

EDPS comments on the Commission Recommendation and the accompanying impact assessment on the implementation of the harmonised EU-wide in-vehicle emergency call ("eCall")

I. General remarks

1. The Recommendation¹ and the accompanying impact assessment² are put forward by the Commission in the context of its intention to establish a European regulatory framework on eCall. One of its major components will consist in the adoption of a Regulation providing for the mandatory introduction of the in-vehicle part of the eCall service in new type-approved vehicles in Europe.
2. The EDPS generally supports the eCall initiative, which pursues important objectives of public safety. The EDPS particularly welcomes a harmonised European approach to eCall, which should contribute to setting consistent data protection standards for its deployment and use.
3. However the EDPS underlines, as was clearly stated by the Article 29 Working Party in its Opinion on eCall³, that the choice of a mandatory introduction of eCall will have to be properly justified in terms of data protection. It should first be demonstrated why the mandatory introduction of eCall is necessary for the pursued purpose and how this would be the best way -in comparison to other options- to fulfil that aim.
4. Furthermore, appropriate guarantees will need to be set forth in the Regulation, which take into account data protection principles. In particular, the Regulation should clarify the responsibilities under the data protection legal framework -namely, the Directives 95/46/EC⁴ and 2002/58/EC⁵- of the different actors involved in eCall as well as the modalities for providing information to data subjects and for facilitating the exercise of their data protection rights.

¹ Commission Recommendation of 8 September 2011 on the support to the EU-wide eCall service in electronic communication networks for the transmission of in-vehicle emergency calls based on 112 ("eCalls"), C(2011) 6269 final.

² SEC(2011)1019 final.

³ See Opinion of the Article 29 Working Party on data protection and privacy implications in eCall initiative, WP 125, adopted on 26 September 2006, page 5: "*In case the eCall service is to be obligatory, the system would de facto be embedded in the vehicle and its activation would be mandatory. However, this option would need to be enforced by a dedicated EU-wide regulation. Such regulation would have to be properly justified in terms of data protection.*" (WP 125, adopted on 26 September 2006).

⁴ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281, 23.11.1995, p. 31.

⁵ 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.

5. The EDPS also stresses out that appropriate rules should be defined for the proper processing of personal data relating to eCalls not only by mobile network operators but also by all other actors involved in eCall, including vehicle manufacturers, PSAPs and emergency services.
6. Given the data protection implications of the envisaged Regulation, the EDPS and the Article 29 Working Party should be duly consulted on the proposal from the Commission for a Regulation on eCall.

II. Delineating the chain of actors and of responsibilities in eCall

7. The eCall initiative has been set up with a view to dealing with emergency situations, for which the intervention of emergency services is necessary (e.g. firemen, ambulance, etc). For an eCall to take place, it requires the involvement of a number of actors, from the implementation of the eCall platform in the vehicle up to the handling of an actual eCall, namely: (i) vehicle manufacturers who provide the eCall in-vehicle platform, (ii) mobile network operators who ensure the conveyance of data and communications from the in-vehicle platform to the recipient of an eCall, (iii) the Public Safety Answering Point (PSAP) which is the recipient of the eCall and of the eCall data, and (iv) the emergency services which will be providing the required emergency assistance to individuals in the field, which may not necessarily be the same as the PSAP.
8. Beyond the standard eCall framework, several initiatives from the private sector are being developed which aim at using the eCall in-vehicle platform for providing additional assistance services, such as providing assistance to tourists and travellers or in the context of a vehicle technical problem (so called "private eCall"). In this context additional operators also intervene; it is however not clear who will be acting as providers of these enhanced emergency assistance services, whether this would be the car manufacturers and/or other service providers acting in their own name or on their behalf, and what would be the role of mobile network operators in this respect.
9. Both standard and private eCalls involve a complex chain of actors, whose responsibilities from a data protection perspective may not always be clearly apparent or understood. One major issue is to determine who is the data controller in the sense of Article 2(d) of Directive 95/46/EC⁶, as this person will bear the most responsibilities from a data protection perspective.
10. In the standard eCall, it is clear from the assessment conducted by the Article 29 Working Party that the PSAPs would be considered to be the data controllers. In the private eCall, the providers of additional assistance services who process data for their own purposes are likely be considered to be the controllers of the processing, in which case they would be responsible for ensuring compliance of these processing operations with data protection law. Mobile network operators seem to have a limited role in the processing of personal data in eCall as they appear only to be conveyors of a set of data and of the call itself from the data subject to the PSAP; when acting in this capacity, their processing of data must

⁶ Pursuant to Article 2(d) of Directive 95/46/EC, the "'controller' shall mean the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes and means of the processing of personal data; where the purposes and means of processing are determined by national or Community laws or regulations, the controller or the specific criteria for his nomination may be designated by national or Community law".

comply mainly with the provisions of the ePrivacy Directive⁷. However, if they are offering additional services in their own name, and process personal data for their own purposes (e.g. they offer assistance to tourists, etc), they will likely be considered to be data controllers of such processing.

