

09 BY DESIGN & BY DEFAULT

What is needed?

Data protection by design means that, when designing products and services, data protection requirements are taken into account from the outset. It ensures that companies and public bodies take a positive approach to protecting privacy, throughout the entire life cycle of design

and implementation of technologies and services that require the processing of personal data.

The provisions must be further clarified, in order to indicate that data protection by design and default relate to both (a) technical measures relating to the design and architecture of the product or service and (b) organisational measures, which relate to operational policies of the controller.

negative amendments

Some amendments introduce the so-called “context and risk-based approach” to the concept of privacy by design and by default. This is dangerous as it would only lead to

legal uncertainty for companies and citizens and would, consequently, result in higher legal costs for companies.

Other amendments describe these principles as a burden for companies, despite the fact that this approach will help to avoid situations in which data protection requirements are an afterthought to the development process, which can result in both higher development costs for companies and lower protection for the data subject. Data protection by design can be more accurately seen as an investment that greatly reduces the privacy risks for both companies and citizens (e.g. costly data breaches).

Moreover, some of the suggested additions are vague and undermine legal clarity and opt for a more self-regulatory approach, which is not sufficient to ensure the implementation of strategies that protect privacy by design and by default.

Examples of such amendments include:

ALDE: 1710, 1715, 1721, 1726, 1729, 1730 - EPP: 1711, 1720, 1723 - N/A: 1717 - Greens/EFA: 1725 - S&D: 1728, 1731

Amendments 752 and 753 introduce new provisions to define « data protection by default and by design » and to clarify that these principles should also include data minimisation.

positive amendments

Some amendments add clarity and specificity to the Commission proposal. They work to strengthen privacy by design and by default which ultimately strengthen the rights of the data subject.

These amendments are:

S&D: 1714, 1722, 1727 - Greens/EFA: 1713

LAW ENFORCEMENT ACCESS

The Prism scandal showed that several Western governments and large corporations have cooperated to implement mass surveillance, resulting in a loss of public trust. Public awareness regarding privacy enhancing technologies, such as encryption, has grown.

Since the NSA leaks, companies that implement privacy by design and by default, such as

search engines Ixquick and DuckDuckGo, have seen a steep increase in traffic. It is clear, therefore, the comprehensive adoption of data protection by design and by default can serve to restore citizens’ trust in systems, governments and companies, while also providing the latter with a distinct competitive advantage.