

**REGISTER NUMBER: 854**

**NOTIFICATION FOR PRIOR CHECKING**

Date of submission: 11/04/2012

Case number: 2012-0333

Institution: OHIM

Legal basis: article 27-5 of the regulation CE 45/2001<sup>(1)</sup>

*(1) OJ L 8, 12.01.2001*

**INFORMATION TO BE GIVEN <sup>(2)</sup>**

*(2) Please attach all necessary backup documents*

**1/ Name and adress of the controller**

1) For ongoing administrative inquiries: The respective lead inquirer as determined by the Appointing Authority (AA) or the Authority Empowered to Conclude Contracts of Employment (AECE);

2) For closed administrative inquiries: the Director or the Deputy Director responsible for Human Resources

Office for Hamonization in the Internal Market  
Avenida de Europa, 4  
E 03008 Alicante

**2/ Organisational parts of the institution or body entrusted with the processing of personal data**

1) For ongoing administrative inquiries: The respective Inquiry Team appointed ad hoc by the AA/AECE or the Disciplinary Board, as foreseen in Articles 3 and 4 of Decision No ADM-08-01;

2) For closed administrative inquiries: The Human Resources Department.

### **3/ Name of the processing**

Administrative investigations and disciplinary proceedings at OHIM

#### **□ Description of the processing**

Processing of personal data, including personal data of a sensitive nature, in the context of administrative inquiries and disciplinary proceedings carried out at OHIM in compliance with the applicable regulatory framework.

As described in Decision No ADM-08-01, implementing Article 86 of the Staff Regulations concerning the conduct of administrative investigations and disciplinary proceedings, the procedure involves the following basic steps:

- Decision to open an administrative investigation
- Preventive and precautionary measures
- Appointing and mandate of the person/s conducting the administrative investigation

### **4/ Purpose or purposes of the processing**

The main purpose is to put together relevant information into a file in order to enable the appointing authority to determine whether there has been a failure by an official, servant or other person working for OHIM, to comply with his/her obligations under the Staff Regulations and, where appropriate, impose a disciplinary penalty in accordance with the Staff Regulations.

### **5/ Description of the category or categories of data subjects**

All statutory staff employed at OHIM, including officials, temporary agents and contract agents and any person whose data may be processed in the context of an inquiry or proceeding.

### **6/ Description of the data or categories of data**

*(including, if applicable, special categories of data (article 10) and/or origin of data)*

Any personal data or document necessary in order to determine the existence of suspected offences in the framework of administrative inquiries and disciplinary proceedings in each particular case under investigation, namely:

- name, personal number, and data on the statutory position and conditions of employment, name of witnesses, etc;
- behavior, action or inaction of persons under investigation and / or subject to disciplinary procedures;
- personal information contained in or compiled from a transcript, minutes, reports of informers, hearing records, witnesses, and investigators;
- the legal qualification of these actions or inactions under the staff regulations and other obligations to which the persons concerned are subject
- the individual responsibility of the persons concerned, including financial (Article 22 of the Staff Regulations)
- the disciplinary penalty imposed where appropriate to those concerned.

If, exceptionally, processing of special categories of data in the meaning of Article 10(1) were to be regarded this would be done under strict compliance with the conditions established in this regard in Article 10 of the Regulation.

## **7/ Information to be given to data subjects**

As soon as an administrative investigation is initiated, the person concerned is officially notified by the appointing authority that the investigation has been opened, provided that information does not hinder the investigation.

It is informed during the investigation of the facts and circumstances involving him/her.

It is also informed by the appointing authority of the conclusion of the investigation and its findings.

The appointing authority shall inform the person concerned of the possible opening of disciplinary proceedings concerning him/her and his decision.

Furthermore, the data subject will be provided with a privacy notice with respect to the processing of his/her data in an administrative procedure or disciplinary proceeding including as a minimum:

- the identity of the controller;
- the purposes of the processing operation for which the data are intended;
- the recipients or categories of recipients of the data;
- the existence of the right of access to and the right to rectify, the data concerning him or her.

## **8/ Procedures to grant rights of data subjects**

*(rights of access, to rectify, to block, to erase, to object)*

### **- To have Access**

1) In the course of an administrative inquiry the data subject can exercise this right by submitting a request in writing to the respective lead inquirer as Controller in charge at this stage of the processing of personal data.

