

AI Liability in EU

Lecturer: Prof. Marija Ampovska, Faculty of Law, Goce Delcev University Stip, North Macedonia

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Current tort regimes and AI in EU

EXISTING LIABILITY REGIMES IN NATIONAL LAWS

- In its assessment of existing liability regimes in the wake of emerging digital technologies, the New Technologies Formation of the Expert Group has concluded that the liability regimes in force in the Member States ensure at least basic protection of victims whose damage is caused by the operation of such new technologies. However, the specific characteristics of these technologies and their applications – including complexity, modification through updates or self-learning during operation, limited predictability, and vulnerability to cybersecurity threats – may make it more difficult to offer these victims a claim for compensation in all cases where this seems justified

LEX SPECIALIS FOR AI

- In 2021, France and Germany were the first countries in the world to establish a legal framework for the deployment (placement) of autonomous vehicles in regular services.
- In Germany the regulation has been legally binding since May 2022. Autonomous fleets can be used in regular operation from 2023 – autonomous operation with remote control will be possible after a transitional period. The Federal Ministry for Digital and Transport is also providing model regions and living labs to promote the development of completely new, digitalized and connected mobility systems.
- The Association of German Transport Companies (VDV) already lists more than 40 autonomous shuttle bus projects in regional and local public transport. However, most of them travel at low speed, on fixed routes and still with safety drivers.
- In France since September 2022, autonomous vehicles up to Level 4 and without drivers on board have been allowed in mixed traffic on public roads – but they do require remote control.

Regulation of AI in EU

- In recent years, much has been going on at the European Union (EU) level regarding the regulation of artificial intelligence (AI).
 1. In March 2018, the Commission set up an Expert Group on Liability and New Technologies, operating in two different formations: the Product Liability Directive formation and the New Technologies formation - Expert Group's report on liability in 2019,
 2. the White Paper on AI in 2020 with the accompanying report on safety and liability and
 3. AI Act (Regulation) adopted in June 2024
 4. the European Commission (EC) published new liability rules for AI in September 2022, one for a directive on adapting non-contractual civil liability rules to artificial intelligence and one for adapting the existing PLD to the challenges of digital technologies. The aim of the first proposal is to complement and modernize the EU liability framework by introducing new rules specific to damages caused by AI as the Commission seeks to introduce a new liability regime to ensure greater legal certainty, thereby enhancing consumer trust in AI and ensuring successful innovations across the EU.
 5. In October 2024 the revised PLD was adopted.

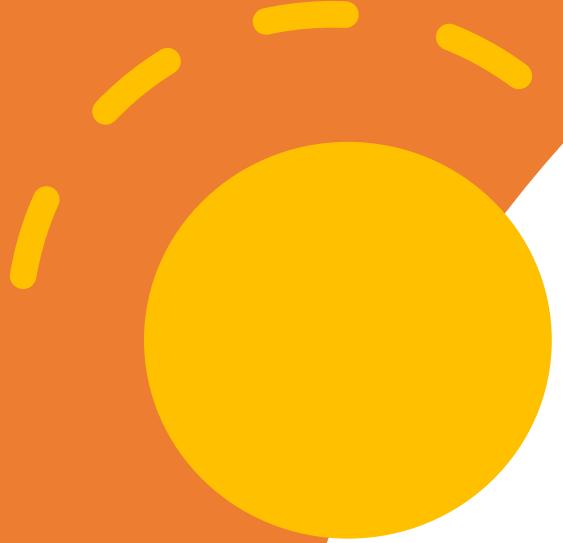
What is applicable at this moment

in the absence of liability rules specifically applicable to damage resulting from the use of emerging digital technologies such as AI, the harmful effects of their operation can be compensated under existing so-called traditional laws on damages in contract and in tort in each Member State. This applies to all fields of application of AI and other emerging digital technologies.

Product liability regime

Directive 85/374/EEC of July 5, 1985, on the approximation of the laws, regulations and administrative provisions of EU Member States concerning liability for defective products (also known as Product Liability Directive, or PLD)

Directive 1999/34/EC of the European Parliament and of the Council of 10 May 1999 amending Council Directive 85/374/EEC on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products



Revised Product Liability Directive

Adopted 2024

AI perspective – product meaning, the term related services, product-oriented paradigm, defective updates/upgrades, disclosure of evidence and presumption of defectiveness and causation

The Core Mandate for National Governments

The primary task for all EU Member States is to **transpose** this Directive into their national legal systems. This means they must pass new national laws or amend existing ones to reflect the rules and principles set out in the rPLD.

- **Deadline for Transposition: 9 December 2026** (Article 22)
- **Date the New Rules Apply to Products: 9 December 2026** (Article 2(1))

By **9 December 2026**, each EU Member State must have national legislation in place that:

- **Transposes** all articles of Directive (EU) 2024/2853.
- **Repeals** national laws that implemented the old 1985 Product Liability Directive.
- **Ensures** that the new rules only apply to products placed on the market **after** 9 December 2026 (the old rules will still apply to products sold before that date).
- **Empowers** their national courts with the new procedural tools for evidence disclosure and the application of the new presumptions.

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Overview of the Artificial Intelligence Act

AI ACT

STATUS

- In December 2023 the Council presidency and the European Parliament's negotiators have reached a provisional agreement on the proposal on harmonised rules on artificial intelligence (AI), the so-called **Artificial Intelligence Act**.
- Following its adoption by the European Parliament and the Council, the AI Act shall enter into force on the twentieth day following its publication in the Official Journal. It will be fully applicable 24 months after entry into force, with a graduated approach
- Adopted 13 June 2024

Importance of the Act

- The regulation aims to ensure that AI systems placed on the European market and used in the EU are safe and respect fundamental rights and EU values. This landmark Act also aims to stimulate investment and innovation on AI in Europe.
- As the first legislative Act of its kind in the world, it can set a global standard for AI regulation in other jurisdictions, just as the GDPR has done, thus promoting the European approach to tech regulation in the world stage.
- It is a Regulation. A regulation is a binding legislative act that applies directly to all member states without the need for national implementing measures. It would be directly applicable in all EU countries.

Risk-based approach

- The AI act is a flagship legislative Act with the potential to foster the development and uptake of safe and trustworthy AI across the EU's single market by both private and public actors. *The main idea is to regulate AI based on the latter's capacity to cause harm to society following a 'risk-based' approach: the higher the risk, the stricter the rules.*
- The regulation intends to ensure a proportionate regulatory framework in relation to its objectives by adopting a risk-based approach that imposes regulatory burdens only when an AI system is likely to pose high risks to fundamental rights and safety.
- Nevertheless, the regulation, anticipating future developments in AI technology, defines software that qualifies as an AI system broadly. As a result, software that is developed to generate outputs such as content, predictions, recommendations, or decisions, using statistical and machine learning approaches, as well as search and optimisation methods, constitutes an AI system. This broad definition would cover a variety of activities undertaken by credit institutions, particularly in relation to *systems intended to establish the credit score of natural persons* (European Central Bank, 2021).



AI Liability Directive Proposal

The AILD applies to non-contractual civil law claims for damage caused by an AI system when such claims are brought under fault-based liability regimes.