

The connected car: Towards an EU regulation ensuring effective and fair access to in-vehicle data

Connected and autonomous cars represent a great challenge for the EU automotive industry as the latter needs to confirm its world leader position. The increasing developments in the field of autonomous and connected mobility underline an urgent need to tackle the issue of data collection and ownership **at the EU level** with a specific regard to the automotive sector.

Following the 2017 results of the study, lead by the European Commission, on access to in-vehicle data and resourcesⁱ, MOBIVIA calls for a **clear** and **adequate** regulation at the EU level aiming to: (1) set up a **consumer-friendly solution in relation with data ownership and data protection rules** and (2) pursue the adoption of **fundamental principles** that will be respected by all actors of the automotive sector. In consequence, it is essential to (3) legally ensure the use of a **technological solution** that will embody those guiding tenets and will thereby create a level playing field for all players on the market.

This means, in practical terms, that **MOBIVIA asks for a quickly-adopted EU regulatory provision eventually requiring the introduction of an on-board application platform with an equal access for all actors**. This unique, innovation-centred solution would ensure that no single actor (i.e. manufacturers) benefits from a lack of binding guidelines to concentrate power emanating from a data access restriction at the expense of consumer choice and innovation.

Moreover, despite the fact that the on-board solution can be presented as a long-term solution, **short-term inaction at the EU level poses a severe risk both to fair competition and the mere respect of commonly agreed guiding principles** established by the Working Group n°6 'Access to in-vehicle resources and data' of the European Commission C-ITS platform (gathering several actors of the automotive market, including manufacturers)ⁱⁱ. In its EU strategy on automated mobilityⁱⁱⁱ, the European Commission recognizes that the in-vehicle data platform servers, put forward and already implemented by several manufacturers, are not sufficient to ensure the respect of the principle of fair competition on the market.

Proposal 1 – Setting up a consumer-friendly solution in relation with data ownership and data protection rules

Consumer protection is one of the founding tenets of the Internal Market: no exception should be made for connected cars. In its communication 'Building a European Data Economy'^{iv}, the European Commission stated that drivers should have the freedom to choose services, based on accessing in-vehicle data, to meet their specific needs.

In this respect, MOBIVIA recalls two of the guiding principles underlined in December 2015 by the Working Group n°6 of the European Commission C-ITS platform.

Following those principles:

- The owner of the vehicle should give **his/her consent** to the use of data
- For privacy reasons, the driver must benefit from the **protection of the data** generated by their car journeys

Moreover, and supporting these principles, in February 2016 the *Fédération Internationale de l'Automobile* (FIA) also published a report^v based on a survey carried out in the EU about connected cars, where 90% of the respondents say data generated by vehicles belong to the driver and that in the case of a breakdown, 92% of them believe they have the right to choose where they wish to repair their vehicle.

There is therefore a clear need to put consumer choice at the core of the relationship between the rules on data ownership and data protection. Indeed, the study on access to in-vehicle data and resources points out the risk that manufacturers, as *de facto* owners and controllers of in-vehicle data, could distort competition and stifle innovation by limiting data access to service/application providers, eventually limiting consumer choice without the consumer consent.

Somehow the EU is gradually moving towards a regulatory framework that considers the needs of the European citizens as evidenced by a principle enshrined in the latest Reform of the EU data protection rules: the 'right to data portability'^{vi}. Indeed, Article 20 of the General Data Protection Regulation has introduced a right enabling data subjects to transfer their personal data in a commonly-used format from one data controller to another without hindrance from the original controller.

There is a need **to go further** and **to apply those fundamental assumptions to the in-vehicle data scheme**. Data generated by the use of a vehicle – such as speed, location, general conditions of the vehicle, etc. – belong to the owner and thus data collected requires an adequate level of protection.

The owner of the vehicle must be advised of the information he/she provides and should be able **to choose to whom he/she gives access to such data** – e.g. through an opt-in system allowing the driver to choose whether the car can collect their information before starting the ride. This right is a precaution to consumer protection as it allows consumers to select their service providers.

Proposal 2 – Pursuing the adoption of fundamental principles for the automotive digital transition

As many automotive businesses and activities are gradually shifting towards innovative forms of mobility and new ways of providing services to car users, three fundamental principles must be respected to ensure Europe's leading position within the digital transformation sector.

Failure to comply with the following principles would represent a threat to the whole industry, to its worldwide competitiveness as well as to the millions of jobs linked to it:

- **Freedom of Operation**
- **Freedom of Innovation**
- **Safety of People**

Freedom of Operation

To preserve and promote both entrepreneurship and the existing or future jobs within the automotive sector, all service providers with professional qualifications must have equal access to vehicles' data and resources. Moreover, in order to ensure fair competition, the aftermarket sector needs an on-site access to data for maintenance, a remote access to data for preventive services as well as an access to in-vehicle driver interface for a customer relationship.

