



**The reform of Civil Liability  
of AI in the EU They say  
that USA designs, China  
produces, and Europe  
regulates...**

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# Introduction: adversarial reflection

- We live in a technological world...
  - Technology and AI are making life better BUT...
  - ZUBOFF, Surveillance capitalism
  - Manfred SPITZER: Digital Dementia
  - Umberto ECO Apocalyptic and integrated
  - Between technophilia and technophobia...
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# USA, China, EU

- USA:
  - has the business leadership. In addition, Technological giants carry out what has come to be called "killer acquisitions"
  - National Artificial Intelligence Initiative Act of 2020
  - Blueprint for an AI Bill of Rights (Making automated systems work for the American people) Project
  - Future AI Law
- China:
  - Made in China 2025
  - New Generation Artificial Intelligence Development Plan (2017)
- EU:
  - European approach, based on the ethical principles
  - Regulations
    - European Data Protection Regulation
    - Digital Market Act (DMA)
    - Digital Services Act (DSA)
    - Proposal for an Artificial Intelligence Act (AIA)

# Ethical principles of AI

- "The ethical dimension of AI is neither a luxury nor an accessory: it must be an integral part of the development of AI.
- Isaac ASIMOV: it cannot harm people
- Hans JONAS The Principle of Responsibility. Essay of an ethics for technological civilization: "Act in such a way that the effects of your action are compatible with the permanence of an authentic human life on Earth"
- "Ethical guidelines for trustworthy AI" by the High-Level Expert Group on Artificial Intelligence:
  - AI must be robust, legal and ethical
  - "people-centered and grounded in a commitment to use them in the service of humanity and the common good, with the aim of improving the well-being and freedom of human beings"