The right of access must be granted by the Controller, as long as it does not prove detrimental to the administrative inquiry according to Art. 20 of Regulation EC No 45/2001.

2) Each member of the staff shall have the right to access the information contained in his/her personnel file and administrative inquiry file and take copies of all documents relevant to the proceedings, including exonerating evidence.

### **- To Rectify**

1) In the course of an administrative inquiry the data subject can exercise this right by sending a written request to the lead inquirer as officer in charge of the investigation. The Controller may restrict the right of rectification, where there is a clear risk of harm to the administrative inquiry according to Art. 20 of Regulation EC No 45/2001.

2) After the administrative inquiry has been closed the data subject shall execute this right by submitting a written request to the Director or the Deputy Director responsible for Human Resources.

### **- To Block**

N/A

### **- To Erase**

As to the right of erasure, Decision ADM-08-01 refers to the provisions of the Staff Regulations, Annex 9, Article 27 so that the data subject may, after three years in the case of a written warning or reprimand or after six years in the case of any other penalty, submit a request for the deletion from his personal file of all reference to such measure. The AA/AECE shall decide whether to grant this request.

## **9/ Automated / Manual processing operation**

It is a manual processing operation of creation of files and collection of evidences. Electronic files will follow the same rules as paper documents.

## **10/ Storage media of data**

All relevant documents of the administrative inquiry will be stored electronically on the drive of the appointed authority, duly protected by restricted access or a password.

Documents presented in paper will be kept in a locked cupboard to which only the appointed authority has access.

The decisions and relevant documents related to the investigation are inserted in the personal file of the staff member concerned. The documents, papers, pieces of evidence, etc, that constitute the record of proceedings upon which it decision is based are stored in the administrative inquiry file as a separate section of the personal file.

The administrative inquiry files are stored in secure cupboards within the Human Resources Department.

## **11/ Legal basis and lawfulness of the processing operation**

Article 5(a) of Regulation 45/2001 ("processing is necessary for the performance of a task carried out in the public interest on the basis of the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof [...]")

Moreover, the legal basis for the processing are:

- Art. 86 of the Staff Regulations and Annex IX thereof ;
- Articles 49 to 50a and Article 119 of the CEOS ;
- Decision of the President of OHIM No ADM-08-01 concerning the conduct of administrative investigations and disciplinary proceedings and, as a consequence, the mandate granted by the AA/AECE for the administrative investigations.

## **12/ The recipients or categories of recipient to whom the data might be disclosed**

The data subject

The staff member of the Office appointed and authorised by the AA/AECE to conduct an administrative investigation (the Inquiry Team Lead or the Chairman of Board) and his alternate.

The members of the the Inquiry Team or the Disciplinary Board, their alternates and the additional members where appropriate

The Secretary of the Inquiry Team or the Board, with respect to the personal information transcribed in the minutes of the Inquiry Team or Board's meetings

The AA/AECE, as regards the investigation reports and conclusive opinions of the Inquiry Team and the Disciplinary Board

The Human Resources department as custodian of documents generated in the framework of administrative inquiries and disciplinary proceedings to be filed in the corresponding personnel files and administrative inquiry files in accordance with the retention policy applied

## **13/ Retention policy of (categories of) personal data.**

The final disciplinary decision is kept in the personal file of the staff member concerned.

All the documents related to the disciplinary proceedings and the administrative inquires without disciplinary follow-up are kept according to Article 20 of Decision ADM-08-01 in the register of administrative investigations for a period of three years.

**13 a/ Time limits for blocking and erasure of the different categories of data**

(on justified legitimate request from the data subject)  
(Please, specify the time limits for every category, if applicable)

N/A

**14/ Historical, statistical or scientific purposes**

(If you store data for longer periods than mentioned above, please specify, if applicable, why the data must be kept under a form which permits identification)

No

**15/ Proposed transfers of data to third countries or international organisations**

No

**16/ The processing operation presents specific risk which justifies prior checking (please describe):**

AS FORESEEN IN:

Article 27.2.(a)

Processing of data relating to .....suspected offences, criminal convictions or security measures;

Article 27.2.(b)

Processing operations intended to evaluate personal aspects relating to the data subject, including in particular his or her conduct.

**17/ Comments**

PLACE AND DATE:

**Alicante, 11 April 2012**

DATA PROTECTION OFFICER:

**Gregor Schneider**

INSTITUTION OR BODY:

**OHIM**

**Office for Harmonization in the Internal Market**

