
EUIPO's Data — Personal data processed within the framework of the EUIPO's tasks as laid down in Regulation (EU) 2017/1001 and Regulation (EC) No 6/2002 — legal requirements

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1 Concept of Mandatory and Non-Mandatory Personal Data Within the Framework of the EUIPO's Tasks as laid down in Regulation (EU) 2017/1001 and Regulation (EC) No 6/2002

The adoption of the codified Regulation (EU) 2017/1001 on the European Union trade mark ('EUTMR') and of acts adopted pursuant to it⁽¹⁾, as well as the adoption of Regulation (EU) 018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC ('Regulation (EU) 2018/1725') make it appropriate to provide a concise overview of the personal data⁽²⁾ processing operations within the framework of the Office's tasks as laid down in the EUTMR and Regulation (EC) No 6/2002 ('CDR')⁽³⁾.

Personal data that is processed by the Office in its administrative procedures based on other legal instruments, such as the Financial Regulation or the Staff Regulations, is beyond the scope of this Note.

For the purposes of this analysis, a distinction should be made between the mandatory personal data and non-mandatory personal data processed by the Office.

Mandatory personal data processed in relation to the tasks of the Office, as laid down in Articles 151 and 152 EUTMR includes:

- 'those of applicants and, where applicable, of their representatives which shall be included in the Register of EU trademarks and of Community designs within the meaning of Article 111 of Regulation (EU) 2017/1001 or Article 72 of Regulation (EC) No 6/2002, respectively ('Register data'); and
- 'personal data to the extent they are required by Regulation (EU) 2017/1001, by acts adopted pursuant to it, by Regulation (EC) No 6/2002 or by its implementing Regulation, within the meaning of Article 112(2) of Regulation (EU) 2017/1001 ('Database data')'.

Register data, including personal data, will be considered of public interest and may be accessed by any third party⁽⁴⁾. An application for an EU trade mark and all other information for which publication is prescribed by the EUTMR or an act adopted pursuant to it, will be published in all the official languages of the Union⁽⁵⁾. Similar provisions apply to

⁽¹⁾ Commission Implementing Regulation (EU) 2018/626 and Commission Delegated Regulation (EU) 2018/625.

⁽²⁾ References to personal data are included in the EUTMR under different concepts: entries, items, items including personal data or particulars.

⁽³⁾ Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs, amended by Council Regulation No 1891/2006 of 18 December 2006 amending Regulations (EC) No 6/2002 and (EC) No 40/94 to give effect to the accession of the European Community to the Geneva Act of the Hague Agreement concerning the international registration of industrial designs.

⁽⁴⁾ Article 111(9) EUTMR and Article 72 CDR.

⁽⁵⁾ Article 147(1) EUTMR.

registered Community designs: all information for which publication is prescribed by Regulation (EC) No 6/2002 or its implementing regulation will be published in all the official languages of the Community (Union). The register will be open to public inspection, except to the extent that Article 50(2) CDR provides otherwise, due to deferment of publication⁽⁶⁾. In respect of these data categories, the legislator put the emphasis on the free accessibility of the data in a public register environment⁽⁷⁾.

In contrast, database data will be restricted and will not be made publicly available unless the party concerned has given express consent⁽⁸⁾. The legal concept of this database⁽⁹⁾ is implemented by creating and maintaining several Office IT systems⁽¹⁰⁾.

Consequently, certain personal data provided by the applicant, proprietor or representative, for which publication is not a legal obligation, such as phone and fax numbers or email addresses, may only be accessible to the public if consent is given. Otherwise, this data will remain restricted⁽¹¹⁾.

Indeed, the Executive Director may determine, according to Article 111(4) EUTMR that items other than those referred to in paragraphs 2 and 3 (the mandatory entries to be published relating to EUTM applications and registrations) are to be entered in the Register, subject to Article 149(4) (in compliance with Regulation (EU) 2018/1725). In this context, Article 4 of Decision No EX-14-3⁽¹²⁾ remains relevant to the extent that it further specifies the notion of 'particulars' referred to in Article 111(3)(n) EUTMR by providing that the name and address of the following should also be made available to the public:

- opponents,
- applicants for invalidity/revocation or for counterclaims,
- the representatives of any of the above parties.

Non-mandatory personal data refers to data that can only be processed by the Office based on the consent of the applicant or other parties⁽¹³⁾.

The analysis below will focus on mandatory personal data.

⁽⁶⁾ Articles 72 and 99(1) CDR, specific provisions apply to the deferment of publication of an RCD (Article 50 CDR).

⁽⁷⁾ Accessible via eSearch Plus.

⁽⁸⁾ Article 112(4) EUTMR.

⁽⁹⁾ The processing operation in the database, within the meaning of the EUTMR, concerns the collection and storage of the particulars provided by applicants or any other party to the proceedings, as required by the EUTMR or by acts adopted pursuant to it (Article 112(1) and (2) EUTMR). The repositories that allow online access to decisions (Article 113 EUTMR) and inspection of files (Article 114 EUTMR) are distinct from the concept of the database itself, even if user access to these repositories is carried out through an online application allowing database searches.

⁽¹⁰⁾ E.g. CRM, PER.

⁽¹¹⁾ Technically, this will be implemented via the User Area.

