



# EUROPEAN DATA PROTECTION SUPERVISOR

The EU's independent data  
protection authority

2 March 2022

**Opinion 3/2022**  
on the Proposal for amending  
the Directive on the framework  
for the deployment of  
Intelligent Transport Systems  
in the field of road transport

*The European Data Protection Supervisor (EDPS) is an independent institution of the EU, responsible under Article 52(2) of Regulation (EU) 2018/1725 ‘With respect to the processing of personal data... for ensuring that the fundamental rights and freedoms of natural persons, and in particular their right to data protection, are respected by Union institutions and bodies’, and under Article 52(3) ‘...for advising Union institutions and bodies and data subjects on all matters concerning the processing of personal data’.*

*Wojciech Rafał Wiewiorowski was appointed as Supervisor on 5 December 2019 for a term of five years.*

*Under Article 42(1) of Regulation (EU) 2018/1725, the Commission shall ‘following the adoption of proposals for a legislative act, of recommendations or of proposals to the Council pursuant to Article 218 TFEU or when preparing delegated acts or implementing acts, consult the EDPS where there is an impact on the protection of individuals’ rights and freedoms with regard to the processing of personal data’ and under Article 57(1)(g), the EDPS shall ‘advise on his or her own initiative or on request, all Union institutions and bodies on legislative and administrative measures relating to the protection of natural persons’ rights and freedoms with regard to the processing of personal data’.*

*This Opinion relates to the EDPS' mission to advise the EU institutions on coherently and consistently applying the EU data protection principles. This Opinion does not preclude any future additional comments or recommendations by the EDPS, in particular if further issues are identified or new information becomes available. Furthermore, this Opinion is without prejudice to any future action that may be taken by the EDPS in the exercise of his powers pursuant to Regulation (EU) 2018/1725*

## Executive Summary

The European Commission adopted on 14 December 2021 a Proposal for amending Directive 2010/40/EU on the framework for the deployment of Intelligent Transport Systems ('ITS') in the field of road transport and for interfaces with other modes of transport. The deployment of ITS has been identified by the Commission as a key action in achieving connected and automated multimodal mobility.

The objective of the Proposal is to expand the current scope of the ITS Directive to cover new and emerging challenges and to allow essential ITS services to be made mandatory across the EU. Moreover, the revision is part of the evolving landscape of legislation on data, following the Communication on the European strategy for data.

The EDPS recalls that the processing of personal data shall be lawful if the data subject (the identified or identifiable natural person to whom personal data relate) has given consent to the processing of his or her personal data for one or more specific purposes or if another appropriate legal basis under Article 6 GDPR can be validly applied.

The Proposal indicates that data types and services, the provision of which should be made mandatory, would be identified based on the specifications set out in delegated acts supplementing the ITS Directive and reflect the data types and services set therein. At the same time, the EDPS notes that the Proposal would delete a number of provisions included in the existing ITS Directive, including the provisions that relate to the principle of purpose specification and data minimisation.

Taking into account the particular protection granted to privacy and data protection as fundamental rights protected by Articles 7 and 8 of the Charter of Fundamental Rights of the European Union, the EDPS considers that the categories of personal data as well as the purposes for the processing of personal data in the context of the deployment of ITS services should be specified directly in the Proposal rather than in delegated acts supplementing the ITS Directive. In addition, the EDPS considers it important that the requirements of purpose specification, security, data minimisation, and to the need to ensure that provisions on consent are respected would remain appropriately reflected in the revised ITS Directive.

Insofar as the Proposal would seek to provide a legal basis for the processing of personal data in the context of the deployment and operational use of ITS, it should also establish a maximum storage duration for the relevant categories of data concerned, taking into account the ITS in question.

Given that the deployment of ITS may involve a large number of stakeholders, the EDPS recommends that a DPIA be conducted by the Commission before enabling the deployment of ITS services that are likely to result in a high risk to the rights and freedoms of natural persons (e.g. mobility management services by public transport authorities).

