

WG2 conclusions/recommendations on “liability and data storage / recording needs”

Public confidence in automated and connected Vehicles will be dependent upon how the liability and privacy issues are clarified. This paper represents the conclusions of the group based on consensus reached for vehicles expected by 2020.

The group will continue discussing liability issues in particular for vehicles expected beyond 2020. In particular, liability assignment could become more complicated with the multiplication of actors in the development of higher levels of connectivity, automation (including self-learning systems). The group will also look at the differences concerning the liability regimes in the Member States (e.g. road and traffic law, civil law, strict liability regimes, and national implementation of the product liability directive 85/374/EEC) which could impair the deployment of highly automated and connected vehicles. The group will look at the best approach to overcome these difficulties taking into account the Communication on Building a data economy¹, the on-going evaluation of the product liability directive, etc.

I. Conclusions

1) Motor insurance and product liability directives are sufficient for upcoming systems

An accident involving automated and connected vehicles might occur as a result of a mistake of the driver, a faulty system or due to external factors. Irrespectively of the accident’s cause, it is decisive for the traffic victim to ensure compensation in an easy way. Therefore, the protection currently afforded to victims of road traffic accident must be maintained in any event. The Motor Insurance Directive (MID) is an effective system which effectively delegates complex legal actions to insurers and other stakeholders, providing fast, simple and efficient means of compensation for victims of road traffic accidents, thus ensuring swift compensation for such victims, even where an automated vehicle is involved. These potential legal actions include a possible recourse of an insurer (having settled the traffic victim’s claim) vis-à-vis a vehicle manufacturer in case of a malfunction of the automated driving system in the context of the Product Liability Directive (PLD).

There is no need to amend either the MID or the PLD for upcoming systems. The two instruments are complementary. The MID will continue to be the system where injured road users claim while the PLD (for defective products) and national law will allocate the liability. Whilst some parties in the discussions see a benefit in promoting and extending specifically the principle of “strict liability” (e.g. strict liability under civil law, separate strict liability regime under road and traffic laws, etc), combined with a compulsory insurance for vehicles (the latter already existing under the MID), there is no change currently needed on this topic for 2020 systems.

¹ Building a European data economy COM(2017) 9 final. The Communication looks at proven or potential blockages to the free movement of data and presents options to remove unjustified and or disproportionate data location restrictions in the EU,

2) Different national liability regimes – difficult to harmonise for 2020.

Besides the already harmonised EU product liability regime and MID, there are some differences concerning the liability regimes in the Member States (e.g. road and traffic law, civil law, strict liability regimes, and implementation of product liability). There are diverging views as to whether it is necessary or even desirable to harmonise the different EU liability regimes, or whether this is even an EU competence.

The agreement at this stage is that any such harmonisation is neither needed nor feasible for the upcoming systems in 2020. These aspects will however be looked at in more details in the second phase of the WG2 (January-June 2017)

II. Recommendations

1) Data storage to be included in the type-approval legislation to clarify liability. It shall cover the minimum set of data needed to clarify liability and mechanisms to regulate the data access.

It is expected that for upcoming systems at some stage of automated driving (AD), the use of Data storage will become mandatory, for establishing the factual operating circumstances in the occurrence of an accident and/or a significant safety related event related to a highly automated vehicle, i.e. whether the human driver or/and the highly automated driving system were in control when the accident occurred (“operating circumstances”, how engaged was the driver, etc). This Data storage will therefore need to fulfil specific requirements which are quite distinct from the Event Data Recorders (EDRs) which are currently in use. The Data storage should be subject to the Type Approval Regulatory framework and a set of Minimum Requirements for Data storage therefore needs to be reformulated for data recording.

Specific consideration will need to be given to a number of aspects including: Data privacy (in line with the General Data Protection Regulation – GDPR and implementing legislation), Data Integrity (to validate data storage) and Cyber Security (methodology needed for a risk assessment). The setting of these requirements may need further research.

A mechanism will also be needed to regulate the access to this data. The conditions surrounding this access would thus depend on the user (law enforcement authorities, repairers, insurers, manufacturers, parts suppliers, software companies) and the existence of a legitimate interest to access this data (e. g. determination of responsibility). Such mechanism would also need to be developed in line with the GDPR (Art. 6), with some parties calling for a binary distinction between two categories of users, having either unconditional or conditional access to the data. The format in which this data is to be collected and stored would also need to be discussed. The extensive work already done in the context of the C-ITS Platform and UNECE on some of these topics should also be incorporated.