COMMUNICATIONS SERVICES EMERGENCES
October 2022
apelegrin@ametic.es

DRAFT ROYAL DECREE REGULATING THE PUBLIC WARNING TRANSMISSION SYSTEM BY MEANS OF MOBILE ELECTRONIC COMMUNICATIONS SERVICES IN THE EVENT OF IMMINENT OR DEVELOPING MAJOR EMERGENCIES AND DISASTERS

The Spanish Asociación Multisectorial de Empresas de la Electrónica, las Tecnologías de la Información y la Comunicación y de las Telecomunicaciones y de los Contenidos Digitales (**AMETIC**), represents the main companies of this sector, having a wide experience and recognition for the plurality of our high number of members and the value and sectorial balance of the positions. The companies we represent also include a large number of manufacturers of communication devices such as cell phones.

We would like the following the comments to be taken into consideration:

General consideration on the reference to Advanced Mobile Location ("AML")

The Draft Royal Decree explicitly specifies AML (ETSI-TS-103-625) as the reference point for the provision of caller location information to the emergency services. It should be noted that AML is simply a transport path to convey the location information from the hand-held mobile telephone. AML has its restrictions and in fact the recommended path by the Report commissioned by the European Commission on "Technical Solutions to Ensure Compatibility, Interoperability, Quality, Reliability and Continuity of Emergency Communications in the Union"[1] is to use the well-known and standardized IP-Multimedia Subsystem-based communications with Session Initiation Protocol (IMS/SIP) (see reference at pages 42 and 48).

It is our view that AML (nor IMS/SIP) should not be specified in the Draft Royal Decree as it should be technology-agnostic but if the Spanish authorities do wish to prescribe a transport path, it should be IMS/SIP and not AML.

Furthermore, the Decree has a number of differing references to "mobile terminal", "mobile devices", "portable mobile devices" and others – as such there needs to be a single definition that is in line with 2019/320.

Article 2. Scope of application

4. It shall be the responsibility of the manufacturers of operating systems for portable mobile devices with computer-like functionality in terms of data processing and storage

1 E-Mercury, Study on Technical Solutions to Ensure Compatibility, Interoperability, Quality, Reliability and Continuity of Emergency Communications in the Union - CNECT/2020/OP/0079, May 2022

capacity to ensure that such operating systems are able to provide the AML advanced mobile location information functionality from the device itself regulated in this Draft Royal Decree when the emergency communication is triggered

Typically, such responsibilities are not foisted on handset manufacturers, and it is not in line with the practice of other Member State in the EU. The requirement of location conveyance usually falls on the mobile network operator, as explained in detail in Article 12. By contract, this language appears to suggest that the responsibility solely on the mobile handset manufacturer.

Any location delivery will involve technical process from both network operator and handset manufacturers, which is correctly reflected in the statements in Article 12.

For example, in AML, while the handset is able to calculate a position, the network actually conveys SMS to the national endpoint. There are additional links between the endpoint and the PSAP for the location to actually get to the dispatcher.

As such, there are many links in the chain that can potentially break due to issues, and any location reports from the handset via a technology such as AML is “best effort”. Additionally, there are several circumstances in which a device may not have a position available. For example:

- If there are difficult GNSS conditions or weak Wi-Fi signals, the device may not be able to calculate a position.
- Even if a position is available, there may be circumstances (such as timing, call end, etc.) that will cause the location to not be sent out.

Article 12. Obligation for operators to provide location information to users calling the Single European emergency number 112

3. In addition, if the mobile terminal is compatible and the information is available, the operators referred to in Article 2(1) of this Draft Royal Decree, including in relation to end-users of mobile interpersonal communications services based on numbering from another Member State roaming in Spain, shall route the location information from the mobile device through the AML functionality in order to provide the most accurate information on the location of the calling user.

The Decree references in Article 12, paragraph 3 that the location information from the mobile device of a user from another Member State roaming in Spain and obtained through the AML functionality should be made available.

Whilst there are efforts underway to standardize this functionality, at this time there are no standardized technical solutions in place to allow for the provision of location information for

roaming end-users using the AML functionality and thus the operators providing publicly available interpersonal communications services would not be able to comply.

Third additional provision. Introduction in the Spanish market of the mobile devices that make the AML advanced mobile location information functionality effective.

The proposed market ban for portable mobile devices without the AML functionality will be in conflict with Regulation 2019/320 and the EU principle of the free movement of goods.

a) Conflict with Regulation 2019/320

Commission Delegated Regulation 2019/320 came into force in March this year. The purpose of this act is to ensure caller location in emergency communication from mobile devices. Regulation 2019/320 imposes an obligation on manufacturers of hand-held mobile telephones with advanced computing capabilities to ensure that these devices are AML-enabled. This Regulation is directly applicable in all Member States, including Spain. By introducing Regulation 2019/320, the EU regulator decided to harmonize rules related to caller location in emergency situations. Regulation 2019/320 ensures the technical harmonization of new hand-held mobile phones with regard to AML while guaranteeing free movement of these goods across the EU. Older devices, introduced to the market before March 2022, are intentionally exempted from these rules.

The market ban proposed in Spain for portable mobile devices without AML would be in conflict with Regulation 2019/320. The national Spanish rule would apply to all portable mobile devices (not only hand-held mobile phones) and also to those devices, which have been introduced to the EU market before March 2022. As a result of this market ban, mobile devices which are not captured under Regulation 2019/320 and which are currently freely circulating in the EU market, would be prevented from entering the Spanish market. In other words, the Spanish national regulation would go against an EU harmonized measure.

b) Conflict with the principle of the free movement of good

The proposed market ban for portable mobile devices without the AML functionality is also in conflict with the general EU principle of the free movement of goods. The right to the free movement of goods originating in Member States, and of goods from third countries which are in free circulation in the Member States, is one of the fundamental principles of the Treaty (Article 28 of the TFEU). The specific prohibition of measures having an effect equivalent to quantitative restrictions is formulated in Article 34 and Article 35 of the TFEU. Under these provisions, even in the absence of an EU harmonization measures, Member States are obliged to allow goods that are legally marketed in other Member States to circulate and to be placed on their markets.

Article 36 of the TFEU allows Member States to take measures having an effect equivalent to quantitative restrictions when these are justified by general, non-economic considerations (e.g.,

public morality, public policy or public security). However, such exceptions to the general principle must be interpreted strictly and national measures cannot constitute a means of arbitrary discrimination or disguised restriction on trade between Member States. Finally, the measures must have a direct effect on the public interest to be protected and must not go beyond the necessary level (principle of proportionality).

The proposed market ban for portable mobile devices without the AML goes beyond what is necessary to protect the Spanish public interest. As recognized in Regulation 2019/320, hand-held mobile telephones are the category of devices most used in the EU to make emergency calls. Extending the AML obligation to other mobile devices would be unjustified and disproportionate as these devices are not typically used in emergency situations. Also, the market ban should not apply to portable mobile devices of older generation. These products have not been designed with the AML functionality in mind and may have technical limitations preventing its enablement.