Ref. Ares(2017)3808102 - 28/07/2017

From:
Sent: 18 March 2015 19:22
To: (CAB-JOUROVA)
Subject: Short report - meeting with Samsung Electronics Europe -04.03.2015

Dear ,

See below the short report of the meeting with Samsung

Summary:
A delegation of Samsung Corporate affairs Europe (– President, – Executive Director and - Trade Policy Manager), informed HoC Renate Nikolay about the key priorities of Samsung in the Digital Single Market (see attached document) and confirmed its full support for the data protection reform. In addition Samsung highlighted its commitment to investing in Europe and highlighted that the Digital Single Market initiative should not hinder international trade.

Possible follow up actions:
Samsung invited the HoC to a roundtable on mobile health and requested a meeting with the Commissioner.

Details:
Samsung informed that their strategic priorities are to succeed in the mobile and electronic Health market and in the internet of things market. Samsung elaborated on the strong sense of corporate and social responsibility of Korean companies, and stressed that delivering innovative eHealth products and applications will hopefully bring a lot of additional well-being to individuals in Europe and across the world. Internet of things and eHealth are technologies that have a potential to improve a lot the delivery of healthcare services and lower the costs.

Samsung requested information on the state of play of the data protection reform. HoC informed that very good progress is registered with Council, and that the Commission is confident that the co-legislators will conclude on the data protection reform in 2015. Samsung welcomed the progress and confirmed that harmonisation of the data protection rules and legal certainty are very important for the success of its strategy in the field of electronic health. Samsung is willing to support initiatives of the Commission that will help the fast implementation of the data protection reform.

Samsung informed of the importance of free trade for its activities and of the importance of free flow of data. The HoC informed that there is no intent from the Commission to create protectionist barriers with the digital single market. Rather, the idea of the digital single market is to help companies that currently only have a national footprint to leverage the European market at a lower entry cost. The digital single

market will build on the European tradition of high standards, in many areas including data protection and consumer protection.

Samsung
Electronics in Eu...

European Commission
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Unit JUST/C/3, Data Protection
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Ref. Ares(2017)3807735 - 28/07/2017

From: O'CONNELL Kevin (CAB-JOUROVA)
Sent: 24 March 2015 19:56
To: NIKOLAY Renate (CAB-JOUROVA); BRAUN Daniel (CAB-JOUROVA); PERIGNON Isabelle (JUST); HULICIUS Eduard (CAB-JOUROVA); LADMANOVA Monika (CAB-JOUROVA); CONSTANTIN Simona (CAB-JOUROVA); (CAB-JOUROVA)
Cc: (JUST); (SG)
Subject: Flash: meeting with SWIFT on EU-US data protection issues (24 March 2015)

I received (Head of Corporate Affairs) and (Head of Policy) from SWIFT, who enquired about the state of play of discussions on the EU-US data protection umbrella agreement and on Safe Harbour.

, SWIFT relies on Safe Harbour for the 'mirroring' of its data between US and European sites and therefore has a strong interest in the continuation of the scheme.

I explained the state of play on the umbrella agreement, including the latest developments on judicial redress (Sensenbrenner bill), and referred to the Commission's efforts to strengthen the Safe Harbour scheme, based on the 13 recommendations of November 2013. I underlined that the Commission keeps the LIBE committee regularly informed. I stressed the importance of stakeholders engaging with the US administration and Congress on judicial redress for Europeans, which needs bipartisan support.

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Member of Cabinet

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Ref. Ares(2017)3807702 - 28/07/2017

From: CAB JOUROVA ARCHIVES
Sent: 13 April 2015 16:53
To: CAB JOUROVA ARCHIVES
Subject: FLASH: HoC Nikolay meeting with SAS 24/3/2015
Attachments:

From: j (JUST)
Sent: Monday, April 13, 2015 1:47 PM
To: NIKOLAY Renate (CAB-JOUROVA); MICHOU Paraskevi (JUST); NEMITZ Paul (JUST); (JUST)
Cc: (JUST); (JUST); (JUST);) (JUST); JUST C3 BRIEFINGS; (JUST); es (JUST); : (JUST)
Subject: FLASH: HoC Nikolay meeting with SAS 24/3/2015

Head of Cabinet Renate **Nikolay** meeting with Mr , Chief Legal Officer of SAS Institute Inc.

SAS is a global company focused on SAS data management, data analytics (big data) and business intelligence. Their major concern is Article 20 of the proposed General Data Protection Regulation.

SAS first met (on behalf of DG JUST/C3) and later on Renate Nikolay, Head of Cabinet (Mr was present at that meeting as well). The subject matter of both meetings was the same: whether the harm based approach could be introduced in Article 20, or alternatively whether the threshold "significantly affects" could be higher.

Renate Nikolay explained to SAS that data protection reform needs to be done this year and it will present a foundation stone of the Digital Single Market. She underlined that provisions on profiling are not new and that they already exist in Directive 95/46. She emphasized that we cannot go below the current level of protection. At the same time, the Commission does not want to close doors on innovation. While data protection is at the heart of an individual, we have to find a way to simultaneously respect business interests, as the Commissioner does not intend to harm business.

. In any case, we are bound by the Charter of Fundamental Rights, its Article 8 and the way it is interpreted by CJEU. In conclusion, there will be red lines, but the debate is still open on profiling.

In reply, SAS expressed the view that profiling should not be singled out the way it is and wondered if there is any room for compromise. They believe that the classic debate *individual v. business interests* should be complemented by the

third prong – societal benefits; and they could provide hundreds of examples where the current wording of Article 20 would hinder such benefits.

At the end of the meeting, both sides expressed their satisfaction with the recent agreement in the Council on the One-Stop-Shop.

In the follow up of the meeting, SAS informed the Commission on the position of the Industry Coalition on Data Protection (ICDP) on Article 20. ICDP is comprised of 20 associations representing thousands of European and international companies .

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Ref. Ares(2017)3807843 - 28/07/2017

From: NIKOLAY Renate (CAB-JOUROVA)
Sent: 27 March 2015 18:27
To: (CAB-JOUROVA)
Cc: BRAUN Daniel (CAB-JOUROVA); LADMANOVA Monika (CAB-JOUROVA); PERIGNON Isabelle (JUST); HULICIUS Eduard (CAB-JOUROVA); CONSTANTIN Simona (CAB-JOUROVA); O'CONNELL Kevin (CAB-JOUROVA)
Subject: Flash on meeting RN with Dell on 27 March

Short introductory meeting with Dell (Government Affairs and Privacy compliance Director) to compare notes on data protection reform and the Digital Single Market.
Full support of Dell for a finalisation of the Data Protection Reform in 2015 as key enabler for the Digital Single Market.
Acknowledgement of Dell that the one-stop-shop will improve the situation compared to today.
Willingness of Dell to constructively accompany the discussions on the reform in this critical phase to get the balance right.

Dell showed interest in a strengthened Safe Harbour arrangement to facilitate commercial data exchanges cross Atlantic. They welcomed that the talks continue, in particular in light of the pending case before the ECJ.

Renate

Renate NIKOLAY
Head of Cabinet

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Ref. Ares(2017)3808000 - 28/07/2017

From: O'CONNELL Kevin (CAB-JOUROVA)
Sent: 30 March 2015 20:30
To: NIKOLAY Renate (CAB-JOUROVA); BRAUN Daniel (CAB-JOUROVA); CONSTANTIN Simona (CAB-JOUROVA); HULICIUS Eduard (CAB-JOUROVA); PERIGNON Isabelle (JUST)
Cc: (CAB-JOUROVA)
Subject: Report: Meeting with Adobe on data protection reform (30 March 2015)

I received two representatives of Adobe (Senior Manager European Government Affairs, Privacy Product Manager), who presented Adobe's position on the General Data Protection Regulation. In particular, they expressed concerns over: the wording of Article 20 (profiling), which they consider too restrictive; and joint liability of controllers and processors (which they argue would be confusing and costly).

I recalled the data protection reform's aim to put individuals in control of their data and thereby foster trust in online services. I reiterated the Commission's aim to finalise the data protection reform in 2015. I also gave a broad outline of the Digital Single Market Strategy and Commissioner Jourová's contribution to it.

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Ref. Ares(2017)3808026 - 28/07/2017

From: O'CONNELL Kevin (CAB-JOUROVA)
Sent: 30 March 2015 20:39
To: NIKOLAY Renate (CAB-JOUROVA); BRAUN Daniel (CAB-JOUROVA); CONSTANTIN Simona (CAB-JOUROVA); HULICIUS Eduard (CAB-JOUROVA); LADMANOVA Monika (CAB-JOUROVA); PERIGNON Isabelle (JUST)
Cc: [redacted] (SG); [redacted] (JUST); [redacted] (CAB-JOUROVA)
Subject: Report: Meeting with Computer & Communications Industry Association (30 March 2015)

I received two representatives (Director of International Digital Economy Policy, Director Europe) of the Computer & Communications Industry Association (CCIA). The CCIA represents major internet companies and platforms (e.g. Facebook, Google, Microsoft, BT, Ebay, PayPal, Allegro etc.).

The representatives of CCIA enquired as to Commissioner Jourová's position on a number of issues under the Digital Single Market initiative, including copyright reform, 'geo-blocking', regulation of internet platforms, vertical restraints and the e-commerce directive. They also referred to the competition investigation recently launched by the Commission in the area of e-commerce.

I highlighted Commissioner Jourová's contribution to the Digital Single Market, notably in the area of data protection reform and the new initiative in the area of contract/consumer rules for online purchases. I underlined that discussions on several aspects of the DSM are still ongoing (and that competition investigations are a separate process).

The representatives of CCIA:

- enquired why legislation on purchases of digital content products is needed (they would look at the UK and NL legislation in this area and reflect on CCIA's position on the issue);
- argued that the competition investigation into e-commerce should also look at the question of vertical restraints (notably prohibition of sales on certain online platforms);
- expressed concerns about the idea of introducing a duty of care for online platforms for illegal content (CCIA wishes to preserve the current e-commerce Directive, i.e. no general obligation to monitor);
- expressed concerns about possible initiatives in the area of data ownership;
- welcomes the Commission's efforts to strengthen (rather than suspend) Safe Harbour;
- stressed their support for the extension of US privacy legislation to Europeans.

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Ref. Ares(2017)3808052 - 28/07/2017

From: O'CONNELL Kevin (CAB-JOUROVA)
Sent: 09 April 2015 19:44
To: NIKOLAY Renate (CAB-JOUROVA); BRAUN Daniel (CAB-JOUROVA); CONSTANTIN Simona (CAB-JOUROVA); LADMANOVA Monika (CAB-JOUROVA); PERIGNON Isabelle (JUST); HULICIUS Eduard (CAB-JOUROVA)
Cc: (JUST); ((SG); CAB JOUROVA ARCHIVES; (CAB-JOUROVA)
Subject: Report: Meeting with FEDMA (Federation of European Direct and Interactive Marketing) - 9 April 2015

I received two representatives (EU Affairs Managers) of FEDMA (Federation of European Direct and Interactive Marketing), who presented the role of their organisation (FEDMA represents direct marketing associations at Member State level and individual companies across the whole 'value chain' of direct marketing, covering both online and offline marketing).

FEDMA presented their work on preparation of a new code of conduct for direct marketing, to be finalised after adoption of the General Data Protection Regulation. This would replace the 2003 code of conduct based on the existing Data Protection Directive. They stressed their wish to work closely with EU institutions on this matter, notably the Commission (DG JUST) and the EDPS.

I emphasised the Commission's aim to finalise negotiations on the data protection reform in 2015. After adoption of the Regulation, a two-year transition phase would provide an opportunity for the development of sectoral codes of conduct. I encouraged FEDMA to continue to liaise with regulators, notably DPAs, on this matter.

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Ref. Ares(2017)3807974 - 28/07/2017

From: NIKOLAY Renate (CAB-JOUROVA)
Sent: 06 May 2015 00:01
To: (JUST)
Cc: CONSTANTIN Simona (CAB-JOUROVA); HULICIUS Eduard (CAB-JOUROVA); (JUST); (SG); SPANOU Despina (CNECT); (JUST); (JUST); (JUST); JUST C DIR; (JUST)
Subject: Re: Flash report - Meeting with , deputy CEO of Orange

Dear
this is fine for me, thx. R

Sent from my iPhone

On 05 May 2015, at 18:20, (JUST) <@ec.europa.eu> wrote:

> Dear Renate,
> Dear Simona and Eduard,
>
> Please find below the flash report from the meeting this afternoon with Mr , deputy CEO of Orange. Please let me know in case you have any addition to make.
>
> Best regards,
>
> --
>
> **Meeting with , deputy CEO of Orange**
> **05/05/2015**
>
> **Participants:**
> - Renate NIKOLAY, Head of Cabinet
> - Simona CONSTANTIN, Member of Cabinet
> - Eduard HULICIUS, Member of Cabinet
> - E, DG JUST E6
> - , Deputy CEO, Orange
> - , Director EU Affairs, Orange
>
> **Main points raised:**
> - Mr started the meeting with a brief introduction of the difficulties faced by the telecoms sector in Europe (sluggish growth of revenues due to fierce price competition in several markets).
> - Mr then went on to outline Orange's main expectations: first, to be considered on an equal-footing with over-the-top players and, second, benefit from a legal

framework more favourable for investment. Their main priorities is to have an efficient network and protect the data that transits on it.

