VIANOVA'S GDPR STATEMENT

March 2020

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Introduction

VIANOVA's services are used by many municipalities worldwide to better manage shared mobility services (such as e-scooters, dockless bikes or ride-hailing services) and their local impact.

To that end, we rely on real-time mobility data collected directly from mobility operators, including unique vehicle IDs, such as in the Mobility Data Specification (MDS) format.

There has been much discussion about MDS and its compliance with the EU data protection framework, namely the General Data Protection Regulation (GDPR).

The purpose of this document is to explain how we at VIANOVA have designed our services to comply with this data protection framework, and how we help municipalities handle mobility data in compliance with GDPR.

This GDPR statement is **not** a privacy notice as per Articles 12 to 14 GDPR. As municipalities may use VIANOVA's services for different specific purposes, citizens should check with their local public administration for further information on the processing of their personal data.

What is MDS?

► ***An innovative data format allowing for improved management of shared mobility services.***

MDS is an open-source, collaborative, mobility data format, governed by the non-profit organisation OMF, which enables better management of micro-mobility services. It is widely used in the USA and is getting strong traction across Europe.

MDS datasets include unique vehicle identifiers (vehicle IDs), combined with real-time and historical location data. They allow municipalities to better understand mobility patterns on their territory, but also to tackle most challenging issues raised by the multiplication of shared micro-mobility vehicles.

Using MDS data is especially relevant in enabling municipalities to craft and enforce slow-speed areas, restricted parking areas and other local traffic policies. It will also help authorities locate and remove abandoned, dysfunctional or out-of-battery vehicles. Municipalities may also use VIANOVA's own MDS-based mobility insights for other purposes such as urban planning with the development of cycling lanes, mobility orchestration for large events, etc.

Although it originally focused on micro-mobility services, MDS is now expanding to other services such as car-sharing services, and maybe soon ride-hailing services and urban logistics.

VIANOVA is first in bringing MDS to Europe, in compliance with local laws and regulations.

Is MDS data personal data?

► ***As per GDPR – yes. This is why we take steps to comply with GDPR.***

The notion of personal data is not new. Years of case law of the European Court of Justice and doctrine of EU supervisory authorities have given it a very extensive meaning.

Any data will be considered personal data if it relates to an identified or identifiable person (Article 4.1 GDPR). A person is said to be identifiable when another person (we, the municipality or anyone else) may re-identify them through any "*means reasonably likely to be used*" (Recital 26 GDPR).

MDS data, including vehicle IDs, does not allow for direct identification of users of mobility services. However, some organizations (mobility operators) may easily link such vehicle IDs to the respective users, if provided with the date and hour a vehicle was used. Under certain very specific circumstances, they may provide municipalities with such link.

> *« To determine whether a natural person is identifiable, account should be taken of all the means reasonably likely to be used, such as singling out, either by the controller or by another person to identify the natural person directly or indirectly [...] taking into consideration the available technology at the time of the processing and technological developments. »*
> (Recital 26 GDPR)

This is why one cannot exclude that MDS data be considered personal data, and we take GDPR to be applicable to our services.

However, the risks of user reidentification through MDS data should not be exaggerated – they are actually extremely low, at least in the context of our services.

Municipalities never access user IDs, name or surname through our services. To do so, they would need to send a formal request to mobility operators, who keep this information. In most countries, such request will need to undergo close scrutiny and be approved by competent authorities or a tribunal. Therefore, reidentification of a given user can only be occasional, non-systematic and subject to legal conditions.

Nor should re-identification through geolocation alone be considered an important risk (as it is sometimes deemed in relation to connected cars). In this respect, micro-mobility vehicles essentially differ from personal vehicles as they are *shared* vehicles: an individual's identity cannot be deduced as easily from the mobility patterns of one shared vehicle, as the latter is continuously passed from hand to hand.

Are Vianova and municipalities legally authorized to collect MDS data?

► ***Provided that all GDPR requirements are met – yes. Collecting personal data is not prohibited!***

GDPR sets no general prohibition on the collection of personal data – except for very specific categories of "sensitive" data, which do not include mobility data. It merely provides certain requirements for the collection and processing of personal data to be lawful. Let's remember that GDPR is also about the free flow of data (Recital 6 GDPR)!

A major requirement is that any processing of personal data has a "*legal basis*" (Article 6.1 GDPR), i.e. be justified e.g. by legal obligations, a task carried out in the public interest or legitimate interests.

In this respect, most uses of MDS data by municipalities will have a legal basis, as transport regulation is part of any municipality's duty performed in the public interest, and is often imposed on them by legal obligations. EU law itself provides useful legal bases for the collection of full-fledged mobility data by municipalities:

- Directive 2010/40/EU of 7 July 2010 encourages Member States to develop Intelligent Transport Systems (ITS) such as digital maps.
- Commission Delegated Regulation (EU) 2017/1926 of 31 May 2017 enables the collection of both static and dynamic data, such as individual trip plans.
- Directive (EU) 2019/1024 of 20 June 2019 (the "Open Data Directive") deems mobility data a "*high-value dataset*", the free reuse of which is imposed on Member States.

