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Ms Françoise LE BAIL
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Subject: Comments on the Draft Commission Implementing Decision on the adequate protection of personal data in New Zealand pursuant to Directive 95/46/EC

Dear Ms Le Bail,

We refer to the draft Commission Implementing Decision on the adequate protection of personal data in New Zealand pursuant to Directive 95/46/EC, on which we were informally consulted on 5 November 2012.

This informal consultation follows a consultation of the Article 29 Working Party in which the EDPS has also taken part. The conclusion of the Working Party¹, shared by the EDPS, is that New Zealand presents an adequate level of protection, which is reflected in the draft implementing decision of the Commission.

The EDPS only has an additional comment, which relates to the fact that legislation other than the Privacy Act of 1993² (hereinafter "the Privacy Act") might widen the scope of the exceptions of the information privacy principles (hereinafter: "the privacy principles").

The Privacy Act contains a list of twelve privacy principles and specifies exceptions to them. We share the views of the Working Party and the Commission that these principles and exceptions are close to the ones laid down in Directive 95/46/EC.

¹ Article 29 Working Party Opinion 6/2010 on the level of protection of personal data in New Zealand, 4 April 2011 (WP 182).

² As amended, among others, by the Privacy (Cross-border Information) Amendment Act 2010 (Public Act No.113 of 2010) and the Privacy Amendment Act 2011 (Public Act No.44 of 2011).

However, in addition to the specified exceptions, Section 7 of the Privacy Act states that if another law is contrary to the privacy principles, that other law will prevail over them.

We would like to point out that future changes to legislation other than the Privacy Act might thus widen the current exceptions to the privacy principles. This may have consequences on the assessment of the level of adequacy.

Therefore, we recommend clarifying this in the Preamble of the draft decision and specifying in Article 1 that the decision of adequacy is valid in view of the current legal framework of New Zealand.

Yours sincerely,

(signed)

Giovanni BUTTARELLI

Cc.: Ms Marie-Hélène BOULANGER, Head of Unit -Data Protection, DG JUST
Mr Bruno GENCARELLI, Head of Sector - International, Data Protection Unit, DG JUST
Mr Philippe RENAUDIÈRE, Data Protection Officer - European Commission