Opinion of the EDPS on the proposal for a Regulation of the European Parliament and of the Council concerning type-approval requirements for the deployment of the eCall system and amending Directive 2007/46/EC

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 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[1],

Having regard to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 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[2], and in particular Article 28(2) thereof,

HAS ADOPTED THE FOLLOWING OPINION:

1. INTRODUCTION

1.1 Consultation of the EDPS

1. On 13 June 2013, the Commission adopted the proposal for a Regulation of the European Parliament and of the Council concerning type-approval requirements for the deployment of the eCall system and amending Directive 2007/46/EC ('the Proposal')[3] announced in the Commission Communication of 21 August 2009 on 'eCall: Time for Deployment' ('the 2009 Communication')[4].

2. The EDPS welcomes the fact that he is consulted by the Commission and that a reference to the consultation is included in the preambles of the Proposal.

[1] OJ L 281, 23.11.1995, p. 31.
[2] OJ L 8, 12.1.2001, p. 1.
[3] COM (2013) 316 final.
[4] COM (2009) 434 final.

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3. Before the adoption of the Proposal, the EDPS was given the possibility to provide informal comments to the Commission. He highly appreciates that most of his comments have been taken into account.

1.2 Objective and scope of the Proposal

4. This Proposal complements other regulatory measures which have been implemented to support the deployment of eCall, such as the ITS Directive 2010/40/EU[5], the Commission Recommendation of 8 September 2011 on the support to the EU-wide eCall service[6], and the adoption of specifications for the upgrade of Public Safety Answering Points (PSAPs)[7], on which the EDPS was consulted and provided comments[8].

5. The Proposal provides for the mandatory introduction of an eCall in-vehicle system in new type-approved vehicles in Europe. Contrary to the current system where eCall is installed by car manufacturers on a voluntary basis, the Proposal provides for the mandatory fitting of eCall devices in all new vehicles starting with new passenger cars and light commercial vehicles by 1 October 2015[9]. It therefore contains several obligations addressed to vehicle/equipment manufacturers.

2. GENERAL ANALYSIS OF THE PROPOSAL

2.1 Applicability of data protection legislation to any processing of personal data envisaged under the Proposal

6. 'e-Call in-vehicle system' is defined in Article 3 of the Proposal as a 'system activated either automatically via in-vehicle sensors or manually, which carries, by means of mobile wireless communications networks, a standardised minimum set of data (hereinafter 'MSD') and establishes a 112-based audio channel between the occupants of the vehicle and a public safety answering point'.

7. The EDPS wishes to emphasize that, for privately owned cars, the vehicle identification is directly related to the identity of the owner of the car who is in several cases identical with the driver. For other cars, e.g. rental cars, information obtained from the owner will lead to the identification of the driver. Combined with these personal details, the positioning information[10] (location data of the vehicle), and other

[5] 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 L2017/1, 6.9.2010.
[6] Commission recommendation of 8 September 2011 on support for an EU-wide eCall service in electronic communication networks for the transmission of in-vehicle emergency calls based on 112 ('eCalls'), 2011/750/EU, OJ L 303/46, 22.11.2011.
[7] 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 Text with EEA relevance, OJ L 091 , 03/04/2013 P. 0001 – 0004.
[8] See in particular Opinion of 22 July 2009 on the ITS Directive, formal comments of 12 December 2011 on the Commission Recommendation on the implementation of the harmonised EU-wide eCall, and the letter of 19 December 2012 on the Commission Delegated Regulation with regard to the harmonised provision for an interoperable EU-wide eCall, all published on the EDPS website: www.edps.europa.eu (under "Consultation").
[9] See Article 4 and Article 5(1) of the Proposal.
[10] See in particular Recital 6.

information processed, is related to a directly or indirectly identifiable individual and therefore qualifies as personal data.