- In relation to roaming, Mr admitted that these surcharges should be phased out. Orange actually already offers roam-like-at-home tariffs to its consumers. He pointed however that roaming charges are still a substantial source of revenues for telecoms companies of Southern Europe, which explains why the industry is still defending them.
- Mr also called for more harmonisation, be it in relation to consumer or data protection. He also pointed to the fact that the industry is not in favour of having sector specific data protection rules such as the e-Privacy Directive in addition to the horizontal framework. Mr complemented this point by making a reference to an ETNO study looking at the provisions of the e-privacy Directive which should be transferred into the GDPR.
- Mr made a call for simple provisions that apply to all players (e.g. same rules for all digital services) and the need to have a real, effective European industrial policy. For instance, access rules to telecoms networks should be simplified. He also called on the Commission to update its "digital software", notably in the field of competition.

- Ms NIKOLAY explained the preparation of the Digital Single Market Strategy: all Commission services have worked in a collective way to identify the issues that need to be addressed. The Strategy will outline both areas for immediate actions but also others which will require further reflection in the long term.
- On the Data Protection Reform, Ms NIKOLAY indicated that the aim is to finalise the negotiation by the end of this year. The new rules will be simpler and apply to all players. As to the ePrivacy Directive, its review will come once the Data Protection Reform is finalised. At the request of Orange, Ms NIKOLAY gave a brief overview of the ongoing negotiations with the US on Safe Harbour, the ambition being to have a revised version of the agreement by the summer. She also briefly touched upon the issue of data localisation. A brief exchange of views took place on encryption,

- Finally, Ms NIKOLAY briefly touched upon the aim of the proposal on digital content and tangible goods. Orange welcomed this but did not comment any further.

Policy Officer

<image001.png>
European Commission
DG Justice and Consumers
Unit E6 – Consumer Policy
[redacted]

s/Belgium

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2015 European Consumer Summit on 1&2 June 2015
Register and find out more on http://ec.europa.eu/justice/events/european-consumer-summit

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Ref. Ares(2017)3807909 - 28/07/2017

From: (JUST)
Sent: 02 September 2015 18:53
To: NIKOLAY Renate (CAB-JOUROVA)
Cc: (CAB-JOUROVA)
Subject: meeting with Burda Media - 1 September 2015

Dear Renate,

Please find below the report from our meeting with Burda Media.

Kind regards,

The Hubert Burda Media wanted to exchange views and gather information on the state of play of the data protection reform and of the reform of the Safe Harbour adequacy decision. Their main concern is levelling the playing field, in particular with US digital giants. They were wondering about the link between the General Data Protection Regulation and the Safe Harbour decision. They were very interested in mechanisms of enforcement of both the Regulation and the Safe Harbour, as their principal concern is that US companies could collect data in Europe, transfer it to Safe Harbour and return to the European market with products that are cheaper and do not ensure the required level of protection of fundamental rights or the consumer protection.

Head of Cabinet Renate Nikolay took note of the above mentioned concerns. She explained that the data protection reform needs to be done this year and that it will present a corner stone of the Digital Single Market. The Regulation strikes the right balance between the protection of fundamental rights and commercial policies. She praised the atmosphere in the trilogues and a very good job currently being done by the Luxembourg Presidency. This month will be critical in reaching the goal – adoption of the reform package by the end of 2015. She stressed the importance of the two-year implementation period and the need to adapt to the new regulatory environment, which should create a competitive advantage for those who abide by the rules.

On the Safe Harbour, Renate Nikolay explained t

, lot of progress has been made and the improved Safe Harbour might be adopted by the end of 2015. The new Safe Harbour decision should be monitored with teeth and is very important in the context of TTIP and the pending Schrems case (before CJEU). In addition, the dynamics of today's world require periodical reviews of such decisions, and this will be built in as well.

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Fundamental rights and Union citizenship Directorate
Tel:

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Ref. Ares(2017)3807771 - 28/07/2017

From: HULICIUS Eduard (CAB-JOUROVA)
Sent: 21 September 2015 17:41
To: BRAUN Daniel (CAB-JOUROVA); CONSTANTIN Simona (CAB-JOUROVA); HULICIUS Eduard (CAB-JOUROVA); LADMANOVA Monika (CAB-JOUROVA); NIKOLAY Renate (CAB-JOUROVA); O'CONNELL Kevin (CAB-JOUROVA); PERIGNON Isabelle (JUST)
Cc: CAB JOUROVA ARCHIVES
Subject: Flash note - Meeting with CA Technologies

Meeting with the CA Technologies - 21/09/2015
Participants:

- **Eduard Hulicius**
- **, CA VP on Global Govt. Relations, , Head of EU+MENA regional office**

CA Technologies, the 8th largest global Software firm (focused only on SW production, no HW division; est. 1976, 13 000 global employees, 2000 in EU – 400 in Prague R&D centre, 4,4 bio dollars revenue) was interested in discussing the GDPR and DSM.

The three pillars of CA are provision of SW to enterprises, the helping major companies to run their IT in business-like model and security of data and their transfer management (protection of online transactions, data tagging and securitisation). As part of Digital Europe and BSA they actively cooperate in our consultations. They are very keen on GDPR, preferring mostly the Council approach. On the global transfers of data they pointed out their recent acquisition of UK Binding Corporate Rules.
On Digital Contracts CA inquired if the plan will cover also B2B (and B2Public authorities), which they clearly do not prefer. They have also asked on the distinction between sales of digital content and the licensing – which is the usual mode of selling SW. Also fears over definitions of platforms were raised. On the other hand CA is happy with DSM plans on standardisation, e-government and free flow of data.

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Member of Cabinet

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Ref. Ares(2017)3807858 - 28/07/2017

From: CONSTANTIN Simona (CAB-JOUROVA)
Sent: 12 October 2015 17:20
To: NIKOLAY Renate (CAB-JOUROVA); BRAUN Daniel (CAB-JOUROVA); LADMANOVA Monika (CAB-JOUROVA); PERIGNON Isabelle (JUST); O'CONNELL Kevin (CAB-JOUROVA); HULICIUS Eduard (CAB-JOUROVA)
Cc: [redacted] (CAB-JOUROVA); CAB JOUROVA ARCHIVES; [redacted] CAB-JOUROVA)
Subject: Flash report - Meeting with Confederation of Swedish Enterprise and Member Companies - 12/10/2015

Flash report - Meeting with Confederation of Swedish Enterprise and Member Companies - 12/10/2015

Participants:

- Simona Constantin, Cabinet Member
- [redacted] (Ericsson), [redacted] (Deputy Director, EU Affairs Confederation of Swedish Enterprise), [redacted] (Legal Officer, Confederation of Swedish Enterprise)

Data Protection:

Key concerns for the Confederation of Swedish Enterprise

- Profiling: risks of making profiling too narrow; enterprises need to work with data analysis; in favor of Council text with some additions from EP;
- Joint liability between data controller and data processor: do not see a need for further rules; keep what is under the existing directive as otherwise it would create heavy burden for businesses (eg. negative impact on cloud services);
- Sanctions: in favour of proportional assessment of the data breach; possibility to have first a written warning; important to assess first whether the breach was intentional or non-intentional;
- Data Protection Officer: do not see added value in of having DPO; it would be very costly;

I have updated them on the negotiations, including on the recent general approach on the Police Directive, and ensured them of the commitment to have a political agreement by the end of the year.

Safe Harbour:

- They are concerned about the way forward. Ericssson, as a big player, believes that they will be able to work with the other legal tools (BCRs, model contracts) to ensure safe data transfers. However, this is only a very short term solution. They called for urgent guidelines to ensure a long term reliable framework and/or a new Safe Harbour. Legal certainty is of outmost importance, especially for SMEs. For future guidelines or new SH, they argued for allowing some form of waivers (eg. more leeway to companies in case of individual transfers for legitimate interests; stronger rules are needed rather for mass data transfer).

I have informed them about the planned discussions between our Commissioner, and businesses and DPAs. And, stressed, that in the meantime all businesses need to comply with the judgment. I have also highlighted that we need to have first a good analysis of the requirements provided for in the judgment.

Ref. Ares(2017)3807885 - 28/07/2017

From: O'CONNELL Kevin (CAB-JOUROVA)
Sent: 13 October 2015 22:30
To: NIKOLAY Renate (CAB-JOUROVA); BRAUN Daniel (CAB-JOUROVA); HULICIUS Eduard (CAB-JOUROVA); LADMANOVA Monika (CAB-JOUROVA); PERIGNON Isabelle (JUST)
Cc: CONSTANTIN Simona (CAB-JOUROVA); [redacted] (CAB-JOUROVA)
Subject: Flash report - Meeting with Channel 4 – 13/10/2015

Participants:

- Cabinet Jourova: Kevin O'Connell and Simona Constantin
- Channel 4: [redacted], European Affairs Manager

Channel 4 is a publicly-owned, commercially-funded UK public service broadcaster, and its not-for-profit status ensures that the maximum amount of its revenues is reinvested in the delivery of its public service remit.

Copyright:

- Channel 4, as both right holder and right user, claims to support a balanced view; They are against addressing copy right aspects through the banning of geo-blocking, and rather in favour of solving the problems through the revision (extended scope) of the Cab Sat Directive. On content portability, they believe it should cover only paid services.
- We have provided updates on the internal process of preparing the 1st deliverable of the copyright package in December and explained the consumer angle to the debate.

Big data:

- Channel 4 fears that platforms will become gate keepers of the data; data ownership is the big issue in the debate; they will provide input to the public consultation;
- We have explained the demarcation between personal data (where our priority is to finale the data protection reform) and questions of (industrial) data ownrship in the big data context, when for now the Commission is mainly interested in better understanding the problems.

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Ref. Ares(2017)3807809 - 28/07/2017

From: CONSTANTIN Simona (CAB-JOUROVA)
Sent: 04 December 2015 18:40
To: NIKOLAY Renate (CAB-JOUROVA); [redacted] (JUST); SPANOU Despina (CNECT)
Cc: HULICIUS Eduard (CAB-JOUROVA); [redacted] (CAB-JOUROVA); [redacted] (JUST); [redacted] (JUST); [redacted] UST); CAB JOUROVA ARCHIVES
Subject: Flash note meeting EDiMA - 4/12/2015

Simona Constantin and Eduard Hulicius met EDiMA on 4/12 to discuss the **Digital contracts proposal. EDiMA** director Siada El Ramly **and representatives of Yahoo, Microsoft and Amazon** participated on the meeting.
EDiMA is Brussels lobby of online platforms (from Airbnb to Yelp, Google, Facebook, Microsoct and others included). They have participated as stakeholders in the preparation phase and have sent a letter in September in which they put forward their concerns on the proposals. They welcomed the reply sent by the Commissioner, signalling that in general they are on the same page.
We have explained the current state of the digital contracts proposal and the aims we want to achieve with both directives.
EDiMA welcomes the proposal in general, particularly praising the targeted full harmonisation; however they have raised concerns related to the Digital content, fearing that the proposal might not be technically workable. They have requested explanation on concept of "data as payment" and technical feasibility of transfers of consumers data (unclear to them what does the "commonly used format" mean). They have highlighted the need of consultations on technical issues with experts in the field to keep the legislative proposals realistic. They also asked about the alignment of the proposal with the GDPR.

We welcomed their input at **technical level** and suggested a **meeting with DG JUST as of January**

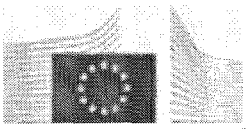
We gave them several info and explanations on the proposal, especially on digital content.
We called for their positive reception of the proposal and the importance of keeping in mind the objectives as we all agree with them. The technical aspects can be looked at further, during the negotiations.

Following our explanations, they did not raise any issue on the sales of goods,.

EDiMA was also interest on the content of **UCPD guidelines,** raising their particular issue of limited liability of platform providers, that they would very much like to keep.

We have informed them that the guidelines will be presented earliest next May.

Eduard HULICIUS
Member of Cabinet
Consumers and European Parliament



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Ref. Ares(2017)3807432 - 28/07/2017

From: HULICIUS Eduard (CAB-JOUROVA)
Sent: 28 January 2016 19:52
To: BRAUN Daniel (CAB-JOUROVA); CONSTANTIN Simona (CAB-JOUROVA); HULICIUS Eduard (CAB-JOUROVA); LADMANOVA Monika (CAB-JOUROVA); NIKOLAY Renate (CAB-JOUROVA); O'CONNELL Kevin (CAB-JOUROVA); (CAB-JOUROVA); PERIGNON Isabelle (JUST); (CAB-JOUROVA)
Subject: flash notes - meetings with Zettabox and ITIC

Importance: High

I have accompanied the Commissioner at two meetings with digital industry subjects today in lieu of Kevin.

Zettabox, a European based company (Maltese registration, seat in Prague) providing heavily securised cloud spaces co-founders J and came to establish connection with the Commissioner. She has informed them about leading role of VP Ansip and Commissioner Oettinger on the Cloud policies, which they accepted.
On data protection we were explained the efforts Zettabox does in guaranteeing full compliance with the GDPR principles of data safety. The Commissioner welcomed the focus on privacy and safety. We explained the adoption procedure and timing.

On Safe Harbour they accented the need to support European enterpreneurs and bridge the gap between the US and EU digital developments and companies. The Commissioner did confirm the negotiations are still ongoing and it is impossible to state what will be their results. The need to find a right balance between the privacy, security and business is crucial.

ITIC, the information technology industry council representatives (CEO ; Digital Europe dir. General et al.) met to inquire on the state of play on the Safe Harbour successor and ask whether it can further support the process via contacts with US administration or EU states.
The Commissioner has briefly outlined the current state of play and thanked for support ITIC gave to successful and speedy result of negotiations. She has informed about the schedule for next week.

