EU trade mark

2013/0088(COD) - 11/07/2013

Opinion of the European Data Protection Supervisor on (i) the proposal for a directive of the European Parliament and of the Council to approximate the laws of the Member States relating to trade marks (recast) and (ii) the proposal for a regulation of the European Parliament

and of the Council amending Regulation (EC) No 207/2009 on the Community trade mark

The EDPS notes that these two proposals – the objective of which is to harmonise further all aspects of substantive trade mark law as well as procedural rules within the EU - establish a few processing operations, which may have an impact on individuals' right to privacy and data protection.

The proposed regulation amends the current legal framework applicable to the Community trade mark

set forth in Regulation (EC) No 207/2009. The Office for Harmonization in the Internal Market (‘OHIM’) is renamed ‘European Trade Marks and Design Agency’. The proposed regulation clarifies substantive and procedural rules that apply to the European trade mark. It provides for the establishment by the Agency of a register and of an electronic database. It also clarifies the role and tasks of the Agency, in particular in relation to its cooperation with the national central industrial property offices in the EU.

In particular, the EDPS recommendations are to:

- set forth the modalities for the processing of personal data in the register and the electronic database in a substantive provision of the proposal and not in delegated acts;
- insert a substantive provision specifying the types of personal data to be processed in the register and the electronic database, the purpose of their processing, the categories of recipients who are authorised access to the data (with the specification of which data), the data retention time limit(s), and the modalities for the information and the exercise of data subjects' rights;
- clarify whether or not the exchanges of information between the Agency and national offices would include personal data, and if so, which ones;
- assess the necessity and proportionality of disclosing personal data in the context of the publication of information contained in the electronic database;
- clarify in a substantive provision whether or not the means of cooperation would include the publication of court decisions relating to trade marks. If so, this substantive provision should define the conditions under which the publication of court decisions may take place.