⁽¹²⁾ Decision No EX—14—3 of the President of the Office of 22 October 2014 concerning publicly available particulars of CTM and RCD applications and registrations.

⁽¹³⁾ This does not extend to the analysis of contracts entered into by the Office, in which processing of personal data is necessary for the performance of a contract to which the data subject is party or to take steps at the request of the data subject prior to entering into a contract (Article 5(1)(c) of Regulation (EU) 2018/1725).

The **mandatory nature** of the processing of personal data categories is based on the consideration that they are:

- necessary for the performance of a **task carried out in the public interest or in the exercise of official authority** vested in the Union institution or body (Article 5(1)(a) Regulation (EU) 2018/1725);
- necessary for **compliance with a legal obligation** to which the controller is subject (Article 5(1)(b) Regulation (EU) 2018/1725)⁽¹⁴⁾.

In both cases, the legal requirement is that processing is **necessary**. In other words, the processing will be a targeted and proportionate way of achieving the purpose.

Indeed, as provided for in Article 112(2) EUTMR, 'Database data', beyond that included in the Register, will be required by the EUTMR or by acts adopted pursuant to it.

The **purpose** of the collection, storage and processing of this data is defined in Articles 111(5), (8) and 112(2) EUTMR in an exhaustive manner.

The purposes of processing data in the Register include:

- **administering the applications and/or registrations** as described in this Regulation and acts adopted pursuant to it;
- **maintaining a public register for inspection by, and the information of, public authorities and economic operators**, to enable them to exercise the rights conferred on them by this Regulation and be informed about the existence of prior rights belonging to third parties;
- **producing reports and statistics** enabling the Office to optimise its operations and improve the functioning of the system.

The purposes of processing data in the Database include:

- **administering the applications and/or registrations** as described in this Regulation and acts adopted pursuant to it;
- accessing the information necessary for **conducting the relevant proceedings more easily and efficiently**;

⁽¹⁴⁾ The EDPS interprets the line between points (a) and (b) as follows:

- in point (a) the institution is given a task that requires the processing of personal data to fulfil it;
- in point (b), the institution has a specific obligation to process personal data clearly spelled out in EU law with no margin for manoeuvre on how to implement it (EDPS publication: Accountability on the ground, part I, February 2018, p. 17).

- **communicating** with the applicants and other parties to the proceedings;
- **producing reports and statistics** enabling the Office to optimise its operations and improve the functioning of the system.

Mandatory personal data is collected, stored and processed by the Office for the purposes of **carrying out its tasks in the public interest**, as set out in Articles 151 and 152 EUTMR (the administrative data processing operations, required for the functioning of the Office under other legal acts, being out of the scope of this Note).

The **tasks of the Office**, as defined by the legislator in Article 151 EUTMR, include activities that extend beyond the administration of the EU trade mark and registered Community design systems to include:

- the administration and **promotion** of the EU trade mark system established in Regulation (EU) 2017/1001;
- the administration and **promotion** of the European Union design system established in Council Regulation (EC) No 6/2002;
- **promoting the convergence of practices and tools** in the fields of trade marks and designs, in cooperation with the central industrial property offices in the Member States, including the Benelux Office for Intellectual Property;
- the tasks referred to in Regulation (EU) No 386/2012 of the European Parliament and of the Council (activities of the European Observatory on Infringements of Intellectual Property Rights).

The Office must also cooperate with institutions, authorities, bodies, industrial property offices, international and non-governmental organisations in relation to the tasks conferred on it (see previous paragraph)⁽¹⁵⁾.

Cooperation on common tools, as laid down in Article 152(1) EUTMR, requires:

- the creation of common or connected databases and portals for Union-wide consultation, search and classification purposes;
- the continuous provision and exchange of data and information, including for the purposes of feeding the databases and portals referred to above (see: TMview and DesignView).

⁽¹⁵⁾ The Office may also provide voluntary mediation services for the purpose of assisting parties in reaching a friendly settlement (Article 151(3) EUTMR).

In conclusion, where the applicant/proprietor is a natural person, the Office may legitimately consider the personal data categories processed as mandatory data if:

- the data is processed as required by the EUTMR and CDR, or by acts adopted pursuant to them;
- the processing is performed for the purposes set out in Articles 111(5) and (8) and 112(2) EUTMR;
- the data is processed to be able to carry out the tasks set out in Articles 151 and 152 EUTMR, as detailed in other parts of the EUTMR, in the CDR, and in the acts issued pursuant to them, in the public interest or in the exercise of official authority.

