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*Rethinking the Foundations of the State's Civil Liability Regime in the Performance of the 'Artificially Intelligent' Tax Administration**

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ABSTRACT The integration of artificial intelligence in Public Administration requires a break with the classical models of civil liability, since the paradigm focused on individual fault and linear causality is ineffective in the face of autonomous algorithms. More than a mere instrument for repairing damages, civil liability must be converted into an essential regulatory mechanism. The need to integrate sustainable smart systems on a regulatory basis ensures that administrative modernization does not sacrifice fundamental rights, transforming the duty to compensate into an incentive to implement fairer, auditable and safer systems by design.

KEYWORDS: Artificial Intelligence - Tax Administration - Civil Liability - Administrative Activity - Risks

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1. *Introduction*

The use of artificial intelligence systems by public administration represents one of the greatest contemporary challenges in society, and, consequently, in the regulation of the organization of society. Therefore, Law is not immune to the future of this new reality, and the various domains of it suffer the particularities that artificial intelligence brings in the various sectors of society.

In the field of Administrative Law and Tax Law, the automation of public decisions – whether in the administrative, tax or social security fields – brings with it efficiency gains, but also increased risks of error, algorithmic discrimination and decision-making opacity.

Historically, the civil liability of the State has been structured around classic assumptions – the fact, the unlawfulness, the damage, the causal link and the fault – anchored in a logic of human imputation. However, the introduction of intelligent systems, capable of learning, adapting and interacting autonomously with other open systems, destabilizes this architecture.

In this context, the central question is to know how to impute civil liability to the State when the damage arises from an action based on artificial intelligence systems. Is it possible to continue to apply the same criteria of guilt and causality? Or is it necessary to rethink the regime, admitting strict liability based on technological risk and the duties of supervision and transparency?

2. *Artificial Intelligence in Administrative Activity*

Artificial intelligence has been assuming an increasingly relevant role in contemporary Public Administration, being used in multiple functional and decision-making domains.[1] In the administrative-tax sphere, artificial intelligence is applied in the analysis of tax risk, in the management of the tax system, and in the creation of mechanisms to assist[2]

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[1] M. Prata Roque, *O Nascimento da Administração Eletrónica num Espaço Transnacional (Breves notas a propósito do projeto de revisão do Código do Procedimento Administrativo)*, in *e-Pública*, vol. 1, no. 1, January 2014, 307-321.

[2] L.M. Pica, *A inteligência artificial no sistema de gestão fiscal: uma dimensão preventiva e as presunções (jurídicas) na identificação e combate aos fenómenos patológicos*, in *Revista Jurídica Portucalense,* no. 32,

taxpayers. In the case of risk management, the creation of risk profiles and the massive cross-referencing of data to create alerts and indication of decisions to be made, allows the Tax Authority to detect anomalous patterns in the declarations and cross-reference large volumes of data to identify potential evasion or fraud; It is also used in the detection of social fraud, within the scope of social security and subsidy policies, through the automated correlation of information between different databases; in human resources management, through the automation of recruitment and performance evaluation processes; and also in the evaluation of administrative requests and the granting of benefits, where intelligent systems assist in the decision on social support, authorizations, licenses or other administrative acts.

The common feature of these applications is the *use of machine learning algorithms***,** which are not limited to executing previously programmed instructions, but are capable of detecting patterns and inferring relationships from large volumes of data (*big data*).[3] Unlike traditional deterministic systems, which always produce the same result from the same set of *inputs*, artificial intelligence systems learn and adapt**,** adjusting their predictive models according to accumulated experience and successive interactions with new data.

This characteristic – that of the capacity for autonomous evolution and adaptation – constitutes what is called the '*technical autonomy'* of legal artificial intelligence, understood as an autonomous, adaptive system articulated with the environment in which it is integrated, which develops decision-making patterns not entirely programmed by its creators**,** but resulting from the Continuous interaction with data, contexts, and other information systems**.** Thus, artificial intelligence is not just a static tool, but a dynamic computational agent, which interacts with the legal and administrative environment, modifying its behavior over time.

The consequence of this adaptive nature is profound from a legal point of view, as *decisions generated by algorithmic systems cannot be fully anticipated by programmers or public decision-makers who use them***,** which introduces an area of opacity and unpredictability in administrative action. Such opacity – often referred to as *a black box problem* – stems from the fact that many algorithms, especially those based on deep neural networks (*deep learning*), operate with decision models whose internal logic is inaccessible to human interpretation**,** making it difficult to identify the specific reasons that lead to a given result.[4]

In the context of Public Administration, this opacity poses direct challenges to the structuring principles of administrative activity, namely the principles of transparency, legality, impartiality and good administration (cf. Articles 266 and 268 of the Constitution of the Portuguese Republic).[5] The use of systems that make or influence decisions without full intelligibility compromises the possibility of scrutiny by the addressees of the acts and by the courts**,** and may affect the right to the statement of reasons for administrative acts. In fact, an automated administrative act whose reasoning is limited to an algorithmic 'output' – without comprehensible explanation – collides with the constitutional and legal requirement that the addressees know the reasons and grounds for the decision that affects their legally protected rights or interests.[6]

In addition, artificial intelligence systems

2022, 171-191, avaliable at https://revistas.rcaap.pt/juridica/article/view/26769 [consulted on 26.01.2026].

