A CRITICAL ANALYSES OF CIVIL LIABILITY MODELS FOR AI-ENABLED PLATFORMS IN EUROPEAN UNION

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ABSTRACT

Artificial intelligence technologies become an integral part of online platforms via recommender systems, automated content moderation, ranking, profiling, generation and other decision support or decision-making technologies. Such technologies may produce or exacerbate legally actionable harm while making it difficult to establish defects, faults and causation in traditional ways. This paper provides a critical analysis of the civil-liability framework for AI-powered platforms emerging in the European Union, in particular considering the interplay between the Artificial Intelligence Act (AI Act), the Digital Services Act (DSA), the 2024 Product Liability Directive (PLD) and the withdrawn Artificial Intelligence Liability Directive (AILD). Using doctrinal, comparative and policy analysis, this study explores how ex-ante risk regulation works in tandem with ex-post compensation, whether this interaction is adequate to account for platform-specific harms, evidentiary asymmetries and multi-actor responsibility. It appears that the EU has transitioned from a largely technology-neutral liability regime to a layered approach where AI safety responsibilities, due diligence of the platform and product liability can complement each other. At the same time, there are some gaps regarding design-based harm, recommendation, autonomy, non-material damage and multi-actor involvement. The suggested model will be based on liability for risks sensitive to duties, adequate access to technical evidence, specific presumptions, and responsibility allocation without turning each damage caused by artificial intelligence into strict liability.

Keywords: Artificial Intelligence; Civil Liability; AI Liability Directive; Product Liability; Digital Services Act; AI Act; Platform Liability; Algorithmic Harm etc.

Introduction

Artificial intelligence has changed the factual and legal framework of digital platforms. No longer do social networks, search services, marketplaces, and content-sharing platforms only function as storage for information provided by their users. They are designed based on algorithmic ranking, recommendations, personalization, automation of moderation, advertising optimization, identification and fraud detection, as well as generative and agentic capacities. It is not just the fact

that artificial intelligence presents new technological dangers that makes the difference from a civil-liability perspective. Artificial intelligence may affect the way risk is distributed within the platform ecosystem in a way that makes traditional civil-liability analysis problematic. A harmful output can be produced because of a certain dataset, an algorithm design, a deployment configuration, human instructions, regular updates, recommendation optimization, insufficient monitoring, or the interplay of some of those elements.

The European Union's legal response takes place within a multilayered regulatory framework instead of a dedicated liability statute. While the AI Act provides for harmonized rules dealing primarily with safety and fundamental-rights risks of AI systems, the DSA regulates intermediary services, and places differentiated due diligence obligations, including systemic-risk assessments for very large online platforms and search engines. Under the 2024 PLD, the concept of the product is broadened to include software products such as AI systems, maintaining the liability regime without fault in case of injury sustained due to the presence of defects in the product. The proposed AILD was designed to enhance this liability regime by adapting non-contractual fault-based liability through the use of evidence and rebuttable presumption, but this proposal was withdrawn by the European Commission on 6 October 2025 [1]-[4].

The withdrawal of the AILD does not reduce its significance. The evidence and causation procedures included in the proposal expose the evidentiary challenge underlying AI liability, that the victim normally does not have control over the model, training data, logs, risk assessment and design documentation necessary for proving fault and causation. The revised PLD helps to address this evidentiary gap by creating disclosure, presumption and defectiveness assessment requirements, whereas the AI Act and the DSA produce evidentiary material in the form of compliance records [2]-[4]. Thus, this framework needs to be analysed as an entire liability ecosystem, rather than a set of different legal acts.

This article concerns AI-driven platforms in the European Union. The concept ‘platform’ is meant functionally, i.e., any online service using AI to curate, recommend, rank, moderate, advertise, profile, or generally organize any information or interactions. Thus, the scope of the inquiry is more limited than that of the research of liability concerning AI and broader than the issue of product liability only.

The research question in this case is whether the EU civil liability regime will be able to deliver compensation without making liability disconnected from defects, faults, or causality at all. It demands answering four questions. First, how does the interaction take place between the AI Act, DSA, and PLD in relation to ex-ante and ex-post responsibility? Second, to what extent can software and AI be considered as products for applying the no-fault liability principle? Third, how can one address evidentiary asymmetry and causal uncertainty in the absence of AILD? Fourth, which of the models of liability is consistent with platform liability that is not caused by an AI product itself but rather by

interaction between the AI, the platform, and governance?