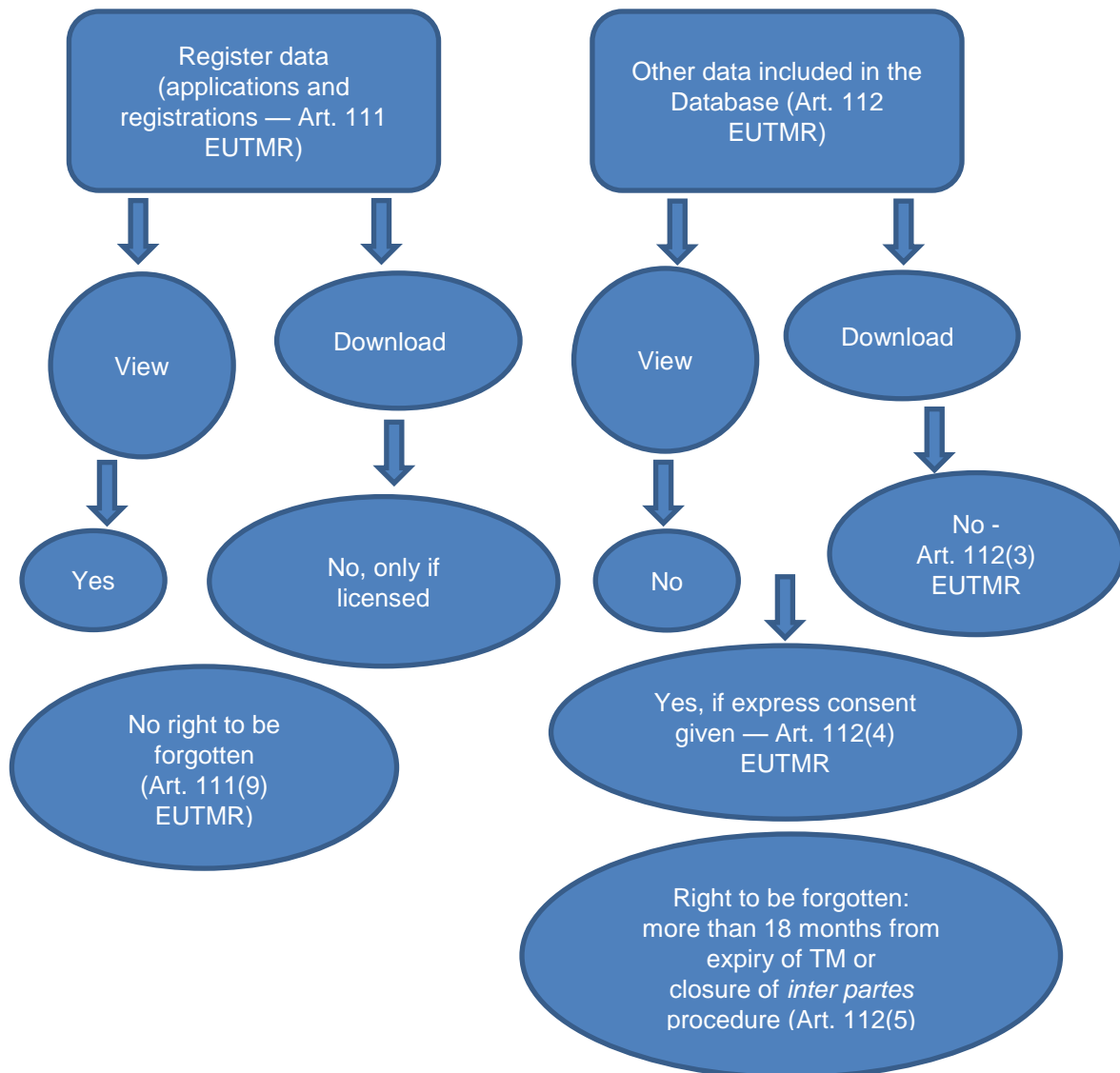
This is particularly justified in cases where certain personal data categories (including email addresses) are required for the identification of a data subject, for example, through the authentication mechanism to be used by the data subject to log in to the online service offered by the Office (User Area on the Office's website)⁽¹⁶⁾.

The circumstances in which removal (erasure) of certain personal data or objection to certain processing activities may be requested will be addressed below in this Note.

⁽¹⁶⁾ In any event, use of electronic communication with the Office remains optional. Therefore, if a user decides not to make use of any of the electronic filing or other electronic services, an email address required for authentication will not be deemed mandatory for this communication purpose.

2 Scheme of Personal Data Processing Operations in Relation to EUTM Applications and Registrations

The scheme below provides an overview not only of the access to personal data for the purpose of viewing (public access) but also for the purpose of downloading certain content with regard to EUTMs. The detailed requirements and conditions of the EUTM download offered by the Office are set out in a separate Note ⁽¹⁷⁾.



⁽¹⁷⁾ A similar approach is followed for RCDs. The legal requirement is that the Office keep a register to be known as the register of Community designs, containing those particulars for which registration is provided for by Regulation (EC) No 6/2002 or by the implementing regulation. The register must be open to public inspection, except to the extent that Article 50(2) provides otherwise (Article 72 CDR, the exception being the deferment of publication).

3 List of Mandatory Personal Data⁽¹⁸⁾

The mandatory personal data processed in relation to the tasks of the Office, where the applicant, proprietor, representative or other party to the proceedings is a **natural person**, includes the following categories.

3.1 'Register data' — Personal data processed in the Register (Article 111 EUTMR, Article 72 CDR)

Applications and registrations

- name of the applicant (family names(s) and given name(s)⁽¹⁹⁾);
- address of the applicant;
- nationality of the applicant for an RCD;
- state in which the RCD applicant is domiciled or in which they have their seat or establishment;
- changes in the name, address or nationality⁽²⁰⁾ of the proprietor/holder of an EU trade mark/RCD or a change in the State in which they are domiciled or have their seat or establishment;
- where representation is mandatory in accordance with the EUTMR/CDR⁽²¹⁾: name of representative (other than an employee);
- where representation is mandatory in accordance with the EUTMR/CDR: business address of the representative;
- where representation is mandatory in accordance with the EUTMR/CDR: changes in the name or business address of the representative (other than an employee);
- where representation is mandatory in accordance with the EUTMR/CDR: where a new representative is appointed, the name and business address of that representative.

