

Colmar-Berg, April 30, 2020

Subject: Comments on THE EDPB draft guidelines 1/2020 on processing personal data in the context of connected vehicles and mobility related applications

Presentation. Goodyear Dunlop Tires Operations S.A. and its affiliated companies (“**Goodyear**”) develops, markets and sells tires for most applications. Goodyear commercializes services and solutions with current core focus on professional fleet customers, e.g., customers who qualify as commercial/corporate organizations (not individuals) who own or lease vehicles (e.g., trucks, vans) such as transportation or logistics companies. Goodyear’s products can be equipped with technology (e.g., sensors) enabling technical monitoring of products and proactive planning of their maintenance. This may entail transmission of data in relation to tires and concerned vehicles to Goodyear (e.g., to generate security or maintenance alerts), but without triggering any automated remote action on a particular vehicle.

Goodyear welcomes this opportunity to contribute to the public consultation (the **consultation**) on the EDPB draft guidelines on processing personal data in the context of connected vehicles (the **Guidelines**). As an equipment manufacturer and data-driven service provider, we are aware of the importance of integrating high data protection standards to the design phase of our services and products. In most of our data-driven services, data at stake is merely technical data and does not qualify as personal data. However, certain data-driven services Goodyear provides may entail the processing of personal data. In the latter case, we would expect the EDPB final Guidelines to provide pragmatic guidance.

Goodyear believes that the Guidelines could benefit from clarifications and further explanations on the below issues:

• **Scope/Applicability of the Guidelines to equipment manufacturers and data-driven service providers.** Goodyear would welcome more precise guidance and examples from the perspective of an equipment manufacturer. The Guidelines indeed currently provide very limited practical guidance.

The allocation of roles and responsibilities (controller *vs.* processor) in relation to the connected vehicles’ environment should notably be contextualized. We would also welcome further clarification as to the role and responsibilities of mere technology providers (e.g., the manufacturer of a tire equipped with a sensor in relation to connected vehicles). Having a clear position from the EDPB on most appropriate legal qualifications for common connected vehicles situations would enable securing the allocation of responsibilities in the interest of concerned actors and data subjects. In our view, a mere technology provider should not fall under the qualification of either a ‘controller’ or a ‘processor’ under the GDPR if it does not receive, process, store or access any of the personal data generated in the context of connected vehicles’ management or operation.

• **Professional use of connected vehicles.** The Guidelines focus on data processing activities in relation to non-professional use of connected vehicles by data subjects (e.g., drivers, passengers, vehicle owners, renters). As a consequence, the Guidelines are only partially relevant to Goodyear's core activity (e.g., manufacturing and sale of tires mainly to fleet customers, irrespective of professional or non-professional use of vehicles equipped with Goodyear products). Since the GDPR does not distinguish between professional and non-professional use of data, Goodyear would appreciate if the EDPB could clarify if/how the Guidelines apply in a business-to-business-to-consumer (B2B2C) context.

• **ePrivacy.** The Guidelines provide that the EU ePrivacy Directive 2002/58/EC (the **ePrivacy Directive**) applies in the event of storage or access to information stored in the terminal equipment of a subscriber or user in the European Economic Area (EEA). Connected vehicle and any device connected to it are indeed considered as 'terminal equipment' by the EDPB.

The Guidelines consider that any device linked to a connected vehicle as 'terminal equipment', within the meaning of the ePrivacy Directive. In our view, the Guidelines currently retain a very high-level approach and do not provide sufficient practical guidance on cases where consent from users/subscribers is required. Providing a number of examples relevant to the connected vehicle industry and the various related products and services would allow a clearer understanding of how ePrivacy applies to this sector. From the perspective of a tire manufacturer, obtaining prior consent from individual drivers/subscribers (with whom it does not directly interact) would be incredibly burdensome and complex. We thus think that the Guidelines would benefit from further clarifications on when and how to implement the consent requirement in a B2B2C environment, and clear statements on the conditions in which manufacturers can be exonerated from such consent requirements.