In the article, it is suggested that the EU is creating a mixed liability approach rather than one liability approach. Strict liability approach based on product-based liability law is possible where an AI system, which is considered defective, falls under the PLD, and the fault-based national tort law is applicable for damages which fall outside the PLD. There is regulatory standards and documentation in AI Act and DSA, but a regulatory breach does not necessarily translate into liability.

Related Work

The discussion in the academic literature on AI liability in Europe was initiated by the existence of compensation gap since fault-based tort law may not be easily applicable to complex, obscure, adaptive, and multi-actor AI systems. Whittam suggested that the existing EU legal framework before the reform did not sufficiently guarantee compensation for the harm caused by AI and discussed the amendment of product liability laws and the sector-specific approach [5]. Subsequently, Buiten suggested the definition of product defects in autonomous AI and pointed out the necessity of distribution of responsibilities depending on control and awareness of risks [6]. After the Commission's 2022 proposal, studies began to focus on the interplay between the new AILD and PLD revisions. Rimkute analyzed their scope of application, procedural methods, disclosure requirements, presumptions, and product defect concepts [7]. Ziosi et al. stressed the existence of "information gap" besides the "liability gap," noting that despite the formal right to evidence, the claimant may face difficulties with accessing and understanding technical information [8]. Also, some studies criticized the new proposed directives for failing to address the unique risks associated with AI and called for better combining the elements of strict liability and rebuttable presumptions [9], [10].

Liability is also increasingly linked to AI governance and platform regulation in literature. The DSA considers recommender algorithms and other such systems to be important in the context of assessing systemic risk posed by very large online platforms and search engines [3]. A recent study also highlights how platform architecture may violate the neutrality assumption about intermediaries due to algorithmic recommendation systems [11].

However, the present paper draws upon these research strands differently as it is primarily concerned with the legal framework following the withdrawal of the proposal. Naturally, earlier works could not but focus on analyzing the AILD as a proposal. The situation in October 2025 is different: while the proposal for the AILD has been withdrawn, the 2024 PLD has been adopted and the AI Act and the DSA have come into force according to their implementation timelines.

Table 1. Comparison of principal related research and the contribution of the present study.

Study / Source	Principal focus	Liability model or issue	Relevance to present study

Whittam (2022) [5]	EU AI compensation gap	Reform of PLD; sector-specific strict liability	Establishes pre-reform compensation problem
Buiten (2024) [6]	Defective AI and product liability	Definition of defect; control and risk awareness	Clarifies defect analysis for autonomous AI
Rimkutė (2024) [7]	AILD and revised PLD	Disclosure, presumptions, scope and defect	Provides comparative baseline for Commission proposals
Ziosi et al. (2023) [8]	AILD information gap	Access to evidence and intelligibility of disclosure	Highlights evidentiary asymmetry
Veale and Borgesius (2023) [9]	European AI liability proposals	Strict liability and presumptions	Tests adequacy of hybrid liability options
Kohl (2024) [11]	Platform recommender systems	Algorithmic amplification and platform responsibility	Connects platform architecture to regulatory risk
Present study	Post-2025 EU architecture	PLD + AI Act + DSA + national tort law	Reassesses civil liability after AILD withdrawal

Key Contribution

Four main contributions are made by the article. Firstly, it brings the civil liability analysis to account for the withdrawal by distinguishing enacted legislation from the AILD proposal. The importance of the contribution lies in the fact that it will be wrong to assume that the AILD is still pending since this does not properly reflect the EU legal regime at hand.

Secondly, it elaborates the platform-specific approach. AI platform harm may occur due to an AI system, due to a platform design, or due to their interaction. In this regard, the article differentiates between product defect, platform due diligence, and ordinary fault instead of treating every case of AI injury as a matter of product liability.

Finally, it considers evidence as a substantive element of effective civil liability. In cases of AI litigation, logs, models, risks assessment, testing, and information about updates can be requested. In this context, it links the evidentiary elements of the PLD with those of the AI Act and the DSA.

