

QUESTIONNAIRE FOR AIDA WORLD CONGRESS, RIO, 2018

New Technologies

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

General Co-Reporters: Kyriaki NOUSSIA and Rob MERKIN

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.

- ⇒ The new automated driving ordinance (ordinance of the federal ministry of transport, innovation and technology on the framework for automated driving) stipulating the prerequisites for the **testing** of vehicles with assistance systems as well as vehicles with automated or connected drive systems entered force on 19 December 2016; such systems are still not allowed to be operated in the normal course of traffic.

Before each test drive the responsible ministry of transport must inter alia be provided with the following information:

- Information on the application or system being tested
- Name of the testing facility
- The total number of real, virtual and experimentally driven test kilometres completed by the system being tested
- License plate number for the test vehicle to be used in test runs
- Information on the test vehicle driver for the test runs
- Written confirmation from the motor vehicle liability insurer that insurance coverage is provided for the test runs in accordance with the provisions of the Motor Vehicle Liability Insurance Act 1994

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.

- ⇒ A legal obligation to obtain a motor-vehicle liability insurance exists. Said insurance provides coverage for claims with respect to property, personal or any other pecuniary damages due to caused traffic accidents. The amount of the insurance coverage is dependent on the horsepower and the age of the vehicle. A confirmation regarding the existence of a liability motor-vehicle insurance must be provided to the ministry of transport prior to the first entry service of the vehicle.

The testing of vehicles according to § 1 Abs. 3 Ziff. 1 of before mentioned ordinance in public traffic is only allowed if during the test drive(s) insurance coverage is guaranteed by a liability insurer and the motor-vehicle liability insurer confirms in writing that

insurance coverage in accordance with the provisions of the Motor Vehicle Liability Insurance Act 1994 (KHVG 1994) is provided for the applied test drive(s)

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

⇒ There are currently no plans being made by the insurers with respect to this topic. Only the use of “Big Data” is already commonplace in Austria and used to improve the claim settlement and optimize the classification of the car and its potential risk (e.g. theft risk).

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.

⇒ a) Different products are already available in Austria, e.g. SafeLine from the UNIQA Insurance (= a personal emergency assistant, connected directly with the emergency responders).

b + d) There are no special products available in Austria

c) Currently there are only insurance products available via carsharing-platforms, e.g. charsharing 24/7, market leader within the private carsharing-platforms in Austria, is providing the ensuing insurance product in collaboration with a local insurer (Niederösterreichische Versicherung): the customer – who is renting the car – is obliged to cover the insurance premium for a specific insurance during the rent. Deduced from that the vehicle owner can make the vehicle available in return for payment to third parties (renter) without risking negative insurance premium effects – for his own motor-vehicle liability insurance – due to damages occurred during the rent.

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.

⇒ Several paragraphs were added to the Austrian Criminal Code:

- Unlawful access to a computer system (paragraph 118a)
- Abusive/unlawful interception of data (paragraph 119a)
- Data corruption (paragraph 126a)
- Disruption of the functioning of computer systems (paragraph 126b)
- Abuse of access data (paragraph 126c)

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) Cyber risks are generally excluded from coverage. Only a specific cyber insurance is providing self-damage coverage (business interruption loss, crisis management, extortion costs, data restoration costs, credit monitoring costs, defense costs, forensic costs, notification costs, public relations costs, contractual penalties of PCI companies) and liability coverage.

b) Yes. There are currently 11 different products offered on the market, whereby it must be emphasized that the provided coverage of said products can differ significantly.

c) Most insurance concepts/products don't cover risks associated with the use of cloud services, cyber terrorism, operating errors and financial loss because of cyber fraud. In addition, deductibles are always part of the existing insurance concepts/products, e.g. a deductible of EUR 1'000 is in general applicable and for the business interruption insurance a duration of 12 hours is the general deductible. Moreover, several insurers are stipulating sub limits for individual insurance components (e.g. credit monitoring costs, contractual penalties of PCI companies).

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) Broker are maintaining online presences, however mainly focusing on client information. Nevertheless, different online-broker have entered the marketplace. Those online-brokers are currently facing the challenge to comply with their legal obligations to provide advice to their clients according to the local broker law. As a consequence said online-brokers are frequently sued by their competitors under the federal act against unfair competition.

b) Big data is especially relevant in the area of motor-vehicle insurances, e.g. regarding the risk classification or computation of replacement value). Apart from that big data is used in the area of health and life insurance, but the insurance sector is confronted with manifold ethical as well as socio-political issues.

c) In principal, all Austrian insurers maintain online-portals. Those portals enable the insurers to offer direct sales on their online-portals. Some portals also provide additional features such as online damage tracking (e.g. Zurich Connect). But those online-portals are not only designed for direct insurance customers, brokers are usually also directed to those portals for the insurance application/calculation. In short, it is obvious that most insurance companies are emphasizing the improvement of their online presence.

While this digital trend has manifested itself, certain elements, such as the policy documents, are still submitted to the policy holder by post although it is permitted by law since 2012 to provide such documents electronically.

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 Austria it is not allowed to use genetic information by insurers. § 67 Gentechnikgesetz (GTG) regulates that the use of genetic information of a policy holder or employee by an insurer or an employer is forbidden. In Austria the use of genetic information is only legal in the health-care sector and is subject to a lot of restrictions. Also the EU General Data Protection Regulation stipulates distinctive rules for the use of genetic information. Genetic data is legally classified as a special category of personal data under Art 9 (EUDATAP) and therefore can only be used after the consent of the natural person or under the restricted legal framework stipulated in Art 9 (EUDATAP).

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

⇒ There is no arrangement in place allowing insurers to share information regarding fraud. The Austrian Government Computer Emergency Response Team (GovCERT) and the Computer Emergency Response Team Austria (CERT.at) issue a yearly Security Report on cybercrime and fraud. But there is no official data base or register pertaining to cybercrime or fraud.

The GovCERT is run by the Federal Chancellery in cooperation with [CERT.at](https://www.cert.at) to handle and prevent security-relevant incidents in the area of information and communication technologies.

CERT.at is the primary contact point for IT-security in a national context. In the case of significant online attacks against Austrian infrastructure, CERT.at will coordinate the response by the targeted operators and local security teams.

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

⇒ Only the internet-portals of the insurance companies

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?

⇒ The risks for critical infrastructures (electricity supply, water supply, public transport, hospitals, airports, banks) were recognized. The EU issued the NIS-directive in 2016 (DIRECTIVE (EU) 2016/1148 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union). The implementation of said directive in Austria is planned for January/February 2018.