

LIABILITY FOR DAMAGES CAUSED BY ARTIFICIAL INTELLIGENCE—A NEW SPECIAL CASE OF LIABILITY IN WHICH TRADITIONAL RULES PROVE INSUFFICIENT AND SOMETIMES INAPPLICABLE

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ABSTRACT: *The adoption at the European Union level of a regulatory framework for artificial intelligence, robotics, and related technologies, based on ethical principles and legal obligations, represents a new challenge for a paradigm shift in the traditional institution of civil liability.*

Over time, economic and social transformations have led to new interpretations of this liability, in an effort to facilitate redress for injustices caused in society and to better protect victims.

Thus, we have witnessed the decline of subjective liability—which is contingent upon proving the perpetrator’s fault—and the emergence of a new perspective toward strict liability, independent of any fault, based on an analysis of the abnormality of harmful conduct.

The issue of compensable damages has undergone extensive development and diversification, particularly regarding bodily injury and moral damages. Moreover, loss of opportunity has been recognized as “compensable” to the extent that the likelihood of its occurrence is real and serious.

However, establishing liability for damages caused by AI proves to be far more complex, emerging as a new special case of liability in which traditional rules prove to be insufficient and, at times, inapplicable.

This study aims to analyze the specific aspects of this potential civil liability, starting with a review of recent European Union regulations applicable to AI, in order to address the difficult issue of identifying the liable party as AI technology becomes increasingly autonomous.

KEYWORDS: *civil liability, damages caused by advanced and autonomous AI systems, damages.*

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1. INTRODUCTORY REMARKS

The institution of legal liability reflects the evolution of social life as a whole, encompassing its dynamics, constants, and variables. Since time immemorial, legal liability has been at the heart of all social responsibility, embodying the quintessence of the most important rules of conduct. As a form of legal liability, civil liability has been defined as “that relationship of civil obligations in which a person, referred to as the liable party, is obligated to compensate for unjust harm suffered by another person, referred to as the victim or injured party. (Pop, 2020)”

Viewed from an evolutionary perspective, beginning in the final decades of the 19th century, civil liability has faced major challenges in adapting legal norms to the social realities shaped by technical, economic, and social progress, which have led to paradigm shifts and profound transformations. The Industrial Revolution, followed by the scientific and technological revolution and, more recently, the information revolution, have brought about significant changes within the institution of civil liability, aimed at creating a flexible and harmonious legal framework to more effectively protect victims of contractual or non-contractual torts.

Undoubtedly, emerging technologies have evolved at an accelerated pace, which is why it has become necessary to adopt new legal regulations as well as new interpretations of existing ones. Gradually, the age-old concept of fault, the subjective basis of civil liability, regarded as fully consistent with society’s moral principles and the cornerstone of *tort liability* (Marton, 1938), has been nuanced, with objective grounds such as risk, objective guarantee, and equity being invoked, thereby revitalizing the reparatory function of liability while diluting its educational and preventive aspects.

Thus, in addition to personal liability based on fault, the possibility has been recognized of imposing strict liability on the legal custodian of the property that caused the damage or, in certain cases, liability for acts committed by other persons, taking into account the relationship between the perpetrator of the tort and the liable party.

At this point, we find ourselves at an impasse regarding the regulation of civil liability applicable to artificial intelligence (AI), which has been described as “one of the fastest and most profound technological revolutions in history.” (Dutu, 2024) In recent decades, AI has evolved rapidly through the application of intelligent algorithms and autonomous systems, becoming a social reality that influences the lives of each and every one of us.

But are we truly prepared to adapt the traditional institution of civil liability to these new scenarios of liability, given that the responsible party is, in fact, a robot or an automated system that cannot be blamed for culpable conduct, as it is not a human being endowed with thought and will?

The entire legal framework of civil liability appears vulnerable in the face of this reality, with the risk of unjustly bearing the burden of damages caused by AI.

However, a new approach to the concepts of the traditional institution of civil liability is emerging, one designed to regulate and integrate AI, thereby avoiding potential risks to the legitimate rights and interests of individuals. Viewed from this perspective, AI is subject to legal regulation regarding the imposition of special civil liability; however, AI is also a tool used in the application or even the development of the law, as algorithms can be employed in decision-making processes, such as in the judiciary, in politics, and in legal consulting.