Fourth, the paper suggests the use of calibrated liability matrix in place of one-size-fits-all strict liability. This suggested framework is based on a distinction among various criteria including the origin of damage, level of control, regulatory risk classification, technical evidence, and linkages between defect, fault, and causality.

Table 2. Key analytical contributions of the article.

Contribution dimension	Existing approach	Present article's contribution
Temporal/legal status	AILD often treated as an ongoing legislative proposal	Treats AILD as withdrawn legislative history and analyses enacted post-2025 architecture
Platform focus	Predominantly AI systems or products	Connects AI system, platform architecture and intermediary functions
Evidence	Disclosure discussed mainly as procedural reform	Links litigation evidence to AI Act/DSA documentation and PLD disclosure mechanisms
Liability allocation	Strict vs fault-based models considered separately	Calibrated model based on control, defect, risk and evidentiary conditions
Redress	Compensation gap framed generally	Identifies platform-specific causation and multi-actor allocation problems

Method, Experiments and Results

Research Design and Method

The research methodology chosen herein is doctrinal and comparative law study supplemented by structured policy analysis. Since this is a case of civil liability rather than a test of technological capabilities, 'experiments' mean theoretical analysis of different cases of harm caused by platforms in light of relevant legal regulations. The methodology includes four elements: (i) analysis of doctrinal issues in EU legislation; (ii) analysis of the legislative history of AILD and PLD; (iii) comparative analysis of liability systems; and (iv) applying the findings to selected AI-based platforms' scenarios.

Primary legal sources include Regulation (EU) 2024/1689 (AI Act), Regulation (EU) 2022/2065 (DSA), Directive (EU) 2024/2853 (PLD), Regulation (EC) No 864/2007 (Rome II), and the Commission's withdrawn AILD proposal COM (2022) 496 [1]-[4]. Literature is referred to in order to find different interpretations of legal provisions and raise normative questions.

Three factors have been used to assess each liability pathway: (a) substance of the grounds for liability; (b) evidential standard of proof required; and (c) the causative link between the platform's actions, the AI, and the harm. The resultant matrix is then applied to four common types of platform harms:

harmful recommendation or amplification; automated moderation or ranking; generative AI output incorporated into a platform; and unlawful decision-making.

Table 3. Research methodology and analytical stages.

Research stage	Material analysed	Analytical question	Output
Stage 1	AI Act, DSA, PLD, Rome II	What obligations and liability pathways exist?	Doctrinal map
Stage 2	AILD proposal and withdrawal record	What was proposed and what remains after withdrawal?	Legislative-status analysis
Stage 3	Academic literature	Where are the principal doctrinal disagreements?	Related-work synthesis
Stage 4	Hypothetical platform scenarios	How do liability pathways operate in practice?	Scenario matrix
Stage 5	Cross-instrument comparison	Do regulation and compensation reinforce each other?	Integrated liability model

EU Civil-Liability Architecture for AI-Enabled Platforms

EU law must be seen as a multi-layered structure. Thus, the AI Act is a regulation of AI systems and AI models but not a general cause of action for an individual damaged by AI. The DSA regulates intermediary services and provides for liability exemptions subject to due diligence. The PLD provides for a path for no-fault product liability provided that conditions laid down in it are satisfied. Tort law remains available as a source of fault-based causes of action, subject to conflict-of-law provisions of EU law and other relevant Union legislation [2]-[4].

Artificial Intelligence and Civil Liability

The AI Act lays down a risk-based regulatory regime. Providers of high-risk AI systems shall have to comply with requirements on risk management, data governance, technical documentation, record-keeping, transparency, human oversight, accuracy, robustness and cybersecurity. These requirements do not automatically create a private cause of action. What is important about them in the context of civil liability is the evidential and normative environment they create. However, the legal significance of this evidence is to be determined according to the civil liability rules.

The relation of the AI Act to platform liability is especially significant in cases where the platform itself

is an AI provider and/or deployer. A social media network employing AI technology for moderation purposes could be subject to more than one type of liability because of the way the technology works. In this case, there could be a variety of duties involved at different stages of the value chain. Therefore, it becomes important to establish who is the actor in question.

Compliance with the AI Act should consequently be seen as being probative but not dispositive. In those cases where the law of the country allows regulators to take part in determining whether there is civil fault, a breach of the obligations established by the AI Act may be considered relevant for negligence claims. On the other hand, compliance with the AI Act does not mean the absence of liability when the product is still defective under the PLD.