Freedom of Innovation

Freedom of innovation means the right to enhance the existing car technologies. Indeed, innovation within the aftermarket sector is key for the rapid market adaptation to global issues and worldwide competition. It allows the entrance of new market players and the development of fresh initiatives. At the same time, it helps transforming the industry at a faster pace than the natural market fleet renewal.

Safety of People

By advising and assisting motorists, the aftermarket sector contributes to better vehicle maintenance and greater driving safety. And, as safety is a topic that goes beyond any individual business interest, all stakeholders should collaborate to create secure and interoperable solutions. In this sense, car manufacturers and the aftermarket should define together the technical environment that is required for passenger safety and system security. This cannot be an exclusive or monopolistic area reserved to one of the parties only.

Proposal 3 – Building a legislative framework enforcing a technical solution which allows equal access to vehicle data

The conclusion of the EC study on access to in-vehicle data and resources is plain: the current legal framework could lead to the development of technical solutions that do not respect the commonly agreed guiding principles of the Working Group n°6 'Access to in-vehicle resources and data' of the C-ITS platform. The Communication from the European Commission on automated mobility, published in the framework of the Third Mobility Package, also mentions the possible risks, posed for the principle of fair and undistorted competition, by the implementation of extended vehicle data platform servers, a technical solution defended and put in practice by several manufacturers.

Evidence has been made in the Working Group n°6 that genuine fair competition is only possible if subject to the consent to data processing by the driver:

- All service providers are in an equal, fair, reasonable and non-discriminatory position;
- Standardised access comes to foster interoperability between different applications, notably regulatory key applications, and facilitates the common use of the same vehicle data and resources.

Therefore, only one mandatory technical solution can be considered and will enable a fair access for everyone: **An on-board application platform with an equal access to all actors**

MOBIVIA acknowledges the legislative challenge that the EU is facing. However, it is clear that one needs to avoid situations where technical solutions are developed via private initiatives, consequently distorting the market before new rules are adopted. In this context, in its recent own-initiative report on a European Strategy on Cooperative Intelligent Transport Systems^{vii}, the European Parliament asks the Commission to present a legislative proposal ensuring an unrestricted access to in-vehicle data and resources for third parties in order to protect the principles of innovation, non-discrimination and technological neutrality. Moreover, in May 2018, five distinguished MEPs from the Transport and Tourism Committee of the European Parliament addressed an official letter^{viii} to the Commission calling for a clear legislative roadmap on the issue of safe, secure and equal access to in-vehicle data and resources for all relevant stakeholders.

Therefore, during the adoption phase of this new legislation, competition law must be strictly observed to prevent abuse of dominant position and should be in line with the digital evolution in order to avoid significant negative impacts by the time sanctions are taken. Standardising the way data is made available should contribute to a smoother and fairer application of competition law.

The EU must lead the way to the implementation of an on-board application platform with equal access for all actors

The on-board application platform allows the uniform deployment of certified applications and their subsequent execution directly in the vehicle, including data access.

Either way, there is a fundamental need for the aftermarket actors to access car data in a non-discriminatory manner compared to car manufacturers. This will only be possible with the creation of a robust EU regulatory framework that enforces a technological solution which is interoperable, standardised, secure and safe. While awaiting the adoption of such a legislative framework at the EU level, the Recommendations of the European Commission to the Member States in the field of cybersecurity, access to data and connectivity, expected at the end of this year, should include at least

a set of fundamental principles regarding the fair and equal access to in-vehicle data and resources for all concerned third parties.

The cost of the development of an on-board solution is often raised by manufacturers as a major issue. However, as indicated in the study on access to in-vehicle data and resources, the cost of this solution does not exceed the benefits from a fair access to data.

Indeed, when considering the long-term benefits of an on-board application platform, it becomes essential to go for it. MOBIVIA thus proposes to include the issue of investment in this sector at the highest political level and calls public actors to encourage manufacturers to invest in such a solution via tailor made actions. This would ensure that the EU keeps playing a major role on the international scene regarding the development of autonomous vehicles thanks to the sole market and consumer-friendly solution for data access and management eventually promoting innovation in services to drivers.

ANNEX

The connected car: European context

Connected cars are already a reality of our everyday life but a great step forward was taken in 2015 when the European Parliament and the Council adopted Regulation 2015/758 making the eCall in-vehicle system mandatory for all new vehicles by 2018^{ix}.