## Table of Contents

<b>1. Introduction.....</b>	<b>4</b>
<b>2. General Comments.....</b>	<b>5</b>
<b>3. Specific Comments.....</b>	<b>6</b>
3.1. Legal basis and categories of personal data .....	6
3.2. Roles and responsibilities.....	7
3.3. Storage duration .....	8
3.4. Data minimisation .....	8
3.5. Data protection impact assessment .....	9
<b>4. Conclusions.....</b>	<b>10</b>

## THE EUROPEAN DATA PROTECTION SUPERVISOR,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 16 thereof,

Having regard to the Charter of Fundamental Rights of the European Union, and in particular Articles 7 and 8 thereof,

Having regard to Regulation (EC) 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 Community institutions and bodies and on the free movement of such data<sup>1</sup>, and in particular Articles 42(1) thereof,

## HAS ADOPTED THE FOLLOWING OPINION:

### 1. Introduction

1. The European Commission adopted on 14 December 2021 a Proposal for amending Directive 2010/40/EU on the framework for the deployment of Intelligent Transport Systems in the field of road transport and for interfaces with other modes of transport ('the Proposal')<sup>2</sup>.
2. Directive 2010/40/EU ('the ITS Directive') was designed to be the framework for accelerating and coordinating the deployment and use of ITS applied to road transport and its interfaces with other transport modes.
3. The Commission's *Communication on a Sustainable and Smart Mobility Strategy* ('the Strategy')<sup>3</sup> identifies the deployment of Intelligent Transport Systems ('ITS') as a key action in achieving connected and automated multimodal mobility, and therefore contributing to the transformation of the European transport system to reach the objective of efficient, safe, sustainable, smart and resilient mobility.
4. The Strategy announced that the ITS Directive would soon be revised, including some of its delegated regulations. The Strategy also highlighted the Commission's intention to support the creation of a coordination mechanism in 2021 for the national access points (NAPs) created under the ITS Directive. Moreover, the revision is part of the evolving landscape of legislation on data, following the Communication on the European strategy for data<sup>4</sup>.
5. The Proposal seeks to address the following problems<sup>5</sup>:
  - i. the lack of interoperability and lack of continuity of applications, systems and services;
  - ii. the lack of concertation and effective cooperation among stakeholders; and
  - iii. unresolved issues related to the availability and sharing of data supporting ITS services.

6. The Proposal seeks to address these problems notably by expanding the current scope of the ITS Directive to cover new and emerging challenges, and by allowing essential ITS services to be made mandatory across the EU. The deployment of ITS services will be supported by the availability of data necessary to provide reliable information and additional rules would help to improve alignment with current practices and standards<sup>6</sup>.
7. On 6 January 2022 the Commission requested the EDPS to issue an Opinion on the Proposal pursuant to Article 42(1) of Regulation (EU) 2018/1725 ('the EUDPR')<sup>7</sup>. The comments and recommendations in this Opinion are limited to the provisions in the Proposal that are most relevant from data protection perspective.

## 2. General Comments

8. The EDPS notes that most actions under the ITS Directive have focused on ensuring the interoperability and accessibility of data that is already available in digital machine-readable format and on the deployment of ITS services, but prescribed no obligations to relevant stakeholders for making that data available or for deploying specific services<sup>8</sup>. The mandatory provision of a number of essential ITS services and crucial data is now considered necessary, however, to ensure both continued availability of such data and continued delivery of such services across the Union.
9. Recital 15 of the Proposal<sup>9</sup> provides that when the deployment and use of ITS applications and services entail the processing of personal data, such processing should comply with Union law on the protection of personal data and privacy, as set out, in particular, in Regulation (EU) 2016/679 ('GDPR')<sup>10</sup> and in Directive 2002/58/EC (ePrivacy Directive')<sup>11</sup>. The EDPS welcomes that references to applicable data protection law have been inserted in a specific recital of the Proposal.
10. Having regard to Article 1(10) of the Proposal, that would replace Article 10 of the ITS Directive by a new Article 10, the EDPS notes that the Proposal removes some provisions of Article 10, which contained references to a number of data protection principles, including the provisions that relate to the principle of purpose specification and data minimisation.
11. In the Explanatory Memorandum of the Proposal<sup>12</sup>, the Commission justifies the proposed changes by the aim to remove duplications of existing obligations under data protection rules, e.g. on the security of personal data processed and the need for controllers to comply with their other obligations under data protection rules.
12. The EDPS considers that Article 10 of the current ITS Directive does not merely duplicate the relevant provisions the GDPR<sup>13</sup>. Moreover, the EDPS considers that requirements of purpose specification, security, data minimisation, and to the need to ensure that provisions on consent are respected when special categories of personal data are involved are of particular importance in the context of the operation of ITS applications and services. The EDPS therefore **considers it necessary that these requirements remain appropriately reflected in the revised ITS Directive**, taking into account the specific nature of the ITS services envisaged.

