Meeting of the "Expert Group on liability and new technologies"

Article by Philipp Reusch and Dennis Bernhardt

The "Expert Group on liability and new technologies" advises the EU Commission on the applicability of the Product Liability Directive to traditional products, new technologies and new societal challenges and helps it develop principles which can serve as guidelines for possible adaptations applicable laws.

Since a long time has passed since the Expert Group's last meeting, on 14 May 2019, and since the group has yet to issue its guidelines for the Product Liability Directive in connection with new technologies, which had been announced for mid-2019, the scheduling of a meeting of the Expert Group on 5 November 2019 can be seen as a positive sign, particularly since certain members of the Expert Group had some sharp words for the Commission’s last draft of the aforementioned guidelines:

"One expert went as far as labelling it an 'idiots' guide to the Directive.' They also noted their disappointment that virtually all issues related to new technologies have been removed despite the original ambition to provide guidance for cases involving these technologies." (cf. minutes to the meeting of 18 February 2019)

The content of the draft agenda for this meeting, which has been published in advance, gives reason to hope that this criticism has been taken to heart. We would like to draw attention to the following agenda items in particular:

- **Product:** Should the term "product" include all non-tangible items (including software) as well as tangible items?
- **Defect:** Should the definition of "defect" be revised (e.g. by defining cases in which a defect is presumed to exist or focusing more on foreseeable use)?
- **Damage:** Should additions be made to the types of damages which are eligible for compensation (death, physical injury and private property)?
Producer: Clarification of the definition of "manufacturer" e.g. in cases involving 3D printers (the creator of the CAT file or the person who "prints" the product?) and online traders

Exemptions to liability: Should development risks (which cannot be identified given the state of scientific and technical knowledge) continue to be excluded from liability and should the "500-Euro threshold" be retained?

Insurance: Should mandatory insurance be prescribed for product liability cases?

It remains to be seen whether the future guidelines will indeed be nothing more than an "idiots’ guide to the Directive" or whether the Commission will take advantage of this opportunity to address urgent questions in a substantive manner so as to keep pace with recent developments, particularly with respect to new technologies. We will report any new developments.