2. EUROPEAN UNION REGULATIONS APPLICABLE TO AI

Europe has adopted two major, foundational, and far-reaching legislative acts for EU law—Regulation (EU) 2024/1689 — and another, an instrument of international law, of European origin but with universal scope, adopted within the Council of Europe, the Framework Convention, thereby creating the core of a relevant legal framework with two facets—one internal, that of the Union, and the other external, that of the Council, open to the global legal order, thus generating a model with a leadership role.

2.1. Regulation 1689/June 13, 2024, establishing harmonized rules on artificial intelligence, effective as of August 1, 2024, aimed to create a uniform legal framework across Member States in response to these technological developments. Article 1 specifies the purpose of the Regulation “to improve the functioning of the internal market, to promote the adoption of human-centered and reliable artificial intelligence (AI), “while ensuring a high level of protection of health, safety, and the fundamental rights enshrined in the Charter—including democracy, the rule of law, and the environment—against the harmful effects of AI systems in the Union, and supporting innovation.”

An artificial intelligence system is defined in Article 3(a) as “a machine-based system designed to operate with varying levels of autonomy and capable of exhibiting adaptability after deployment, which, in pursuit of explicit or implicit objectives, infer, from the input data it receives, how to generate outputs such as predictions, content, recommendations, or decisions that may influence physical or virtual environments.” Thus, software developed using AI techniques (listed in the annexes) has a set of human-defined objectives and can generate outputs (e.g., content, predictions, recommendations, or decisions) that influence the environment with which it interacts. Certain computer systems can simulate human cognitive functions—such as reasoning, learning, planning, or creativity. Moreover, they can operate with a certain degree of autonomy (without constant human intervention) in carrying out assigned tasks.

According to Article 3(2), risk is defined as the combination of the probability of harm occurring and the severity of that harm. The applicable legal rules were based on a risk-based approach. AI systems were classified into risk levels (unacceptable, high, limited, minimal), each corresponding to graduated obligations for their manufacturers and users, intended to ensure respect for fundamental rights and user safety.

With regard to high-risk AI systems, pursuant to *Article 14 of the Regulation*, they are designed and developed in such a way that, through the inclusion of appropriate human-machine interface tools, they can be effectively supervised by natural persons during their use. This human supervision is required to prevent or minimize risks to health, safety, or fundamental rights that may arise when a high-risk AI system is used in accordance with its intended purpose or under reasonably foreseeable misuse conditions.

Article 3(3)–(8) of the Regulation defines the “actors” involved in AI:

- *the provider* is a natural or legal person, a public authority, an agency, or another body that develops a general-purpose AI system or AI model, or that commissions the development of a general-purpose AI system or AI model and places it on the market or puts the AI system into service under its own name or trademark, whether for a fee or free of charge;

-“*deployer*” means a natural or legal person, public authority, agency, or other body that uses an AI system under its authority, unless the AI system is used in the course of a personal, non-professional activity;

-*authorized representative* means a natural or legal person located or established in the Union who has received and accepted a written mandate from a provider of an AI system or a general-purpose AI model to exercise and fulfill, respectively, on its behalf, the obligations and procedures established by this Regulation;

-*an importer* is a natural or legal person located or established in the Union who places an AI system on the market bearing the name or trademark of a natural or legal person established in a third country;

-*a distributor* is a natural or legal person in the supply chain, other than the supplier or importer, who makes an AI system available on the Union market;

-*operator means* a supplier, product manufacturer, implementer, authorized representative, importer, or distributor;

According to Article 5 of the Regulation, the following are considered “prohibited practices in the field of AI”:

(a) placing on the market, putting into service, or using an AI system that employs subliminal techniques that cannot be consciously perceived by a person, or techniques that are intentionally manipulative or deceptive, with the aim or effect of significantly distorting the behavior of a person or a group of persons by substantially impairing their ability to make an informed decision, thereby causing them to make a decision they would not otherwise have made, in a manner that causes or is reasonably likely to cause significant harm to that person, another person, or a group of persons;

(b) placing on the market, putting into service, or using an AI system that exploits any of the vulnerabilities of a natural person or a specific group of persons associated with age, a disability, or a specific social or economic situation, with the aim or effect of significantly influencing the behavior of that person or of a person belonging to that group in a way that causes or is reasonably likely to cause significant harm to that person or to another person;

