



What We Are Talking About

ISO 26262 Functional Safety – Road Vehicles

Any Relevance for Warranty Considerations?

Legal requirements and Protect yourself

Defect preventions versus liabilities

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Ad personam:

- Attorney-at-Law with main focus on the automotive supplier industry
- Until 2003 Legal Counsel of an US-based power-train supplier
- Until 2002 Board member of Deutsche Gesellschaft für Qualität e.V. (DGQ)
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- Member of a working group of Clepa,
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2015: Trapped in the world of recalls





A recall case is always a warranty case

**A warranty case is based on a deviation from
agreed upon specifications**

**Including deviations from legal requirements which are
always inherent in agreed upon specifications**

**The root cause has been created somewhere
in the supply chain**

or

in the assembly of the OEM



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Two sides of the same coin: You must pay for it

Warranty



Product Liability



As an example: The goals of ISO 26262 Functional Safety



- To make vehicles safer
- To avoid accidents
- To enhance the controllability
- To justify the trust of the driver

in the item of Functional Safety

The proof that all these goals have been achieved must be provided **retrospectively** when a hazardous event has happened. At that time people have a better knowledge or pretend to have a better knowledge about the reasons that the occurrence of the hazardous event could have been avoided.

And then they ask for responsible peoples and their individual roles.



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The lessons from the Takata – case (or GM)



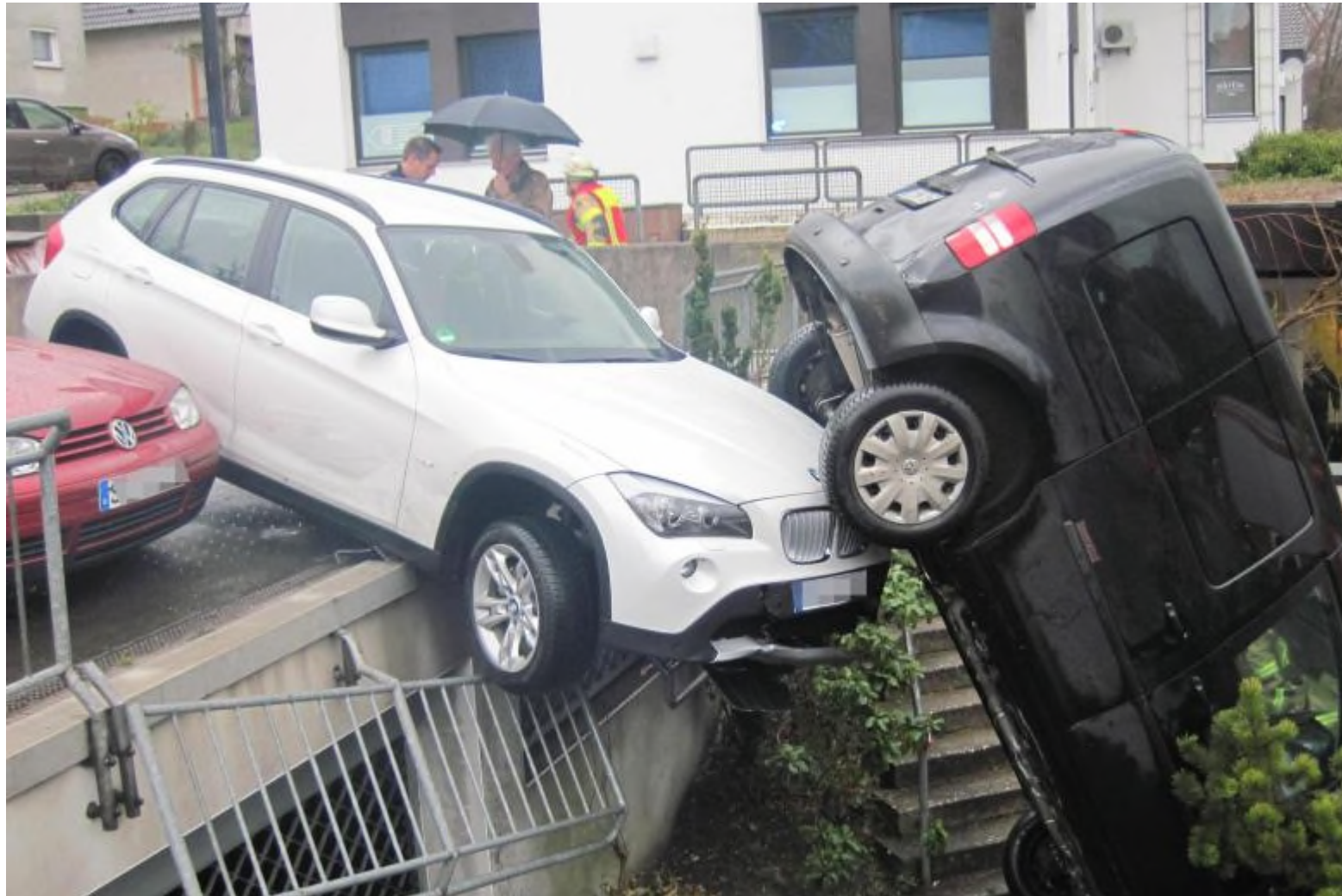
Blue Print of NHTSA* for questions and answers