### 3. Specific Comments

#### 3.1. Legal basis and categories of personal data

13. Article 1(6) of the Proposal would introduce the obligation for Member States to ensure that for each data type listed in Annex III, data is available for the geographical coverage relative to such data type and is accessible on the National Access Points<sup>14</sup>. In addition, Member States shall be obliged to ensure that the ITS services specified in Annex IV are deployed for the geographical coverage set out in that Annex by the date specified therein<sup>15</sup>.
14. The Commission Staff Working Document accompanying the Proposal clarifies that *“most ITS data is not personal (e.g. speed limits, traffic rules, maps) but some personal data is needed for some critical road safety services (e.g. vehicles sharing they are braking hard warn oncoming traffic of a potentially dangerous situation). Despite measures such as anonymization and data aggregation, data generated through the usage of vehicles can be considered personal and in those cases the GDPR applies.”*<sup>16</sup>
15. The EDPS considers that the Proposal does not clearly indicate when the performance of ITS services entails the collection and processing of personal data for the processing in relation to each of the ITS services.
16. In this regard, the EDPS recalls that **the processing of personal data shall be lawful** if the data subject (the identified or identifiable natural person to whom personal data relate) has given consent to the processing of his or her personal data for one or more specific purposes or if another appropriate legal basis under Article 6 GDPR can be validly applied.
17. The EDPS remarks that recital 12 of the Proposal specifies that data types and services, the provision of which should be made **mandatory**, should be identified based on the specifications set out in delegated acts supplementing the ITS Directive and reflect the data types and services set therein.
18. Article 1(2) of the Proposal provides for the **priority areas**<sup>17</sup> for the development and use of specifications and standards, namely:
  - i. Information and mobility ITS services;
  - ii. Travel, transport and traffic management ITS services;
  - iii. Road safety and security ITS services; and
  - iv. Cooperative, connected and automated mobility services.

The scope of the priority areas is specified in Annex I. Annex I adapts Annex I of the current Directive by organising the priority areas according to the types of ITS services, and also adds new actions corresponding to new and emerging ITS services<sup>18</sup>.

19. Article 1(10) of the Proposal, replacing Article 10 of the ITS Directive, specifies that where specifications adopted pursuant to Article 6 of the ITS Directive concern the processing of traffic, travel or road data that are personal data, **these specifications shall lay down the categories of those data** and provide for appropriate personal data protection safeguards pursuant to the GDPR and the ePrivacy Directive.



20. The EDPS considers that the provisions of the Proposal are too broad and general to adequately address the privacy and data protection concerns raised by ITS deployment in the Member States. It is not clearly indicate when the performance of ITS services will lead to the collection and processing of personal data, what are the specific purposes for which a data processing occurs, nor what is the legal basis that justifies such processing.
21. The EDPS considers that the priority areas do not specify sufficiently the purposes of the possible processing of personal data. In other words, insofar as the processing of personal data is concerned, there is still a need, for each of the four areas listed in the new Article 2(1), to further specify the purpose of the processing of personal data in accordance with the purpose limitation principle under Article 5(1)(b) GDPR<sup>19</sup>.
22. Taking into account the particular protection granted to privacy and data protection as fundamental rights protected in Articles 7 and 8 of the Charter of Fundamental Rights of the European Union, it can be questioned whether and to which extent the categories of the data processing operations should be decided through the delegated acts.
23. The EDPS considers that the **categories of personal data** as well as the **purposes for the processing of personal data** in the context of the deployment of ITS services **should be specified directly in the Proposal**. While the EDPS understands that, given the diversity of ITS and the variety of potential use cases, it may not be possible to fully detail each possible data category, the EDPS considers that only more detailed data fields (sub-categories of data) falling under the already defined categories of data should be added through the adoption of delegated acts<sup>20</sup>. Moreover, the purposes for which the categories of personal data may be processed should be clearly set out in the Proposal itself.
24. Insofar as the Proposal seeks to provide a legal basis for the processing of personal data in the context of the deployment and operational use of ITS, it should therefore:
- clearly specify the **purpose(s) of the processing**; and
  - provide a clear and comprehensive overview of the **categories of personal data** that may be processed.