Several countries and municipalities have now taken the step by enacting new micro-mobility regulations, such as France and the City of Brussels, Belgium. These regulations enable respective municipalities to collect MDS or MDS-like data to better reach their goals.

> *« In that case, although data protection rules apply, the risks at stake for the individuals with regard to the processing of such indirectly identifiable information will most often be low, so that the application of these rules will justifiably be more flexible than if information on directly identifiable individuals were processed. »* (Opinion 4/2007 of former Article 29 Working Party)

Other GDPR requirements include technical and organizational measures to ensure the security, confidentiality and lawfulness of the processing of personal data.

These follow a general risk-based approach: appropriate measures and guarantees must be set up as proportionate to the risks for individuals' privacy and other rights and freedoms. In this respect, EU supervisory authorities have made it clear that the lower the risks of reidentification, the more flexible the application of the legal framework.

As explained above, VIANOVA's services do not allow for direct identification of individuals, so that risks are most reduced, even in the event of a data breach. This has proved essential to our own GDPR compliance assessment and our tech and design choices.

Who is responsible for this?

► ***Both we and municipalities. But our role is not exactly the same.***

Municipalities may choose to use our services for many different purposes, ranging from traffic regulation to transport planning . These purposes they determine themselves, based on authority on their own territory; in this respect, they qualify as *data controllers* under GDPR (Article 4.7 GDPR).

As a service provider, we at VIANOVA qualify as *data processor* (Article 4.8 GDPR), because we take no part in determining the purposes for which MDS data is ultimately used.

Although both data controllers and data processors help ensure data protection, they do not have the same role.

While the municipality is primarily in charge, *inter alia*, of informing individuals in relation to the collection and use of their personal data, answering their requests and performing privacy impact assessments, we as *data processor* are mostly committed to the technical security of personal data, and respecting the municipality's documented instructions.

We will however take necessary steps to help municipalities fulfil their obligations, where such help may prove useful.

How exactly does Vianova ensure GDPR compliance?

► ***We work hand in hand with municipalities – just as it should be done!***

Our service agreements with municipalities all include comprehensive Data Processing Agreements, providing appropriate commitments on our part in relation to data security, confidentiality and due assistance (Article 28 GDPR).

On a technical note, we have designed our SaaS product in compliance with the principles of *privacy by design* (Article 25 GDPR), data minimization (Article 5.1(c) GDPR) and storage limitation (Article 5.1(e) GDPR), so as to minimize all risks of reidentification of individuals and for their privacy. Vehicle IDs are only collected when municipalities actually need them for specified, explicit and legitimate purposes, to be determined by each municipality itself (Article 5.1(b) GDPR), e.g. for real-time traffic regulation purposes[1]; they are in any case anonymized after a very short delay.

We use state-of-the-art security measures to protect mobility data while at rest, in motion and in use, by relying on top-tier, reputed service providers (Article 32 GDPR). We have appointed our very own Data Protection Officer (Article 37 GDPR) in the person of an external legal counsel.

We will continue improving and updating these measures constantly, as necessary to follow data protection regulations and best practices.

Is users' consent mandatory to collect MDS data?

► ***In most situations, no. But municipalities may need to consider it for certain use cases.***

Consent is not the only legal basis for processing personal data under GDPR - nor is it the primary one (Article 6.1 GDPR). It is even non applicable where there is an imbalance between the data controllers and individuals whose data is collected.

Choosing the appropriate legal basis depends on an assessment which is to be conducted for each particular use case. It is the municipality's responsibility, as data controller, to conduct such assessment.

In most cases, the use of MDS data by city services may be justified, without consent, based on legal obligations or public services carried out by the municipality, as per Article 6.1(c) and 6.1(e) GDPR.

However, for certain rare, very specific use cases, municipalities may need to consider obtaining valid consent from mobility users. Easiest way to do this may be to rely on mobility operators, who provide direct user interfaces through their applications. We as data processors may also assist municipalities in crafting smart, appropriate privacy notices and consent request forms.

[1] Where such regulation enforcement purposes involve police services of the municipality, we refer to the respective provisions of Directive (EU) 2016/680, which applies specifically to police and justice services (in lieu of GDPR).

Where can I get more information?

► ***Just get in touch with us. We are always happy to talk!***

Should you have any concern or question in relation to this GDPR Statement, please feel free to liaise with us (thibault.castagne@vianova.io, frederic.robinet@vianova.io, thibaud.febvre@vianova.io) and our Data Protection Officer (dpo@vianova.io).

We will be happy to provide you with further information on the way we can make MDS and GDPR work together in a secured, innovative manner, and our local initiatives worldwide.

About this statement

This statement and its content are intended to explain how VIANOVA has designed its services to comply with GDPR, and how we help municipalities handle mobility data in compliance with GDPR. It does not constitute legal advice, nor should it be a substitute for legal advice. Practitioners should always consider existing laws in their local jurisdiction.

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