Regulation 2015/758 did not occur unexpectedly, and the European Commission has yet been working since years on telematics and connected cars. Currently, there are indeed various EU initiatives that can be mentioned such as the Cooperative Intelligent Transport Systems (C-ITS), the GEAR 2030 High Level Group and its final report^x (DG GROW), a Communication as well as the proposal for regulation on the free flow of non-personal data^{xi} (DG CONNECT). More recent initiatives concern the European Parliament own-initiative report on Cooperative Intelligent Transport Systems, the Communication from the European Commission on automated mobility as well as the draft own-initiative report on autonomous driving in European Transport^{xii} currently under discussion at the European Parliament.

However, the adoption of the e-call regulation brings the issue of in-vehicle data collection generated by the use of a vehicle to the fore as this regulation is the first act that officially places telematics as a binding device for all cars sold in the EU.

It should be noted that car manufacturers, who install the telematics devices on their vehicles, whether an eCall system or another one, are logically put in the first line because today, as conceivers of the devices, they are also the ones who have primary access to the data collected (speed, location, oil level, general conditions of the vehicle, etc.).

On the one hand, this reality corresponds to a danger of locking consumers in the terms and conditions dictated by manufacturers – as it is currently the case for the use of smartphones in the telecommunication sector. On the other hand, there is an inherent risk of a market power abuse from manufacturers if the data collected is restricted for their sole use and is not – or partially – made accessible to other key players of the automotive sector such as aftermarket actors and service providers.

In other words, there is a great chance of hindering the principles of fair competition and, as a consequence, a danger of decreasing consumer protection as well as freedom of choice.

In order to avoid such a situation, safeguards should be established to quickly adopt the on-board solution described above in this position paper. Status quo is no longer feasible, and time has come for the elaboration of a proper regulatory framework.

The elements, pointed out in this position paper, are backed by the recent study lead by the European Commission on access to in-vehicle data and resources. Along with several observations on the flaws of manufacturer-centred solutions and the inappropriateness of the current legal framework, the study presents strong arguments in favour of an on-board application platform. The Communication from the European Commission on automated mobility also underlines the risks that extended vehicle data

servers, implemented by several manufacturers, could not be sufficient to guarantee undistorted competition between service providers on the automotive market.

Once again, MOBIVIA stresses out the fact that even though this solution is depicted as the most favourable one in a long-term perspective, the risks for consumers are way too high if manufacturers are allowed to impose their own solution in the short term.

ⁱ In August 2017, the European Commission issued a report – following a legal and technical study lead by TRL – on the access to in-vehicle data and resources: <https://ec.europa.eu/transport/sites/transport/files/2017-05-access-to-in-vehicle-data-and-resources.pdf>.

ⁱⁱ The C-ITS platform published a report in January 2016 containing all working group's conclusions: <http://ec.europa.eu/transport/sites/transport/files/themes/its/doc/c-its-platform-final-report-january-2016.pdf>.

ⁱⁱⁱ The European Commission [Communication on automated mobility](#) is part of the Third Mobility Package for Safe, clean and connected mobility published in May 2018.

^{iv} In January 2017, the European Commission presented its [Communication on 'Building a European Data Economy'](#) regarding the free flow of data and including some considerations about the access to data in various domains (such as the automotive sector).

^v FIA report is available through this link: http://www.fiaregion1.com/en/fia_region_1/news/consumers-speak-out-on-data-protection-with-connected-cars.htm.

^{vi} In April 2016, the European Parliament and the Council formally adopted the new General Data Protection [Regulation \(EU\) 2016/679](#) establishing a modern and harmonised data protection framework across the EU.

^{vii} In February 2018, the European Parliament adopted its [own-initiative report on C-ITS](#) where it invites the European Commission to make a legislative proposal on a fair and unrestricted access to in-vehicle data and resources before the end of 2018.

^{viii} MEPs Ismail ERTUG (S&D, DE), István UJHELYI (S&D, HU), Henna VIRKKUNEN (PPE, FI), Karima DELLI (Verts, FR) and Daniel DALTON (ECR, UK) were the ones who addressed the [letter](#) to the European Commission.

^{ix} In April 2015, the European Parliament and the Council adopted [Regulation \(EU\) 2015/758](#) concerning type-approval requirement for the deployment of the eCall in-vehicle system.

^x The GEAR 2030 High Level Group was launched in January 2016 and includes a working group dedicated to the development of connected and automated driving. GEAR 2030 presented [guidelines](#) for Member States and stakeholders in October 2017.

^{xi} The European Commission adopted a [Communication](#) on 'Building a European Data Economy' on January 2017 and also proposed a [draft regulation](#) of the EU free flow of non-personal data on the 13th of September 2017.

^{xii} In its [draft Report](#), published in July 2018, MEP Wim van de CAMP asks the European Commission to present legislative actions in the field of data access and data protection.