



Opinion on the notification for prior checking received from the Data Protection Officer of the Office for Harmonization for the Internal Market ("OHIM") concerning OHIM's Quality Management System and ex-post quality checks

Brussels, 9 June 2011 (Case 2010-0869)

1. Proceedings

On 5 November 2010, the European Data Protection Supervisor ("EDPS") received from the Data Protection Officer ("DPO") of the Office for Harmonization for the Internal Market ("OHIM") a notification for prior checking concerning "Quality Management System and ex-post quality checks".

The notification was accompanied by several background documents including a processing map entitled "Perform and report on quality checks (TM)" dated 7 October 2010 and a note for the attention of staff in the Trade Mark Department and the Cancellation and Litigation Department entitled "Quality after reorganisation: first steps"¹.

On 18 November 2010, the EDPS sent a request for additional information to the DPO, who responded on 1 April 2011. The draft opinion was sent to the DPO for comments on 3 May 2011 and these were received on 26 May 2011.

2. Facts

A system of **ex post quality checks** ("EPQC") has been up and running since 2007 in OHIM to control the quality of trademark first instance decisions² produced by OHIM's trademark examiners. It was introduced on the basis of the Council Trade Mark Regulation pursuant to which examiners are obliged to take correct decisions. Since it was not used for individual performance evaluation, it had not been submitted to the EDPS for prior checking.

In September 2009, by the note entitled "Quality after reorganisation: first steps", the Director of OHIM's Department for Intellectual Property Policy ("DIPP") informed his staff of the changes to be introduced in the quality management system, and specifically concerning the ex post quality checks. One of the major changes in the examination decision process consists in the possibility of using EPQC data to evaluate the quality of the examiners by taking it into account in their annual appraisal exercise. As a result, the EPQC system was notified to the EDPS for prior checking.

¹ Although no date is mentioned on the document, the DPO informed the EDPS that it was distributed to staff in September 2009.

² Ex post quality checks are carried out with respect to trademark first instance decisions taken in the following fields: classification, absolute grounds (positive and negative), opposition and cancellation.

A new EPQC system was implemented in the course of 2010, which, according to OHIM, has up to now not been used for purpose of evaluating the staff. The DPO informed the EDPS that, by a note of 11 November 2010, he reminded the controller and other directors involved in the data processing not to use the outcomes collected as a result of ex post quality checks in the annual appraisal exercise of the staff conducted in the last quarter of 2010. The DPO underlined to the EDPS that not "*any data processed so far in the pilot phase of the EPQC new system has had any influence at all to date on the appraisal report of the individuals. Until conclusion of this prior checking, the processing is applied restrictively to rather monitor the overall quality of the examination first instance decisions, carefully aligned with the objectives of the previous EPQC system (...)*".

The EPQC system is complemented by a system of ex ante quality checks of decisions made by examiners before they become final. The system of ex ante quality checks was prior checked by the EDPS³. OHIM indicated that, in the new EPQC system, results of ex post checks will not be compared with those of the ex ante check.

The **data subjects** are OHIM's trademark examiners of the first instance teams taking decisions on classification, absolute grounds, opposition or cancellation.

In the new system, ex post quality checks are carried out under the responsibility of DIPP for the following **purposes**:

- (i) to measure and make public the level of quality of trademark first instance decisions,
- (ii) to obtain feedback information about the reasons of the mistakes, their frequency, distribution, pattern, etc, in order to decide the measures for improvement, and
- (iii) to evaluate the quality of the work of the examiners and to take this information into account in their annual performance appraisal.

Database: OHIM uses a database, the EPQC database (called UQCT), for recording and storing the results of the ex post checks. The content of the database is for OHIM's internal use only.

Description of the processing: A processing map entitled "*Perform and report on quality checks (TM)*" (document available to all staff through the Intranet) describes how the ex-post quality check is performed, as follows:

- a) except for cancellation decisions that are checked on a yearly basis, there is on a weekly basis an automatic extraction from the trademark production database of a statistically representative sample of decisions produced by examiners that have been formally adopted and communicated to third parties;
- b) experts groups are in charge of checking the quality of the decisions, under the responsibility of DIPP: (i) the Ex-Post Quality Checks Group for absolute grounds, opposition and cancellation decisions, and (ii) the Classification experts Group for classification decisions. The composition of these experts groups is decided by DIPP's director and can include temporarily assigned examiners. The decisions to be checked are distributed between the members of the experts groups ("the rapporteurs") who individually analyze the decisions in the light of Office's practices, as described mainly in the Manual on Trade Mark Practice;

³ See EDPS Opinion in case 2008-0437 adopted on 22 October 2008.