8. Processing of personal data is one of the core obligations created by the Proposal which is therefore subject to the application of and compliance with data protection legislation and safeguards. In this regard, the EDPS reminds that it is essential to explicitly mention the applicable EU data protection law in a substantive provision of the Proposal: a mere indirect reference in a recital[11] cannot be considered as sufficient.

9. The reference should explicitly provide, as a general rule, that Directive 95/46/EC and its national implementing rules apply to the processing of personal data within the framework of the Proposal.

10. The EDPS also wishes to stress that, contrary to what may be implied from the wording of the proposal, the applicability of data protection law is not the consequence of a recommendation by the Article 29 Working Party. To avoid any ambiguity/confusion, he recommends dissociating the reference to the Article 29 Working Party working document[12] of the reference made to the data protection legislation in Recital 13.

11. Besides, the EDPS notes that concrete data protection safeguards are not developed enough in the proposal. For instance, it is envisaged that the data, originally collected to be transferred in case of accident, either automatically or manually, to a PSAP, can be used for other purposes by car manufacturers and no further specification are given on the necessary data protection safeguards that should be implemented simultaneously to avoid function creep.

12. The EDPS therefore recalls that clarifying in a substantive provision the applicable data protection legislation is essential and welcomed but not sufficient. The references to applicable data protection law should indeed be specified in concrete safeguards, including in particular the purpose limitation requirement, which will apply to any situation in which personal data processing is envisaged, namely 112 eCall as well as private eCall and added value services based on the embedded system. To this end, further guidance will be given in this Opinion.

2.2 The potential intrusiveness of the eCall system

13. The technical approach chosen in the Proposal is the integration of location and communications service equipment in each new car sold in the EU. This equipment will be able to identify and record the car's location at least with the same precision and granularity as mobile phones can do this today. From a technical perspective, this

[11] Currently recital 13 states that 'According to the recommendations made by the Article 29 Data Protection Working Party […], any processing of personal data through the eCall in-vehicle system should comply with the personal data protection rules provided for in 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 an on the free movement of such data […]'.

[12] Working document number 1609/06/EN WP 125 adopted on 26 September 2006.

equipment may therefore carry at least the same privacy and data protection risks as mobile equipment[13].

14. The system mandated by the Proposal shall be open and accessible without discrimination for third parties, for repair and maintenance, and also serve as a platform for added value services provided by third parties. If such services could make full use of the technical possibilities of the equipment installed in each new car, they could create considerable additional risks for privacy, comparable with those of mobile apps on smart phones.

15. The intrusiveness of an eCall system and the potential impact on citizen's right to privacy has raised the Article 29 Working Party's concern in such a proportion that, already in 2006[14], when its deployment was only considered on a voluntary basis, it has issued a Working Document developing the specific data protection guarantees that should be implemented whenever the system is installed.

16. In this regard, the EDPS highly welcomes the introduction in Article 6 of the Proposal of a substantive provision dedicated to data protection. In particular, he notes with satisfaction that Article 6 would require vehicle manufacturers (i) to ensure that vehicles equipped with the system are not traceable and are not subject to any constant tracking in their normal operational status related to the eCall, (ii) to make use of privacy enhancing technologies (hereinafter 'PETs') as well as to adopt safeguards to prevent surveillance and misuse of the data, (iii) to make sure that the in-vehicle system only processes the minimum set of data, (iv) and to inform eCall users about the processing of data and in particular:
    - its legal basis,
    - its activation by default,
    - the modalities of data processing,
    - the purpose pursued,
    - the types of data collected and processed and the recipients,
    - the time limit for the retention of data,
    - the fact that there is no constant tracking,
    - the modalities for exercising data subject's rights and
    - any necessary additional information.

17. The EDPS however regrets that not all essential safeguards are specified in the Proposal. He notes that Article 6(4) refers to the adoption of delegated acts which could give further specifications. However, he insists that specifications regarding essential data protection safeguards are given in the legislative proposal itself[15].