Legal basis: Article 111(2)(d) and (e), 111(3)(a), (b), (c) EUTMR, Articles 1(b) and (e), 19, 69(2)(d) and (e) and 69(3)(a) to (c) CDIR, for cancellation of the representative: Article 111(3)(q) EUTMR and 69(3)(s) CDIR⁽²²⁾.

⁽¹⁸⁾ The operational implementation will be the subject of a separate note.

⁽¹⁹⁾ Article 2(1)(b) of Commission Implementing Regulation (EU) 2018/626 and Article 1(b) CDIR.

⁽²⁰⁾ Indication of the country.

⁽²¹⁾ Article 119 EUTMR sets out the following requirements: (1) subject to the provisions of paragraph 2, no person should be compelled to be represented before the Office. (2) without prejudice to the second sentence of paragraph 3 of this Article, natural or legal persons having neither their domicile nor their principal place of business or a real and effective industrial or commercial establishment in the European Economic Area will be represented before the Office in accordance with Article 120(1) in all proceedings provided for by this Regulation, **other than the filing of an application** for an EU trade mark.

The provisions applicable to RCDs are set out in Article 77 CDR.

⁽²²⁾ Commission Regulation (EC) No 2245/2002 of 21 October 2002 implementing Council Regulation (EC) No 6/2002 on Community designs, amended by Commission Regulation (EC) No 876/2007 on 24 July 2007 amending Regulation (EC) No 2245/2002 implementing Council Regulation (EC) No 6/2002 on Community designs following the accession of the European Community to the Geneva Act of the Hague Agreement concerning the international registration of industrial designs.

- identification number of the applicant/proprietor/holder;
- where representation is mandatory in accordance with the EUTMR/CDR: identification number of the representative;
- where applicable, the citation of the designer or of the team of designers pursuant to Article 18 of Regulation (EC) No 6/2002.

Legal basis: Article 111(4) EUTMR and Article 68(2)(j) CDIR for the entry into the Register; data processed on the basis of Article 2(1)(b) and (e) of Commission Implementing Regulation (EU) 2018/626 and Article 1(b) and (e) and 19 of CDIR.

- the name and address of opponents;
- the name and address of applicants for invalidity/revocation or for counterclaims pursuant to Article 128(4) EUTMR⁽²³⁾;
- the name and address of the representatives of any of the above parties.

Legal basis: Article 111(3)(n) EUTMR, as further specified in Article 4(2) of [Decision No EX-14-3 of the President of the Office of 22 October 2014 concerning publicly available particulars of CTM and RCD applications and registrations](#).

If a relevant application or request has been filed by the applicant, proprietor, holder, one of the parties or the competent national authority, the following personal data is mandatory:

Transfer

- particulars of the new proprietor in accordance with Article 2(1)(b) of Regulation (EU) 2018/626;
- where applicable, the name and business address of the representative of the new proprietor.

Legal basis: Articles 111(3)(g) and 20(5) EUTMR and Article 13(b) and (e) of Regulation (EU) 2018/626, Article 28 CDR and Article 69(3)(i) CDIR.

Rights in rem, levy of execution, insolvency proceedings (entry at the request of a national authority), grant or transfer of a licence

The same requirement applies *mutatis mutandis*, according to Article 26(1) EUTMR and Article 24(1) CDIR, to the entry in the Register.

Legal basis: Articles 22-25 and 26(1), 111(3)(h)-(j) EUTMR, Article 11(3)(h), Articles 16(2), 28-30 and 32 CDR, Article 69(3)(j)-(l) CDIR.

⁽²³⁾ Ex Article 100(1) CTMR.

Declaration of surrender

- name and address of the proprietor/holder in accordance with Article 2(1)(b) of Regulation (EU) 2018/626 and Article 1(1)(b) CDIR.

Legal basis: Article 111(3)(m) EUTMR, Article 15 of Regulation (EU) 2018/626, Articles 27(1)(b) and 69(3)(o) CDIR.

Division of an EUTM application/registration

- name and address of the applicant/proprietor in accordance with Article 2(1)(b) of Regulation (EU) 2018/626.

Legal basis: Article 111(3)(w) EUTMR, Articles 8(1)(b) and 11(1)(b) of Regulation (EU) 2018/626

Amendment of an EUTM application and/or alteration of an EUTM registration

- correction of the name and address of the applicant;
- where the EUTM includes the name and address of the proprietor: change of name and address.

Legal basis: Articles 49(2), 54 and 111(3)(d) EUTMR.

Correction of an RCD application

- the name and the address of the applicant, or where the applicant has appointed a representative, the name and the business address of the representative;
- the indication of the element of the application to be corrected and the corrected version of that element.

Legal basis: Article 12(3)(b),(c) and (d) CDIR.