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Ref. Ares(2017)3808124 - 28/07/2017

From: BRAUN Daniel (CAB-JOUROVA)
Sent: 14 June 2016 11:01
To: PERIGNON Isabelle (JUST); O'CONNELL Kevin (CAB-JOUROVA); LADMANOVA Monika (CAB-JOUROVA); HULICIUS Eduard (CAB-JOUROVA); CONSTANTIN Simona (CAB-JOUROVA); NIKOLAY Renate (CAB-JOUROVA)
Cc: CAB JOUROVA ARCHIVES; ' 'CAB-JOUROVA)
Subject: flash report from a meeting with Facebook, 13/06

Daniel Braun and Eduard Hulicius met with , Facebook Managing Director EU Affairs and Head of the Brussels Office.

Mr. enquired about **e-Privacy Directive**. DB and EH informed about the public consultation and the fact that DG Connect is in the lead. We explained that a more meaningful discussion could take place in summer, once the services will have had discussed in more detail the interplay between the outcome of the public consultation and the GDPR.

On **digital content** Mr. questioned the reasoning and logic behind the issue of payment with data and considered that FB is not concerned with it anyway. DB and EH explained the meaning of the proposal and pointed out the ongoing legislative process that may clarify the notion more.

Daniel

Ref. Ares(2017)3807566 - 28/07/2017

From: O'CONNELL Kevin (CAB-JOUROVA)
Sent: 06 December 2016 03:10
To: JOUROVA Vera (CAB-JOUROVA); NIKOLAY Renate (CAB-JOUROVA); BRAUN Daniel (CAB-JOUROVA); LADMANOVA Monika (CAB-JOUROVA); HULICIUS Eduard (CAB-JOUROVA); CONSTANTIN Simona (CAB-JOUROVA); PERIGNON Isabelle (JUST); [redacted] (JUST-EXT); [redacted] (CAB-JOUROVA); [redacted] (CAB-JOUROVA)
Subject: RE: Report: visit to Washington 5 December 2016

And the joint press statement is available here: http://europa.eu/rapid/press-release_STATEMENT-16-4272_en.htm

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From: O'CONNELL Kevin (CAB-JOUROVA)
Sent: 06 December 2016 03:06
To: JOUROVA Vera (CAB-JOUROVA); NIKOLAY Renate (CAB-JOUROVA); BRAUN Daniel (CAB-JOUROVA); LADMANOVA Monika (CAB-JOUROVA); HULICIUS Eduard (CAB-JOUROVA); CONSTANTIN Simona (CAB-JOUROVA); PERIGNON Isabelle (CAB-JOUROVA); [redacted] (CAB-JOUROVA); [redacted] (CAB-JOUROVA); [redacted] (CAB-JOUROVA)
Subject: Report: visit to Washington 5 December 2016

Summary: friendly farewell Ministerial meeting, with conclusion of the Umbrella Agreement as key result. Side meetings with State Department, tech industry and NGOs on Privacy Shield revealed great uncertainty around the transition and underscored the need to engage with the incoming administration and Congress as soon as possible.

The last **EU-US Justice and Home Affairs Ministerial** meeting

In the side meetings:

- **Privacy NGOs**

- **Tech companies (ITIC)** enquired how the joint review of Privacy Shield will be conducted, how companies can contribute, and how the Commission will deal with legal challenges. Tech

companies are

and keen to cooperate with the Commission. At the same time, there was a concern that the Commission making far-reaching demands on FISA-reform could (if they're not realised) end up undermining the Privacy Shield. ITIC offered an exchange of views ahead of Commissioner Jourova's visit to prepare the ground and update on developments. The need to involve also non-tech companies was stressed by both sides.

- **(State Department)**

Ref. Ares(2017)3830059 - 31/07/2017

Report on a meeting on Cloud Computing Contracts between DG Justice A2 and Oracle on 18/01/2013

Present for Oracle: Mr .
Present for COM:

Summary:
The meeting was requested by Oracle. They presented their concerns about the scope of the Commission (COM) work on cloud contracts and shared their ideas on useful soft-laws initiatives in this area. COM remained in a listening mode. It asked questions on the cloud market experience of Oracle and clarifications on their ideas.

Oracle's concerns: whether COM would differentiate between different market segments in its work on cloud contracts, in particular B2B contracts between large companies, paid and unpaid products and types of cloud services (infrastructure, platform, software).

Oracle's ideas: Creating a compendium on applicable laws to cloud computing, particularly useful for SMEs providers, Guidelines on best practices endorsed by COM, an online Cloud Observatory (including consumer/business education platform, reputation engine for SME cloud providers, discussion forum and Guidelines, if available).

In detail:

1. Oracle stressed the need to distinguish between different segments of the cloud computing market in the work on standardised contract terms.

In particular, Mr. highlighted the specific situation of **B2B contracts between large companies**, which were normally for highly customised services, were always individually negotiated. Large companies had the resources and comparable negotiating power to agree on their contracts. Moreover, depending on the value of the contract, the client could impose their own contract on the provider, who would then be in the weaker negotiating position. Such contracts could not be treated in the same was as one-to-many services offered by cloud providers to consumers and SMEs. These services were offered at a low price, were highly standardised and thus were practically on a take-it-or leave it basis. The same level of service could not be offered for the two. A distinction should also be made between **paid and unpaid products.**

Mr. also noted that "**Infrastructure as a service**" in cloud computing could only be offered by large companies. The equipment of the data centres was so expensive that only large companies could effectively afford it and manage it. He acknowledged however that the situation was different in the market segments of "platform as a service" or "software as a service", as these services could be offered also by small providers. He noted that the role of SMEs was often overlooked in these areas.

2. Legal framework: Applicable law and jurisdiction

Mr. noted that particularly **smaller cloud providers had difficulties** with the so called "localisation of contracts", i.e. adaptation of the provider's base contract to different applicable national laws. For instance, in his view clients based in other jurisdictions should also have the responsibility of ensuring that the product and contract they request from the provider complies with

the applicable laws. He explained that for high value contracts even in negotiations between two large companies, it was often the client who proposed the contract terms and specified the product they wished and the provider could then be in the weaker negotiating position. Large cloud providers had the necessary resources and legal teams to negotiate their contracts and comply with applicable laws. Nevertheless, for convenience reasons they preferred their own national law where possible.

He pointed out that the E-commerce Directive generated uncertainty on the rules on applicable law.

3. Soft-law initiatives proposed by Oracle

- **Compendium on applicable laws in cloud computing**: This could help SMEs to become aware and comply with applicable laws. This project could be carried out by law schools and possibly financed by the Horizon 2020.
- **Guidelines on best practices:** Mr noted that soft law measures, such as guidance on best market practices could be a useful tool for the market. He emphasized that Guidelines endorsed by the Commission would gain more stakeholder, than a self-regulatory initiative of the industry.
- **Online cloud observatory**: It could contain information on the Guidelines and a discussion forum on their implementation. It could also serve as a platform for consumer and business education on cloud. In addition, "a reputation engine" (similar to the 'E-Bay power seller' status) could be linked to compliance with the Guidelines. It would be particularly helpful for SMEs cloud providers, which often have difficulties making themselves known to the users.

Mr mentioned that this idea was discussed with the Cabinet of Commissioner Kroes, but was not followed-up due to other priorities.

4. Question on interaction between DG Justice and DG CNECT

Mr. asked about the process (timing, priorities to focus on) and about the interaction between DG Justice and DG CNECT.

Ref. Ares(2017)3828755 - 31/07/2017

Report of the meeting with ECIS (European Committee for Interoperable Systems) on Cloud Computing Interoperability

Brussels, 25 September 2014

ECIS Participants: (Oracle), and (Clifford Chance), (Red Hat), (IBM)
COM Participants: (JUST C3), and (JUST A2)

Background: The meeting was set up at the request of ECIS in order to present their paper on "Cloud Computing Standards, Compatibility and Interoperability" as well as to launch the debate on these issues. ECIS is an international non-profit association, which endeavours to promote a favourable environment for interoperable ICT solutions, and whose members include large and smaller information and communications technology hardware and software providers (e.g IBM, Oracle, Red Hat...).

Stakeholder's position: ECIS gave an overview of the Paper, which describes the evolution of cloud architecture, discusses the key differences of the main cloud implementations and highlights the key role that interfaces and data formats play. The Paper focusses as well as on some of the exit and migration issues that should be considered and thus tackles the major question of switching and lock-in situations.

The Paper does not propose any policy recommendations on purpose because it is intended to initiate a broad discussion on the importance of standards, compatibility and interoperability. It addresses the question of interoperability from a technical, rather than legal, perspective. ECIS believes that currently there is a lack of focus on the technical side of interoperability and they would like to raise awareness about it. ECIS wants to make sure that if users wish to move part or all of their data to another cloud environment, they would technically be able to do so.

ECIS representatives were not able to provide the COM with sound evidence on the existence of any providers' lock-in strategy. They pointed out that cloud computing is still a very dynamic and new market, so they can hardly report a concrete example of dominant or abusive position.

The switching issue concerns both B to B and B to C provision of cloud services, but they acknowledge the vulnerable position of SMEs towards lock-in situations. The solutions, according to ECIS, are mainly related to education and raising the awareness of users. Contractual terms and pre-contractual information could also have a role to play.

Finally, ECIS expressed its strong interest in joining the Expert Group on Cloud Computing Contracts as an observer, if this was technically possible at this stage. They questioned the COM on the state of play of discussions and policy initiatives on cloud computing.

Next steps: ECIS will review its Paper on "Cloud Computing Standards, Compatibility and Interoperability" including concrete data and policy recommendations (e.g "Top 10 of questions you should ask your provider before signing"); ECIS will send to DG JUST an invitation to their workshop on cloud computing on 13 November.

Ref. Ares(2017)3828962 - 31/07/2017

Short report

Meeting with UEAPME Legal Affairs Committee, 17 April 2015

UEAPME Legal Affairs Committee: Federation of Finnish Enterprises, APCMA- France, BIPAR – EU, ZDH –Germany, CPME – France, UNIZO – Belgium, WKÖ – Austria, PIN-SME - EU

DG JUST: A2 ; and .

The meeting was initiated by UEAPME in order to discuss the Digital Contracts initiative.

DG Just informed members of UEAPME Legal Affairs Committee on the current state of play and time frame and on the key issues on the scope and content of the future instrument.

A long and detailed discussion followed where members of UEAPME Legal Affairs Committee asked a number of questions among others on the time frame of the DSM initiative, the future IA, the type and nature of the legislative instrument and whether it would also include rules on the on-line sale of tangible goods or that would be a matter of a separate instrument. They also enquired whether some lowering of the level of consumer protection could be expected through the new instrument.

They expressed their concern that the tight time frame would make it difficult for the UEAPME members to provide input to the Commission.

UEAPME Legal Affairs Committee members commented that there should not be different rules for on-line and off-line sale of goods as there are a large number of SMEs that use both channels and such a difference would create inconsistencies and difficulties for them. They further made it clear that currently SMEs are less protected than consumers, especially when it comes to using types of digital content that are equally intended for consumers and for SMEs and that SMEs are put in a rather unfavourable position with regard to big digital content suppliers.

They expressed a preference for using the same rules for digital content as those for goods with necessary adaptations, and for having those rules also applicable for SMEs. As to the conformity criteria for the digital content contracts, some members expressed the view that the future instrument could include a mixed approach of subjective and objective criteria.

Ref. Ares(2017)3828806 - 31/07/2017

Short report of a meeting with EUROCHAMBRES

Present for Eurochambres: , ', ', ', l and representatives of the Spanish, French, Danish, and German national associations.

Present for the COM: I ', F t, DG JUST A2

At the request of Eurochambres, A2 met on 7 May with members of Eurochambres. The purpose of the meeting was mainly to present the future proposal on digital contracts. We explained the aim, i. e. to build up consumer trust and to create a business-friendly environment and the needs for the two elements of the proposal on digital contracts and the online sale of goods. We also explained the state of thinking of the Commission on the main substantive elements of the proposal.

Eurochambres expressed its support for a full harmonisation of the rules, which should however not overburden businesses. They asked a number of technical questions about the possible content of the proposal, notably on how we can ensure it will be future-proof and whether it will be profitable to all "traditional" SMEs, and not only start-ups.

Eurochambres expressed their willingness to participate in the thinking-process and promised to contribute by sending responses to the questionnaires sent to members of the consultative group (which we had circulated to them).

The meeting took place in a friendly atmosphere.

Ref. Ares(2017)3830031 - 31/07/2017

Short report of a meeting with EuroCommerce representatives

JUST A2 (, F ı) met on the 21st of September EuroCommerce representatives (, Chairman of EuroCommerce IMCO Committee & Assistant Director at the British Retail Consortium; , Adviser)

By way of introduction, A 2 presented the state of play for the digital contracts proposal (Impact Assessment, end of the public consultation and ongoing assessment of the results, preparation of the workshops with Member States and stakeholders on 6th and 12th of October to discuss key elements of the draft rules). The discussion dealt mainly with the rules for tangible goods.

