

# Alternative approaches to liability in robotics

Inbots Conference  
18-20 May 2021

*Vagelis Papakonstantinou*

Professor, Faculty of Law and Criminology, Vrije Universiteit Brussel

# Outline

- *Technology-neutral or technology specific regulation?*
- *A risk-based approach for liability regime?*
- *The Product Liability Directive and robotics*



*Functional reasons to provide legal personality to robotics*

## A. Technology-neutral or technology-specific regulation?

**Against:**  
“Technology  
neutrality is  
often a myth”

As correctly identified in WP5 report, “clear clusters of very specific product categories can be easily identified (pharmaceutical and medical devices)”, consequently it is **impossible to regulate in an entirely tech-agnostic manner**

**Pro:** Case-  
specific  
regulation is  
necessary

Case-specific regulation is common, and particularly welcome, in:

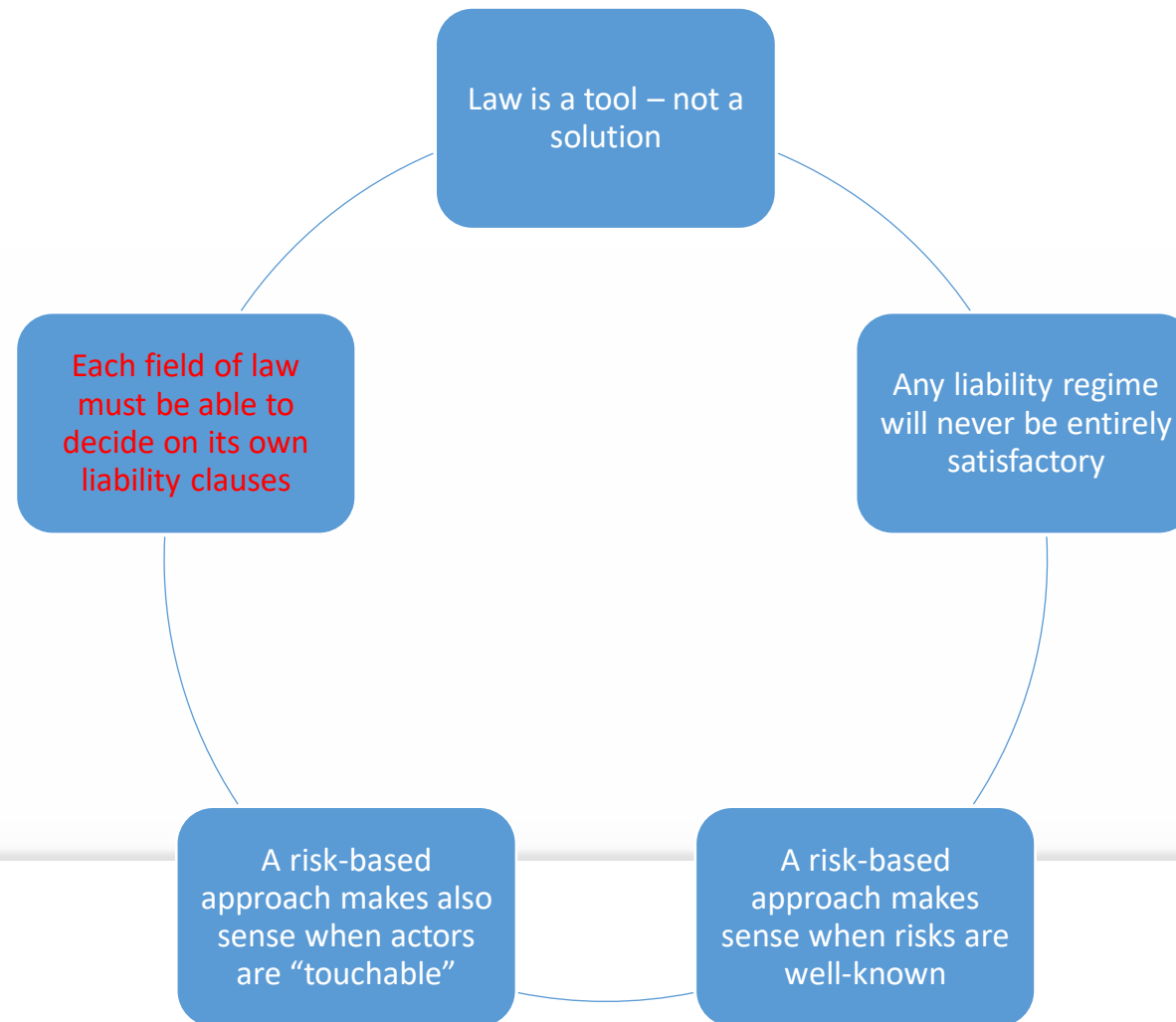
- soft law (eg. standards);
- certification (also when formally ratified);
- semi-mandatory guidance (e.g. DPA opinions).

