

Privacy by Design Privacy by Default Legal Concepts

dr. Patrick Van Eecke
Partner, DLA Piper Brussels
Professor Universiteit Antwerpen

Future Regulation: Data protection by design and by default

- Article 23: **Data protection by design and by default**
- 1. Having regard to the state of the art and the cost of implementation, the controller shall, both at the time of the determination of the (EP: + Purposes) means for processing and at the time of the processing itself, implement appropriate technical and organizational measures and procedures in such a way that the processing will meet the requirements of this Regulation and ensure the protection of the rights of the data subject.
- 2. The controller shall implement mechanisms for ensuring that, by default, only those personal data are processed which are necessary for each specific purpose of the processing and are especially not collected or retained beyond the minimum necessary for those purposes, both in terms of the amount of the data and the time of their storage. In particular, those mechanisms shall ensure that by default personal data are not made accessible to an indefinite number of individuals.

- Concept of "Producer":
 - 'producer' means a natural or legal person, public authority, agency or any other body which creates automated data processing or filing systems designed for the processing of personal data by data controllers and data processors;
- New art. 23 says: "*Data processors and producers shall implement appropriate technical and organisational measures and procedures to ensure that their services and products allow controllers by default to meet the requirements of this Regulation, in particular those referred to in paragraph 1 and 2.*"

- 3. The Commission (EP: EDPS) shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of specifying any further criteria and requirements for appropriate measures and mechanisms referred to in paragraph 1 and 2, in particular for data protection by design requirements applicable across sectors, products and services.
- 4. The Commission may lay down technical standards for the requirements laid down in paragraph 1 and 2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).

Art. 30 of the current draft : Security of Processing

- "The Commission (EP: EDPS) shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and conditions for the technical and organisational measures referred to in paragraphs 1 and 2,
- including the determinations of what constitutes the state of the art, for specific sectors and in specific data processing situations, in particular taking account of developments in technology and solutions for privacy by design and data protection by default, unless paragraph 4 applies"