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FNA's Contribution on the Consultation on the White Paper on AI

Summary

Undue hardship on advanced technologies

European regulations in line with technical progress
-Unrestricted access to vehicle repair and maintenance data
-Competition in the market for automotive data services
-Actual consumer's choice being analysed regularly
-More financial and human resources for national authorities

Federation of Craft Businesses in the automotive sector and in mobility services (FNA) would like to thank the authors of the White Paper on Artificial Intelligence (AI) to inform citizens and stakeholders about the Commission's work in order to allow them to provide feedback on the intended initiative and to participate effectively in future consultation activities. FNA representatives also express their thanks for being given the opportunity of once again making submissions on the Consultation and make the following comments.

Access to Automotive data

Findings of new undue hardship on advanced technologies

- Electric vehicles

1. Advanced technologies win the automotive industry: on the one hand, the electric car revolutionizes maintenance methods; on the other hand, the increasing connectivity of new *"smart"* vehicles tends to channel diagnostic, maintenance and repair services through the manufacturer's network.
2. While the classic vehicle has thousands of moving parts in the engine, the electric car is less than ten: maintenance is therefore simpler and 30 to 40% cheaper. The battery, which is managed by the on-board electronics, warns the driver of the level of his capacity being affected by the charge and discharge cycles. In order to carry out the maintenance of the vehicle, it must be temporarily deactivated via a safety connector. The specificity of the maintenance relies precisely on the safety instructions and data to be applied: the work is done under tension, the electrical intensities are strong.
3. Difficulties in access to the maintenance and repair market, which have already been identified for the combustion engine, are focused on the electrical system: many safety data and the needed equipment. While the new technique is designed to reduce the cost of maintenance and repair, vehicle manufacturers tend to reserve the operation to their network, at the expense of consumers' choice.

- Connected vehicles

4. The same observation can be made for the connected vehicle: data exchanges are supposed to offer more comfort and to be a source of savings for the consumer: remote prognosis of the vehicle condition, use, support services, smart electric vehicle recharging, traffic management, connection to infrastructure and other vehicles for cooperative and highly automated driving. But the exclusive and permanent connection of manufacturers with motorists entails the risk of favoring their network.

5. Moreover, this risk has been highlighted by the European Commission, after the study carried out by the Cooperative Intelligent Transport Systems (C-ITS) platform it has set up. Members warned the European Parliament and the Council of Ministers that these new challenges have raised concerns about the potential exclusion of independent operators and the monitoring of their activities by manufacturers that are in competition with them. The role of European legislation is fundamental to ensure that key conditions are fulfilled, in particular those identified by the C-ITS platform:

-a prior consent of the person concerned (driver or vehicle owner);
-a fair and undistorted competition;
-data protection and privacy;
-non-falsifiable access and liability;
-data saving.

These conditions should be met in light of the need to protect the potential intellectual property[1].

Need of new European regulations in line with technical progress

6. The public interest of road safety has justified the European authorities concentrating their efforts, as a matter of priority, on the vehicle connected to emergency aid. European Parliament and Council Regulation n° 2015/758 defines the legal framework for the deployment of the on-board emergency call system (eCall)[2]. It states that the mandatory installation of this device must, as early as 2018, be without prejudice to the *"right of all stakeholders, such as car manufacturers and independent operators, to offer additional emergency and / value added, in parallel or on the basis of the embedded eCall system based on number 112[3]."* Article 5 (7) of that regulation requires manufacturers to make *"the on-board eCall system based on number 112 accessible to all independent operators at a reasonable cost not exceeding a nominal amount and without discrimination for repair and maintenance."*

7. In the event of failure to comply with these provisions, Article 11 of this regulation requires Member States to enforce *"effective, proportionate and dissuasive penalties"* which they must notify to the European Commission. Beyond sanctions better defined and controlled by the European Commission, technical solutions to be put in place are evaluated and proposed in order to achieve the objective of opening up the market for aftermarket services covered by the regulation in Article 5 (7).

8. Thus, under Article 12, the European Parliament and the Council empower the European Commission to establish the specifications for an interoperable, standardized, secure and open-access platform. The study of technical solutions for access to vehicle data, carried out by the C-ITS expert group, revealed three types of platforms: two would be internal to the vehicle, while another would be external:

-an application platform or an interface, which would be embedded in the vehicle;
-a data server platform.

9. These options were assessed in the framework of the Commission's work on access to data and on-board resources to be completed. The European Commission Informs that the conclusions of this analysis serve as a basis for modernizing European provisions on access to technical information for the maintenance and repair of connected vehicles.