In case certain categories of personal data would be **processed for multiple purposes**, the Proposal should clearly establish **the link between the purposes and the categories of personal data** concerned.

When specifying the categories of data, the EDPS recalls first and foremost comply with the **requirements of necessity and proportionality**<sup>21</sup>, as well as **the principle of data minimisation**.

### 3.2. Roles and responsibilities

25. The EDPS recalls that the concepts of controller, joint controller and processor play a crucial role in the application of data protection law, since they determine who shall be responsible for compliance with different data protection rules, and how data subjects can exercise their rights in practice.



26. Insofar as the Proposal seeks to provide a legal basis for the processing of personal data in the context of the deployment and operational use of ITS, it should also set out the roles of the various actors involved.
27. The EDPS recalls that in line with Article 26 of the GDPR “*where two or more controllers determine the purposes and means of the processing, they shall be joint controllers*”. This specification makes it clear that the concept of controllership does not necessarily refer to one single entity, but can also involve multiple parties playing a role in a processing operation. As a result, and as confirmed by the CJEU, each of the actors involved have obligations under data protection law<sup>22</sup>. Insofar as the various actors act as joint controllers, they “*shall in transparent manner determine their respective responsibilities for compliance with their data protection obligations, in particular as regards the exercising of the rights of the data subject and their respective duties to provide the information (...)*”. In that case, the distribution of tasks between them should be laid down, preferably by law, or by an arrangement between the joint controllers.
28. The allocation of the responsibilities between the various actors should be clear and accessible in order in particular to ensure that the data subjects can fully exercise their rights under the GDPR. While detailed arrangement to ensure compliance with data protection requirements may be specified by way of an implementing act, the EDPS considers that **the roles of the various actors involved as controller, joint controller or processor should be clearly assigned**.

### 3.3. Storage duration

29. The EDPS recalls that one of the fundamental principles of data protection is that personal data is not kept in a form which permits identification of data subjects for longer than necessary for the purpose(s) for which the data were collected<sup>23</sup>. In practice, this means that a maximum, proportionate retention period, should be determined, following the expiry of which the personal data should be deleted.
30. Insofar as the Proposal seeks to provide a legal basis for the processing of personal data in the context of the deployment and operational use of ITS, **it should establish a maximum storage duration for the relevant categories of data concerned**, taking into account the purposes of the processing related ITS in question.

### 3.4. Data minimisation

31. As noted, Article 10(3) of the current Directive states that “*[i]n order to ensure privacy, the use of anonymous data shall be encouraged, where appropriate, for the performance of the ITS applications and services*”.
32. However, the EDPS notes that Article 10 of the Proposal, that would replace Article 10 of the current Directive with a new Article 10, underlines only that “*[w]here appropriate, the use of anonymous data shall be encouraged*”, but no longer provides any indication as to when personal data should be anonymised. The EDPS underlines that **the use of anonymous data should not only be encouraged**, but that **personal data should only be processed insofar as such processing is necessary for the performance of ITS applications and services**. As remarked above, the EDPS considers that these requirements should remain appropriately reflected in the revised ITS Directive.

