

30.4.2020

European Data Protection Board

Guidelines 1/2020 on processing personal data in the context of connected vehicles and mobility related applications**Comments by Ministry of Transport and Communications Finland****Summary**

In the consultation response, attention is paid to the following matters:

- The definition of personal data in the EU General Data Protection Regulation (GDPR) is broad, which means that data collected by vehicles is almost always personal data. The processing of such data is subject to the provisions of the Data Protection Regulation and, in addition, to the requirements concerning consent in the Directive on Privacy and Electronic Communications.
- The draft guidelines deal with connected vehicles. At this stage, however, the term “connected and automated vehicles” should be used. The draft does not take the needs of automation into account. Developing automation in road transport is based on the use of data and algorithmic systems (which in turn are also based on the processing of big data).
- It is a challenging task to reconcile these two points. Transport automation brings great benefits to road safety and combined with the use of data also has a major impact on the achievement of transport emission reduction targets, for example.
- The use of the key processing basis, consent, involves significant risk and uncertainty factors, as specified in more detail below. In addition, anonymisation requirements are so high that even that does not allow extensive processing of data.
- The conclusion is that the processing of personal data in connection with connected vehicles requires a legal basis provided by (special) regulation. It must be specific and ensure that the protection of personal data is implemented in an appropriate manner in line with the GDPR, taking into account other generally acceptable objectives (such as road safety). As vehicle data holders are, as a rule, large international operators, regulation would best achieve its objectives when implemented at EU level.
- One of the regulatory options to be examined could be to increase the B2G data sharing, for example through traffic control and management service providers. The Commission has put forward these types of ideas in connection with the revision of the ITS Directive.
- Attention would also be paid to the exclusion of C-ITS services in the draft guidelines of EDPB. Apparently, the aim is to draw a line between services using public communications networks and services using short-range communication solutions.

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Ministry of Transport and
CommunicationsOffice
Eteläesplanadi 16
FI-00100 HelsinkiPostal address
PO Box 31
FI-00023 Government
FinlandTelephone
+358 295 16001www.lvm.fi
firstname.lastname@lvm.fi
kirjaamo@lvm.fi

This should be clarified in the draft guidelines, otherwise it will be very difficult to understand its scope.

More detailed remarks

Legal basis for the processing

According to the guidelines, consent is, as a rule, the most suitable basis for processing personal data when there is a consent or basis for exception as referred to in Article 5(3) of ePD, unless it can be shown that some other legal basis as referred to in Article 6 of the General Data Protection Regulation would be applicable to the processing and that the legal basis in question will not decrease the level of protection as referred to in Article 5(3) of ePD.

Consent should be obtained from all data subjects within the scope of the processing measures. The challenge is that those subject to the processing measures (vehicle owners and users) can change. So in the context of connected vehicles there may easily be situations where data controllers are unable to ascertain all the parties from whom the consent should be obtained, for example, or if additional consent is requested for new processing purposes, whether the person giving the consent is the same as the person who gave the original consent. If this or an adequate level of information provision cannot be ensured, consent cannot serve as the legal basis for processing.

However, the controller may not rely on any other legal basis for processing under Article 6 of the Data Protection Regulation, unless it can be substantiated that it does not undermine the level of protection provided by Article 5(3) of the ePD. The guidelines do not take a stand on whether the data controller could set a requirement that the data subject giving a consent will inform other people subject to the processing measures how they can receive information about the processing, how to give their consent or forbid the processing for a certain period of time, for example. Or could the controller require that the data subject who has given consent informs other data subjects who are subject to processing operations and ensures that they accept processing operations or, if processing is not accepted, the processing is discontinued for a certain period of time. Or are such measures considered to be unreasonable and to place too much responsibility on an individual data subject, thus violating the principles of data protection regulation.

In practice, the use of consent as the legal basis for processing by using the current technical means seems to contain a lot of uncertainties and great risks for the controller. On the basis of the guidelines, the only legal basis for the processing of personal data that does not involve significant risks seems to be a statutory obligation. However, the adoption of statutes is a slow process and the legislation does not keep up with the technological advances. Nevertheless, the development of transport automation, supported by communication between vehicles, must be ensured and there must be means to improve road safety by means of automation while fully respecting the protection of personal data. The statutory obligation alone is not sufficient to meet the needs of transport automation. It would be clarifying if the draft guidelines could take a stand on whether processing based on Article 6(1)(e) of the GDPR could also be considered such legal basis, which does not undermine the level of protection provided by Article 5(3) of the ePD. In addition, there is a need to find

Id Versionumero

Ministry of Transport and Communications	Office Eteläesplanadi 16 FI-00100 Helsinki	Postal address PO Box 31 FI-00023 Government Finland	Telephone +358 295 16001	www.lvm.fi firstname.lastname@lvm.fi kirjaamo@lvm.fi
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concrete and reliable methods for obtaining valid consent in the context of connected and automated vehicles.

Anonymisation

Connected vehicles provide an increasing amount of data. Most of it can be considered personal data, because it is either related to the vehicle driver or passengers (also technical data where appropriate). As far as processing measures are concerned, the aim could be that only anonymous data be processed. However, anonymisation of data is in itself processing of personal data and requires a processing basis in accordance with data protection regulation, which means that it involves the challenges mentioned above. Considering the amount of data to be collected, the processing time and the nature of the data, efficient anonymisation is challenging and difficult to implement. In addition, it would be challenging to ensure continuous anonymity of information, particularly in view of the technological development. Efficient anonymisation may also require minimisation of the data being processed to a level where the remaining information is no longer sufficient to serve the purpose of the data.

Cooperative Intelligent Transport Systems (C-ITS)

In the draft guidelines, section 34(1.3.1), the cooperative intelligent transport services, C-ITS have been excluded. It should be noted that the section refers to the transmission of short-range “broadcast” type C-ITS services. However, vehicle-to-vehicle communication services, such as information on conditions and disturbances in road traffic, can also be transmitted between vehicles, infrastructure or devices as long-range services, so-called point-to-point, which utilise the Internet Protocol. The draft guidelines deal with such long-range services provided through radio technology. These services are already provided by several vehicle manufacturers and service providers. In addition to the reference to Directive 2010/40/EU, the draft guidelines should clarify the differences between short and long-range C-ITS services so that only short-range C-ITS services are excluded from the guidelines. This would clarify the limitation of the applicability of the draft guidelines.

Laura Vilkkonen
Director General
Data Department

Kirsi Miettinen
Senior Advisor for Legislative Affairs

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Ministry of Transport and Communications	Office Eteläesplanadi 16 FI-00100 Helsinki	Postal address PO Box 31 FI-00023 Government Finland	Telephone +358 295 16001	www.lvm.fi firstname.lastname@lvm.fi kirjaamo@lvm.fi
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