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correspondence

**Subject: Prior-checking Opinion regarding the updated notification for staff evaluation at EUIPO (EDPS case 2017-0114)**

Dear [...],

On 24 January 2017, the European Data Protection Supervisor (EDPS) received a notification for prior checking under Article 27 of Regulation (EC) No 45/2001<sup>1</sup> (the Regulation) on staff evaluation<sup>2</sup> from EUIPO's Data Protection Officer (DPO).<sup>3</sup>

As indicated by EUIPO's DPO, this notification replaces the ones analysed in EDPS cases 2004-0293 and 2008-0415<sup>4</sup>. Therefore, this Opinion analyses and highlights only those practices which diverge from the earlier notifications and/or which do not seem to be in conformity with the principles of the Regulation.

The main differences to the earlier notifications are (a) the use of performance indicators from production monitoring<sup>5</sup> as an element used for the evaluation exercise and (b) including the rules on blocking in step etc. introduced with the 2014 reform of the Staff Regulations. While not explicitly mentioned in earlier notifications, (c) this notification also refers to the use of appraisal reports of temporary and contract agent for deciding on the (non-)renewal of their contracts and (d) states that reports can also be done for seconded national experts and international experts and will be sent to their home employer.<sup>6</sup>

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<sup>1</sup> OJ L 8, 12.1.2001, p. 1.

<sup>2</sup> Covering the following procedures: periodical staff appraisals, probationary reports, promotion of officials, re-grading temporary and contract agents, certification procedures, renewal of contracts.

<sup>3</sup> As this is an ex-post case, the deadline of two months does not apply. This case has been dealt with on a best-effort basis.

<sup>4</sup> We have therefore updated our register of notifications accordingly.

<sup>5</sup> EDPS case 2013-0680

<sup>6</sup> See also EDPS case 2015-0016 on a similar process at the European Central Bank.

- a) This constitutes a change of purpose compared to the initial collection in the various systems used by EUIPO. As per Article 6(1) of the Regulation, such changes of purposes are only allowed if they are “expressly permitted by the internal rules of the [Union] institution of body”. Article 5 of Decision AMD-14-19-Rev explicitly refers to this further use.<sup>7</sup>
- b) The documentation provided explains that for blocking in step etc. only the information strictly necessary is communicated to authorised staff dealing with financial procedures.
- c) The documentation provided explains that the appraisal reports of temporary/contract agents are to be taken into account for their contract renewal.
- d) As seconded/international experts do not fall under the Staff Regulation/CEOS, a specific legal basis for their evaluation is needed. Article 12(3) of EUIPO Decision No MB-16-13 provides such a legal basis.

The EDPS has no reason to believe that there is a breach of the Regulation and has thus decided to **close case 2017-0114**.

Yours sincerely,

**(signed)**

Wojciech Rafał WIEWIÓROWSKI

Cc: [...], DPO, EUIPO

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<sup>7</sup> See also EDPS case 2013-0680.