18. He therefore recommends the introduction of an additional paragraph to Article 6 of the Proposal which contains these additional essential safeguards, and in particular:

[13] See Article 29 WP documents: 881/11/EN WP185 Opinion 13/2011 on Geolocation services on smart mobile devices adopted on 16 May 2011 and 00461/13/EN Opinion 02/2013 on apps on smart devices adopted on 27 February 2013.
[14] See footnote 12.
[15] See on this also earlier EDPS opinions such as Opinion of 4 July 2013 on a proposal for a Directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, and a proposal for a Regulation of the European Parliament and of the Council on information on the payer accompanying transfers of funds, in particular para 15 and 26, published on EDPS website.

- Designates the data controller and the entity responsible for handling access requests.
- Specifies the list of data referred to as a minimum set of data and as a full set of data (possibly to be elaborated in a delegated or implementing act).
- Includes the possibility for data subjects to deactivate private eCall and added value services.
- Specifies retention periods for the data processed.
- Specifies the modalities of the exercise of data subjects' rights,

19. He also insists that the intrusiveness of the embedded device implies that stricter safeguards are set up to avoid, more specifically, function creep and processing of data the data subject is not aware of through the use of the device for private eCall and added value services, which implies data processing for new purposes. Further recommendations will be given in paragraph 3 of this Opinion.

2.3 The necessary regulation of private eCall and of added value services in the proposal

20. The EDPS furthermore regrets that the requirements displayed in the Proposal only apply to the 112 eCall systems and therefore do not address private eCall systems and added value services. These services are only mentioned in Article 6(3)(i), in connection with the information that needs to be provided.

21. The development, by car manufacturers, of private eCall systems and added value services is not only a prospective. Already in its '*eCall: Time for Deployment*' communication, the Commission itself insisted on eCall being an *'opportunity to deploy added-value services*'[16]and noted that '*proprietary in-vehicle emergency call services are offered in Europe and worldwide by different automobile branches and service providers (e.g., Volvo OnCall, GM OnStar, PSA, Fiat, BMW). They are typically bundled with other services, such as breakdown assistance, onboard mobile telephony, dynamic navigation, etc.*". The right of all stakeholders such as car manufacturers and independent operators to offer additional emergency and/or added value services, in parallel with or building on the (public) 112-based eCall in-vehicle system' is indeed envisaged in Recital 8 of the Proposal.

22. Surprisingly, the Proposal only regulates and addresses data protection implications of EU 112 eCall. Although Recital 13 of the Proposal [17] confirms that any processing of personal data through the eCall in-vehicle system should comply with Directive 95/46/EC', the proposal does not introduce a substantive provision which would effectively address private eCall services as well as added value services. These private services, which are not strictly speaking health-related emergency calls, are, *per se*, privacy-intrusive and should take account, as much as possible at design stage,

[16] Communication cited in footnote 4: p. 7 and 8: '*eCall builds on technical components (satellite positioning, processing and communication capabilities) that also provide the basis for several in-vehicle applications, including those required by existing or planned regulation applicable to commercial or private vehicles, such as the digital tachograph, electronic toll collection or provisions on the transport of dangerous goods and live animals'. […] The definition of an 'open in-vehicle platform' concept is part of the ITS Action Plan, and the introduction of eCall based on this concept would positively contribute to its momentum. The automative and telecommunications industry and service providers will benefit from new services based on the introduction of the eCall telematics platform in all vehicles. This is particularly valuable in times of crisis'.*

[17] Recital 13 refers to the working document cited in footnote 12.

of data protection safeguards. The EDPS therefore notes that the current wording of the Regulation, recognizing the potential offered to car manufacturers by the eCall embedded system without offering further guidance as to data protection implications involved, allows those systems to develop in an unregulated manner, thus creating a legal loophole.