10. National authorities and many specialists draw attention to the manufacturers' intellectual property rights, which oblige repairers to refrain from any manipulation that would affect the initial configuration of the connected vehicle. The maintenance and repair of this vehicle, whose sensors and actuators are governed by millions of lines of computer code thanks to the manufacturer's software, depends on the access to specific data.

11. According to a study carried out in France by the National Institute of Industrial Property concerning the digital transformation of the economy, "*the search for a balance between the use of technology and the rules of competition can encourage the phenomenon of standardization, the main objective of which is to harmonize technologies for the benefit of consumers and to facilitate the movement of goods and services[4]."*

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[1]European Commission - Report from the Commission to the European Parliament and the Council on the functioning of the system for access to information on repair and maintenance of vehicles established by Regulation (EC) No 715/2007 - COM (2016) 782 Final of 9 December 2016, paragraph 5.6 page 11. Chapter 8 of the report of the Cooperative Intelligent Transport Systems (C-ITS) platform on access to embedded data and resources: http://ec.europa.eu/transport/themes/its/doc/c-its-platform-final-report-january-2016.pdf.

[2] Regulation (EU) No 2015/758 of the European Parliament and of the Council of 29 April 2015 on type-approval requirements for the deployment of the on-board eCall system 112 and amending Directive 2007/46 / EC, Official Journal of the European Union n° L 123/77 of 19 May 2015.

[3] Paragraph 15 of the explanatory statement to Regulation (EU) No 2015/758

[4] INPI, *« la propriété intellectuelle et la transformation numérique de l'économie »,* contribution de M. Frédéric Bourguet et Mme Cristina Bayona Philippine, p.259, note 320 https://www.inpi.fr/fr/services-et-prestations/etude-pi-et-economie-numerique

12. The principle of non-discriminatory access embodied in the proposed ISO for the connected vehicle is reproduced in the new European Regulation on the vehicle type approval. These new provisions, in particular those regarding recital 51, clearly prohibit the use of advanced technologies to impede access by independent operators to data: *"technological advances introducing new methods or techniques for the diagnosis and repair of vehicles, such as remote access to vehicle information and software, should not weaken the objectives of this regulation as regards access to repair and maintenance information for independent operators*[5]*."*

Answering the Consultation

13. In view of difficulties arising from the use of advanced technologies to steer the consumer towards the manufacturer's network, which is the dominant player in the aftermarket services in the first six years of the vehicle, appropriate technical and legal solutions are urgent to be enforced.

13.1. FNA representatives welcome EU Commission study on *'Access to In-Vehicle Data and Resources'* which indicates that the *"centralisation of in-vehicle data as currently implemented by some market players might in itself not be sufficient to ensure fair and undistorted competition between service providers."* This centralisation system is the "*extended-vehicle concept"*, a technological solution that the EU study clearly shows that it is a way to exacerbate tensions on the aftermarket by strengthening unfair and distorted competition. Therefore FNA urges to approve the right regulatory framework on access to connected vehicle data, because of the present negative economic impact on EU SMEs who are being already cut out of the market, in particular independent repairers and third enterprises also involved in downstream activities.

13.2. The new framework, which the EU Commission is willing to approve at European level, corresponds to the principles advocated by FNA for independent repairers:

-Unrestricted access to vehicle repair and maintenance data,

-Effective competition in the market of services providing automotive data[6]*.*

14. In order to make these provisions effective, FNA calls for greater market vigilance by a dedicated service being empowered to taking emergency measures to restore competition. In 2010, the European Economic and Social Committee (EESC) recommended this continuous market surveillance to ensure consumer's choice: *"fair competition is the best way to promote economic efficiency, consumer choice and safety in the car repair market. The actual choice should be analysed regularly. If the analysis concludes that there is market distortion, any corrective measures to be introduced should be assessed.*[7]*"*

15. National competition authorities do need more complete powers, in order to give consumers the best possible protection from anticompetitive behaviours, as stressed by Commissioner Margrethe Vestager's statement.[8] They need the financial and human resources to collect and go through the evidence.

Federation of Craft Businesses in the automotive sector and in mobility services (FNA)

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[5] European Regulation of the European Parliament and of the Council on the type-approval and market surveillance of motor vehicles

[6] Draft Regulation of the European Parliament and of the Council on the type-approval and market surveillance of motor vehicles, op. cit. Paragraph 36.

[7] Information Report of the European Economic and Social Committee (EESC) INT / 501 of 6 September 2010, paragraph 1.1
Collision damage claims management: how to ensure the consumer's freedom of choice and security? INT/501 – CESE 395/2010 fin EN/o-FR/NT/nm

[8] Statement 17/726 by Commissioner Vestager on Commission proposal to make national competition authorities even more effective enforcers for the benefit of jobs and growth, 22 March 2017