NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 12/02/2007
CASE NUMBER: 2006-520
NOTIFICATION OF: OHIM
LEGAL BASIS: Article 27-5 of the Regulation CE N° 45/2001

INFORMATION TO BE GIVEN

1. Name and address of the controller

OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET
(TRADE MARKS AND DESIGNS)
Avenida de Europa, 4
E-03008 Alicante
Spain

2. Organisational parts of the institution of body entrusted with the processing of personal data

Human Ressources Department
Occupational Risk Prevention Sector
Mr Carlos ZAERA ALBIÑANA, Head of Sector

3. Name of the processing

Study on stress at work

4. Purposes of the processing

Carry out a study aiming at assessing the level of stress at work of OHIM staff, in order to comply with the Spanish Law (“Ley de Prevención 31/95 del estado español”).

This study has 3 phases:
   1. Collection of indicators as described in the report attached as annex 1;
   2. Design and launching of a survey on stress at work, on a voluntary and anonymous basis (annex 2), elaborated in accordance with a standard

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1 OJ L 8, 12.01.2001.
2 Please attach all necessary backup documents
methodology approved by law by the Spanish State and customised in accordance with OHIM job profiles on the basis of voluntary interviews with OHIM staff members. These interviews with OHIM staff members are led by an external consulting company, accredited to collect data describing jobs, requirements of tasks and indicators of stress which may impact them.

3. Detailed assessment of the mental workload of 40 specific posts of OHIM, randomly selected (annex 3)

5. Description of the category or categories of data subjects

1st phase: statistical data.

2nd phase: 2 voluntary staff members per department for the interviews and any OHIM staff who accepts to take part in the survey.

3rd phase: 40 staff members corresponding to 40 significant posts randomly selected.

6. Description of the data or categories of data (including, if applicable, special categories of data (article 10) and/or origin of data)

1st phase: collection of statistical data does not include personal data. The report of this phase contains results by departments without personal data.

2nd phase: data with medical connotation considering that questions are raised whether the data subject perceives that he/she is subject to stress or not. Nevertheless, by definition of the process, this information is not associated with personal data. The survey includes questions about the general health condition, but taking part to the survey is voluntary and anonymous. It is possible that the combination of some questions may lead to the identification of the data subject, but the information collected through the survey will only be available to the consulting company which is committed to a confidentiality clause (see annex 5) and, in any case such identification is out of scope of the survey.

3rd phase: specific posts of voluntary data subjects will be assessed. The assessment reports will not bear personal data and will not refer to specific medical cases, but only to situations more or less subject to stress with regard to the workload.

7. Information to be given to data subjects

2nd phase: the interviews are voluntary. The interviewees are personally informed and invited by way of e-mail (see annex 4). By this e-mail, they are informed about the protection of personal data involved. For the survey, the staff will be informed by mean of internal communication (e-mail, Insite) about the scope and procedure of the survey, and about appropriate considerations related to Regulation 45/2001 and the anonymous and voluntary feature of the survey (annex 2).

3rd phase: the 40 selected posts will be informed about the scope and procedure of the assessments of the mental workload to those who will voluntarily take part. As well, they will be informed about appropriate considerations related to Regulation 45/2001 and the anonymous and voluntary nature of the results.
8. **Procedures to grant rights of data subjects**

Data subjects must send a request to the head of the Occupational Risk Prevention Sector. See annex 2.

9. **Automated / manual processing operation**

Not applicable.

10. **Legal basis and lawfulness of the processing operation**

Article 5(b) of Regulation 45/2001 (‘*processing is necessary for compliance with a legal obligation to which the controller is subject*’)

⇒ Legal obligation of the Controller:

- Spanish Law 31/95 on Occupational Risks Prevention (‘Ley de Prevención de Riesgos Laborales 31/95’) corresponding to the transposition of the European Directive 89/391 CEE.

Article 5(d) of Regulation 45/2001 (‘the data subject has unambiguously given his or her consent’)

⇒ Taking part to the survey is fully free and voluntary.

11. **The recipients or categories of recipient to whom the data might be disclosed**

The Occupational Risk Prevention Sector, the Staff Committee and the Management Committee of OHIM only have access to anonymous data. The final report of the survey will not contain personal data.

External consulting company MAPFRE.

12. **General indication of the time limits**

   **For Blocking:** Not applicable

   **And/or**

   **For erasing:**

**Of the different categories of data (please, specify the time limits for every category, if applicable)**

Access: theoretically, 3 months. In practice, the Websurveyor software used to implement the survey would allow to grant immediate access to the data subject’s personal data, as far as the data subject can be identified.

Rectification: immediate.

Blocking: Not applicable.
Erasure: immediate, as long as the duration of the study on stress at work.

Storage: as long as the duration of the study on stress at work.

13. 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.*

Not applicable.

14. Proposed transfers of data to third countries of international organisations

Not applicable.

15. The processing operations presents specific risks which justifies prior checking *(please describe)*:

This study includes the collection of data with a medical connotation (see Annex 2, chapter II).

Having said this, the purpose of the survey is not to collect personal data. However, the combination of some replies related to the person (sex, age, without identification of this person) together with some replies related to the post (department, type of employment relationship, seniority in OHIM, …) may lead to the identification of the person (see Annex 2, chapters I and III). Nevertheless, the external consulting company MAPFRE will not be in possession of the necessary elements to establish such identification. As a consequence, the risk in terms of data protection is considered very limited.

As foreseen in:

- Article 27.2(a)  
  *Processing of data relating to health and to suspected offences, criminal convictions or security measures*

- Article 27.2(b)  
  *Processing operations intended to evaluate personal aspects related to the data subject*

- Article 27.2(c)  
  *Processing operations allowing linkages not provided for pursuant to national of Community legislation between data processed for different purposes*

- Article 27.2(d)  
  *Processing operations for the purpose of excluding individuals from a right, benefit or contract*

- Other (general concept in Article 27.1)
16. Comments

About the applicability of Spanish Law 31/95 to OHIM

The application of national laws to EU bodies is a general concern. As far as OHIM and risk prevention are concerned, it must be noted that the Office has decided to apply the Spanish legislation on prevention of risks on a voluntary basis, this is to say “by analogy”, provided that it is not clear whether in case of an incident concerning a non-statutory person (e.g. external suppliers of works) the Spanish judges would apply the Spanish law to the Office. Therefore, OHIM follows such an approach in the field of occupational risk prevention “just in case”.

17. Annexes

Original notification of processing operation of personal data submitted to OHIM’s Data Protection Officer, including the following annexes:

- Annex 1. Report on the study of mental workload in OHIM
- Annex 2. Survey on stress at work
- Annex 3. Methodology of assessment of mental workload
- Annex 4. Invitation to interviews
- Annex 5. Contract with MAPFRE (merged with ENKEN who initially signed the contract)
  - (1) cover contract
  - (2) Special terms and conditions
  - (3) General terms and conditions
  - (4) Standard Reply Form

Place and Date: Alicante, 12 February 2007

Data Protection Officer: Luc Dejaiffe

Institution of body: OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET (TRADE MARKS AND DESIGNS)