2. Digital Services Act and Platform Liability

The DSA is especially important for AI-enabled platforms since it acknowledges that algorithmic systems, recommender systems, and advertising systems can constitute sources of systemic risks. The DSA does not alter the conditional exemption from hosting liability under Article 6, but introduces additional due diligence duties and systemic risks duties for very large online platforms and search engines [3].

It specifically obliges the relevant systemic risk assessment to cover the design and operation of the algorithmic systems including recommender systems.

This establishes an important conceptual distinction between the liability for the user-generated content and the responsibility of the platform in respect of its own service architecture.

The DSA does not transform every harm that is exacerbated by algorithms into damage. Nonetheless, when a case relates to the architecture of the platform, risks associated with it, their assessment, management and handling of risks, the DSA can be relevant to the factual and regulatory context of the national civil liability rules.

3. Product Liability Directive 2024/2853

In this respect, the 2024 PLD is the most obvious EU legislation that links AI to no-fault civil liability. This Directive refers to software explicitly as products, which include AI systems [4]. Furthermore, the Directive acknowledges that software can be provided separately, over networks or cloud computing, and by software-as-a-service method. In view of the provisions of the AI Act, AI systems' providers can be manufacturers when the legal requirements are met [4].

Such development has a structuring meaning. According to the product liability principle, the claimant has to prove fault of the manufacturer in the form of negligence as a separate element. Instead, the claimant needs to prove damage, defectiveness, and a causal link between defectiveness and damage. Thus, the question is not whether the manufacturer was careless but whether the product was defective and whether such defectiveness caused damage [4].

The PLD also addresses the life cycle nature of digital products. Defectiveness can result from updating

or upgrading of software, and in certain circumstances, from modifications and control over the product. This is especially true for evolving AI systems.

4. Withdrawal of the AI Liability Directive

The proposed AILD was intended to supplement the doctrine of strict product liability with fault-based regulations in relation to harm arising from the use of AI technology. In particular, the following were its key instruments: disclosure of evidence of high-risk AI systems and presumptions concerning causation in certain cases. Legislative procedure documents show that the Commission withdrew the proposal on 6 October 2025 [1]. Thus, it is not current EU legislation.

However, the AILD is of particular importance for doctrinal studies due to the fact that it raised a structural issue that the adopted framework should solve: a lack of information available to the claimant and its comprehension. Therefore, the mechanisms proposed in the directive can be considered legislative instruments, not operational rules.

Moreover, the withdrawal of the proposal makes national tort law even more important. Due to the absence of harmonised AI-fault directive, issues of negligence, duty of care, causation and damages will be resolved to a large extent through national legislation, according to EU rules, if any.

Comparative Liability Models

Scenario Analysis

The following scenario tests are analytical rather than empirical experiments. They illustrate how the layered EU framework can produce different liability pathways depending on the source of harm.

Table 6. Application of the EU framework to representative AI-enabled platform harms.

Scenario	Primary legal issue	Potential liability pathway	Critical proof question
AI recommender repeatedly amplifies demonstrably harmful content	Platform design and systemic risk	DSA duties + national tort law; PLD only if a defective AI product is legally implicated	Did the platform breach a relevant duty and did that breach cause legally recognised damage?
AI moderation system wrongly removes lawful content causing economic loss	Automated decision and platform service design	National tort/contract law; DSA procedural duties; potentially PLD depending on product classification	Was the system defective, unlawfully designed, or negligently deployed?
Generative AI feature	Output attribution and	Potential national tort	Is the legally relevant

produces defamatory or harmful output	defect/fault	law; PLD where statutory product-liability conditions are satisfied	defect in the AI product, platform integration, or deployment?
High-risk AI tool used by platform causes discriminatory decision	Regulatory compliance and causation	AI Act compliance evidence + national civil liability; PLD where applicable	Can claimant connect discriminatory outcome to a legally actionable breach or defect?
AI system becomes defective after controlled update	Lifecycle defect	PLD no-fault liability where statutory conditions are met	Was the update within manufacturer's control and was defect causal?

