

**Open source legal and
regulatory framework on
in-vehicle data | EU and NL**

A smart searchable legal and regulatory framework



The framework consists of **all relevant EU legislation and Dutch legislation**, i.e. public laws and regulations (e.g. GDPR), (intellectual) property laws (including trade secret legislation) and contract laws in relation to in-vehicle data



The framework also **provides insights in the interests that individual actors or groups of actors may have**, such as safety, privacy, security and fair competition in relation to in-vehicle data



The framework is accompanied by a **Thesaurus** that provides insights into the layered structure of all the definitions as used in the framework and how these definitions relate to each other



The framework was **set up in close collaboration with key stakeholders**, such as Automotive Industry branch associations and the Dutch government



The framework is accompanied by **Use Cases** that demonstrate how parties with an interest in in-vehicle data can use the framework to find the answers to several questions with regard to access to and the exchange of in-vehicle data



The framework has been **validated by an independent research expert**



The framework is **built in a smart Excel format** through which parties can navigate to find the specific legislation that is applicable to them and are able to see how this relates to other Automotive Industry actors in the ecosystem, i.e. their rights and obligations



The framework **may be obtained via an open source license** by all parties with an interest in in-vehicle data

Framework

Actor Profile View

Side by Side Comparison View

Thesaurus

An overview of applicable legislation for different actors

The **Actor Profile View** allows parties to find out which legislation is applicable to them, in what way this has an impact on their interests and how this relates to other automotive industry actors in the ecosystem

Actor Profile View

1: Pick an Actor
2: Filter Interests (optional)
3: Filter Laws (optional)
Number of requirements

Road Assistance Operators

Service Providers

Supervisory Authorities

Wholesaler (Grossiers)

Umbrella Organisations

Interest

Access to in-vehicle data

Consumer Protection

Environmental Protection

Free competition

Law

Product Safety Directive	Regulation (EU) No 2015/758 - eCall in-vehicle system
Software Directive	Technology Transfer Block Exemption Regulation ("TTBER")
Treaty on the Functioning of the EU	Unfair Terms in Consumer Contracts Directive
CD Regulation on EU-wide real-time traffic information services	CD Regulation on road safety related minimum universal traffi...

1	2	3	4
General Data Protection Regulation	Technology Transfer Block Exemption Regulation ("TTBER")	Treaty on the Functioning of the EU	Block Exemption Regulation from EU competition law – motor vehicles
<p>Requirements: (14)</p> <p>In general, the GDPR creates obligations for a controller and processor to provide sufficient technical and organization Security measures in order to protect the personal data (Privacy) of the Individuals. It also requires the Controller to have sufficient contractual safeguard in place with the Processor and other third parties.</p> <p>The Grossiers will likely be acting as data controllers because they determine how or why the processing takes place. A data controller is required to ensure that the processing complies with data protection laws. For a data processor - who acts purely on instructions of data controllers, a different regime of obligations apply.</p> <p>In order to act lawful, data controllers may only process if they satisfy conditions, such as consent of the data subject or processing necessary for the performance of a contract with the data subject. If a Grossier collects in-vehicle data about a data subject and wants to use that data to offer services not very closely related to their existing commercial relationship, consent of the data subject is likely to be required. Where consent is necessary, it must be freely given, specific, informed and unambiguous.</p>	<p>The TTBER exempts licensing agreements between companies that have limited market power (i.e. market share of under 20 % for agreements between competitors and 30 % for agreements between non-competitors), and fulfil certain conditions. Article 2 states a test to determine whether certain clauses in a technology transfer agreement (in particular concerning purchases of raw material or equipment from a licensor or the use of the licensor's trademark) are exempted from Article 101 of the TFEU, together with the technology transfer agreement itself. In article 4 hardcore restrictions (practices deemed so serious that they, together with the rest of the agreement in which they are found, are excluded from the safe harbor of a BER) are formulated. Passive sales restrictions between licensees are added to that list and can never be exempted by the TTBER. All exclusive grant-back obligations will fall outside of the TTBER safe harbor and terminating clauses allowing the licensor to terminate the license agreement if the other party challenges the validity of the licensed technology will fall outside the TTBER safe harbor.</p>	<p>Art 101 (1) prohibits any agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market. Such agreements are automatically void, unless art. 101 (3) applies. Art. 101 (3) has been applied in various Block Exemption Regulations ("BER"). Those BERs related to in-vehicle data are included in this framework. The Commission communicated guidelines that set out principles for the assessment of technology transfer agreements under art. 101 and/or TTBER. In addition art. 102 prohibits abuse by one or more undertakings of a dominant position and elaborates on several particular cases in which abuse may consist.</p>	<p>A Garage formula can be party in a vertical agreement for the purchase, sale or resale of new motor vehicles and vertical agreements for the provision of repair and maintenance services for such vehicles and for the distribution of spare parts.</p> <p>The following vertical agreements are restricted:</p> <p>(a) the restriction of the sales of spare parts for motor vehicles by members of a selective distribution system to independent repairers which use those parts for the repair and maintenance of a motor vehicle;</p> <p>(b) the restriction, agreed between a supplier of spare parts, repair tools or diagnostic or other equipment and a manufacturer of motor vehicles, of the supplier's ability to sell those goods to authorized independent distributors or to authorized or independent repairers or end users;</p> <p>(c) the restriction, agreed between a manufacturer of motor vehicle which uses components for the initial assembly of motor vehicles and the supplier of such components, of the supplier's ability to place its trade mark or logo effectively and in an easily visible manner on the components supplied or on spare parts.</p>