*National HighwayTraffic Safety Administration



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U.S Transportation Secretary Foxx Announces Order to Preserve Defective Takata Air Bag Inflators for Ongoing Federal Investigation

NHTSA 07-15

Wednesday, February 25, 2015

Contact: Gordon Trowbridge, 202-366-9550, Public.Affairs@dot.gov

WASHINGTON – U.S. Transportation Secretary Anthony Foxx today announced that the National Highway Traffic Safety Administration (NHTSA) issued an order requiring Takata to preserve all air bag inflators removed through the recall process as evidence for both NHTSA’s investigation and private litigation cases. The order also ensures NHTSA’s access to all data from the testing of those removed inflators.

“This department is focused on protecting the American public from these defective air bags and at getting to the bottom of **how they came to be included in millions of vehicles** on U.S. roads,” Foxx said. “This preservation order will help us get the answers we need to accomplish those goals.”



May 24, 2015 - 12:01 am ET

WASHINGTON -- As the newly appointed head of the National Highway Traffic Safety Administration, Mark Rosekind vowed in January to work closely with the auto industry to promote safety — and to hammer companies that stepped out of line.

Five months into his tenure, Rosekind is delivering on that pledge. In a rapid-fire series of actions last week, his agency:

- Summoned Fiat Chrysler's U.S. arm to a July 2 public hearing to review a "pattern" of alleged problems with executing 20 recalls since 2013.
- Exacted an acknowledgment from Takata Corp. of an airbag defect in some 34 million vehicles.
- Extended its extraordinary oversight of General Motors' safety operations for at least another year.



In the case of the Takata action, for example, NHTSA has set in motion a legal process to coordinate the recalls of the defective airbags and the distribution of replacement parts — even though automakers have yet to pinpoint what's causing the inflators to break apart. **That means replacement airbags may manifest the same defect years from now.**

"The way this is happening makes us nervous," said one automaker's government affairs executive, who spoke on the condition of anonymity.

Rosekind acknowledged that risk. "Just to be very direct, that does mean that some people might have to go back for a second [repair] if we find out that the current remedies need to be enhanced," he told reporters here last week.

...

"As we've said repeatedly and emphasized again this week, it's not enough to identify defects," Rosekind said in the news conference.

"To save lives and prevent injuries, defects must be repaired."



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The number of suppliers is decreasing: Higher pressure

Less suppliers – more specific parts and systems

Challenge for competence

Don't believe it is Takata and not you

Takata is everywhere



Are you prepared to answer all these questions?

- **Do you have an “internal NHTSA”?**
- **You need a plan**
- **You need documents**
- **You need responsible peoples**
- **You need a Development Interface Agreement (DIA)**



Instrument of Self protection:

Quality Assurance Agreement

**The Development Interface Agreement is a specific
Quality Assurance Agreement**

It is vital for each Participant in the supply chain

**Due to European comprehensive Safety Culture it must be
consistent under safety perspectives and not cost considerations.**



