

CARA response to the public Consultation to the Subject "Access to vehicle data, functions and resources" from the European Commission from March 29, 2022¹

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¹ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13180-Access-to-vehicle-data-functions-and-resources_en

1 CARA Background

CARA, the European Car Remarketing Association represents the key players in Professional Remarketing of used vehicles in Europe. This comprises the European international remarketing units from Leasing Companies, Rent-a-Car Companies, Car Auction companies, international wholesale Car Traders, Vehicle Inspection Companies, Data Provider Companies etc.

Professional remarketing is the resale of used vehicles (cars and Light Commercial Vehicles (LCV) through the channel of B2B2C traders, dealers, auctions, and comparable channels. Retailing of used vehicles is not in scope of CARA, although some members have retailing units in parallel to their professional remarketing units.

Main goals of CARA are:

- Create unique industry insights
- Developing Industry Standards and Create Transparency and Security for the end -user
- Support digitization and new market trends
- Create a common voice e.g., versus regulators, vehicle manufacturers and others

CARA has 39 members and is represented by a board of seven members.

CARA is an international non-profit association according to Belgium law.

2 Motivation

Considering the "Call for evidence for an impact assessment – Ares (2022) 2302201" Document of the Commission², CARA would like to contribute the following standpoint:

- (1). Importance of the definition of the parties "owner", "keeper" and "driver" of the vehicles regarding the access to car data and the determination of access rights to different data categories (ownership "triparty")
- (2). Relevance of the access to car data during the ownership cycle and remarketing of used cars in order to:
 - a. support prolonged use by maintaining the value of used vehicles (circular economy),
 - b. ensure transparency of the compliance to environmental regulation during the remarketing process (environmental benefits)
 - c. protect private owner/user of the vehicles by foster external storage of car maintenance and mileage data to avoid mileage fraud and tampering of vehicle maintenance and use histories (consumer and competition benefit).
 - d. enable OEM independent management of personal data access and management between Owners, Keepers, and Drivers to make vehicle use and history data transferable between previous and new owner (consumer benefit on data privacy).

² <https://ec.europa.eu/info/law/better-regulation/>

- e. enhance offering of in-car services with higher competition across the phase of ownership change during remarketing (competitive benefits).
- f. allow real driving CO2 Emission taxation across change of ownership (environmental benefits).
- g. enable competitive offerings of car sharing and other pay-as-you-drive offers for insurance and finance rates and make them transparent during the remarketing process (enhanced competition).
- h. enhance fleet planning opportunities due to better forecast of need for maintenance, repair or replacement, optimization of residual value management (enhanced competition, environmental benefits)

3 Standpoint

The relevance of in-car data has been a subject discussed in several facets. However, the distinction between data belonging to a vehicle (i.e., in-car data and other data) vs personal data is often not made specific enough, hence impeding the transfer of access rights of in-car data between owners. This happens often due to unclear regulation regarding data privacy and data security.

CARA members have identified a need to an open list, the “**CARA-List of In-Car Data**”, of data elements to be considered during the vehicle lifetime, regarding remarketing.

The “CARA-List” makes a clear distinction between different data categories to ensure a risk-minimal remarketing of the vehicles, increasing value and enhancing the circular economy of the mobility sector. With the CARA list there is a base for a clear distinction of data that belong to a car and data being protected by privacy. **The key position of CARA is the free transferability of in-car data along with the vehicle ownership title that can be transferred between owners.**

CARA suggests **a free choice of the actual owner** for an independent data storage and processing of the vehicle data such as correct mileage, maintenance data, equipment, official emission, and statutory compliance etc. This is in line with consumer protection rights, environmental protection requirements with regards to emissions, and to support the circular economy character of the remarketing business. Independent of such data storage, the determination of data access shall be governed by the proposed triparty of ownership in accordance with data privacy regulation (GDPR).

Due to the need for access to vehicle data, **CARA supports the implementation of a legislation following option three of the paper.** The required frequent updates of such legislation will reflect the dynamic development of the technology, data volumes and variety in future, which will require the legislator to adapt the regulation accordingly.

With the **CARA List**, CARA has defined a model to determine which group of users will be allowed to determine the access to data of the vehicle. This determination is crucial to support the transparency and security for the end-user and actual owner in the vehicle market due to the frequent difference of owner, keeper, and driver of a vehicle. While in private use, all three roles are usually combined in one natural person, any company car,

leasing or financed car deviates from this monolithic model and introduces two or three parties involved in the overall usage of a vehicle.

