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Contract law and liability

Refining the framework for trading industrial data

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Contract law

- B2B-contracts: scarcely any harmonisation on EU-Level
- Any need? Free choice of jurisdictions – institutional designs
- Different situation for SMEs – unfair contract terms etc.
- Approaches:
 - Extension of new proposal concerning contracts regarding digital content (Dec.2015)
 - Antitrust specifications
 - Need for a general harmonisation of licensing (databases, intell. Property rights etc.)
- Specific notions and/or legal regime required for traditional industrial data?
 - Contract law flexible enough to deal with intangible properties

Liability

- No real harmonisation of Liability issues
 - Product liability directive not applicable
- Contractual liability sufficient? Not applicable to liability issues „in the value chain“
- Allocation of risks due to „false“ industrial data causing damages depends largely upon national tort law
- Typical IT-liability problems, relevant also for industrial data:
 - Causation (multifactor)
 - Proof and evidence
 - In some jurisdictions limits for pecuniary losses