

REGISTER NUMBER: 1441

## NOTIFICATION FOR PRIOR CHECKING

Date of submission: 02/03/2017

Case number: 2017-0256

Institution: European Union Intellectual Property Office

Legal basis: Article 27-5 of the regulation CE 45/2001<sup>(1)</sup><sup>(1)</sup> OJ L 8, 12.01.2001INFORMATION TO BE GIVEN <sup>(2)</sup><sup>(2)</sup> Please attach all necessary backup documents

1/ Name and address of the controller

SUSANA PEREZ FERRERAS (DIRECTOR OF THE HUMAN RESOURCES DEPARTMENT) - HRD  
 European Union Intellectual Property Office  
 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, EUIPO

3/ Name of the processing

Procedure for renewal of temporary and contract agent's contracts at EUIPO

4/ Purpose or purposes of the processing

The purpose of the processing of data is to enable EUIPO's to take decisions about the renewal of contracts for temporary and contract agents within the framework for the workforce management in EUIPO.

There is a need for EUIPO to provide flexibility in the workforce to the variations in terms of increase or decrease in the activities of EUIPO generated by the market situation and the behaviour of industry towards Intellectual Property, while ensuring a balanced budget to which the Office as a self-financed agency is fully committed.

Temporary agent contract:

Article 2(f) of the Conditions of Employment of Other Servants of the European Union (CEOS) provides a type of engagement for temporary agent specific to agencies of the European Union. Article 8 CEOS constitutes the relevant provision for the renewal of temporary agents referred to in Article 2(f).

- *First renewal:* based on Article 8 CEOS, EUIPO's staff policy establishes the standard term of contract for temporary agents under type of contract Article 2(f) CEOS as fixed period of 5 years. The contract may be renewed for a further period of 5 years.

- *Second renewal for indefinite period:* Article 8 CEOS stipulates that any further renewal of a temporary agent contract concluded under Article 2(f) CEOS shall be for an indefinite period. On that basis, EUIPO has established a procedure for the second renewal of those contracts.

Contract agent contract:

Article 3(a) CEOS foresees the engagement of contract staff. Article 85 CEOS constitutes the relevant provision for the renewal of contract agents referred to in Article 3(a). Based on Article 85 CEOS, the Office employs contract staff for the duration of the specific project to which they are assigned or for a fixed period of 5 years. The EUIPO's staff policy for the first renewal of a contract agent's contract is to renew until the end of the project or for a fixed period of 5 years. There is no policy established at EUIPO for any further renewal.

The procedure which applies to the first renewal of contracts is detailed in the QSD-0060 Work instruction: First Renewal or Non-Renewal of Contracts of Temporary or Contract Agents, published in Insite/OMS. This Work Instruction is referred to in the Guidelines for the renewal of temporary agent contracts at EUIPO, also published on Insite.

The procedure which applies to the second renewal of contracts is detailed in the same Guidelines for the renewal of temporary agent contracts at EUIPO.

5/ Description of the category or categories of data subjects

EUIPO's temporary and contract agents.

6/ Description of the data or categories of data

*(including, if applicable, special categories of data (article 10) and/or origin of data)*

## Personal data processed:

- Identification of the data subject (full name, personal number);
- Type of contract, job title, function group, grade, statutory link, job assignments (current and past);
- Performance of the jobholder (appraisal reports by the jobholder's Director (or delegated) and HRD authorized staff for first renewal procedure and only by HRD authorized staff for second renewal procedure);
- The talent and competency profile of the jobholder which could be compared with the needs identified in the Office;
- For the assessment of the first renewal of contract: the recommendation of the jobholder's Director or delegated person with the reasons for renewal or non-renewal of the contract and its supporting documents (e.g.: appraisal reports, emails, letters and notes);
- The specific situation and interests of the jobholder; for the second renewal procedure, it is put forward on his/her expression of interest.

7/ Information to be given to data subjects

Staff members are informed on all the required elements of the procedures by the information available/disseminated through the relevant page of the HRD in the Intranet and particularly by the specific privacy statement (Annex 5).

