

Written observations by the Dutch government on the draft-Guidelines 1/2020 on processing personal data in the context of connected vehicles and mobility related applications.

In the above mentioned matter, the Dutch government has the honor to bring the following comments to the attention of the European Data Protection Board.

The Dutch government welcomes the emphasis on data protection and privacy concerns related to connected vehicles, in particular those related to consent as a legal basis for data processing.

1. The Dutch government observes there's much attention for consent as a legal basis for processing data in this document. However, consent should in this case be separated into different data processing topics for each of which the consumer as a data subject can separately provide consent or not. In opinion of the Dutch government if consent is necessary for basic use of the car, then the consent is not valid as a legal basis to process the data.

Through this response the Dutch government asks the EDPB to give explicit attention to the obligation to split consent in the final version of the guidelines.

The Dutch government notices that other legal grounds for processing data are only discussed at the end of the document in the examples (page 21 and further). While these legal grounds will not often apply, we would recommend to mention them earlier and not only at the end. In addition, the Dutch government asks to be more detailed and give guidance about the relation between these other legal grounds and the consent of the consumer. For instance in no. 112 it is only recommended that the data subject should be informed. If a data subject has not specifically given consent (or has explicitly expressed that further processing is not allowed, or is not aware of processing), can the other legal ground set aside the consent of the consumer?

2. The Dutch government suggests that some further guidance would be useful towards how far the duty of care stretches of processors further in the chain with regards to the validity of the consent that has been given. The Dutch government wonders whether a contractual statement of the first processor is sufficient or that the recipient of the data should somehow check the validity of this consent (for example by means of a regular accountancy control declaration), and asks the EDPB to give guidance about this matter.

3. The Dutch government notices that a problem of data collected by connected vehicles is that there's difficulty in determining which party controls the data and who has the ownership of the data collected. The Dutch government wonders whether the EDPB would be willing to address this problem in more detail and if give guidance.

4. The EDPB does not discuss the current situation and what people can do at this moment if they are already driving in a connected car which processes and shares a lot of data. The Dutch Data Protection Authority (Autoriteit Persoonsgegevens) for example has made a document with practical examples on how to deal with situations like this. The driver can, for example, start by looking into the privacy settings of the vehicle and see whether the manufacturer has published any information on their website about which data is collected and for what purpose. The Dutch government suggest to give more guidance about the current situation of driving a connected vehicle, by the example of the mentioned document.

5. The Dutch government wishes to emphasize that the added value of the guidelines is to give clarity about the application of the standards of the GDPR. The status of the guidelines could rise discussion since both recommendations and more obligatory paragraphs are to be found in this document. For clarity it would be in the opinion of the Dutch government best to separate these matters.

6. As for the Dutch government the processing and use of biometric data should only take place under strict guarantees. The exclusion of the applications mentioned in no. 71 from the scope and guarantees and protection of the GDPR could therefor lead to risks. The exclusion of processing for purely personal activities should in the opinion of the Dutch government be limited to data under full control of the natural person concerned. It is questionable if applications using biometric data are indeed under full control of the average user. Furthermore since these applications can be used by different users and possibly service providers.