



GIOVANNI BUTTARELLI
ASSISTANT SUPERVISOR

Mr Ignacio DE MEDRANO
Data Protection Officer
Office for Harmonization in the Internal
Market (OHIM)
Avenida de Europa, 4
03080 ALICANTE
SPAIN

Brussels, 11 December 2009
GB/IC/ktl D(20091769 C **2009-0468**)

Dear Mr DE MEDRANO,

I am contacting you in respect of the prior-check notification submitted to the EDPS on 13 July 2009 concerning "Management of personal data of staff on general HR database" at OHIM.

As outlined to you in our emails of 31 July 2009 and 4 December 2009, and in view of the information available, the EDPS is of the opinion that the management of the general HR database as such is not subject to prior checking under Article 27 of Regulation No 45/2001 ("the Regulation").

The notification was submitted for prior checking under Article 27.2.b) of Regulation No 45/2001 on the ground that it allows processing of personal data "in view of collecting the professional abilities". Article 27.2.b of Regulation No 45/2001 subjects to prior checking those processing operations that are "intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct". We understand that the purpose of the HR database is to manage data of OHIM staff and that such database is not intended, as such, to evaluate the ability of the data subject.

On the other hand, personal data may be collected and processed on the HR database as a result of other data processing operations, which each need to be carefully examined in order to assess whether or not they would each be subject to separate notifications to the EDPS in case they present one of the risks listed in Article 27 of the Regulation. For example, the procedure for management of promotions, which is in itself intended to evaluate the abilities of a person, would be subject to a notification to the EDPS. Similar exercise should be conducted in respect of each particular HR data processing which might involve a particular

Postal address: rue Wiertz 60 - B-1047 Brussels

Offices: rue Montoyer 63

E-mail : edps@edps.europa.eu - Website: www.edps.europa.eu

Tel.: 02-283 19 00 - Fax : 02-283 19 50

risk according to Article 27 of Regulation No 45/2001. In this respect, I note that several HR data processing operations have already been notified to the EDPS, such as for example appraisal procedure, staff appraisal, etc.

In view of the above considerations, the EDPS believes that the processing operation does not qualify for prior checking and the EDPS has therefore decided to close the case, unless you can give us specific grounds to reconsider this decision.

The EDPS, of course, remains available for any further consultation on the matter.

Yours sincerely,

(signed)

Giovanni BUTTARELLI

Cc: Anna-Sabine RIEDER, Assistant to the DPO