EATA response to EDPB Guidelines 1/2020 on processing personal data in the context of connected vehicles and mobility related applications

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The European Automotive and Telecoms Alliance (EATA) welcomes the initiative of the European Data Protection Board to draft Guidelines on the processing of personal data in the context of connected vehicles and mobility related applications ("Guidelines").

Due to the increasing amounts of data being processed in the context of connected vehicles and mobility related applications, and growing complexity of the connected vehicles environment, guidelines are especially helpful to ensure common understandings of the rights and obligations placed on each actor in the ecosystem, from automotive manufacturers to telecoms operators, and end-users. As representatives of the European automotive and telecoms sectors, we submit this paper in response to the draft Guidelines.

However, we find these guidelines to be unnecessarily strict and not reflective of how connected vehicles operate. We thus are not fully convinced about the value-add of this guidance for industry to provide better privacy protection to European citizens.

Consistency with guidelines from National Data Protection Authorities

The national Data Protection Authorities (DPAs) in several Member States have already issued guidelines on the processing of personal data in the context of connected vehicles. Notable examples include Germany[1] and France[2]. While we welcome the objective to have harmonised EU-wide guidelines, we regret the disparity, and indeed level of detail, between the guidelines in certain Member States, and the draft Guidelines from the EDPB.

We would welcome greater harmony between the guidelines in the Member States and the EU-wide guidelines, as there are certain aspects which are in conflict.

Consent as legal basis

The guidelines greatly emphasise user's consent as the key legal ground for processing personal data derived from connected vehicles, especially where data is collected through an electronic communication service. However, we would like to elaborate on why consent may not always be the most suitable legal ground in this environment.

We believe that the GDPR's risk-based approach, which enables the data controller to assess whether personal data should be processed depending on the context and the purpose of the processing, is

[1] Datenschutzrechtliche Empfehlungen der BfDI zum automatisierten und vernetzten Fahren, 2017: https://www.bfdi.bund.de/SharedDocs/Publikationen/Allgemein/DatenschutzrechtlicheEmpfehlungenVernetztesAuto.html?cms_templateQueryString=fahrzeug&cms_sortOrder=score+desc

[2] Commission nationale de l'informatique et des libertés, 2018 : https://www.cnil.fr/fr/vehicules-connectes-un-pack-de-conformite-pour-une-utilisation-responsable-des-donnees

particularly important in a complex connected vehicle ecosystem that poses several limitations to obtaining consent from all the participants (car owner, driver, passenger…). Other legal bases that embed the risk-based approach, such as 'legitimate interests', are very suitable in this context.

Applicable Law (par. 13, 14)

The guidelines consider that the connected vehicle is defined as a 'terminal equipment' and that the obligation to obtain prior consent to store or process personal data as per Article 5(3) e-Privacy Directive applies. However, the guidelines also maintain that any processing operations in a connected vehicle context "must additionally have a legal basis under art. 6 GDPR in order to be lawful". This statement is confusing, as the EDPB seems to require two cumulative grounds for processing the same data based on Article 5(3) e-Privacy Directive and Article 6 GDPR.

Transparency obligations towards the user (par. 46)

The possibility of a connected vehicle service provider to ask consent or provide information to individual users of the car varies greatly depending on the type of service provided and has unavoidable limitations. The service provider usually identifies and contacts the person who purchases the services but might not know whether the customer is the person driving the car (e.g., in household context) and could not identify all the users as different data subjects. Obtaining a participant's consent upon each use of the vehicle would be unpractical. In the same vein, the principle that "must be as easily withdrawn as it is given" could in many instances be difficult or impossible to implement in the connected vehicle.

Further processing of personal data

According to the guidelines, further compatible processing as per Article 6(4) GDPR is not permitted when connected vehicle data are collected based on Article 5(3) e-Privacy Directive "since it would undermine the data protection standard" of said directive. We reiterate that the risk-based approach is crucial to balancing a strong protection of individuals with the needs of data-rich processing contexts. Further compatible processing should then be a key mechanism of the connected vehicle ecosystem, which relies on huge and sophisticated data analytics.

Scope

Standalone mobile applications (par. 20)

The scope of the guidelines currently covers standalone mobile applications. Such applications contribute to the vehicles' driving capacities (e.g. navigation apps). Although these applications might have similar features to connected vehicles, they are often used independently of a car (e.g. by pedestrians, cyclists), and therefore cannot be categorised as connected vehicles as such.

Employers providing company cars (par. 31)

In addition, the guidelines stipulate that 'data processed in the context [of employers providing company cares] raises specific considerations to the employment context, which might be regulated by labour laws at the national level that cannot be detailed in these guidelines.' EATA would recommend the inclusion of wording to clarify that the exemption should apply specifically to professional use of company cars.

Indeed, while the creation of, and switching between, data profiles entails added complexities and costs, a pragmatic approach should be taken, otherwise the personal data processed in a company car, even in situations of personal use, would not necessarily be afforded the appropriate protections

under these guidelines. Such an approach will also ensure sufficient adaptability of personal data protection, to market and technological development.

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Telematics providers and insurance companies (par. 108)

The example of insurance providers assumes that the telematics providers and insurance companies actively cooperate in collecting the data so that the telematics provider is only able to transfer the necessary data to the insurance provider in an aggregated form. It is worth noting that the insurance companies and telematics service providers might not have any other contact than a common customer who wishes to share their data. The requirement for a telematics provider to be able to provide 'scores' or other aggregated data that would be compatible with the insurance providers' requirements is a disproportionate and unfair burden. The insurance company, as the data recipient, should be responsible for only processing personal data necessary to them.

About the European Automotive and Telecoms Alliance (EATA)

The European Automotive and Telecoms Alliance (EATA) comprises six sectorial associations: ACEA, CLEPA, ETNO, ECTA, GSMA and GSA. Together they represent around 32 leading companies, including telecom operators, vendors, automobile manufacturers and automotive suppliers.

The objectives of EATA are to:

- Facilitate and accelerate the EU-wide deployment of connected and automated driving
- Remove potential roadblocks and highlight needed technical and regulatory measures
- Identify the business models underlying connected and automated driving
- Provide a platform for knowledge-sharing between the automotive and telecommunications sectors to develop a 'common language'
- Create societal benefits by improving road safety and traffic efficiency
- Promote the European digital economy