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## **WITH NEW INNOVATIVE FEATURES COME NEW RISKS, NEW REGULATION FOR AUTO INDUSTRY**

From July 2022, Regulation (EU) 2019/2144 will require manufacturers to implement new safety measures in cars, including features to warn of driver drowsiness and distraction (e.g., smartphone use), intelligent speed assistance, and use of cameras or sensors to help drivers reverse their vehicles safely.

Whilst advancements in these areas will undoubtedly improve consumer safety in the long run, manufacturers must nevertheless remain alert to the challenges of commercialising products with increasing technical complexity. From a risk assessment perspective, many of the features that are required to be integrated – such as advanced emergency braking and lane keeping assistance – have the potential to affect control of the vehicle, creating potential risk to occupants and pedestrians if a safety defect arises.

Furthermore, the addition of such features will inevitably mean the inclusion of a greater number of third-party vendor components in the end-product (e.g., sensors and related electronics). National authorities may need increasingly detailed explanations from manufacturers in order to understand how such third-party components interact with one another in order to determine whether a safety defect in one component was, or contributed to,

the root cause of the reported issue. To this end, numerous third parties may need to be involved in the investigation once the potential safety defect is better understood.

As investigation of reported issues in these circumstances is likely to prove increasingly complex – and time-consuming. In addition, the initial investigation by the manufacturer may become more challenging. For example, in the UK, the Driver and Vehicle Standards Agency (DVSA) guidance recommends that automakers keep the DVSA updated on the progress of investigation into potential issues, normally providing evidential and statistical information within 28 days. As such deadlines become increasingly challenging to meet - due to the length of the investigation required and/or the need to involve third-party vendors - working with the relevant national authority to manage expectations will be of paramount importance.

## Impact of Brexit on UK vehicle recall reporting

Since leaving the EU and reaching the end of the Brexit transition period, there is no longer a requirement for UK authorities to notify EU authorities, or vice versa, about automotive safety issues via RAPEX. In addition, the UK government's Product Safety Database, which issues weekly reports on unsafe products supplied within the UK market, does not extend to motor vehicles. Whilst it is straightforward to check if a vehicle supplied in the UK is subject to a safety recall via the website of the DVSA – the UK authority responsible for product safety in the automotive sector – it is first necessary to know either the registration number of the vehicle, or the manufacturer, model and year of manufacture. It will be interesting to see in due course whether the DVSA will add additional features on its website to enhance recall communication (e.g. a weekly reports function covering vehicle safety issues following the model of the RAPEX weekly report).

## Opportunities to address safety issues presented by autonomous driving

In 2022, there will be a number of opportunities for the European Commission to consider the implications of autonomous driving capabilities, whether in the context of the proposed Digital Services Act, the proposed Artificial Intelligence Act, or the revision of the General Product Safety Directive (GPSD). In the U.S., there have been reports of increased regulatory and political scrutiny of manufacturer statements about the autonomous driving capabilities offered by certain vehicles. Criticism has focused on concerns that overstated claims by automakers – for example, implying that driver assistance systems offer full autonomy – may give drivers a false sense of security in a vehicle's capabilities. With this comes the risk of potentially altering driver behavior in a way that could put other road users at risk. It will be interesting to see whether the Commission will take its cue from the debate taking place in the U.S. and come forward with its own measures regarding driver adaptation and, if so, which of the legislative proposals listed previously will be used to address the issue.

## Remote vehicle updates

As the connectivity of vehicles continues to improve, component manufacturers will increasingly have the ability to monitor and update software remotely. Whilst this remote monitoring and repair capability is undoubtedly convenient for dealers and consumers from a recall implementation perspective, it can also create more safety issues long after the product was first placed on the market. As the GPSD also requires manufacturers to monitor the safety of their products after they have been placed on the market, and to take "appropriate action" if a safety issue arises, automakers will be watching to see the extent to which increased use of over-the-air updates may impact the cost of their market surveillance.

## Vehicle-to-Vehicle (V2V) and Vehicle-to-Infrastructure (V2I) technology

Innovative Original Equipment Manufacturers (OEMs) are transforming how our vehicles connect with their surroundings. The development of V2V and V2I technologies – which will enable cars to communicate with other cars and surrounding infrastructure such as traffic signs – is expected to play an important role in improving road safety. As vehicles begin to communicate more frequently with the outside world, their functions are also likely to become increasingly dependent upon connectivity. These features are likely to require the use of Wi-Fi and cellular networks that may be subject to coverage, reception, environmental interruption, or similar issues. They are also likely to involve interaction with software located in the Cloud and/or installed on third-party smart devices, which may be subject to potential security vulnerabilities. We anticipate that national authorities will be watching closely to see how technologies such as V2V and V2I can be deployed in vehicle applications without exposing consumers to excessive risk.

Regulators are definitely focused on consumer safety and recognize how vehicles are driven and powered is changing. Manufacturers may have some challenges working to adapt to all the new requirements, but the goal of safer roads is worth working towards.