Important messages to be flagged from the discussion:

- EuroCommerce expressed very serious concerns about negative perceptions (from businesses, MEPs and Member States) towards the forthcoming disparity between the rules on offline and online sales of tangible goods. Graham Wynn advised the Commission that if this is not tackled properly, this could weaken the Commission's overall position and give the impression that the Commission misjudged its policy choices like it had been done for CESL ("the Commission got it wrong again").
- We stressed that we do not want to have different rules and brought the arguments about the urgency to act due to the DSM Strategy and the consistency to be achieved by the REFIT exercise. They had obviously heard this before and said that this on its own was not convincing. Instead, the suggested to accelerate the REFIT exercise.
- They considered also the likelihood that during the negotiations the EP and the Council could from their own initiative extend the scope of the proposal to the offline sales of goods.
- Upon our question, they advised to cover (as it is in the present draft) all distance sales rather than just the "online" environment. This stems from the same idea of avoiding segmenting too much the omni-channel retail business as there are still practices of telephone and even catalogue sales in the market. The proposed rules should in any event be technologically neutral.
- EuroCommerce also stated that they had no evidence that the different unfair contract terms laws would cause cross-border obstacles and that there would not be a need covering them in the proposal.
- They enquired whether the proposal would put forward the home option and it was clarified that this is not the intention.
- DG JUST and EuroCommerce will remain in contact and provide input and comments in the context of the upcoming workshop. They welcomed very much the possibility to see and circulate to their members the draft key elements ahead of the workshop.
- It was agreed that we will endeavour – to the extent possible – to align communication messages at the moment of adoption.

Ref. Ares(2017)3829051 - 31/07/2017

Short report of a meeting with the Consumer Affairs Committee of EuroCommerce

JUST A2 (I , I and) met on the 19st of January with the Consumer Affairs Committee of EuroCommerce (chaired by , British Retail Consortium). The discussion dealt exclusively with the rules for online and distance sales of goods.

Summarising their internal discussion, pointed out that the two most important aspects for EuroCommerce are (i) the extension of the reversal of burden of proof to two years, and (ii) the potential disparity between the rules on offline and online sales of goods.

DG JUST argued that the reversal of burden of proof is aligned with the guarantee period in the light of recent data that in retail practice there is no distinction made between both periods. Furthermore this step will decrease the reluctance of those Member States with higher national implementation laws and therefore allow agreement on full harmonisation which is a long-standing request of Eurocommerce. As regards the second aspect, DG JUST highlighted that the Commission does not want to have different rules for online and offline sales either. DG JUST further stressed the urgency to act in the digital area, the alignment required with the digital content proposal and the consistency to be achieved by the REFIT exercise, by possibly extending the proposal.

Members inquired what effect the reversal of burden of proof would have in a case in where goods cannot be returned by the consumer because of destruction or loss. In particular, they were wondering how a seller is supposed to prove that there is no defect. DG JUST explained the proposed rules, while underlining that for the reversal of the burden of proof the proposal follows the CSD. The ECJ had clarified here that the consumer has to prove the defect while the seller has only to prove that the defect was not present at the time of delivery.

Concerns were expressed regarding the seller's obligation to reimburse the consumer within 14 days from receipt of the termination notice. This could, in some members' view, result in situations in which the seller is obliged to reimburse the consumer before he got back the respective good and, thus, before the seller had a chance to check if the good is defective. DG JUST explained the way the hierarchy of remedies works, i.e. that one would only get to that stage if the consumer has already contacted the seller beforehand requesting replacement and repair and that the seller would therefore have had a possibility to check the goods.

Several members raised the question which rules would apply in cases where software is embedded into goods, e.g. for networked goods like home appliances and about the distinction operated by the Directives. They also wanted to know about possible future regulation of digital content embedded in goods in the Internet of Things (IoT). DG JUST explained the pragmatic distinction depending on whether the digital content is embedded in the goods and support the functionalities of the goods; in this case the goods proposal would apply. For any further issues related to the IoT, DG JUST referred to the COM initiative under the DSM on IoT and free flow of data.

It was agreed that JUST A2 and EuroCommerce will remain in contact and that they will provide written input and comments in relation to the digital contracts proposals.

Ref. Ares(2017)3829101 - 31/07/2017

Short report of a meeting with EMOTA

On 19.01 JUST A2 (! ', ' t and) met with EMOTA Director of Government Affairs F '. The purpose of the meeting was to discuss EMOTA's preliminary comments on the digital contracts proposals (EMOTA is still consulting its members on both proposals). The discussion dealt mainly with the rules for tangible goods, but also addressed some aspects of the rules for digital content.

The different treatment of online and offline sales was raised by EMOTA as the only general problem.

Main issues which were raised in relation to sales of goods

EMOTA supports full harmonisation as the basis for the proposal. EMOTA welcomes the two years guarantee period, but fear that there will be attempts by the EP and some MSs to extend this period in the course of the legislative negotiations.

Regarding the extension of the reversal of burden of proof to two years, EMOTA appears to be ready to accept COM proposal. Still it inquired why this specific length has been chosen. They highlighted that a longer reversal might fit for some products (e.g. electronic devices), but not for products which are subject to wear and tear (e.g. shoes) or those of a higher value. A2 explained that the extension of the reversal of burden of proof is aligned with the guarantee period, that there is still a hierarchy of remedies and therefore this should not be seen in isolation but rather as a part of a package.

EMOTA further questioned the consumer' option to terminate a contract for minor defects. A2 explained that the proposal includes a hierarchy of remedies, which, thereby, there will be relatively foe cases where the consumers could terminate the contract for minor defect.

EMOTA expressed some concerns about the absence of a notification obligation in case of a defect. EMOTA argued that the obligation to notify should apply, at least, in the case of high-value goods. A2 pointed out that due to studies, consumers react very quickly in case of defects and, moreover, it would be very difficult to agree on such a threshold and justify the different treatment.

Main issues which were raised in relation to digital content

EMOTA generally welcomes the proposal and deem it to be "quite balanced" in terms of consumer rights. EMOTA wondered about the distinction between goods and digital content, e.g. for networked home appliances. They pointed out that only one regime should be applicable in such cases. A2 explained that according to the proposals, only one regime would be applicable depending on whether the digital content ensures the main functionalities and is embedded in the goods.

It was agreed that JUST A2 and EMOTA will remain in contact and provide input and comments in relation to the digital contracts proposals.

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Ref. Ares(2017)3828198 - 31/07/2017

Report on the meeting with the English Bar Council
25 January

Present for A2: ', ', .

Stakeholders present: (Vice-Chairman of the Bar of England and Wales), (Chairman, EU Law Committee, Bar Council), (Consultant Director, Brussels Office, Bar Council).

Short report:

The meeting was constructive and had a very positive atmosphere. A2 present the digital contracts proposals in the context of the Strategy for a Digital Single Market.
The stakeholders congratulated A2 for the good quality of the proposal and signalled general support.
A few questions were raised, but only clarifications on specific points were needed, no criticism was raised. For example: Does the directive impose form requirements for notice? Also the right to reject and the 6 year prescription period in UK law were discussed. When A 2 asked whether the Bar Council have data how many consumers would go to court between the end of the guarantee period of two years and the end of the prescription period, the Bar Council did not have any such data. They agreed however, that there would be only very few. A2 pointed out that the guarantee period of the directive was not in any way a limitation period and the directive would leave national rules on this and also on claims for damages intact. The Bar Council announced some additional technical questions (merely clarifications) by mail.
We agreed to stay in contact.

Ref. Ares(2017)3828320 - 31/07/2017

Report on the meeting with EDIMA and several IT companies
25 January

Present for A2:

Stakeholders present: (EDIMA), (Allegro Group), (Google), (Yahoo!), (Microsoft), (ebay), (Amazon).

Short report:

The discussion was constructive and fruitful. A large part of the meeting was dedicated to digital content, but the proposal on goods was also addressed. The companies mainly sought clarifications on a number of points and raised many technical points, in a constructive manner (see below for more details). The overall take is that they were asking for clarifications and explanations more than simply repeating policy arguments (this was maybe linked to the nature of this (technical) meeting). Interestingly, they suggested that they are less worried by the proposal made by the Commission as it stands now than by the possible evolutions during the discussions at EP and Council. We agreed to stay in contact.

Technical discussion

Digital Content:

EDIMA asked about the reasons why the **material scope** of the proposal is so broad. In particular, the Google Rep. asked if there was any indication consumers actually expect the same conformity requirements for all types of products covered by the proposal. The Microsoft Rep. asked if consumers actually had any problems with digital content and to what extent. Allegro first asked whether its service as a platform could be considered as a digital content.

A2 responded that the scope is deliberately broad to make the Directive future proof. The boundaries between certain types of content are blurred and consumers do not see these differences. The directive only differentiates where necessary. A2 also added that consumers expect the same standards. A2 also referred to the study from the impact assessment, that only 10% of consumers who experienced trouble with digital content were remedied.

EDIMA then inquired about **the articulation of the CRD with the proposals**. In particular, the Google Rep. inquired about their different scopes. A2 responded that there would not be frictions between the two instruments, because they are two sets of different rules. A2 explained that while the definition of digital content in the CRD is in fact narrower, the scope of the CRD and especially the information duties therein are not limited to digital content.

Then the question of **data as a form of payment** was raised. Many participants asked to specify and explain what that means in practice. In particular, the Microsoft Rep. asked several questions about the effect of termination of contract on data used as payment and

the distinction between these data and digital content uploaded during the use of the digital content. He also asked how the value of data could be measured and how it could be provided back to the consumer and expressed that businesses were unclear about their duties under the proposal. EDIMA asked whether subjective or objective criteria are applied to determine the value of data and if the supplier had to remedy the consumer. The Amazon Rep. then asked whether data that has a value for other customers, like reviews, had to be removed as well. A2 clarified that the purpose of the proposal is to avoid discrimination between consumers paying with data and with money, as well as offering a level playing field for different business models and answered the specific questions.

Several other questions were raised about the concept of **"active provision of data"**. Microsoft Rep. asked how to return this data after termination of the contract and how, for instance "click through data" could be given back and how companies were supposed to stop using it. The Allegro Rep. inquired whether search results were "actively provided". The Yahoo! Rep. worried about the unclear outcome of the legislation process and Allegro worried about activist judges interpreting the directive.

A2 explained further that not all data was covered by the directive, and explained the exceptions clarified in Recital 14. In particular, A2 insisted that the proposal does not contain any obligation for the supplier to pay back the consumer for data that was collected, in case of the consumer terminating the contract. It simply must not be used anymore. Reviews don't need to be removed, because they are not used as payment. A2 recalled that the main purpose of the provision on long-term termination of contrcrts is to give the customers the opportunity to switch providers.

Questions on specific articles:

- Article 6 (Supply of digital content): EDIMA raised concerns about the requirement to supply the digital content "immediately". A2 explained the supplier had to provide products immediately, if not agreed on otherwise, but was not responsible for any delay caused by intermediaries, like the consumer's internet provider.

- Article 8 (Third-party rights): Ebay raised the question about the added value of the provision on third parties rights. A2 stressed that a third party right can affect the use of a product and therefore the product is not in conformity.

- Article 9 (Burden of proof): EDIMA and Amazon asked about who has the burden of proof between the platform or the app developer. A2 responded that the consumer had to be informed about who he is contracting with and that this person is the supplier responsible. All in all it depends on the business-model of the platform, and ultimately who is the contractual partner to the consumer.

- Article 14 (Damages): Upon request, A2 clarified the exact scope of the article and damages; i.e. that it applies only to situations where the digital environment of the consumer is damaged in the meantime.

Tangible Goods:

EDIMA asked about the reasons why the period for the reversal of the burden of proof was extended. Especially Ebay and Allegro mentioned the possibility of misuse by the consumer. A2 explained the rationale behind the prolongation (and in particular the fact that it is already widely de facto applied by businesses) and recalled that the reversal of the burden of proof is already in place in the EU.

Ref. Ares(2017)3828392 - 31/07/2017

Short report from the meeting with Digital Europe – 02.02

Present for A2:

Present for stakeholders: (Digital Europe), (Panasonic), (Lenovo), and (Apple).

General

The meeting was held in a constructive and positive atmosphere. The Stakeholders underlined their overall support for both proposals. In particular, they strongly supported the full harmonisation approach and thanked the Commission for the continuous involvement of stakeholders in the process. They intend to support in the legislative process the extension of the scope of the proposal on goods to offline sales. However, they had a series of technical questions, which, while reflecting some concerns, showed their willingness to understand the exact implications of the text on their business.

Technical questions

- They asked for the data supporting the initiatives and justifying the need for regulation.

Digital Content

- What is the reason for a broader definition of digital content in comparison to the CRD?
- What is included in the definition of digital content? Who is the supplier in case of platforms?
- Does Art. 2 (c) also cover reviews and comments posted by consumers?
- How does the directive deal with the question of updates?
- What does the obligation to give the means to the consumer to retrieve content to upon contract's termination mean in practice? What data has to be returned and how?
- What is the rationale behind the unlimited guarantee period and the shift of the burden of proof?

Goods

- What means "shortcoming" according to Art. 6?
- What is the purpose of the provision on third party rights?
- What does "proportionate price reduction" mean? It is in practice source of long discussions with consumers.
- On commercial guarantees: Who is obliged to the consumer under a commercial guarantee? The supplier or the manufacturer?

A2 explained the rationale of the proposals and the meaning of the specific points in detail. They accepted the answers. We agreed to remain in contact. They also asked how they can get involved in the stakeholders' consultation of the REFIT exercise. A2 committed to check this with E2.

Ref. Ares(2017)3828443 - 31/07/2017

Short report from the meeting with BSA – 03.02

In the context of our outreach strategy we continue our meetings with European umbrella organisations. A2 met today BSA (Business Software Alliance) and Symantec.

Present for A2:

Present for stakeholders: (Business Software Alliance - BSA), (Business Software Alliance-BSA), (Symantec).

General

The meeting was held in a constructive and positive atmosphere. The discussion focussed exclusively on the proposal on digital content. While the stakeholders expressed their overall support for the focussed approach and the exclusion of B2B contracts, they raised a number of technical questions reflecting concerns about the exact implications of the proposal on their business.

