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JUSTICE

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Dear Minister,

Thank you for your letter and your kind words on my appointment as Commissioner for Justice. I also very much look forward to our close cooperation.

I fully share your view that the protection of the fundamental rights of citizens and in particular of their right to the protection of personal data is indeed a cornerstone of the European approach to the digital age.

As you mentioned in your letter, I will present the first report on the evaluation of the General Data Protection Regulation (GDPR) after two years of experience of the application of the GDPR. I appreciate that you share in your letter your views on some of the related issues.

As required by Article 97(4) of the GDPR, the up-coming report will take into account in particular the positions and findings of the European Parliament, of the Council, and of other relevant bodies or sources. Accordingly, the Commission consulted also the European Data Protection Board (EDPB) and the national data protection supervisory authorities. Furthermore, the Commission will take into account the contributions of the multi-stakeholder expert group, which is providing a balanced representation of business and civil society organisations.

Hon. Minister Nick Hækkerup
Ministry of Justice
Slotsholmsgade 10
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In that report, the Commission will in particular examine the application of the cooperation and consistency mechanisms. I share your view that these new mechanisms are of key importance for a consistent application of the GDPR especially for monitoring and enforcing the application of the GDPR towards big tech companies. In that respect, my services are currently assessing the input received from the supervisory authorities and from the members of the multi-stakeholder group. This input encompasses, amongst others, responses on whether the supervisory authorities encounter any problems/obstacles in the context of the one-stop-shop mechanism as well as on the use of their enforcement powers, including administrative fines. The members of the multi-stakeholder group were asked on their experience with the supervisory authorities, the one-stop-shop mechanism and the consistency mechanism as well as the application on the GDPR in relation to new technologies.

I take also note of the importance of the margin left by the GDPR for national legislators, that you stress in your letter and which is also addressed in the position of the Council of 15 January 2020. This margin for national legislators is framed by the requirements of the Charter, the need to ensure the free flow of personal data within the EU and the conditions of the GDPR for related national legislation specifying the application of certain of its rules in relation to a legal obligation or public task. This is relevant also for video surveillance and the use of facial recognition technology under the conditions of the Regulation in particular for the processing of special categories of personal data.

I am also aware that businesses, voluntary associations and small entities need specific guidance to comply with the GDPR, in particular where they have not been made aware of the previous data protection rules in place before the GDPR based on the Data Protection Directive 95/46, on which it largely builds. In that respect I note from the information provided by the supervisory authorities, that in most Member States, including in Denmark, provided guidance by publication, online-tools, checklists and participated in conferences and events addressed specifically to SMEs.

In any case, the application of the GDPR requires constant monitoring in the years to come, in particular in view of emerging new technologies. The up-coming report starts the reporting process on the application of the GDPR and will be followed by further reports every four years on the basis of further experience.

Yours sincerely,

(e-signed)

Didier Reynders

