



Council of the  
European Union

Brussels, 25 October 2024  
(OR. en)

14572/24

---

---

**Interinstitutional File:  
2022/0303(COD)**

---

---

**LIMITE**

**JUSTCIV 176  
JAI 1510  
CONSUM 305  
COMPET 1026  
MI 861  
FREMP 395  
CODEC 1950  
TELECOM 300  
CYBER 284  
DATAPROTECT 300**

**NOTE**

---

From: Presidency  
To: Delegations

---

Subject: Proposal for a Directive of the European Parliament and of the Council on adapting non-contractual civil liability rules to artificial intelligence (AI Liability Directive)  
– Discussion paper

---

Delegations will find in the Annex a discussion paper prepared by the Presidency in view of the Working Party on Civil Law Matters (Civil liability) on 11 November 2024.

# **PRESIDENCY DISCUSSION PAPER ON THE AI LIABILITY DIRECTIVE PROPOSAL**

**FOR THE WORKING PARTY ON 11 NOVEMBER 2024 (BRUXELLES)**

In light of the valuable contributions submitted by Member States as well as the discussions held during the previous Working Party meetings on this file, the Presidency has drafted this paper to facilitate further discussions on the file. This document specifically addresses the key aspects of Articles 3 and 4 of the proposal.

**The Presidency invites Member States to share their perspectives and suggestions on the following questions:**

## **ARTICLE 3 (DISCLOSURE OF EVIDENCE AND REBUTTABLE PRESUMPTION OF NON-COMPLIANCE)**

### **1. Pre-trial disclosure of evidence<sup>1</sup>**

- In response to the question of whether a victim who must file multiple lawsuits to identify the liable party can recover all incurred legal costs, most Member States indicated that litigation costs are typically borne by the losing party. Do Member States, in light of the specificities of AI, agree with the additional protection of Article 3 with regard to potential claimants to reduce the claimant's costs by facilitating the identification of the person liable, and to assess the chances for a successful liability claim?
- Some of the comments suggested that the AI Act, particularly the EU Database referred to in Article 71 is an adequate tool for identifying the liable person. Do Member States consider that the AI Act in itself can provide sufficient help in successfully identifying the liable person? Member States are invited to share any additional suggestions they may have.

---

<sup>1</sup> Pursuant to Article 9 of the Product Liability Directive, under certain conditions, the defendant may be required to disclose relevant evidence that is at their disposal. Compared to this, the AILD would provide additional protection by allowing the potential claimant to request the court to oblige the potential defendant to disclose relevant evidence.

## 2. Disclosure of evidence/Trade secrets

- If Member States share the objective set by Article 3, do they agree that the AILD should include similar drafting regarding the right to disclosure of evidence and protection of trade secrets as in the Product Liability Directive?

### ARTICLE 4 (REBUTTABLE PRESUMPTION OF A CAUSAL LINK IN THE CASE OF FAULT)

Most concerns expressed by the Member States regarding Article 4 focused on the complexity of the text and presence of unclear concepts which could lead to difficulties in implementation. In response to these concerns, the Presidency presents a revised draft below which significantly shortens and simplifies the text and structure by removing complex distinctions and several conditions. (The recitals will also need to be revised to reflect these changes.)

As you will see the new draft:

- eliminates the reference to the 'duty of care' in paragraph 1 (a).
- eliminates the reference to 'reasonably likely' in paragraph 1 (b).
- eliminates the condition under paragraph 1 (c). However, the claimant would still be required to prove that the output or failure to produce an output gave rise to the damage (see Recital 22, last sentence).
- eliminates the distinction between high-risk and non-high-risk AI systems and the references to the obligations laid down in the AI Act by deleting paragraphs 2 and 3 of the AILD proposal.
- eliminates the conditions for the rebuttable presumption laid down in paragraphs 4 and 5 of the AILD proposal.
- includes more flexibility for Member States to choose whether to offer the protection for damage caused by a wrongdoer acting in the course of a personal, non-professional activity.

