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Administrative Responsibility for the use of AI in Public Administration – A Theoretical Analysis

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Nowadays, it has become common for modern means of communication to be used in interactions with public administration, through which individuals can schedule visits to the premises of public authorities or, conversely, send or request documents remotely, within the virtual space. The interplay between new technologies and the public and private environments determines the need for a firm regulatory framework that clearly defines rights and obligations, limits, and liability - a regulatory framework which must, however, be subject to ethical scrutiny. In this context, the proposed aim of the study is to document the issue of liability in the context of the use of artificial intelligence systems in public administration, based on legislation, legal doctrine and administrative practice, through an examination of both national and comparative law. Therefore, the proposed topic of liability is highly relevant and generates widespread interest not only in the public sector but also in the private one and it should consistently remain in the attention of the scientific community, especially since humanity is facing new challenges in reinterpreting the law and adapting it to a new type of personality, non-human, namely the artificial intelligence. The findings of the study underline the increasing importance of establishing a solid regulatory framework for AI liability, at the international level, from a legal and ethical perspective, as a foundation for the development of innovation in this field.

Keywords: *administrative act, administrative liability, AI Act, risk assessment, ANAF (National Agency for Fiscal Administration).*

Introduction

In recent years, the proliferation of new technologies has generated new ethical challenges that must be addressed at a regulatory level. Field-specific literature is increasingly engaged in analysing the connection between law, ethics and business. Artificial intelligence has led to normative approaches that extend beyond the level of states. For example, at the EU level, the law on artificial intelligence, AI ACT[1] applies to multiple states, which are in turn obliged to implement it at the national level.

Thus, we can no longer speak merely about the possibility of damage being caused using artificial intelligence as long as various situations that have caused prejudice are now being publicised internationally, bringing to the forefront the issue of liability for automated decisions, such as autonomous vehicles but also the issue of tax scoring. However, "international factors cannot be disregarded in the contemporary context, in

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[1]Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/1144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828, OJ L 2024/1689, 12.7.2024.

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which the life of every human community is closely linked to the fate of humanity as a whole[2]".

The French Tribunal des Conflits established on 8 February 1873, through a cornerstone decision (s.n. Arrêt Blanco), that administrative liability is governed by the rules of public law rather than those of civil law. In French legal doctrine, it has been noted that the Blanco decision determined that: "*for damage caused to individuals by the acts of persons performing certain public services, the principles established by the Civil Code for relations between individuals cannot be applied; this liability is neither general nor absolute. It is subject to special rules which vary according to the needs of the service and the necessity of reconciling the rights of the State with private law*"[3]. Likewise, another author has assessed that in French law "the Blanco Decision of 1873 delivered by the Tribunal des Conflits (the court empowered to resolve jurisdictional conflicts between administrative courts and ordinary courts) is at the origin of a genuine jurisprudential revolution, radically changing the orientation on the issue of *state liability for damages"*[4].

The 153rd anniversary of the famous Blanco decision was commemorated on 8 February 2026, providing the impetus for the present research analysis, the curiosity to examine a new form of administrative liability in relation to artificial intelligence. From this perspective - of theoretical discourse - extrapolating the concept of administrative liability from the Blanco decision to the implications of the use of artificial intelligence in today's public services, such an analysis is both compelling and capable of attracting the interest of the global scientific community.

Nowadays, the issue of liability for damages caused by AI has become scientifically challenging. An analysis of the legal doctrine reveals differences in the regulatory philosophy between the legal instruments and the way the legislator perceives artificial intelligence from one continent to another, such as, for example, Europe or the United States of America. As regards Europe, the member states are obliged to harmonize their legislation with that of the Union. Otherwise, liability intervenes and a sanction can be applied[5]. In this regard, as shown "the Court of Justice first established the principle of Member States' liability for infringements of European Union law in the 1991 Francovich judgment[6]".

The aim of the study is to discover a potential solution for liability in case damage is caused by the use of artificial intelligence. The paper proposes several research questions related to the topic under review, such as: "*is administrative liability for damages created by AI regulated in a uniform manner at a global level?*", "*what is the vision of EU and United States legislation regarding AI*?", "*in the case of an automated decision that causes damages, who is responsible: the human or the machine?*".

The proposed objectives of the study are:

1. Brief documentation of the normative framework which regulates liability in the context of artificial intelligence.

[2]See Muraru (coord.), Muraru, Bărbățeanu & Big (2020) at 2.
[3]See Chapus (1988) at 978 apud Vedinaș (2009) at 288.
[4]See Apostol Tofan (2024) at 366.
[5]See an interesting paper on sanctions: Nunez (2025).
[6]See Popescu (2011) at 214.

2. Identification and clarification at a general level of the concepts of administrative act, automated decisions, administrative liability.
3. Identifying vulnerabilities or risks of using AI in the administrative decision-making system - case study.

This paper starts from the hypothesis that existing legal studies have focused on many topics, such as the principle of good administration with an emphasis on transparency and motivation for AI decisions.[7]At the same time, among the topics addressed in recent years by researchers are: automated decisions, the issue of tax scoring, issues related to personal data protection, and many others.