As it is in most cases technically impossible³ to obtain agreement of all three involved parties, a clear definition of access right determination by the relevant party is required. CARA as the European association of the Car Remarketing is representing the experts of the industry to define this need, as during the remarketing process the triparty of owner, keeper and driver is specifically complex. In the annex pages of the document, specific use cases are explained and quantified.

CARA members are of the clear opinion that the goals of the Commission can best be fulfilled if the upcoming regulation is following this approach and determines a clear listing of data categories and fields along with the party empowered to determine data access. CARA has published the Standpoint with the detailed CARA list on its website in December 2021⁴).

4 Conclusion

- (1). The key players in the remarketing value chain need autonomous and secure access to in-car data authorized by the owner of the car to enable added-value based on the digital data cars generate across the change of ownership.
- (2). The owner is the best party to manage data privacy concerns regarding drivers and keepers, hence owners of the vehicles should have the ultimate right to define the access, management, use, storage, and processing of in-car data, respecting the data privacy rights of drivers.
- (3). In-car data access rights need to be maintained during the remarketing process by a storage and processing of the owners' choice.
- (4). Owner-Keeper-Driver relation regarding data management needs consideration to empower owners' rights to ensure consumer protection, data privacy and maintain residual value of used cars and avoid the monopolistic ownership of this data by the former or origin producer (OEM)..
- (5). The owner shall also be determining the right to access car data bidirectionally, i.e., communicating with the driver via technical interfaces of the car.

³ The vehicle owner, buying the car from the OEM, leases a car - for example - to a company (which is usually the keeper of the car), which in turn allows a driver (employee) to use the car. In the current model, the OEM would require an agreement of the owner, keeper, and driver to handle the car data, and it is unclear who can determine the access to which data.

⁴ https://cara-europe.org/wp-content/uploads/2021/07/InCarData_2021.pdf

5 Summary

- (1). CARA supports a detailed legislation to the sector following option three of the proposal.
- (2). CARA urges the legislator to include a clear definition of the triparty of owner, keeper, and driver as parties regarding vehicle data access determination.
- (3). CARA suggest a categorisation of car data into different categories to which access shall be governed by one of the respective parties of the triparty above (the CARA List).
- (4). CARA suggest a regulation that ensures access to car data by means of technology that is cost optimal and does not prevent business models by financial discrimination in an unfair way.

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Annex I Remarketing process and its relevance for the economy explained

Remarketing is the complex transaction of a used vehicle sale from a professional fleet owner via B2B transactions to a final customer (consumer).

It is different from a simple used vehicle transaction between companies or dealers and private individuals, as it involves a multitude of stakeholders and multilevel processes. The complexity stems from a developed and balanced system to allocate vehicles to those buyers and regions that are most in need and pay relatively higher prices, hence ensuring efficient resource allocation and price harmonization among member states and regions within the EU.

However, this complexity makes it vulnerable for the loss of transparency and access to vehicle information during the process.

The reason for this vulnerability is neither technology nor business process, but mainly the unclear situation of transfer of access rights to in-car data during the transaction. It happens because of these main reasons:

- (1). At the start of the transaction, the car is usually under a triparty situation (see above)
- (2). Consent management to the data transfer is not a viable solution due to the risk of data deletion, change and revoke of access during or after the remarketing process
- (3). The classification of data being personal vs. being pure technical vehicle data regarding in-car data has been far too generic and not specific enough, which creates uncertainty and information asymmetry.

CARA has defined four cases of in-car data and categorized them within the CARA List:

- (1). Vehicle Technical Data
- (2). Vehicle Transaction Data
- (3). Vehicle Offline Data
- (4). Vehicle personal Data

All four types are explained in CARA's standpoint regarding in-car data. In general Vehicle Technical Data as well as Vehicle Transaction Data should be fully transferable at the time of remarketing.

In order to highlight concrete use cases for the benefit of transferable access rights to in-car data, CARA would like to explain the following real-life cases, illustrating the criticality of free transferability of data access during remarketing and why sector specific legislation is required.

The cases are:

- (1). Use Case 1 Fraud: Consumer buying a used vehicle without, with bad or even fake vehicle history data
- (2). Use Case 2 Innovation: Consumer wants to benefit from innovative vehicle data processing solutions when buying a used car
- (3). Use Case 3: Services: Consumer buying used car wants to use in-car services from OEM/Tier independent providers

Annex II Use Case 1 Fraud

Consumer purchases a used vehicle without, with bad or even fake vehicle history data

Without sector specific legislation to the EU Data act, the lack of transferability of car data during the remarketing process at the discretion of the owner will make a reliable transfer of historic vehicle data such as mileage or maintenance data practically impossible. The OEM stored and generated data cannot substitute this. They are based either on triparty consent or collected for legitimate reason of product market surveillance. Passing the access right to this data to a buyer of a used car might not be legitimate according GDPR, as it might be a mix between personal data and in-car data. Example: Date, location and type of a maintenance could be considered personal data due to the possibility to track an individual's journey. This issue affects ca. **30-50% of the new cars sold in Europe** (depending by country) due to their triparty relationship.