23. He finds necessary to recall that the processing of data for a different purpose than the one for which they were originally collected is strictly regulated by Article 6 of Directive 96/46/EC, and if the purpose is incompatible with the original one, this should be considered as a function creep and the processing would be unlawful. In the present case, the use of data originally collected for a public interest (emergency and health issues) and further processed for commercial purposes would, most probably, be considered in principle as incompatible and, thus, as a breach of applicable data protection legislation. For the processing carried out by car manufacturers to be considered as legitimate, specific safeguard would be necessary which would require the latter to ensure in particular that data subjects gave their clear and unambiguous consent prior to the use of their personal data.

24. Therefore, even if the EDPS understands that the main purpose of the present legislation is to regulate 112 eCall, he insists that all data protection implications of the system have to be concretely addressed in the Proposal. Other services have already been developed and are likely to be developed even more as a result of the obligation to provide for the public eCall service in every car.

25. The Proposal should regulate those private eCall services and added value services so that they comply with the same or stricter data protection requirements than those foreseen for the mandatory 112 eCall system and that, for instance, constant tracking is prohibited. The EDPS therefore recommends that Article 6(1) is amended to ensure that both 112 and private e-Calls services, as well as added value services, enter within the scope of the Proposal. Concrete guarantees that should be included will be further developed in this opinion.

2.4 The necessary provision of a clear and timely information as a logical consequence of the mandatory introduction of an eCall embedded system in new vehicles

26. The EDPS highly welcomes that Article 6(3) requires manufacturers to provide individuals purchasing new vehicles with information about the embedded 112 eCall in-vehicle system and the resulting processing of data, and specifies in the Regulation itself the details of what such information should cover, i.a. the fact that the system is activated by default, and the modalities of the data processing that is performed as required under Articles 10 and 11 of Directive 95/46/EC (such as the purpose of the 112 eCall processing, the reference to the legal basis for the processing, the types of data collected and processed, the recipients of the data, the fact that there is no constant tracking of the vehicle, the time limit for the retention of data in the in-vehicle system and the modalities for exercising data subjects' rights).

27. Articles 10 and 11 of Directive 95/46/EC also imply that the modalities of the communication of the information to the consumers be clarified in the Proposal. The EDPS therefore recommends that Article 6(3) is complemented to this extent and specifies, for instance, that car manufacturers will provide such information as part of

the technical documentation handed over together with the vehicle (as the in-vehicle system would constitute a part of the equipment of the car). Such a choice allows second-hand car buyers to be informed of the existence of the system as well. Besides, the EDPS recommends that it is specified in the Proposal that the availability of the information be pointed out to the car owner at the time of the purchase of the car, in a separate document.

28. The EDPS also notes that Article 6(4) refers to delegated acts which will be adopted by the Commission to further define the modalities of the user information referred to in paragraph 3 and insists that he shall be consulted prior to their adoption.

2.5 The required application of equivalent data protection safeguards to private eCall services and added value services

29. Contrary to the 112 e-Call, private eCall and added value services shall be activated on a voluntary basis, and the information given to the data subject will enable him to give his unambiguous consent to the processing or simply refuse it. The default should be that the e-Call system cannot be used to provide those services unless the user has been properly informed and has actively consented to it. The EDPS emphasises that consent is the main applicable ground for making data processing legitimate for these services. None of the other grounds for making data processing legitimate displayed in Article 7 of Directive 95/46/EC would correspond to the processing that car manufacturers will carry out.

30. This is all the more important since the provision of facultative added value services by car manufacturers is based on a system that the clients have by default in their cars and that potentially enables the constant collection of the vehicle's geolocation. In that sense, there is a parallel with geolocation services on smart mobile devices, and the same safeguards apply[18].

2.5.1 Comprehensive information of users on added value services to ensure an informed consent

31. The obligation to inform about the mandatory processing taking place through the 112 eCall (and the safeguards that have been implemented in this context) is without prejudice to the additional information that manufacturers must provide about the processing of personal data in relation to their provision of a private eCall service and/or other added value services based on the system.