- c) when a rapporteur detects a possible error⁴, an e-mail is sent to the relevant experts group explaining why the decision should be marked as a mistake and the file is brought to a plenary meeting of the expert group where, if unanimity, the possible mistake becomes a definitive mistake. If not, the file is declared as not mistaken;
- d) the rapporteur sends an e-mail to the examiner and his/her Head of Service (HoS) where the mistake is explained. The examiner is expected to elaborate on the reasons for having made the mistake as well as on the measures to be taken to avoid the mistake to be repeated in the future. Examiners and their HoS are also informed when in the file checked no mistake has been detected;
- e) examiners have the possibility of contesting the decision of the experts group by replying to the e-mail, through their HoS. The experts group may re-evaluate the pertinence of the arguments and remove the mistake from the database;
- f) information about the files sampled for EPQC and information about the outcome of the evaluation are kept in the EPQC database (as described further below);
- g) aggregated figures of errors are quarterly published on OHIM's web site⁵. OHIM publishes (on an anonymous basis) a report of all the errors in a quarterly report and in the annual report. OHIM also foresees to publish internally on an identified basis the benchmark good decisions.

The following **data** are processed in the frame of EPQC:

- a) in the EPQC database/"UQCT":
 - the identification of the file concerned
 - the type of decision analyzed
 - the date when the extraction point has been reached
 - the date of the extraction
 - the organizational service where the decision was taken
 - the outcome of the evaluation of the decision (correct/mistake)
 - if mistaken, the type of mistake
 - a summary of the e-mail to the examiner is stored in the EPQC database without mentioning the name of the examiner, but with reference to the file identification;
- b) yearly summaries on EPQC: Once a year, a summary of the data by service and individual is built ad hoc by crossing the EPQC database with the trademark production database (the latter contains the name of the examiner and the service associated to the file).

⁴ Examiners' mistakes can be of different categories depending on the type of decision. They are usually split in errors of format, errors of content and errors of outcome. Within each one of them, a second level of classification of mistakes is also defined. The criteria for establishing what a mistake is are public on OHIM's website:

http://oami.europa.eu/ows/rw/resource/documents/QPLUS/serviceCharter/qualitychecklist_en.pdf .

⁵http://oami.europa.eu/ows/rw/resource/documents/QPLUS/serviceCharter/2010/qualityofdecisions_2010_es.pdf.

c) data used as a basis for the evaluation of the work of individuals and for their annual appraisal:

- the results of the EPQC are used as an indicator for evaluating the quality of the work of examiners in the context of their annual appraisal. In particular, this is the case for the information contained in the e-mails received by the HoS, the yearly summary of the data by service and individual, the global appreciation of the HoS about the examiners' production quality, the percentage of erroneous files detected in the sample checked for the examiner, the size of the sample and the total production;
- other indicators are also used to evaluate the quality of their work: (i) the quality of the draft decisions that HoS revise, (ii) the complaints of users that arrived to the Complaints Unit, (iii) the revocation of examiners' decisions, (iv) the information coming from Info Centre about particular problems or good treatments of a file, (v) the feedback from the training units in Quality Matters service when the examiner has been trained and coached in that service, (vi) the feedback from the Legal Advisers in Quality Matters service when the examiner's decisions have been revised by that service.

At the beginning of each appraisal exercise, the trademark director recalls the indicators on the basis of which the quality of the outcome of examiners is evaluated.

The **recipients** of the data are as follows:

- a) data processed in the EPQC database may be disclosed to the members of the experts group, to one expert in statistics from the Quality Management Department, and to two experts from the IT Department (as database administrators).
- b) the summary of the data by service and individual is disclosed to the director and HoS of production services, to the members of the Central Team Unit of the Trade Mark Department responsible for preparing the data for the Trade Mark hierarchy.
- c) the content of the email and the name of the addressee may be disclosed to the members of the expert group, each examiner and eventual co-signers concerned, and their HoS.
- d) the report (content of the e-mail) containing all mistakes (without the name of the examiner or the ID file) is distributed to the whole production services.

Regarding **information** to staff, a note for the attention of staff in the Trade Mark Department and the Cancellation and Litigation Department, untitled "Quality after reorganisation: first steps", was distributed to staff through e-mail in September 2009. Examiners were informed through that note about the details of the EPQC system and that the results of EPQC would be an additional indicator for their HoS in evaluating the quality of their outcome and for their annual performance appraisal. This note was discussed with OHIM's staff committee in a meeting on 11 September 2009; it was explained to all examiners in Trade Mark in meetings with the Director of DIPP in the course of September 2009.