In order to achieve the research objective, from a methodological point of view, the paper has several sections, organized in a chronological order as follows. Section I – *The Administrative Act and Administrative Liability, Fundamental Concepts of Administrative Law* (where the administrative act and automated decisions, as well as administrative liability were theoretically analysed in the context of AI). Section II is dedicated to *the analysis of the regulatory framework applicable to artificial intelligence from the perspective of automated decision-making and liability* (the Union and American plan). Section III is dedicated to *a case study* on the administrative act issued based on a risk score. The final part of the paper is dedicated to the conclusions.

The empirical data were collected by accessing several databases in which relevant studies were identified, indexed in internationally recognized databases. The identification of documentary sources was carried out in Romanian, French and English by using keywords such as: liability, artificial intelligence, automated decisions, liability for defective products, etc. As the number of bibliographic sources increased, the initial research plan was gradually adapted until it reached a final form that also included the research of several online resources from various geographical areas. The key contributions of the paper consist of: the interdisciplinary analysis of the subject, the extension of the documentation to the American jurisdiction and the identification of a case study from Romania regarding risk analysis based on tax algorithms. Thus, the proposed theme encourages reflection because it brings information from comparative law about the regulation of artificial intelligence but also about the issue of liability for the use of AI in administration, the analysis being interdisciplinary.

At the same time, the empirical data collected were interpreted according to research methods specific to law, which revealed the vulnerabilities associated with the use of AI systems in the decision-making process. In this sense, the data were filtered using the logical-deductive method that supported the process of discussions and conclusions.

[7]See Pedro (2023) at 159.

The Administrative Act and Administrative Liability, Fundamental Concepts of Administrative Law

Several Theoretical Considerations on the Administrative Act

The unilateral manifestation of the administration's will to which it appeals when placed in a position to make a decision is the administrative act. When damage occurs in connection with an administrative act or with the poor functioning of public services, the guilty are held accountable.

The unilateral expression of will of the public administration, resorted to whenever it is required to make a decision, constitutes the administrative act. When damage occurs in connection with an administrative act or with the improper functioning of public services, those responsible are held accountable. In administrative law, as a general principle, pursuant to art. 52 of the revised Constitution of Romania, even the state may incur liability for damages caused to individuals, the legal remedy through which such liability may be pursued being the administrative litigation action. Furthermore, judicial control is imperative in order to ensure compliance with the principle of legality in administrative action. Or, as the legal doctrine has stated, "in any system of administrative law, the court exercises control over the factual and discretionary determinations made by the administration."[8]

In Romania, pursuant to Law No. 554/2004[9] on Administrative Litigation, art. 2 para. (1) letter c), the administrative act is defined as: *unilateral act of an individual or normative nature, issued by a public authority for the purpose of executing or organising the execution of the law, giving rise to, amending or extinguishing legal relations*. Field-specific literature[10] has adopted this definition and integrated it into administrative law courses. At the same time, in the Romanian legal system the legislator also considers the administrative-fiscal act which, according to art. 46 paragraph (1) of the Fiscal Procedure Code[11] "is issued in writing, on paper support or in electronic form". Whether materialized in physical or electronic form and regardless of whether it is a pure administrative act or a fiscal administrative act, both forms have one common element: they must comply with the principle of legality.

Automated Decisions-Making

Within state activity, "the most important activity of public administration entities is the adoption of administrative decisions that have either negative or positive consequences for natural or legal persons[12]". In common language, automated decisions are administrative acts issued based on algorithms. Essentially, automated decision-making involves a complex process that does not ignore the fact that it is closely linked to technology, and this leads to the imperative requirement of compliance with the legality of the issuance procedure. At the same time, just as, in the case of

[8]See Craig (2015) at 477.
[9]Administrative Litigation Law No. 554/2004, Official Gazette No. 1154 of 7 December 2004.
[10]For example see Săraru (2022) at 72.
[11]Law No. 217/2015 on the Fiscal Procedure Code, Official Gazette No. 547 of 23 July 2025.
[12]ee Bareikyte (2021) at 65.

the traditional administrative act, legislation imposes the obligation to provide reasons (in fact and in law), we consider that this obligation must also apply to automated decisions. From a normative perspective, the administration is obliged to provide reasons for its decisions, and this derives from the right to good administration, as provided for in art. 41 of the Charter of Fundamental Rights of the European Union[13].

According to the *Principles of Administrative Law concerning Relations between Individuals and Public Authorities* contained in the manual developed by the European Commission, "algorithmic decision making", or "algorithmic decision-making system", means a process of making a decision with the support of automated means. "It usually involves the use of automated reasoning to aid or replace a decision-making process that would otherwise be performed by humans. It does not necessarily involve the use of artificial intelligence but generally involves the collection and processing of data[14]". Therefore, according to the perspective presented in that manual, automated decisions are made by a machine and not by a human being, as a result of a complex process involving the use of data.

Regarding the frequency of this method of making decisions, it has been observed that "automated decision-making systems (ADM) have been increasingly utilized by both private and public entities across the world to reduce errors by humans, increase efficiency, and make more consistent decisions"[15]. Also, from a conceptual perspective "Within the umbrella term of part-ADM, the role of the automated system's output in the process and how humans use it largely differs. In automated triage, the system classifies a new case or application based on the automated assessment; the human can get a case assigned or be required to take follow-up actions[16]".