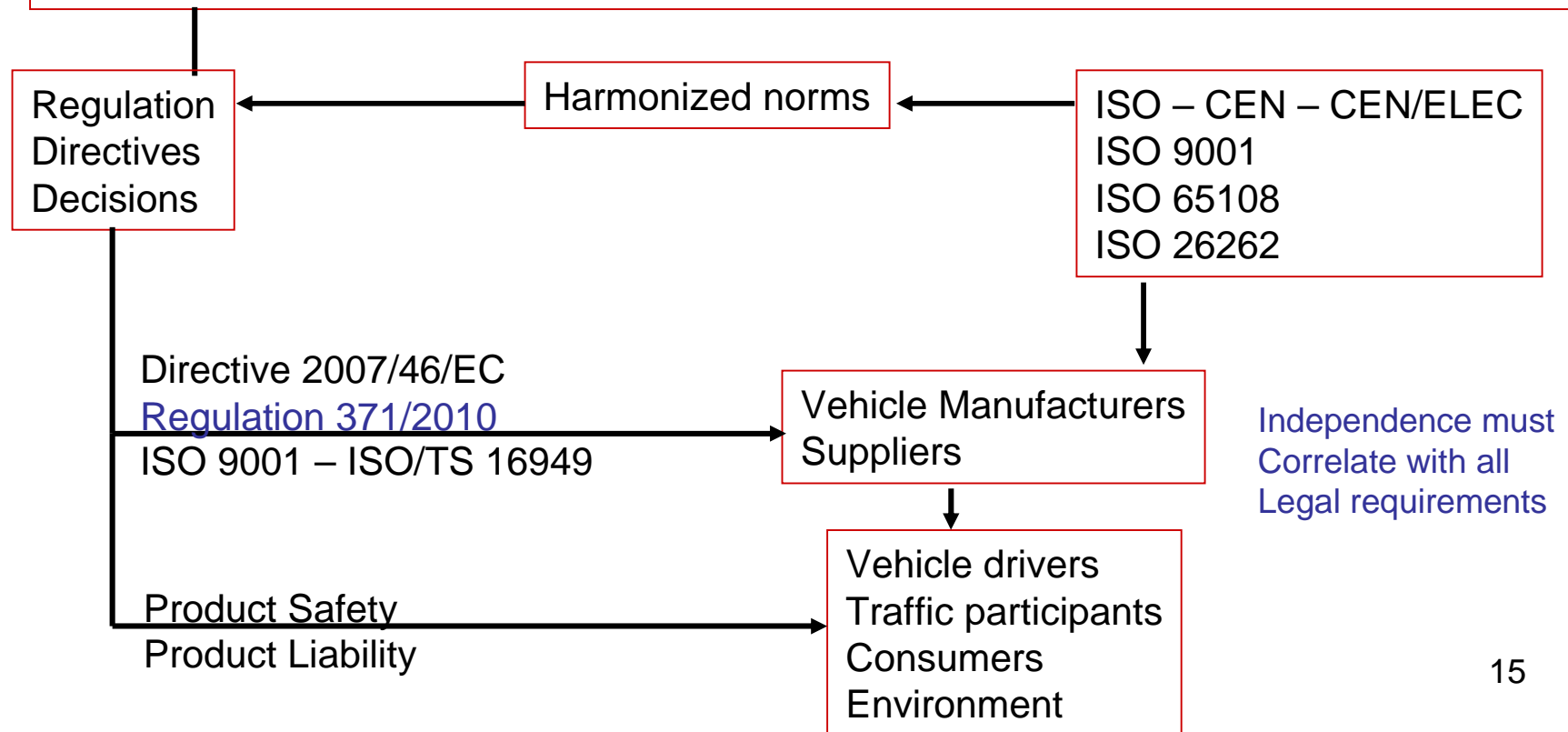
European Safety Culture

European Legislation



Article 169 of the Lisbon Treaty

1. In order to promote the interests of consumers **and to ensure a high level of consumer protection**, the Union shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organize themselves in order to safeguard their interests.





Legal Benchmark:

Newest state of science and technology.

Science is not addressed in the norm.

**Science includes the science of the driver
not „only“ of technologies.**

Best practices of the industry are legally irrelevant.





The OEM has the leadership on the
validations level of the vehicle.

The suppliers have the leadership in the
technology.

Together they have the responsibility for
safety expectations of
the driver and all other traffic participants.

1-136: Unreasonable risk: Risk judged to
be unacceptable in a certain context
according to valid societal moral concepts.



Do you share all relevant information to your supply chain?

Is there the readiness of the OEM to listen to the supplier?

Have both the same integrity of assumptions?

Do they have the congruence of their goals?

Do they have the same language?

Do they have the same competence?

Is there an open communication?



