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Ref.: JPF

30. oktober 2017

Notat

To: AIDA - RIO CONGRESS 2018,
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From: Jens Peter Fabricius

New Technologies (Autonomous Vehicles and Robots- Cyber Risks- New Technologies and Insurance Process)

I. DRIVERLESS/AUTONOMOUS VEHICLES AND VESSELS

1. Are there any specific laws already adopted in your jurisdiction, or proposals for laws, relating to liability in tort for injuries inflicted by the use of such vehicles or vessels? If so, please provide a short explanation. Comment: answers may include the liability of drivers, producers of vehicles and the suppliers of satellite technology.

On June 8th, 2017 The Danish Parliament (Folketinget) passed law 696 amending the Danish Traffic Act, and thereby delegated authority to the Danish Ministry of Transport to grant license to operate driverless vehicles on a trial basis on Danish public roads. Obtaining a license is subject to strenuous conditions that must be met by the applicant, including limitations and legal requirements set by the Ministry of Transport, and a final approval by a committee formed by The Danish Parliament.

The Act introduces strict liability for the licensee and implies that rules imposing criminal penalties must be laid down and that rules on objective criminal liability can be laid down.

2. Are there any specific laws already adopted in your jurisdiction, or proposals for laws, relating to compulsory insurance coverage for injuries inflicted by the use of such vehicles or vessels? If so, please provide a short explanation. Comment: answers may relate to motor vehicle insurance and product liability insurance.

The license holder is obligated to take out motor vehicle liability insurance in accordance with the Danish Traffic Act. It is questionable whether the Act allows the Ministry of Transport to make the permission subject to the license holder taking out any other insurance, for example a product liability insurance.

3. How do you envisage the future of personal lines in motor vehicle insurance in the next 5-10 years in your jurisdiction? Comment: you may wish to comment on the future of motor vehicle insurance and the plans being made by the industry for new products

The industry has experienced fewer claims for smaller amounts as new technologies has improved safety. Underwriting has therefore become more complex and requires in depth understanding of how newly introduced and expected motor vehicle technologies will further influence the number, amount and characteristics of future claims.

As the risk has decreased and the safety technologies introduced in new cars has increased, the industry has had to develop new products and a better segmentation of the insured, their cars and the relevant risk-drivers on which to determine the correct and competitive premium.

Access to new data, for example from "black-boxes" voluntarily installed by the insured in their car is one such source of data on which to determine the premium. Data gathered in connection with the use of cars in car sharing pools is another example of how new data has made property- and liability insurance for such cars possible.

4. Driverless cars and autonomous vehicles apart, how do you assess the following technological developments that are expected to not only reshape the auto sector but also the insurance industry around it? (a) connected cars (i.e., Internet enabled vehicles, (IEV)); (b) automated driver assistance systems (ADAS); (c) car/ride sharing; (d) alternative fuel vehicles. Comment: answers may include identifying the legal and regulatory regime and provisions in your jurisdiction.

While the industry is in a state of heightened preparedness to address the needs and opportunities arising from new technology, and increased competition from new entries in the industry, such as Google or Amazon, or from other parts of the International finance industry, it's still too early to establish exactly which insurances coverage may be needed.

(a) For example, it's still not clear how Internet enabled vehicles will be operated, which technologies will eventually be applied, and therefore which risks is involved.

(b) Automated driver assistance systems have clearly decreased the risk of damages, and this has heightened the complexity of underwriting and competition and competitive anxiety in the industry. (See above question 3)

(c) Car sharing has been offered in Denmark for more than 10 years, and has become widely available in all major cities within the last 2-3 years. Most inhabitants living in the central parts of one of Denmark's three major cities will be able to find a shared-car parked less than 300 meters from their home. It's estimated that one car in a car sharing pool could reduce the number of privately owned cars with 10, which would further reduce the marked for motor vehicles insurance, as well as accelerate the introduction of new cars with new safety features, as shared cars must be expected to be used more and faced out quicker than privately owned vehicles.

The Danish insurance industry has been quick to offer property- and liability insurance for shared cars. The challenge has been to offer a comprehensive packed, normally without any deductible that could discourage the potential car sharing customer from signing up and using a shared car. Determining the right premium is based on user data provided by the operator of the car pool. How these data are evaluated and weighed by each insurance company is a closely guarded company secret.