As concerns the **rights of individuals with respect to their personal data**, examiners have direct access to the data concerning them contained in the e-mail they have received

from the rapporteur. Examiners have the possibility of contesting the decision of the expert group by replying to the e-mail, through their HoS. The experts group may re-evaluate the pertinence of the arguments and remove the mistake from the database. Data subjects are not granted any data protection rights with respect to the data processed in the EPQC database on the ground that it does not contain personal data.

As concerns the **retention periods of personal data** in the EPQC database, no limit for storage is foreseen on the ground that no personal data are stored in it. The summary of the data by service and individual is to be eliminated at the end of the lifecycle of the appraisal exercises (2 years after the end of the appraisal period). The e-mails sent and received are eliminated by each individual following their own practices of managing their e-mail inbox. No general instruction has been given on what to do about these e-mails but in any case it is logic that they are maintained during the lifecycle of the appraisal exercises.

With respect to **security measures**, (...)

3. Legal aspects

3.1. Prior checking

Applicability of Regulation (EC) No 45/2001 ("the Regulation"): The processing by OHIM of data relating to staff constitutes a processing of personal data ("*any information relating to an identified or identifiable natural person*" - Article 2 (a) of the Regulation). The EDPS underlines that data processed in the EPQC database are personal data. Although they are not associated as such with the name of an individual, the examiner is however identifiable through the identification of the file (which can be matched to the name of the person by crossing the EPQC database with the trademark production database). The data processing is performed by OHIM, an EU body, in the exercise of activities which fall within the scope of EU law (Article 3 (1) of the Regulation in the light of the Lisbon Treaty). The processing of data is done through automatic means. Therefore, Regulation (EC) No 45/2001 is applicable.

Grounds for prior checking: According to Article 27 (1) of the Regulation, "*processing operations likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purpose shall be subject to prior checking by the European Data Protection Supervisor*". Article 27 (2) of the Regulation contains a list of processing operations that are likely to present such risks. This list includes "*processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct* (Article 27 (2) (b)) ". The processing of ex-post quality checks is intended to evaluate the quality of the work of individuals and will be used to measure their ability, efficiency and conduct in the context of their annual performance appraisal. It clearly falls within the scope of Article 27 (2) (b) of the Regulation and is therefore subject to prior checking by the EDPS. Furthermore, because the processing involves the linking of two databases operated for different purposes -the EPQC database and the trade mark production database- in order to identify the individuals reported in the EPQC database, it is also subject to prior checking under Article 27 (2) (c) of the Regulation.

Since this case is linked with the appraisal of staff, the EDPS would like to draw the attention of OHIM to the recommendations he made in his prior checking Opinion

regarding OHIM's staff appraisal (case 2004-293), which remain fully applicable as concerns the processing of staff data for annual appraisals.

Prior checking: While the new EPQC system is already in place, it appears that OHIM has thus far refrained from using EPQC data for purpose of staff evaluation, which is the subject of this notification under Article 27(2)(b) of the Regulation. It is not clear whether OHIM refrained from matching EPQC data with the trademark production database for purpose of making yearly summaries, which processing should only enter into force after the EDPS has carried out his prior checking, in accordance with Article 27(2)(c) of the Regulation. The EDPS emphasizes that all recommendations made by the EDPS in this Opinion must be fully implemented accordingly before the processing operations examined herein can fully enter into force.

Deadlines: The notification of the DPO was received on 5 November 2010. According to Article 27 (4) of the Regulation, the EDPS opinion must be delivered within a period of two months. The procedure was suspended for a total of 159 days. Consequently, the present Opinion must be delivered no later than on 14 June 2011.

3.2. Lawfulness of the processing

Article 5 of the Regulation provides criteria for making the processing of personal data lawful. According to Article 5 (a), the processing is lawful if it is "*necessary for the performance of a task carried out in the public interest on the basis of the Treaties...or other legal instruments adopted on the basis thereof*". Recital 27 of the Regulation indicates that "*processing of personal data for the performance of tasks carried out in the public interest by the Community institutions or bodies includes the processing of personal data necessary for the management and functioning of those institutions and bodies*".

The processing operation is performed in the context of a task carried out in the public interest in the context of the role of OHIM in the registration of Community trade marks.

