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Response to 'Pathway to driverless cars: consultation on proposals to support advanced driver assistance systems and automated vehicles'.

Channon, M

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Department for Transport

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Do you agree with the proposal to review the regulatory framework to enable the use of advanced driver assistance systems and advanced vehicle technologies as they come to market in the UK?

Yes (See below)

Do you agree that we should follow a rolling programme of regulatory reviews?

Yes, it is crucial that regulation is reviewed especially as this is a developing area of technology a number of regulatory issues are likely to be encountered along the way and therefore it is important that this area is reviewed regularly. There are certain issues which will need to be addressed but the technology is not ready yet, therefore it is important that the law keeps up with technology. It would be unwise to predict any technological changes.

In the first wave of regulatory change, with the exception of insurance, should we only consider those advanced driver assistance systems or automated vehicle technologies that are likely to come to the UK market in the next 2-4 years?

N/A

Are you aware of any upcoming advanced driver assistance systems or automated vehicle technologies which this document does not cover?

No

Do you agree with the proposition to amend road vehicle compulsory insurance primary legislation in Part 6 of the Road Traffic Act 1988 to include product liability for automated vehicles

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It is proposed that product liability is just one system which should be discussed and examined in greater depth, there are also other proposals which are not mentioned in this document which should also be examined. Product liability could be an effective system to ensure compensation for automated vehicles, however, it has been noted that it is extremely complicated and 'impossible to understand'¹. There are potential defences open such as the 'state of the art' defence which would unduly restrict damages to the most vulnerable. Therefore a complete product liability system would need to be altered to ensure that the third party victim is always compensated. A major potential problem, is that the driver may be reluctant to retake control, as they will not perceive themselves as responsible. Therefore, it may be necessary to consider an obligation in insurance for the driver to retake control.

Another potential option would be the introduction of a 'central fund' similar to the system in New Zealand for conventional vehicles. This fund would be paid for through levies in the cost of these vehicles or through fuel and would then pay for any damage caused through strict liability. This system would remove any liability battles and would also ensure that compensation is paid in every situation. Central funds in maritime law act as a second layer of insurance in certain instances (e.g. oil pollution) when the damage exceeds a certain amount. A similar approach can also be considered so that the insurers pay and then the manufacturers pay into a central fund, which is used to compensate when the damages are high.

¹ See Johnson "A personal (and selective) introduction to product liability law" J.P.I. Law 2012, 1, 1-17

Of course there are some drawbacks to a central fund scheme such as who would manage it and whether there needs to be some controls to prevent people from taking advantage of this system. However, it is a proposal which should at least be discussed and examined in greater depth.

One must also remember that despite the UK voting to leave the EU, it would still be advisable to collaborate to ensure that our regulatory frameworks allow travel across the EU with relative ease. Therefore, it is worth consulting with other EU Member States and ensuring that our systems do not make it difficult to travel cross-border.

Question 2B: What, if any, other changes to the insurance framework should be considered to support use of automated vehicle technologies, and why? (free text);

It is suggested that the whole motor insurance framework should be overhauled and both motor insurance and automated transport (whichever system is chosen) should be introduced in their own Act. The current system for motor insurance is poorly drafted and does not provide adequate compensation to third parties. The Act has come into the spotlight recently due to the UK Insurance v Holden case, in which the judge stated that the Road Traffic Act is 'inconsistent' with the 2014 ECJ decision in Vnuk. The aim of motor insurance is to ensure that the third party is compensated and it is clear that with the current allowance of exclusion clauses, the ex turpi causa defence, exclusion to accidents happening 'off road' and significant reduction in damage due to contributory negligence, that there are significant gaps in the protection of third parties. Therefore, if automated transport insurance ensured that there are no gaps in the protection of third parties (which would be needed especially to ensure public confidence in these vehicles) it would be unwise (as noted in the document) to have a higher standard of protection for these vehicles than for conventional vehicles. As with safety, compensation should be equal especially while both are on the roads.

The MIB agreements would also need updating to ensure that automated vehicles are covered, Clause 9 of the Uninsured Driver's Agreement which allows the MIB to exclude payment for acts of terrorism is also a significant concern. Automated vehicles could potentially be used in acts of terror and therefore exclusions in relation to terrorism should be removed from the Agreements.

