



Trust & the Uptake of AIS: Privacy & Liability

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COCOT conversation

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Trust & the uptake of Autonomous Intelligence

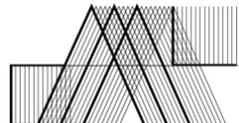
Outline

1. Regulation & Innovation
2. Why Trust is Important
3. How Liability & Privacy Regulation Can Contribute to Trust
4. Trust & The Current Liability and Privacy Regimes
5. Trust & Future Liability Rules:
 1. The Proposed AI Liability Directive
 2. The Proposed Product Liability Directive
6. Wrap-up & conclusions



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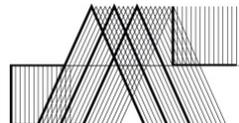
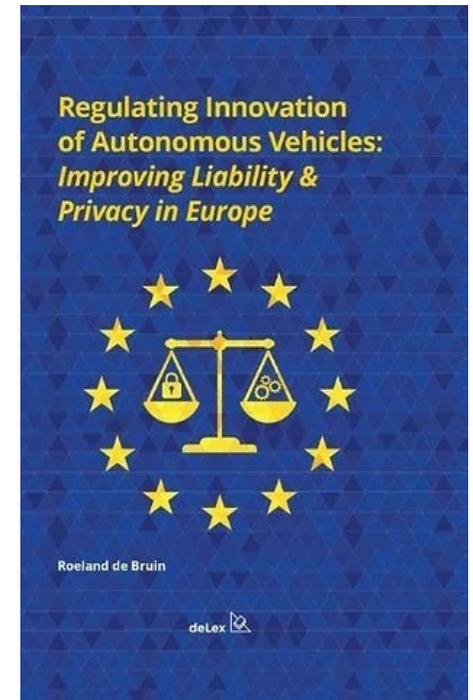
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1. Regulation & Innovation

Some important regulatory factors

- Innovation benefits from
 - Legal certainty for innovators
 - Rules that are not too stringent
 - Flexible and adaptable rules;
 - Uptake of the developed AI-technology which is 'acceptable'
- Adoption/acceptance can only be optimal when AI is
 - **Trustworthy**, and does not pose too many
 - Risks for citizens



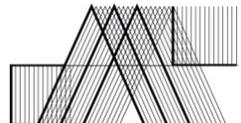
2. Why Trust is Important

Trust:

- Rousseau et al. 1998:
 - “a psychological state comprising the intention to accept vulnerability based on positive expectations or behaviour of another”

Trustworthiness:

- Carter & Belanger 2005:
 - “the perception of confidence in the [marketers] reliability and integrity”



2. Why Trust is Important

Trust & Innovation

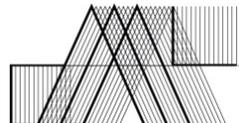
- Intimate relationship: trust is considered necessary for the uptake of innovation.
- See for instance the Proposed EC AI Regulation, which aims for:
 - “[r]ules for AI [...that are...] human centric, so that people can **trust** that the technology is used in a way that is safe and compliant with the law including the respect of fundamental rights”; and
 - “the development of an ecosystem of trust by proposing a legal framework for trustworthy AI”, which is deemed crucial for AI-uptake



3. How Regulation can Contribute to Trust

Liability Regulation & Trust

- Liability regulation cannot influence trust directly; **but**
- It can provide factors to improve the perception of trust, through
 - Stimuli for innovators to **prevent damage** as much as possible
 - Which could lead to *trust* in the safety of technology
 - Create rights for those who suffered damage, to claim **remuneration**
 - Which should lead to *trust* in the reparative capacities of a regulatory regime



3. How Regulation can Contribute to Trust

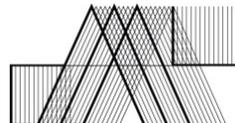
Privacy Regulation & Trust

- Privacy regulation too cannot influence trust directly; **but**
- It can provide factors to improve the perception of trust, through
 - Stimuli for innovators to **ex-ante** address personal data protection
 - Which are enforceable ex post by Data Protection Authorities, and
 - Aimed at *trust* that fundamental privacy rights are duly observed
 - Rights for those who suffered damage, to claim **remuneration**
 - Which should lead to *trust* in the reparative capacities of a regulatory regime



