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" PRODUCT LIABILITY RAMIFICATIONS FOR ERRONEOUS GNSS SIGNALS: AN ALTERNATIVE APPROACH IS POSSIBLE?"

Abstract

The liability regime for erroneous signals provided from Global Navigation Satellite Services (GNSS) and satellite based services more generally is an issue of high topicality. There is already certain legal analysis relating to this matter which in essence suggests the adoption of an international convention which subjects GNSS operators to a strict liability regime with a limitation in the amount and furthermore supplemented by a compensation fund. This paper will address the issues of liability for erroneous satellite signals in the field of GNSS from a different and alternative perspective, namely that of product liability. Interestingly, someone could argue that in case of a GNSS erroneous signal, the GNSS provider could be considered liable for defective product, if the GNSS signals were qualified as a product. In some legal systems, this would lead to strict liability of the provider. In order to reach such a conclusion, it would be necessary to qualify the GNSS signal as a product. Thus, a number of particular questions need further to be explored: Can a satellite signal be qualified as a product or as a service? What would be the legal consequences for GNSS signal providers if satellite signals were qualified as products? Also, what kind of legal provisions from product liability perspective could be invoked? The basic aim of this paper is to give answers in the aforementioned questions. In doing so, the paper will base its analysis on two GNSS systems; the current system of GPS and the forthcoming system of Galileo. After briefly describing the basic elements of these systems and some hypothetical scenarios of damage, the paper will address the issue of whether satellite signals could be considered as products or services. In doing so, analogies from other fields as for instance electricity, will be drawn. Electricity has been recognized as a product in a number of legal systems, within European Union for example. Given the fact that satellite signals share a number of common aspects with electricity, by analogy, one could reach the conclusion that satellite signals could be qualified as products. Thereafter, the legal consequences in case of recognition of satellite signals as a product will be examined by reviewing product liability provisions in selected legal systems, namely USA and the European Union. Finally, some conclusions can be drawn from the aforementioned analysis.