



Formal comments of the EDPS on the Commission Delegated Regulations supplementing Directive 2010/40/EU of the European Parliament and the Council with regard to "Data and procedures for the provision, where possible, of road safety related minimum universal traffic information free of charge to users" and "Provision of information services for safe and secure parking places for trucks and commercial vehicles"

1. Article 3 of Directive 2010/40/EU on the legal framework for the deployment of Intelligent Transport Systems in the field of road transport and for interfaces with other modes of transport¹ (hereafter the 'ITS Directive') identified six priority actions for the adoption of specifications by the Commission. Making use of the powers vested on it in Article 7 of Directive 2010/40/EU, the Commission adopted on 15 May 2013, by means of delegated acts, specifications for the following two priority actions:
 - Priority action c) concerning 'data and procedures for the provision, where possible, of road safety related minimum universal traffic information free of charge to users',
 - Priority action e) concerning 'the provision of information services for safe and secure parking places for trucks and commercial vehicles'.
2. The EDPS welcomes that he has been invited to participate in Member States experts meetings where the draft specifications have been discussed. Before the adoption of the Delegated Regulations, the EDPS was given the possibility to provide informal comments to the Commission. He notes with satisfaction that most of his comments have been taken into account. These comments therefore mainly aim at further explaining the impact of data protection law on the application of the Commission Delegated Regulations, and at giving guidance for the application.

I. Relevance of data protection for priority actions c) and e)

3. Recital 12 of the ITS Directive acknowledges that the deployment and use of ITS applications and services will entail the processing of personal data.
4. As to priority action c), the extent in which personal data are being processed in the context of the provision of road safety related minimum universal traffic information depends to a large extent on the method used for collecting the data regarding road safety events. However, the specifications do not indicate clearly what the modalities for the collection of data about road safety related minimum universal traffic information are.
5. The EDPS notes that even if the collection of data may in most countries be based on observations about road safety events gathered by third parties (public or private

¹ OJ L 207, 06/08/2010, p. 1.

bodies) and not from individuals themselves, it is possible that, depending on the method used for collecting the data (e.g. video surveillance), such collection involves information relating to an identified or identifiable natural person² (e.g. by catching licence plate numbers). Furthermore, it is possible that in the future these services will be based on the direct collection of data from users (e.g. through direct feedback) or through cooperative systems (e.g. equipment embedded in the car such as the eCall platform, GPS connected to telecommunication equipment, etc). In such cases, the road safety events would be updated further to information gathered directly from individual users or from the equipment that they make use of, which may include geo-location data. This information would clearly relate to individuals who are identified or identifiable. The EDPS underlines that whenever data processed in the context of ITS applications and services relate to identified or identifiable persons (e.g. because the person may be identifiable through her subscription with the provider of the equipment, through the licence plate number, etc), the deployment of these ITS applications and services would clearly entail the processing of personal data of individuals within the meaning of Article 2(a) of Directive 95/46/EC³.

6. As to priority action e), it is clear that some personal data will be processed in relation to the provision of information services for safe and secure parking places for trucks and commercial vehicles. This is clearly the case in relation to the contact information of the parking operator (Article 4(2)), which shall contain the name, surname, telephone number, email address, and consent of the operator to make his contact information public. Furthermore, recital 10 provides that 'personal and anonymous advice' about the service will be sought from end users; as will be underlined further in section III below, if such feedback is not collected and processed in a truly anonymous manner, it will constitute personal data within the meaning of Article 2(a) of Directive 95/46/EC and will have to be treated as such.
7. As a result, the deployment and use of ITS applications and services in respect of priority actions c) and e) must comply with EU data protection law, in particular Directive 95/46/EC and Directive 2002/58/EC. The EDPS therefore welcomes that references to applicable data protection law have been inserted in recitals of the Delegated Regulations and that several data protection aspects have been specifically addressed therein (as will be analysed further below).

II. The necessity to embed data protection safeguards in Delegated Acts that have an impact on individuals' right to data protection

8. While the need for compliance with applicable data protection law is underlined in Article 10 of the ITS Directive, the EDPS welcomes that both Delegated Regulations contain recitals referring expressly to the respect of applicable data protection law (recital 5 for priority action c) and recital 11 for priority action e)). These recitals are useful to avoid any ambiguity as to the applicable data protection law. He also welcomes that both Delegated Regulations contain provisions dealing with specific data protection issues.
9. The specifications laid down in the Delegated Regulations set forth rules as regards the practical modalities for the collection and processing of data for purpose of priority actions c) and e); for instance, they contain rules dealing with the collection of

² See recital 26 and Article 2(a) of Directive 95/46/EC.

³ See also Article 29 Working Party Opinion 4/2007 on the concept of personal data, WP 136, adopted on 20 June 2007, available at: http://ec.europa.eu/justice/policies/privacy/docs/wpdocs/2007/wp136_en.pdf.

data, the information content, data quality, and data exchange and re-use. These rules may have a direct impact on the protection of the personal data processed in the context of these actions. As a result, it is essential that their impact is duly taken into account, so that these rules contain appropriate safeguards. In this respect, it must be ensured that the practical modalities set forth are carefully drafted so that they help ensuring an adequate protection of personal data.

