

There is a need **to clarify the difference between « essential means » (that shall only be decided by the controller) and « non-essential means » (which may be decided by processors)** : on the Executive Summary page 3 it is stated that *“A controller determines the purposes and means of the processing, i.e. the why and how of the processing. The controller must decide on both purposes and means. However, some more practical aspects of implementation (“non-essential means”) can be left to the processor. It is not necessary that the controller actually has access to the data that is being processed to be qualified as a controller.”*

Details of essential and non-essential means are proposed on pages13-14 *“a distinction can be made between essential and non-essential means. **“Essential means” are closely linked to the purpose and the scope of the processing and are traditionally and inherently reserved to the controller.** Examples of essential means are the type of personal data which are processed (“which data shall be processed?”), the duration of the processing (“for how long shall they be processed?”), the categories of recipients (“who shall have access to them?”) and the categories of data subjects (“whose personal data are being processed?”). **“Non-essential means”** concern more practical aspects of implementation, such as the **choice for a particular type of hard- or software or the detailed security measures which may be left to the processor to decide on.**”*

What more essential than the determination of the technical and operational measures (TOMs)? From your point of view, **when does a TOM become “detailed”?** If the main principle to apply for any TOM is linked to the key principle of minimization, minimization can be applied in many “adapted” ways: from our understanding the proposed guidelines see those minimization measures as a processor’s issue? **TOMs ARE** by design and from our point of view, **processing activities. In our view, this should be viewed as “closely linked to the purpose and the scope of the processing (...) traditionally and inherently reserved to the Controller.**

Could you please explicit the following *““Essential means” **are closely linked to the purpose and the scope of the processing and are traditionally and inherently reserved to the controller.** What does that mean?*