Technical questions/concerns

- What is the reason for such a broad definition of digital content?
- Who is the supplier in case of platforms?
- Termination of long-term contracts: They warned that the right for consumers to unilaterally terminate contracts longer than a year might significantly affect current business models and decrease the offer of products at lower prices.
- How does the directive deal with the question of updates?
- What is data that has been "actively provided" and what is covered by this definition?
- What does the obligation to give the means to the consumer to retrieve content upon contract's termination mean in practice? What data has to be returned and how?
- What is the rationale behind the shift of the burden of proof to the supplier? Isn't it too demanding for the supplier? How will the cooperation duties of the consumer apply in practice? Wouldn't this lead to intrusive actions in the consumer's digital environment?
- What is the rationale behind the articulation between subjective conformity and objective criteria on conformity? Will this imply that the supplier also has to specify in the contract the negative features of its digital content? Is the distribution of beta versions still possible?
- What is the exact purpose of the right of redress addressed in Article 17 of the Proposal?

A2 explained the rationale of the proposals and highlighted the balanced and focussed approach that we are following with the proposals. A2 also clarified the meaning of more specific points in detail. They accepted most of the answers. We agreed to remain in contact for further discussions.

Ref. Ares(2017)3829995 - 31/07/2017

On 4 March 2016 JUST A2 , and) met a delegation of the BDI (Federation of German Industries).

Two of the three main points the BDI is currently interested in with regard to digitalisation and the digital economy are (i) free flow of data/data ownership and (ii) liability in the context of the IoT/ autonomous systems.

As regards free flow of data the BDI stressed the importance of contractual freedom and argued for a balanced approach taking into account legitimate interests/rights in data. Overall, the BDI does not see a need for immediate legislative action in these fields during a trial phase of 3-5 years when the development should be left to the market.

As regards liability, they see a problem for truly autonomous systems which can learn themselves and where the effect of their acts cannot be lead back to a human decision.

In any case, the BDI intends to set up working groups and launch further studies on these topics. Moreover, the BDI informed that they recently created a new department which will be responsible for digitalisation.

A2 briefly outlined the upcoming free flow of data initiative, referring to the framework of the DSM. A 2 explained also the joint DGs JUST/CNECT study on those subjects and the workshops which the COM intends to organise. The BDI was very interested to participate with specialised members.

We also discussed briefly the digital contracts proposals. As to the digital content proposal, the BDI expressed concerns among others regarding the unlimited guarantee period, the permanent shift of burden of proof as well as regarding the inclusion of digital content in exchange for personal or any other data. The BDI opposes the goods proposal. The BDI will issue a rather critical position paper on the digital contracts proposals shortly. The BDI invited DS to their Legal Affairs Committee in April.

Ref. Ares(2017)3829962 - 31/07/2017

On 20.04 2016 A2 (and) met with EUROCHAMBRES representatives
(I -Policy advisor EUROCHAMBRES; - the Austrian Chambres (WKÖ);
- the German Chambres (DIHK).

EUROCHAMBRES informed us about their recent position Paper on the Digital Content Proposal (attached). A further opinion on the online sales of goods proposal will follow in a few weeks.

As an overarching point EUROCHAMBRES continue calling for a revision of Rome I towards the "home option" solution. They are split in relation to full harmonisation – while the majority of their members support full harmonisation (for both proposal), the German member (DIHK) opposes it.

In relation to the digital content EUROCHAMBRES made the following main points:

- The proposal is overly consumer friendly especially considering the indefinite period of reversal of burden of proof and unlimited guarantee. It should follow closer the Consumer Sales Directive in limiting the burden of proof to 6 months and the Consumer Rights Directive (in relation to the supply of the content);
- The proposal should not apply to digital content supplied against data;

The German Chambres (DIHK) - position paper attached – opposes the full harmonization claiming that both proposals are overly consumer friendly and questioning chances for any compromises in this area. They argue for the home option instead.

EUROCHAMBRES considers the proposal for the online sales of goods as premature; the Refit exercise of the Consumer Sales Directive should come first. They stress the negative consequences of discrimination between offline/online contracts. They are strongly against the reversal of burden of proof extended to 2 years. The Austrian Chambres (WKÖ) added a fear of even further increases of consumer protection by the EP which will increase burden for traders.

Ref. Ares(2017)3829921 - 31/07/2017

On 26.04 A2 ([and [ ) met representatives of ETNO (European Telecommunications Network Operators' Association) to discuss the digital content proposal. It was a rather in-depth, technical meeting.

While ETNO supports the general objectives of the proposal (e.g. a need for a balanced consumer rights based on full harmonisation and the necessity to cover content supplied against data), they are clearly worried about potential inconsistences and interplays between the digital content proposal and the outcome of the ongoing telecom review. They strongly call on the Commission services to cooperate in this area (i.e. CNECT and us).

In the area of consumer/end-users rights ETNO wishes to achieve the following twin objectives:

- Ensure that telecoms and OTTs are covered by the same obligations – established by a horizontal consumer law instead of the current, sector-specific (i.e. limited to telecoms) rules. They were referring to the CRD as a good example of "a horizontal approach".
- Their call for the horizontal approach extends to the bundles which combine telecommunication services with the supply of digital content. In this context, they dislike the different treatment of long term contracts by the existing telecom rules and the proposal (i.e. the maximum contract duration of 24 months in the telecom rules vis-à-vis 12 months termination possibility in the proposal). In their view the digital content proposal imposes different treatment of certain elements of a bundle. Consequently, they argue, the industry will stop offering bundles – a choice they oppose.

In addition they raised a couple of more specific points on the need for a better alignment with the GDPR and the need to clarify if collecting data by the supplier as agreed by the consumer in a contract qualifies as "active" provision of data.

They will provide us with a detailed position paper next week.

They were very interested in our work on IoT and M2M contracting – they will share some papers they have developed in this context and will be ready to engage on these specific topics.

Ref. Ares(2017)3829882 - 31/07/2017

FLASH REPORT: Meeting with Independent Retail Europe, Brussels, 28.04.2016:

On 28.04 2016 A2 (I and .) met with Independent Retail Europe
(, Senior Adviser Public Affairs and , Adviser Legal Affairs).

Independent Retail Europe (IRE) is an association of 23 groups representing 364,000 independent retailers active mainly in the face-to-face sales of tangible goods. IRE is about to issue a position paper on the online sales proposal (a draft is attached).

Overall IRE supports COM's approach to fully harmonise rules applicable to sales of goods provided that one, uniform set of rules for online/offline sales is ensured.

IRE calls for the proposal to further regulate the relationship between manufacturers/importers and retailers. In their view the retailer should only be responsible for problems under its direct control while for other defects the retailer should be able to seek redress from the previous link in the supply chain. In their view, article 16 is insufficient in this respect – it should at least ensure that the guarantee period between the seller and the manufacturer matches the 2 years guarantee period provided for in the proposal.

IRE opposes the extension of the period of burden of proof to 2 years (especially if limited to online sales) and regrets the absence of a notification duty for the consumer. They support the hierarchy of remedies but insist that it should be for the seller to choose between repair and replacement.

Ref. Ares(2017)3829836 - 31/07/2017

Short Report – Meeting with Representatives of German Industry

On 27 May, JUST A2 (, and) met with representatives of German mechanical engineering and car industry to discuss access to/transfer of data and IoT liability (VDMA, the umbrella organisation for the DE machine producing industry, and the BMW Group).

While stressing the uncertainty faced by the industry in relation to the implications of Industry 4.0 and possible solutions to the different legal issues it raises, VDMA highlighted three main areas of relevance to industry. First, companies are rather uncertain about the protection of their data. Reluctance as to sharing data with trading partners is linked to the possibility that such shared data may reveal trade secrets and relevant know-how. He argued however that businesses may overcome the legal uncertainty by means of contractual rules (no new regulation would then be required). Secondly, due to the uncertainty in relation to protection of data, companies are hesitant about the consequences of an increased free flow of, and access to, data. Thirdly they are worried about questions of liability.

BMW mentioned the importance of digitisation and connectivity for the automotive industry. The regulatory framework needs to be adequate to the legal challenges of the digital era. On the other hand, the concept of "ownership of data" is rather unclear, and the relationship between large companies and SMEs or small start-up companies would also have to be clarified. He lamented that car manufacturers need extensive contract terms for buyers of a car to agree to the use of their data (as compared to users of online services or apps).

briefly explained the work which is currently undertaken by the Commission in the relevant areas for this discussion (the free flow of data initiative, the emerging issues in relation to the transfer of/access to data, as well as the clarification of liability aspects in the context of the Internet of Things and robotics). The Commission's aim within the DSM is to ensure investment security in order to enable the roll out of the IoT. As explained by the Commission, the work on emerging issues is still in exploratory phase. The Commission aims at a balanced approach allowing a smooth flow of data while protecting the individual rights of the parties involved.

VDMA welcomed the aim of securing investments, but stressed that it would hurt investments if too much liability was put on companies investing in Industry 4.0. While it might indeed be more difficult to find the cause of damage in Industry 4.0, it is still possible to create (and one should seek to incentivize) improvements in IT-systems to facilitate the finding of root causes for a later damage. Therefore legislation should not fall back on strict liability too easily. A liability regime is necessary that would not hinder investments in developments in robotics which would ultimately make robots safer and thus benefit the general public. He stressed that they would prefer contract solutions instead of strict rules in order to accommodate the variety of current and future business cases.

BMW highlighted that, most likely, parties would turn to the car manufacturer for compensation of damages, even when damage was caused by an error in an app supplied by a third party and embedded in the car. The car industry would face a great burden if confronted with or held liable for such claims.

VDMA stressed the importance of quick action by the EU to avoid the emergence of different regulatory regimes in the Member States.

Ref. Ares(2017)3430745 - 07/07/2017

Meeting of Cabinet Commissioner Jourova with EMOTA and online industry

9 June 2016

Participants:

Commission Representatives from : Cabinet Jourová, DG JUST.E.3

Industry Representatives from : EMOTA, Amazon, eBay, UPS, Rakuten, Allegrogroup

The meeting took place further to the request of EMOTA. EMOTA and some other stakeholders have been in contact with Commission services concerning a possible industry voluntary action of e-commerce market players with a view to product safety.

In the meeting, EMOTA explained that they see threats to the European e-Commerce industry stemming from Chinese imports to the EU: 1) non-payment of VAT, 2) extremely low delivery costs, 3) non-respect of product safety rules. This results in an unfair competition and lack of level playing field insofar as European economic operators complying with the rules face competitive disadvantages.

The industry representatives wanted to have more information how the Commission sees the situation and what can be expected in the field of product safety.

They also pointed out that they are collectively thinking about a possible industry-wide voluntary action to support the activities for ensuring that products sold online are safe. In general, they are interested to explore ways how to continue to efficiently communicate with the COM and with the Member States authorities (Amazon). They wanted to know if the COM or the Member States see gaps in e-commerce in terms of product safety that could be further clarified with the industry (eBay). They emphasized the importance that market surveillance authorities understand their business models, their activities and, thus, they can cooperate efficiently. The stakeholders pointed out that they cover the supply chain to a great extent and they can make additional efforts to extend this further. UPS indicated that they, as a global delivery service provider cover many regulatory aspects (customs procedures, security, aviation) but they don't have the expertise to check (and be responsible) for compliance and safety of the products.

They wanted to know about the state-of-play of the ongoing work on the guidance on the market surveillance of product sold online and the timeline.

COM explained that the preparation of the guidance document is still at technical level; therefore the stakeholders should contact DG GROW and DG JUST. The issues EMOTA mentioned concerns several departments of the COM. This COM is working together ('no silos') but there is still the need to consult the right competent services (e.g. on VAT).

Voluntary action:

EMOTA and the stakeholders explained that they are still exploring ways on the best solutions but have nothing concrete to report on this matter. eBay emphasised that they do a lot already, they have good cooperation with authorities and they are not aware of what else they could do in the field of product safety. COM explained that through an industry-wide voluntary action best practices can be shared with stakeholders who are less advanced in this field. COM emphasised the importance of wide coverage of the industry for such an action.

China visit:

COM explained that the Commissioner strongly feels that there is a need to do more to ensure that products coming from China are safe. The stakeholders wanted to know if it is possible to get information what the Commissioner will announce in China. COM explained that it is too early to say, but online questions will be highlighted. EMOTA mentioned that there will be a new e-Commerce law in China and this could be an interesting topic. EMOTA indicated it would not announce any concrete action in China. Nevertheless, they have contacts with Alibaba.com and it is very committed to work together with them. EBay shared it experiences and activities: it organises workshops for Chinese sellers to inform them about the requirements for the European market. In their experience, there is very little bad faith form the side of Chines economic operators but the problems rather originate from lack of information.

Ref. Ares(2017)3829786 - 31/07/2017

Short report on the meeting with IT/digital industry on the digital content proposal

On 29 June, A2 ([r, i,] met with representatives of the IT/digital industry. We organised the meeting as a follow-up to the rather negative Joint Industry Declaration on the Digital Content Directive. The meeting was much appreciated by the industry with all key players represented (Business Software Alliance, Digital Europe, EDiMA, Application Developers Alliance, Amcham and ISFE).

Representatives of industry are concerned that the proposal follows a "one size fits all" approach. In their opinion different types of digital content might require different treatment. In particular, they feared that the rules do not adequately recognise the specificities of one-off and subscription contracts. COM encouraged stakeholders to provide concrete examples of provisions that do not fit all product types or distribution channels.

Among the more specific problems the discussion focussed on the following points:

1. The right to terminate long-term contracts after 12 months is overly consumer friendly and it would not allow businesses to amortise digital content or certain services/sale of goods within bundled contracts. The industry would prefer a longer period.

