

AMICE Response to EDPB draft Guidelines on processing of personal data in the context of connected vehicles and mobility related applications

Preliminary remarks

AMICE welcomes the opportunity to provide feedback on the EDPB draft Guidelines 1/2020 on processing of personal data in the context of connected vehicles and mobility related applications.

As a preliminary remark, it is worth noting that data generated by connected vehicles is used in different ways by insurance companies to provide services to customers, such as telematics insurance, claims settlement, roadside and accident assistance and preventive services.

In this regard, AMICE would like to point out that the draft guidelines, which in more than one occasion refer to the insurance sector and specifically, to the provision of insurance telematics services, do not fully take into account all the practical implications related to the functioning of insurance telematics services and the legal obligations that insurers are subject to when providing this type of insurance services.

Telematics – the combination of computers and wireless telecommunication technologies to facilitate an efficient transfer of information over vast networks – is in fact the key factor underpinning innovation in the insurance sector and particularly, in relation to motor insurance. Hence, the issuance of guidelines that do not take into account the real functioning of the service could hamper this innovative process, which represents a door opener to many new opportunities for both insurers and customers.

An example is autonomous driving, towards which telematics is paving the way. Telematics enable the mobility services and is the instrument for a better, safer, self- and autonomous environment. In addition to telematics, there are the so-called semi-autonomous advanced driver assistance systems (ADAS) (e.g. safety enhancing features, such as emergency brake assist (EBA), side-view (blind spot) assistance, forward collision and lane departure warning system), which are accelerating the development towards automated mobility. In this context, the combination of ADAS and telematics has extensive consequences on road safety and consequently on the insurance sector.

As semi-autonomous vehicles cut the frequency and costs of road accidents, telematics – through the collection of data from the vehicles – allow insurers to improve the design of services with higher added value for consumers and enhance risk segmentation. A more adequate pricing of motor insurance for individuals – which stems from the risk segmentation – could also incentivize consumers to adapt their driving behaviour to more careful driving.

In addition, there is a wide range of services consumers can benefit from the development of telematics and semi-autonomous vehicles, such as emergency calls, efficient claims handling processes, weather alerts based on geo-localisation, highway and parking area tolling, anti-theft services.

Bearing this in mind, and taking into account that digitalisation and data will be an essential component of the upcoming European Commission's 'Smart and Sustainable Transport Strategy' (Q4 2020), AMICE stresses the importance to ensure a correct understanding of the provision of telematics services to allow the insurance sector to keep innovating and remain competitive.

AMICE remains available to further discuss and to support the EDPB in the process aiming at amending the guidelines to better reflect how insurance telematics services work in practice. In particular, we would like to share our concerns with reference to the EDPB general recommendations on:

- further processing of personal data – telemetry data (section 1.5.3)
- geolocation data (section 2.1.1)
- local processing of personal data (section 2.4.1)

- transmission of personal data to third parties (section 2.8) and
- the case study on Pay As You Drive (PAYD) insurance (section 3.1.1).

AMICE invites the EDPB to consider the following comments and to clarify the issues outlined below so to support also national and other European authorities when dealing with the application of data protection and privacy rules with respect to the specificities of the insurance sector.

I. Further processing of data – telemetry data

The guidelines state in paragraph 52 that “*telemetry data collected for maintenance purposes may not be disclosed to insurance companies without consent for the purpose of offering behaviour-based insurance policies*”. The EDPB should specify that telemetry data, which is necessary for the performance of a telematics insurance contract, can be processed on the grounds of Article 6(1)(b) of GDPR. Otherwise, paragraph 52 of the guidelines may be misunderstood in a way that the processing of telemetry data in the context of driving behaviour-based insurance policies always requires consent.

II. Geolocation data

Geolocation data represent one of the three categories of personal data warranting special attention by vehicle and equipment manufacturers, service providers and other data controllers, including insurance companies (paragraph 95).

The collection of geolocation information – as for example through telematics boxes – is of utmost importance for the insurance sector. This kind of information is indeed essential not only to ensure the safety of the data subject, but also to support the important role of insurance companies in the society. By leveraging digital technologies, insurance companies are able to move from a traditional service model that offers only protection to a model that offers protection, prevention and preservation, thus enhancing risk assessment in underwriting, reducing the cost of claims and identifying new sources of sustainable growth.

In this context, AMICE is of the opinion that paragraph 61 of the proposed guidelines, which sets out the principles in compliance with which the collection of geolocation data has to be carried out, raises a number of concerns. The possibility to activate geolocation only when the user launches a functionality that requires the vehicle’s location to be known, and not by default and continuously when the car is started, as well as the option to deactivate geolocation at any time, may have a detrimental impact on the effectiveness of the telematics-based insurance service.

