

# Reply for public consultation on Guidelines 4/2019 on Article 25 Data Protection by Design and by Default

I have only a small comment regarding the Example 1 on page 17 in the text given for public consultation.

*A controller operates a search engine that processes mostly user-generated personal data. The controller benefits from having large amounts of personal data and being able to use that personal data for targeted advertisements. The controller therefore wishes to influence data subjects to allow extensive collection and use of their personal data.*

*When implementing the fairness principle, taking into account the nature, scope, context and purpose of the processing, the controller realizes that they cannot present the options in a way that nudges the data subject in the direction of allowing the controller to collect more personal data than **if the options were presented in an equal and neutral way**. This means that they cannot present the processing options in such a manner that makes it difficult for data subjects to abstain from sharing their data, or make it difficult for the data subjects to adjust their privacy settings and limit the processing. **The default options for the processing must be the least invasive**, and the choice for further processing must be presented in a manner that does not deter the data subject from abstaining.*

One one hand, the text reads that the options should be presented in an equal and neutral way. But on the other hand „*The default options for the processing must be the least invasive*“. Suppose that the controller decides to use two buttons: one for consent and the other for negative consent. Should both buttons be presented with the same look (be neutral) or should the negative consent be more prominent (i.e. the controller nudges the data subject to the default more privacy friendly way but if the data subject is willing to cooperate, it is free to give consent)?

See, for example, Alessandro Acquisti, Laura Brandimarte, and George Loewenstein. 2015. Privacy and human behavior in the age of information. *Science* 347, 6221 (2015), 509–514. The individuals typically do not understand the abstract consequences of their actions. Hence, from the privacy point of view, and the point of privacy by default, it makes more sense to highlight the option of not giving consent.