



2020/2014(INL)

15.7.2020

OPINION

of the Committee on Transport and Tourism

for the Committee on Legal Affairs

with recommendations to the Commission on civil liability regime for artificial intelligence
(2020/2014(INL))

Rapporteur for opinion: Cláudia Monteiro de Aguiar

(Initiative – Rule 47 of the Rules of Procedure)

PA_INL

SUGGESTIONS

The Committee on Transport and Tourism calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

- having regard to Article 225 of the Treaty on the Functioning of the European Union,
 - having regard to the Directive 85/374/EEC¹,
 - having regard to Rule 56 of its Rules of Procedure,
- A. whereas artificial intelligence (“AI”) and other emerging digital technologies have the potential to transform our societies and economies for the better; nonetheless, it is impossible to completely exclude the possibility of damage, injury or loss of life resulting from the operation of such technologies;
- B. whereas in various transport industry sectors, a range of degrees of automation and AI have been applied; moreover, AI involves using many types of technologies such as autonomous vehicles, unmanned aircraft systems and intelligent traffic management solutions;
- C. whereas the civil liability framework in the Union is complemented by national liability regimes and both should reflect the complexity of emerging technologies in order to guarantee the highest level of protection while supporting technological innovation; whereas the Union lacks a harmonized civil liability regime for AI products; whereas encouraging AI deployment and uptake in the EU should be a top priority for the Union and an underlying objective for developing the liability framework concerning AI products; whereas data shows that up to ninety percent of traffic accidents are caused at least in part by human error; whereas autonomous vehicles should be subject to an ethical framework; whereas while the introduction of such a framework can prevent errors in machine decision-making and algorithms, a harmonised liability regime is necessary to ensure that all harm caused by AI systems is fully compensated;
- D. whereas Union and national legislation should ensure high product and service safety and sound system management both ex ante and throughout a product’s life cycle, while facilitating the compensation of victims ex post; whereas technological development in AI should remain human-centric and products and applications using AI should be conducive to human development and a good quality of life;
1. Underlines that AI can be applied at different levels in vehicles, in transport infrastructure and among the transport modes and has an important impact on the degree of autonomy of the system, ranging from complete driver control to full autonomy, and consequently there is a gradual shift of civil liability from the driver towards other parties, the greater the degree of autonomy of the automated driving systems; calls for clear Union definitions for all types of transport modes and infrastructure running AI software and a

¹ Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (OJ L 210, 7.8.1985, p. 29).

corresponding risk classification to support a liability mechanism in clarifying issues of responsibility to ensure the highest safety and security standards, stressing that safety is of paramount importance in the transport sector and that it could be described as one side of the coin of which liability constitutes the other side;

2. Recalls that the transport sector has been integrating AI technologies for decades, in particular with the introduction of the automation of train operation (ATO), including in urban areas where fully automated, driverless operations have increased system availability, network capacity and operational efficiency;
3. Underlines that automated functionalities can bring significant safety improvements in the medium and long term as well as unintended consequences, such as in relation to cybersecurity, data privacy; notes that whilst the coexistence of various levels of automation represents a challenge, AI could also be used for planning and guiding logistics chains, and for increasing efficiency, resilience, reliability, sustainability, interoperability and flexibility, and that it has a tremendous potential for persons with disabilities and reduced mobility; stresses the need for increased scrutiny under a Union civil liability regime for AI products in order to ensure the safety of persons with disabilities and reduced mobility;
4. Stresses the importance of defining a clear division of responsibilities between software developers, manufacturers of various components, service and data providers, operators and end users in order to ensure the best possible product safety and respect for consumers' rights; points out the need to establish the appropriate allocation of risks emerging from new digital interactions between infrastructure and vehicles and to apply a fair liability regime to operative software failures, network failures and risks related to programming choices that are currently not adequately covered;
5. Underlines that for AI-related applications in the transport sector with a specific high-risk profile, there is a need for a risk-based approach depending on the level of automation and self-learning of the system; points out the need for legal requirements for AI applications with a high risk profile; notes, however, that this approach should not be based on identifying in advance certain sectors, such as transport, as being sectors in which high-risk AI are in use, but rather on area-specific and technology-neutral assessments; highlights the need for such requirements to be harmonised across the Union to ensure the highest level of product safety and the minimum level of risk for users while operating AI systems, and the fundamental role that the precautionary principle, enshrined in Article 191 TFEU, has for risk analysis and risk management; calls for an adequate response to the need for a suitable approach to data protection and dealing with the risks related to hacking and cybercrime;
6. Notes that under current product safety regulation, the producer remains liable unless proven otherwise, while the burden of proof is on producers and/ or developers; stresses that this principle should be extended to AI products; recommends that in instances where the producer and/ or developer are proven not to be liable, an operator who has a higher degree of control than the owner or user of an actual product or service equipped with AI should be the party considered to be best positioned to manage the risks and the burden of proof thus should shift onto the operator; notes that each obligation should rest on the actor who is best placed to address the risk; stresses that the consumer's consent is a