<p>8/ Procedures to grant rights of data subjects (rights of access, to rectify, to block, to erase, to object)</p> <p>The rights of the persons concerned are guaranteed by the rules provided for in Article 12 – exercise of data subjects' rights - of the EUIPO's Administrative Decision Nr. 08-40 of 13 November 2008 adopting the implementing rules regarding Regulation (EC) No 45/2001.</p> <p>Right to access: Without prejudice to point 7 above, the staff member concerned by the renewal of his/her contract can request access and copy of all documents of his/her personal file, such as performance evaluation reports used during the assessment for renewal of his/ her contract.</p> <p>Right to rectification: The data subject has the right to request in writing the rectification of incorrect factual data to his/her line manager. When justified, rectification will be done within one month. The effective exercise of data subject's rights, in particular with regard to data generated automatically will be ensured by the controller.</p> <p>Right to block: The data subject may address a written request to the HRD Director to block their inaccurate factual personal data.</p> <p>Right to erase: The data subject may address a written request to the HRD Director for the erasure of factual personal data processed in a manner incompatible with the legitimate purposes pursued by this activity.</p> <p>Right to object: The data subject may submit a written request to the HRD Director to object the processing of his/her factual personal data. When justified data will be excluded from processing.</p>
<p>9/ Automated / Manual processing operation</p> <p>Semi-automated procedure</p> <p>The procedure for dealing with renewal of temporary and contract agents' contracts is based on rules of the CEOS and on EUIPO's Guidelines.</p> <p>Only a limited number of authorized staff members working in these files have access to data on a strict need to know basis.</p> <p><u>Electronic files:</u> all documents are password protected and records held securely so as to safeguard the confidentiality and privacy of the data therein. Data are kept in HR Allegro and its modules (stored in MY SQL database), as well as in Alfresco/ShareDox.</p> <p><u>Paper files:</u> The storage will be done only in locked cupboards kept by HRD. Access to the locked cupboards is limited to authorized HRD staff members working with these files.</p> <p>In accordance with Article 4(1) (b) of Regulation 45/2001, such data will not be processed for any other purposes or used in support of measures or decisions regarding any particular individual.</p>
<p>10/ Storage media of data</p> <p>Electronic documents are password protected. All records are held securely so as to safeguard the utmost confidentiality and privacy of the data therein. Paper documents are stored in secure cupboards in HRD.</p>
<p>11/ Legal basis and lawfulness of the processing operation</p> <p><u>Legal basis:</u></p> <ul style="list-style-type: none"> <li>- Article 5(a) of Regulation 45/2001;</li> <li>- Articles 2 (f) and Article 8 of CEOS;</li> <li>- Article 3(a) and Article 85 of CEOS;</li> <li>- Framework for the Workforce management at EUIPO of 28/01/2016, published in Insite news on 07/03/2016 and in Insite management systems (HRD - renewal of contracts);</li> <li>- Guidelines for the renewal of temporary agent contracts at EUIPO of 28/01/2016, published in Insite news on 07/03/2016 and in Insite management systems (HRD – renewal of contracts);</li> <li>- Guidelines for the use and selection of contract agents at EUIPO of 18/05/2016 - QSD-0083, published in Insite management systems;</li> <li>- Procedure for first renewal or non-renewal of contracts (Temporary or Contract agents) of 20/04/2016 – QSD-0060, published in Insite management systems.</li> </ul>
<p>12/ The recipients or categories of recipient to whom the data might be disclosed</p> <p>Data processing operations for renewal of staff member's contracts are conducted by authorized staff of HRD who proceeds to an individual assessment of each particular case. For the first renewal procedure, HRD performs an analysis of the file and of the recommendation sent by the jobholder's Director (or delegated). For the second renewal procedure for temporary agents, HRD establishes a list of staff members proposed for renewal or non-renewal.</p> <p>For both procedures, data mentioned on point 6, as well as supporting documents (such as expression of interest of the jobholder, the recommendation of his/her Director or delegated person), are presented to the Authority Authorized to Conclude Contracts of employment (AACC) for preliminary analysis. The AACC then informs the jobholder about its envisaged decision, send him/her all the documents at its disposal, and invites him/her for comments within a deadline. The final assessment and decision is taken after that deadline, upon reception or not of comments. The data is also accessible to the HRD management, authorized staff of the Cabinet and the jobholder's Director or delegated person.</p> <p><u>Other recipients on a strict need to know basis:</u> Authorized staff of Finance Department and PMO (only to the extent necessary to process remunerations/or sickness insurance). In case of complaint and further judicial procedure, data may be disclosed to the Legal Service and/or to the EU Court of Justice. Upon request, data may also be disclosed to the staff of the European Anti-Fraud Office, the Internal Audit and the Court of Auditors. External staff (IT administrators) could also have access to the data, if necessary for technical reasons.</p>
<p>13/ Retention policy of (categories of) personal data</p> <p>Working documents in electronic and paper data (emails, letters, notes) used for the assessment of each individual case are kept up to a maximum of 5 years after decision of the AACC about the renewal or non-renewal of the contract. Working documents may be kept beyond 5 years in case of complaint and further judicial procedure. In that case, all documents are kept until the end of the judicial procedure.</p> <p>All letters/notes exchanged between the AACC and the staff member concerned by a renewal of contact, as well as the renewed contract are kept in his/her individual file for the same duration as these files (8 years after the expiry of all rights of the person concerned and of any dependents, and for at least 120 years after the date of birth of the person concerned).</p>
<p>13 a/ time limits for blocking and erasure of the different categories of data (on justified legitimate request from the data subject)</p> <p>Legitimated requests accepted by the controller are treated immediately and in any case not later than 15 days from the date of receipt of the request.</p>
<p>14/ Historical, statistical or scientific purposes n.a.</p>
<p>15/ Proposed transfers of data to third countries or international organisations n.a.</p>

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

YES.  
As foreseen in Article 27(b) - Processing operations intended to evaluate personal aspects relating to the data subject, including his/her performance (appraisal reports - his/her ability, efficiency and conduct). The talent and competency profile of the jobholder which could be compared with the need identified in the Office. The opinion/recommendation of the jobholder's Director or delegated person with the reasons for renewal or non-renewal of the contract of the data subject.

17/ Comments

Documents submitted as attachments:

- Annex 1 - Framework for the Workforce management in OHIM, dated 28/01/2016 and published in Insite news on 7/03/2016 and in Insite management systems (HRD - renewal of contracts);
- Annex 2 - Guidelines for the renewal of temporary agent contracts at the OHIM, dated 28/01/2016 and published in Insite news on 07/03/2016 and in Insite management systems (HRD – renewal of contracts);
- Annex 3 - Guidelines for the use and selection of contract agents at EUIPO - QSD-0083, dated 18/05/2016 and published in Insite management systems;
- Annex 4 - Procedure for first renewal or non-renewal of contracts (Temporary or Contract agents), - QSD-0060, dated 20/04/2016 and published in Insite management systems;
- Annex 5 - Data Protection Privacy Statement;
- Annex 6 – Form renewal\_Non-renewal Contract (applicable for first renewal procedure)

PLACE AND DATE: Alicante, 02/03/2017

DATA PROTECTION OFFICER: **Pedro Duarte Guimarães**

INSTITUTION OR BODY: **EUIPO**