“Article 4

*Rebuttable presumption of a causal link in the case of fault*

1. ~~Subject to the requirements laid down in this Article, national courts shall presume, for the purposes of applying liability rules to a claim for damages, the causal link between the fault of the defendant and the output produced by the AI system or the failure of the AI system to produce an output, where all of the following conditions are met:~~

~~(a) the claimant has demonstrated or the court has presumed pursuant to Article 3(5), the fault of the defendant, or of a person for whose behaviour the defendant is responsible, consisting in the non-compliance with a duty of care laid down in Union or national law directly intended to protect against the damage that occurred; **and**~~

~~(b) it can be considered reasonably likely, based on the circumstances of the case, that the fault has influenced the output produced by the AI system or the failure of the AI system to produce an output.~~

~~(c) the claimant has demonstrated that the output produced by the AI system or the failure of the AI system to produce an output gave rise to the damage.~~

~~2. In the case of a claim for damages against a provider of a high-risk AI system subject to the requirements laid down in chapters 2 and 3 of Title III of [the AI Act] or a person subject to the provider’s obligations pursuant to [Article 24 or Article 28(1) of the AI Act], the condition of paragraph 1 letter (a) shall be met only where the complainant has demonstrated that the provider or, where relevant, the person subject to the provider’s obligations, failed to comply with any of the following requirements laid down in those chapters, taking into account the steps undertaken in and the results of the risk management system pursuant to [Article 9 and Article 16 point (a) of the AI Act]:~~

~~(a) the AI system is a system which makes use of techniques involving the training of models with data and which was not developed on the basis of training, validation and testing data sets that meet the quality criteria referred to in [Article 10(2) to (4) of the AI Act];~~

~~(b) the AI system was not designed and developed in a way that meets the transparency requirements laid down in [Article 13 of the AI Act];~~

~~(c)the AI system was not designed and developed in a way that allows for an effective oversight by natural persons during the period in which the AI system is in use pursuant to [Article 14 of the AI Act];~~

~~(d)the AI system was not designed and developed so as to achieve, in the light of its intended purpose, an appropriate level of accuracy, robustness and cybersecurity pursuant to [Article 15 and Article 16, point (a), of the AI Act]; or~~

~~(e)the necessary corrective actions were not immediately taken to bring the AI system in conformity with the obligations laid down in [Title III, Chapter 2 of the AI Act] or to withdraw or recall the system, as appropriate, pursuant to [Article 16, point (g), and Article 21 of the AI Act].~~

~~3.In the case of a claim for damages against a user of a high-risk AI system subject to the requirements laid down in chapters 2 and 3 of Title III of [the AI Act], the condition of paragraph 1 letter (a) shall be met where the claimant proves that the user:~~

~~(a)did not comply with its obligations to use or monitor the AI system in accordance with the accompanying instructions of use or, where appropriate, suspend or interrupt its use pursuant to [Article 29 of the AI Act]; or~~

~~(b)exposed the AI system to input data under its control which is not relevant in view of the system's intended purpose pursuant to [Article 29(3) of the Act].~~

~~4.In the case of a claim for damages concerning a high-risk AI system, a national court shall not apply the presumption laid down in paragraph 1 where the defendant demonstrates that sufficient evidence and expertise is reasonably accessible for the claimant to prove the causal link mentioned in paragraph 1.~~

~~5.In the case of a claim for damages concerning an AI system that is not a high-risk AI system, the presumption laid down in paragraph 1 shall only apply where the national court considers it excessively difficult for the claimant to prove the causal link mentioned in paragraph 1.~~

~~62.~~ In the case of a claim for damages against a defendant who used the AI system in the course of a personal, non-professional activity, **Member States may provide that** the presumption laid down in paragraph 1 shall **not** apply ~~only where the defendant materially interfered with the conditions of the operation of the AI system or if the defendant was required and able to determine the conditions of operation of the AI system and failed to do so.~~

~~73.~~ The defendant shall have the right to rebut the presumption laid down in paragraph 1.”

---