### 3.5. Data protection impact assessment

33. Article 35(1) of the GDPR provides that a Data Protection Impact Assessment ('DPIA') must be carried out when processing is "*likely to result in a high risk*" to the rights and freedoms of individuals, taking into account the nature, scope, context and purposes of the processing. More specifically, the controller must assess the necessity and proportionality of the processing<sup>24</sup> as well as the possible risks to the rights and freedoms of individuals. Finally, the impact assessment shall contain in particular the envisaged safeguards, security measures and mechanisms to ensure the protection of personal data<sup>25</sup>.
34. Article 35(1) GDPR clearly indicates that processing personal data "*using new technologies*" is likely to result in a high risk. Moreover, Article 35(3)(c) provides that a DPIA shall in particular be required, inter alia, in the case of "*a systematic monitoring of a publicly accessible area on a large scale*". The EDPS notes that this feature is likely to be present for many ITS services. In addition, recital 91 GDPR clarifies that a DPIA would be necessary in particular in case of "*large-scale processing operations which aim to process a considerable amount of personal data at regional, national or supranational level and which could affect a large number of data subjects and which are likely to result in a high risk*".
35. The Guidelines on DPIA<sup>26</sup> advance nine criteria to assess the necessity of a DPIA. According to these guidelines: "*a data controller can consider that a processing meeting two criteria would require a DPIA to be carried out. In general, the WP29 considers that the more criteria are met by the processing, the more likely it is to present a high risk to the rights and freedoms of data subjects, and therefore to require a DPIA, regardless of the measures which the controller envisages to adopt*".
36. In light of the above, the EDPS considers that processing of personal data in the context of the deployment and use of ITS services is likely to meet (at least) three criteria: systematic monitoring; data processed on a large scale; and innovative use or applying new technological or organisational solutions. Taking all above into account, the EDPS considers that the deployment of ITS services involving the processing of personal data would likely require a DPIA.
37. The EDPS recalls that **a DPIA may be used to assess multiple processing operations** that are similar in terms of nature, scope, context, purpose, and risks. Recital 92 of the GDPR clarifies that there are circumstances under which it may be reasonable and economical for the subject of a data protection impact assessment to be broader than a single project, for example '*where authorities or bodies intend to establish a common application or processing platform*'.
38. Given that the deployment of ITS may involve a large number of stakeholders, the EDPS recommends that the **Commission carry out a DPIA before enabling the deployment of ITS services that are likely to result in a high risk** to the rights and freedoms of natural persons (e.g., mobility management services by public transport authorities). The EDPS recalls that when a DPIA is carried out at the stage of the proposal for the legal basis, it is likely to require a review before entry into operations, as the adopted legal basis may differ from the Proposal in ways that affect the impact on privacy and data protection<sup>27</sup>.

## 4. Conclusions

39. In light of the above, the EDPS makes the following main recommendations:

a) Insofar as the Proposal seeks to provide a legal basis for the processing of personal data in the context of the deployment and operational use of ITS, it should therefore:

- clearly specify the **purpose(s) of the processing**; and
- provide a clear and comprehensive overview of the **categories of personal data** concerned;
- clearly assign the **roles of the various actors involved** as controller, joint controller or processor;
- establish a **maximum storage duration** for the relevant categories of data concerned, taking into account purposes of the processing the ITS in question.

b) Given that the deployment of ITS may involve a large number of stakeholders, the EDPS recommends that the Commission carry out a data protection impact assessment before enabling the deployment of ITS services that are likely to result in a high risk to the rights and freedoms of natural persons.

Brussels, 2 March 2022

*[e-signed]*

Wojciech Rafał WIEWIÓROWSKI

## Notes

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<sup>1</sup> OJ L 295, 21.11.2018, p. 39.

<sup>2</sup> COM(2021) 813 final.

<sup>3</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions “Sustainable and Smart Mobility Strategy – putting European transport on track for the future” adopted in December 2020, COM/2020/789 final.

<sup>4</sup> <https://digital-strategy.ec.europa.eu/en/policies/sshoudlstrategy-data>

<sup>5</sup> Explanatory Memorandum, page 3.

<sup>6</sup> Explanatory Memorandum, page 3.

<sup>7</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons 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, OJ L 295, 21.11.2018.

<sup>8</sup> Recital (12) of the Proposal.