As to the legal basis of EPQC, it can be found in the Council Regulation on the Community trade mark, and in particular Article 131 of Council Regulation (EC) No 207/2009, which provides that examiners are "*responsible for taking decisions on behalf of the Office in relation to an application for registration of a Community trade mark*". This notably implies that the decisions they produce in respect of trademarks are correct, otherwise they can be corrected, subjected to an appeal procedure or challenged in court. Therefore, there is a legal basis for the processing in respect of measuring the quality of decisions.

As concerns the use of EPQC data for performance appraisals, which goes beyond the scope of the above mentioned legal basis and which also involves linking the EPQC database with the trade mark production database for identification purposes, the EDPS considers that this processing is not currently justified by an appropriate legal basis. The EDPS notes in particular that the new EPQC system will lead to a structural change of purpose of the initial EPQC database in order to allow data gathered for general quality monitoring to be used for individuals' appraisal purposes. Given the specific risks of the processing and in accordance with Article 6 of the Regulation, the EDPS advises that OHIM adopts an internal decision concerning the data processing performed for ex post quality checks which should describe in more details the impact of the processing on performance appraisals and the data protection guarantees implemented in that respect

(e.g. composition of experts groups, which data are kept and serve as a basis for the evaluation, the purpose of linking the two databases, which additional quality indicators are used for evaluation, how is accuracy of the data ensured, the procedure for contesting the outcome and for having data rectified, etc.). This would reinforce the legal basis of the processing operation and would provide clarity and certainty to staff members.

As to the *necessity* of the processing, it appears that the performance of EPQC for purpose of verifying and improving the quality of the decisions adopted in the field of trademark is necessary for ensuring the effective functioning of OHIM. The EDPS however considers that the use of EPQC data for annual performance appraisal is only legitimate provided that EPQC data **are not the sole basis for the evaluation**. Appropriate consideration should be given to other defined indicators measuring the quality of the work of examiners as well as to the justifications provided by examiners concerning all the circumstances of a given case (e.g. complexity of the case). This is all the more important that only a sample of decisions is being checked and therefore the data processed in the context of EPQC may not reflect accurately and fully the level of quality of the decisions of a given examiner.

3.3. Data Quality

Adequacy, relevance and proportionality: According to Article 4 (1) (c) of the Regulation, personal data must be *"adequate, relevant and non excessive in relation to the purposes for which they are collected and/or further processed"*.

The data processed in the EPQC database seem adequate, relevant and non excessive for the purpose for which they are collected. Further, the EDPS notes that there will be no systematic or ad hoc matching of ex post checks data with the ones collected in the course of an ex ante check, which contributes to ensure that the data collected in a given course for specific purposes will not be used further in an inadequate, irrelevant or excessive manner.

Concerning data used as a basis for the annual appraisal, the EDPS has the following observations.

The EDPS notes that the "global appreciation of the HoS about the examiners' production quality" may by its very nature be very subjective. It is therefore important that several other indicators are used in order to provide a comprehensive view on a person's work.

The EDPS also notes that the annual summary of the data by service and individual involves linking the EPQC database with the trade mark production database in order to identify the individuals concerned and the service associated to the file. The EDPS considers that the linking of the two databases affects individual staff members, as it has an impact on their annual evaluation. Therefore, OHIM must implement appropriate data protection guarantees in that respect, as underlined in section 3.2 above.

Accuracy: Article 4 (1) (d) of the Regulation provides that personal data must be "accurate and, where necessary, kept up to date" and that "every reasonable step must be taken to ensure that data which are inaccurate or incomplete are erased or rectified".

Firstly, the EDPS notes that the evaluation of the quality of the work of examiners is carried out by using a set of defined criteria that are made public, which contributes to a

fair evaluation process and which should reinforce the accuracy of the evaluation undertaken.

The EDPS however notes that the final decision under check may be the result of a drafting process which involved several persons at different stages of the process. It is therefore important that the examiner is able to provide justification for the mistake, which in certain cases may not be solely imputable on him/her.

Furthermore, there is no clear transparency on the composition of the experts groups, on their level of expertise, and whether they are in the managing line of the examiner whose work is being checked. Considering that any evaluation has by nature a subjective dimension, these factors may impact the review carried out or the future annual appraisal. The EDPS therefore recommends that OHIM defines clear criteria for the designation of the members of the experts groups.

