



Special Newsletter Autonomous Driving

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Contents

Key points and background to the new law 4

New liability for drivers, holders of vehicles and manufacturers..... 6

Data protection obligations related to autonomous driving 9

Labour law issues in autonomous driving 12

Contacts and authors 15

Events, publications and blog 16

Dear Readers,

In this special edition of our newsletter, the Mobility & Logistics industry group looks at the German Act on Autonomous Driving (*Gesetz zum Autonomen Fahren*), which entered into force on 28 July 2021. This Act marks the next milestone on the way to Germany becoming a leader in autonomous driving, one of the goals of the Federal Ministry of Transport and Digital Infrastructure ("BMVI"). In order to make the most of the huge potential of automated and connected driving, the Federal Government wants to advance research and development with the aim of making the mobility of the future more versatile, more safe, more environmentally friendly and more user-oriented. The regulatory framework for this is to be expanded by the Act on Autonomous Driving.

Automation - along with connectivity, electrification, and car sharing ("ACES") - is considered to be one of the major trends in the automotive industry. The interaction of automation and digitalisation in particular mean that mobility concepts are not only technologically possible but also economically feasible. There is potential for new business models, particularly in connection with urban development, both in terms of car sharing and autonomous shuttle transport, as well as the further development or integration into the local public transport network. However, the use of autonomous systems also offers potential, not least in the re-design of deliveries over the first or last mile, for the logistics sector which has been suffering from a shortage of drivers in road haulage for some time now. In addition, business models are conceivable for company shuttles that take over employee transport, passenger transport at airports and journeys between medical care centres and old people's homes or nursing homes. The potential environmental benefits associated with such models are evident and are likely to be of increased relevance for car manufacturers, not least in view of the threat of lawsuits related to climate protection.

A task force set up at Luther specifically for this purpose has been working for some time now on evaluating the potential opportunities and implementation of business models related to autonomous driving. Our task force has summarised for you the most important aspects related to the new Act in this special newsletter. You can also look forward to future articles from our task force that will follow-up on this special newsletter and will talk about the issues addressed here in more detail.

Please feel free to contact us if you have any questions about the respective comments and articles. We look forward to your feedback. Happy reading!

Stay healthy!

Yours sincerely,

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Key points and background to the new law

The Act on Autonomous Driving, which entered into force on 28 July 2021, represents the fourth of a total of five stages marking the development towards fully automated driving. In short, the new law allows the use of driverless vehicles in defined operating areas. A person driving the vehicle is no longer required, but a natural person must exercise the function of the so-called Technical Supervisor of the vehicle in order to be able to intervene in an emergency.

The foundation for using automated driving systems was laid back in 2017 with the introduction of Section 1a and Section 1b into the German Road Traffic Act (*Strassenverkehrsgesetz*, StVG). With the Act on Autonomous Driving, the Road Traffic Act has now been further amended with the aim of enabling the operation of autonomous motor vehicles in national public road traffic in defined operating areas as a transitional solution until internationally harmonised regulations have been drawn up. The changed regulatory framework with regard to the approval and licensing of driverless journeys paves the way for new mobility concepts and offers vehicle manufacturers in particular an initial legal framework for the development, testing and subsequent implementation of new business models relating to autonomous mobility.

In essence, the Act on Autonomous Driving contains two areas of regulation, namely the regular operation of autonomous driving functions (Section 1d to Section 1h StVG) and

the trial operation for automated and autonomous driving functions on public roads (Section 1i StVG). Not only were technical requirements for the construction, quality and equipping of motor vehicles with autonomous driving functions newly regulated, but the responsibility for testing and the procedure for issuing a type approval for such vehicles was also assigned to the Federal Motor Transport Authority (*Kraftfahrt-Bundesamt*, KBA). The idea behind this is to concentrate licensing decisions at the national level in order to ensure uniform, comparable and thus predictable decisions throughout the Germany. In addition, the new law contains extensive regulations on data processing, in particular with regard to the storage and use of data (for more information on questions relating to data processing, see Part Three of this special newsletter, p. 9 onwards).