According to Malgieri[17], "*The French Law[18] regulates automated decision-making in a different manner considering three different cases: (1) automated decisions in the judicial field; (2) administrative automated and semi-automated decisions and (3) all other kinds of automated decisions with legal effects or significant effects on individuals". (...) "For administrative decisions three is a difference between semi-automated decisions and fully automated decisions. Fully automated decisions are prevented within the administrative appeal (....)*[19]".

In the case law of the French Constitutional Council with reference to automated decisions, it was appreciated that: "an exclusive basis form an individual administrative decision, algorithms likely to revise by themselves the rules to which

[13]Charter of Fundamental Rights of the European Union (2012/C 326/02), OJ C 326/391, 26.10.12, https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:12012P/TXT

[14]Council of Europe (2024). The Administration and You, A handbook, 3rd edition, *Principles of administrative law concerning relations between individuals and public authorities,* ISBN 978-92-871-9460-2, p.*7,* https://rm.coe.int/handbook-the-administration-and-you-3rd-edition-005924-gbr-web/1680b04d3f.

[15]See Bantekas & Bratsiakou (2026).

[16]See Palmiotto (2024) at 210-236.

[17]See Malgieri (2019).

[18]Loi°2018-493 du 20 juin 2018 relative a la protection des donnees personnelles, JORF n° 0141 du 21 juin 2018, https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000037085952

[19]See Malgieri (2019).

they apply cannot be used, without the oversight and validation of the data processor[20]" (para.71).

Moreover, automated decisions are increasingly used in many areas of activity. In this sense, "Examples include the "visa streaming algorithm" and automatic detection of "sham marriages" in the UK, the risk-assessment tool used in the Netherlands to screen employment sponsorships, the EU-funded project iBorder Ctrl, and the automated case-management system for the EU settlement scheme. In automated evidence, the system provides information or an expert assessment humans use to prove a fact relevant to the decision[21]".

Administrative Liability in the Context of AI – General Considerations

Regarding legal liability, according to university courses on the general theory of law, the conditions required for engaging liability are[22]: unlawful conduct, result of unlawful conduct, causal relationship, fault of the perpetrator. From the perspective of administrative law, when analysing administrative liability, the following elements are important: the unlawful act, the fault, the causal relationship and the damage[23]. In traditional administrative law, administrative liability is classified into objective liability and fault-based liability.

According to the Romanian Administrative Code[24], the following forms of administrative liability exist:

- *objective liability* that is incurred regardless of the guilt of the public authority, and this includes: the patrimonial liability of the state for damages caused by judicial errors as well as the exclusive patrimonial liability of public authorities for the limits of public service;
- *subjective liability* which implies the fault of the responsible public authority and includes: the administrative-patrimonial liability of public authorities and institutions, respectively of public officials for damages caused by administrative acts as well as the joint and several administrative-patrimonial liability for damages caused in connection with the valorisation of public goods and services.

Analysing Romanian law, as mentioned above, we can say that there is: fault-based administrative liability, no-fault administrative liability, as well as joint and several administrative liability of the administration.

Currently, as states toy with the idea of introducing AI into administration and damage inevitably occurs, the question arises as to whether the conditions for administrative liability still apply from a legal standpoint. From this perspective, we consider that the topic of administrative liability in the context of AI use is

[20]Decision no 218-765 DC of 12 June 2018, https://www.conseil-constitutionnel.fr/en/decision/2018/2018765DC.htm
[21]See Palmiotto (2024).
[22]See Bădescu (2025) at 373-375.
[23]See Ștefan (2013) at 240-268.
[24]Government Emergency Ordinance No. 57/2019 on the Administrative Code, Official Gazette No. 555 of 5 July 2019.

interesting because several problems revealing vulnerabilities and risks must be clarified, namely: who is to blame if an AI system creates harm? In this regard, who is to blame, man or machine? Does the lack of human oversight over an AI system in administration constitute fault or risk?

A recent study on algorithmic accountability noted that "the challenges arising from algorithm use give rise to deficits that strike at the heart of accountability processes: compounded informational problems, the absence of adequate explanation or justification of algorithm functioning, and ensuing difficulties with diagnosing failure and securing redress[25]".

Fault-Based Liability for Damages caused by Automated Administrative Decisions

A valuable recent study highlighted the major legal challenges in the context of analysing administrative liability for AI-based decisions, namely: "how do we define fault in a digital context?

1. Is a programming error considered administrative fault?
2. Does the deployment of an untested or unsupervised system constitute negligence?[26]".

This form of liability was considered to arise when "the damage arises when harm can be traced to an error attributable to the administrative authority, whether that error lies in its legal acts or its material operation[27]". According to this author, fault denotes "a service fault (faute de service), a defect imputed to the public service as an institution, irrespective of the individual staff involved, arising from its failure to discharge the functions it is legally bound to perform in a proper manner"[28]. Another study supports to the idea that "the application of the concept of fault-based unlawful acts is difficult to implement effectively due to the autonomous and non-transparent nature of AI"[29].

