Liability for machine-made decisions: Gaps and potential solutions

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Gaps in the liability system for machine-made decisions

- Damage resulting from machine-made decisions

- Tort Law: Liability for breach of duty of care (fault)
  - Liability in areas where a machine acts autonomously?
    - No breach of duty of care by the user
    - No breach of duty of care by the operator
  - No attribution of a duty of care by a machine
Interim Conclusion

- Liability under Tort law requires a breach of a duty of care
  ⇒ Autonomous actions by machines are not covered

- Strict liability is based on the controllability of risk
  ⇒ The manufacturer is best placed to control the actions of autonomous machines

**Thesis:**
The current system is inadequate.
Potential solutions

European Parliament
2014-2019

TEXTS ADOPTED

P8_TA(2017)0051
Civil Law Rules on Robotics
European Parliament resolution of 16 February 2017 with recommendations to the Commission on Civil Law Rules on Robotics (2015/2103(INL))

The European Parliament,

- having regard to Article 225 of the Treaty on the Functioning of the European Union,
- having regard to Council Directive 85/374/EEC¹,
- having regard to the study on Ethical Aspects of Cyber-Physical Systems carried out on behalf of the Parliament’s Science and Technology Options Assessment (STOA) Panel
Insurance and Liability funds

- Concept: Compulsory insurance + Liability funds

- Requirements:
  - Register for autonomous systems
  - Risk-specific classification of autonomous systems
  - Insurability of the risks posed by autonomous systems
New liability system for machine-made decisions

- Addressees of liability
- Fault-based liability vs. strict liability
- Enforceability of claims for damages
Conclusion

- Further development of the liability system is required
  - New elements: insurance, register, classification
  - Specific liability for machine-made decisions

- Incentives to avoid risk for manufacturers and users
- Possibilities to control risk must be taken into account

- Enforceability of claims under the rules of civil proceedings
Thank you very much for your attention!

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