Change of RCD ownership following claims relating to entitlement

- any change in the ownership of the registered Community design resulting from the final decision (name and address of the owner following the change).

Legal basis: Article 15(4)(c) CDR and Article 69(3)(h) CDIR.

The Office is required to publish a European Union Trade Marks Bulletin containing publications of applications and of entries made in the Register, as well as other particulars

relating to applications or registrations of EU trade marks, the publication of which is required under this Regulation or by acts adopted pursuant to it (Article 116(1)(a) EUTMR). Moreover, the Office will periodically publish a Community Designs Bulletin containing entries open to public inspection in the register, as well as other particulars, the publication of which is prescribed by the CDR or by the implementing regulation (CDIR). The registration of a design will be published in the Community Designs Bulletin (Article 14 CDIR). These publications are available online on the Office's website via eSearch Plus. Phone and fax numbers and email addresses are made available to the public only if the affected party has given explicit consent, and provided that the Office's IT systems can support it⁽²⁴⁾.

3.2 'Database data' — Personal data processed in the Database (Article 112 EUTMR, Article 71 CDIR) beyond what is included in the Register (Article 111 EUTMR, Article 69 CDIR)

Applications

- In respect of EUTM applications: telephone numbers or other contact details for communication by electronic means may be provided, as defined by the Executive Director. In this context, an email address is considered mandatory to register for electronic services (e-filing), as well as telephone and/or fax numbers. In respect of RCD applications, telephone numbers as well as fax numbers and details of other data-communications links, such as electronic mail, may be given⁽²⁵⁾.
- Address indicated by the applicant: only one address needs to be indicated for each applicant. Where several addresses are indicated, only the address mentioned first will be taken into account, except where the applicant designates one of the addresses as an address for service.
- Where representation is mandatory in accordance with the EUTMR/CDR, address indicated for the representative: where the representative has more than one business address or where there are two or more representatives with different business addresses, only the first-mentioned address will be taken into account as an address for service, unless the application indicates which address is to be used for this purpose.
- Signature of the applicant⁽²⁶⁾.

⁽²⁴⁾ See Articles 4(3) and (4) of Decision No EX-14-3.

⁽²⁵⁾ Article 1(b) CDIR.

⁽²⁶⁾ As regards the signature of the applicant and/or the representative required for an application, Article 63(1) of Commission Delegated Regulation (EU) 2018/625 provides that applications for the registration of an EU trade mark, as well as any other application provided for in Regulation (EU) 2017/1001 and all other communications addressed to the Office, must be submitted as follows:

- by electronic communication, in which case the indication of the name of the sender is deemed to be equivalent to the signature;
- by submitting a signed original of the document in question to the Office by post or courier.

- Where representation is mandatory in accordance with the EUTMR/CDR: signature of the representative⁽²⁷⁾.

Legal basis: Article 2(1)(b), (e) and (k) of Regulation (EU) 2018/626, Article 1(b),(e) and (i) CDIR.

Professional representatives

- nationality of one of the Member States of the European Economic Area (EUTM)/Member State (RCD)⁽²⁸⁾;
- place of business or employment in the European Economic Area (EUTM)/Community (RCD);
- entitlement to represent natural or legal persons in trade mark matters / design matters (qualification or practice)⁽²⁹⁾.

Legal basis: Article 120 EUTMR, Article 64 and 78(4) CDR.

Payment of fees and charges

- every payment must indicate the name of the person making the payment (payment or transfer to an Office bank account, or a deposit in a current account held with the Office).

Legal basis: Article 179(2) EUTMR, Article 6 Commission Regulation (EC) No 2246/2002⁽³⁰⁾

3.2.1 EUTM specific data processing operations

Request for conversion of an EU trade mark application or a registered EU trade mark into a national trade mark application

- name and address of applicant for conversion in accordance with Article 2(1)(b) of Regulation (EU) 2018/626.

⁽²⁷⁾ See footnote 6.

⁽²⁸⁾ Exemption may be granted by the Executive Director under the conditions set out in Article 120(4)(b) EUTMR.

⁽²⁹⁾ Exemption may be granted by the Executive Director under the conditions set out in Article 120(4)(a) EUTMR.

⁽³⁰⁾ Commission Regulation (EC) No 2246/2002 of 16 December 2002 on the fees payable to the Office for Harmonization in the Internal Market (Trade Marks and Designs) in respect of the registration of Community designs, amended by Commission Regulation (EC) No 877/2007 of 24 July 2007 amending Regulation (EC) No 2246/2002 concerning the fees payable to the Office for Harmonization in the Internal Market (Trade Marks and Designs) following the accession of the European Community to the Geneva Act of the Hague Agreement concerning the international registration of industrial designs.

Legal basis: Article 22 of Regulation (EU) 2018/626.

Facts and decisions on invalidity to be notified to the International Bureau

- the name of the holder of the international registration.

Legal basis: Article 29⁽³¹⁾ of Regulation (EU) 2018/626.

Seniority claims before the Office

- name and address of the holder of the international registration in accordance with Article 2(1)(b) of Regulation (EU) 2018/626.

Legal basis: Article 32 of Regulation (EU) 2018/626.

Notification of invalidation of the effects of an international registration to the International Bureau

- name of the holder of the international registration.

