



LEONARDO CERVERA-NAVAS
THE DIRECTOR

Mr Herald RUIJTERS
Director-General for Mobility and
Transport
European Commission
B-1049 Brussels

Brussels,
WW/RR/ssp/D(2017)1778 C2015-0960
Please use edps@edps.europa.eu for all
correspondence

Subject: EDPS formal comments on the Draft Delegated Regulation supplementing Directive 2010/40/EU of the European Parliament and the Council with regard to “the provision of EU-wide multimodal travel information services”.

Dear Mr Ruijters,

I am writing in reply to a consultation of the EDPS on 31 July 2017, concerning the above mentioned draft Regulation.

As indicated in your letter, the EDPS already provided informal comments on 15 September 2016, at the occasion of the inter-service consultation.

We are pleased to see that the comments made by the EDPS were integrated in the Proposal for a Delegated Regulation. We would like to address two additional comments, as follows.

- Regarding the reference to current and future EU legislation on the protection of personal data, we welcome the fact that Recital (5)¹ of the Draft Delegated Regulation now mentions the Regulation 2016/679 (“the GDPR”). For the sake of consistency, we advise to insert the same reference to the GDPR under point 3.3 of the Explanatory Memorandum.

- Regarding Recital (6) of the Draft Delegated Regulation, we welcome the fact that the reference to anonymised data was deleted, since it seemed to imply that data protection legislation was applicable to anonymised data, whereas this is not the case. For this reason, Recital (6) should make a reference to the collection of “personal data”, instead of “data”, since only personal data are subject to data protection law. In addition, we would like to raise the following remarks on Recital (6):

¹ Former Recital 6 in the draft submitted to the EDPS on 1 August 2016.

- We welcome the new reference to the principles of privacy by design and privacy by default. However, we stress that these principles, as stated in Article 25 of the GDPR, do not only include technical measures but also organisational ones. The same remark applies regarding pseudonymisation, which also implies technical *and organisational* measures (see Article 4 (5) of the GDPR). Therefore, the EDPS suggests adding a reference to organisational measures in Recital (6) which are, along with technical measures, inherent to the processing of pseudonymised data and are also essential elements of the principles of privacy by design and privacy by default.
- The use of pseudonymisation is merely a mean to achieve some of the obligations of the data controller under the GDPR². Since pseudonymised data are still considered as personal data³, because they remain identifiable, data protection principles apply to them as well (contrary to anonymous data)⁴. Therefore, the EDPS suggests stating clearly in Recital (6) that the mere use of pseudonymised data does not exempt the controller from respecting the provisions of data protection law.

Our services are at your disposal, should you need any clarification in relation with this letter.

Yours sincerely,

(signed)

Leonardo CERVERA-NAVAS

Cc: Mr Per Haugaard, Head of Unit - Planning, Communication and Inter-institutional Relations, DG MOVE
 Mr Pierpalolo SETTEMBRI, Assistant to the Director-General, DG MOVE
 Ms Claire DEPRE, Head of Unit - Intelligent Transport Systems, DG MOVE
 Ms Eleonore DE BERGEYCK, Security officer - Informatics & Logistics, DG MOVE
 Mr Olivier MICOL, Head of Unit - Data Protection, DG JUST
 Mr Philippe RENAUDIÈRE, European Commission Data Protection Officer

Contact person: *Romain ROBERT (tel: 02 283 1999)*

² See e.g. Articles 6 (assessment of a compatible purpose), 25 (data protection by design), 32 (security of the processing), 40 (codes of conduct), or 89 (processing of data for research or statistical purposes).

³ See Recital (26) of the GDPR.

⁴ As this is reminded by Recital (28) of the GDPR, “*The application of pseudonymisation to personal data can reduce the risks to the data subjects concerned and help controllers and processors to meet their data-protection obligations. The explicit introduction of ‘pseudonymisation’ in this Regulation is not intended to preclude any other measures of data protection.*”