Relation of ISO/TS 16949 and ISO 26262



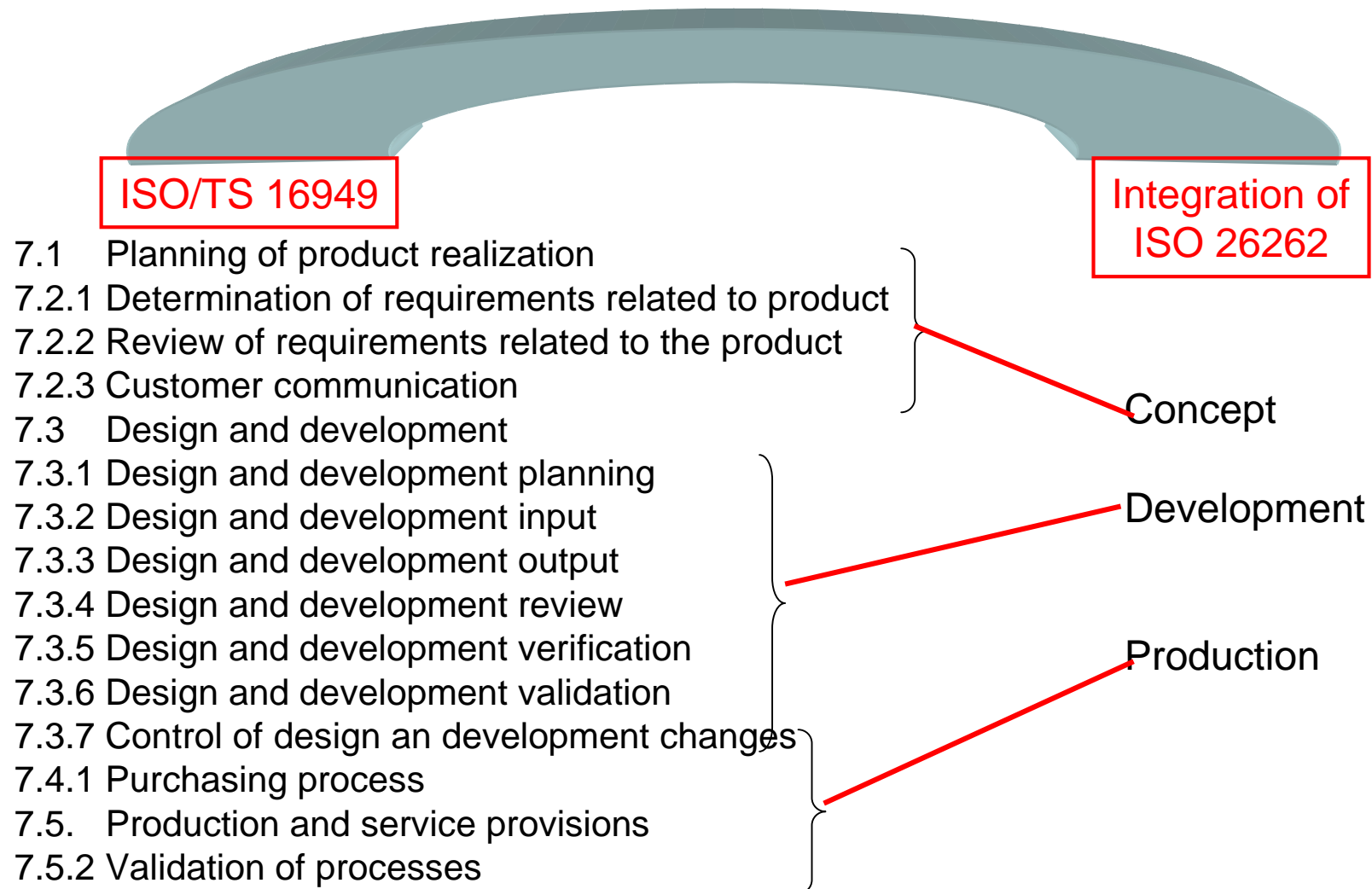
Quality Management System

Processes of ISO 26262 are always processes under the regime of the Certified Quality management system. ISO 26262 does not encompass all all processes of ISO/TS 16949 (2-6.3.1).

ISO/TS 16949 is a Quality management system that ensures the conditions for the manufacturing of products without defects but does not produce such products.



All processes of ISO 26262 must be integrated in system under ISO/TS 16949





Conclusions: **You must take over the controls**

- **Functional Safety requirements are generic requirements over the entire supply chain including the OEM**
- **Warranty cases can be avoided by culture of self protection**
- **A Quality Assurance Agreement is a valid instrument within the supply chain**
- **The Development Interface Agreement (DIA) includes the OEM**



All data required post hazardous events or warranty case must be retraceable in the previous work products.