Legal basis: Article 34 of Regulation (EU) 2018/626.

Request for conversion of an international registration into a national trade mark application or into a designation of Member States

- name and address of applicant for conversion in accordance with Article 2(1)(b) of Regulation (EU) 2018/626.

Legal basis: Article 35 of Regulation (EU) 2018/626.

⁽³¹⁾ The Office will notify the International Bureau within a period of 5 years of the date of the international registration in the following cases:

- the EU trade mark application on which the international registration was based has been withdrawn, is deemed to be withdrawn or has been refused by a final decision, in respect of all or some of the goods or services listed in the international registration;
- the EU trade mark on which the international registration was based has ceased to have effect because it has been surrendered, has not been renewed, has been revoked, or has been declared invalid by the Office by a final decision or, on the basis of a counterclaim in infringement proceedings by an EU trade mark court, in respect of all or some of the goods or services listed in the international registration;
- the EU trade mark application or the EU trade mark on which the international registration was based has been divided into two applications or registrations.

Transformation of an international registration designating the Union into an EU trade mark application

- name and address of applicant in accordance with Article 2(1)(b) of Regulation (EU) 2018/626 ('elements referred to in Article 2 of this Regulation')

Legal basis: Article 36 of Regulation (EU) 2018/626.

Renewal of an EUTM

- name of the person requesting renewal.

Legal basis: Article 53(4)(a) EUTMR.

Notice of appeal concerning an EUTM

- the name and address of the appellant;
- where the appellant has appointed a representative or representation of the appellant is mandatory, the name and business address of the representative.

Legal basis: Article 21(1)(a) to (c) Commission Delegated Regulation (EU) 2018/625.

3.2.2 RCD specific data processing operations

Renewal of a Community design registration

- the name of the person requesting renewal.

Legal basis: Article 22(1)(a) CDIR.

Application for a declaration of invalidity in respect of an RCD

- as concerns the RCD: name and address of its holder;
- as concerns the applicant:
 - his or her name and address in accordance with Article 1(1)(b) CDIR;
 - if the applicant has appointed a representative, the name and the business address of the representative, in accordance with Article 1(1)(e) CDIR.

Legal basis: Article 28(1)(a) and (c) CDIR.

Notice of appeal concerning an RCD

- the name and address of the appellant in accordance with Article 1(1)(b) CDIR;
- where the appellant has appointed a representative, the name and the business address of the representative in accordance with Article 1(1)(e) CDIR.

Legal basis: Article 34(1)(a) and (b) CDIR

Personal data processed in litigation files

As part of an application lodged with the General Court:

- the name and address of the applicant;
- particulars of the status and address of the applicant's representative;
- name of lawyer: where the party represented by the lawyer is a legal person governed by private law, the lawyer must lodge an authority to act given by that person at the Registry.

Legal basis: Article 76(a) and (b) and Article 51(3) of the Rules of Procedure of the General Court

As part of a defence lodged with the General Court:

- particulars of the status and address of the applicant's representative;
- name of agent: agents must produce an official document issued by the party for whom they are acting.

Legal basis: Article 81 (1)(b) and 53(1)(a) of the Rules of Procedure of the General Court.

As part of an appeal lodged before the Court of Justice of the European Union:

- the name and address of the appellant;
- the names of the other parties to the relevant case before the General Court;
- name of the agent/lawyer: agents and lawyers must lodge an official document or an authority to act issued by the party whom they represent at the Registry.

Legal basis: Article 168(1)(a) and (c) and Article 119(2) of the Rules of Procedure of the Court of Justice of the European Union.

As part of a response lodged before the Court of Justice of the European Union:

- the name and address of the party submitting it;
- name of the agent/lawyer: agents and lawyers must lodge an official document or an authority to act issued by the party whom they represent at the Registry.

Legal basis: Articles 173(1)(a) and 119(2) of the Rules of Procedure of the Court of Justice of the European Union.

The above applies *mutatis mutandis* to replies and rejoinders.

4 Exercising Data Subject Rights in the Context of Trade Mark and Design Procedures Before the Office

4.1 Exercising the right of access, the right to request removal (erasure), correction and restriction of personal data (Articles 17 to 21 of Regulation (EU) 2018/1725)

The right of access by the data subject, within the meaning of Regulation (EU) 2018/1725⁽³²⁾ entails that the data subject must have the right to ask the controller whether or not personal data concerning him or her is being processed, and, where that is the case, access the personal data and information set out in Article 17 of that Regulation (namely, the purpose of the processing, the data categories processed, the recipients, etc.). The controller must provide a copy of the personal data being processed. Where the data subject makes the request by electronic means, and unless otherwise requested by the data subject, the information should be provided in a commonly-used electronic form. The right to obtain a copy will not adversely affect the rights and freedoms of others.

Exercising the right of access primarily concerns the database data, as the data stored in the Register is publicly accessible.

Indeed, all data stored in the Register, including personal data, must be considered to be of public interest and may be accessed by any third party (available to view). For reasons of legal certainty, the entries in the Register will be kept for an indefinite period of time in accordance with Article 111(9) EUTMR.