10. The EDPS is therefore satisfied that a number of data protection aspects have been specifically addressed in the recitals and the provisions of the Delegated Regulations. For instance, recital 5 of the Delegated Regulation for priority action c) and recital 11 of the Delegated Regulation for priority action e) underline the need for ITS applications to apply two important data protection principles which are particularly relevant for priority actions c) and e), namely the principles of purpose limitation and data minimisation. Recital 8 of the Delegated Regulation for priority action c) sets forth conditions for the dissemination of data that take account of data protection requirements and also require that appropriate information is provided to end users about the processing of personal data. The EDPS also notes the reference in Article 6 of the Delegated Regulation for priority action c) to the fact that *'the deployment of these means should comply with the conditions and requirements set out in national law'*, which should be understood as also including national data protection legislation.
11. Furthermore, the EDPS welcomes that the rules themselves establish with sufficient details and clarity the practical aspects of data collection, processing and sharing, which also contributes to ensuring appropriate data protection. For instance, the types of data to be collected are strictly defined in a list (Articles 3 and 4 as concerns priority action c) and Article 4 as concerns priority action e)). Those responsible for collecting the data are clearly designated and the sharing of data is organised through national (or international) access points (see recital 7 and Article 6 as concerns priority action c) and Articles 4 and 5 as concerns priority action e)).

III. Comments on the Delegated Regulations

III.1. Common general comments

12. Both Delegated Regulations provide that anonymity should be guaranteed for data received from end users or their vehicle. In respect of priority action e), 'personal and anonymous advice' about the service will be collected from end users (recital 10). Recital 10 further requires that the anonymity of the feedback should be guaranteed. In respect of priority action c), recital 8 underlines that appropriate technical measures should be deployed to ensure the anonymity of the data received from end users or their vehicle.
13. The EDPS welcomes that both instruments aim at making use of data that are anonymous or have been anonymised. However, he stresses that it must be ensured that data have been irreversibly anonymised, in a way that individuals can no longer be identifiable by anyone (the controller or anyone else) using reasonable means⁴. As was underlined recently by the EDPS in his additional comments on the data protection reform package⁵, anonymisation requires not only deleting all directly

⁴ See recital 26 of Directive 95/46/EC and Article 29 Working Party Opinion 4/2007 on the concept of personal data, WP 136, 20.06.2007.

⁵ See EDPS additional comments on the data protection reform package, 15 March 2013, pages 1-2, available on the EDPS website at:

identifying attributes (e.g. names, phone numbers) from the data set, but usually also data which in combination reveal unique characteristics and any further modifications, to prevent re-identifiability. Recent research suggests that also fine grained location data can be sufficient by itself to identify the individual it relates to, which is particularly relevant as concerns ITS applications and services that rely upon geo-location data. The concept of identification moreover involves the capacity to distinguish an individual from all other individuals ('singling out'), even when commonly used identifiers are not available. As a result, the EDPS recalls that if the data have not been irreversibly anonymised, they will constitute personal data within the meaning of Article 2(a) of Directive 95/46/EC and will have to be treated as such.

14. The EDPS takes note that the ITS applications and services deployed in the context of priority actions c) and e) may involve the re-use of public sector information. In his Opinion on the re-use of public sector information⁶, the EDPS underlined data protection issues that should be considered when dealing with the re-use of public sector information. These considerations should be taken into account by public and private road operators and service providers so that appropriate guarantees are implemented in case of re-use of public sector information, in particular as regards data quality. The EDPS notes that these data protection considerations have been mentioned in recital 9 as regards priority action e) but not as regards priority action c).

III.2. Specific comments

In respect of priority action c)

15. As mentioned in point 10 above, the EDPS welcomes recital 8 and the fact that it stresses that if the information service is to rely on the collection of data, including geo-location data, from the end users themselves or through cooperative systems, then end users should be clearly informed about the collection of such data, the arrangements for data collection and potential tracking, and the periods for which such data are kept. This is in line with the requirement to provide appropriate information to individuals about the processing of their personal data, as set forth in Articles 10 and 11 of Directive 95/46/EC.
16. Data minimisation and proportionality have been taken into account in the text, by requiring that only the data necessary for purpose of providing the information service are collected (the definitions of data in Article 2 refer to the 'data necessary') and by listing the type of information content to be collected (Article 4). This is in line with Article 6(1)(c) of Directive 95/46/EC, which requires that data should be adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed.
17. Data quality and accuracy are particularly crucial in this field of action. The EDPS welcomes that, pursuant to Article 7(4), public and private road operators and service providers are responsible for the timely renewal and quality of data. He also notes with satisfaction that rules have been set forth in Article 4(2) concerning the update of

http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Comments/2013/13-03-15_Comments_dp_package_EN.pdf

⁶ See EDPS Opinion of 18 April 2012, available on the EDPS website at: http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Opinions/2012/12-04-18_Open_data_EN.pdf.

data. All these rules also help ensure the quality of the data from a data protection perspective, in accordance with Article 6(1)(d) of Directive 95/46/EC.

18. The EDPS further shares the point of view, as expressed in recital 11, that further work is needed on the issue of how to ensure a minimum level of quality and accuracy of the data. The Delegated Regulations underlines that further work will be done by Member States on this issue, with a view to share knowledge and best practices with each other and the Commission. The EDPS therefore welcomes that recital 16 provides the possibility for the Commission to amend and/or complement the specifications where appropriate, in the light of their national deployment, technological developments and standardisation progress. In the EDPS' view, this may be relevant in particular with a view to harmonising further the conditions for ensuring data quality and accuracy in relation to road safety traffic information.

In respect of priority action e)

19. The EPDS notes that the reliance upon technical standards covering the provision and exchange of data is helpful in promoting the interoperability of the service. Whenever the service involves the processing of personal data, the use of such standards may also prove useful in ensuring due respect of data protection principles, provided that these standards take full account of data protection requirements. The EDPS therefore welcomes that this is expressly stated in recital 5.
20. Specific attention is paid to the accuracy and the reliability of the information (Articles 5(6) and 7), which is particularly crucial for the provision of real time information on safe and secure parking places for trucks and commercial vehicles. These measures will also help verifying the accuracy of the feedback received from end users.

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