

# GUIDELINES 1/2020:

Guidelines 1/2020 on processing personal data in the context of connected vehicles and mobility related applications - **Response on behalf of DAC Beachcroft LLP**

## ABOUT US

DAC Beachcroft LLP is a leading international legal business with offices across the UK, Europe, Asia Pacific and Latin America.

We partner with our clients to help them achieve sustainable growth and to defend their business and reputation. We do this by taking a tailored approach to providing commercial, transactional, claims, risk and advisory legal services.

We are recognised leaders in Insurance, Health and Real Estate and draw on the knowledge, industry experience and commercial expertise of our outstanding 2,200 lawyers and support colleagues in these sectors and beyond.

We are forward-thinking, flexible and easy to engage with and we're proud that our clients tell us regularly that we're great to work with.

We know that our clients value advice that is innovative, practical and personal to them, and we pride ourselves on getting to the heart of their businesses. We measure our performance against their expectations and embrace change as a necessary stage in evolving and strengthening our relationships.

The close working relationship we enjoy with our clients has not been built overnight but honed carefully over the last 250 years. This means today our clients can remain confident they have the very best legal expertise available.

## GENERAL OBSERVATIONS

DAC Beachcroft are of the view that the guidelines could benefit from clarity and further detail in the ways set out below:

- Paragraph 38 states that joint controllers will be where “two or more controllers can jointly determine the purpose and means of the processing.” However, as it is often ambiguous or contentious whether controllers are joint controllers, it would be helpful to have some examples of who the EDPB consider to be joint controllers when processing personal data in the context of connected vehicles.
- The guidelines recognise, at paragraph 44, the challenge with adequately informing vehicle drivers and passengers about the processing of their personal data (namely that the information is generally only given to the vehicle owner who may not be the driver). However, there are no practical solutions/guidance of how this can be overcome and how controllers can sufficiently meet their transparency requirements.
- At paragraph 48, the guidelines also recognises that the user of the connected vehicle (i.e. driver/passenger) may not be aware of data processing carried out in the vehicle and that the lack of information constitutes a significant barrier to demonstrating valid consent. Therefore, DAC Beachcroft would welcome any guidance from the EDPB about which legal basis could be relied upon, in the absence of consent.
- The guidelines (at paragraph 84) recommend the “layering” approach to privacy notices, in particular, the first “layer” must name all recipients of the personal data, or where this cannot be achieved, the information provided must be as specific as possible by indicating the type of recipient (i.e. by reference to the activities it carries out), the industry, sector and sub-sector and location of recipients. Where the first layer short form fair processing notice might be provided on the “info-tainment” screen for example, it is unclear how controllers would be able to provide the level of detail that is being suggested.
- At paragraph 74, it is recommended that data subjects should have the ability to activate or deactivate the data processing for each purpose. It would be useful to have some more guidance on how this would work in practice, particularly as this would imply that consent would be the only legal basis for processing – is this the intention?
- The guidance recommends that insurance companies do not gain access to the underlying raw behavioural data but instead only see an aggregate score. This would be problematic and challenging for the insurance industry as insurers would require the underlying personal data to inform pricing models and to be able to offer discounts to individual policyholders.
- At paragraph 79, it is acknowledged that personal data generated via connected vehicles will often result in a high risk to the rights and freedoms of individuals, therefore triggering the threshold for carrying out a data protection impact assessment (DPIA). It would be helpful if the finalised guidelines could provide examples of when a DPIA will be mandatory.
- Paragraph 89 states that “the sale of a connected vehicle and the ensuing change of ownership should also trigger the deletion of any personal data which is no longer needed for the previous specified purposes.” It is unclear whether this trigger would apply to all data controllers and how this would work practically. Any guidance or examples in this regard would be useful, particularly to assist data controllers in ascertaining how they would align such deletion obligations with the mapping/auditing of any sales of vehicles.
- It is not clear when personal data should be transferred to insurers or manufacturers in the event of a collision or accident and what the associated data flows would be. Will this be for individual regulators and government to legislate on, for example legislating (i) when data is required to be sent to manufacturers or insurers; (ii) what the role of insurers are when there is a collision which was the due to the fault of the vehicle?; or (iii) apportioning liability where the vehicle software has not been updated to the latest software by the driver? This is a particularly complex area which has not been addressed in the guidelines.

## FOR FURTHER INFORMATION:

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