It was assessed that, "When the damage flows from intelligent automated administrative decisions, liability consists in the administration's obligation to indemnify individuals for injury resulting from decisions rendered by automated systems that rely on artificial-intelligence techniques or algorithms, with no direct human intervention, whenever that injury is traceable to: a software error, a malfunction in the automated processing, or the misuse of the intelligent systems through which the decision is generated[30]".

From the perspective of the nature of the damage that can be satisfied in cases of fault-based liability, we believe that compensation for both material damage and moral damages may be awarded by a court of law.

[25]See Busuioc (2021) at 825-836.
[26]See Hamid (2025).
[27]See Khader (2025) at 620.
[28]Ibidem at 621.
[29]See Pelupessy (2026).
[30]See Khader (2025) at 616.

As a general perception, we consider that in cases involving the liability of the administration, the notion of fault may also be understood to include situations in which there is no human oversight of AI systems and such systems are capable of causing damage, as well as situations in which fault may be interpreted as a lack of transparency in decision-making and, implicitly, a lack of reasoning. We particularly refer to scoring mechanisms (tax risk analysis) that form the basis for the adoption of an administrative act, as will also be illustrated in the case study presented in the final part of this paper.

No-Fault Liability of the Public Authority for Damages caused by Automated Decisions

This form of liability is based on the idea of risk. In this case, we are talking about the existence of a public service that by its very nature contains the risk of causing certain harm to the beneficiaries. Consequently, beneficiaries have the obligation to demonstrate before the courts the causal link between the automated decision and the damage suffered. Furthermore, the causal relationship must demonstrate the existence of a public service which, by its nature, contains the risk of causing certain harm. Similar to fault-based liability for damages caused by automated administrative decisions and in the case of no-fault liability of the authority, we support the idea of obtaining in the court of law compensation for material damages as well as moral damages.

Moreover, it has been argued that "the risks associated with the absence of a human in control are projected into risks of accountability[31]". Among the categories of risks, we note that a serious impediment to attracting liability lies in the particular nature of AI systems' operation which complicates the burden of proof regarding causality, as the relevant data are excessively technical and therefore inaccessible to an ordinary person lacking specialised expertise.

Joint and Several Liability of the Public Authority

An analysis of the relevant field-specific literature reveals that, in addressing the issue of administrative liability arising from the use of artificial intelligence, certain authors advocate for the liability of AI system developers. Thus, it has been argued that "developers should be held accountable for the algorithmic design and functionality of their GenAI systems. This requires clear disclosures of their AI's modelling and reasoning process, enabling scrutiny for potential bias or flaws in the algorithms. However, liability allocation networks must avoid overly punitive developer liability frameworks[32]". We do not concur with this doctrinal position, as we consider that, within the context of artificial intelligence usage, fault cannot be attributed exclusively to a single actor; rather, there exists a chain of culprits. Consequently, given the current stage of legislation, we consider that joint liability could arise on the part of the public administration alongside other participants, such as the software programmer responsible for the system underlying the operation of the AI system, the implementer, and others involved in the process.

[31]See Mureddu, Paciaroni, Pavelka, Pemberton & Remotti (2025).
[32]See Socol de la Osa & Remolina (2024).

In conclusion, based on the above assertions, we consider that it remains difficult, from the perspective of liability, to formulate a definitive answer regarding fault or what fault is and to whom it may be attributed when an AI system causes damage. The answer depends on the nature of the liability involved, whether objective or subjective. However, under no circumstances, at least at the present stage of legislative development, is it possible to hold a machine itself liable.

The Regulatory Framework Applicable to Artificial Intelligence from the Perspective of Automated Decision-Making and Liability

The EU Regulatory Approach

The delineation of the legal regime governing liability for the use of artificial intelligence in public administration, particularly with regard to the identification of applicable legal instruments, is currently difficult, given the absence of a unified legal framework at Union level. Nevertheless, we consider that among the most relevant instruments applicable to the subject under analysis are the GDPR[33]and the AI Act[34], to which various other regulations and directives may be added. In this respect, it is worth noting that "a Regulation has general applicability[35]". Scholars rightly point out that: "(...) automated decision-making (ADM) and AI-supported decision-making create new dilemmas, especially in relation to accountability, data protection, and general principles of administrative law[36]".

Regarding the AI Act and GDPR, "Unlike the GDPR, which sets requirements for solely automated decisions, the AI Act primarily concerns AI systems that pose an unacceptable or high risk, considering AI-driven decision making as a potential source of risk"[37]. Moreover, "Even if the legislation does not provide a definition of AI decision-making, the role of AI systems in influencing decisions is a core concept in the classification rules for high-risk AI set in Article 6 of the AI Act[38]".

In addition, European liability law is also shaped by Directive (EU) 2024/2853 of the European Parliament and of the Council of 23 October 2024[39] on liability for defective products and repealing Council Directive 85/374/EEC. This represents the common law on liability for damages and applies to the case of no-fault liability for manufacturers in the European Union. In essence, this regulatory act states that when there is a defective product that causes harm to a consumer, the manufacturer

[33]Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/CE (General Data Protection Regulation), OJ L 119/1, 4.5.2016.

[34]We understand that the aim is not to provide an extensive development of the identified legal instruments, but rather to select, at a general level, the most relevant information for the proposed research topic.

