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ASSISTANT SUPERVISOR

Mr José Manuel BARROSO
President of the European Commission
1049 Brussels

Brussels, 23 July 2014
GB/ZB mk D(2014)1561 **C2014-0346**

Subject: Proposal for a Decision of the European Parliament and of the Council on establishing a European Platform to enhance cooperation in the prevention and deterrence of undeclared work

Dear Mr President,

Having regard to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of data by the Community institutions and bodies and on the free movement of such data, and in particular its Article 28(2), I am writing in relation to the proposal for a Decision of the European Parliament and of the Council on establishing a European Platform to enhance cooperation in the prevention and deterrence of undeclared work ('the Proposal').¹

We welcome that we have been consulted by the Commission at an earlier stage and given the opportunity to provide informal comments as to the compliance of the Proposal with data protection rules.

The objective of the Proposal is to enhance cooperation among national enforcement authorities in Member States, the Commission and other relevant organisations in the prevention and deterrence of undeclared work. To this end, Article 1 of the Proposal establishes a platform, to be composed of national enforcement authorities (as nominated by Member States) and the Commission.

In relevant part, Article 4(1)(f) of the Proposal provides that the platform could '*examine ways to improve data sharing in compliance with the Union data protection rules, including exploring possibilities to use of the Internal Market Information System (IMI) and the Electronic Exchange of Social Security Information (EESSI)*'.

Our understanding is that the information sharing under the Proposal will cover only information regarding different measures and policies put in place in different Member States to tackle undeclared work and at this stage the Platform is not aimed at sharing personal data of individuals working undeclared (or individuals or organisations employing workers without declaring them).

¹ COM(2014) 221 final.

As you are aware, exchange of personal data relating to infringements or suspected infringements of national or EU law regarding undeclared work may affect the rights to privacy and protection of personal data of the individuals concerned.

Therefore, any such information exchange among authorities responsible for enforcement, especially if conducted on a systematic basis and on a large scale across Europe, would require a clear and specific legal basis. This legal basis should clearly identify the purposes and scope of the information exchange and any necessary data protection safeguards.

For this reason, Article 4(1)(f) of the Proposal, while providing an appropriate legal basis for discussing possibilities for such future sharing of personal data, cannot be considered , in itself, as appropriate legal ground for the exchange of personal data under Article 7(c) of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data², which applies to the activities of the national enforcement authorities, and under Article 5(b) of Regulation 45/2001, which applies to the activities of the Commission.

We welcome that Article 4(1) (f) reflects the intention that this paragraph is not actually providing a legal basis for the exchange of personal data, rather, it is providing a legal basis for developing mechanisms to improve the exchange of personal data. The EDPS underlines that he is available to provide further guidance and advice in the future once the Commission will propose specific plans with regard to exchanges of personal data in this area.

We also welcome that the Proposal considers the use of existing information exchange tools such as the Internal Market Information System (IMI), taking into account that the Commission has already invested significant efforts in ensuring that IMI is developed taking into account the principle of data protection by design.

The EDPS has no further comments on the text of the Proposal itself.

I have sent this letter to the President of the European Parliament and to the President of the Council as well.

Yours sincerely,

(signed)

Giovanni BUTTARELLI

Cc: Ms Martine REICHERTS, Commissioner, Justice, Fundamental Rights and
Citizenship
Mr László ANDOR, Commissioner, Employment, Social Affairs and Inclusion
Ms Françoise LE BAIL, Director General, DG Justice
Mr Paul NEMITZ, Director, Fundamental Rights and Citizenship
Mr Michel SERVOZ, Director General, DG EMPL [Same as above.]
Mr Bruno GENCARELLI, Head of Unit - Data Protection, DG JUST
Mr Philippe RENAUDIÈRE, Data Protection Officer - European Commission

² OJ L 281, 23.11.1995, p. 31.