Framework

Actor Profile View

Side by Side Comparison View

Thesaurus

By selecting an actor from a drop-down menu and filtering one or more interests, the smart searchable legal and regulatory framework will provide parties with an overview of all the applicable European and Dutch legislation

Comparing requirements of laws and regulations

The **Side by Side Comparison View** allows parties to compare a maximum of 4 different laws and regulations in one, single overview

Side by Side Comparison View		
Law 1: General Data Protection Regulation	1	Law 2: Treaty on the Functioning of the EU
Laws and Regulations		Laws and Regulations
General Data Protection Regulation		Treaty on the Functioning of the EU
Summary		Summary
<p>The GDPR aims to ensure a high standard of protection for personal data. It allows European Union (EU) citizens to better control their personal data. It also modernizes and unifies rules allowing businesses to reduce red tape and to benefit from greater consumer trust.</p> <p>The GDPR strengthens existing rights, provides for new rights and gives citizens more control over their personal data. These include:</p> <ul style="list-style-type: none"> - easier access to their data — including providing more information on how that data is processed and ensuring that information is available - A new right to data portability — making it easier to transmit personal data between service providers; - a clearer right to erasure ("right to be forgotten") — when an individual no longer wants their data processed and there is no legitimate reason to keep it, the data will be deleted; - right to know when their personal data has been hacked — companies and organizations will have to inform individuals promptly of serious data breaches. They will also have to notify the relevant data protection supervisory authority. <p>The GDPR is designed to create business opportunities and stimulate innovation through a number of steps including:</p> <ul style="list-style-type: none"> - a data protection officer, responsible for data protection, will be designated by public authorities and by businesses which process data on a large scale; - one-stop-shop — businesses only have to deal with one single supervisory authority (in the EU country in which they are mainly based); - EU rules for non-EU companies — companies based outside the EU must apply the same rules when offering services or goods, or monitoring behavior of individuals within the EU; - innovation-friendly rules — a guarantee that data protection safeguards are built into products and services from the earliest stage of development (data protection by design and by default); - privacy-friendly techniques such as pseudonymisation (when identifying fields within a data record are replaced by one or more artificial identifiers) and encryption (when data is coded in such a way that only authorized parties can read it); - removal of notifications — the new data protection rules will scrap most notification obligations and the costs associated with these. One of the aims of the data protection regulation is to remove obstacles to free flow of personal data within the EU. This will make it easier for businesses to expand; - impact assessments — businesses will have to carry out impact assessments when data processing may result in a high risk for the rights and freedoms of individuals; - record-keeping — SMEs are not required to keep records of processing activities, unless the processing is regular or likely to result in a risk to the rights and freedoms of the person whose data is being processed. 		<p>The TFEU organizes the functioning of the Union and determines the areas of, delimitation of, and arrangements for exercising its competences. This Treaty and the TEU constitutes the Treaties on which the Union is founded.</p> <p>Article 101(1) prohibits agreements between undertakings, decisions by associations of undertakings or concerted practices which may affect trade between EU member states and which have as their object or effect the prevention, restriction or distortion of competition within the EU.</p> <p>Article 102 of the TFEU prohibits the abuse by one or more undertakings of a dominant market position within the EU (or a substantial part of it) in a way which may affect trade between EU member states.</p> <p>Application of these articles have been specified in Block Exemption Regulations and related guidance.</p>

Framework

Actor Profile View

Side by Side Comparison View

Thesaurus

By selecting multiple laws or regulations from the drop-down menu, the smart searchable legal and regulatory framework will provide parties with an overview of the different requirements, rights and obligations they must adhere to and which of their interests are impacted by the selected laws and regulations

Explaining the layered structure of the definitions

The **Thesaurus** provides insights into the layered structure of all the definitions as used in the legal and regulatory framework and how the laws and regulations are related to in-vehicle data