[35]See Fuerea (2010) at 141.

[36]See Jakubek – Lalik (2024) at 109**.**

[37]See Palmiotto (2024).

[38]Ibidem.

[39]Directive (EU) 2024/2853 of the European Parliament and of the Council of 23 October 2024 on liability for defective products and repealing Council Directive 85/374/EEC, JO L, 2024/2853, 18.11.2024.

may be held liable. From our perspective, we advance the idea that the respective directive could also be applied to AI software, given the lack of a special normative act regulating the legal regime of liability applicable to the use of artificial intelligence. This interpretation emerges from the provisions of art. 4 of Directive (EU) 2024/2853 which provides that "products" include any movable item, even where integrated into another movable or immovable item or interconnected with it, and which encompasses electricity, digital production files, raw materials, and software. Consequently, we consider the possibility of holding the public authority and the manufacturer jointly and severally liable for the implementation of a defective product (AI system) in the administration.

It should be noted that, from a chronological perspective, following the adoption of the AI Act, there were notable intentions to improve the legislation, materialising in the form of a proposed Directive[40]on the adaptation of non-contractual civil liability rules to artificial intelligence. The Preamble of this proposal stated that "the current liability rules, in particular those based on fault, are not suitable for addressing claims for damages caused by AI-based products and services (...)". The legal doctrine considered in this sense that: "The EU's proposed AI Liability Directive partly alleviates the burden of proof by adopting the 'presumption of causality', noting precisely that it is increasingly more onerous for individuals, due to reasons of lack of transparency, complexity and autonomy of AI systems, to demonstrate harm or call them into account[41]". However, the proposal for a directive on liability was withdrawn on 6 December 2025 and at the time of drafting this study there is no other regulatory proposal in this field of liability.

Therefore, at present, two key Union instruments remain relevant in relation to the legal regime of liability, namely the AI Act and Directive (EU) 2024/2853 on liability for defective products. There is a close relationship between these two instruments, as under the Directive's framework, presumptions of defect may arise from non-compliance with the requirements laid down in the AI Act.

At the same time, one of the key elements underpinning the legality of algorithmic decision-making is transparency. *Per a contrario*, in the context of artificial intelligence use, a lack of transparency may result in the infringement of certain rights, such as the right to be informed and the right to receive a statement of reasons for administrative acts, thereby potentially leading to the occurrence of damage. In this regard, according to Regulation EC no. 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents[42] "any citizen of the Union and any natural or legal person residing or having its registered office in a Member State shall have a right of access to documents of the institutions, subject to the principles, conditions and limits defined in this Regulation" [Article 2(1)].

[40]COM/2022/496 final - Proposal for a Directive of the European Parliament and of the Council on adapting non-contractual liability rules to artificial intelligence (AI Liability Directive), 2022/0303(COD), Brussels, 28.9.2022.

[41]See Teo (2025) at 2265-2280.

[42]Regulation (EC) No. 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145/43, 31.05.2001, pp.43-48.

Essentially, it seems that in Europe, the emphasis regarding AI is on the protection of fundamental human rights, on its operation in a safe environment and under conditions of transparency, while any breach of the relevant legal requirements gives rise to liability.

Discussions on Administrative Liability for Artificial Intelligence from the United States Perspective

In the American jurisdiction there is no federal law on liability for the use of AI in administration. For this reason, at the level of the legislation of the states forming the federation, certain responses may be identified with regard to the applicable regulatory framework in this area. Therefore, this section first outlines the applicable normative framework governing artificial intelligence in the United States, followed by an analysis of the legislation relevant to liability arising from the use of AI in public administration. In this context, a general overview may be obtained of the manner in which the American legislator approaches the use of emerging technologies in public life, and consequently of the legal issues that may arise in the event of harm.

As Donovan observes: "The United States' approach to AI regulation remains fragmented, hindered by shifting political priorities and the absence of a cohesive federal framework[43]".

Regarding legal instruments governing the use of artificial intelligence in public administration, two key developments may be identified in recent years. In this context, reference should also be made to the United Nations Resolution[44] adopted in 2024 on the promotion of safe, secure and trustworthy AI systems, which contains provisions relating to accountability in the use of artificial intelligence. Chronologically, on 30 October 2023, the Biden Administration issued Executive Order 14110 on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence (...)[45]", which seeks to ensure that AI systems within government are designed and deployed in ways that respect human rights and prevent harm[46]".

Upon the change of administration, as appears from public information, in his first days in office, President Donald Trump[47]signed Executive Order 14179 of 23 January 2025 - *Removing barriers to American leadership in artificial intelligence*[48].

Moreover, at the state level there is an interesting vision on new technologies, with an emphasis on innovation. Specialists point out: "America's AI Action Plan[49] (released July 2025) remains a key roadmap for federal 'innovation-first' actions[50]".

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[43]See Donovan (2025).

[44]Available online https://docs.un.org/en/A/78/L.49. *Excerpt,* Point 6 letter K) emphasizes: "Promoting transparency, predictability, reliability and understandability throughout the life cycle of artificial intelligence systems that make or support decisions impacting end-users, including providing notice and explanations (....) human decision making alternatives or effective redress and *accountability for those adversely impacted by automated decisions of artificial intelligence systems*".

