

SUMMARY

The EU's Artificial Intelligence Directive aims to establish a new liability regime to enhance consumer trust in AI and promote innovation. It proposes reforms in national fault-based liability regimes concerning damages caused by AI systems.

****Disclosure of Evidence (Article 3)****

Article 3 focuses on high-risk AI systems, but it's notable that even lower-risk systems can cause harm. The Directive should consider emergent properties in systems currently seen as lower risk, allowing courts to requisition evidence.

****Article 4: Causation and Liability in AI****

The Directive introduces a presumption of causation linking the defendant's fault with damage caused by AI. This presumption arises when the defendant fails to meet a duty of care, it's reasonably likely that this fault influenced the AI's output, and the AI's output or failure to output resulted in damage. Defendants can rebut this presumption.

****Weaknesses of Article 4****

A key weakness in Article 4 is the requirement to prove it was "reasonably likely" that the defendant's fault influenced the AI's output. The term "reasonably likely" includes the concept of "foreseeability," which may not cover emergent AI capabilities. This leads to a question: can AI's unforeseen emergent abilities be accounted for in traditional tort law? Amending the meaning of "reasonably likely" could address this, but would change its traditional legal interpretation. Article 4 does not adequately consider AI's emergent abilities and opacity, making it hard for victims to prove liability, especially in cases involving high-risk AI models.

****Strict Liability in Article 4****

To address weaknesses in Article 4, high-risk AI Models should be categorized into "illegitimate harm" (like autonomous cars) and "legitimate harm" models (like credit scoring). Strict liability should apply to high-risk "illegitimate harm" models, which would address issues of proving liability in cases where the AI's workings are opaque.

****Strengths of the Directive****

The Directive eases the burden of proof for claimants by creating a presumption of causality. It simplifies the process for individuals alleging injury from AI, especially given AI's complex nature. The Directive, however, does not reverse the burden of proof entirely, to avoid exposing AI system providers to high liability risks. Defendants are allowed to rebut the presumption.

****Approaches to Address Tort Liability Shortcomings****

1. ****Insurance and Financial Responsibility****: Introducing compulsory insurance for AI operations and establishing victim compensation funds.
2. ****Clear Legal Definitions****: Defining legal statuses for AI agents, potentially treating them as separate legal entities or as property of owners/operators.
3. ****Special Legal Categories for AI****: Considering a new legal category that acknowledges AI's unique nature, balancing autonomy and liability.

4. **Liability Attribution Models**: Developing models for attributing liability, considering the roles of AI developers, users, operators, and the AI itself. Employing legal versus factual causation in disputes, with a rebuttable presumption against companies.

In summary, while the EU AI Directive introduces a framework for handling AI liability, it falls short in addressing the unique challenges posed by AI's emergent capabilities and complexity. The Directive's strengths lie in easing the burden of proof and creating a presumption of causality. However, its reliance on traditional legal concepts like "reasonably likely" may not adequately capture the unpredictability of AI. Solutions include revising liability attribution models, introducing special legal categories for AI, and considering strict liability for certain high-risk AI applications.