3.1 In-vehicle data	
DF	In-vehicle data is all data that is inextricably linked to the Vehicle.
SN	An inextricable link only exists when the data is generated in the Vehicle by OEM installed, operated, controlled and/or owned equipment.
SN	Data that is generated outside the Vehicle, or other data that is not generated by OEM installed, operated, controlled and/or owned equipment, is not considered to be inextricably linked to the Vehicle.
SN	Software (incl. algorithms) in the Vehicle does not fall within the scope of the framework.
RT	Original Equipment Manufacturer ("OEM")
DF	is the ultimate responsible manufacturer of the Vehicle
RT	Vehicle
DF	a self-propelled motor vehicle intended for use on public roads (e.g. caravan, trailers do not fall in the scope of the framework. Motorcycles and quads do.)
RT	Personal data
DF	Personal data is any information relating to an identified or identifiable natural person ("data subject"); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.
SN	in context of the GDPR and Directive 2002/58/EC.
RT	Non-personal data
DF	all other data that is not personal data. (Anonymous data?)
SN	in relation to in-vehicle data
Access to in-vehicle data	
RT	OBD access
DF	Access via the OBD portal in the vehicle, limited amount of data, meant for maintenance purposes but also used as an entrance to the CANbus data by third party devices
RT	Wireless access
DF	Access via the OEM installed simchips or via aftermarket devices processing in-vehicle data
RT	Electromagnetic tapped
DF	Tap from the vehicle CANbus with an electromagnetic clamp which makes it possible to obtain CANbus data without violating the physical integrity of the vehicle.
RT	Direct contact tapped
DF	Tap by physical invading the vehicle CANbus for instance by physical connection with CANbus wiring.
RT	Real-time access to in-vehicle data
DF	Access to in-vehicle data upon generating as a basis for (near) real time in-car services.
RT	Access to stored in-vehicle data
DF	Access to stored in-vehicle data (within and outside of the vehicle) e.g. for maintenance or other services (insurance monitoring).

Short Title	Directly or indirectly related to in-vehicle data	Full title
<u>Data Protection Law I: General Data Protection Regulation</u>	Directly related	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (Text with EEA relevance)
<u>Technology Transfer Block Exemption Regulation</u>	Indirectly related	Commission Regulation (EU) No 316/2014 of 21 March 2014 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of technology transfer agreements
<u>Common Principles for state aid</u>	Indirectly related	Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty
<u>Transport and Mobility Law II: Commission Delegated Regulation on Road safety related minimum universal traffic information</u>	Directly related	Commission Delegated Regulation (EU) No 886/2013 of 15 May 2013 supplementing Directive 2010/40/EU of the European Parliament and of the Council with regard to data and procedures for the provision, where possible, of road safety-related minimum universal traffic information free of charge to users
<u>Treaty on the Functioning of the European Union</u>	Indirectly Related	Treaty on the Functioning of the European Union (consolidated version) (2012)
<u>Competition Law II: Block Exemption Regulation from EU competition law - motor vehicles</u>	Indirectly Related	Commission Regulation (EU) No 461/2010 of 27 May 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector
<u>Transport and Mobility Law I: Intelligent Transport Systems Directive</u>	Directly related	Directive 2010/40/EU of the European Parliament and of the Council of 7 July 2010 on the framework for the deployment of Intelligent Transport Systems in the field of road transport and for interfaces with other modes of transport (Text with EEA relevance)
<u>Competition Law I: General Block Exemption Regulation (GBER)</u>	Directly related	Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices (Text with EEA relevance)

Framework







Actor Profile View

Side by Side Comparison View

Thesaurus

Significance for all parties with an interest in in-vehicle data

The legal and regulatory framework and thesaurus can be used to:

	Navigate the EU and NL legal landscape with relevant laws and regulations in relation to in-vehicle data
	Refer to as a "central point of truth"
	Determine one's strategic (legal) position
	Stimulate collaborations
	Engage in IoT projects
	Set up new ecosystems
	Facilitate qualitative discussions with regard to access to and the exchange of in-vehicle data



Learn more about the smart searchable legal and regulatory framework on in-vehicle data by visiting our [website](#).

Please fill in the [contact form](#) to receive updates on the availability of the framework and pre-register to obtain the framework.

Or reach out to:



Peter Kits | Partner

pkits@deloitte.nl

+ 31 88 288 7370



Myrthe van Dam | Manager

myvandam@deloitte.nl

+31 88 288 0778



Nathalie Niessen | Consultant

nniessen@deloitte.nl

+31 88 288 0817



Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited ("DTTL"), its global network of member firms and their related entities. DTTL (also referred to as "Deloitte Global") and each of its member firms are legally separate and independent entities. DTTL does not provide services to clients. Please see www.deloitte.nl/about to learn more.

Deloitte is a leading global provider of audit and assurance, consulting, financial advisory, risk advisory, tax and related services. Our network of member firms in more than 150 countries and territories serves four out of five Fortune Global 500® companies. Learn how Deloitte's approximately 286,000 people make an impact that matters at www.deloitte.nl.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms or their related entities (collectively, the "Deloitte network") is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. No entity in the Deloitte network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.