[45]https://www.congress.gov/crs-product/R47843

[46]See Mureddu, Paciaroni, Pavelka, Pemberton & Remotti (2025).

[47]https://www.whitehouse.gov/wp-content/uploads/2025/07/Americas-AI-Action-Plan.pdf

[48]Federal Register 90 (20) 8741, https://www.govinfo.gov/content/pkg/FR-2025-01-31/pdf/2025-02172.pdf

[49]https://www.whitehouse.gov/wp-content/uploads/2025/07/Americas-AI-Action-Plan.pdf

[50]https://www.softwareimprovementgroup.com/blog/us-ai-legislation-overview/

Reading the document, it appears that the American Action Plan is based on three pillars: Pillar I - *Accelerate AI Innovation*; Pillar II - *Build American AI Infrastructure* and Pillar III - *Lead in International AI Diplomacy and Security*. Simultaneously, "The Action Plans' objective is to articulate policy recommendations that this Administration can deliver for the American people to achieve the President's vision of global AI dominance[51]".

By contrast, an analysis of legislation at the federal states level, reveals possible answers regarding the legal regime of liability for the use of AI in local government. In this respect, according to the legal doctrine, "In the United States, the absence of a federal law on AI has led to a patchwork of state-level laws (e.g., in California and Colorado) and federal agency guidance (…) with new executive orders driving infrastructure localization and AI safety standards[52]".

One of the most significant examples is represented by the legislation adopted in the State of Colorado. It seems that "Colorado made history on May 17, 2024 when Governor Polis signed into law the Colorado Artificial Intelligence Act ("CAIA"), the first law in the United States to comprehensively regulate the development and deployment of high-risk artificial intelligence ('AI') systems"[53]. The field-specific literature emphasized: "(…) CAIA will require companies doing business in Colorado to meet stringent compliance and oversight requirements intended to prevent algorithmic discrimination in AI systems considered to be 'high risk'"[54]. Although the law was supposed to come into force on 1 February 2026, it seems that its implementation has been postponed. Public information shows that "Colorado Governor Jared Polis recently signed Senate Bill 25B-004 into law, which delays the enforcement date of the Colorado Artificial Intelligence Act ("CAIA") from February 1, 2026, to June 30, 2026. SB 25B-004 does not amend the substantive requirements of the CAIA[55]".

According to experts, "Colorado is not the only state entering the AI regulatory space with trepidation. In 2024, the Connecticut state legislature killed a similar bill to CAIA under threat of veto by the governor. In 2025, the Virginia legislature passed a less-stringent version of CAIA, but it was vetoed by the governor, citing similar concerns as Governor Polis in his CAIA signing statement"[56].

At the same time, legislation concerning artificial intelligence has also been adopted in the State of Texas through the Texas Responsible AI Governance Act (TRAIGA), which entered into force on 1 January 2026. It was stated about TRAIGA that, "Under the new legislation, state government agencies must disclose to consumers when they are interacting with an AI system, regardless of whether such interaction appears obvious. This transparency requirement represents a fundamental shift toward algorithmic accountability in government operations and ensures that citizens are

[51]https://www.whitehouse.gov/wp-content/uploads/2025/07/Americas-AI-Action-Plan.pdf
[52]See Kumar (2026).
[53]https://fpf.org/blog/a-first-for-ai-a-close-look-at-the-colorado-ai-act/
[54]https://www.reedsmith.com/our-insights/blogs/technology-law-dispatch/102lu0u/colorados-hesitation-in-pioneering-ai-regulation-mirrors-similar-hesitation-na/
[55]https://www.hunton.com/privacy-and-cybersecurity-law-blog/enforcement-of-colorado-ai-act-delayed-until-june-2026
[56]https://www.reedsmith.com/our-insights/blogs/technology-law-dispatch/102lu0u/colorados-hesitation-in-pioneering-ai-regulation-mirrors-similar-hesitation-na/

aware when automated systems are processing their information or making decisions that may affect them[57]".

Considering the above, although no unified federal legal framework currently exists concerning liability for the use of artificial intelligence in public administration, significant legislative efforts may nevertheless be observed at the level of the individual federal states. In conclusion, "While global initiatives like the UN resolution and the EU AI Act provide structured oversight, America oscillates between prioritizing risk mitigation and innovation with each administration[58]".

Discussions on the Administrative Act issued based on a Risk Score - Case Study

Between 2004-2026, as a result of the proliferation of new technologies and digitalization, there is a considerable impact that they have on the administrative decision-making processes. In this context, there is the possibility of issuing an administrative act by using an algorithm. However, "digitalization brings with it new issues of responsibility, legal liability, limits and respect for citizens' rights and freedoms [59]" while "the legal norm requires acceptance and compliance with the prescribed conduct"[60].

From a legal point of view, the administrative act has traditionally been regarded as the will of the administration. Therefore, even when issued in a modern electronic form, the administrative act should still reflect the will of the public authority. But when the administrative decision is made through an automated process, does it reflect the internal will of the administration, so that in the event of damage, it can lead to legal liability?

