WORKSHOP

EMERGING LIABILITY CHALLENGES IN THE EUROPEAN DATA ECONOMY

DRAFT AGENDA[1]

Day 2

I. Liability challenges in the context of the Internet of Things (IoT) and robotics technology: practice on the ground, currents problems and emerging risks.

9.30-10.00: Introduction by the Commission and the Contractor

10.00- 11.15: Discussion

Questions guiding the discussion

Current situation

What are possible liability risks holding back big, SME or micro businesses to invest in the roll-out of IoT?

- Difficulties in ascertaining extra-contractual liability in IoT, as compared to ordinary products? If so, what are these?
  a) Discovering the root of the problem?
  b) Unclear contribution of IoT players (manufacturer, network provider, software developer)?
  c) Difficulty in proving the causal link between the origin of the problem and the damage? If data sent over the network is erroneous, difficulty in identifying the actor from whom it originated?
  d) Others? (e.g. difficulty on how to classify certain IoT solutions, products or services)

- What are the specific liability problems encountered as product manufacturer, sensor manufacturer, software developer or network provider? What should be the role of the users in the context of liability allocation?

[1] The detailed questions are solely intended as a means to facilitate the debate, not as a mandatory list of topics to be addressed. While not each of these questions may be of relevance or interest for your organisation/company, we encourage you to take the floor on those points which concern you so as to share any particular problems you may have faced in that respect and, more generally, your specific expertise.

11.15-11.30: Coffee break

11.30 – 12.30 Discussion – continued

Autonomous systems/robots/artificial intelligence:

- Do you have examples of accidents involving autonomous systems/robots/artificial intelligence?
- Do you foresee liability risks in the use of autonomous systems/robots/artificial intelligence, for instance industrial or surgical robots different than those from IoT?

12.30- 13.45: Lunch break

II. Liability in the context of the Internet of Things and robotics technology: legal aspects and possible solutions.

13.45 - 14.15: Introduction by Contractor and by the Commission

14.15 -15.45: Discussion

Questions guiding the discussion

Current legal framework:

- Are existing legal frameworks at national and EU level (including product liability rules) fit for purpose for damages arising in the context of the IoT and autonomous systems/robotics/artificial intelligence?
- Are there gaps, or is there a need for adaptation or clarification? If so, where?

Existing solutions and future trends:

- What solutions for potential liability risks are practiced or envisaged in the market, e.g. model contracts, insurance mechanisms?
- Are you aware of contractual practices limiting liability in the IoT context (e.g. in contracts concluded between software developers/sensor manufacturers and product manufacturers, between product manufacturers and sellers or between sellers and users)?
- What future developments do you foresee in the absence of regulatory intervention at national or EU level for the type of liabilities not covered already by EU or national law (e.g. economic losses)?
- Is an insurance coverage a sensible solution to the liability risk issue?
- Have insurance companies started to develop insurance policies for the specific needs of IoT actors (e.g. manufacturers of smart products) for damages caused to users or third parties? If so, what are the specificities of such insurance clauses? How are the risks calculated and the new insurance policies priced? What risks are most likely to materialise, what kind of damages to occur?

15.45 -16.00: Coffee break

16:00 – 17.30: Discussion – continued

Liability in the specific case of autonomous driving

How will current liability rules work when the role of the human driver will be decreasing or stop to have an influence?

- Who should be liable and to what extent: product manufacturers, sellers, owners, platforms providing data, network providers, others?
- If necessary, how to adapt the rules?
- For the insurance sector, what emerging business models are envisaged or could be developed?

Possible future liability rules: Autonomous systems/robots display different levels of autonomy and can take "decisions"/'actions" without human intervention.

- What happens when damages stem from action of autonomous system/robots not attributable to defects in the machinery part, or to the data/data service/connectivity, or to the software/algorithm, BUT to the autonomous behavior of robots?
- Who should be "responsible" and possibly liable for an unintended autonomous behavior?
- What would be the most effective instruments/approaches/solutions to compensate victims while at the same time incentivize safe design?

Guiding principles for the liability regime: What should be the guiding principles when defining extra contractual liability?

Generic: IoT&Robotics

- Should extra-contractual liability be based on the existence of a "defect" or on an introduction of a risk?
- Is the existing concept of "defect' adequate for dealing with liability in robotics and IoT?
- Can an unintended autonomous behaviour be considered a defect?
- Is it the degree of autonomy that could shape a legal framework for robots/autonomous systems, with specific regimes/different solutions, depending on the level of autonomy of the robot?)
- Should there be liability rules covering specific types of robots/autonomous systems/artificial intelligence (i.e industry robots, surgical robots, healthcare robots, etc.)?

Interaction of consumers with the IoT ecosystem/autonomous systems

- Consumers may play a role as final users of the new IoT and robotics technologies. Would this require that product and services specifications, instructions for use, be differently presented/explained? Should there be more information? What is your experience until now?

Robotics:

- Is there a need to define legally the concepts emerging in robotics law (i.e what is a 'robot', what is 'autonomy', etc.) or should they be left open to technological development?
- Should there be defined categories/classes of robots based on their level of autonomy or other criteria?
- In particular, which developments do you expect in relation to insurance products for robotics/IoT? Would you see a kind of insurance solution as necessary and/or appropriate?
- Should there be a compulsory insurance scheme for responsible parties for damage caused by the robots?
- If so, who should be obliged to take out the insurance? What would be the impact of such insurance schemes on the final prices for smart robots?
- Do you see any particular commercial or legal obstacles for insurances to provide insurance solutions for robots/autonomous systems?

Need for action?

- Do you see a need for EU policy intervention in relation to current liability regimes in order to create the conditions for the roll-out of IoT/autonomous systems/robotics/artificial intelligence?
- If so, what objective and nature should such initiatives have: e.g. information exchange, coordination, encouragement of voluntary measures, regulatory intervention?
- Should the possible initiatives be undertaken at national or at EU level?

III. Closing remarks

17.30 – 18:00: Closing remarks by the Commission