Message 303

Communication from the Commission - TRIS/(2022) 03616
Directive (EU) 2015/1535
Notification: 2022/0485/E

Observations from the Commission (article 5, paragraph 2, of Directive (EU) 2015/1535). These observations do not have the effect of extending the standstill period.

Observaciones - připomínky - Bemärkninger - Bemerkungen - Märkused - Παρατηρήσεις - Comments - Observations - Osservazioni - Piezīmes - Komentarai - Megjegyzések - Kummenti - Opmerkingen - Uwagi - Observacoes - Komentáre- Pripombe - Huomautuksia - Synpunkter - Коментари - Comentarii.

Sin plazo de statu quo - Doba pozastavení prací se neaplikuje - Ingen status quo frist - Keine Stillhaltefrist - Ooteaeg ei ole kohaldatav - Δεν υπάρχει statu quo - Standstill period does not apply - Pas de délai de statu quo - Termine di status quo non previsto - Bezdarbības periods netiek piemērots - Atidėjimo periodas netaikomas - A halasztási időszak nem alkalmazandó - Il-perijodu ta' waqfien ma japplikax - Geen status quo-periode - Okres odroczenia nie ma zastosowania - Prazo do statu quo não previsto - Perióda pozastavenia neplatí - Obdobje mirovanja ne velja - Ei status quon määräaikaa - Ingen tidfrist för status quo - Не се прилага период на прекъсване - Perioada de stagnare nu se aplică.

(MSG: 202203616.EN)
1. MSG 303 IND 2022 0485 E EN 13-10-2022 11-10-2022 COM 5.2 13-10-2022

2. Commission

3. DG GROW/E/3 - N105 04/63

4. 2022/0485/E - V00T

5. article 5, paragraph 2, of Directive (EU) 2015/1535

6. Within the framework of the notification procedure laid down by Directive (EU) 2015/1535 , the Spanish authorities notified to the Commission on 12 July the “Royal Decree Regulating Emergency Communications through the Single Emergency Number 112” (the "notified draft").
In the notification message, the Spanish authorities explain the notified draft is intended to update the currently applicable rules and align them with the General Telecommunications Law while also reflecting the technological advances in the field since the last amendments of that law.
In this regard, the notified draft is aimed at improving caller location information in order to provide emergency services with more accurate location information based on the caller’s mobile terminal. In addition, the notified draft also advances equal access to the number 112 for persons with disabilities, access to such emergency services from the electronic communications networks that are not accessible to the public and enhances the information provided to end users on the use of the Single European Emergency Number 112.
The examination of the notified draft has prompted the Commission to issue the following comments.
Analysis of the notified draft in the light of Regulation (EU) 2016/679 (‘the GDPR’)
Article 7 of the notified draft lays down the rules relating to access to directory information in accordance with the Spanish General Telecommunications Law. IN accordance with this article, the National Commission for Markets and Competition shall provide access to certain data including the subscriber numbers for 112 emergency services as well as to emergency communications reception centres.
Article 7(4) of the notified draft lays down the minimum data that shall be provided by the National Commission for Markets and Competition, which includes:
 Full name or business name.
 National identity card.

 Subscriber number.
 Postal address of the address, including the floor, apartment and door.
 Specific terminal declared.

In this context, it is important to note that Article 6 of the GDPR lays down the conditions for the lawful processing of personal data. When a Member State adopts a law that provides for a lawful ground for processing of personal data and such law lists the type of personal data that are subject to processing in accordance with paragraph 3 of the Article 6 GDPR, the provision must be clear and precise and its application should be foreseeable.

Recital 41 of the GDPR clarifies that a legal basis "should be clear and precise and its application should be foreseeable to persons subject to it, in accordance with the case-law of the Court of Justice of the European Union (the 'Court of Justice') and the European Court of Human Rights."

In this context, the Commission notes that the notified draft uses the formulation "as a minimum" before listing the types of personal data about a subscriber that the National Commission for Markets and Competition shall provide to the 112 emergency services and emergency communications reception centres. The Commission considers that such formulation does not allow the identification of any other types of personal data – not listed under Article 7(4) – that may be provided to the operators of the above mentioned services, hence it does not meet the requirement of foreseeability as laid down in the GDPR.

In addition, the Commission would also like to remind the Spanish authorities that that in line with the principle of data minimisation laid down in Article 5(1)(c) of the GDPR, data must be adequate, relevant and limited to what is necessary in relation to the purposes of the processing.

Furthermore, Article 11(8) of the notified draft lays down the obligations of operators in relation to emergency communications via the Single European Emergency Number 112. This article lays down requirements relating – among others – to the routing of calls to the Single European Emergency Number, the costs related to this routing including roaming as well, the provision of data to the entities providing 112 emergency response service and emergency communication reception centres including also location data of users.

Article 11(8) of the notified draft lays down that the processing of personal data shall be in line with the General Telecommunications Law for reasons of protection of vital interest of the caller, safeguarding national security, defence, public safety and the prevention, investigation and prosecution of crime, the safety of human life or reasons of public interest.

In this context, the Commission notes that Article 6(3) of the GDPR lays down that the law providing for the legal obligation for the processing of personal data (Article 6(1)(c) of the GDPR) must define the purpose of processing; or in case the lawful ground of processing is the performance of a task in the public interest, (Article 6(1)(e) of the GDPR) the law should explain that personal data processing is necessary for the performance of such tasks. Such law must also meet an objective of public interest and be proportionate to the legitimate aim pursued.

The Commission understand that the aim of the notified draft is to regulate emergency communications through the Single European Emergency Number 112 for the purpose of providing life rescuing assistance, however the Commission fails to understand the reasons why the notified draft is referring to the purpose of safeguarding of national security and defence in the context of the emergency number 112. Therefore, the Commission invites the Spanish authorities to clarify the circumstances in which emergency communication through the number 112 may be carried out for the purposes of national security and defence in order to demonstrate that such circumstances are proportionate to the aim of the notified draft.

For the reasons stated above, the Commission invites the Spanish authorities to take the above comments into account. The Commission furthermore recalls that once the definitive text has been adopted, it has to be communicated to the Commission in accordance with Article 5(3) of Directive (EU) 2015/1535.

Kerstin Jorna
Director-General
European Commission

Contact point Directive (EU) 2015/1535
Fax: +32 229 98043
email: grow-dir2015-1535-central@ec.europa.eu