

**REGISTER NUMBER: 327**

**NOTIFICATION FOR PRIOR CHECKING**

Date of submission: 13/02/2008

Case number: 2008-095

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

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 or body entrusted with the processing of personal data

Human Resources Department  
Career and Development Sector  
François Fémia, Head of Sector

3/ Name of the processing

Internal Promotion of Officials and Regrading of Temporary Agents

4/ Purpose or purposes of the processing

The purpose of the processing is to conduct the yearly internal promotion / regrading exercise for members of staff in compliance with article 45 of the Staff Regulations and administrative decisions ADM-05-09 and ADM-05-59 (see respectively annexes 1 and 2).

In the context of the yearly promotion/regrading exercise run in OHIM under administrative decisions ADM-05-09 and ADM-05-59 (see Annexes 1 and 2), a database is set up each year with basic administrative data of members of staff to whom promotion/regrading points may be awarded, by departments. The data are synchronised from the SAP-HR module into a MS-Access database.

The lists of candidates eligible for promotion/regrading are published on OHIM's intranet (name, surname, functions group, grade). See annex 6.

During the promotion/regrading procedure, directors fill in the number of promotion points for each of their respective members of staff in the MS-Access database made accessible to them for this purpose. The HRD - Career and Development Sector blocks access to the database when the deadline for introducing points arrives. Precisely, the MS-Access database is moved to a folder accessible by HRD Career and Development sector staff only.

The points introduced by the directors on the database are compiled by HRD – Career and Development Sector - into two lists (officials and temporary agents) to be discussed in the Management Committee meeting held on the comparative examination of merits (promotions and regradings). The lists (paper format) are handed over personally to each director before the beginning of this meeting. The members of the Management Committee agree on a proposal of points for each member of staff to whom promotion/regrading points must be awarded.

An individual letter of the proposal of points is sent out by internal mail in a sealed envelope to each member of staff. This notification is appealable to the Joint Evaluation and Promotion Committee.

In case of appeal, the treatment of the appeal follows the established appeal procedure in accordance with OHIM's administrative decision ADM-04-19 REV (see annex 3).

The final promotion/ regrading points and promotions / regradings are then decided upon by the Appointing Authority.

Another letter on the final awarding of points is sent out by internal mail in a sealed envelope to each member of staff.

The lists of promoted / regraded members of staff are published in OHIM's intranet (name, surname, grade, points obtained and threshold, and department). See annex 6.

Promoted / regraded staff members are addressed a formal decision by HRD's Personnel Administration Sector.

At the end of the promotion / regrading exercise, the accumulated number of promotion / regrading points of each year is kept on a confidential electronic list in the HRD Career and Development Sector as a necessary basic working document for its use in the following promotions / regrading exercise as promotion / regrading points are accumulative over the years.

The SAP-HR module is synchronised back in accordance with the outcome of the promotion exercise.

#### Nota bene:

The processing operations of personal data related to:

- personal files (pursuant to article 26 of the Staff Regulations)
- appeal procedures (pursuant to articles 90 and 91 of the Staff Regulations)

are out of the scope of the present notification.

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

The officials and temporary agents of the Office who may be awarded promotion / regrading points (i.e. excluding grades A\*16, A\*15 and A\*14) – see scope of decisions ADM-05-09 and ADM-05-59.

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

Full name, gender, staff number, category and grade, status, seniority in grade, overall assessment comment in the last appraisal exercise (because it gives right to a minimum amount of guaranteed promotion/regrading points), the accumulated capital of points since the last promotion / regrading, if any, the promotion / regrading threshold, the number of promotion / regrading points proposed/awarded in the current exercise, total number of promotion / regrading points (sum of accumulated points and points awarded in the current exercise), the number of promotion / regrading points in past promotions / regrading exercises, and third language (to check compliance with article 45.2 of the Staff Regulations in case of promotion).

Special categories of data (article 10):

The staff number is used for the purposes of identifying the data subjects, keeping track of their progress through their career and implementing their individual rights subsequent to eventual promotion/regrading decisions.

Origin of the data:

The data are extracted and synchronised from the SAP-HR module (the system implemented by OHIM for human resources management) to a MS-Access database.

7/ Information to be given to data subjects

A data protection statement is attached to the notice published on OHIM's Intranet informing about the launching of a promotions / regradings exercise with the list of candidates for promotion / regrading (see annex 4).

In addition, FAQ (Frequently Asked Questions) are available on OHIM's intranet. FAQ 28 refers precisely to the right of rectification of data (see annex 5).

8/ Procedures to grant rights of data subjects (*rights of access, to rectify, to block, to erase, to object*)

Data subjects are to submit a written request to the Career and Development Sector of the Human Resources Department (the controller).

9/ Automated / Manual processing operation

The synchronisation of data between SAP-HR and the MS-Access database is partly automated.

The processing of personal data related to the purpose of promotion/regrading is fully manual (promotion are not granted by means of automated decisions).

10/ Storage media of data

The core data are stored in SAP-HR, the main IT system run in OHIM for human resources management. For the purpose of the promotion/regrading exercise, they are extracted into a MS-Access database placed on a network drive (X:) with a restricted access.