It remains to be seen if car sharing will be widely accepted. The trend has been steadily growing for the past 10 years, and growth could accelerate as more Danes accept sharing economy, but it's possible that operators of shared car pools will find that it's not possible to obtain the necessary economic returns to continue this business.

(d) Electric cars have been driving on Danish Roads for close to 10 years. Owners take out standard property- and liability motor vehicle insurance. The number of electric cars is growing, but less compared to for example Norway, as the Danish Government has not exempted electric cars from taxation to the extent the Norwegian Government has.

New types of cars or modified cars cannot be registered in Denmark without being type approved, generally EU type approved. Such approval must be assumed to secure that the use of the motor vehicles does not entail greater risks than what is generally accepted from conventional fuel vehicles.

II. CYBER RISKS

5. Identify the concerns have emerged in your jurisdiction as a result of cyber risks. Is there any legislation in place or under consideration that might affect such risks? Comment: possible matters include cyber-terrorism, hacking, computer or software failure and financial fraud.

Denmark is a highly digitalized society, and data security is therefore ingrained in numerous laws, standards and best practices.

Data security is regulated in the Processing of Personal Data Act and EU General Data Protection Regulation 2016/679 which is to take effect May 25th, 2018. The financial industry is further regulated by The Financial Business Act which includes numerous regulations meant to secure safe handling of data. In order to fight money laundering, ultimate owners with a large or controlling interest in companies, funds, associations and other entities must be publicly registered by December 1st, 2017.

Public focus has been on such issues as ID-thefts, e-mail scams and the consequences of malware or virus, which has led to information campaigns to the public to induce them to heighten protection of private and work computers by installing updated firewalls and introduce best practice in handling access codes.

In 2014 the Central Personal Registration Act, whereby all Danes are provided with a unique personal registration number, was amended in order to make it possible for victims of ID-theft to apply for and receive a new personal registration number.

All Danes have a digital signature operated by Nets A/S, which is used by close to 100% of the population to access and administer bank accounts, tax records, health records, multiple other services and even to request and accept divorce on-line. Data security in Nets A/S has been scrutinized and it has been revealed that sensitive information on the whereabouts of celebrities including the Danish royal family has been sold by a Nets A/S employee to the Danish tabloid media. The scandal led to criminal convictions of the Nets A/S employee as well as two journalists and responsible editors, and has heightened awareness of how credit card transaction data can be used to virtually map all Danes whereabouts and purchases.

Fraudulent activities, including cross border activity, is facilitated by easy electronic exchange of documents, signatures and funds. Denmark has seen a heightened activity of fraudulent activity, including for example; fake homepages, "Nigeria-mails" and scammers pretending to call from Microsoft. Numerous laws can help to reduce such fraudulent activity, including – one may speculate – general consumer protection laws prohibiting unsolicited e-mails and phone calls to consumers.

6. How has the insurance industry responded to cyber risks? In particular: (a) do property policies cover losses from cyber risks, or is special insurance required? (b) is insurance and reinsurance readily available? (c) are there any special restrictions imposed on cyber risks, e.g. event limits or deductibles?

(a) Standard Danish property policies' coverage of cyber risks is limited to direct damage from for example fire caused by a malfunction of electronic software or hardware, or do to loss or manipulation of electronic data. The cost of reestablishing or recreating lost data can be covered by an extension of the coverage.

Coverage of cyber risks in excess of the limited standard coverage requires that a special insurance policy is taken out. Such policies could include coverage of ID-theft, theft from the insured's internet bank account, and additional costs and loss of turnover in case of malicious electronic viruses or similar. It is possible to take out policies that cover penalties and damages incurred as a result of violations of the EU General Data Protection Regulation 2016/679. Other specific coverage for cyber risks may be offered as requested by the insured.

Coverage of all cyber risks is subject to limitations and numerous conditions being met, and in general does not include indirect loss or loss due to gross negligence.

(b) Insurance and reinsurance covering cyber risks is readily available, but with limitations and conditions as must be expected.

(c) Coverage is limited generally by event and/or yearly, and deductibles that follow the general terms of the policy often DKK 25.000-100.000.

III. NEW TECHNOLOGIES AND THE INSURANCE PROCESS

7. To what extent have the availability of new technologies affected the way in which insurance policies are placed? In particular: (a) has there been any effect on the traditional use of agents and brokers? (b) has the underwriting process been affected by the availability of information,

particularly big data, from sources other than the applicant for insurance? (c) has the means of providing information to policyholders changed significantly, e.g. are written documents provided or are policyholders directed to websites?

