

AUTONOMOUS VEHICLES IN BELGIUM. IS OUR LEGAL SYSTEM READY?

We have been hearing about autonomous vehicles (“AVs”) for quite a while. However, as time goes by, the use of AVs is getting closer to becoming a reality. In various countries, car manufacturers are now carrying out tests on open or closed parts of public roads. Just like engineers are facing technical challenges in this field, lawyers have to deal with questions around liability, cybersecurity, data protection, insurance, intellectual property, etc. In this framework, news about AVs accidents are getting less and less uncommon, and they lead to tricky liability questions, such as: can a car user be held liable if he or she had no direct control over the wheel?

Such questions might need a clear answer in the near future and the whole AV subject at large is gaining track. Recently, a [Belgian politician launched the idea](#) to make Belgium the first country to welcome AVs. In parallel, the European Commission issued in February 2020 a [White Paper on Artificial Intelligence](#), referring to liabilities incurred by AI, and by extension by AVs.

What do you mean, “autonomous” vehicle (“AV”)?

AVs’ autonomy varies in degree. Subject to a specific European scale of autonomy measurement, authors generally refer to the Society of Automotive Engineering (“SAE”)’s scale. SAE is an international organisation based in US. It brings together engineers, CEOs, researchers, professors, and students who share ideas on automotive engineering. It established six levels of autonomy, ranging from a complete human intervention (level 0) to a total absence of human action (level 5).

To date, the most advanced AVs on the market are of level 3. In that case, the vehicle can handle itself all aspects of the driving tasks within a certain set of circumstances. In some instances, the human driver must be ready to take back control of the vehicle when the AV so requires, e.g. during a traffic jam. According to car manufacturers’ (enthusiastic) declarations, the next levels of autonomy should reach our market in the coming months or years.



How does Belgian law address liability issues in the case of AV accident?

At this stage, Belgian law does not have any specific liability regime addressing the risks generated by AVs.

A victim of an AV should thus find its way through the existing and non-specific Belgian liability regimes. In short, four liability regimes can be identified as potential legal basis for a claim.

A. The fault-based liability regime (Article 1382 of the Civil Code)

This requires the victim to prove three things: a wrongful behaviour from the AV user, a damage and a causal relationship between the behaviour and the damage.

The tricky question here is whether a driver can be found guilty of a wrongful behaviour if he or she was letting the AV operating itself at the time of the accident?

B. The strict liability regime for the use of defective things (Article 1384 of the civil Code)

The victim should prove its damage and a causal relationship, just like in the previous fault-based liability regime. However, in this case, the victim can limit itself to proving a malfunctioning in the AV, rather than proving a wrongful behaviour of the AV user.

This solves the question raised by the previous regime but raises a new one, e.g. how do you prove a malfunctioning when the accident is the result of an algorithmic decision, which in turn could potentially be the outcome of machine learning?

C. The product liability regime (law of 25 February 1991 on product liability)

This regime is similar to the second liability regime as the victim must prove its damage, a malfunctioning of the AV and a causal relationship between these two aspects. However, in this case, the victim will seek compensation against the manufacturer, not the driver.

Furthermore, the compensable damage will be limited to personal injuries (including moral damage) and, subject to certain conditions, damages to property. Other types of damage (e.g. loss of opportunity) are not recoverable under this specific liability regime.

D. The insurance liability (Article 29bis of the law of 28 November 1989 on compulsory motor vehicles liability insurance)

Once a vehicle is involved in an accident, “weak users” (e.g. pedestrians and cyclists) may obtain compensation from the car insurer for the damages resulting from this accident.

In this case too, recoverable types of damage are limited. They only cover personal injuries or death, as well as damage to clothing (quite oddly).

What's next

Vehicles are becoming more and more autonomous. Level 5 (fully autonomous) AVs are still prohibited at this stage but their eventual arrival on the market will generate liability questions for which our legal system is not well equipped.

They will change the fault-based paradigm and we anticipate that a dedicated liability regime (e.g. based on the mere use of the AV) will be needed to complement our existing legal framework. We at Simont Braun will closely follow up on this and keep you posted.

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