Applicability to 'motor vehicles equipped with autonomous driving functions' when operating within a delineated regulatory area



What is immediately striking is that the legislator does not use the term 'autonomous vehicles' but instead refers to motor vehicles that have 'autonomous driving functions'. The background to this is that the legislator is following a system of levels which is used to categorise the transfer of responsibility from humans to machines according to the degree of automation, in line with the gradual transfer of the driving task from human vehicle drivers to an autonomous, intelligent system. On an international level, the classification of the Society of Automotive Engineers (SAE), which describes six levels of driving automation ranging from Level 0 'no driving automation' to Level 5 'fully autonomous', is used as a guideline. Deviating from this, the Federal Highway Research Institute (Bundesanstalt für Strassenwesen, BAST) published as far back as 2012 a classification that differed from that of the SAE. The new Act on Autonomous Driving officially addresses Level 4 and not Level 5 functions, which explains the terminology cho-

sen by the legislator. In this respect, however, the criticism can be made that in the implementation none of the existing categorisations is in fact mapped and no sufficient differentiation is made according to the automation levels. A clearer reference to one of the SAE Levels would, however, have been desirable, not least with a view to international harmonisation.

A motor vehicle with autonomous driving function is defined in Section 1d (1) StVG as a vehicle which is capable of performing the driving task independently in a defined operating area without a person driving the vehicle, and which is equipped with technical equipment (defined in more detail below). As an example of motor vehicles with autonomous driving functions, the explanatory memorandum mentions the so-called “people movers”, i.e. autonomous shuttle buses, which are already being tested in many cases as a supplement to local public transport within the framework of public funded research projects. This shows that the legislator must have had local public transport in mind as the main area of application for the amendment. Nevertheless, the definition of motor vehicles with autonomous driving function is also to include common motor vehicles with corresponding additional equipment. In addition to passenger transport, the transport of goods by motor vehicles with autonomous driving functions is also to be made possible. In this special newsletter, for the sake of simplicity, a motor vehicle with autonomous driving functions will be referred to as an “**Autonomous Vehicle**”. It should be emphasised that the operation of an Autonomous Vehicle is **only** permissible **within a defined operating area**, i.e. a locally and spatially defined public road area. Overall, the regulations are therefore aimed more at commercial providers and less at private transport.

The absence of the driver

In order to meet the requirements of international standards, which stipulate the possibility of deactivation by a human as a safety solution for Level 4 and 5 driverless vehicles, the absence of the driver still had to be compensated for to a limited extent. The legislator has solved this problem by introducing a technical supervisor, who must be a natural person and whose tasks include deactivating the vehicle from the outside if necessary, enabling driving manoeuvres and initiating traffic safety measures. The obligation to ensure that the tasks of a Technical Supervisor are fulfilled is placed on the holder of the vehicle (*Fahrzeughalter*). However, it is possible to entrust another person with performing this task, even if, according to the explanatory memorandum, the holder of the vehicle shall be liable in this case for the fault of the entrusted person (for more information on the associated change in the scope of

obligations of the driver, holder and manufacturer as well as the consequences under liability law, see Part 2, p. 6 onwards). In this respect, it seems possible that business models will develop here around the assumption of the tasks of Technical Supervisor as a service to the holder of the vehicle.

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New liability for drivers, holders of vehicles and manufacturers

The possibility of using Autonomous Vehicles in regular operation also creates opportunities for new business models. Anyone wishing to operate in these new business fields will have to obtain clarity about the list of duties of the respective players, which has changed as a result of the amendment to the law, and about the associated liability risks. Particularly due to the substitution of the vehicle driver by the Technical Supervisor, it can be expected that the known liability standard in the triad of manufacturer, vehicle driver and vehicle holder liability will be impacted.



Paving the way for new mobility concepts

For over 100 years, a driver's license has been a prerequisite for driving an automobile. If you do not have a driver's license, you are not allowed to drive a motor vehicle. However, those who are poorly connected to the local public transport network are dependent on the use of motor vehicles to reach the vibrant life of the centres of German metropolitan cities. The consequences are increased traffic and a shortage of parking spaces at the coveted destination. Autonomous Vehicles can reduce these predicaments. One advantage of the use of Au-

tonomous Vehicles that is highlighted by the legislator is the creation of new mobility services in local public transport. This is a practical benefit for our increasingly ageing society, especially for creating transport options in rural areas. For people who live in residential areas with poor connections to the existing local public transport network, as well as for people who for various reasons can (no longer) drive a vehicle, autonomous driving should improve social interaction and participation in public life. The new law is therefore also advertised as the "People Mover Act". The logistics sector is also expected to benefit in many ways from the use of autonomous systems,

whether it be it to transport goods or documents between different locations or production sites, or to transport employees via company shuttles, passengers on the tarmac or residents of old people's and nursing homes to medical care centres, to name just a few examples. Transportations over the first or last mile are additional conceivable application targets for Autonomous Vehicles. This presents new opportunities for the industry, which has been experiencing a shortage of drivers in the road haulage sector for some time now. Through using autonomous systems, the sector could meet the personnel shortage and at the same time acquire a new and modern image. As explained in the first part of this special newsletter, the new law includes new regulations on the obligations of the vehicle holder and the manufacturer, and also introduces a Technical Supervisor.