At the end of the promotion/regrading exercise, SAP-HR data are synchronised in accordance with the outcome of the said exercise (change of grade and date of seniority in grade in the event of a promotion / regrading).

List of final points relating to promotion / regrading are stored in locked Cupboard in HRD – Career and Development Sector – for use in following promotion/regrading exercise.

A copy of the letter confirming the final awarding of points is kept in each individuals' personal file. Where relevant, a copy of the decision on promotion / regrading is in kept the respective data subject's personal file. OHIM personal files are stored in locked cupboard in HRD – Personnel Administration Sector (notified separately to the DPO, see DPN-2006-23 dated 14/12/2006, available on request to the DPO).

11/ Legal basis and lawfulness of the processing operation

The processing operations of personal data are performed on the grounds of 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) pursuant to the following legal instruments:

- Article 45 of the Staff Regulations
- Administrative decision ADM-05-09 (see annex 1)
- and Administrative decision ADM-05-59 (see annex 2)

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

Personal Data are disclosed as follows:

- . Individually to the members of staff to whom promotion / regrading points are to be awarded (individual notifications described above), an individual having access only to his/her own data.
- . The Directors of Department in charge of members of staff to whom promotion / regrading points are to be awarded. The data of each official and temporary agent included on the database are only disclosed to the director of the department to which the member of staff belongs.
- . The members of the Management Committee in the meeting on the global awarding of promotion points and the comparative examination of merits are discussed. This will be done on the basis of a list including the staff members for whom points must be proposed.
- . The members of HRD's Personnel Administration Sector in charge of personal files (for the filing of definitive notification of points and preparation of decisions on promotion/regrading)
- . The members of the Joint Evaluation and Promotions Committee, only in case of an appeal on the proposal of awarding of promotion / regrading points.

13/ retention policy of (categories of) personal data

The MS-Access database built for the purpose of the yearly promotion / regrading exercise is kept for a period fixed provisionally to 10 years as from the end of the said exercise.

At the end of the promotion / regrading exercise, the accumulated number of promotion / regrading points of each year is kept on a confidential electronic list in the HRD Career and Development Sector as a necessary basic working document for its use in the following promotions / regrading exercise as promotion / regrading points are accumulative over the years. This list is kept for a period fixed provisionally to 10 years as from the end of the said exercise.

Both above 10 years retention periods are necessary for the purpose of appeals related to promotions. Indeed, in case of appeal, OHIM must be in a position to reconstitute with precision the situation and "environment" of past exercises. Such retention period also pursues the interests of data subjects in their right to appeal a promotion decision.

Since the current promotion scheme is in force since 2003, it is considered that a sufficient and reasonable experience is necessary to fix a definitive time limit for the storage of these data. Therefore, the retention period has been fixed provisionally to 10 years.

The data included in the lists published on OHIM's intranet are governed by the conditions of use of OHIM's intranet (i.e. published for a period of about 15 days and further archived for a period not longer than 5 years).

The copy of the letter confirming the final awarding of points is kept on each individuals' personal file until the end of the career of the person concerned.

Where applicable, the copy of the decision on promotion / regrading is kept in the data subject's personal file until the end of his/her career.

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)*

During the promotion/regrading exercise, the rights of rectification, blocking, erasure and objection data will be granted with immediate effect upon duly justified request addressed in written to the Career and Development Sector of the Human Resources Department (the controller).

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 personal data are kept for historical, statistical or scientific purposes in this context.

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

Not applicable.

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

The processing operations are intended to evaluate personal aspects related to the data subjects as foreseen in article 27.2.(b) of Regulation 45/2001.

AS FORESEEN IN:

☐ ~~Article 27.2.(a)~~

~~Processing of data relating to health and to suspected offences, offences, criminal convictions or security measures,~~

☐ Article 27.2.(b)

Processing operations intended to evaluate personal aspects relating to the data subject,

☐ ~~Article 27.2.(c)~~

~~Processing operations allowing linkages not provided for pursuant to national or 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)~~

17/ Comments

(i) This prior check refers to processing operations of personal data already performed within OHIM for several years. Therefore, it shall be considered as an "ex-post" prior check.

(ii) Annex: Notification to the DPO (DPN-2005-033), including the following annexes

Annex 1 – Administrative decision ADM-05-09 (EN + FR)

Annex 2 – Administrative decision ADM-05-59 (EN + FR)

Annex 3 – Administrative decision ADM-04-19 REV (EN + FR)

Annex 4 – Data protection statement

Annex 5 – Frequently asked questions (as updated in 2007)

Annex 6 – Model of lists published on Intranet

(iii) The following processing operations of personal data are out of the scope of the present prior check:

- Staff appraisal (see case EDPS 2004-0293, OHIM's register DPN-2005-034)

- Personal files pursuant to article 26 of the Staff Regulations (OHIM's register DPN-2006-023)

- Appeal procedures pursuant to articles 90 and 91 of the Staff Regulations (not notified)

PLACE AND DATE: ALICANTE, 13 FEBRUARY 2008

DATA PROTECTION OFFICER: LUC DEJAFFE

INSTITUTION OR BODY: OHIM (Office for Harmonization in the Internal Market)