Secondly, the EDPS notes that data processed in the EPQC database are obtained through a process where the examiner is not consulted before the decision on the outcome of the evaluation is taken; the examiner is only informed about the decision and is then asked to provide justifications for the mistake. There is an informal appeal process, whereby the examiner may contest the decision and the experts group may re-evaluate the pertinence of the arguments. To ensure the accuracy and completeness of the EPQC data, appropriate consideration should be given to all relevant circumstances of the given cases as well as to the justifications provided by the examiners. The EDPS therefore recommends that the justifications for the mistake and/or the reasons for contesting the decision provided by the examiners are taken into account for their annual appraisal. For reason of legal certainty, the EDPS recommends that the procedure for contesting the decision of the experts group and having the data rectified are clearly indicated to the examiners; this could be clearly described in the internal decision referred to in section 3.2 above.

Furthermore, considering that data are not collected directly from the data subjects, the rights of access and rectification are important means of ensuring accuracy of the data, which should be available to data subjects (cf. points 3.6).

Fairness and lawfulness: Article 4 (1) (a) of the Regulation also provides that personal data must be *"processed fairly and lawfully"*. Lawfulness has already been discussed (cf. point 3.2) and fairness will be dealt with in relation to information provided to data subjects (cf. point 3.7).

3.4. Data retention

Article 4 (1) (e) of the Regulation states that personal data must 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 for which they are further processed"*.

As concerns the retention of data in the EPQC database, no limit for storage has been foreseen on the ground that no personal data are stored in it. As already explained earlier (see first paragraph in section 3.1) data processed in the EPQC database relate indirectly to individuals; they are therefore subject to the Regulation. The EDPS recommends that OHIM adopts appropriate time limits for the conservation of data in the EPQC database.

The EDPS considers that the retention of the summary of the data by service and individual for a period 2 years after the end of the appraisal period seems proportionate in view of the lifecycle of the appraisal exercises.

Concerning the retention of e-mails by each individual involved in the EPQC, the EDPS recommends that OHIM defines appropriate measures concerning the retention and deletion of EPQC emails exchanged between members of the experts groups.

3.5. Transfer of data

In line with Article 7 of the Regulation, personal data can be transferred within or to other institutions or bodies *"if the data are necessary for the legitimate performance of the tasks covered by the competence of the recipient"* (paragraph 1). The recipient shall process the data *"only for the purposes for which they were transmitted"* (paragraph 3).

Personal data are disclosed to internal recipients within OHIM who have a need to know these data for the performance of their tasks. The EDPS notes that examiners do not have access to the EPQC database; access is only allowed to the members of the experts groups for carrying their check, an expert in statistics for producing the aggregate statistical reports, and two experts in IT for purpose of maintenance of the database. All these transfers are considered necessary for the legitimate performance of the tasks covered by the competence of the recipients.

The EDPS also notes that the transfer of the summary of the data and of the content of the email as described in the facts fall within the competence of the recipients for the legitimate performance of their tasks.

The EDPS emphasizes that in case personal data processed in the context of EPQC are disclosed to other recipients, such transfers must be done in accordance with Article 7, i.e. it should be ensured that only the data necessary for the legitimate performance of the tasks of the recipient are disclosed.

To ensure compliance with Article 7 (3) of the Regulation, the EDPS recommends that OHIM reminds all these recipients that they should only use the data for the purpose for which they were transmitted.

The EDPS notes that an anonymous report of the e-mail containing all mistakes is distributed to the whole production services. The EDPS questions the necessity of distributing to the whole staff each single e-mail reporting a mistake. Furthermore, the EDPS underlines that it may be difficult to ensure the full anonymity of such report as many factors could be taken into account to identify the case or the examiner. As a result, the EDPS considers that other methods should be used for purpose of providing information to the staff on the types of errors. For example, reports could be consolidated in a reference document providing concrete examples of types of mistakes, which would be updated on a regular basis.

OHIM foresees to publish on an identified basis the benchmark good decisions. The EDPS understands that such publication should only take place internally so that other examiners may refer to them as a matter of good practice in the course of their work.

3.6. Rights of the data subjects

Articles 13 to 19 of the Regulation establish a number of rights for data subjects. These notably include the right to access data upon request by the data subject and the right to rectify, erase or block personal data.

The EDPS underlines that access to the evaluations made by the members of the experts group during the review process should in principle be granted, unless one of the exceptions listed in Article 20 (1) of the Regulation applies. This must be assessed on a case by case basis, and the data subject must be informed of the principal reasons for the restriction and his/her right to have recourse to the EDPS, in accordance with Article 20(3) of the Regulation.

