



EDPS Formal comments on the draft Commission Delegated Regulation supplementing Directive (EU) 2018/1972 of the European Parliament and of the Council with measures to ensure effective access to emergency services through emergency communications to the single European emergency number ‘112’

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 Community institutions and bodies and on the free movement of such data (‘EUDPR’), and in particular Article 42(1) thereof,

HAS ADOPTED THE FOLLOWING FORMAL COMMENTS:

1. Introduction and background

1. On 5 August 2022 the European Commission issued a draft Commission Delegated Regulation (EU) supplementing Directive (EU) 2018/1972 of the European Parliament and of the Council with measures to ensure effective access to emergency services through emergency communications to the single European emergency number ‘112’ (‘the draft Proposal’).
2. The objective of the draft Proposal is to ensure effective access to emergency services through emergency communications to the single European emergency number ‘112’, as laid down in Article 109(8) of the European Electronic Communications Code (hereinafter: EECC)² and referred to in the explanatory memorandum and Recital (1). The measures adopted shall be necessary to ensure the compatibility, interoperability, quality, reliability and continuity of emergency communications in the Union with regard to caller location information solutions, access for end-users with disabilities and routing to the most appropriate public safety answering point (PSAP). According to the explanatory memorandum³, in order to ensure the compatibility, interoperability, quality, reliability and continuity of emergency communications with regard to caller location solutions, the draft Proposal sets out parameters that need to be taken into account by the competent regulatory authorities when setting

¹ OJ L 295, 21.11.2018, p. 39.

² Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast), OJ L 321, 17.12.2018, p. 36–214.

³ See p. 5.



the criteria for accuracy and reliability of caller location information. The obligation of competent regulatory authorities to establish such criteria is already laid down in Article 109(6) of Directive 2018/1972. The imposition of specific technical solutions involving network-based and handset-derived location information is outside the scope of the draft Proposal, given the number of alternative technical solutions and Member States' obligation to make both these types of location information available for the most appropriate PSAP. At the same time, the criteria for accuracy and reliability of caller location information should ensure that the provided caller location information would be precise enough to allow emergency services to intervene.

3. The draft Proposal is adopted pursuant to Article 109(8) of Directive (EU) 2018/1972.
4. The present formal comments of the EDPS are issued in response to a consultation by the European Commission of 24 October 2022, pursuant to Article 42(1) of Regulation 2018/1725⁴ ('EUDPR'). In this regard, the EDPS welcomes the reference to this consultation in Recital (20) of the Proposal.
5. 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 acts⁵.
6. Furthermore, these formal comments are without prejudice to any future action that may be taken by the EDPS in the exercise of his powers pursuant to Article 58 of the EUDPR and are limited to the provisions of the draft Proposal that are relevant from a data protection perspective.

2. Comments

2.1. General comments

7. The legal basis combines several subject matters that are related: access to emergency

⁴ 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, 21.11.2018, L.295, p. 39.

⁵ 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.

services for end-users with disabilities, routing to the most appropriate Public Safety Answering Point (PSAP), and caller location information. All three subject areas have in common that their need to be regulated is related to technological changes in electronic communications, most notably the transition from circuit-switched 'legacy' networks such as 2G and 3G mobile radio to packet-switched technology, which does not only allow a more efficient use of network resources but also a greater variety of possible technical solutions.

8. As the scope of the Commission Delegated Regulation according to Article 109(8) is limited to certain aspects of access to the single emergency number '112', the EDPS understands that the draft Proposal is not the right place to include safeguards regarding data security and privacy. Traditionally, data security measures to be taken by providers as well as the area of ePrivacy are areas for dedicated regulation. However, the EDPS takes the opportunity to recall that software applications that are meant to be a functional equivalent for users with disabilities for the traditional audio call to a PSAP, as well as the connections they establish, must meet all requirements of data security. Applications that gather contextual information such as caller location information produced by the terminal device must be designed in a way that ensures that this information gathering does not exceed what is necessary to fulfil the purpose of timely routing to the most appropriate PSAP and enabling the timely identification of the intervention resources of the emergency services, and the fast arrival of the emergency services at the intervention scene. The EDPS welcomes that the draft Proposal states the purposes of data processing clearly, e.g. in Article 2(2). Any technical implementation of the draft Proposal will have to consider the limitation to these purposes.

2.2. Caller Location Information

9. According to Article 109(6) of the EEC and repeated in this draft Proposal's Recital (7) and the explanatory memorandum, caller location information can be derived from the handset or the network. The draft Proposal sets in this regard in Article 3 a reliability and accurateness requirement ("as necessary to enable the emergency services to come to the end-user's assistance"), whereby the accuracy criterion shall be expressed (by the national regulatory authorities), depending on the type of network, as information related to the physical address of the network termination point, or in metres in the case of mobile networks. The reliability criterion shall be expressed as success rate, in percentage, of the technical solution or mix of technical solutions to establish a caller location information, in the case of a fixed network, or in the case of a mobile network to establish a search area, both corresponding to the accuracy criterion. The EDPS recognizes that the determination of the location of a terminal device may, depending on the available methods, e.g. fixed line service, use of GPS on a mobile device, use of network information from a long range base station

with an omnidirectional antenna as opposed to a short range base station with sector antennas, inevitably may produce data of different qualities. It is therefore important also from a data protection standpoint that the reliability of the location data is communicated to the PSAP, in line with the principle of accuracy as laid down in Article 5(1)(d) of the GDPR. Accordingly, the EDPS welcomes the efforts undertaken with the draft Proposal in this respect.

10. On occasion of this legislative consultation, the EDPS wishes to recall that the collection and transmission of location data from the handheld device as well as from the provider needs to satisfy existing requirements of transparency.

2.3. Access to emergency services for end-users with disabilities

11. Article 4 of the draft Proposal supplements Article 109(5) of the EECR and lists functional equivalence requirements for means of access to emergency services through emergency communications for end-users with disabilities. These requirements do not give rise to specific comments beyond what has already been stated above in relation to data security and privacy.

2.4. Routing to the most appropriate Public Safety Answering Point

12. Articles 5 to 7 of the draft Proposal contain the basic principle that the most appropriate PSAP for routing purposes must be technically capable to convey without delay the contextual information to the emergency services, require Member States and the European Commission to cooperate on common interoperability requirements and contain reporting obligations. These provisions do not give rise to data protection concerns.

Brussels, xx December 2022

(e-signed)

Wojciech Rafał Wiewiórowski