32. It has to be kept in mind that the provision of these services will likely rely on the processing of more data than the minimum set of data agreed upon for the 112 eCall - [19] and may also entail the use of more intrusive means (such as constant geo-location).

33. The validity of consent depends *inter alia* on the quality of the information given about the data protection implications of the service offered. As stated by the Article

[18] In its Opinion 13/2011 on Geolocation services on smart mobile devices, the Article 29 Working Party stressed that 'Given the sensitivity of the processing of (patterns of) location data, prior informed consent is the main applicable ground for making data processing legitimate when it comes to the processing of the locations of a smart mobile device in the context of information society services'.

[19] The WP29 refers to a full set of data (FSD); see Working document cited in footnote 12.

29 Working Party in its opinion 13/2011 on Geolocation services on smart mobile devices, 'Information must be clear, comprehensive, understandable for a broad, non-technical audience and permanently and easily accessible'[20]. In the present case, consumers should be provided with clear information so that they can not only understand the processing operation(s) taking place through the in-vehicle system, but the differences that may exist between the processing carried out for the mandatory 112 eCall and the one for the private eCall, and freely consent to the processing.

34. In this regard, the EDPS reminds that car manufacturers shall not assume that their customers are technically skilled persons and will have to clearly explain the modalities of the processing. Besides, the information shall be accessible and visible, i.e. given directly to the car user and submitted at the moment of the purchase and not only be available somewhere in the technical documentation.

35. He therefore welcomes that section 2.5 of the Impact Assessment mentions that in case of the provision of added value services, there should be an appropriate contract between the consumer and the service provider and that Article 6(3)(i) of the Proposal requires car manufacturers to provide 'any necessary additional information regarding the processing of personal data in relation to the provision of a private eCall service and/or other added value services'. He however regrets that the proposal itself does not mention the contract obligation.

36. The EDPS therefore recommends that the requirement for an appropriate and distinct contract between the consumer and the service provider is stated in a specific provision of the proposed Regulation He also recommends clarifying in the provision that this contract should cover data protection aspects, including providing appropriate information to consumers on the service(s) and collecting their consent for the processing of data in relation to the provision of these added value services. This could, if needed, be elaborated in the delegated acts that the Commission will adopt. He recalls that he shall be consulted on these acts before their final adoption.

37. This contract will have to provide the following additional information:
    - Clear and transparent information of end-users on the mandatory processing of location data, including a clear description of the data processed and the conditions of processing.
    - Separately, similar information in relation to the facultative processing for additional facultative services.
    - Clear and transparent information on the fact that facultative services are not activated by default and will be activated on the basis of consent.
    - The absence of any constant geo-location unless the user has been made aware of it and is in a position to give prior free and informed consent.
    - Information relating to the elements proposed in paragraph 16 of this Opinion.

38. The EDPS would also favour that this information is copied in the notice/technical documentation of the car and therefore accessible, on a permanent basis, to the car owner or the person he might lend/sell the car to.

[20] See footnote 17

2.5.2 The requirement for a free, specific and informed consent to private e-Call services and added value services

39. As already stated above, the information given will enable the data subject to express his consent to the processing envisaged. Clear, complete and prior information is not, however, the only requirement to ensure that consent is valid.

40. Article 2(h) of Directive 95/46/EC specifies that consent must be freely given, specific and concretely result in an informed indication, by the data subject, of his wishes by which he signifies his agreement to personal data relating to him being processed. Article 7(a) thereof adds as a condition that, for the processing to be legitimate, this consent shall be given unambiguously.

41. These requirements have been further explained by the Article 29 Working Party in its opinion 15/2011 on the definition of consent[21] where it clearly states that 'consent can only be valid if the data subject is able to exercise a real choice, and there is no risk of deception, intimidation, coercion or significant negative consequences if he/she does not consent'.