(c) the placing on the market, putting into service, or use of AI systems for the evaluation or classification of natural persons or groups of persons over a specific period of time, based on their social behavior or known, inferred, or predicted personal or personality characteristics, with a social score leading to one or both of the following situations: (i) prejudicial or unfavorable treatment of certain natural persons or groups of persons in social contexts unrelated to the contexts in which the data were originally generated or collected; (ii) prejudicial or unfavorable treatment of certain individuals or groups of individuals that is unjustified or disproportionate in relation to their social behavior or the severity thereof;

(d) the placing on the market, putting into service for this specific purpose, or use of an AI system to carry out risk assessments of natural persons for the purpose of evaluating or predicting the risk of a natural person committing a crime, based solely on the profiling of a natural person or on the evaluation of their personality traits and characteristics;

(e) placing on the market, putting into operation for this specific purpose, or using AI systems that create or expand facial recognition databases by indiscriminately harvesting facial images from the internet or CCTV recordings;

(f) the placing on the market, putting into service for this specific purpose, or use of AI systems to infer a natural person’s emotions in the workplace and in educational

institutions, except where the use of the AI system is intended to be established or placed on the market for medical or safety reasons;

g) the placing on the market, putting into service for this specific purpose, or use of biometric classification systems that individually classify natural persons based on their biometric data to infer or deduce the race, political opinions, trade union membership, religious or philosophical beliefs, sex life, or sexual orientation of those persons;

(h) the use of real-time remote biometric identification systems in public spaces for law enforcement purposes.

2.2. The Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy, and the Rule of Law was adopted in Strasbourg on May 17, 2024, during the annual ministerial meeting of the Committee of Ministers of the Council of Europe, which brings together the foreign ministers of the Council of Europe's 46 member states.

The treaty covers the use of artificial intelligence systems in the public sector—including in companies acting on its behalf—and in the private sector. The convention offers parties two ways to comply with its principles and obligations when regulating the private sector: parties may choose to be directly bound by the relevant provisions of the convention or, alternatively, may take other measures to comply with the treaty's provisions, while fully respecting their international obligations regarding human rights, democracy, and the rule of law. This approach is necessary due to differences in legal systems around the world.

The Council of Europe has adopted the first legally binding international treaty aimed at ensuring respect for human rights, the rule of law, and democratic legal standards in the use of artificial intelligence (AI) systems. The treaty, which is open to non-European countries as well, establishes a legal framework covering the entire lifecycle of artificial intelligence systems and addresses the risks they may pose, while promoting responsible innovation. The Convention adopts a risk-based approach to the design, development, use, and decommissioning of artificial intelligence systems, which entails carefully considering any potential negative consequences of the use of artificial intelligence systems.

2.3. On December 9, 2026, Directive 2853/23.Oct.2024 on liability for defective products will enter into force, repealing Directive 85/374/EEC as of the same date.

The innovative feature of the Directive is the expansion of the scope of “products” for which civil liability may be incurred in the event of a defect, defined in Article 4 as follows:

1. “product” means any movable good, even if it is incorporated into or interconnected with another movable or immovable good; this includes electricity, digital production files, raw materials, and software;

2. “digital production file” means a digital version or digital model of a movable good that contains the functional information necessary to produce a physical item by activating the automatic control of machines or tools;

3. “related service” means a digital service that is integrated into or interconnected with a product in such a way that its absence would prevent the product from performing one or more of its functions;

Article 5 sets forth the conditions for civil liability: “Member States shall ensure that any natural person who suffers damage caused by a defective product is entitled to compensation in accordance with this Directive.”

With regard to compensable damages, Article 6 of the Directive lists the following: (a) death or personal injury, including medically recognized psychological injury; (b) damage to or destruction of any property, except: (i) the defective product itself; (ii) a product damaged due to a defective component that is incorporated into or connected to the product by the manufacturer of that product or under its control; (iii) property used exclusively for professional purposes; (c) the destruction or corruption of data not used for professional purposes.

Paragraph 2 establishes the principle of full compensation for material damages, as well as for non-material damages to the extent that domestic law provides for compensation for such damages.

The defective nature of a product is defined in Article 7 of the Directive as follows: “A product is considered defective when it does not provide the safety that a person is entitled to expect or that is provided for by Union or national law.”