Extended obligations of the holder of the vehicle

According to the provisions of the German Road Traffic Act, holders of Autonomous Vehicles are initially obliged to maintain the roadworthiness and environmental compatibility of the vehicle. However, the manner in which the holder of the vehicle is to ensure environmental compatibility is not regulated. It also remains unclear to what extent the holder of a vehicle (who is not the manufacturer of the vehicle) can ensure environmental compatibility.

With regard to the maintenance of roadworthiness, the holder of the vehicle must first ensure the regular maintenance of the systems required for the autonomous driving function. The details are laid down in the Autonomous Vehicles Approval and Operation Ordinance (*Autonome-Fahrzeuge- Genehmigung- und-Betriebs-Verordnung*, AFGBV). According to this, the holder of the vehicle must during the operation of the motor vehicle ensure in particular that the vehicle systems for active and passive safety are checked regularly, that an extended departure check is carried out before the start of the journey, that an overall check of the vehicle is carried out every 90 days in accordance with the specifications of the operating manual and that the results of the overall checks are documented in a report. To implement these measures, the holder of the vehicle may only use persons who are reliable and have the appropriate professional qualifications. A master craftsman's examination in the motor vehicle mechanic trade or a subject-specific degree with three years of professional experience are examples of what is recognised. If the holder of the vehicle delegates such measures to third parties, he must properly instruct and supervise them. In addition, the holder of the vehicle has duties of care that are normally incumbent on

the driver of the vehicle, who does not exist, however, in the case of an autonomous vehicle. This includes, among other things, ensuring that the persons being transported are wearing seat belts or that the load is secured.

Finally, the holder of the vehicle has the obligation to ensure the fulfilment of the task of a Technical Supervisor for the Autonomous Vehicles. In this respect, the holder of the vehicle has to be able, *inter alia*, to provide evidence upon request that the person appointed by him to carry out the function of the Technical Supervisor has appropriate professional qualifications (e.g. degree in engineering or state-certified technician) and has undergone training.

Overall, it can be stated that very high demands are placed on the holder of an autonomous vehicle, which can hardly be fulfilled by private individuals, and it can therefore be assumed that, on the basis of the current legal situation, such vehicles will only be used by commercial operators, primarily in the field of public transport or by haulage companies.

The list of duties of the “Technical Supervisor”

In contrast to vehicles with automated driving systems, Autonomous Vehicles no longer have a person driving the vehicle. Thus, without an alternative solution, there would be no fundamental possibility of intervention and control of the vehicle by a human being. However, this would not be compatible with the international requirements in the road transport sector. The introduction of an obligation on the part of the holder of the vehicle to ensure a Technical Supervisor is intended to take account of the requirements of international regulations.

The function of the Technical Supervisor must be carried out by a natural person who can control the Autonomous Vehicle or turn it off completely. However, this does not require constant monitoring of the Autonomous Vehicle. Rather, the only requirement is to be ready at any time to deactivate the Autonomous Vehicle or to enable driving manoeuvres.

The specific tasks of the Technical Supervisor are set out in Section 1f (2) of the StVG. These consist of deactivating the vehicle if necessary, selecting suggested driving manoeuvres, initiating traffic safety measures, and contacting the passengers when the vehicle is stopped. In principle, it is not ruled out for the time being that the Technical Supervisor may also supervise several Autonomous Vehicles at the same time. It is to be expected in this respect that corresponding providers will establish themselves on the market.

The legal concept of the liable vehicle driver, on the other hand, no longer exists in case of autonomous driving. Accordingly, there is no longer any basis for liability according to “classic driver liability” pursuant to Section 18 StVG. For the Technical Supervisor, only liability under the law of tort comes into question.

Changed manufacturer obligations

The manufacturer's obligations newly regulated in the Act on Autonomous Driving can now be found in Section 1f (3) StVG. Based on the explanatory memorandum to the law (Bundes-tag printed paper 19/27439), the new list of obligations for manufacturers of Autonomous Vehicles can be described as follows.