There are two sets of issues which need to be considered:

- a risk management issue, and
- an issue related to the fulfilment of the contract for the supply of the telematics-based insurance service concluded between the provider and the end-user.

As regards the risk management issue, it is important to consider it both from a safety perspective and from a strict insurance risk management perspective.

When looking at the safety aspect, one of the basic principles of insurance requires the insured to do everything possible (thus including omissive and/or commissive behaviour) to avoid or decrease the damage. The possibility to activate geolocation only when the user launches a functionality that requires the vehicle’s location to be known, and not by default, instead, provides for the opposite result since it may trigger negative effects not only by incentivizing biased behaviours by the end-user but also by hindering the proper functioning of the telematics service. For example, in case of weather storms or other critical situations, not having an active geolocation can undermine the functioning of the telematics service and consequently the insurance company’s efforts to provide for preventive measures to reduce the risk of damage or enhance the driver’s safety. The worst-case scenario could be the death of the driver.

Another relevant argument related to the safety aspect – and consequently to the need to have geolocation activated by default - concerns the exercise of the right of defence and the right to a fair trial (Article 6 of the European Convention on Human Rights). Geolocation data can in fact be used as evidence in both civil and criminal proceedings, as for example in vehicular manslaughter cases. Conversely, should the

option to activate geolocation be subject to the user's discretion, such a right of defence could be seriously undermined.

From a strict insurance risk management point of view, AMICE would like to point out the fact that telematics devices play an important role both with respect to the possibility to decrease the damage, as well as in relation to the fulfilment of the requirements set out by European and national insurance legislation to combat fraud and on claim settlement.

Enabling geolocation by default would allow indeed:

- to promptly get in contact with emergency services, and thus, to prevent the worsening of consequences of an accident and, in parallel, to reduce the damage;
- to facilitate the 'event reconstruction' by using objective parameters that can support at the same time claim settlement activities and the fight against insurance fraud.

Regarding the second issue mentioned above – the fulfilment of the contract for the supply of the telematics-based insurance service – AMICE would like to refer to the general principles of contract law, which provide that each party of the contract is legally responsible to perform its obligations according to the contract terms. In the case of a telematics-based insurance service, by voluntarily entering into an agreement with the telematics service provider, the end user has agreed to implement the telematics device in an exchange of a number of benefits, including the application of lower insurance premium. Moreover, without continuous geolocation – in the context of telematics and usage-based insurance policies – it would not be possible to grant a fair premium for the users since their driving habits would not be continuously monitored.

It derives that the option to deactivate geolocation at any time may risk invalidating the contract and the related contractual obligations.

Based on the above observations, AMICE invites the EDPB to amend section 2.1.1 on "Geolocation data" by clarifying that disabling data collection may be incompatible with an insurance policy based on telematics and to propose recommendations compatible with national contract law and sectorial mandatory guidance concerning telematics insurance.

III. Local processing of personal data and limitation to access raw data

The EDPB refers in paragraph 75 to the case of usage-based insurance (UBI) – which is then further elaborated under Section 3.1.1. that deals with Pay As You Drive Insurance – and recommends that personal data regarding driving behaviour (such as the force exerted on the brake pedal, mileage driven, etc.) could either be processed inside the vehicle (e.g. in telematics boxes) or by the telematics service provider on behalf of the insurance company (the data controller) to generate numerical scores that are transferred to the insurance company on a defined basis (e.g. monthly basis). In this way, the insurance company does not gain access to the raw behavioural data but only to the aggregate score that is the result of the processing. The EDPB states that this ensures that principles of data minimization are satisfied by design.

AMICE does not agree with this recommendation and it is of the opinion that the interpretation of the data minimization principle given by the EDPB is too strict.

Under paragraph 68 of the guidelines, the EDPB notes that, taking into account the volume and diversity of personal data produced by connected vehicles, the data controllers (e.g. insurance companies) are required to ensure that technologies deployed in the context of connected vehicles are configured to respect the privacy of individuals by applying the obligations of data protection by design and by default as required by Article 25 of GDPR. This means that technologies should be designed to minimize the collection of personal data, provide privacy-protective default settings and ensure that data subjects are well informed and have the option to easily modify configurations associated with their personal data.

It is important firstly to stress that in usage-based insurance, the customer often must install a telematics device in their car or an application on their phone. Consequently, customers will know if their insurer is collecting data or not.

Secondly, a clarification on UBI policies, as well as on why access to raw data is extremely important to ensure fair pricing and design products with higher value added for consumers is necessary. UBI policies are mostly based on driving behaviour (not only mileage) and rely on telematics devices to collect vehicle-operating data that insurance companies can analyse to price insurance policies more accurately, assess claims, and even recreate accidents for analysis.

