WHO IS LIABLE FOR A **SELF-DRIVING CAR** ACCIDENT?

Self-driving cars have been gaining a lot of attention, not coincidentally given their many advantages: time efficiency, less congestion, ability of disabled, youngsters and elderly to fully participate in traffic, …

But when will the major breakthrough of self-driving cars happen in Belgium? Will we be able to use self-driving cars in the (near) future?

It seems as if the belief in self-driving cars is even declining, partly due to accidents and their media coverage. Are people even ready to hand over the control over the vehicle and their safety to computers?

There are also some legal challenges. Traffic regulations, for example, may need to be revised with rules tailored to computers and provisions that determine how human drivers should interact with those computers.

With computers in charge, traffic can become safer, but traffic accidents will not suddenly stop from happening. Who is liable for the damage caused? This question becomes more important as the autonomy of vehicles increases and the control of humans over the vehicle decreases.

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Driver

?! Questions & answers

1. Is there still a driver in autonomous cars?

   There are 2 criteria to determine this: factual (he/she who performs an action affecting the movement of the vehicle) and normative (he/she who is responsible for driving even if he/she did not perform any act that had an actual impact on the movement of the vehicle).

2. Can **traffic offences** initially committed by the autonomous vehicle be attributed to the driver who did not infringe traffic regulations but only failed to prevent the vehicle from doing so?

   This is possible as the driver needs to have his vehicle well under control at all times.

3. Can a traffic offense committed by the autonomous vehicle be considered as **force majeure**?

   This depends on the interpretation and scope of the concept 'force majeure'.

⋯ Actions & action points

1. Determine what can still be expected from **users** of autonomous cars.
2. Reassess **the required skills** to obtain a driving licence (e.g. focus on interaction with the operating system).
3. **Judges** continue to play an important role in the interpretation and application of concepts (e.g. force majeure and driver).
4. Article 59/1 was added to the **Belgian Highway Code**, so that the Federal Minister responsible for Transport can deviate from the Highway Code for experiments with autonomous vehicles.

Software publisher

?! Questions & answers

The EU Directive and Belgian Act on product liability determine that a producer is liable for damage caused by a **defect** in the **product**.
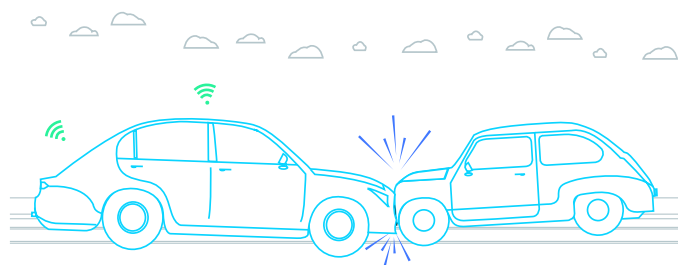
1. Is software a 'product'?

   This remains unclear. As a collection of data and instructions, it can be qualified as an intangible good.

2. When is software or a self-driving car 'defective'?

   It is not easy to determine whether software is defective. A product is defective when it does not provide the safety that a person is entitled to expect, taking all circumstances into account. The question is: what are legitimate expectations with regard to self-driving cars?

⋯ Actions & action points

1. The EU has published numerous **documents** on liability and AI/digital technologies. Want to know more?
2. The **provisions on product liability** are being revised by European expert groups. There is no clarity yet on the qualification of software and the concept of 'defect'.
3. Possible revision of **the concept 'defect'**, thereby taking into account the impact on innovation. Manufacturers currently face a high risk of liability because of the high level of legitimate expectations regarding the safety of autonomous motor vehicles.

Car manufacturer

?! Questions & answers

The manufacturer is liable for damage caused by a defect in the vehicle.

As a tangible medium, the self-driving car is a product which may be defective if the software system does not function properly.

The manufacturer is not liable if he can prove that the defect did not exist when the product was put into circulation or that this defect came into being afterwards.

1. How should the moment of putting software or products using software into circulation be determined?

⋯ Actions & action points

1. It is being examined how this **possibility to escape liability** is implemented for AI systems and digital technologies.
2. It is proposed that the producer should be strictly liable for defects in emerging digital technologies even if said defects appear after the product was put into circulation, as long as the producer was still in control of updates to, or upgrades on, the technology.

Other actors

?! Questions & answers

Under Belgian law a **custodian** is liable for damage caused by defective things in his custody.

1. Who is the custodian of the software? Is software a thing?

   The interpretation of these concepts raises similar questions as under product liability.

Usually, there are also other parties involved in an accident such as oncoming car, a pedestrian, …

1. To what extent does an oncoming car or pedestrian also commit a traffic offence?

⋯ Actions & action points

1. In addition to the application of product liability for damage caused by self-driving cars, there are relevant alternatives in **national law** (e.g. liability for defective things).
2. In the event of an accident, it must be determined whether and when the self-driving car caused the accident and resulting damage.