The legal possibility to request the erasure of any personal data processed as 'Database data' is only available with respect to personal data that does not constitute mandatory data to be kept in the Register. Register data, consisting of the first name and surname of natural person applicants/proprietors/representatives, the nationality of the proprietor and the postal address of the above will be kept for an indefinite period and cannot be erased for reasons of legal certainty.

Database data, including phone/fax numbers and email addresses, may be subject to erasure. In such cases, the party concerned may request the removal of any personal data from the 'Database' 18 months after:

- the expiry of the relevant EU trade mark;
- the closure of the relevant *inter partes* procedure.

⁽³²⁾ Article 17 of Regulation (EU) 2018/1725.

Moreover, correction of inaccurate or erroneous personal data must be ensured at any time in accordance with Article 112(5) EUTMR.

The right to restriction of processing, as laid down in Regulation (EU) 2018/1725, corresponds to 'blocking' ⁽³³⁾. The data subject has the right to ask the controller to restrict the processing of his or her data when one of the following cases applies:

- the accuracy of the personal data is contested by the data subject, for a period enabling the controller to verify the accuracy, including the completeness, of the personal data;
- the processing is unlawful and the data subject opposes the erasure of the personal data and requests the restriction of its use instead;
- the controller no longer needs the personal data for processing, but it is required by the data subject for the establishment, exercise or defense of legal claims;
- the data subject has objected to processing pursuant to Article 23(1) of Regulation (EU) 2018/1725 pending verification whether the legitimate grounds of the controller override those of the data subject.

Regulation (EU) 2018/1725 sets further conditions for the processing of personal data where the processing has been restricted:

- only for the establishment, exercise or defense of legal claims or for the protection of the rights of another natural or legal person or for reasons of important public interest of the Union or of a Member State;
- information to be provided to the data subject before restriction is lifted.

As a requirement maintained in Regulation (EU) 2018/1725, in automated filing systems, restriction of processing must in principle be ensured by technical means. Personal data that is restricted will be indicated in the system in such a way that it becomes clear that it may not be used.

Regulation (EU) 2018/1725 also stipulates that the controller must communicate any rectification or erasure of personal data or restriction of processing carried out in accordance with Article 18, Article 19(1) and Article 20 to each recipient to whom the personal data has been disclosed, unless this proves impossible or involves disproportionate effort. The controller will inform the data subject about those recipients if the data subject requests it ⁽³⁴⁾. The right to request erasure of personal data from the 'Database', with the exception of mandatory personal data to be kept in the Register, requires the Office to establish a procedure to implement such requests.

⁽³³⁾ Article 20 of Regulation (EU) 2018/1725.

⁽³⁴⁾ Article 21 of Regulation (EU) 2018/1725.

4.2 Inspection of files

Article 114(4) EUTMR provides that where files are inspected (pursuant to paragraph 2 or 3 of this Article) documents relating to exclusion or objection pursuant to Article 169, draft decisions and opinions, and all other internal documents used for the preparation of decisions and opinions, **as well as parts of the file that the party concerned showed a special interest in keeping confidential before the request for inspection of the files was made, unless inspection of such parts of the file is justified by overriding, legitimate interests of the party seeking inspection, may be withheld from inspection** ⁽³⁵⁾.

This provision is applicable not only (i) to the parties who submit a procedural document to the Office that may include personal data (such as email addresses, bank details or original signatures) and may be withheld from inspection if confidential treatment has been requested ⁽³⁶⁾, but also (ii) to inspectors whose request itself may be subject to inspection by the applicant/owner. Moreover, it is appropriate to differentiate between online and paper-based inspections.

- In case of an **online inspection**, the Office's IT systems only record this in the login history of the account of the requestor, and the relevant information is only accessible by manual processing, which the Office does not perform of its own motion. This data is not communicated to the owner of the file by default, nor does the system generate any information to the owner that the file has been inspected.

Should the **owner request to know who has inspected a given file**, the Office will not automatically grant this request. In such a case, the owner must put forward a reasoned and substantiated request showing that there are legitimated reasons for doing so.

⁽³⁵⁾ As regards RCDs, in a similar manner, the parts of the file that will be excluded from inspection pursuant to Article 74(4) of Regulation (EC) No 6/2002 will be:

- documents relating to exclusion or objection pursuant to Article 132 of Regulation (EC) No 40/94, the provisions of this Article being considered for this purpose as applying *mutatis mutandis* to registered Community designs and to applications for these;
- draft decisions and opinions, and all other internal documents used for the preparation of decisions and opinions;
- parts of the file that the party concerned showed a special interest in keeping confidential before the application for inspection of the files was made, unless inspection of such parts of the file is justified by the overriding legitimate interests of the party seeking inspection. (Article 72 CDIR).

Where registration is subject to a **deferment of publication** pursuant to Article 50(1) of Regulation (EC) No 6/2002:

- **access to the Register to persons other than the holder must be limited to the name of the holder, the name of any representative**, the date of filing and registration, the file number of the application and the mention that publication is deferred;
- the certified or uncertified extracts from the Register will only contain the name of the holder, the name of any representative, the date of filing and registration, the file number of the application and the mention that publication is deferred, except where the request has been made by the holder or his or her representative. (Article 73 CDIR).

⁽³⁶⁾ In exceptional cases, where a party submits health data in a procedure, this will be withheld by the Office from online inspection to ensure confidentiality.