Question 2C: If you are an insurer or vehicle manufacturer or other organisation directly affected by these changes, what costs do you estimate your organisation will incur as a direct result of these changes? (free text)

N/A

Question 2D: Do you anticipate the cost of insurance products for automated vehicles to be higher than for conventional vehicles? (Y/N); By how much and why? (free text)

Insurance products should not be any more expensive for automated vehicles than for conventional vehicles. 90% of Road Traffic Accidents are caused by driver error, therefore by at least partially removing the scope for driver mistake, the risk of accidents occurring for these vehicles is going to be lower. Of course it will take time before there is any real impact on premiums as insurers will need time to judge risk and there may be some early reluctance to reduce premiums.

Question 2E: Do you anticipate that the introduction of automated vehicles will increase insurance premiums for conventional vehicles? (Y/N) Why? (free text)

There should be no reason why insurers would increase premiums for conventional vehicles, the risk of accidents especially 'knock for knock' should decrease and therefore there should be no increase

in premiums for conventional vehicles. It must also be noted that insurers are competing for the same business.

Question 2F: What do you estimate will be the costs to insurers, vehicle manufacturers, or other parties of providing product liability cover for automated vehicles, and why? (free text)

The costs to insurers, manufacturer or other parties providing cover for automated vehicles should not be significant due to the fact that the risk of accidents is going to be lower. Of course there will be some costs especially when the vehicle is in the hands of the general public who may not be familiar with these vehicles. Moreover, another potential cost, which could be significant, is in relation to issues involving the tampering or misuse of these vehicles for criminal reasons

Question 2G: Do you anticipate that this cost will be passed on to the consumer? (Y/N) Why, and by how much? (free text)

Yes, insurers are businesses and work on the basis of profits, therefore, at least indirectly costs of automated vehicles will be passed through the premiums of the consumer. However, of course this may not work on the basis that all consumers will face these costs, as it is envisaged that those who pose the highest risk will pay the higher premiums and therefore those who are found to have misused the technology will pay a much higher premium.

Question 2H: Do you agree that where a driver attempts to circumvent the automated vehicle technology, or fails to maintain the automated vehicle technology, the insurer should be able to exclude liability to the driver but not to any third parties who are injured as a result? (Y/N) Why? (free text)

Yes, the overall concern is that the third party should always be compensated even where the driver of the vehicle commits an illegal or dangerous act. Of course this will bring some difficult legal technicalities as to how we define 'driver' of the vehicle, especially when the vehicle is at a stage when it requires very little interference, the driver then would be seen more as a passenger who would ultimately need to be compensated.

Do you agree that in the event of 3rd party hacking of an automated vehicle, an insurer should not be able to exclude liability, as set out in the Consultation Document?

As noted in the response to 2H , the third party should always be compensated. Therefore the insurer should not be able to exclude compensation to a third party due to hacking, however, they should be able to attempt to recover any damages from the hacker or from the 'owner' of the vehicle if they have failed to maintain the cyber security of the vehicle.

Question 2J: Do you agree that the product liability and insurance requirements for automated vehicles should follow the normal rules on product liability with different rules depending on whether the injured party was an individual or a company? (Y/N)

No

be limited by the 'state of the art' defence? (Y/N)

No, as highlighted above there should be no limitation in the liability of the manufacturer towards third parties.

Question 2K: Alternatively, should we extend insurance/liability rules specifically for automated vehicles? (Y/N) Why? (free text)

The introduction of a strict liability system for automated vehicles is worth considering. Public perception is crucial in relation to the widespread adoption of these vehicles. An example can be seen in relation to the introduction of the motor car in 1896, with a number of fatalities occurring due to the use of these vehicles and very little compensation for injured victims, the motor car was disliked by the public² and their adoption was at first slow. Therefore, it is important that the public perceive these vehicles as both safe but also that they will be able to gain some compensation for accidents. A completely strict liability system, however, could open up to individuals taking advantage by inflicting personal harm to gain compensation, therefore, purposeful harm by the injured party could be excluded.

Do you agree that an alternative first party model option would not be proportionate while automated vehicles represent a small proportion of the fleet? (Y/N);

As stated in the consultation, a first party model is likely to be unduly expensive and could ultimately lead to an increase in premiums. A substantially different system would also provide logistical issues for insurers and regulators as it would be a substantially different system to the one we have now.

Question 2N: What do you anticipate the cost of implementing a first party insurance model would be? (free text/upload)

N/A

² See Spencer "Motor-Cars and the Rule in Rylands v. Fletcher: A Chapter of Accidents in the History of Law and Motoring " (The Cambridge Law Journal, Vol. 42, No. 1 (Apr., 1983), pp. 65-84)