Article 8 establishes that the following economic operators are liable for damages:

- a) the manufacturer of a defective product;
- b) the manufacturer of a defective component, where that component was incorporated into a product under the manufacturer’s control or connected to it and caused the defect in that product, without prejudice to the manufacturer’s liability referred to in point (a);
- c). in the case of a manufacturer of a product or component established outside the Union, and without prejudice to the liability of that manufacturer: (i) the importer of the defective product or component; (ii) the manufacturer’s authorized representative; and (iii) if there is no importer established in the Union or authorized representative, the logistics service provider.

A person who substantially modifies a product outside the manufacturer’s control and subsequently makes it available on the market or puts it into service is also considered a manufacturer.

According to **Article 10**, the burden of proof lies with the claimant, who is obligated to prove the defective nature of the product, the damage suffered, and the causal link between the defect and the damage.

Article 11 establishes grounds for exemption from liability, including the “risk of development” applicable to situations where the objective state of scientific and technical knowledge at the time of the product’s introduction to the market or commissioning, or during the period when the product was under the manufacturer’s control, did not allow for the detection of the defect;

3. CIVIL LIABILITY FOR DAMAGES CAUSED BY IT IN LIGHT OF THE PROVISIONS OF THE CIVIL CODE.

The provisions of the Civil Code govern tort and contractual liability without making any specific reference to cases where damages are caused by AI. This implies that the provisions must be interpreted and adapted to the specific nature of this field of activity, so that there are grounds for imposing an obligation to compensate for the damages caused.

As highlighted in legal literature (Dutu Buzura, 2025), the impact of AI on civil liability manifests as a trend toward objectification and socialization of liability, given that the aim is to hold accountable individuals who have not been negligent in the traditional sense, but who either benefit from AI (producers) or control it (holders). The socialization

of risks through the involvement of insurers or the establishment of guarantee funds proves to be an effective, pragmatic solution.

In analyzing the provisions of the Civil Code applicable to this matter, the following could be relevant: a) liability for the act of the thing, *Art. 1.376 of the Civil Code*, and b) the principal's liability for the act of his agent, *Art. 1.372 of the Civil Code*, to which may be added c) liability for defective products, Law No. 240/2004.

The provisions of *Art. 1.349 of the Civil Code* establish a general obligation to comply with the rules of conduct imposed by law or local custom and not to infringe, through one's actions or inactions, upon the rights or legitimate interests of other persons. The imposition of civil tort liability is contingent upon the responsible person's possession of legal capacity.

Article 1.357 of the Civil Code establishes the rule governing tort liability for one's own acts, setting forth the essential elements: the wrongful act, the damage, fault, and the causal link between the wrongful act and the damage.

However, an IT system is not a human being capable of thought; therefore, the user may be held liable for damages caused under Article 1.357 of the Civil Code only if it is proven that the user is at fault for the system's malfunction.

To the extent that an agent, acting under the control and authority of a principal, operated the AI system and caused the damage, the principal's liability may be invoked pursuant to Article 1.373 of the Civil Code. In all cases, the agent is a human being, since an AI system cannot be considered an employee or worker. Liability for the acts of agents can only be incurred when a natural person interacts with the AI, such as when a test driver operates the company's autonomous vehicle and it injures someone; the company is still liable as the principal for the driver (if the driver is considered an agent). The harm has a mixed cause—human and AI—so liability falls on the company regardless; the real problems arise when the human element is virtually absent from the causal chain.

The provisions of Article 1376 of the Civil Code apply to damages caused by ID systems, given that they are "things" whose functionality is linked to the resulting damage. Thus, the legal guardian must compensate the injured party, the basis for this liability being the assumption of risks and the objective guarantee regarding the abnormal behavior of the "thing."

The discussion could also cover liability for defective products, as regulated by Law No. 240/2004, which transposed Directive 85/374/EEC into Romanian law. As noted above, the new Directive expands the scope of "defective products" to include digital production files and software, meaning that their manufacturer is liable regardless of fault if the defect caused the damage. The manufacturer's liability is independent of fault.

In conclusion, we believe that in view of the implementation of Regulation IA and the new Directive on defective products, it may be necessary to amend certain provisions of the Civil Code regarding strict liability. Thus, the category of things for which liability may be incurred under the conditions of Article 1.376 of the Civil Code could include software and autonomous artificial intelligence systems that are not physically incorporated into a specific object, so that liability for the act of things would also apply to a robot that causes harm by making an erroneous decision.

In addition, the legislature could establish insurance requirements for certain high-risk AI users, a measure that is, in fact, recommended by experts in the field.

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