In order to ensure the roadworthiness of its vehicle, the manufacturer shall demonstrate that the electrical and electronic architecture of the motor vehicle, as well as the electronic and electrical architecture associated with the motor vehicle, are protected against attacks throughout the entire period of development and operation of the vehicle. The manufacturer must also carry out a risk assessment and provide evidence of sufficient radio connections.

The manufacturer must make a binding declaration to the KBA in the system description and in the operating manual of the respective motor vehicle that the technical equipment of Autonomous Vehicles complies with the requirements described in the new Section 1e (2) Sentence 1 StVG. The system description of the motor vehicle must guarantee that the installed parts and systems comply with the legal requirements.

In addition to the technical requirements to be specified in more detail in a legal ordinance, compliance with which leads to the granting of the operating permit for an Autonomous Vehicle, the so-called manufacturer's declaration is necessary. This has to guarantee the legality of the installed technical equipment and parts which represent a solution that has the same effect compared to the solution under previous specifications, for example through further development, but are not yet available in a standard form. This manufacturer's declaration to the KBA is made as part of the application for the granting of the operating permit for an Autonomous Vehicle.

It is not yet clear whether this declaration gives rise to liability under a warranty from a legal point of view.

In addition, the manufacturer must provide training for the persons involved in the operation of the vehicle, covering in parti-

cular the technical functioning of the driving functions and the performance of the tasks of the Technical Supervisor. This is to ensure that the motor vehicle can be operated properly.

Furthermore, as part of its general product monitoring obligation, the manufacturer must immediately notify the KBA and the competent authority under regional law of any manipulations detected on its vehicle and initiate the necessary measures, such as recalls.

No provision on the apportionment of liability in the event of a claim

If one is looking for an overall regulation on the reapportionment of liability in the event of a claim, which takes into account the shift of responsibility from human to machine associated with automation, one will not find it in the new law. What can be said in this respect is that the Technical Supervisor is not liable under the StVG but exclusively according to general standards under the law of torts. In particular, the Technical Supervisor is not subject to the driver's liability under Section 18 StVG due to the fact that his duties clearly differ from those of the vehicle driver. The StVG does not impose any special liability on the manufacturer either; however, it is responsible for ensuring that the vehicle complies with the statutory requirements. In this respect, the manufacturer's liability continues to be based on the Product Liability Act (*Produkthaftungsgesetz*) or the law of torts in conjunction with the Product Safety Act (*Produktsicherheitsgesetz*). The liability of the holder of the vehicle, on the other hand, remains in the form of strict liability for all loss and damage caused by the operation of the vehicle, which means that the holder remains the primary liable party. However, the holder of the vehicle can still try to seek recourse from the manufacturer in the event of a claim.

With regard to liability risks in connection with autonomous driving functions, vehicle manufacturers will be faced in particular with the as yet unresolved question of the effects of artificial intelligence on manufacturer liability in tort. In addition, manufacturers could be obliged to provide software updates as part of their duty to warn under product liability law. Incidentally, the same obligation is likely to arise for sellers of Autonomous Vehicles in connection with the EU Directive on the Sale of Goods and the EU Directive on Digital Content and Digital Services, the national transpositions of which will come into force on 1 January 2022, if they sell these vehicles to consumers as end customers. This will raise the interesting question of liability along the supply chain for obligations to update the consumer.

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Data protection obligations for autonomous driving

Autonomous driving leads to a further increase in the amount of personal data that is processed during vehicle operation. This is because all processed data has a personal reference due to its link to the vehicle identification number (VIN). As holders of vehicles and thus Controllers under data protection law, providers offering new business models in particular must comply with numerous obligations under data protection law. This includes informing passengers and the Technical Supervisor in a transparent manner about the processing of their personal data.

Section 1g, newly inserted into the German Road Traffic Act (StVG), regulates in its paragraphs 1 and 2 the data protection obligation of the holder of the vehicle to store a variety of vehicle and environmental data (including the VIN, position data, information on the activation and deactivation of the autonomous driving function, data on environmental and weather conditions, speed, longitudinal and lateral acceleration). These data captured using different sensors, optically with cameras, with Lidar and radar, sound waves and GPS, which can be categorised as identification data and characteristic data, and which are related to a person due to their connection to the VIN, must be transmitted to the KBA and other authorities responsible under national or regional law if this is necessary to monitor the safe operation of the autonomous vehicle.

