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ASSISTANT SUPERVISOR

Mr Michel BARNIER
Commissioner for
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European Commission
B-1049 Brussels

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GB/IC/kd/D(2013) 1543 C 2013-0457
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correspondence

Subject: Report from the Commission to the European Parliament and the Council on the functioning of the Memorandum of Understanding on the Sale of Counterfeit Goods via the Internet

Dear Mr Barnier,

I have taken note with interest of the report from the Commission to the European Parliament and the Council on the functioning of the Memorandum of Understanding on the Sale of Counterfeit Goods via the Internet adopted on 25 April 2013¹.

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 personal data by the Community institutions and bodies and on the free movement of such data, and in particular its Article 41, the EDPS hereby wishes to underline a few comments regarding this report.

The EDPS welcomes the adoption of this report, which contains useful feedback from the signatories of the Memorandum of Understanding (MoU) on the effectiveness of the measures to fight against the sale of counterfeit goods on the Internet that they have put in place pursuant to the MoU. The report notably provides information on how Internet platforms participating in the MoU have implemented notice and take down procedures and on the mechanisms they have set up for cooperating and sharing information - including personal data of alleged infringers - with rights owners.

¹ COM(2013) 209 final.

As was underlined by the EDPS in his response to the public consultation of DG MARKT on procedures for notifying and acting on illegal content hosted by online intermediaries, the processing of personal data by Internet platforms in that context raises specific concerns from a data protection viewpoint and it is crucial that such processing be done in full compliance with the applicable data protection laws².

The EDPS welcomes that one of the report's findings is that Internet platforms usually only disclose the identity and contact details of alleged infringers upon request and as permitted by the applicable data protection laws³. We also appreciate that a reference to the EDPS formal comments mentioned above has been included.

We also take note of the European Commission's role in facilitating the stakeholders' dialogues and in ensuring that "*possible subsequent agreements are transparent and fully compliant with the existing legal framework, scrupulously respecting fundamental rights and freedoms.*" We underline that it is of crucial importance to ensure that any agreement regarding voluntary measures to be deployed by stakeholders in that field are compliant with applicable law and that they fully respect fundamental rights and freedoms, including the rights of individuals to privacy and data protection.

Finally, we note that several meetings are planned in the frame of the Stakeholders Dialogues, for which the Commission will seek the involvement and full participation of consumer protection groups and civil rights groups. Considering the potential impact of these discussions on the protection of individuals' rights to privacy and data protection, we would like to draw your attention to the fact that we wish to be involved by the Commission in the course of the Stakeholders Dialogues and in the meetings thereof.

I have sent a copy of this letter to the European Parliament and the Council of the European Union as well.

Yours sincerely,

(signed)

Giovanni BUTTARELLI

Cc: Mr Jonathan FAULL, Director-General, DG MARKT
Ms Françoise LE BAIL, Director-General, DG JUST
Mr Paul NEMITZ, Director - Fundamental Rights and Citizenship, DG JUST
Ms Marie-Hélène BOULANGER, Head of Unit - Data Protection, DG JUST

² See EDPS comments of 13 September 2012 on DG MARKT's public consultation on procedures for notifying and acting on illegal content hosted by online intermediaries, available at:

https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Comments/2012/12-09-13_Comments_DG_MARKT_EN.pdf

³ See p. 13.

Mr Philippe RENAUDIERE, European Commission Data Protection Officer