[3] In this sense, see the definition given by Article 3(1) of the Artificial Intelligence Regulation, approved by Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024, which establishes that an Artificial Intelligence System will be 'a machine-based system designed to operate with varying levels of autonomy, and which may be adaptable after deployment and that, for explicit or implicit purposes, and based on the input data it receives, infers how to generate results, such as predictions, content, recommendations or decisions that may influence physical or virtual environments'.

[4] F. Serrano Antón*, Fiscalidad y Robótica: funcionalidades disruptivas en el Derecho tributario*, in *Fiscalidad e Inteligencia Artificial: Administración Tributaria y Contribuyentes en la era digital,* Thomson Reuters Aranzadi, 2020, 52; Y. Bathaee, *The Artificial Intelligence Black Box and the Failure of Intent and Causation*, in *Harvard Journal of Law & Technology,* vol. 31, no. 2, Spring, 2018, 890-938.

[5] L.M. Pica, *A Inteligência Artificial no Direito Tributário: Fundamentos e Limites Constitucionais,* Coimbra, Almedina, 2023, 181 ff.; A.G. Orofino, *The Implementation of the Transparency Principle in the Development of Electronic Administration*, in *European Review of Digital Administration & Law - Erdal,* vol. 1, issue 1-2, 2020, 123-142.

[6] J.C. Vieira de Andrade, *O Dever da Fundamentação Expresso de Actos Administrativos*, Coimbra, Almedina, 1991, 79; D. Melo Fernandes, *O Princípio da Transparência Administrativa: Mito ou Realidade?*, in *Revista da Ordem dos Advogados*, year 75, Lisbon, January- July 2015, 443.

present increased risks of algorithmic *bias*, when training databases reflect inequalities, biases or historical errors. In the administrative and tax domain, this phenomenon can translate into discriminatory treatment of subjects, especially when algorithms reproduce patterns of socioeconomic or territorial inequality, without there being any underlying human intentionality.[7] Thus, even if the automated decision is 'neutral' in appearance, it can perpetuate systematic injustices, challenging the equal treatment and non-discrimination enshrined in Article 13 of the Constitution of the Portuguese Republic.

It is in this context that the reflection that artificial intelligence must be perceived as an autonomous and adaptive system, and legal liability cannot be based exclusively on the mechanical causality between a technical error and the damage**,** but must consider the normative dimension of the interaction between the system, the data and the authority that uses it. In other words, legal imputation must remain in the sphere of the Public Administration, which chooses, supervises and benefits from intelligent systems, even if they operate with varying degrees of autonomy.

Therefore, the introduction of artificial intelligence in the functioning of the Public Administration does not eliminate the responsibility of the State, but rather reconfigures the terms in which it manifests itself**.** The Administration is now responsible not only for the acts and omissions of its human agents, but also for the acts resulting from the functioning of its technical systems**,** understood as instrumental extensions of the administrative will**.** Legal-administrative dogmatics must therefore recognise that algorithmic action is part of the functional domain of the Administration, implying the need for new mechanisms for control, auditing and explainable reasoning (*explainable AI),* in order to ensure compatibility between technological innovation and the rule of law.[8]

Thus, it can be said that artificial intelligence in administrative and tax activity represents, simultaneously, an opportunity and a legal challenge: *an opportunity because it allows a more efficient, rational and data-driven public management; and a challenge, because it calls into question central categories of administrative and tax law – such as act, will and guilt – requiring a dogmatic reconstruction that ensures the effective protection of fundamental rights in the algorithmic era*.

3. *Problems and Challenges of the Current Legal Architecture of the Legal Regime of Non-Contractual Civil Liability of the State in the Age of Artificial Intelligence*

3.1. *Introductory Framework*

The Portuguese regime of non-contractual civil liability of the State and other public entities is enshrined in Law No. 67/2007, of 31 December**,** which approved the Regime of Extracontractual Civil Liability of the State and other Public Entities, a diploma that implements the constitutional command of Article 22 of the Constitution of the Portuguese Republic, according to which '*the State and other public legal persons are civilly liable, jointly and severally with the holders of their organs, employees or agents, for actions or omissions practiced in the exercise of their functions, resulting in violation of rights, freedoms and guarantees or prejudice to others'*. It is, therefore, an institute for the realization of the responsibility of the public power before the subjects, materializing the subjection of the State-Administration to the Law and the principle of the Democratic Rule of Law.[9]

[7] F. Alonso Murillo, *Los Derechos Fundamentales como Límites al Empleo de Inteligencia Artificial en los Procedimientos Tributarios*, in *Inteligencia Artificial y Administración Tributaria: Eficiencia Administrativa y Defensa de los Derechos de los Contribuyentes*, Navarra, Thomson Reuters, 2021, 65.