42. Applied to car manufacturers, these requirements mean that they shall seek the prior informed consent of potential users of private e-Call and/or added value services. Besides, it must be clear that such consent cannot be obtained freely through mandatory acceptance of general terms and conditions, or through opt-out possibilities. Equally, consent cannot be freely given if the data subject has to accept a (non-negotiable) clause in a contract (as is generally the case with car sale contracts) or if he suffers any kind of pressure into consenting to such processing. This also excludes pressure from car insurance companies or car rental companies to keep it activated.

43. Besides, consent given must be specific and therefore obtained for each of the different purposes for which data are being processed. If the purpose of the processing changes in a material way, the controller must seek renewed specific consent. For instance, if the data is processed to be transferred to a third party for insurance purposes and not anymore by the car manufacturer himself or his processor for assistance purposes, active prior consent of the user must be sought.

44. Furthermore, to allow the user to consent freely, the EDPS[22] would highly recommend a design that would allow the user to know when the e-Call system is used to process its location data for the purpose of added value services, outside the scope of emergency e-Call processing.

45. Finally, data subjects must be able to withdraw their consent in an easy way, without any negative consequence.

46. To sum-up, the EDPS recommends that the proposal ensures that data subjects are given the choice to opt for the services, through a specific contract offer, made prior to

[21] 01197/11/EN WP187, page 12.

[22] See in this sense also footnote 17's reference to WP29 opinion ‘on geolocation services on smart mobile devices'.

the processing. Non-negotiable clauses part of a car sale contract, or clauses belonging to general terms and conditions, whose acceptance is mandatory, will not fit this requirement.

47. Besides, there should be no adverse consequence to the refusal of the offer. Therefore, in addition to the recommendations already given regarding the information that should be given to the data subject, the EDPS recommends that it is also stated in the contract that the refusal of the service offered will not involve adverse consequences linked to that refusal. Such a statement could appear in the privacy statement of the contract.

3. SPECIFIC COMMENTS

3.1 The necessity to prohibit constant tracking for added value services

48. The EDPS notes that Article 6(1) of the Proposal states that 'manufacturers shall ensure that vehicles equipped with eCall in-vehicle system are not traceable and are not subject to any constant tracking in their normal operational status related to the eCall'. He understands that constant tracking is only prohibited for 112eCall services and private eCall services and recommends clarifying in the Proposal that, by analogy with 112 and private eCall services, added value services shall not allow constant tracking.

3.2 The importance of listing the categories of data processed under 112 eCall, private eCall and added value services

49. The Proposal does not specify to which data the MSD processed for 112 eCall corresponds. It appears that the MSD ('minimum set of data') necessary were selected by the eCall driving group in 2006 and standardised by the standard 'Road transport and traffic telematics — eSafety' (EN 15722) as follows: the time of incident, the precise location including direction of driving, the vehicle identification, the eCall identifier giving the severity of the incident (manual or automatically triggered), information about a possible service provider. Stakeholders should not have to check inaccessible standards to access this information.

50. The EDPS therefore recommends listing the categories of data processed under the 112 eCall in a substantive provision of the Proposal (see point 16 above).

51. Furthermore, the EDPS notes that private eCall and added value services will most probably involve the processing of additional personal data by a third party, i.e. insurance companies, automobile call centres, medical companies, lawyers, motors clubs. In this regard, the EDPS recalls that, when processing data, third party service providers have to comply with the data minimisation principle meaning that only the data necessary to achieve the purpose pursued should be collected[23]. They should therefore design technical arrangements to select only the necessary and suitable information, thus respecting the prohibition of processing of sensitive data.

[23] See Article 6(c) of Directive 95/46/EC and developments relating to the data minimisation principle in the draft data protection Regulation.

52. As a result, the personal data that car manufacturers can process for the purpose of private eCall or added value services should be clearly listed in the Proposal or, if this was not possible, in delegated acts. At the very least, the list of data of which the processing is prohibited should be specified in either of these legal instruments and the concept of 'full set of data' should be defined in the Proposal.

