Dear Ms Reding,

As you know the Article 29 Working Party adopted its opinion on the Commission’s Data protection reform proposals very recently at its plenary meeting on 23 March 2012.

The Working Party has carefully studied both proposals and with the opinion provides its general reaction to them. The opinion highlights several areas of concern and where appropriate makes suggestions for improvement. There is one area of concern that I would like to draw your attention to specifically, the budget and resource implications of the proposals.

As mentioned in the opinion, the Working Party is pleased that the proposals recognise the important role DPAs can play in ensuring compliance by introducing enhanced duties for both DPAs and the European Data Protection Board (EDPB).

The Working Party does however have serious doubts as to whether the significant budgetary implications of these enhanced duties are sufficiently recognised. To empower DPAs and the EDPB to effectively carry out their duties, including mutual assistance and cooperation within the consistency mechanism, Member States must be committed to provide the necessary financial, human and technical resources. Without these there is a risk that DPAs will not be able to cope with the demands on them and will act as an impediment to rather than an enabler of the innovation and growth that you are seeking to promote.

In this respect the Working Party strongly suggests an independent in-depth assessment of the increased costs for DPAs and the EDPS (as secretariat for the EDPB) based on the current proposals, be carried out. The Working Party would advise the Commission to ensure such an independent study be carried out in a way that identifies the existing and new or modified duties and the likely demands and costs associated with them for a sample of at least one small, one medium sized and one large DPA, as well as for the EDPS.
Following the results of such an assessment, what constitutes ‘adequate human, technical and financial resources, premises and infrastructure’ for DPAs as mentioned in Article 47(5) should be made clear. If the cost of providing these exceeds the financial commitment that Member States and the Commission are prepared to make, then priorities should be set, with those duties that do not provide the best ‘value for money’ in terms of privacy protection being scaled back.

Yours sincerely,

On behalf of the Article 29 Working Party,

Jacob Kohnstamm
Chairman

Annex: Opinion 01/2012 on the data protection reform proposals (WP 191)

CC: Ms. Françoise LE BAIL, Director General, DG Justice