

EDPS Formal comments on the draft Commission Delegated Regulation amending Delegated Regulation (EU) No 305/2013 supplementing Directive 2010/40/EU of the European Parliament and of the Council with regard to the harmonised provision for an interoperable EU-wide eCall

THE EUROPEAN DATA PROTECTION SUPERVISOR,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC ('EUDPR')¹, and in particular Article 42(1) thereof,

HAS ADOPTED THE FOLLOWING FORMAL COMMENTS:

1. Introduction and background

1. On 21 September 2023, the European Commission consulted the EDPS on the draft Commission Delegated Regulation amending Delegated Regulation (EU) No 305/2013² supplementing Directive 2010/40/EU³ with regard to the harmonised provision for an interoperable EU-wide eCall ('the draft Delegated Regulation').
2. Commission Delegated Regulation (EU) No 305/20138 establishes the specifications for the upgrading of the Public Safety Answering Point ('PSAP') infrastructure required for the proper receipt and handling of eCalls⁴. The main aim of the draft Delegated Regulation is to adapt the specifications of the PSAPs that receive and handle the eCalls to packet-switched (e.g. 4G/5G) electronic communications networks⁵.

¹ OJ L 295, 21.11.2018, p. 39.

² Commission Delegated Regulation (EU) No 305/2013 of 26 November 2012 supplementing Directive 2010/40/EU of the European Parliament and of the Council with regard to the harmonised provision for an interoperable EU-wide eCall, OJ L 91, 3.4.2013, p. 1.

³ Directive 2010/40/EU of the European Parliament and of the Council of 7 July 2010 on the framework for the deployment of Intelligent Transport Systems in the field of road transport and for interfaces with other modes of transport, OJ L 207, 6.8.2010, p. 1.

⁴ Recital (3) of the draft Delegated Regulation.

⁵ Explanatory Memorandum, p. 2.

3. The draft Delegated Regulation aims in particular to take into account standard EN 15722:2020, by requiring the inclusion in the “minimum set of data” (‘MSD’) of the two most recent locations of the vehicle before the incident location. That information is necessary for PSAPs to provide the appropriate emergency service(s) or service partner(s) with accurate and reliable information on the locations and direction of the vehicle before the incident related to the eCall. Such information is important to help reduce the response time of the emergency services, especially on motorways or bridges⁶. The MSD would be sent, from the in-vehicle equipment, to the eCall public safety answering points (‘PSAPs’)⁷.
4. The EDPS recalls that it has provided comments on Delegated Regulation (EU) No 305/2013 on 19 December 2012⁸.
5. The present formal comments of the EDPS are issued in response to a consultation by the European Commission pursuant to Article 42(1) of EUDPR. The EDPS welcomes the reference to this consultation in Recital 11 of the draft Delegated Regulation.
6. These formal comments do not preclude any additional comments by the EDPS in the future, in particular if further issues are identified or new information becomes available, for example as a result of the adoption of other related implementing or delegated acts⁹.

2. Comments

7. The EDPS welcomes the reference to the applicability of Regulation (EU) 2016/679 (‘the GDPR’)¹⁰, as well as of Directive 2002/58/EC (‘ePrivacy Directive’)¹¹, in recital 8 of the draft Delegated Regulation. The EDPS also positively notes that the draft Delegated Regulation would replace Article 6 of Delegated Regulation (EU) No 305/2013 by a new Article 6, providing “rules on privacy and data protection”,

⁶ Recital 3 of the draft Delegated Regulation.

⁷ See the proposed amendment to Article 3(1) of Delegated Regulation (EU) No 305/2013.

⁸ [EDPS comments on the Commission Delegated Regulation supplementing Directive 2010/40/EU of the European Parliament and of the Council with regard to the harmonised provision for an interoperable EU-wide eCall](#), issued on 19 December 2012.

⁹ In case of other implementing or delegated acts with an impact on the protection of individuals’ rights and freedoms with regard to the processing of personal data, the EDPS would like to remind that he needs to be consulted on those acts as well. The same applies in case of future amendments that would introduce new or modify existing provisions that directly or indirectly concern the processing of personal data.

¹⁰ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, p. 1.

¹¹ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), OJ L 201, 31.7.2002, p. 37.

specifying that PSAPs and other emergency control centres or service partners are controllers under the GDPR.

8. The EDPS also welcomes that Article 7(2) of Delegated Regulation (EU) No 305/2013 would specify the data retention period applicable to the MSD received by PSAPs¹². At the same time, the EDPS notes that the new Article 6(2) would also refer to retention periods. To ensure alignment and avoid possible legal uncertainty, the EDPS recommends including in Article 6(2) an appropriate cross-reference to Article 7(2).

Brussels, 13 November 2023

(e-signed)

Wojciech Rafał WIEWIÓROWSKI

¹² See also recital 8 of the draft Delegated Regulation.