The "State of the Art" of Privacy by Design

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Agenda

- Preceding considerations on “privacy by design”
- Definition of “state of the art” of privacy by design
- Meaning of “taking into account” the state of the art and costs of its implementation
- Governance of knowledge about the state of the art
- Conclusion
“Privacy (and security) by design”

Implementation of

- technical and
- organisational measures

Taking into account

- “context”, “purpose”, “nature”
- risks to fundamental rights
- state of the art and costs

Based on a user-centric iterative development process

- Research
- Development
- Test
- Iterate and adapt

Prototype

Product, system or process
“State of the Art”

● Definition of “state of the art” *
  → Technically feasible + scientifically evidenced + available on market (= best available technology)

● Higher level than “generally accepted technical rules” **
  → Rules that are generally used and accepted by majority of experts in a certain field

● Lower level than “state of science and technology” ***
  → Latest scientific evidence, irrespective of whether this is technically feasible or not

* “Stand der Technik” ** “Allgemein anerkannte Regeln der Technik” *** “Stand der Wissenschaft und Technik”
“Taking into Account”

- Legal meaning
  → Balancing exercise: Data protection risks + best available technology + implementation costs

- Economic effect
  → Driving innovation on the market for “privacy-enhancing technologies” (PET)
Governance of Knowledge

- Knowledge about the “state of the art” = pre-condition for factual applicability and economic effects

- How to gather and organize the knowledge about the “state of the art”?
  → Proposal by ENISA to set up a “PET Maturity Repository”
    - Community-driven
    - Independent (from private companies involved in PET development)
    - Remaining questions on legal effects and liability (in particular)
Discussion
Thank you!

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