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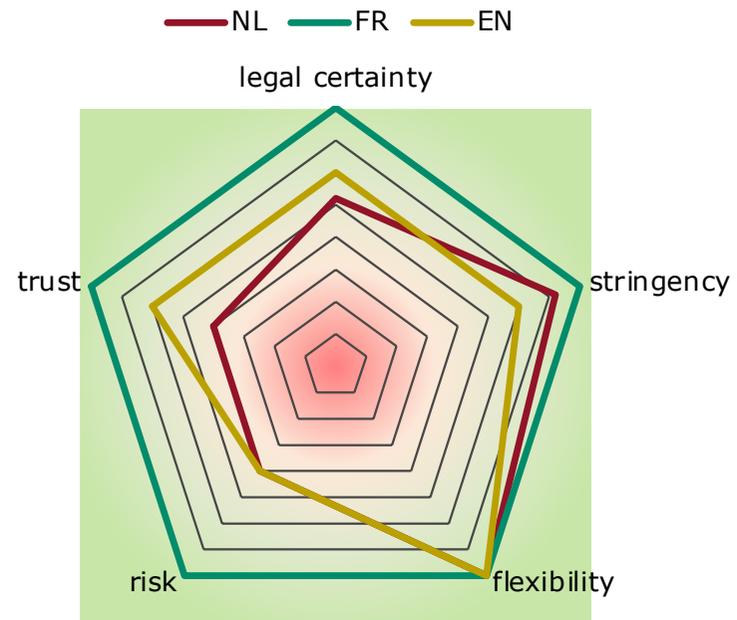
4. Trust & Current Liability Rules