<sup>9</sup> Recital 15 of the Proposal states that: “[w]hen the deployment and use of ITS applications and services entail the processing of personal data, such processing should be carried out according to Union law on the protection of personal data and privacy, as set out, in particular, in Regulation (EU) 2016/679 of the European Parliament and of the Council and in Directive 2002/58/EC of the European Parliament and of the Council.”

<sup>10</sup> 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.

<sup>11</sup> 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).

<sup>12</sup> Explanatory Memorandum, page 10.

<sup>13</sup> Article 10 of the current ITS Directive (Rules on privacy, security and re-use of information) states that:

“1. Member States shall ensure that the processing of personal data in the context of the operation of ITS applications and services is carried out in accordance with Union rules protecting fundamental rights and freedoms of individuals, in particular Directive 95/46/EC and Directive 2002/58/EC.”

2. In particular, Member States shall ensure that personal data are protected against misuse, including unlawful access, alteration or loss.

3. Without prejudice to paragraph 1, in order to ensure privacy, the use of anonymous data shall be encouraged, where appropriate, for the performance of the ITS applications and services. Without prejudice to Directive 95/46/EC personal data shall only be processed insofar as such processing is necessary for the performance of ITS applications and services.

4. With regard to the application of Directive 95/46/EC and in particular where special categories of personal data are involved, Member States shall also ensure that the provisions on consent to the processing of such personal data are respected.”

<sup>14</sup> Article 6a of the Proposal.

<sup>15</sup> Article 6b of the Proposal.

<sup>16</sup> The Commission Staff Working Document - Impact Assessment Report accompanying the Proposal for amending Directive 2010/40/EU on the framework for the deployment of Intelligent Transport Systems in the field of road transport and for interfaces with other modes of transport, SWD (2021) 474 final.

<sup>17</sup> Article 2(1) of the Proposal provides that “[f]or the purposes of this Directive, the following shall constitute priority areas for the development and use of specifications and standards:

I. Information and mobility ITS services;

II. Travel, transport and traffic management ITS services;

III. Road safety and security ITS services;

IV. Cooperative, connected and automated mobility services.”

<sup>18</sup> Explanatory Memorandum, p. 11.

<sup>19</sup> Article 5(1)(b) GDPR state that: “[p]ersonal data shall be collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes (‘purpose limitation’)”

<sup>20</sup> See in the same vein the EDPB-EDPS Joint Opinion 04/2021 on the Proposal for a Regulation of the European Parliament and of the Council on a framework for the issuance, verification and acceptance of interoperable certificates on vaccination, testing and recovery to facilitate free movement during the COVID-19 pandemic (Digital Green Certificate), Version 1.1 31 March 2021, at paragraph 41.

<sup>21</sup> See: EDPS Guidelines on assessing the proportionality of measures that limit the fundamental rights to privacy and to the protection of personal data, adopted on 25 February 2019, available at [https://edps.europa.eu/data-protection/our-work/publications/guidelines/edps-guidelines-assessing-proportionality-measures\\_en](https://edps.europa.eu/data-protection/our-work/publications/guidelines/edps-guidelines-assessing-proportionality-measures_en)

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<sup>22</sup> See: Judgment of the Court (Grand Chamber) of 5 June 2018, case C-210/16, *Wirtschaftsakademie v Schleswig-Holstein*, paragraph 29.

<sup>23</sup> Article 5(1) (e) of the GDPR states that “[p]ersonal data shall be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the personal data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) subject to implementation of the appropriate technical and organisational measures required by this Regulation in order to safeguard the rights and freedoms of the data subject (‘storage limitation’)”

<sup>24</sup> Article 35(7)(b) of the GDPR.

<sup>25</sup> Article 35(7)(d) of the GDPR.

<sup>26</sup> Article 29 Working Party Guidelines on Data Protection Impact Assessment (DPIA) and determining whether processing is “likely to result in a high risk” for the purposes of Regulation 2016/679 adopted on 4 October 2017, WP 248 rev.01, p. 8-12

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<sup>27</sup> *Idem*, footnote 19.