2. In relation to the restitution by the supplier of "any other data" upon termination of the contract by the consumer, industry representatives were concerned that the proposed rules would be difficult to apply in practice and unduly burdensome on businesses. In particular, industry representatives were worried that the obligation to give back "any other data" to the consumer extends to proprietary formats and source-code. They explained that user generated content is frequently saved in proprietary formats which is subject to licences (e.g. Photoshop, CAD-applications). Even though such content could be made available in a readable format, the proprietary formats as such should not be transferred. COM explained that the obligation of portability should not necessarily oblige the supplier to transfer the content into a non-proprietary format.

3. Industry stakeholders considered the provision on the integration of digital content (art. 7) to be problematic, especially for SMEs. A successful integration often depended on the concrete digital environment of the particular consumer. They presented this article as an example of overburdening small application developers by the proposal.

4. Stakeholders called for even stronger emphasis on subjective conformity criteria than in the present COM proposal and were concerned that the objective criteria in art. 6(2) of the proposal undermines contractual freedom. COM explained that its original balanced approach has not been really welcomed in the Council and in the Parliament which consider giving more importance to objective criteria. In this context, it becomes clear that industry representatives could accept the new balance of the proposal as discussed in the Council: i.e. greater importance of objective conformity criteria provided that, as a concession to businesses, deadlines for liability and the reversal of burden of proof would be introduced.

The overall impression of the meeting: while the industry supports COM efforts for full harmonisation, it is worried about the far reaching consumer rights and about those aspects of the proposal which relate to data. We dispersed some of their major misgivings by informing them about

the trend to simply refer to the GDPR and simplify the restitution obligation for other than personal data and providing further explanations.

Ref. Ares(2017)3829720 - 31/07/2017

Meeting with Representatives of SKY about the Proposal for a Directive on the Supply of Digital Content

30 June 2016

JUST A.2: [illegible]

SKY: [illegible] (Consumer Legal Team), [illegible] (Head of European Policy) and a representative of SKY Brussels Office.

SKY is a UK-based supplier of paid digital tv in five MS (UK, IT, AT, DE and), often combined in bundles with internet supply and other telecommunication services. In principle SKY strongly supports the Proposal on the supply of digital contents. Having harmonised substantive rules would make it significantly easier for SKY to expand its services within the EU.

SKY has three concerns in relation to the digital content proposal:

1) Termination of **long term contracts** (art. 16): SKY considers the 12 month period to be too short. They use longer periods in their contracts in order to spread the cost of hardware provided to the costumers (e.g. "digit-box"). SKY argued that customers prefer these longer contracts in order to pay for the hardware over a longer period of time. If SKY had to calculate on the basis of 12 months, the subscription fee would be too high for some consumers. However, they appear to be ready to accept 12 months contracts as long as SKY would be allowed to charge early termination fees to recoup the parts of the value of the hardware which the customer would have paid in the remaining months. In their view the proposal does allow for such early termination fees. SKY called for coherency with the 24-month period in the Universal Service Directive.

2) The right of the consumer to terminate by notice given "**by any means**" (Art. 16(2)): SKY explained that they won't be able to follow all potential channels which a customer could use to notify. Customers could e.g. leave notices by twitter, chat or by post on the SKY-Facebook-page. In their view, suppliers should be allowed to determine which concrete channels consumers must use to notify about termination. They agreed that, in any case, this should not lead to overly burdensome procedures for consumers.

3) **Modification** of the digital content (art. 15): SKY considered that in practice it would be excessively burdensome to notify consumers on a durable medium about any detrimental modifications made to the digital content. They explained that their content changes every day and that they did not have the email-address of all customers, so they might potentially have to send letters to millions of customers on a regular basis. They suggested that requirements in Art. 15(1) should be reduced to cases where the supplier has not foreseen in their contract that the digital content might be subject to changes

Ref. Ares(2017)3829697 - 31/07/2017

Short report on the meeting with Insurance Europe

On 14 July, A2 (L , A di, i) met with representatives of Insurance Europe (I , , L ,), the European insurance umbrella association, to discuss COM 'Building a European Data Economy' initiative related to the IoT.

On the substance of IoT liability, Insurance Europe stated that it was important to differentiate between different products (i.e. drones, robots, cars etc.) and tailor liability rules accordingly. They expect progress to be gradual; While the current regulatory framework, in particular the Motor Insurance and Product Liability Directives, sufficiently address most liability issues at present and in the near future, changes will be necessary when a substantial level of automation of cars on the road is reached. In any case, they stressed that it would not be the role of insurance to allocate responsibility but to provide coverage for those persons liable.

With regard to access to/transfer of data, Insurance Europe stressed that unhindered access to data was of vital interest for insurers. This was particularly true for those pieces of car- or driver-generated data which are necessary to accurately assess risk and responsibility. (For the time being and until sufficient amounts of data are available, premiums in the context of brand new technology were calculated largely on the basis of the insured party's compliance with certificates, standards and product safety rules.) Insurance Europe was concerned that car manufacturers would try to prevent other interested parties from access to the data collected by the cars and would eventually impose their own data-related products on everyone else. Yet, a clarification of access to data could help not only insurers, but also the drivers themselves and would allow for a better multilateral communication between cars and road infrastructure. Insurers could play a role in collecting and distributing this data more effectively. Therefore, they were particularly interested in the legal rules concerning the transmission of car-generated data as well as their later transfer.

They would very much like to take part in the joint JUST/CNECT workshop on IoT-liability and access to/transfer of data in September.

Ref. Ares(2017)3829668 - 31/07/2017

Short report on the telephone conference with the Head of the "Legal framework" Working Group of "Plattform Industrie 4.0"

On 8 August, A2 ([redacted]) had a telephone conference with [redacted] (Head of the "Legal framework" Working Group of "Plattform Industrie 4.0", the German coordination initiative for the digitisation of the German industry, and Head of Legal Components Technology at ThyssenKrupp AG) to discuss IoT liability and Access to/Transfer of data.

The main objective of the Industrie 4.0 platform is the development of new business models and concrete policy advice for the legislator. The immediate objective of the Legal Framework Working Group is to deliver concrete proposals for legislative action to the German IT summit in November 2016. The issues dealt with by three out of the five sub-groups of the Working Group – IoT liability, data ownership and general contract law including M2M-contracting – match the current work of DG JUST in this field and the issues prepared for the November COM communication on Building a Data economy.

We discussed different trends on the relevant topics. On IoT liability, it was interesting to see that the present DG JUST ideas on a joint 'network liability' of all parties coupled with a compulsory insurance solution is also discussed by them. On access to/transfer of data, their discussion reflects the present industry opinion which we had already heard that they are against an exclusive 'property' right on data, but want to rely on contracts.
acknowledged the objective of DG JUST to ensure that the contractual relationship takes into account the interests of all parties, especially new market entrants and SMEs. On M2M contracting, their discussion trend is to recommend a clarification to the DE Civil Code allowing general contract law rules to apply to contracts concluded by autonomous systems.

was keen to continue the discussion and to take part in the joint JUST/CNECT workshop on IoT-liability and free flow of data on 21 and 22 September.

He also mentioned that even in Germany where the discussion is coordinated and already quite advanced, there are various existing discussion strands on digitisation which are not linked. A2 pointed to the European dimension of the topics and related discussions and the need to coordinate the discussion at European level.

Ref. Ares(2017)3829594 - 31/07/2017

Short report

Meeting with GDV (German Insurance Association)

On 31 August, JUST.A2 (; ;) met the DE umbrella insurance association GDV (Member of the board , Head of among others liability insurances to discuss liability in the IoT eco-system.

JUST explained the COM work on IoT liability, access to/transfer of data and M2M contracting.

According to GDV it should be the owner of an IoT device who should be held liable in cases where such a device caused damages. The reason for the failure should not be of any relevance. The latter would be justified since the owner would benefit from the use of the device and would have created the risk inherent in the use of the device. Furthermore, the owner would be entitled to recourse against other players who are (also) responsible. The liability of the owner could be designed as fault-based or as strict liability.

GDV emphasised that this solution fitted in the current legal regimes and existing business models like insurance for cars, airplanes and pets, known by the insurance companies. Therefore, it would allow them to provide insurances covering the risks the owner would be exposed to. The onus placed on the owner would not be too burdensome since the insurer would have to find out the cause for failure and the person responsible while the owner would be protected. After having paid for the insured event, the insurer would have to decide whether the responsible party can be determined with commercially reasonable costs and whether the evidence is sufficient to bring an action against that party. GDV considers the risk for insurers not to be able to recover the costs incurred as manageable.

GDV stressed however, that a licensing system – comparable to the existing ones for airplanes, cars or medical drugs – regarding autonomous systems would be helpful because such a system would allow them to calculate the risks.

Ref. Ares(2017)3828623 - 31/07/2017

Short report on the meeting with EMOTA on Thursday 1 September 2016

EMOTA representative:
Attendants: (DG JUST – A2)

EMOTA sees the digital content proposal as regulating the "retail" side of the data market – i.e. by imposing certain obligations on retailers offering products against data. However, from retailers' perspective, data only became valuable once it was collected from a critical number of consumers therefore the B2B dimension of the data market is even more relevant for them. In their views retailers have issues with big data platforms which do not share sufficiently revenues coming from data.

Consequently EMOTA would like to be involved in JUST work on free flow of data. They requested a separate bilateral meeting with us on this and would like to participate in the workshop (if possible).

Ref. Ares(2017)3828532 - 31/07/2017

Short report on the meeting with EuroCommerce on Wednesday 8 September 2016 on the Goods Proposal

- EuroCommerce representatives:
- Attendants: (DG JUST – A2)

EuroCommerce stated it opposes the proposed prolongation of the reversal of the burden of proof to two years and a potential extension of the legal guarantee period beyond two years. While both aspects were key issues, of these two the extension of the legal guarantee period is the more critical aspect for their members. EuroCommerce informally stated that their members would accept a one year reversal of the burden of proof. When asked, they also stated that a one year reversal of the burden of proof and a three years legal guarantee package could be a possible albeit not desirable compromise.

Regarding the notification duty they expressed that their members from countries that already have the notification period are strongly in favour of keeping it while those who do not have it yet are not against it. They are aware that no strong policy argument can be made for keeping the notification duty as consumers usually report faulty goods either immediately upon discovery of the defect or refrain from it entirely. However, businesses appreciate the symbolic value of the notification duty, feeling it helps to prevent abuse. While EuroCommerce therefore is in favour of including the notification duty, this is not a key issue.

EuroCommerce opposes the inclusion of durability criteria for establishing the length of the legal guarantee as the expected lifespan of a given product would need to be assessed on a case-by-case basis and they fear this would decrease legal certainty.

EuroCommerce supports the hierarchy of remedies. Furthermore, they are concerned about the potential extension of the CRD's 14 days right of withdrawal to offline sales as well as the EU-wide implementation of the UK's 30 days right to reject.

Finally they strongly emphasize the need for full harmonization, stating that most of their members would prefer to keep the status quo rather than accepting minimum harmonization.

Ref. Ares(2017)3430877 - 07/07/2017

Meeting with e-commerce industry representatives, Brussels, 27 October 2016

Participants:

Commission - DG JUST and DG GROW

Industry -

- EMOTA: Amazon:
- eBay: Allegro: Rakuten:
- Alibaba: represented by Interel

Operational outcome:

- The industry representatives confirmed that there are several challenges in e-commerce – non-compliant products from third countries (in particular China) can easily reach consumers in Europe and this does not ensure a level playing field.
- Industry does not want regulation in the field, they want practical actions and cooperation instead which could involve
  - education of sellers who sell products through online market places or
  - streamlined communication between industry and authorities.
- The Commission
  - explained that e-commerce will be in the focus of product safety in the next years. It will be also in the centre of the discussions in the International Product Safety Week (IPSW) in November 2016;
  - explained that it was planned to finalise and adopt the guidance on the market surveillance of products sold online which is aimed to provide solutions to most of the issues mentioned;
  - invited the participants to send their final comments until the IPSW and reminded them that the draft of the guidance has been shared with most of them before throughout the consultations in the spirit of full transparency;
  - explained that DG JUST is in the process to reform the RAPEX system to make it up-to-date to the challenges of today and, in particular, to considerably speed up the flow of information;
  - reminded EMOTA and the participants that their planned voluntary initiative needs a clear roadmap and should be complementary to the Commission's guidance.
  - DG GROW reminded the participants to the ongoing public consultation on the Internal Market for goods – enforcement and compliance.

Ref. Ares(2017)3827975 - 31/07/2017

Short report

Meeting with UEAPME's Digital Working Group on the digital contracts proposals

9 September, Brussels

DG JUST A.2: I[illegible]

UEAPME (EU SMEs umbrella association) Secretariat: [illegible]

Members of the Digital Working Group: WKÖ (AT), UNIZO and BIPAR (BE), ZDH (DE), CGPME (FR), FFE (FI), CAN (IT) and ACCA (UK).

Overall a constructive and open meeting with UEAPME's Digital Working Group focusing on the state of play of the negotiations. The meeting was initiated by DG JUST A.2 in order to find out the points UEAPME will insist in the negotiation process.

UNIZO, ZDH and VKÖ representatives were in principle supportive of the COM goal to having one set of rules all over the EU. However they stressed that too much consumer protection prevent a number of small companies to sell online. In particular, they emphasised that currently already the CRD pre-contractual information obligations and right to withdrawal overburden SMEs. They explained that if the current proposals go for a very high level of consumer protection, it will kill small businesses. It will also have a negative effect on consumers leaving them with the limited choice offered by the big chains.

ZDH and VKÖ expressed also some concerns on the way the REFIT data on the Sales Directive were collected. They considers that they should be given sufficient time to reply to consultants and to identify SMEs that could reply.