Theoretically, we believe that the answer to this question is affirmative. The administration may adopt a decision based on an evaluation process founded upon a score obtained through an automated procedure; however, this may render the decision-making process vulnerable. For example, in Romania there is a risk analysis that tax authorities carry out through which economic operators are assigned to different risk categories on the basis of a risk score.

According to tax legislation[61], a risk assessment is carried out according to criteria provided for in Order no. 417/2025[62] on the adoption of criteria for assessing

[57]See Othman (2025).
[58]See Donovan (2025).
[59]See Ștefan (2024) at 565.
[60]See Hegheș N. (2022) at 153.
[61]Joint Order of the President of the National Agency for Fiscal Administration and the President of the Romanian Customs Authority No. 1.826/2.372/2025 amending and supplementing the annex to the Order of the President of the National Tax Administration Agency and the President of the Romanian Customs Authority No. 417/1,204/2025 on the approval of the criteria for assessing tax risk in order to determine economic operators presenting a high tax risk, provided for in art. 375 paragraph (1^1) and in art. 435 paragraph (3^1) of Law No. 227/2015 on the Fiscal Code, Official Gazette No. 708 of 30 July 2025.
[62]Joint Order of the President of the National Agency for Fiscal Administration and the President of the Romanian Customs Authority No. 417/2025 on the adoption of the criteria for assessing the fiscal risk that presents a high fiscal risk, provided for in art. 375 paragraph (1^1) and in art. 435 paragraph (3^1) of Law No. 227/2015 on the Fiscal Code, Official Gazette No. 262 of 26 March 2025.

fiscal risk. In essence, based on certain criteria, an analysis is carried out which results in an official score generated by algorithms. Following the analysis, the economic operator is classified into one of three risk classes: low, medium or high risk.

As a result of the risk analysis carried out by the National Agency for Fiscal Administration (ANAF) and the classification into a particular risk class, legal consequences may arise. Verifications (ANAF controls) can be carried out. The outcome of such verification is recorded in a Verification Report which subsequently forms the basis for the issuance of an administrative act such as, where appropriate, a tax decision or a decision to terminate the documentary verification procedure. Thus, a fiscal scoring system, the reasoning of which is not disclosed to the taxpayer, generates a chain of effects in relation to that taxpayer, the procedure ultimately culminating in the issuance of an administrative act.

In this context, may one speak of the intervention of a form of administrative liability?

The answer to this question can be provided by the Romanian Administrative Code, which regulates, under Article 573, administrative-patrimonial liability as a form of administrative liability. This consists in "*the obligation of the State or, as the case may be, of the administrative-territorial units to compensate for damage caused to a natural or legal person through any judicial error, deficiencies in the public service, an unlawful administrative act, or the unjustified refusal of the public administration to resolve a request concerning a right recognised by law or a legitimate interest"*.

At the same time, regarding the conditions of administrative-patrimonial liability, according to art. 577 of the Administrative Code, the cumulative conditions under which administrative-patrimonial liability may be engaged are: a) the contested administrative act is illegal; b) the illegal administrative act causes material or moral damages; c) the existence of a causal relationship between the illegal act and the damage; d) the existence of the fault of the public authority and/or its staff.

If these general conditions of liability are applied to the case under examination, several observations may be made.

With regard to the first condition, namely that *the administrative act must be illegal*, we consider this requirement to be satisfied through the defective nature of the issuance procedure, insofar as the obligation to provide reasons for the administrative act has not been fulfilled. Furthermore, the lack of transparency in the issuance of the administrative act may result in harm to the taxpayer through the infringement of the right to be informed, since the taxpayer does not have the opportunity to know the criteria for issuing the document, the procedure being devoid of transparency and offering no effective means of challenge.

There is *a causal relationship between the administrative act and the damage* because the risk analysis that generates a risk score automatically triggers the initiation of an ANAF control and based on the Verification Report an administrative act is issued. In relation to the causality report, we estimate that it may be difficult for the injured person to demonstrate that there is a malfunction, an error in the algorithm used by ANAF due to the lack of knowledge of the strictly technical conditions in which it operates. Rather, we can state that in administrative practice, the opaque nature of the AI system may be an impediment to demonstrating causality.

At the same time, we appreciate that *the condition of fault* is also met in this case by the existence of a defect in the public system that enabled the operation of the AI system itself. We consider that based on general data manually input by a human operator, an operation that may itself be defective or incomplete, the automatic system analyses and generates a risk score. This outcome, in accordance with the applicable legislation, is the basis for the decision to initiate an ANAF audit. And therefore, if the AI system is defective, it is evident that the final outcome does not reflect reality, thereby causing harm and consequently lacking legality.

Therefore, we consider that the answer to the question is affirmative: the administration may be held liable. On the one hand, the requirement to justify the administrative act is only met to a small extent, namely the application of the criteria provided for in the regulatory act (legal requirements). On the other hand, the only possibility for the taxpayer is to accept the control that is triggered and possibly to challenge, if necessary, a possible onerous administrative act that could be issued (a tax decision). The existence of the control can be found on the ANAF website which periodically announces the subject of the controls[63]carried out.

