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Additional comments regarding document 13599/19 – evaluation of GDPR

1. General remarks

Protecting citizen's rights to their personal data is essential and the GDPR is the foundation for European digital policy moving forward. GDPR must be a key enabler in promoting responsible development and use of new, advanced technologies. Particularly concerning big tech-companies, GDPR is and must continue to be the foundation of a responsible processecing of data and use of new, advanced technology.

However, preliminary experiences regarding the GDPR show that GDPR does not always result in desirable results in every respect of everyday life when it comes to for example voluntary associations, SMEs, day care centers and so on. The undesirable results are due to the ground rules laid down by the GDPR, which sometimes involves significant use of resources for especially small entities. In this respect, the business community and minor public authorities experiences – notwithstanding the guidance and support from the Danish National DPA – confusion and concern regarding GDPR.

Thus, it is important to underline, that the European legal ground must be understandable, easy to use – even for SMEs, voluntary associations, day care centers etc. – digital-by-default and future-proof enough to adapt and be applied to the technological developments.

The GDPR and the interpretation hereof as well as the guidelines should be useful in practice for everyone. For example, there is a need for guidance and clarification for determining controllers and processers especially in cases of joint controllers. Another example of a situation where guidelines

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are needed, is the use of clouds. In Denmark, interpreting the GDPR has posed some issues when it comes to commercial clouds data processing outside EU/EEA. Therefore, guidance and shared best practices is very welcome on this matter.

Furthermore, to ensure a legal foundation applicable for everyone, it is important to ensure coherence and uniform implementation of digital initiatives in the further development of a European single market that works for citizens and businesses. To this end and in line with EU's prinicples for better regulation, we must abstain from regulating the same issues in different legal acts. For instance, overlapping rules in GDPR and ePrivacy may create a legal landscape that is hard to navigate in for businesses and public authorities.

2. Cooperation and consistency mechanisms and big tech-companies

Some of the big tech companies' business models, which have been discussed lately, are causing great concerns. It is worrisome if big tech companies unjustified process personal data. In this regard, GDPR must be a key enabler in promoting responsible development and use of new technologies, especially concerning big tech companies' processing of personal data. Cases concerning unjustified processing of personal data using new technology across the European Union by e.g. big tech companies are prime examples of situations, where the corporation and consistency mechanisms become key instruments to ensure a high and effective level of protection of personal data in the European Union. In cases like this, the corporation and consistency mechanisms shall prove its worth.

3. Margin left for national legislators

Once again, the Danish Ministry of Justice would like to underline the importance of the margin left for national legislators, cf. the contribution from the Danish Ministry of Justice dated 23 September 2019.

According to Article 6 (2) and (3) Member States may introduce more specific provisions to adapt the application of the rules of the GDPR. According to recital 10 of the GDPR, Member States are allowed to set out circumstances for specific processing situations, including explicitly determining more precisely the conditions under which the processing of personal data is lawful. Furthermore, according to recital 45, Member State law could specify the general conditions of the GDPR governing the lawfulness of personal data processing and establish the storage period to ensure lawful and fair processing. Article 6 (2) and (3) makes reference to Article 6 (1)

(e) on tasks carried out in the public interest. Private entities can perform such task, cf. Article 55 (2), and therefore the national room for manoeuvre may be used to nationally regulate private entities lawful processing of personal data when carrying out a task in the public interest. Against this background, in the Danish Video Surveillance Act it is regulated which types of private entities that lawfully may have video surveillance in public areas. These private entities, that includes gas stations and retail stores, have been selected because crime often takes place at these types of businesses in the form of for example vandalism, theft and violence; video surveillance can help solve such crimes.

The margin left for national legislators was intentional and justifies a certian fragmentation of the implementation of GDPR among European Member States. It is essential not to limit or restrict this margin for national legislators.

4. New obligations for the private sector

Based on the preliminary experiences, voluntary associations, businesses of all sizes and especially SMEs, day care centers, minor public authorities, voluntary associations, e.g. sport clubs, etc. are faced with considerable administrative burdens in order to comply with GDPR. Therefore, the Danish Ministry of Justice supports the introduction of further centralised guidance and support for e.g. voluntary associations and SMEs etc. on an EU-level in order to facilitate a use of GDPR that works 'in the real world' and address the above mentioned concerns.