3.3 The required choice of a retention period for the data processed

53. Under Directive 95/46/EC, data exchanged should only be kept for the time necessary to achieve the purposes for which they were collected[24] and should be automatically deleted following the expiry of the retention period. This period of retention should be justified and motivated, possibly in Recitals. The EDPS notes that the retention period of the data processed for 112 eCall purpose is not specified even though this information is included in the notice that should be given to data subjects by car manufacturers. He reminds that retention periods of the data processed for mandatory e-Call purpose as well as for private e-Call/added-value services have to be determined. In in any event, the data shall not be retained longer than necessary for adequate transmission to the appropriate PSAP and the MSD should be deleted afterwards. These storage periods shall be adapted and harmonised depending on the parties and location of the data (in-car storage, PSAP databases storage). If the data were to be necessary after the expiration of the required period of storage, in particular for statistical purposes, they should be anonymised, i.e. there should be no way to identify directly or indirectly a person based on these data. The EDPS advises specifying these safeguards with regard to retention.

3.4 Ensuring security of the data processed

54. Security of the processing of personal data, ensuring among other objectives confidentiality of data and preventing unauthorised access or modification, is an obligation for controllers consistently established by all data protection instruments[25]. This obligation also applies to the processing of personal data in the context of eCall systems, both for public and private eCall systems, as well as for any value-added services using the same platform.

55. Data protection legislation requires that security safeguards are appropriate to the risks related to the processing of data processing operations, taking account of the state of the art and the cost of the measure. In order to implement this requirement, controllers have to apply a risk management approach based on thorough assessment of threats and vulnerabilities of their processing operations.

56. Security considerations for complex embedded systems such as eCall systems concern not only the processing of personal data, but may also need to take account of other functions for which specific risks may exist, e.g. the interaction with other elements of embedded in-car systems. In particular, where an environment has to be made accessible for the installation of components provided by third parties, the complexity of security assessments may be significant.

[24] Article 6(e) of Directive 95/46/EC.
[25] E.g. Art. 17 of Directive 95/46/EC and Art. 4 of Directive 2002/58/EC.

57. In general, IT based components require regular updates and maintenance, both in hardware and software components, inter alia in order to address security vulnerabilities which are frequently detected after their deployment, or for ensuring continuous compatibility with technological development. This need generally increases with the functionality and the number of interfaces supported, as well as with the lifetime of systems. The lifetime of cars and their embedded system is usually longer than that of consumer electronic products such as personal computers and mobile communications devices, increasing the likelihood of update requirements.

58. Article 5(6) of the Proposal provides that eCall systems shall be "accessible to all independent operators free of charge and without discrimination at least for repair and maintenance purposes". This requirement could mean that third parties would have the possibility to perform manipulations on the equipment, e.g. by exchanging hardware components or installing software upgrades or modifications, after the sale of the car to the consumer. Such modifications of the eCall system could affect the security of this system and other components of the car electronics connected to it.

59. The Proposal and the accompanying documents do not indicate whether a comprehensive analysis of the security of the personal data processed and of other relevant risks related to the mandatory roll-out of eCall systems, including on road safety, has been performed, covering the expected lifetime of the systems, and if specific security measures will be included in the type approval process.

60. While testing against appropriate standards could be one measure contributing to ensuring security, the list of standards provided in the Proposal appears to cover only certain aspects of eCall systems and may not include all relevant standards. The EDPS also notes that Article 5(4) requires that eCall in-vehicle systems must be "tested" for type-approval, which it is not fully in line with Recital (10) which requires that the systems are "fully tested" for type approval. To ensure consistency, and that all technical aspects are effectively tested before type approval, the EDPS recommends clarifying in Article 5(4) that the system needs to be 'fully tested' instead of simply 'tested'.

3.4.1 Restricting access to data on a need to know basis

61. The question of access to any data stored in the in-vehicle system is also particularly relevant in relation to the desire to create an 'open access' platform. It should be clarified in the proposed Regulation under which conditions third parties providing private eCall or added value services may access data that would be stored in the in-vehicle system. As to the technical features that will be deployed by manufacturers to embed the eCall system in the vehicle, the Commission should promote the use of relevant standards and should also underline the necessity to ensure the interoperability of the eCall in-vehicle system with other third party applications.