11. Nevertheless, other actors who intervene solely as processors are not totally exempt from any obligations under data protection law. Whilst they may have a more limited responsibility under data protection law, they must none the less ensure the proper handling of personal data in eCall in accordance with Article 17 of Directive 95/46/EC concerning security of processing. Furthermore, given the complexity of the chain of actors in eCall, specific modalities will have to be defined to ensure that the necessary information is provided on time to data subjects and for facilitating the exercise of their data protection rights in respect of their eCall data. In a scenario where the eCall platform would *de facto* be embedded in the vehicle, it is foreseeable that the vehicle manufacturer will have a role to play in informing the individuals about the data processing and in helping them exercise their rights concerning their personal data processed in the in-vehicle platform.

III. Ensuring the fair and proportionate processing of data in eCall

12. The EDPS welcomes the taking into account by the Commission of the Opinion of the Article 29 Working Party on eCall⁸ for the deployment of eCall. Some of the data protection safeguards recommended by the Article 29 Working Party have been explicitly included in the Recommendation, such as the non permanent tracking of the vehicle and the transmission by mobile network operators of a "minimum set of data" to the PSAP. Further guarantees are however needed to ensure a proper deployment of eCall, as described below.

a) *Minimum set of data*

13. In accordance with the proportionality principle, only the data strictly necessary for the purpose of handling an eCall should be transmitted from the in-vehicle platform to the PSAP. In this respect, a minimum set of data has been defined and standardised in standard EN 15722, which notably includes the accurate location of the vehicle and the time of the incident. The EDPS would stress that this minimum set of data should be the exhaustive list of data that may be processed by mobile network operators for purpose of an emergency call.

b) *Location data*

14. While the Universal Service Directive⁹ provides that consent may be overridden in cases where the use of location data is necessary for emergency purpose, the EDPS underlines that transparency obligations still have to be complied with and that mobile network operators must provide specific information to the users with whom they have entered into

⁷ 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.

⁸ Article 29 Working Party Opinion WP 125 on data protection and privacy implications in eCall initiative, adopted on 26 September 2006.

⁹ Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive), OJ L 108, 24.4.2002, p. 51.

a contract. Article 20 of the Universal Service Directive, as revised by Directive 2009/136/EC, requires mobile network operators to provide users with clear, comprehensive and easily accessible information on whether or not access to emergency services and caller location information is being provided, and any limitations on the provision of emergency services under Article 26.

c) *Advanced eCall applications and enhanced emergency assistance services*

15. The Recommendation foresees the development of eCall enhanced services for emergency assistance, which would allow the use of the eCall platform for the provision of additional services. It is not clear whether mobile network operators would be required by those operating enhanced emergency assistance services to transmit a certain number of additional information from the in-vehicle platform to them. This would result in extending the scope of the data that they are authorised to communicate as well as the scope of the recipients to whom they are required to transmit the data.
16. Although these additional services would be provided on a commercial basis and would *a priori* not be part of the eCall deployment in the proposed EU regulatory approach, the fact that the provision of these additional services will rely upon a device that is integrated in the vehicle pursuant to a mandatory requirement will however affect the foreseeable use of eCall. These additional and further uses must therefore be taken into account in the future Regulation on eCall in order to prevent the collection of unnecessary data and any misuse and to govern the type of additional information on possible optional use that may be made of the data.
17. The EDPS emphasizes that the processing of personal data in advanced eCall applications and/or for the provision of additional services must be done in accordance with Directive 95/46/EC¹⁰ and Directive 2002/58/EC. In particular there must be a valid legal basis for the processing, which should be clarified in the future Regulation. As soon as the data processing is not directly legitimised by the emergency assistance to the data subject (eCall), another legal basis will have to be found; in principle this basis should be the consent of the data subject¹¹. In order for their consent to be valid, data subjects must be provided, prior to their decision to subscribe to additional services, with transparent information about the processing as foreseen in Article 10 of Directive 95/46/EC, such as the identity of the controller, the types of data processed, the purpose of the processing, the recipients of the data and how they may exercise their rights with respect to their personal data.
18. Furthermore, the provision of these additional services may involve the collection by the in-vehicle platform of additional data other than those that have been considered strictly necessary for eCall, such as the number of occupants of the vehicle, crash sensor indicators, etc. It should be ensured that only the data necessary for the additional service are collected in the in-vehicle platform and transmitted to the relevant operator.
19. Moreover, if the data collected in the eCall platform are intended to be transferred to recipients located in countries outside the EU, specific adequate safeguards will have to be adduced, as provided in Articles 25 and 26 of Directive 95/46/EC, in order to permit such transfers to take place. This might be the case for example when the car manufacturer

