

C-ITS Platform
WG: Data Protection & Privacy
1st Meeting: Phase II: 28 June 2016, 09:00-13:00

Venue: DG GROW, Avenue d'Auderghem 45, 1040 Etterbeek, Michel Ayrat

Summary

- **First meeting of the WG since the final report of the first phase of the platform:** objective is to flesh out next steps in the second phase
- **DG JUST and EDPS presented their analysis of Phase I deliverables:**
The deliverables must be analysed against the GDPR and include essential definitions such as who the data controller is. It must also be proven that the objective of processing data cannot be fulfilled in any other way. As part of the consultation with Art.29 TS (Technology Sub-group) initiated in May, EDPS recommended formally consulting Art.29 TS through an official letter to the chairman
- **Next meeting in September, further information to be provided in the coming weeks**

1. Introduction

DG MOVE welcomed participants and informed of a fruitful meeting with the Art.29 TS that had taken place mid-May. DG MOVE had presented the conclusions of the first phase of the C-ITS platform relating to data protection. The WG had advocated finding a solution to implement informed consent and pointed out the need to foresee implications 10-15 years down the line.

2. Presentation of the solution proposed by the WG as deliverable of Phase I

DG JRC presented conclusions and solutions proposed as deliverables from Phase I. The working group had determined that messages exchanged from vehicle-to-vehicle or from vehicle-to-infrastructure were personal data, which had led to data being categorised: as necessary to obtain for vital interest, for public interest or by 3rd party services.

The proposed solution was a two-step approach, to give the data subject control and to instantiate an informed consent. First, the driver would always have to actively opt-in to broadcast their personal data. If the user however were to opt-out too frequently, it would potentially reduce the overall expected benefit of C-ITS deployment. Therefore, a second measure was developed. When the data subject chooses to opt-in to broadcasting data, 'consent markers' are attached to the messages broadcasted, giving data collectors a legal basis to process data. Further consent for vital or public interest would no longer be necessary – only for the use of 3rd party services.

Two challenges that had to be met were a) gaining trust that data would not be used incorrectly and b) preventing track and trace. Representatives of the WG on security and JRC are looking at issues of short-term certificates to this end.

One of the members pointed out that this may not be practical for the driver, if the driver is blocked by having to opt-in or out of broadcasting data before operating the car. DG MOVE responded that a solid legal basis had to be found first, before considering practicalities.

3. Analysis of Phase I deliverable by DG JUST and EDPS

EDPS reminded participants that the new privacy-by-design concept included in the GDPR would enter into force in July 2018. It was a forward-looking approach still in need of guidelines from EDPS. Critical points of analysis:

- **The data controller** (the entity identifying purposes and means to process data) **must be defined**
- **Privacy-by-design must be implemented by the data controller**, not the manufacturer: pseudonymous data is still personal data, albeit not directly identifiable. As soon as anonymous data is de-identified, it is still considered personal data.
- **Identifying purposes and scope of processing data is crucial:** the deliverables from the 1st phase of the platform make it difficult to identify scope, use and purpose of processing information, on which the subject needs to be clear.
- **Vital and public interest are the two more logical legal bases to use for this case, but may still be difficult to use:** vital interest has been very restrictively interpreted by Art.29 TS. Processing data without consent on the basis of vital interest would only be possible if for example the subject's life were in imminent danger. Public interest applications must be defined by public policy.
- **The principle of proportionality must be observed:** it was important to prove that processing the drivers' data is absolutely necessary for the purpose it aims to fulfil and that there is no other way of fulfilling the same purpose without processing personal data. Processing of data is very intrusive; all alternatives to processing data should be addressed.
- **EDPS recommended involving Art.29 TS in the discussion as soon as possible, in order to ensure that Data Protection Authorities become an active part in the work of the Working Group.**

Several members suggested considering drafting legislation on public interest applications as had been suggested in the last phase. It was stated that the data controller would have to be cooperative, including the government, industry, public-private partnerships. **A government representative** suggested exploring the possibility of using the regulation on traffic information where data could be used in certain conditions.