- **Defect Prevention is provision against warranty costs.**



The European Court of Justice has decided on March 5, 2015:

Under European Product Liability Regulations a product can be deemed defective only because it belongs to a series with a significant failure rate. The product in question must not be identified being defective itself.

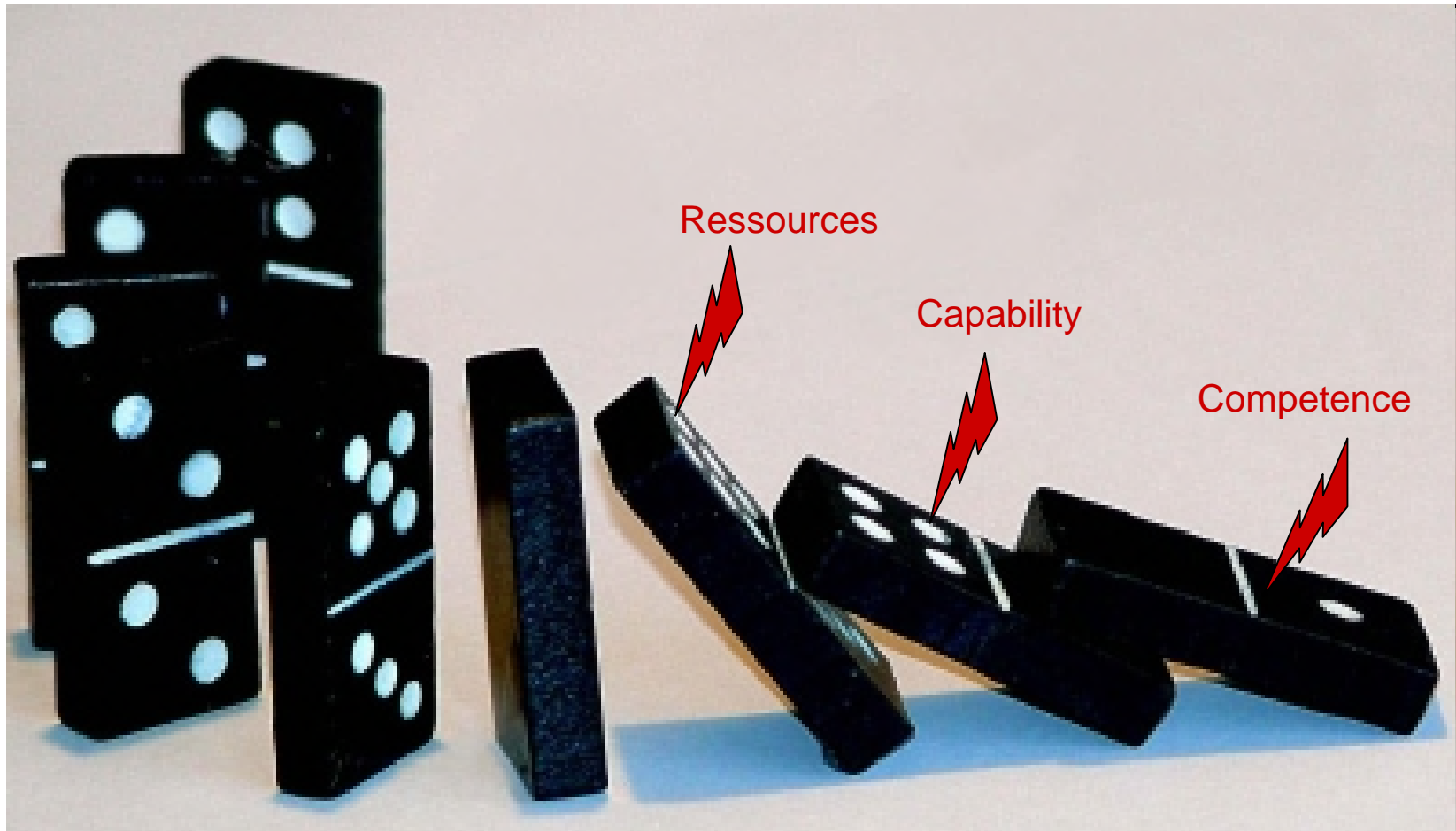


Next:

In a new case the European Court of Justice will decide on the legal relevance of the Quality Management System and the Quality Assurance System and the Conformity Declaration of the Manufacturer.



The Domino - Effect





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