Interim observations

Current Product liability

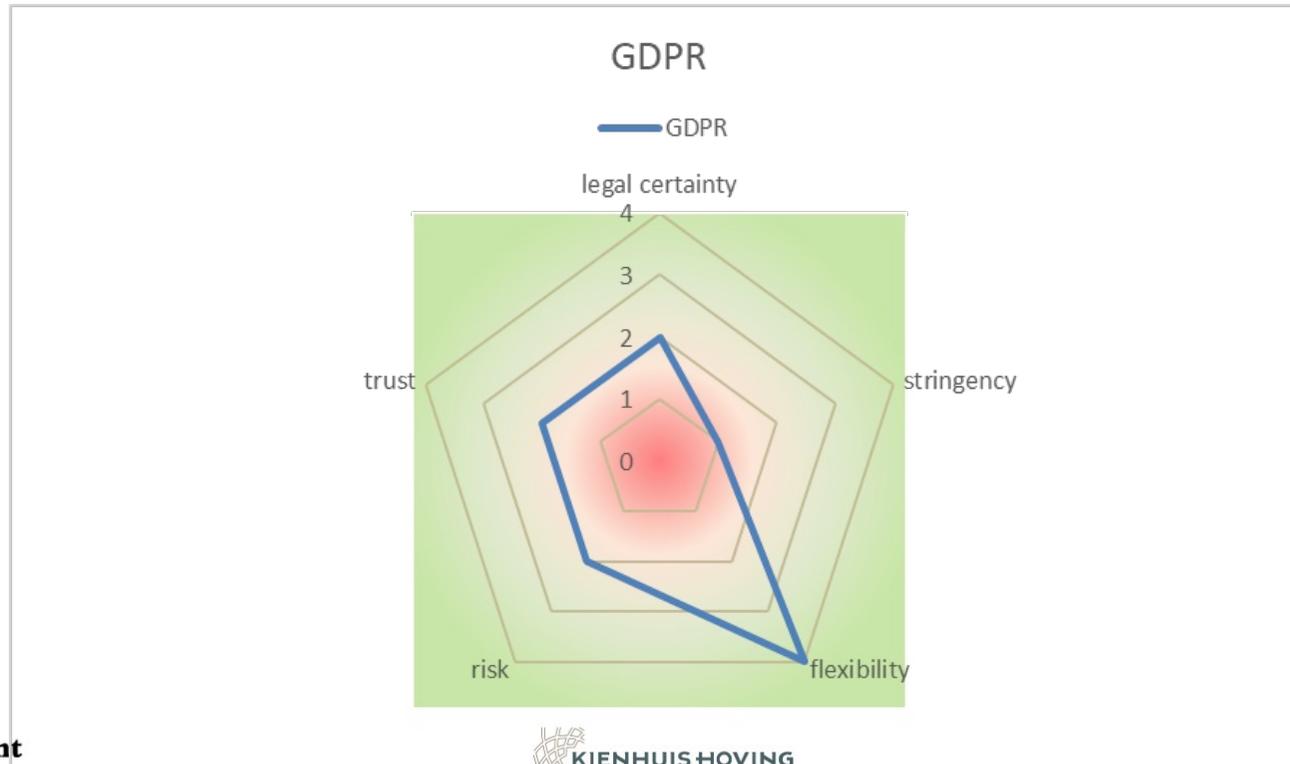


Traffic liability

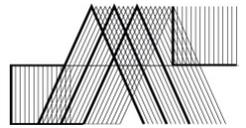


4. Trust & Current Privacy Rules

Interim observations

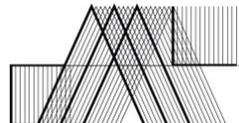


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5. Trust & Future Liability Regulation

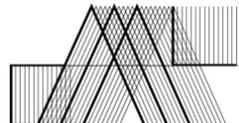
- Among (many) others, those principles are acknowledged by the EU regulators
- Who recently issued proposals to regulate certain aspects of Artificial Intelligence, including
 1. EC Proposal for a Regulation: Artificial Intelligence Act (AIA) & the
 2. **EC Proposal for an AI Liability Directive (AILD) +**
 3. **EC Proposal for a Revised Product Liability Directive (PPLD)**
following up the EP Proposal (risk liability)





5. Trust & Future Liability Regulation

- **AILD:**
 - (5) To reap the economic and societal benefits of AI and promote the transition to the digital economy, it is necessary to adapt in a targeted manner certain national civil liability rules to those specific characteristics of certain AI systems. Such adaptations should contribute to societal and consumer trust and thereby promote the roll-out of AI. Such adaptations should also maintain **trust** in the judicial system, by ensuring that victims of damage caused with the involvement of AI have the same effective compensation as victims of damage caused by other technologies.
- Creates an obligation to store and provide necessary evidence
- Presumes attribution of *fault* of the AI-system-provider when the AI-system caused damage ...
- Albeit without
 - harmonising causality between the *fault* and *damage*
 - Introducing risk-liability
 - Creating a lawful basis for personal data processing



5. Trust & Future Liability Regulation

- PPLD:

This proposal is in line with the Commission's priorities to make Europe fit for the digital age and to build a future-ready economy that works for people²⁵.

In order to minimise risks linked to **digital technologies** and improve the safety of products, the EU is modernising rules on machinery, radio equipment and general product safety, as well as creating new rules on safe and trustworthy AI systems²⁶. This proposal complements this digital-by-default modernisation process by ensuring that, when products cause harm, injured persons can be confident that their right to compensation will be respected, and businesses have legal certainty about the liability risks they face when doing business. Taken

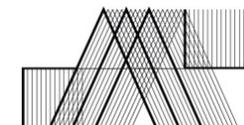
- Brings "software" under its scope, and extends to virtually any actor in the supply chain of (AI) products
- Encompasses obligations to keep AI (and other software) safe
- Introduces presumptions of *defect* and *causality* as well as evidentiary aids for victims
- Reduces the scope of the "later-existence"-defence
- But does not introduce a "lawful basis" for personal data processing





5. Trust & Future Liability Regulation

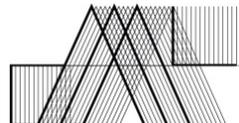
- AILD could be beneficial for *trust*, but not as much as the 2020 EP-proposal would have been
 - Which was aimed at creating a risk-liability regime for AI, to be harmonised through a regulation
- PPLD likely is a massive step forward for citizen's trust in the damage preventing- and repairing capacities of the regulatory regime
 - Although privacy-matters should be addressed





6. Conclusions

- Trust is crucial for uptake of innovation
- Current liability rules will likely not cater for ideal trust-conditions
- The proposed AILD solves some issues, whereas
- The proposed PPLD would resolve most *trust*-issues
- The regulatory process has now started, and can be steered to (even) better foster trust (and the other innovation-influencing factors)





Any questions? Thank you!

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