Additionally, the Guidelines seem to require both prior consents to store or process personal data in accordance with art. 5.3 of the ePrivacy Directive and a legal basis under art. 6 GDPR (cf. paragraph 13-14), which creates confusion. We think that this position should be reconsidered or further explained by the EDPB. Moreover, the Guidelines take a very conservative approach when providing that 'further processing on the basis of a compatibility test according to art. 5.1b GDPR is not possible, since it would undermine the data protection standard of the ePrivacy Directive' (paragraph 50). We believe that the risk-based approach and the principle of compatible further processing under the GDPR already allow for high data protection standards. We would thus like to ask the EDPB to review this position.

Goodyear believes the Guidelines should reconsider and further explain the implementation of the lawfulness requirement (art. 6 GDPR) in the context of connected vehicles, taking into consideration the different uses of data (notably the provision of services to customers, whether the latter are individuals or corporations). Goodyear suggests clarifying the Guidelines as to whether personal data can be processed on a legal basis other than consent, notably to render legitimate (i) processing operations carried out by an equipment manufacturer to provide services to its customers/subscribers, or (ii) secondary processing carried out by an equipment manufacturer in capacity as an independent controller (e.g., statistics, product improvement, research and development). We believe that consent does not provide absolute protection to data subjects in this context.

• **Extensive interpretation of personal data in the context of connected vehicles.** The Guidelines provide that 'much of the data that is generated by a connected vehicle relate to a natural person that is identified or identifiable and thus constitute personal data' (paragraph 28). Whilst we acknowledge that technical data derived from a connected tire may -depending on the context of their collection or use- qualify as personal data, Goodyear considers that this statement is too general and introduces a risk that any data related to or collected from a connected equipment be considered as personal data, which is not necessarily correct. There is a specificity of data collected from connected tires and the B2B2C nature of our business that is not taken into account in the Guidelines. Since -from our perspective- much of the data generated from connected tires does not qualify as personal data, we take the view that the Guidelines should not automatically qualify connected vehicles-related data as personal data; this is indeed not a trivial

legal question and a correct qualification calls for a case-by-case review. In practice, knowing or accessing a vehicle identification number (VIN) does not in itself allow a tire manufacturer identifying an individual driver (often one of many professional drivers of a fleet customer).

- **Location data.** Goodyear suggests clarifying the difference between 'location data' and 'geolocation data' (paragraph 60 and 61).

- **Transmission of personal data to third parties.** The Guidelines recommend that 'the data subject's consent be systematically obtained before their data are transmitted to a commercial partner acting as a data controller' (paragraph 95). Goodyear wonders what the legal basis for this requirement is and considers such a generic requirement to excessively restrict the possibilities offered by art. 5.1b GDPR (provided prior information by a controller is clear and contains required information on recipients).

- **Security.** We have observed that the Guidelines only provide general recommendations and call for 'specific requirements taking into account the characteristics and purpose of each data processing' (paragraph 92). Goodyear suggest that the EDPB emphasises on the risk-based approach enshrined in art. 32 GDPR. It is indeed important that the Guidelines do not provide theoretic general restrictions or conditions that would not take GDPR's self-accountability principle into account: a controller should be able to carry out more detailed or accurate geolocation data processing if adequate privacy and security measures are deployed to protect individuals. Given the high business potential of secondary use of non-personal data collected from devices linked to connected vehicles (e.g., in order to build new services related to prevention, maintenance, security and road safety), anonymization can prove to be an essential measure for both equipment manufacturers (in the interest of security and technical progress) and users. Goodyear would welcome good practices, examples or case studies in the Guidelines illustrating the use of anonymization or pseudonymisation techniques by equipment manufacturers.

- **Data protection by design & by default.** Goodyear suggest that the Guidelines emphasise the link between (i) data protection by design and (ii) organisational accountability and the risk-based approach to better assist controllers.

- **Good practices, case studies.** We believe that good practices and case studies can create a better understanding for practical implementation of data protection rules in the context of connected vehicles. We have observed that the list of case studies currently lacks illustrations of the core business of equipment manufacturers or the perspective of a processor.