# Why is Civil Liability essential?



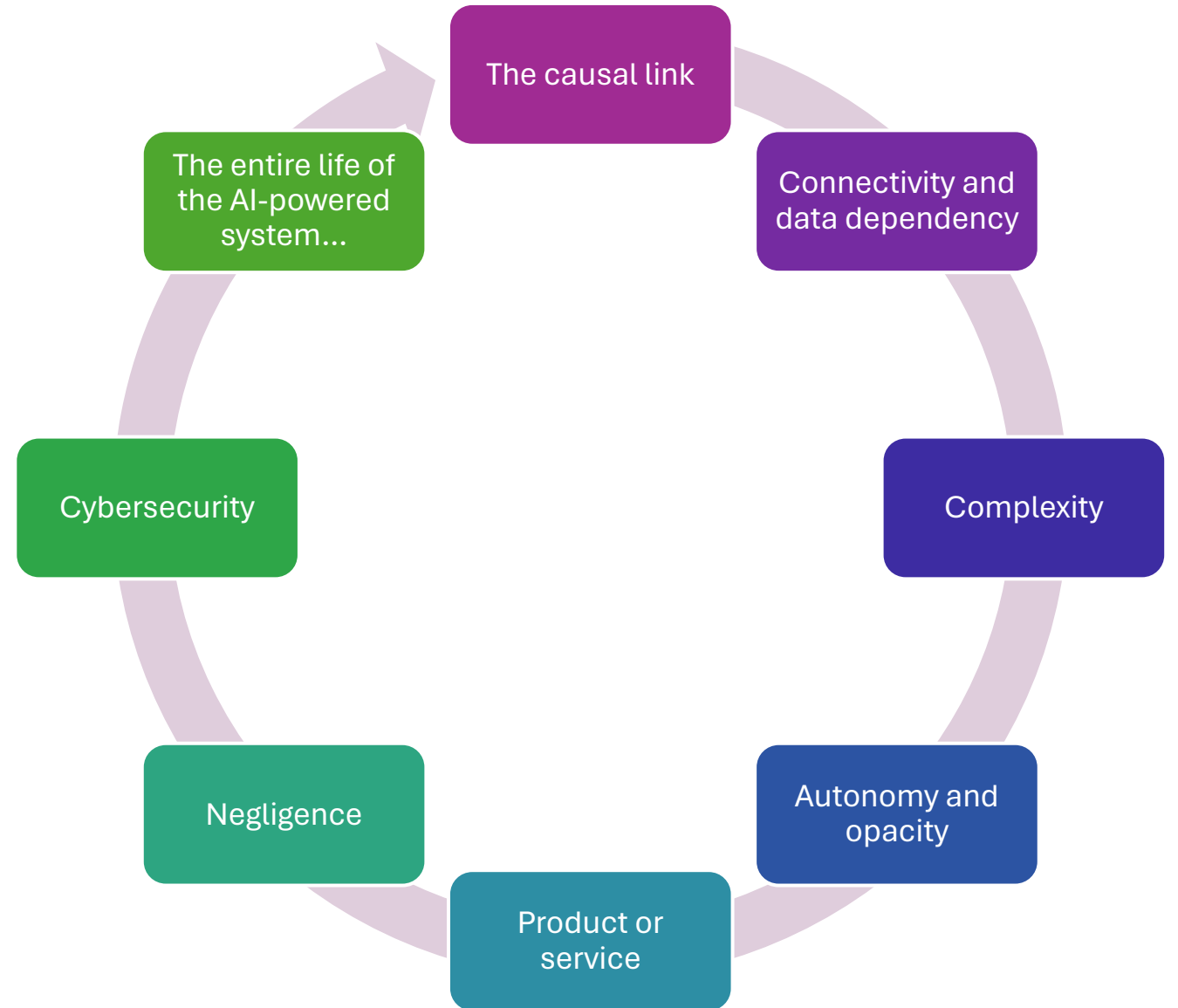
## CL gives confidence

- "Civil liability rules have a dual function in our society: on the one hand, they ensure that victims of harm caused by others receive compensation and, on the other hand, they provide financial incentives for the responsible party not to cause such harm."
- full reparation
- to promote the widespread introduction of trustworthy AI
- The normative disintegration of AI CL would be a legal mistake with economic consequences

## CL and safety (difficulties)

- connectivity
- autonomy
- ignorance of the risks
- dependence on data
- opacity
- complexity
- computer programs, which are also modifiable, even substantially, through updates

The Civil Liability we have is not enough for AI (The checklist of what we can ask to European legislation)



# ProDirLDP

- Product
  - Recital 12: "Products in the digital age can be tangible or intangible. Software such as operating systems, microprograms, computer programs, applications or AI systems are becoming more common on the market and play an increasingly important role for product safety. Software can be placed on the market as stand-alone products and can subsequently be integrated into other products as components, and can cause damage by its execution. Therefore, in the interests of legal certainty, it should be clarified that software is a product for the purposes of applying strict liability, irrespective of its mode of supply or use, and therefore irrespective of whether the software is stored on a device or accessed through cloud technologies'
- Damages
- Plaintiff: "any natural person who suffers harm" (Art. 5)
- Defendant

# ProDirLDP

- defect
  - A product is defective "when it does not offer the safety that the general public is entitled to expect, taking into account all the circumstances" and some of the circumstances to be taken into consideration are indicated (Art. 6.1):
    - « a) the presentation of the product, including instructions for installation, use and maintenance;
    - b) reasonably foreseeable and misuse of the product;
    - c) the effect on the product of the possibility of continuing to learn after deployment;
    - d) the effect on the product of other products which can reasonably be expected to be used in conjunction with the product;
    - e) the time when the device was placed on the market or put into service or, if the manufacturer retains control over the device after that time, the time when the device left the manufacturer's control;
    - f) product security requirements, including security-relevant cybersecurity requirements;
    - g) any intervention by a regulatory authority or economic operator referred to in Article 7 in relation to product safety;
    - h) the specific expectations of the end-users for whom the product is intended».
  - In any case "a better product, including updates or improvements to a product, has already been placed on the market or put into service, or is subsequently placed on the market or put into service" (Art. 6.2)
- Consumer Expectation Test
- The nature of the Proposal is clearly objective in that the claimant must prove "the defective character of the product, the damage suffered and the causal link between the defect and the damage" (Art. 9.1). Still further, there are cases of presumption of defectiveness (Art. 9.2) and presumption of causal link (Art. 9.3).
- Article 10 establishes exemptions from liability that do not differ much from the existing ones



## ProDirNonContrLiability - AI

- It does not set up a CL system and in fact in Article 5 states that in the evaluation of the Directive it should be considered whether it is appropriate to implement an objective CL system without fault
- Article 1 states that the directive lays down rules on:
  - "(a) the disclosure of evidence relating to high-risk artificial intelligence (AI) systems in order to enable claimants to substantiate their claims for subjective (fault-based) tort for damages;
  - '(b) the burden of proof in the case of subjective (fault-based) tort claims brought before national courts for damages caused by AI-systems».

# A single urgent conclusion



## 01

The European regulations on AI CL need to be approved. And it is necessary that:

- it is European, because national regulations in this area are totally meaningless and can lead to fragmentation of the single market.
- it has the so-called "European approach", based on ethical principles, **because** an AI that is not governed by Ethics can pose a serious risk to the system in which we live, to the Europe that is an "area of freedom, security and justice".

## 02

To finish, is there going to be a huge wave of claims involving AI and algorithms? For example, Instagram?