The first types of telematics products on the market did not have any variable component linked to usage (telematics information), but only an up-front flat discount. These solutions monitor mileage (distinguishing sometimes between driving during the day, the night, the weekend and/or itineraries) and provide a base premium adjustment to be applied in the following year.

Given the steady rise of UBI policies, many insurers in recent years have made significant efforts in terms of investments and resources to develop a thorough expertise and proprietary technology (such as algorithms) aimed at calculating a fair price for their clients or providing better suited services. The EDPB's interpretation suggests instead a uniform approach to risk scoring.

AMICE does not agree with this approach. The envisaged limitations to access raw data would prevent insurance companies to recoup the massive investments they have made during the last years in creating risk models and algorithms to ultimately benefit consumers through better risk segmentation and pricing. As a result, there would be negative consequences on the quality of the insurance products as well as an impact on free competition within the insurance market where risk would be viewed exactly the same by all insurers.

Data analytics hold indeed huge potential for generating business value. However, given the transformative strength of big data (of which telematics is a classic application), knowing (*ab origine*) the exact business value of any one big data application is often unclear. The reason is due to the fact that analytics initiatives have several unique features:

- First, they require an explorative approach: usually the analysis does not start with specific requirements as in other projects but rather with an idea or data set. To assess the relevant contribution, ideation techniques and rapid prototyping are usually applied. This exploration plays a key role in developing a shared understanding and giving a big data initiative a strategic direction.
- Second, in their early phase analytics projects are characterized by a complex interaction between different stakeholder interests, competencies, and viewpoints. This means that learning is an integral part of these projects since it is essential to build experience and competence with analytics.
- Third, analytics projects run in parallel to the existing information technology (IT) infrastructure and deliver short scripts or strategic insights, which are then installed in larger IT projects. Due to a missing end-to-end target, data is not only to be extracted, transformed, and loaded, but also needs to be identified, classified, and partly structured.

This all means that a general process for value generation, which needs to be established to guide analytics projects and address the above-mentioned issues, would not be possible without access to the data.

Moreover, should a scoring algorithm be developed by a third party, the insurer will be required to understand the raw data that has been used to create that score to ensure that it is meeting its obligations from a regulatory, contractual and data protection perspective (e.g., to ensure fair customer outcomes).

Raw data must be regularly audited and reviewed for accuracy and relevance: this means that the inability to access raw data impedes insurers from complying with legal obligations, including Solvency II requirements. At the heart of the prudential Solvency II regulation, there is indeed the comprehensive assessment of the company's risk profile that the insurer has to conduct as part of a process that can enhance decision-making procedures by developing closer integration between risk and performance management at all levels. Should the insurance company have limited or no access to raw data, the risk assessment would have to be based on the scoring elaborated by a third party – e.g. the telematics service provider – that *de facto* would be the real “risk assessor”.

Another relevant argument related to this aspect – and consequently to the need for insurance companies to access raw behavioural data – concerns the fact that today many companies have developed the internal skills and created such corporate structures so that they act, at the same time, as insurance companies and telematics service providers. Such a circumstance, on the one hand, makes it difficult for

the companies to properly conduct “hybrid processing” as envisioned by the EDPB, while on the other hand, makes inconsistent the decision to prevent insurers to access and process data collected by their own devices, installed on their own clients’ vehicles, for the specific purposes of carrying out their own insurance contracts.

Therefore, AMICE does not agree with the EDPB position as reflected in paragraph 75 under section 2.4.1 and paragraphs 108, 112 and 115 under section 3.1.1 of the proposed guidelines and suggests the introduction of a more flexible approach to data minimization, allowing a better understanding of who can access and process the data collected by the telematics device.

In view of the above arguments, AMICE urges the EDPB to amend section 2.4.1 on “Local processing of personal data” and section 3.1.1 on “Pay as you drive (PAYD) insurance” to provide for clearer guidance and vision to the insurance industry in the development and functioning of the telematics services.

IV. Transmission of personal data to third parties

The EDPB recommends in paragraph 74 that “*data should not be transmitted to any third parties (i.e., the user has sole access to the data)*”, while paragraph 93 of the guidelines suggests that “*the data controller may transmit personal data to a commercial partner, to the extent that such transmission is based on one of the legal basis stated in Article 6 GDPR*”. Then, in paragraph 95 the EDPB recommends that “*the data subject’s consent should be systematically obtained before their data are transmitted to a commercial partner acting as a data controller*”.