Obligations of the holders of the vehicles

Due to the processing of personal data of the Technical Supervisor (natural person who can deactivate the autonomous driving function at any time and enable manoeuvres for the vehicle) by the authorities, providers of new business models related to autonomous mobility must inform their employees who they deploy as Technical Supervisors about the fact that their personal data are transferred to the public authorities in

order not to violate the information obligations of the EU GDPR, which are subject to fines. This can be done by including relevant references in the data protection information for employees, which can be published on the employer's Intranet, for example. General information obligations of mobility providers also exist vis-à-vis their users, not only when creating video recordings of the vehicle interior, but also when adding position data to the profiles of registered users.

If, in addition to the holder of the vehicle, the vehicle manufacturer also has access to the data stored in the vehicle, it may be necessary to conclude a joint controller agreement in accordance with Article 26 EU GDPR.

Obligations of the manufacturer

Manufacturers of motor vehicles with autonomous driving functions must equip them in such a way that it is actually possible for the holder of the vehicle to store the aforementioned data (Section 1g (3)). In designing the vehicle memory, manufacturers are faced with the difficulty of, on the one hand, complying with the general principle of data protection law of limiting storage, and, on the other hand, enabling the holder of the vehicle to fulfil the obligations imposed on him by the new legal provisions to store data - for an unlimited period of time. In this respect, it is questionable to what extent, for example, automatic deletion routines may be provided by the manufacturer at all. Details on the technical design and the location of the storage medium (may the data be stored outside the vehicle?) are not regulated.

It remains to be seen what technical measures manufacturers will have to take to ensure data security and data protection, for example to ensure that the data can be evaluated in the relevant case of a serious accident (robustness). The legislator considers the owner to be the authorised party with regard to the data generated during the operation of an Autonomous Vehicle and requires the manufacturer to make it technically and organisationally possible for the holder of the vehicle to exercise data sovereignty. In addition, the manufacturer shall inform the holder of the vehicle in a concise, clear and easy-to-understand language about possible changes to the privacy and data processing settings, in order to take the principle of "privacy by design" into account.

New powers of the KBA and the competent public authorities

For the purpose of monitoring the safe operation of the autonomous vehicle, the new law creates a legal basis for the KBA to process the identification and characteristic data collected from the holder of the vehicle as well as the personal data of the person appointed as Technical Supervisor, including data on their professional qualifications (Section 1g (4) StVG). Sufficiently qualified employees or special service providers who are likely to establish themselves on the market can be used as Technical Supervisors.

In addition, the KBA is not allowed to make personal data that it has collected from the holder accessible in particular to universities, to be used for traffic-related public benefit purposes and research purposes in the field of digitalisation, automation



and connectivity and for accident research (transmission of the VIN, which represents person-related data, therefore appears to be ruled out).

The authorities responsible for the approval of specified operating areas under national or regional law are equally entitled to process the vehicle data and the data of the person appointed as Technical Supervisor, insofar as this is necessary for checking and monitoring whether the specified operating area is suitable for the operation of the motor vehicle with autonomous driving function (Section 1g (6)).

The storage period for the data processed by the KBA and the authority responsible under regional law covers the entire operating time of the Autonomous Vehicle and, in line with the general limitation period, a further three years, as all claims and proceedings should have been concluded within this period.

Finally, the new law grants third parties a right to information about the stored data if an Autonomous Vehicle is involved in an accident (Section 1g (7)).

Criticism: extensive data processing

According to the explanatory memorandum to the Act, the storage of the data referred to in Section 1g (1) is to be limited only to specific occasions referred to in (2) pursuant to the legally required principles of data minimisation and data economy. The focus is on investigating cases in which the autonomous driving function reaches its limits and/or human intervention becomes necessary (bill, p. 41).

In fact, however, the holder of the vehicle must store the very extensive, sometimes sensitive data (e.g. position data), from which movement profiles can be created, when **operating** the vehicle - i.e. for every journey and not just in the case of certain events. If, for example, providers of autonomous group taxis have the names of the passengers at their disposal because they have to register with their personal data when booking a ride due to the lack of an anonymous usage option, movement profiles can be created which can be processed further by the mobility service provider without any legal basis for other purposes, for example targeted advertising, and sold to third parties. The German Lawyers' Association (Deutscher Anwaltverein) had already, in its statement¹, rightly criticised this considerable encroachment on the right to informational self-determination due to the far-reaching data processing. The possibilities for the holder of the vehicle to determine the settings as described in the new law are limited and do not change the obligation of the holder to transmit ex-

tensive data to the state authorities. Due to the extensive data processing, the DAV demanded the regulation of an obligation to transmit the stored data only in cases of accidents or criminal offences.