Regarding the rights to rectify data, the EDPS notes that examiners are asked to elaborate on the reasons for the mistake. This shall help ensure the accuracy and completeness of the data. Furthermore, OHIM explained that there is an informal process by which examiners may contest the decision of the expert group, further to which the expert group may re-evaluate the pertinence of the arguments and remove the mistake from the database. The EDPS recommends that OHIM informs clearly the examiners of their rights to contest the accuracy of the data and to rectify them.

Data subjects are not granted any data protection rights with respect to the data processed in the EPQC database on the ground that it would not contain personal data. As explained earlier (see first paragraph in section 3.1), the EPQC database contains personal data and data subjects should therefore be granted the rights to access, block, erase, and rectify data processed in that database in accordance with Articles 13 to 16 of the Regulation.

3.7. Information to the person concerned

Articles 11 and 12 of the Regulation provide for information to be given to data subjects to ensure the transparency of the processing of personal data. Article 11 provides that when the data is obtained from the data subject, the information must be given at the time of collection. When the data has not been obtained from the data subject, the information must be given when the data is first recorded or disclosed, unless the data subject already has it (Article 12).

In the present case, data are not collected directly from staff members, thus Article 12 applies. The core data processed in the course of EPQC are evaluations obtained from quality check reviewers at individual level and at group level, which indicate whether or not mistakes have been made in a particular decision.

The EDPS notes that no specific data protection notice for the EPQC system exists. The EDPS thereby recommends that OHIM implements a data protection notice containing all the pieces of information listed in Article 12 of the Regulation (e.g. data controller, legal basis, purposes of the processing, data processed for EPQC and for annual appraisal, recipients of the data, data retention periods, rights of the data subjects). This notice should be distributed to the staff concerned as well as made readily available to them (for example by posting it on the intranet).

3.8. Security measures

According to Article 22 of the Regulation, *"the controller shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks presented by the processing and the nature of the personal data to be protected"*.

These measures must *"in particular prevent any unauthorised disclosure or access, accidental or unlawful destruction or accidental loss, or alteration, and to prevent all other unlawful forms of processing"*.

The EDPS recommends that OHIM provides him with the detailed specific technical and organisational security measures relating to the processing.

4. Conclusions

The EDPS considers that there is no violation of Regulation (EC) No 45/2001 provided that OHIM fully takes into consideration the above considerations before the system can be used for purpose of staff evaluation. In particular, OHIM should:

- adopt an internal decision concerning the data processing performed for ex post quality checks which should describe in detail the impact of the processing on individual performance appraisals and the data protection guarantees implemented in that respect. It should also contain appropriate data protection guarantees for the linking of the EPQC database with the trade mark database;
- ensure that EPQC data are not the sole basis for the annual performance appraisal. Appropriate consideration should be given to other defined indicators measuring the quality of the work of examiners as well as to the justifications provided by examiners concerning all the circumstances of a given case;
- ensure the accuracy of the data by (i) defining clear criteria for the designation of the members of the experts groups, (ii) setting out in writing the procedure for contesting the outcome of the experts group and for having the data rectified, and (iii) taking into account in the annual appraisal the justifications for the mistake and/or the reasons for contesting the decision provided by the examiners;
- adopt appropriate time limits for the conservation of data in the EPQC database and define appropriate measures concerning the retention and deletion of EPQC e-mails exchanged between members of experts groups;
- ensure that transfers of personal data processed in the context of EPQC are done in accordance with Article 7 and remind all recipients of EPQC data that they should only use the data for the purpose for which they were transmitted;
- adopt appropriate methods for providing all relevant staff members with general information on the types of errors. For example, reports on errors could be consolidated in a reference document providing concrete examples of types of mistakes, which would be updated on a regular basis;
- grant access to the evaluations made by the members of the experts group during the review process, unless one of the exceptions listed in Article 20 (1) of the Regulation applies, as explained in section 3.6. OHIM should further inform clearly the examiners of their right to contest the accuracy of the data on the outcome of the evaluation and their right to rectify them;
- grant data subjects with the rights to access, block, erase, and rectify data processed in the EPQC database in accordance with Articles 13 to 16 of the Regulation;

- implement a specific data protection notice for the EPQC processing containing all the pieces of information listed in Article 12 of the Regulation. This notice should be distributed to the staff concerned as well as made readily available to them; and
- provide the EDPS with the detailed specific technical and organisational security measures relating to the processing.

Done at Brussels, on 9 June 2011

(signed)

Giovanni BUTTARELLI
Assistant European Data Protection Supervisor