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Leaseurope response complementing the Data Act questionnaire

Leaseurope, the European Federation representing the leasing and automotive rental industries, fully supports the European Commission's intention to create a Single Market for data and to create fairness in the data economy. We also appreciate the idea of complementary initiatives to the Data Act for sectoral data spaces or data access & use in specific sectors or markets (incl. vehicle data).

Business-to-business data sharing

The Data Act offers an important opportunity to establish clearer European rules for B2B data transactions. Fleet owners need to retrieve all vehicle data which is captured in the vehicle. Next to VIN number, mileage (odometer) reading, miles to next maintenance service, longitude & latitude, EV's battery status, g-forces etc. are key. The same applies for asset owners retrieving data and all parameters from their connected assets (e.g. for maintenance operations).

These data are needed to offer the current and future mobility services: Mobility as a Service (MaaS), fleet management and maintenance, consumer-facing services, insurance, fleet renewal and electrification

Unfair and discriminatory restrictions placed on direct access to in-vehicle data will stunt this innovation for European consumers, businesses and the mobility eco-system as a whole. To date, our industry is facing the current situation:

1. Generic Repair and Maintenance Information (RMI). Data access is limited and expensive and it is difficult to obtain initial access for Independent Operators. The data access is controlled by the Vehicle Manufacturer (VM).
2. Specific vehicle data. Data access to "In-Vehicle" is limited to not accessible, expensive with unfair conditions. The data access is controlled by the VM and is only accessible on their terms based upon B2B contracts based upon burdensome negotiations, even if the consumer is in consent. The VM is acting as a gatekeeper and owner of the data with limited available data and limited cross-brand standardisation. For resolving this uncompetitive behaviour, Leaseurope and other aftermarket associations have setup the Secure Onboard Telematics Platform (S-OTP) as a possible solution that will solve and meet all requirements to have a cyber secure solution, transparent contracts with equal access and give the control of the data (consent management) to the driver/owner/operator of the vehicle. This set of requirements would preserve rights and obligations of every stakeholder and

ensure competition while enabling a wide range of digital services to be made available for the consumers.

Complementary regulation is required for the mobility industry. 'Fairness test' could avoid unfair contractual terms which we are currently facing with VMs. Model contract terms can reduce administrative burden but should not overrule a data sharing obligation for the mobility sector where only type-approval legislation can ensure competitiveness.

In fact, the Commission arrived at the conclusion in the 9 December 2020 Sustainable and Smart Mobility Strategy and Action Plan that it needed to make a "Proposal on a new regulatory framework to open up access to car data to mobility services". We believe that the Commission has identified the right approach that is entirely consistent with the evidence base accumulated over the five previous years. While the Data Act plus supported sectoral legislation may address several of the identified problematic issues, we remain far from convinced that it can provide the holistic and, critically, seamless regulatory framework that addresses the full range of inter-connected issues that arise from guaranteeing fair, non-discriminatory and safe access to in-vehicle data.

For example, technical standardisation could be achieved via an EU proposal. Taking into account that the market is evolving fast and competitors change over time, a degree of technical standardization will help especially for multi brand services, but always making adjustments possible to adapt to future market changes. As the vehicle acts like a platform, effective competition entails that third party providers are given the same capabilities in the same driving conditions as the OEMs. This includes an effective HMI model to be in place where every third-party app runs basically on every vehicle brand.

From a regulation point, we need a faster control mechanism to ensure that prices, terms and conditions, data/function and security standards are always kept up to date following market evolution and technical evolution. This could be achieved via an EU dynamic governance proposal, by which the legislator only enshrines general principles of "Equal access to technical progress with equal rights and responsibilities" in legislation while this entity developed and constantly updates the details over time (e.g. on a yearly basis): from enhancing the list of standardized data and functions over new mandatory security standards up to new maximum prices for app validation (see example of roaming prices). In the aforementioned S-OTP concept it is proposed to extend the existing Automotive Forum (SERMI) which is mentioned in the Regulation (EU) 2018/858, to take up this control mechanism function. The accessibility and use of the "In-vehicle" data would be verified by an independent Forum (e.g. extended SERMI). This Forum will verify the access of the data of the service provider which has received the consent of the data controller (e.g. driver, owner, operator of the vehicle) to use the data. This will ensure equal & timely access to all service providers who have received consent of the data controller.

The Data Act can provide a coherent framework for the machine generated data in the context of the Internet-of-Things (IoT), which is relevant for all sorts of connected leased equipment to ensure the assets can be tracked and serviced during their life cycle as well as materials and components can be easily repaired, maintained, and recycled at the end of the life cycle.

We call for sector specific rules for the mobility industry to address the particular and complex needs of the sector and which would provide for a specific set of legal and technical requirements to address the structural impediments hampering effective competition and innovation in the digital automotive aftermarket. Such sector specific EU rules should take precedence over the general Data Act.

Portability right under Article 20 GDPR

We are fully supportive of the portability right under Article 20 GDPR. At the same time, it needs to be highlighted that the right to data portability itself is not a solution for access to data.

Intellectual Property Rights - Protection of Databases

IP rights currently offer limited protection in relation to data. Therefore, protection of data is mainly achieved by actual control of the data (OEMs) and the technical capability of not allowing other parties access to that data without permission. In the absence of a clearly defined legal regime relating to the ownership and usage of data, in practice the party that controls the data has a big advantage over parties requiring to use that data.

Regarding the Database Directive applied to machine generated data, the so called “In-vehicle” data is produced as a by-product of the normal functioning of the vehicle and it is not generated for the purpose of generating data *per se*. As such we do not believe it should be covered by *sui generis* rights as the investment was made for a purpose other than building a database. This “In-vehicle” data should be owned/controlled by the driver/owner/operator.

We do not believe that *sui generis* rights should apply to machine generated data in the automotive sector. If the Machine Recorded Data (we rather talk about recorded than generated, due to the reason that the driver is supplying input for the sensors) and clear control of the data is prescribed (at the moment the VMs have the firm believe that they are in control of this data), there will be a huge innovation potential for small and medium enterprises in technology and in business models (e.g. Integrated MaaS solutions, Predictive maintenance, road safety). The VMs could receive a fair price (a price which will not discourage IOs for entering this new market) for making the data available/transmitting data since this will give the VMs the motivation to unlock more datapoints in the vehicle.

In reviewing the *sui generis* protection for databases provided by the Database Directive, there should be a clear distinction between the main purpose of a product and the side products it might deliver and a clear definition of the controller of this data, since the data is acquired by monitoring the behaviour of the driver/owner/operator of the vehicle and not generated by the vehicle itself.

Leaseurope stresses the importance to leave room to consider specificities in sectoral legislation, making sure that provisions are applied consistently, and sector specific bottlenecks avoided. We believe that a robust framework should be in place for mobility services and measures such as a Delegated Act will not be sufficient to address the complex cybersecurity, governance, consumer and ex ante competition angles of a Data Act initiative. Ultimately, consumer issues are at stake and can be only tackled by a proposal which will undergo the co-decision process.