



## RESPONSIBILITY OF ARTIFICIAL INTELLIGENCE

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE ADAPTATION OF THE RULES ON NON-CONTRACTUAL LIABILITY TO ARTIFICIAL INTELLIGENCE

### INTRODUCTION

In September 2022 the European Commission published a proposal on adapting the rules on non-contractual civil liability to artificial intelligence, seeking to ensure that those injured by Artificial Intelligence (AI) systems are recognised with the same rights and level of protection as others who are victims of other technologies in the European Union (EU).

The emergence of this Directive was due to the fact that EU institutions realised that issues related to the liabilities of AI

services often led consumers to choose not to use them. This was because they considered such operations risky due to the lower level of protection.

Thus arose the need and impetus on the part of the Commission to create a Directive that would encourage confidence in new technologies, particularly AI services.

### WHY A NEW DIRECTIVE IS NEEDED?

Directive 85/374/EEC (PLD) already existed, covering situations of claims for

compensation for damage caused to a consumer due to a defect in a product purchased through services at EU level, but it only deals with cases of contractual liability where someone is liable or to whom the blame for the damage caused can be attributed.

The problem with applying this Directive to the reality of AI is that it is not clear how products of a technological nature should be classified when it comes to establishing their liability, i.e. who should be liable for damages.

This led to great legal uncertainty, since when it came to AI services, which could even lead to damage of the same nature, there were no EU regulations applicable to the specific case, which made it difficult to compensate the injured.

On the other hand, a legislative fragmentation started to emerge.

As one of the objectives of the EU institutions is to improve the functioning of the internal market, it is counterproductive for Member States, such as Finland and Portugal, to develop national regulations concerning the liability of AI systems.

## ***MOST RELEVANT ARTICLES OF THE DIRECTIVE***

### ***Article 4 - Presumption of Causality***

It results from this that if the victim demonstrates that the occurrence of damage, based on a service provided by an

AI system, was due to the omission of a duty of diligence on the part of the latter, a rebuttable presumption is formed that there is a causal link between the omission of the duty of diligence and the production of the damage.

In this way it will be easier and more accessible to present complaints against AI services, taking into consideration the complexity of this reality.

### ***Article 3 - Disclosure of Evidence***

Through this article, the national Courts are recognised as having the power to order the disclosure of elements of evidence on AI systems, due to the difficulty observed by the victim in obtaining certain data which could serve as means of evidence.

Paragraph 4 of the same article states that it is for the courts, when weighing the interests of both parties concerned, to be guided by criteria of necessity and proportionality.

If on the one hand it is necessary to protect the weaker party - the injured party - it should not be forgotten that the IA services must also ensure the protection of their business secrets and confidential information.

## ***CRITICISM OF THE DIRECTIVE***

Although the need for the creation of this Directive is unanimous, it is worth reflecting on the problems that it may cause.

It may lead to a decrease in innovation since the proposed rules serve as an incentive to facilitate the presentation of de facto liability claims, as well as to an increase in commercial and insurance costs.

The very possibility of being faced with an obligation to give up confidential data, as well as business strategies that may be secret, has a detrimental effect for entities of this nature, particularly for small businesses.

## *FINAL NOTES*

It is therefore necessary to weigh up the need for this Directive against its possibly harmful effects, in particular the importance of Article 3 so that, by means of the decision-making powers conferred on national courts, a fair application of this provision can be achieved.

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