fundamental principle for the development of AI transport services; urges the Commission to set up means to certify such services; notes that the protection of Union citizens and businesses using AI technologies requires a clear division of responsibility between the different parties involved, irrespective of the fact that the parties are Union-based or not (extra-territorial effect);

7. Emphasises the need to guarantee at least the same level of product safety as that currently existing, also taking account of the Union ‘vision zero’ target, to make it easier for victims of accidents to obtain remedies, to avoid increasing current litigation costs and to avoid legal uncertainty, especially for businesses that are marketing their products in the Union and globally; in this respect emphasizes the need to provide swift compensation to victims regardless of the chain of liability;
8. Believes that despite the level of automation and of integration of AI in transport systems and vehicles, ultimately responsibility must always lie with a natural or legal person in order to ensure legal certainty and at the same time to encourage investment and the correct uptake of the technology;
9. Stresses the importance of ensuring that drivers are properly trained and always fully aware of a vehicle’s level of automation and their level of liability, and that they should be informed about their vehicles’ AI systems and related limitations of such systems such as activation, deactivation, failure; moreover, in-vehicle features should periodically remind the driver that he or she is in charge of monitoring the vehicle status and give clear warnings about the limits of the AI system to the driver ; stresses that drivers cannot be held liable if they are found to have lawfully used fully automated driving systems;
10. Notes that there is a need to deploy event recording technology, to be used in the event of severe accidents, in full respect of data protection and privacy law, and that enables to a responsible natural or legal person to be found; highlights the key role that data storage, sharing and management will have for AI deployment in mobility and stresses that recorders should in no circumstances be used as permanent tracing systems; calls for more research and development through both public and private means and for more testing, to enhance product safety and as a result traffic safety, but at least to also provide concrete data helping further development; notes that state-of-the-art underlying infrastructure, an Intelligent Transport System, running on up to date, and clear, interpretable data, are needed to limit incidents to the minimum;
11. Calls for further analysis of the need to adapt the Directive 2006/126/EC of the European Parliament and of the Council² and the Directive 2009/103/EC of the European Parliament and of the Council³ due to automated functionalities of vehicles; urges the Commission to carry out a periodic assessment of the European transport regulatory framework to ensure that it can respond to the safety and liability challenges related to

² Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences (OJ L 403, 30.12.2006, p. 18).

³ Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (OJ L 263, 7.10.2009, p. 11).

the integration of AI technologies; calls moreover on the Commission to explore the possibility of including in Union product safety legislation requirements addressing the risks to safety of faulty data ;

12. Underlines that liability schemes in the event of an accident or a violation of traffic legislation need to be carefully designed for each level of automation and AI integration and communicated in a clear way to the users in order to ensure a smooth transition from full driver liability to full manufacturer and operator liability;
13. Notes that the degree to which unmanned systems in the transport network, such as automated vehicles and unmanned aircraft systems, can be integrated into the land infrastructure and airspace depends on many variable signals and conditions and on any hazards or obstacles that might be encountered; notes that such increase in use, particularly in urban areas, will continuously test the existing civil liability regime, calls as a result for a regular update of digital maps, traffic management systems and data-sharing rules providing a compulsory minimum and appropriate set of information and instructions for the use of products equipped with AI and about the road network, and for the correct development and deployment of the U-space; believes that human-centricity should be the basis for any update and development of the regulatory framework related to the automation and AI-integration of transport;
14. Asks the Commission to present guidelines to avoid fragmented regulatory approaches at national level, taking into consideration Directive 85/374/EEC and existing national liability regimes; stresses the need for a Union civil liability framework and emphasizes that fragmentation would be extremely damaging for the development of such technologies, for the competitiveness of Union businesses, especially SMEs, and that it would undermine legal certainty and safety and hinder the swift compensation of victims; notes that the liability should rest on the actor who is best placed to address the risk, following a due judicial process.

INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

Date adopted	14.7.2020
Result of final vote	+: 49 -: 0 0: 0
Members present for the final vote	Magdalena Adamowicz, Andris Ameriks, José Ramón Bauzá Díaz, Izaskun Bilbao Barandica, Marco Campomenosi, Ciarán Cuffe, Jakop G. Dalunde, Johan Danielsson, Andor Deli, Karima Delli, Anna Deparnay-Grunenberg, Ismail Ertug, Gheorghe Falcă, Giuseppe Ferrandino, Mario Furore, Søren Gade, Isabel García Muñoz, Jens Gieseke, Elsi Katainen, Kateřina Konečná, Elena Kountoura, Julie Lechanteux, Bogusław Liberadzki, Benoît Lutgen, Elżbieta Katarzyna Łukacijewska, Marian-Jean Marinescu, Tilly Metz, Giuseppe Milazzo, Cláudia Monteiro de Aguiar, Caroline Nagtegaal, Jan-Christoph Oetjen, Philippe Olivier, Rovana Plumb, Dominique Riquet, Dorien Rookmaker, Massimiliano Salini, Barbara Thaler, István Ujhelyi, Elissavet Vozemberg-Vrionidi, Lucia Vuolo, Roberts Zīle, Kosma Złotowski
Substitutes present for the final vote	Leila Chaibi, Angel Dzhambazki, Markus Ferber, Carlo Fidanza, Maria Grapini, Roman Haider, Alessandra Moretti

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

49	+
ECR	Angel Dzhambazki, Carlo Fidanza, Roberts Zīle, Kosma Złotowski
GUE/NGL	Leila Chaibi, Kateřina Konečná, Elena Kountoura
ID	Marco Campomenosi, Roman Haider, Julie Lechanteux, Philippe Olivier, Lucia Vuolo
NI	Mario Furore, Dorien Rookmaker
PPE	Magdalena Adamowicz, Andor Deli, Gheorghe Falcă, Markus Ferber, Jens Gieseke, Benoît Lutgen, Marian-Jean Marinescu, Giuseppe Milazzo, Cláudia Monteiro de Aguiar, Massimiliano Salini, Barbara Thaler, Elissavet Vozemberg-Vrionidi, Elżbieta Katarzyna Łukacijewska
Renew	José Ramón Bauzá Díaz, Izaskun Bilbao Barandica, Søren Gade, Elsi Katainen, Caroline Nagtegaal, Jan-Christoph Oetjen, Dominique Riquet
S&D	Andris Ameriks, Johan Danielsson, Ismail Ertug, Giuseppe Ferrandino, Isabel García Muñoz, Maria Grapini, Bogusław Liberadzki, Alessandra Moretti, Rovana Plumb, István Ujhelyi
Verts/ALE	Ciarán Cuffe, Jakop G. Dalunde, Karima Delli, Anna Deparnay-Grunenberg, Tilly Metz

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Key to symbols:

- + : in favour
- : against
- 0 : abstention