Results and Findings

Finding 1 – The EU now has a proper AI-relevant product liability pathway. The PLD of 2024 significantly alters the legal framework by clearly including software and AI products in the definition of a product. The need to push old product liability rules into the digital age will decrease, which provides the basis for non-fault liability claims [4].

Finding 2 – Civil liability frameworks remain plural, not unified. The three laws discussed above have very different purposes in regulation. Their requirements can overlap but none of them can implicitly override the tort laws of the country. Thus, the route to recovery of losses will depend greatly on the way the harm is characterized.

Finding 3 – Platform design is a separate issue of liability. When the cause of the harm lies in ranking, recommendation, amplification or moderation of the platform's services, the harmful act may be the platform design and its algorithm, rather than unlawful content of the users. That makes DSA particularly important as a context of liability [3].

Finding 4 — Evidence is still the key practical limitation. AI cases could depend on log, technical and risk assessment documents, details about models and their testing and information on any updates. The AILD withdrawal does not mean that there is no instrument in the EU which provides the proposed general framework for fault-based AI cases, since the PLD and other instruments have several tools that could reduce information asymmetries [1], [2], [4].

Finding 5 — Strict liability must be limited. Applying strict liability to every harm arising from AI would ignore the different roles of platforms and AI. A balanced approach is more rational – strict product liability when the PLD can be applied, fault-based liability in other situations, and special presumptions or evidentiary aids in case of excessive evidentiary burden due to opacity.

Finding 6 — Regulatory compliance and civil liability must be analytically separate from each other. Both the AI Act and DSA may provide examples of the measures that would be taken by an adequately regulated AI-powered platform. However, compliance alone does not necessarily imply the lack of civil liability, nor vice versa – non-compliance cannot serve as an automatic basis for determining all elements of the damage claim. Civil liability doctrine will do the trick here.

Critical Analysis

The most prominent feature of the EU model is its layered nature. AI regulation offers ex ante regulation; platform regulation deals with systemic risks of intermediary liability; product liability offers compensation mechanism ex post; and the tort laws in each of the member states still have the power to cover the areas that are left outside of the harmonised product liability rules. This design makes perfect sense from the institutional point of view.

The main problem with the approach is the possible fragmentation at the stage of compensation. A claimant has to decide whether the harmful event is to be considered a defective product, platform design negligence, improper management of illegal content, discrimination via automated decision-making, contract breach, or other tort. The decision will define not only the legal requirements to be met but also the possible existence of evidentiary presumptions and the identity of a possibly liable actor.

The second problem is related to multi-actor causation. In the contemporary world, AI-powered platforms are composed of several elements including foundation models, third-party data sets, application programming interfaces, safety filters, recommendation layers, and optimization for a particular platform. Therefore, harm does not necessarily have to have a single cause.

The third problem is that of distinguishing between the algorithmic risks and the damages compensable in law. The DSA acknowledges the presence of systemic risks but the civil law demands that there must be a protected legal interest and actual damage to be able to seek compensation.

The last deficiency concerns the failure of the AILD to address uniformity in the context of AI claims which are fault-based. While the PLD harmonizes issues concerning defective products, it is impossible to apply this Act to all AI services or platform harms, as intended by design. The use of national tort law in the remaining cases is inevitable.

It does not mean that the EU liability framework is unable to produce good redress mechanisms. Rather, it means that the effectiveness of this mechanism will depend on how courts will understand the relationship between regulatory obligations, product defects, evidence and causation. Thus, the success of the framework will depend not only on the presence of duties but on the ability of the injured person to prove the factual sequence leading to compensation.

Calibrated Model

The article suggests using a four-level analytical framework for future EU civil liability adjudication. The framework suggested is not a new regulation but rather a doctrinal sche

Table 7. Proposed calibrated model for AI-enabled platform liability.