3.4.2 Clarifying the modalities to exercise data subjects' rights

62. The modalities of information of data subjects regarding both processing involved by 112 eCall and private eCall and added value services have been addressed above and, as already stated, this information should include information of data subjects on how to exercise their rights. However, to ensure a harmonised application of data subjects' rights, the EDPS would recommend that the contact of the services responsible for

handling access requests, in every Member State, is given to data subjects within the documentation informing them about eCall.

4. CONCLUSIONS

63. The EDPS emphasises that the processing of personal data is one of the core obligations created by the Proposal and welcomes that many recommendations he made in relation to 112 eCall's data protection implications were taken into account.

64. Regarding 112 eCall, the EDPS recommends that the following issues are further specified in the Proposal:

- an explicit reference to applicable EU data protection law should be inserted in the Proposal in a substantive and dedicated provision, mentioning in particular Directive 95/46/EC and specifying that the provisions will apply in accordance with the national rules implementing it;
- the reference to the Article 29 Working Party working document is dissociated from the reference made to the data protection legislation in Recital 13;
- concrete data protection safeguards applying to 112 eCall should be developed in the Proposal rather than in delegated acts and in particular that Article 6:
  - designates the controller and the authority responsible for handling access requests;
  - specifies the list of data referred to as a minimum set of data and as a full set of data (possibly to be elaborated in a delegated or implementing act);
  - includes the possibility for data subjects to deactivate private eCall and added value services;
  - specifies retention periods for the data processed.
  - specifies the modalities of the exercise of data subjects' rights.
- Article 6(3) should be complemented to ensure that the information it refers to is part of the technical documentation handed over together with the vehicle and it should be specified in the Proposal that the availability of the information has to be pointed out to the car owner at the time of the purchase of the car, in a separate document.
- The EDPS should be consulted prior to the adoption of delegated acts foreseen in Article 6(4).

65. Regarding private eCall and added value services, the EDPS reminds that they are regulated by the Proposal so that they comply with similar or stricter data protection requirements than those foreseen for the 112 eCall system. He also reminds that:

- the Proposal specifies that contrary to the 112 e-Call, private eCall and added value services shall be activated on a voluntary basis and deactivated by default;
- the requirement for an appropriate and distinct contract between the consumer and the service provider is stated in a specific provision of the proposed Regulation and that it is clarified in the provision that this contract

should cover data protection aspects, including providing appropriate information to consumers on the service(s) and collecting their consent for the processing of data in relation to the provision of these added value services. The proposal ensures that data subjects are given the choice to opt for the services, through a specific contract offer, made prior to the processing. Non-negotiable clauses part of a car sale contract, or clauses belonging to general terms and conditions, whose acceptance is mandatory, will not fit this requirement.

- It should also be stated in the contract that the refusal of the service offered will not involve adverse consequences linked to that refusal. Such a statement could appear in the privacy statement of the contract.

66. The EDPS further recommends that:

- it is clarified in the Proposal that constant tracking is prohibited for added value services;
- the categories of data processed under the 112 eCall - and private eCall and added value services is specified in a substantive provision of the Proposal and that the concept of 'FSD' is defined in the Proposal;
- only the data necessary to private eCall and added value services are processed in compliance with the data minimisation principle;
- a specific provision recalls that the processing of sensitive data under private eCall and added value services is prohibited;
- the retention period of data processed under 112 eCall, private eCall and added value services is determined and specified in a substantive provision of the Proposal;
- security of the data processed under 112 eCall, private eCall and added value services is guaranteed by some specifications in the text.

Done in Brussels, 29 October 2013

(signed)

Giovanni BUTTARELLI
Assistant European Data Protection Supervisor