The VDA² [German Automotive Industry Association] in turn raised the criticism during the legislative process that the data list contained in Section 1g (1) was too vague (for example, it did not specify the amount of data to be stored). The entire provision contradicts the basic principles of data processing (Art. 5 GDPR), in particular the principle of data economy. It is unclear, for example, when the holder of the vehicle must erase the data in the vehicle memory. While the vehicle manufacturers must provide the holders with the technical option of deleting the personal vehicle data after the retention periods specified by them, the holders of vehicles and providers offering new business models for autonomous driving must develop deletion concepts in order to comply with the legally required principle of storage limitation. Storage for an unlimited period of time would be inadmissible.

Due to many unanswered questions, the legislator has indicated that, after the evaluation of the new rules has been completed after the end of 2023, it will examine whether comprehensive regulations on mobility data should be developed, for example within the framework of a separate "Mobility Data Act" (Bundestag printed paper 19/27439, p. 28).

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¹ Statement of Deutscher Anwaltverein by the Information Law Committee on Section 1g StVG-E and the BMJV's discussion proposal on the regulation of mobility data on Art. 1 of the Act on Autonomous Driving, p. 7 ([available in German here](#)).

² VDA, statement from February 2021 ([available in German here](#)).

Labour law issues in autonomous driving

Autonomous driving is also revolutionising labour law. Innovative ideas are needed to keep up with the rapid pace of development and to keep the legal situation up to date. What approaches are there and where do the first problem areas open up? The following contribution will briefly illustrate this.



What duties can be imposed on the employee as the driver of a vehicle under the employment contract?

For its part, the employer is likely to be obliged to offer the employee instruction in autonomous driving in the form of further training measures. In addition, the employer is authorised to explain the general obligations under road traffic law in more detail and is even required to give the employee more precise instructions regarding driving behaviour, which the employee must implement.

Use of autonomous driving in everyday operations

The actual use of autonomous driving in everyday operations remains to be seen. However, practical questions have already arisen as to how such use is to be planned and run. Both the content, time and place of the activity are part of the employer's own right to issue instructions. Therefore, in addition to the ordering of business trips, the employer is also to have reasonable discretion to order the type of travel, e.g. the dri-

ving of a specific vehicle. The situation will be no different with the use of Autonomous Vehicles, especially if the requirements for this type of locomotion are lower than for driving a passenger car because of the autonomous driving mode. In this respect, autonomous driving appears to be a less intervention-intensive option.

Autonomous driving - working time or new rest period?

Provided that the driving with Autonomous Vehicles has been effectively ordered by the employer, a field representative, for example, could find himself driving inter-regionally. Since, at least assuming Level 4 and Level 5 vehicles are being used, he no longer has to pay attention to the road here, this gives him the opportunity to devote himself to other things. Obviously, the employer's duty to pay remains in force if the employee uses this time, for example, to read his or her e-mails. But what if the employee wants to use the time gained to relax between two appointments, i.e. as a break? As described above, the employee is no longer subject to the traditional road traffic obligations when the vehicle is driven auto-

mously. However, just as in the case of the traditional journey, he is bound to stay in the car and obliged by way of his occupation to reach the place of the next appointment. Thus, there is a certain comparability with a journey by train. Moreover, the employee must intervene if necessary, for example by confirming irregular driving manoeuvres. Therefore, a readiness to work exists due to the fact that his work is tied to the location and that he must start the activity without a separate request of the employer.

This time is therefore also working time and therefore subject to remuneration. To reject such constant readiness would presuppose an extraordinarily advanced Level 5 vehicle in which the employee's activity can be completely ruled out. In this case, as is common today, a distinction can be made, based on the demands placed on the employee, between performing other work tasks during the journey and an interruption of the working time. In addition, fascinating questions arise as to whether and how the Driving Time Regulation (*Lenkzeitverordnung*, LenkzeitVO) must be adapted, in particular whether driving on Level 5 is still "Steering" as used in this regulation.