These reasons will have to be balanced against the explanations provided by the person who made the inspection on a case-by-case basis, before any such request is granted.

- For **paper inspections**, the same principles apply and the same result can be reached by marking the inspection request as confidential so that the owner can only access it if it shows a prevailing interest.

4.3 Exercising the right to object to processing certain personal data (Article 23 of Regulation (EU) 2018/1725)

As regards mandatory personal data processed by the Office to carry out its tasks, processing of certain categories of personal data is a compelling legitimate ground.

Article 23 of Regulation (EU) 2018/1725 provides that the data subject will have the right to object, at any time, on grounds relating to his or her particular situation, to the processing of personal data concerning him or her which is based on point (a) of Article 5(1), including profiling based on that provision. The controller will no longer process this personal data unless the controller demonstrates compelling legitimate grounds for the processing which override the interests, rights and freedoms of the data subject or for the establishment, exercise or defence of legal claims.

As a general requirement, **at the time of the first communication with the data subject, at the latest, the right to object will be explicitly brought to the attention of the data subject** and will be presented clearly and separately from any other information. Regulation (EU) 2018/1725 also indicates that, **in the context of the use of information society services, the data subject may exercise his or her right to object by automated means using technical specifications.**

Regarding the Office's tasks, this may be relevant when the Office contacts applicants/proprietors with relevant IP information while carrying out its task to promote the EU trade mark and design systems, using their email address, which is kept as 'Database data'. It would be appropriate in these circumstances to include brief, specific information with links to the Office's General Data Protection Statement to inform users of their right.

4.4 Exercising the right to request removal (erasure) of personal data included in the decisions of the Office published online

Article 113(1) EUTMR introduces the obligation that the Office make its decisions available online for the information and consultation of the general public in the interests of transparency and predictability. Any party to the proceedings that led to the adoption of the decision may request the removal of any personal data⁽³⁷⁾ included in the decision.

⁽³⁷⁾ EU trade marks and trade mark numbers are, in general, not considered to be personal data. Therefore, their removal cannot be requested.

Decisions of the Office, within the meaning of Article 113(1) EUTMR, cover EUTM examinations, oppositions, cancellations and decisions of the Boards of Appeal⁽³⁸⁾. In respect of registered Community designs this extends to decisions on invalidity and the decisions of the Boards of Appeal. Such decisions are available online in eSearch Case Law via the Office's website. In order to allow any party to the proceedings to make use of their right to request the deletion of personal data from these decisions — in the absence of systematic anonymisation — it would seem appropriate to include this possibility in the General Privacy Statement, making the data subjects aware of their right to request the deletion of personal data (possibly by reference to the General Privacy Statement) and to establish an internal procedure for this purpose.

Moreover, the Office also offers machine translation for its decisions on its website, which is currently available for the Boards of Appeal decisions (with first instance decisions also being in scope in the short term). This implies that the right to request the deletion of personal data from the Office's decisions should be applied to automatic translations as well⁽³⁹⁾.

4.5 The scope of data portability (Article 22 of Regulation (EU) 2018/1725)

Regulation (EU) 2018/1725 sets out the new legal requirement that the data subject will have the right to receive the personal data concerning him or her, which he or she has provided to a controller, in a structured, commonly-used and machine-readable format and have the right to transmit this data to another controller without hindrance from the controller to which the personal data was provided, where:

- the processing is based on consent pursuant to point (d) of Article 5(1) or point (a) of Article 10(2) or on a contract pursuant to point (c) of Article 5(1);
- the processing is carried out by automated means.

However, this right does not apply to the processing necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller. These are the procedures of the Office's core business, in which processing is not solely based on consent or on a contract and does not involve special categories of

⁽³⁸⁾ Decisions closing opposition and invalidity/revocation proceedings and decisions of the Boards of Appeal, as set out in Article 5(2)(a) to (c) of Decision EX-14-3 of the President of the Office (see also Article 159 EUTMR). Administrative decisions taken in the context of the functioning of the Office that entail personal data and rely on other legal bases such as the Staff Regulations or the Financial Regulation, do not fall within the scope of this provision.

⁽³⁹⁾ Starting in 2018 with the aim of offering our customers, in particular SMEs in the EU, access to relevant IP information in their own language, in collaboration with the European Commission, the Office provides an automatic translation service for IP-related judgments of the General Court, the Court of Justice and the decisions of the Boards of Appeal through the eSearch Case Law application. The machine translation technology (MT) used for eSearch Case Law is currently only available for BoA decisions (46 000 MT available, 39 % of total downloaded BoA decisions translations are MT, 72 % of BoA decisions have an available MT). In the short term, first instance decisions and ECJ judgments will also be in scope.

data (e.g. health data).

Regulation (EU) 2018/1725 further requires that in exercising his or her right to data portability pursuant to paragraph 1, the data subject should have the right to have personal data transmitted directly from one controller to another or to controllers other than Union institutions and bodies, where technically feasible. This right must not adversely affect the rights and freedoms of others.

4.6 Scheme of the exercise of the data subject's rights

Scheme of the exercise of the data subject's rights
(Articles 17 to 23 of Regulation (EU) 2018/1725)