¹⁰ See also pages 6 and 7 of Article 29 Working Party Opinion on eCall as concerns the eCall extended system.

¹¹ See Article 29 Working Party Opinion 15/2011 on the definition of consent, available at: http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/files/2011/wp187_en.pdf.

wants to transfer data collected in the vehicle to establishments located in a third country for purpose of technical analysis or for maintenance and repair.

20. Considering the potential risks to privacy and data protection, the EDPS recommends that the development of advanced eCall applications should be subject to a Privacy Impact Assessment, to be carried out by the data controller/operator of the system.
21. Finally, the EDPS emphasizes that it is for the controllers and operators of the system to ensure that it is used in full compliance with data protection law and to demonstrate such conformity with national data protection authorities, whether during *a priori* control procedures (e.g. prior notifications) or *a posteriori* checks (e.g. in the course of complaints and investigations).

IV. Defining appropriate measures for the proper handling and transmission of eCalls and in-vehicle data

22. Mobile network operators play a central role in the eCall architecture as they are the ones who provide the connection between the in-vehicle platform and the PSAP and the emergency services, and possibly other service providers. On the one hand they enable a call to be made whilst on the other hand they ensure the transmission of a number of data gathered by the in-vehicle platform to the relevant recipients.
23. In view of the mobile network operators' central role in eCall, the Commission has adopted the present Recommendation, which defines a number of measures for the handling of eCalls and for their transmission to PSAPs. In addition, a number of essential common conditions and principles are defined in the Recommendation, such as the integration of "emergency service category value", "eCall discriminator" and the transmission to PSAPs of a "minimum set of data".
24. However, the definition of detailed rules on the handling of eCalls by public mobile network operators has been left to Member States, which may lead to discrepancies amongst Member States. The EDPS regrets that a higher level of harmonisation could not be achieved on this aspect, which could also lead to diverging levels of data protection and security of the data across Europe.
25. Furthermore, the EDPS underlines that appropriate rules on the handling of personal data relating to eCall should be defined not only in respect of mobile network operators but also for all other actors involved in eCall, including vehicle manufacturers, PSAPs, emergency services and possibly, in the context of private eCall, providers of additional assistance services. In the context of the regulatory approach of the Commission to eCall, and to ensure consistency and legal certainty across Europe, it would be advisable to have these rules defined at European level.
26. As to the content of such rules, the EDPS advises that they should be based on European standards or specifications which take into account the protection of personal data. This approach is notably emphasised in Directive 1999/5/EC¹² as concerns the design of radio and telecommunications terminal equipment.

¹² Mainly the Article 3.3 (c) of Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity.

27. The EDPS emphasises that the design of the in-vehicle platform should be based on the principle of "privacy by design"; vehicle manufacturers will bear some of the responsibility for the design of the in-vehicle platform, or at least in the choice of specific in-vehicle devices, and they will have to ensure that the device embedded in the vehicle is privacy friendly.
28. Furthermore, all the data protection principles should be duly taken into account in developing detailed rules on the handling of data in eCall, which might need to be differentiated according to the type of operator concerned (mobile network operator, PSAP, emergency service, or providers of additional services). Among others, particular attention should be given to the following data protection aspects:
- the categories of personal data processed (MSD or additional data necessary for the provision of additional services);
 - the time limits for the retention of eCall data applicable to the various operators processing the data in accordance with applicable law and with the necessity test;
 - the carrying out of privacy and data protection impact assessments to help define the eCall infrastructure and the procedures for the transmission of in-vehicle eCalls and data and to help adopt appropriate security measures;
 - the security measures adopted to protect the confidentiality of the data and to secure the system against unauthorised access and misuse; the feasibility of encrypting eCall data should be explored.
29. Finally, given the data protection implications of the envisaged Regulation, the EDPS and the Article 29 Working Party should be duly consulted in good time on the proposal from the Commission for a Regulation on eCall.

Done in Brussels, on 12 December 2011