep@gp.gov.ua).

for case related follow-up: the Prosecutor General’s Office will provide OLAF with data of the corresponding contact person.