On the Digital contract proposals, UEAPME members identified the following red lines:

- they insist on maintaining a hierarchy of remedies.

- two years reversal of the burden of proof is considered as too long and too burdensome.

- there should be a notification obligation for consumers when a defect appears.

- On the length of the guarantee period, some of them even thought that the present two years are too long. In any case, they are in a favour of a simple system and therefore against guarantee periods linked to the lifespan of products.

Ref. Ares(2017)3828661 - 31/07/2017

Short report on the meeting with Business Europe on Thursday 13 September 2016 on the Digital Content and the Online Sales of Goods Proposal

- Business Europe representative:
- JUST.A2:

On the Digital Content Proposal

For the time being Business Europe maintain its general opposition against covering by the proposal digital content supplied against any type of data. However, they might be open to accept covering "personal data" subject to a nuanced system of remedies/ different conformity criteria, depending on whether the consumer paid with money or with personal data. Especially the consequences of termination should be reconsidered since the return of metadata as well as all user-generated content as envisaged in the original proposal is too far reaching. Still an inclusion of" other data" constitutes a "red line" for them.

They appear not to have strong feelings about the lack/introduction of a guarantee period for digital content. Still, if introduced, the period should be aligned with the Sales proposal.

With regard to the embedded software, BusinessEurope supports the current COM approach with rules on goods applicable. The currently envisaged "place of defect" approach is a "red line" for them as neither consumers nor retailers can be expected to correctly locate the defect.

There are diverging approaches among national organisations towards this proposal, with some being more flexible (PL) and other much more reserved (Nordic, DE, FR).

On the Online Sales of Goods Proposal

Business Europe emphasised that full harmonisation was a priority for its members but not at any costs – i.e. they would oppose harmonisation of the highest national levels. Minimum harmonisation is a "red-line" for them as well.

BusinessEurope is clearly worried about attempts to increase the level of consumer protection in the legislative process; consequently they appear to be more supportive to the original COM proposal than in the beginning. Still, they will fight against the extended reversal of the burden of proof, which significantly deteriorates the situation for most of its members (and make FR, PL and NL members unhappy as they hoped that full harmonisation would decrease their national levels of protection).

In relation to the possible increases in the level of protection:

- A legal guarantee period longer than 2 years is a "red line" for them, even in a nuanced way whereby the longer period would apply to certain products/certain types of defects
- They work with MEP Arimont against the direct producer's liability; they appear confident that retail business would be on their side as the cost would be passed on to them.
- Durability in form of an extended guarantee period: another "red line" for them; durability as a conformity criterion: unclear about the impact of such a change.

Ref. Ares(2017)3829428 - 31/07/2017

Meeting with Ecommerce Europe

On 16/19/2016 A2 (and) met with Ecommerce Europe. They shared their draft amendments on digital content (not approved by their Member yet) and will share once ready also those on online sales.

Their position can be summarised as follows –

Their main priority is to achieve full harmonisation. They therefore show a certain flexibility as regard the level of consumer protection.

- red lines:
  - in favour of a notification and an uniform notification period: they are in contact with BEUC to discuss a notification period which would not imply consumers'complete loss of all rights.

- On remedies, they consider for both proposals that trader should be able to choose what remedy is the most appropriate.

- on digital content in particular:
  - they are in favour to include digital content against data
  - they are not against "other data" if limited to other data which have a clear economic value for the trader.
  - They do not want an unlimited guarantee period, but a flexible guarantee period determined according to the lifespan of the digital content (Digital content can be very diversified and one size does not fit all.) and limited to 10 years (5 years for digital content on a tangible medium). They also foresee a limit of 2 years for the consumers to claim his rights as from the notification of the defect.
  - On termination of long term contracts they suggest including an exception to the rule: consumers can terminate long term contracts after 12 months unless that would be unfair for the trader.

- on online sales in particular:
  - Support a 2 years legal guarantee, but show signs of openness to a longer period.
  - 2 years reversal of the burden of proof could be accepted only if combined with a notification duty.

Ref. Ares(2017)3829186 - 31/07/2017

BUILDING A DATA ECONOMY WORKSHOP MERGING CHALLENGES IN THE EUROPEAN DATA ECONOMY

In the context of the forthcoming *Building the European Data Economy* initiative, scheduled for adoption on 30. 11., DG JUST A2 and DG CNECT G1 and E4organised a 2-day workshop to discuss legal challenges in relation to the access to industrial data and liability in the Internet of Things and robotics.

- **Day 1 - Access to/transfer of data**

Day 1 examined data-based business models, contractual restrictions and access to data solutions. There was a shared feeling that **uncertainties in the legal status of industrial data** impact the extent of data flows. Reluctance in data sharing has different reasons, for instance disclosure of know-how to competitors is nourishing the reluctance in sharing data with third parties. Building trust thus becomes key when deciding which third parties to share with, and especially which data should be traded. It was argued that companies should be given incentives to share their data.

For a number of participants data should 'belong' to the data producer/originator (i.e. user of the car/machine collecting data via sensors); some argued that control over data should be granted to the owner of the physical asset. Participants disagreed on the actual functioning of certain data markets. For example, access to real time vehicle data seems to be a matter of contention between car manufacturers and independent secondary market players (car repair and maintenance). The latter category deplored lack of access to needed data. They called for EU rules on access to data. A similar scenario seems to arise in other secondary markets (ICT).

The vast majority of participants supported a sectorial approach, through the **segmentation of the types of data and markets**. Virtually all manufacturers present highlighted the importance of freedom of contract and the need for flexible frameworks and contracts to allow return on investment when sharing data. Enhanced legal certainty when partnering with more players (especially across border) is needed also because fairness control of contract terms in B2B is higher in some MS. Insurances saw access to data essential for calculating risks (important for the automated cars scenarios).

On a possible regulatory intervention the industry was careful. Big industry and telecom feared that **prematurely regulating risks to stifle innovation**. They asked for clear evidence of market failures. Best practices or voluntary schemes would be welcomed.

- **Day 2 – Liability in IoT and robotics**

A need for **better clarification** at conceptual level emerged. Participants supported clear distinctions between IoT and robotics, between categories of robots, between connected and automated cars. Participants agreed in classifying robots along functionality (rather than autonomy) but the appropriate level for classification is to be determined (legislator, standardization bodies, insurance companies).

Some industry participants (software business) argued that neither IoT raises new issues, nor robotics entirely challenges traditional concepts, except for fully autonomous systems. In this opinion, the intrinsic complexity in the IoT can be managed by current rules. However, many participants agreed upon a **paradigm shift in relation to liability**. Sales law rules and product liability rules are in place, but not sufficiently addressing situations when things go wrong in IoT/robotics due to software/data services/connectivity failures. It was argued that traditional delineation between contractual and extra-contractual liability is challenged by the hybrid reality of

IoT/robotics - we may need to rethink liability in a combined way to avoid legal uncertainty.

In respect to the assumption that a human is always involved in the supply chain, that may not always be the case as the M2M sector is growing due to self-learning algorithms and robots. Although less emphasis has been placed on the autonomy of robots/independent behaviour, certain participants made it clear that some robots could be considered as autonomous agents. Software designers may not be able to foresee all conceivable outcomes of interactions between artificial agents and humans.

The need ***to enable at the EU level the testing of robots was*** widely welcomed. Companies face difficulties in testing robots at national level so support or intervention is welcomed.

As to the **liability solutions**, different approaches may be envisaged. There is a need to avoid cases where liability cannot be attributed to someone. Some saw the need of revisiting product liability rules, other would draw inspiration from liability based on having created a risk while others favoured a new approach, assigning liability to the market actor which is best placed to avoid and minimize costs.

The lack of data on risks and accidents affects the insurance company in their ability to calculate and price risks and develop adequate insurance policies. ***The insurance companies generally took a cautious approach.*** For the car sector, the motor insurance directive provides for a compulsory insurance scheme to adequately compensate victims. It functions well since this is a mature market, risks being understood. This does not necessarily mean that a compulsory insurance solution might automatically work for all IoT/robotics. Insurers are prepared to insure only risks they can understand. Access to data becomes vital.

Ref. Ares(2017)3430958 - 07/07/2017

Safety of products sold online - stakeholder consultation

Meeting with EuroCommerce

Safety of products sold online - Stakeholder meeting

EuroCommerce & DG JUST

Meeting of 7 October 2016

EuroCommerce is the European umbrella organisation of retailers. Their members are national trade federations, around 30 major international retailers (IKEA, TESCO, Auchan, etc.), online platforms, EMOTA, E-Commerce Europe, etc. Members are involved both in online and offline trade. Their primary objective is to ensure level playing field for online and offline traders as well as between EU and non-EU based operators and to step up against rogue traders.

EuroCommerce wanted to clarify the state-of-play of the online guidance document. They are overall happy with the working document and will provide further feedback. They welcome the work of the Commission on online market surveillance that they find very important for their objective to ensure level playing field. They plan to take the working document as part of their bigger discussion with their members both on consumer protection and product safety.

As regards fulfilment houses they asked to give more criteria to help define their responsibilities (e.g. as distributor).

They are following the ongoing work of DG GROW regarding their initiative on enforcement and compliance (participating in the online public consultation) and they asked if online-related aspects would be dealt with in that framework.

The Commission representatives explained the work carried out so far by the online working group and clarified that there is no decision yet as regards the working document that was previously circulated. Work is ongoing and we appreciate any input and information. It was mentioned that the International Product Safety Week will also have a dedicated conference on online trade with relevant international players.

EuroCommerce expressed interest in the online conference and in participating in the RAPEX Workshop. They will provide detailed comments as regards the guidance document in one week time.

Ref. Ares(2017)3829373 - 31/07/2017

On 13/10 A2 (and) met with Zurich Insurance (– Head Public Affairs, EMEA region, – Global head of Casualty Lines). The meeting focused mainly on Access to/transfer of Data and IoT liability. A2 presented the activities of the Unit in these fields.

Zurich did not consider the Product Liability Directive approach for IoT liability, for instance for connected or self-driving cars, as adequate given the multiplicity of actors and the complexity of the IoT ecosystem.

As regards the insurance solution, they argued that the current mandatory car insurance system worked quite well and should be exported to other fields. Generalising this concept would mean to provide insurance to the owner of the equipment. In case of a responsibility of another party, the insurer would attempt to demonstrate the responsibility of this other party. If this is not possible, the community of policy holders would cover this risk via higher prices. Insurance markets were best suited for optimal pricing solutions; a fund solution would create moral hazard. They did not see a problem with pricing the risk; probably more data than they could handle would be available; possibly at the beginning prices would be higher because of a lack of data for calculating the risk. For exorbitantly large risks reinsurance solutions existed.

With regard to access to data, Zurich is in discussions with manufacturers and data aggregators. In general they favour an approach that the owner of the asset also owns the data generated; data should be shared with any particular insurance company only on a non-exclusive basis.

To the question whether there was a market dealing with the liability of cloud providers, for instance for damages because of business interruption or loss of profit, the company answered positively, but also mentioned that there were only few products on the market.

Finally the company expressed an interest in the work of the Commission Expert Group on Insurance Contract Law and stated that there are still many obstacles related to contract law which make it difficult to sell the same insurance policy available to other countries.

Ref. Ares(2017)3829305 - 31/07/2017

Meeting with Airbus

On 23 November 2016 A2 (I , I and /) met a delegation of Airbus (, VP & Head of EU Regulatory Affairs, , VP, Digital transformation, I , Senior Legal Counsel and , Chief of Staff EU & NATO Affairs) to discuss the issues of access to data and liability.

Airbus manifested a strong interest in the discussion on emerging issues of the data economy and wanted to share their preliminary reflections.

In the context of the upcoming debate about the regime applicable to Big Data or in relation to possible future initiative, Airbus underlined from the outset the importance of taking care of the international dimension. As representative of the aerospace industry, operating globally and dealing with worldwide partners, possible negative consequences may arise from geographical differentiation. Airbus took the view that "ownership" was not the appropriate concept when talking about sensor-generated data in the context of aerospace (no creative exercise in such raw data is involved), while the issues of access to such data are clearly of much relevance.

Airbus broadly explained their 3 main types of contracts relevant for dealing with data: i) service contracts where access is needed and allowed for product improvement, maintenance and analysing root causes of problems; ii) contracts aimed at evaluating potential impact of certain technical practices (for instance hard landings), mainly engineering services; iii) less frequent, clauses envisaging a forced access to data for specific safety concerns.

The raw data generated by the aircraft's sensors (including all its components) are first/directly accessed and controlled by the airline companies. Such data are recorded and transmitted to a server which is based at the airport. Airbus gets access to some of data through bilateral contracts concluded with the airlines. Airbus saw market problems in their access to data: every time they negotiate a contract for accessing the data they have to do it one to one, which is costly and inefficient, and most of the time they do not get all data they would need. There are usage limitations clauses. Airbus argued that more access to raw engine-/aircraft-sensor data would be beneficial for addressing environmental and security aspects as well as for technological improvements. Currently there is no guidance available on these contractual clauses across the industry. Airbus confirmed that the data they are processing and dealing with is mostly purely machine-generated data (coming from sensors; so personal data is very marginal in this business model).

For potential solutions, Airbus mentioned the idea of a data platform acting as an "ecosystem", by putting together all relevant market players (manufactures, spare parts suppliers, service providers) and allowing for a "managed access to data". This objective could be achieved through incentives to enter this eco-system in the context of, (for instance), private-public partnerships.

Access to data and liability aspects are closely linked. For instance, in the context of any solution favouring a broad open access, they emphasized the enhanced risks, especially in relation to security. Secondly, on liability, their main concern was to avoid responsibility for not having avoided a damage that could have been avoided through an analysis of all data available.