(a) The availability of new technologies has had no significant effect on the use of agents and brokers.

(b) Brokers have introduced facilities and pools for small and medium size enterprises revealing less information to the insurer. "Big data" is not used to a greater extent than previously, except extended use of the Danish Central Building Register (BBR).

(c) Traditional paper mail is rarely used in Denmark. Information to policy holders is almost exclusively sent by e-mail or to the insured in their mandated electronic e-box. Brokers and agents make more and more use of automatic generated insurance certificates.

8. To what extent is genetic testing regarded as important by life and accident insurers? Is there any legislation in place or in contemplation restricting requests for genetic information, and are there any relevant rules on privacy that preclude its disclosure?

In accordance with the Danish Insurance Contracts Act section 3A, insurers are not entitled to request, collect or receive and use information that may reveal a natural person's hereditary genes and risk of developing or catching diseases, including demanding examinations required to provide such information, neither in connection with the execution of the insurance contract or thereafter.

Danish insures are therefore prohibited from requesting genetic or health information of the insured that may predict the insured's risk of developing a disease, including genetic or health information from the insured's parents, siblings or other family members.

Health providers are becoming increasingly aware of hereditary health risks and genetic testing has become generally available to the public. It´s therefore more likely that the insured has knowledge of a specific – possibly even substantial – risk, that he or she may have to develop a certain disease. Because of the Danish Insurance Contracts Act section 3A the insured can take out insurance to cover such risk, without disclosing this information to the insurer. If it's later revealed to the insurer in connection with a claim being filed, that the insured intentionally or by gross negligence did not disclose such information that the insured knew would be of material importance to the insurer, it's an open question whether the policy can be avoided by the insurer in accordance with the Danish Insurance Contracts Act section 4 or 7, or whether section 3A cuts off this position, as section 3A's wording clearly states that the insurer may not use such information even after the conclusion of the insurance agreement. This result, which is clearly in contradiction to the normal principles of insurance based on symmetrical access to information, needs to be challenged before the Danish Courts before the issue should be accepted as settled.

Section 3A does not restrict the insurer's right to ask the insured to submit all relevant previous or current information with regard to the insureds own health.

9. Has the assessment of claims been affected by the availability of data. In particular, are there any industrywide arrangements in place whereby insurers can share information on fraud?

Unlike Norway and Sweden, the insurance industry in Denmark does not have access to shared information on previous claims and cannot exchange such data. In 1995, the industry raised the issues with the Danish Consumer Ombudsmand who issued the opinion that establishing a mutual database containing all insurance claims with the purpose of reducing fraud would, despite access being restricted in numerous ways be in violation of the Danish Marketing Practice Act Section 1 (Today section 3). In 2006, the industry once again raised the issues, this time requesting permission from the Danish Data Protection Council to create the database. The Council would not grant permission to create the database as described and the Danish Data Protection Council Agency further specified that registering claims and requesting access to claims filed in the data base would require the insureds uncoerced consent in accordance with the Processing of Personal Data Act Section 6, subsection 1.1, which makes the objective of the database unobtainable.

10. Are there any other ways in which the new technologies have affected the insurance process in your jurisdiction?

Surely, as Denmark is extremely digitalized, new technology is continuously being implemented on a small scale by individual employees or in major companywide projects in all Danish insurance companies.

Personally, I think that the development of the "Internet of things" has the potential to influence business and our daily lives in a way we do not yet comprehend, but which will be substantial and be felt as a "natural" and convenient part of daily life in just 3-5 years. I believe that the "Internet of things" will influence our daily shopping for grocery, our use of heat and power, and will further enable a sharing economy. Clearly, this will entail a change in risks, as all exchanges of data can be corrupted. As data is incorporated in our physical property, the risk of physical damages to insured property will be affected. Whether the risk will increase or decrease as a result remains to be seen.

Also, I believe that blockchain technology could influence the backbone in new insurance IT-systems and create owners-registers, enabling better authenticating of property, such as expensive designer watches, yachts, new works of art, etc., which could in turn increase international competition in the insurance industry.

IV. OTHER NEW TECHNOLOGY RISKS

11. Are there any other particular risks from new the new technologies that have been identified in your jurisdiction? If so, is there any legislation in place or under consideration to regulate them?

Possible.

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