AMICE notes a contradiction between the recommendations made in paragraph 93 and paragraph 95. We invite therefore the EDPB to revise the draft guidelines taking into account all the legal bases for processing, including the one on the execution of a contract. This would ensure that the final text recognises the existence and practical use of all legal bases in Article 6 of GDPR to process personal data generated by connected vehicles. In particular, the EDPB should acknowledge that in the context of motor insurance telematics, the most adequate legal basis to process personal data is Article 6(1)(b) of GDPR (performance of a contract). This would also ensure consistency with paragraph 50 of the guidelines.

V. Case study on Pay As you Drive (PAYD) insurance

General remark on PAYD / PHYD insurance policies

The draft guidelines primarily refer to PAYD insurance policies. It should be noted that advanced usage-based insurance products are represented by pay-how-you-drive (PHYD) policies, which are based on driving behaviour. Today, these products represent the most common solutions currently available on the market.

PHYD policies are different from PAYD because they are policies that integrate information gathered on mileage with an analysis of the client’s driving style based on the number and intensity of accelerations and stops, driving timetables, speed, location and other variables, such as weather conditions, the time of day / the weekday. This is an important difference that should be better reflected in the final EDPB Guidelines to avoid misunderstandings when reference is made to PAYD (see paragraph 103 of the EDPB draft guidelines).

Definition of PAYD insurance

When describing PAYD insurance, the draft guidelines do not refer to sensors but only to telematic services (see paragraph 103, paragraph 105 “*SIM card contained in the telematic device*”). We believe that the example should be extended to all the data collected regardless of the vector: sensors integrated into the vehicle, telematics boxes, etc.

Data collected

The EDPB recommends a strict separation between commercial data and usage data. In particular, raw data and data directly relating to the identity of the driver (including license plate) must be separated, also when the raw data are processed outside the vehicle by a specific data processor. We fully understand the rationale of this guideline, however it is impossible to apply it in practice for the following reasons:

- A data processor must have limited information on data subjects and/or a vehicle to allow a match between raw/aggregated data and data subjects. IMEI-number is usually used to connect a data source (vehicle, telematic device or smartphone) to the platform set up by the data processor and license plates are commonly used for connecting the dataset/platform to the data subjects; policy number is an alternative but is less convenient and may lead to more mistakes in the identification of the data subject;
- A data processor usually has access to contact details of the data subject (email address and phone number) to give them access to specific app/website allowing the data subjects to have a view on their data and monitor their usage;
- Insurance companies (data controller) should have access to some raw data collected by the data processor for test and monitoring purposes (i.e. to make sure the solution offered by the data processor is correct and conform to the requirements of the insurance company) or for troubleshooting purposes (to answer a request or a complaint of the data subject). It is important to note that the quality of the data is of utmost importance for the insurer as it has potential major impact on its business model (i.e. pricing);
- Insurance companies (data controller) should have access to raw data collected by data processor for research purposes (e.g. research linked to accidentology) in order to identify the behaviours that are best linked to a higher risk of accident and adapt the computation of the aggregated data accordingly; these researches must use both commercial and (raw) usage data to be effective.

The EDPB also notes that if only the mileage is necessary for the performance of the contract, location data should not be collected. However, location data is collected to calculate the mileage in most cases. Insurers and data processors do not always have direct access to the mileage of the vehicle provided through an odometer and have to calculate it by using smartphone or after-market device location data.

Limitation to access raw data

The EDPB recommends limiting the access to raw data by the insurer (paragraph 108), whether it is processed in the vehicle or by a telematics service provider. In the latter case, the EDPB specifies that on the one hand the supplier would only receive the real-time data without knowing the identity of the insured. On the other hand, the insurer would know the name of the insured, but would receive only the scores and the total mileage. It will be necessary to ensure that the supplier does not transmit any identifying information and that this anonymization is indeed effective.

However, access to the raw behavioural data collected by the cars' sensors is key to provide fair pricing for PAYD insurance. As such, the EDPB recommendation to limit insurers' access to raw data and to resort to "hybrid processing" pose serious challenges.

As mentioned above, AMICE invites the EDPB to amend its draft guidelines so as to grant access to raw data from the telematics device used to offer PAYD.

About AMICE (Association of Mutual and Cooperative Insurers in Europe)

AMICE is the voice of the mutual and cooperative insurance sector in Europe. The Brussels-based association advocates for appropriate and fair treatment of all mutual and cooperatives insurers in a European Single Market. It also encourages the creation and development of innovative solutions for the benefit of European citizens and society.

Mutual and cooperative insurance follows the principles of solidarity and sustainability and is characterised by customer-membership and a democratic governance. The mutual business model, with its focus on using surpluses for the benefit of its members, is the natural way to provide insurance.

Mutual and cooperative insurers have a market share of more than 30% of the European insurance sector, with more than €420 billion in premiums written and over 410 million policyholders across Europe.