If the data access right of specific data types relating to the vehicle (i.e. vehicle technical data and vehicle transaction data as defined and distinguished between non-personal and personal data (see CARA In-Car Data standpoint) is transferable with the ownership title of a vehicle, consumers can **choose vehicles with higher transparency of the history** and pay higher prices (in analogy to Akerlofs Lemons theory). It creates an incentive to the sellers to **offer vehicles with transparent data and in good maintenance status**.

This effect, however, only becomes relevant if the market is dominated by vehicles with good data, which is today rather an exception than the normality. If the share of vehicles with transparent data on the use and maintenance history is increasing, the need for all car sellers increases to ensure that a) they provide the data and b) the vehicles data reflect a positive lifecycle of the vehicle, which means maintenance, reliable mileage, and good health of battery.

EU Data act, together with a sector specific legislation regarding the transferability of in-car data between vehicle owners would be an effective measure to support transparency on used car history data:

- (3). It would be defined that access to data that belong to a vehicle shall be **transferable with the vehicle ownership right**
- (4). The owner can define the access rights and **transfer it independently** from the manufacturer to a trusted data holder
- (5). The data that belong to the owner and the car **cannot be altered or deleted** by, or by request of other parties⁵ in the triparty relationship.

⁵ If data for example is considered too narrowly as personal, a previous driver of a car could request the deletion of vehicle history data. This would devalue a car immediately at a point after it has been sold.

Annex III Use Case 2 Innovation

Consumer wants to benefit from innovative vehicle data processing solutions when buying a used car

Currently, the storage of vehicle data is driven by manufacturers and their direct access to the buyer of the new vehicle. Transfer of data from the OEM to an independent provider of data storage - who might offer added value to the consumer - is practically not existing and in most cases impeded by the OEMs position on being the data gatekeeper in the first place.

At time of vehicle sale/purchase, consumers might want to obtain the data access (see use case 1) and transfer the data storage and processing to another provider. The reasons can be - for example- a) more innovative services, at b) lower cost or c) enhanced trust into the data storage.

The new owner (e.g. a private person) of a vehicle could benefit from this right of choice of a trustable partner for data processing and **enhance competition** between providers of such service. Because these services are not linked to the vehicle asset or manufacturing industry, these services can be provided from suppliers that are not within the traditional automotive OEM/ Tier supply chain and **create new employment outside of traditional automotive clusters**.

Finally, a better processing of the data can further increase the transparency of the vehicle history and make - especially older used cars - more attractive for further buyers, thus **enhancing the life cycle** of vehicles which supports the idea of maximum use of an asset and waste reduction.

The EU Data act along with sector specific legislation would support such opportunities by allowing the transfer of the access rights of data when selling/ purchasing a used vehicle.

NB: CARA is agnostic to the subject of how data is transferred and stored when communicating to the vehicle. This subject is considered under separate discussion streams mainly concerned with cybersecurity or data integrity, not being subject of CARAs consideration.

Annex IV Use Case 3: Services

Consumer buying used car wants to use in-car services from OEM/Tier independent providers

Today, most cars are not yet fully bi-directionally communicating with the web. However, in future this function will be increasing and might offer a variety of new services from OEM/Tier independent providers. Those could be vehicle related services such as maintenance and PTI reminders, but also context sensitive services such as geolocation / context-based traffic information or advertisements, or mileage-based tolls, for example.

A customer might want to use such services when purchasing a used vehicle even if such services were not available or used by the previous owner or triparty. In order to do that, **the right to access the vehicle from outside must be transferable between owners during remarketing** and must not be impeded by OEM or Tier reservation of vehicle data access rights.

The provision of such right to the consumer / new owner will make used vehicles more attractive to be kept **up to date to technology development**, create OEM/Tier independent **employment** by providing such services and support governments in **rewarding environmentally friendly driving behaviours** such as rewards for a high electric driving share of PHEV Vehicles, for example.

Even if services are offered by third parties, OEMs might remain in the responsibility to ensure vehicle cyber security during the lifetime of the vehicle and need to have access to vehicles to perform software updates in accordingly (Reference UN ECE R155 and R156 type approval regulations).

This situation makes sector specific regulation along with the EU data act required. Without such regulation, OEMs as gatekeeper or intermediary might - for reason of doubt about the liability perspective - restrict access to the vehicle and its data in a way that impedes competition.