**Consequently:**  
An open-  
ended  
approach is  
best

A one-size-fit-all approach is untenable, because hard law and soft law needs differ – but both provide “regulation”

**An open-ended approach, whereby civil law would simply be amended to add “digital persons” next to “natural” and “legal” persons would leave it to each field of law to decide**

# A risk-based approach for machine-relevant liability regime?



# Software as a product

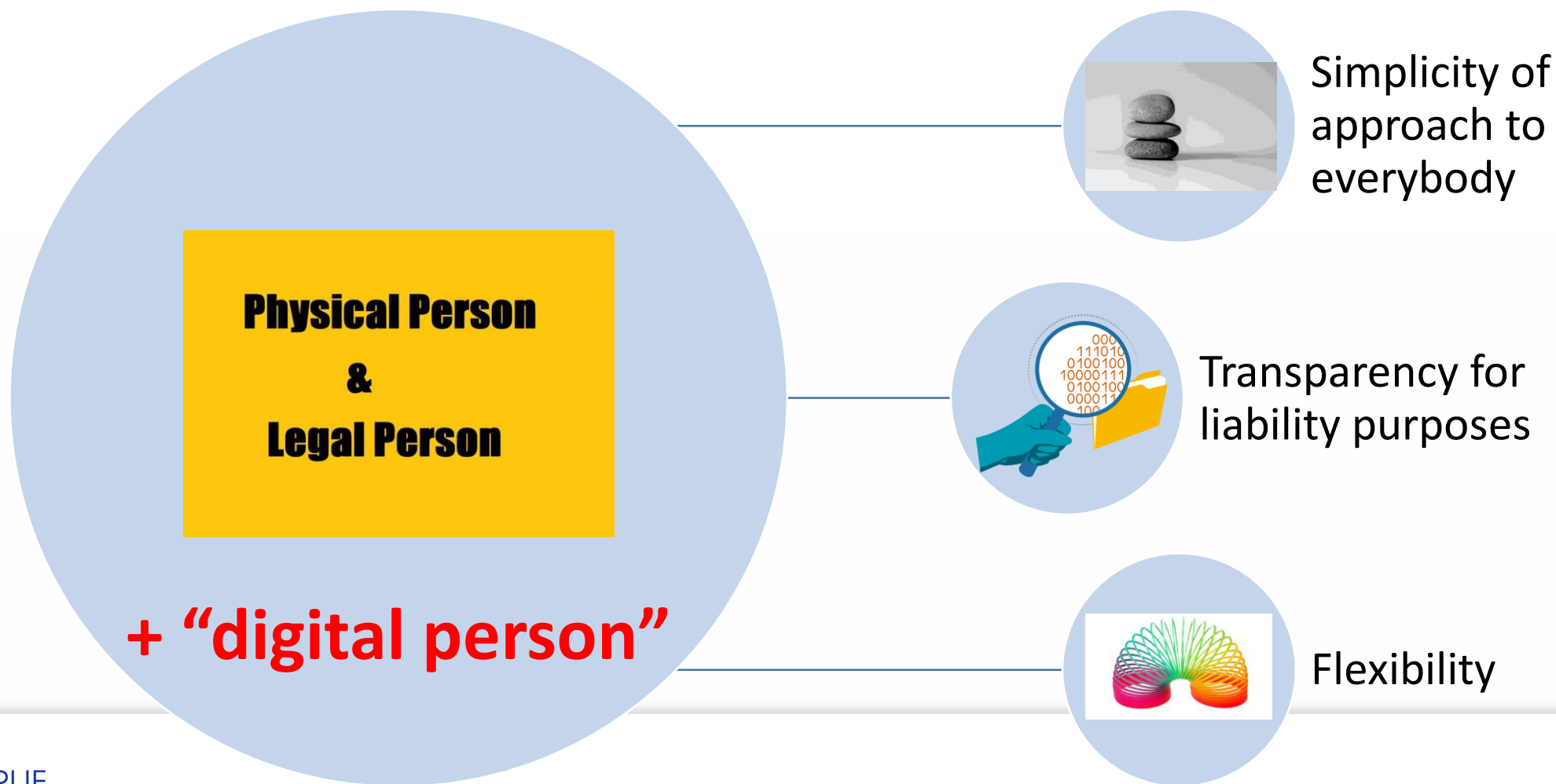
Software underpins  
robotics (and AI)

There are specific  
reasons why until  
today software is not  
considered a  
“product”

EU is not the  
dominant global  
player in the field (≠  
than the GDPR)

While an overhaul of  
software liability  
regime would perhaps  
address AI liability  
concerns, I am not  
optimistic on this  
actually happening

# The way out: Legal personality to AI/robotics



## Other points with regard to WP5

The need for definitions (1.1) is well-identified – and, I believe, stands in the way of any meaningful regulation

“Robots are products” – I entirely agree; This does not stand in the way of legal personality, similar to legal persons

On the critical review of the European Parliament position (5.2): *GDPR mimesis* in play

“Governance structures” and institutional architecture (5.3): I think it is best that AI & robotics have no single supervisory authority

Thank you!

[Evangelos.Papakonstantinou@vub.be](mailto:Evangelos.Papakonstantinou@vub.be)