Several participants asked **why the CAM/DENM messages** are not **encrypted** to strengthen the protection against abusive use. Due to the high broadcast rate and the availability requirements, encrypt-decrypt would be impossible with known technology. Furthermore,

these messages are broadcasted to be seen by all in real time. Encrypting the messages and giving the decryption keys to all would be significantly inefficient.

DG JUST presented the new GDPR more in-depth: the GDPR includes the new possibilities of data protection by design and data protection by default. The GDPR defines the principles for these new possibilities, and contains the option to minimise information to the purpose of data processing. DG JUST suggested a certification framework for processing the data: devices, processes, mitigations measures would need first to obtain a qualification/certification (privacy compliance) before being marketed. For e-call, every e-call device will be subject to a technical test designed to deal with privacy and data protection requirements.

The DE Ministry informed the group of guidelines that had been proposed by DE together with Japan including basic principles data protection and cybersecurity connected to Art.29 TS at UNECE level. These guidelines could be of interest as interim guidance for those dealing with connected technology and should eventually be considered by the WG.

Under the light of comments from EDPS and JUST, **JRC** proposed that objectives of the 2nd phase be:

- To analyse deliverables against the GDPR
- To better identify the process: data owner, data processor, data controller, certification/qualification scheme
- To analyse legal implications: is this a free market driven process or is an EU delegated act necessary?
- To investigate risk assessment and possible alternatives to processing data.

Annex 1:

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| <p style="text-align: center;">C-ITS Platform WG: Data Protection & Privacy 1st Meeting / Phase II: 28 June 2016, 09:00 – 13:00</p> |
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Venue: **DG GROW, Avenue d'Auderghem 45, 1040 Etterbeek (Schuman Metro Station) Meeting room Michel Ayrat**

Draft Agenda

1. Introduction:

- Presentation of the overall context: Phase II of the C-ITS Platform, Delegated Act, etc.
- Adoption of the agenda of the meeting

2. Presentation of the solution proposed by the WG as deliverable of Phase I

3. Analysis of phase I deliverable by DG JUST and EDPS

4. Evaluation of the proposed technical solution

- Opt-in / Opt-out and consent markers
- Alternatives to driver consent instantiation?
- Parallelism and lessons to learn from existing implementations (e.g. cookies...)

5. Mapping of C-ITS applications in relation to legal basis categories

- C-ITS applications families, identifiers, univocal classification
- Criteria and Processes for identification and classification

6. Presentation of the NL representatives on a Conference on Data Protection, and steps for Privacy by Design

7. Way forward for the WG on Privacy and Data protection Phase II deliverable

8. Conclusions, planned actions and AOB

Annex 2: Attendance List

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| Simon Hania | TomTom |
| Laurianne Krid | FIA Region 1 |
| Lamprini Gyftokosta | Insurance Europe |
| Gregory Neven | IBM |
| Henri Kujala | HERE |
| Martina Schollmeyer | BMW |
| Maria Marton | Sweden - Transportstyrelsen |
| Sevvy Palmer | UK Department for Transport |
| Marc Greven | ACEA |
| Sebastian Gress | Dahler |
| Vivanne Eisenmann | Bosch |
| Niels Peter Skov Andersen | Car2Car |
| Stefano Leucci | EDPS |
| Steffen Kraschwald | Porsche |
| Günther Wildmann | Kapsch |
| Wontier Van Haaten | Min. men M |
| Jan Michael Schüngeler | German Federal Ministry of Transport and Digital Infrastructure |
| Maria Alfayate | DG MOVE |
| Natasha Ryan | DG MOVE |
| Vincent Mahieu | DG JRC |
| Manuel Garcia | DG JUST |
| Romain Robert | EDPS |
| Regina Eibich | Continental |