Applicability of liability provisions under labour law

In order to avoid breaching the duty of control and supervision and to be able to assume that the liability rules under labour law apply, it makes sense to know which activities can be carried on along with the switched-on automatic driving controls. Especially in the area of actual *autonomous* driving, i.e. vehicles that support Levels 4 and 5, the driver is no longer required to monitor the driving operation. This also gives the employee the opportunity to pursue other activities. It is relevant here that the activity causing the loss or damage is "work-related". Often, a contributory cause of an occupational nature will have to be agreed and thus application of liability rules under labour law will come into effect even if the private conduct of the employee caused (contributed to causing) the accident.

However, depending on the standard of fault, a payment by the employee has to be determined as a consequence of liability (one to three gross monthly salaries can be used as a guide). It should also be noted that when driving in autonomous mode, it should be possible to prove by means of a "black box" whether the driver or the vehicle has taken over control. Thus, in case of doubt, it can be proven that the employee was not a driver and is therefore not liable for traffic violations or damages. Some car manufacturers, including Volvo, have already announced they will "assume full liability" for accidents involving their autonomous vehicles.

Co-determination of the works council on the introduction of automated driving

Could the works council, however, prohibit the introduction of autonomous driving based on its right of co-determination pursuant to Section 87 (1) No. 6 of the German Works Constitution Act (*Betriebsverfassungsgesetz*, BetrVG) if there were no systems without a monitoring function? According to what is known at present, it will be possible in the future for all automation systems, regardless of their degree of automation, to collect all relevant data, even if the automatic driving system is not active at the time. In addition, in the event of an accident, various data such as location, driving style, route etc. should be ascertainable by means of a "black box". Insofar as this is equivalent to a tachograph, the scope of application seems to be comparable and co-determination in accordance with Section 87 (1) No. 6 is applicable.

This topic also broadens the view of data protection law issues on the subject.

Is permanent monitoring of the location of the vehicle driven by the employee legitimate?

Autonomous driving is accompanied by extensive data collection when the automatic driving system is switched on. Due to his responsibility under traffic law, the holder of the vehicle is obliged to be able to also have the operation of the automatic driving system checked afterwards. Permanent open monitoring of the whereabouts of the employee's vehicle may therefore be legitimate.

For example, reasons such as increasing efficiency through the optimally coordinated use of company vehicles should be mentioned here.

Autonomous driving as a gateway for employee surveillance?

Questions of data protection similarly arise when, as seen above, permanent monitoring of the Autonomous Vehicle takes place. However, the question arises as to whether the associated monitoring of the employees who are travelling in the vehicle is permissible, e.g. the recording of the route for the short stop at the daycare centre on the way home. It may also be of interest to the employer to record traffic violations committed by the employee. However, according to Section 26 (1) of the German Data Protection Act (*Bundesdatenschutzgesetz*, BDSG), personal data of employees may only

be processed for narrow purposes of the employment relationship. Tracking of the employee as such should therefore only be permissible in exceptional cases.

However, it seems conceivable, especially in occupational groups where frequent journeys are intrinsic, to use the recording technology in such a way that the employees' driving style and compliance with the rules can be evaluated. Here too, however, the technology used has an impact on the scope of application because autonomous driving makes far fewer self-controlled driving manoeuvres possible and therefore fewer accidents are likely.

Employees as Technical Supervisors within the meaning of Section 1d (3) StVG?

It would also be conceivable to assign the employee the newly created task of "Technical Supervisor" of the company-owned Autonomous Vehicles following the amendment of the StVG. However, the Technical Supervisor and the person present during the journey are not one and the same. The term "Technical Supervisor" refers to a responsible person in addition to the person who is present during the journey and who, for example, works centrally at the company's headquarters.

The Technical Supervisor can deactivate the vehicle or enable certain driving manoeuvres. In accordance with Section 1g (4) and (6) StVG, the KBA or the responsible authorities must be informed of the first and last name of the person deployed, as well as proof of their professional qualifications. In addition, the possibility for the holder of the vehicle to use employees as Technical Supervisors is explicitly mentioned. In addition to any emerging business field of third-party control centres, the use of own employees, e.g. in the employer's company, is therefore conceivable. The activity as a Technical Supervisor of company vehicles with autonomous driving functions is likely to fall under the employer's right to issue instructions, but is linked to the duty to ensure appropriate training and proficiency. Depending on the scope and requirements of the monitoring systems used, training or further education may in certain circumstances be necessary to cover this new field of employment. The actual skills required of the employees deployed in this way will also depend on this.

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