Tier	Circumstance	Liability approach	Evidentiary mechanism
Tier 1	Defective AI/software product within PLD	No-fault product liability, subject to statutory elements and defences	PLD disclosure/presumptions and technical evidence
Tier 2	Platform's own negligent design, deployment or monitoring outside PLD	Fault-based national civil liability	Regulatory records, platform documentation and ordinary proof
Tier 3	High information asymmetry in AI-related fault claim	Fault-based liability with targeted rebuttable evidentiary assistance where national/EU law permits	Access to evidence; adverse inference or statutory presumption where justified
Tier 4	Systemic-risk governance failures by very large platforms	National civil liability informed by DSA duties, without automatic damages liability	Risk assessments, mitigation records, recommender-system documentation

Discussion of Causation and Evidence

Even under the proposed PLD, causation is going to be one of the most difficult components of any AI liability case. AI technologies are probabilistic in nature, and often there are many inputs and outputs involved. A claimant might know that the harm was caused by the automated system but will not know what process exactly was responsible for it. It is, thus, necessary to differentiate between factual uncertainty and legally sufficient causal connection.

Disclosure will be effective only when the disclosed information allows drawing conclusions about the system. A voluminous body of documentation will not resolve the problem of a claimant if the information in question is difficult to understand for a layperson. There will have to be a proportionate approach towards handling the disclosure process with the help of identifying the relevant documents [8].

The approach to software and updating under the PLD is particularly relevant for platform AI. If a provider control all the post-market changes in software, then the distinction between 'design' and ‘deployment’ phases becomes unnecessary.

Evidence concerning the records under the AI Act and DSA should also be developed properly. Risk assessments, technical documents, logs, and mitigation records may assist in identifying what the platform knew, what risk assessments it was required to conduct and what actions were taken by the platform. However, such documents must not be considered as substitutes for the elements of civil liability.

Cross-Border Considerations

AI enabled platforms work across borders. The application of conflicting laws cannot be avoided. Under the rule of Rome II, the damage caused is regulated by the law of the state in which it occurred except in some cases. Product liability is regulated by its own cascade of connection factors where the habitual residence of the person injured, in case the product was marketed in that state, is one of them [12]. It is important to note that the same architecture of the platform might cause harm in several Member States.

Cross-Border issues serve to reinforce the necessity of harmonised product liability. The presence in the scope of PLD may help diminish the differences in the substantive law. Otherwise, national laws will be predominant.

For platform operators, it means that the compliance must be geared toward maximising legal coverage across the whole EU and not towards meeting only the minimum requirements of one Member State. For claimants, it is a question of access to an appropriate jurisdiction as well as evidence necessary to follow a certain legal route.

Limitations

The research is doctrinal and analytical in nature and not empirical in character. It does not attempt to establish any patterns of litigation practice in the Member States or the results thereof. The scenario analysis serves only to test a certain legal route in relation to the recurrent situations in which AI-enabled platforms operate.

The legal position changes from time to time. The article is based on the EU legal framework and legislative status as of September 2026, including the withdrawal of the AILD in October 2025.

The paper also deals with the topic of civil liability but does not give a general treatment of administrative sanctions, criminal liability, competition, consumer protection enforcement or fundamental rights actions in so far as those regimes interact with the civil liability regime.

Conclusions

The EU has made considerable progress towards a civil liability system tailored to the needs of AI, but it has not yet created an autonomous system of AI liability. The current regime is a mixed one, with the AI Act providing risk governance duties, the DSA dealing with intermediary services and risks of platforms, the 2024 PLD applying no-fault product liability to software and AI systems, Rome II determining the law applicable to transnational non-contractual disputes and national tort law covering many issues that fall outside harmonized product liability [2]-[4], [12].

The abandonment of the AILD in October 2025 is not the end of EU AI liability developments. It alters the balance of institutions. Issues of fault, causation and proof that were meant to be harmonized through the AILD remain subject to existing product liability and national law frameworks.

Where an AI product is defective and falls under the PLD framework, there is a case for a no-fault liability scheme, which would offer a clearer route for compensation. Where harm results more from the structure and governance of the platform, the fault-based liability rules of individual states should continue to apply. In situations where the defendant has full control over the information required for the prosecution of the case, disclosure and evidentiary presumptions can mitigate the evidentiary problem without completely removing the requirement to demonstrate legal damage and causation. The future of AI liability in the EU can thus be assessed through the interface of regulation and redress. There is little value to a regulatory requirement that does not give rise to admissible evidence, and similarly, there is little scope for an effective damages system that operates independently of risk governance. The emerging EU model possesses the elements of a sound approach to liability, although its success will ultimately rest on judicial interpretation, domestic implementation of the PLD, evidentiary developments, and evolving responsibility concepts in complex AI-enabled platform environments.

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