Extending the theoretical analysis to the practical, applied level, we have examined the portal of the Romanian courts, the administrative and fiscal litigation sections (www.just.ro) to identify potential litigations concerning liability actions in the context under discussion. Our intention was to identify litigations in which ANAF appeared as a party in proceedings challenging such administrative acts allegedly causing harm. At the time of drafting this study it was not possible to identify in the national plan any case law before the competent administrative and fiscal courts in relation to the issues outlined above. From our perspective, this may have an explanation, meaning that Romanian legislation is still at an early stage regarding the ANAF control procedure based on an automatic risk assessment, which has the potential to end with a sanctioning administrative act. Moreover, "such an approach raises serious compatibility issues with Law no. 554/2004, because the administrative act is issued by a public authority, the documents that were the basis for its issuance, respectively those contained in the administrative file, are the result of artificial intelligence as a tool[64]". The lack of transparency of the decision-making process, combined with the lack of proper reasoning, may constitute sufficient legal grounds for initiating an administrative litigation action to hold the public authority accountable.

Moreover, it should be noted that the Romanian legislator has recently proposed the suspension, until the end of 2026, of the taxpayer's right to request classification into a risk category or subcategory[65]. This development raises genuine concerns regarding the impossibility of ascertaining one's risk classification, as well as the broader lack of decisional transparency. In such circumstances, it may be argued that a potential situation of abuse of power on the part of the public authorities arises. Consequently, we consider that it may be possible to speak of an extended form of administrative liability on the part of the public authority, namely the National

[63]https://static.anaf.ro/static/3/Anaf/20260223111817_com%20183%20verificari%20antifrauda%2023%20februarie%202026.pdf

[64]See Crețu (2026).

[65]https://www.digi24.ro/stiri/economie/guvernul-vrea-sa-suspende-pana-la-finalul-lui-2026-dreptul-de-a-solicita-de-la-anaf-comunicarea-clasei-de-risc-fiscal-ce-motive-invoca-3649205

Agency for Fiscal Administration (ANAF), for the issuance of an administrative act based on an algorithmic system, in breach of the principle of transparency and in the absence of genuine reasoning of the act.

Conclusions

Following the documentation of the issue of liability for the use of AI in the decision-making process, several conclusions can be drawn, the research objective being thus considered fulfilled. In essence, with regard to liability in the context of AI, the legal doctrine remains in a formative stage. From the analysis of the legislation, a conceptual delimitation has been achieved between the administrative act, automated decision-making, and administrative liability.

Regarding the applicable regulatory framework, administrative liability for damages caused by AI is not uniformly regulated at international level. The most important EU legislative acts are the AI Act and the Directive (EU) 2024/2853 of the European Parliament and of the Council of 23 October 2024 regarding liability for defective products (...). Also, there are notable differences between Union and United States legislation on artificial intelligence. On the one hand, at the Union level, the AI Act and the GDPR are insufficient to outline a general legal regime applicable to liability for the use of AI in administration, which has led to legislative efforts aimed at introducing a dedicated directive on liability, albeit without concrete results to date.

Although there is the Directive (EU) 2024/2853 of the European Parliament and of the Council of 23 October 2024 on liability for defective products (...) it cannot provide all the answers for liability cases because it only regulates the no-fault liability for defective products of manufacturers in the European Union. However, we have advanced the idea that in this case, we see the *possibility of attracting joint and several liability of the public authority and the manufacturer for the implementation in the administration of a defective product (AI system).*

On the other hand, with regard to the United States of America, the documentary analysis reveals differences in the regulation of artificial intelligence and, implicitly, of liability, depending on whether one refers to the federal level or to the level of individual states. The study has highlighted efforts undertaken by certain states to improve the relevant legal framework, such as, for example, the Colorado Artificial Intelligence Act (CAIA).

With regard to the types of administrative liability for the use of artificial intelligence in public administration, certain limitations of the present research have been identified, insofar as the analysis has focused on two main forms of liability, namely objective liability and subjective liability, respectively fault-based liability and strict (no-fault) liability, on the basis of which several conceptual directions have been advanced. Nevertheless, it is considered that, at the current stage of legislative development, a firm answer regarding administrative liability for the use of AI may prove difficult in practice.

With respect to the question of whether the lack of human supervision over an AI system in public administration constitutes fault or risk, the case study suggests that, although it is difficult to classify within a strict conceptual category, it may

rather be regarded as fault. We consider that fault is due to the existence of an error within the public system which permitted the operation of a defective AI system, thereby generating the risk of harm and, implicitly, the potential engagement of administrative liability. Furthermore, in this context, it has been argued that extended administrative liability may arise in cases of fault, particularly where there is a lack of human oversight of AI systems or a lack of transparency.

From a comparative law perspective, it has been observed that there are various approaches to liability for the use of artificial intelligence in public administration, depending on the value systems, historical development, and legal traditions of each state. While at Union level the regulatory framework on AI places emphasis on the protection of fundamental human rights and the maintenance of a democratic and secure environment, in the United States the primary focus is placed on innovation.

In conclusion, on the basis of the extensive documentary analysis conducted, it appears that we are currently witnessing a reconsideration of liability regimes in the context of artificial intelligence use, particularly in relation to the potential harm that may be caused by algorithms used within public services.

At the same time, from both an ethical and legal perspective, it is not considered possible to hold a machine legally liable for its actions, but rather the human actor behind it.

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