In the follow-up of the meeting, A2 contacted the Contractor in the joint DG JUST-DG CNECT study on emerging issues, to organize interviews with Airbus, to better cover this industry in the case studies.

Ref. Ares(2017)3829137 - 31/07/2017

Oracle is on a grand "European tour" (DE, FR, IT, Brussels), meeting EU officials (COMP, CNECT, JUST), Cabinets, national authorities and organisations (data protection authorities in DE and consumer organisations in IT and FR), EU policy makers (MEPs Voss, Schwab, Lauristin) and national policy makers (,) and German publishers (, ...).

They had also met Cabinet Jourova earlier today (Perignon, Hulicius, in the presence of the E1 colleague dealing with antitrust.

Whilst Oracle has no B2C business, its main concern is the convergence of Googles' "monopolies" (search, Android, Google Analytics) through its privileged access to user data.

Oracle has collected data and run a technical experiment showing that:

- Computing is now mobile through apps via Google's proprietary APIs: in a day, a user spends 198 minutes on mobile apps line versus 22 minutes on a mobile browser
- Android represents more than 80% of global smartphone shipments per platform
- 90% of Google's revenue comes from advertising based on its unique access to user data. Therefore Oracle qualifies is not as a 'tech company' but as an 'ad company'.
- That access has been expanded through constant changes in privacy settings (5 changes in 2015, 3 in 2016) all of which allow combining tracking data from third party sites and apps with personal accounts data
- The changes in privacy settings are such that it is very difficult for users to do anything but accept them and in any event the user is not made aware of the scope of the data collection
- Through the smartphone, Google knows at each moment where the user is, who he is and what he is doing. The smartphone sends far more data from the user to Google than from Google to the user: A Google Android phone, left turned on and left resting without any user interaction for 60 minutes will have 285 interactions with Google (i.e. every 4.5 minutes it checks for network connectivity, communicates with Google Play, transmit smartphone location, communicates with Google Hangouts and checks for e-mail).
- In practice, disagreeing with privacy changes is made extremely difficult, not only requiring scrolling through pages and pages but at least 6 different clicks (plus 3 additional for Android)
- Not all Default Google Apps can even be removed (no option to disable provided)
- Result: Google can beat all its competitors and attract business customers because it can build "super-profiles" of users and in fact even boasts that it can report within "99% accuracy whether a customer visited a physical store"

- All this is based on free riding on consumers' private data. According to some estimates, each user around the world sends back at least 6 euros to Google against no counter-performance whatsoever.

Oracle asks:

- Action on interoperability to counter the lock-in effects of Google's proprietary API (Google's Android implementation broke Oracle-owned Java's interoperability).
- But also that data protection, antitrust and consumer authorities to join forces because none of these 3 tools alone will be able to stop the increased monopolisation by Google of the digital economy.

Ref. Ares(2017)3828054 - 31/07/2017

SHORT REPORT ON THE MEETING WITH ZURICH INSURANCE GROUP on the corporate governance and data economy, 23 March 2017

Participants: Zurich Insurance Group: (Head of Legal Counsel), (Head of Public Policy) and (Consultant with Afore Consulting).

Commission: Salla Saastamoinen (Director of Civil & Commercial Justice) and (Unit A3).

An informal meeting was held between representatives of Zurich Insurance Group (Zurich) and representatives of the Directorate General for Civil & Commercial Justice (COM).

Points Discussed

Both COM and Zurich exchanged insights into their respective structures. Zurich explained that they are a Swiss based company and use Ireland as a hub for which funds pass through and the U.K. as a platform for which they sell insurance. They expressed their concerns over Brexit and whether this will affect their business model. COM explained their role in legislating for Civil & Commercial Justice and their overarching aspiration of providing a legislative framework that both encourages entrepreneurial activity but at the same time offers a high degree of social protection to the consumer.

Digitalisation

The over-arching theme of the discussion was on digitalisation and whether existing legislation was up to date with technological advancements.

- **Corporate Governance**

They explained that from a corporate governance perspective digital solutions are used to improve shareholder engagement and communication amongst board members. COM briefly offered insight into their proposals from their Company Law Package which deals with digitalisation.

- **The "Gig" Economy**

Zurich explained that they are investing heavily in emerging tech markets such as the "gig" economy and conduct business with shared platform sites such as Uber and Air BnB. The nature of their clients business models intuitively pose complex questions as to where liability should be apportioned in the case of an insurance claim.

- **Product Liability**

Zurich explained that digital advancements in respect to automation and artificial intelligence are strongly affecting their business. They wish to tap into this emerging market and championed a flexible regulatory framework that encourages technological advancements. However, they explained that automated vehicles such as self-driving cars and lawnmowers have inherent dangers due to the lack of human element and also pose difficult questions as to apportioning liability and the extent to which they should sell insurance.

- **Internal Business Model**

Zurich explained that internally they are making use of digital solutions when selling insurance. They have algorithms and software that can quickly sell insurance and process claims. From a compliance perspective this also poses risks in regard to liability due to the lack of human element.

Ref. Ares(2017)3828905 - 31/07/2017

Meeting with representatives of Bosch to discuss on liability for robotics/AI and access to data

Short report

On 11 July 2017 (Bosch, Vice-President Governmental and Political Relations) and (Bosch, Senior Manager, Governmental and Political Relations) discussed with JUST A2 (; ; ;) liability for robotics/AI and access to data. explained that Robert Bosch GmbH (RB) is currently undergoing the transition from a hardware producer to a digital company. With the strategic goal of making all electronic products internet-enabled and connected by 2020, RB is heavily engaged in the current discussion on how to foster a European Data Economy.

Firstly, Delvaux' report on **Civil Law Rules on Robotics** and reactions by the EC were discussed. Both, and were very interested in this report, especially in the proposed European Agency for Robotics and Artificial Intelligence, in the disclosure of machine learning algorithms and in liability. With regard to the latter, argued that in principle the legislative framework seems fit to address the emerging issues. In the course of the discussion, he agreed that for completely autonomous systems adapted liability rules might be needed in the future. He also stated that autonomous systems could be a challenge for insurance companies.

Secondly, issues on **access to data** were discussed. stressed that RB uses contracts with its partners as an efficient instrument to agree on data sharing. Remuneration conditions are negotiated on a case-by case basis and vary depending on the perceived value for each party. As an example, he explained an agreement with OEMs for the collection of data collected by cars for a parking management application provided by RB. In this case, data is valued by a number of specified criteria (e.g., whether the data is collected in a city or in a more remote area). He mentioned that also for some other business models agreements on access to data were reached. According to , such contractual solutions are currently an efficient instrument to provide data access solutions. But he also admitted that third parties interested in data sometimes face legal difficulties. He also pointed to a study by Osborne Clark dealing with legal aspects of data sharing.

Finally, evaluated that companies recognise the impact of digitalisation on the economy, but that the process may still take a considerable time. To foster innovation the EU should continue to discuss data economy issues.

Ref. Ares(2017)3829260 - 31/07/2017

Building a European Data Economy

Flash report of workshops within the structured dialogue with stakeholders

Workshop on Liability

The workshop on **liability in the area of autonomous systems and advanced robots/IoT** took place on 13 July 2017. Stakeholders showed a great interest in the workshop on liability that was documented by a quite high number of registrations (132). Also MEP Delvaux, the rapporteur of the EP resolution, attended almost the entire day.

After introductions by Salla Saastamoinen and Pearse O'Donohue (Acting Director CNECT E) who also stressed the cooperation among different DGs involved (in particular JUST, CNECT, GROW), colleagues from JUST, CNECT and GROW presented COM work undertaken so far. The presentations covered the evaluation of the PLD, COM activities in the context of robotics and artificial intelligence, the existing EU safety framework and the joint CNECT/JUST study dealing among others with liability. The results of the COM public consultations following the "Building the European Data Economy" Communication and in the context of the evaluation of the PLD were introduced. MEP Delvaux presented the results of the public consultation on robotics and artificial intelligence undertaken by the EP.

In the discussion, the BDI (Association of German industries) and Orgalime (European Engineering Industries Association) stated there was no need to revise the existing legislation on liability. These statements were heavily criticized by (consultant at Roboconsult, former secretary general of euRobotics) who called this a "very plump" approach that could result in stifling innovation and argued that a detailed discussion was needed rather than just repeatedly asserting the current legal framework was fit for purpose. As a reaction to that, BDI agreed that a discussion on liability is needed, but that the issue would need to be assessed carefully.

Some of the participants from the academia presented ideas for different liability concepts. For there was a need for rules which could follow the concept of vicarious liability, i.e. an employer being liable for a negligent behaviour of its employee during the scope of his employment. This is comparable because robots act as assistants similar to human assistants and the liability should be designed accordingly. Also a risk opening approach could be thought about.
declared he was hesitant towards sector specific rules as there was no reason to favour specific groups of victims over others. He said that it would be decisive to determine which level of safety should be expected on the market. According to the most important challenge was to achieve a fair compensation of victims. This would call for a simple procedure ("one stop shop") which could best be achieved by a risk management approach allocating the responsibility to the producers who could best manage the risk and acquire insurance coverage.

of Kuka (robot producer) explained the development of robotics and stated that he does not expect autonomous robots to enter the market soon ("more a matter of 20 years than of 2 years"). of Google, who spoke about AI and machine learning, stated that it could be a design decision to 'freeze' a system so that from the moment that it is put on the market does no longer learn. He stressed several distinctions possibly relevant for the discussion, e.g. the distinction between (in robotics) embodied AI and un-embodied AI (he mentioned that only the hardware causes the damage, not the software) as well as between personal and property damage

vs. economic loss. He underscored that from a consumer protection point of view, liability should be a one-stop shop. (of BEUC explained aspects of the PLD which would need to be adapted to reflect technological developments: definition of liable person, burden of proof, development risk defence, concept of causality). In practice, it would be very difficult for injured consumers to retrace the way back from damage to a possible defect, even if the device was equipped with an event data recorder. stressed that even if the consumer gets access to an available data event recorder, he would be overwhelmed by the sheer mass of data. As regards the burden of proof problem, this point was supported by according to him data event recorders could be useful for establishing liability ultimately between the different market players in the value chain but not for the liability claim of the victim. Interestingly, Orgalime (European Engineering Industries Association) held the view that the PLD already provides for strict liability (i.e. without the need to establish negligence); then it would be fair that the burden of proof is on the victim. of EUnited Robotics and (Sony Europe) discussed cybersecurity can be taken in the area of IoT in order to prevent liability.

In terms of communication tools, during the workshop we provided an on-screen twitter wall on which tweets were displayed at times when no presentation was shown. This turned out to be an interesting communication tool as participants actively used tweets to discuss.

Workshop on SMEs

The **Workshop on data access and data sharing: the real impact on SMEs and start-ups' business models** took place on 29 May 2017. The participants, 45 between SMEs and start-ups, were invited to share their experiences on data access and data sharing. Especially in the automotive industry car manufacturers deny access to in-vehicle data to SMEs active in the independent after-market industry. In this sector there was clearly a strong plea for sectorial hard legislation. While participants from other sectors agree SMEs and start-ups often have a weaker bargaining power when negotiating data access contracts, no new regulation is required at the moment. A certain support for soft measures such as model contract terms to keep transaction costs lower for smaller participants and guidance on the legal framework also emerged.

In terms of communication tools, in order to reach out to SMEs, a webinar session was organised in the afternoon and around 55 SMEs participated.

Workshop with MSs

The **Workshop with MSs** on liability in IoT and robotics and access and reuse of data on 31 May was a good occasion to push the debate on these issues forward at national level. While the importance of the issues is acknowledged, the state of progress of internal discussions is very heterogeneous. The main message sent by Member States was that any initiative at European level would need to be discussed further and carefully considered. On **liability**, priority should be given to additional analysis of the situation as well as to supporting innovative businesses. Moreover, some Member States encouraged the European Commission to think beyond policy silos of sector-specific policies like on connected cars and consider the question of liability as horizontal issue. Finally also other, ethical implications of artificial intelligence like discrimination or transparency of algorithms should be

considered. On **access and reuse of data**, Member States' positions are not crystallised yet. Most of the Member States in fact are gathering evidence at the national level and consulting stakeholders to elaborate more defined approaches on this matter. For this reason, Member States advocate against any hard policy measure at this stage. Nonetheless, soft policy measures could definitely be encouraged. In fact, as emerged from a Dutch experience on the promotion of standard contract terms (Dare2Share), the promotion of standard contracts could favour more access and reuse of data and facilitate negotiations without hampering contractual freedom which remains essential at this stage of market development.

Workshop on Smart Industries

The workshop "**The transformative effect of access and re-use of data for smart industries**" took place on 6 June 2017. Around 76 industry representatives participated. The purpose of the workshop was to bring together stakeholders representing different sectors to investigate how data is shared in their sector as well as the issues they face in accessing and re-using data. The workshop overall showed that there are many differences between sectors, both in terms of how data is accessed and in terms of which data is (re)used. This explains the differences in relation to regulatory options proposed by stakeholders, some of whom are calling for hard legislation, whilst others consider that no intervention is necessary or that soft policy measures would be preferable. In particular, some stakeholders, for instance in the agriculture sector, believe that access to data issues can be solved through the creation of industry developed code of conducts and cooperative data hubs. Through code of conducts businesses can clarify legal issues and build trust in order to avoid negotiating lengthy separate contracts. The data hubs would work as a digital highway on which any company within the system can access and share data.

In terms of communication tools, during the workshop, participants participated to a live poll where they could reply to a number of questions on their experience. The results of the poll were discussed after each question.