[8] This phenomenon raises problems in the light of the principle of the statement of reasons for administrative acts, enshrined in Article 268(3) of the Constitution of the Portuguese Republic, Article 152 of the Code of Administrative Procedure and Article 77 of the General Tax Law. The requirement to state reasons is not merely a formality, it constitutes an essential guarantee for the taxpayer, enabling him to understand the reasons for the decision, to assess its legality and, where appropriate, to challenge it before the courts. The statement of reasons is therefore a requirement of transparency and rationality, ensuring that the administration does not act in an arbitrary or obscure manner. As can be seen, it is established as a true guarantee of the administered and the Democratic Rule of Law, ensuring transparency, impartiality and the possibility of control of administrative acts. J.C. Vieira de Andrade, *O Dever da Fundamentação Expresso de Actos Administrativos*, cit., 79; D. Melo Fernandes, *O Princípio da Transparência Administrativa: Mito ou Realidade?*, cit., 443.

[9] Precisely because of the duty to compensate materialised in the liability of the State, a genuine duty to restore the factual situation is consolidated, namely

The Regime of Extracontractual Civil Liability of the State and other Public Entities enshrines a unitary liability, overcoming the previous fragmentation between liability for acts of public and private management. This unification has particular dogmatic relevance, as it means that all actions of the Administration, regardless of their nature, are subject to the same legal regime of liability**,** provided that the general conditions are verified.

Thus, Article 7 of the Legal Regime for Extracontractual Civil Liability of the State and other Public Entities provides for *liability for an unlawful and culpable act*, requiring the demonstration of the unlawfulness of the conduct and the fault of the agent, while Article 11 establishes strict liability *for the risk*, removing the requirement of fault in situations where administrative activity creates special dangers to the rights of individuals.

In structural terms, the non-contractual liability of the State presupposes, as a rule, the cumulative verification of five elements:[10]

- the existence of damage (property or non-property);
- the practice of an unlawful act, consisting of an action or omission contrary to the Law;
- the imputability of the fact to a public body, official or agent, in the exercise of his duties;
- an adequate causal link between the fact and the damage;
- and, in subjective regimes, the fault of the agent, unless the legislator has established strict liability.

This legal architecture was conceived in a historical context in which administrative action was entirely human, that is, the 'act of the Administration' always implied the intervention of an agent endowed with will, discernment and decision-making power, expressing a manifestation of will legally attributable to the public legal person.[11]

However, with the digital transformation of Public Administration, new paradigms of action emerge in which administrative decisions are fully or partially automated**,** mediated by algorithmic systems and artificial intelligence. The automated or semi-automated administrative act puts in crisis the traditional assumptions of the dogmatics of the civil liability of the State, as it shifts the center of the decision from the human being to the computer system**.**

The question that arises is *how to legally impute damage caused by an administrative decision taken by an algorithm*, especially when the error stems from a programming failure, data *bias.* This is because the classical dogmatics, centered on human guilt and subjective illegality, is insufficient to encompass situations in which the harmful conduct results from a complex technical-administrative chain**,** involving automated decisions, private software suppliers and the absence of conscious intervention by the public agent.[12]

Thus, it is necessary to reformulate or adapt the existing legal dogmatics, in order to ensure the effectiveness of the State liability regime in the digital age, making technological innovation compatible with the protection of the fundamental rights of subjects. And, such adequacy may involve, for example, a (re)conception of the concept of 'administrative act', admitting that the administrative will can be expressed through automated processes controlled or supervised by the Administration, without this eliminating the legal imputation to the public

through the constitutional norms provided for in Articles 22 and 266(1) of the Constitution of the Portuguese Republic. From a joint reading of the aforementioned constitutional precepts, a concern of the constituent legislator to comply with the principle of restoration of legality, namely by prohibiting acts that are considered harmful to the administrated, thus preventing the material translation of damage and injury in the legal sphere of the subjects and the violation of their legally protected rights and interests. B. Piairo De Sousa, *A Responsabilidade Civil da Administração Tributária – Os Atos Lesivos em Matéria Tributária*, Coimbra, Almedina, 2021, 101 ff.

[10] In this sense, the Supreme Administrative Court states that 'the following are prerequisites for non-contractual civil liability for lawful facts: the unlawful legal or material administrative act, the damage resulting in special and abnormal losses, a general interest and the causal link between the fact and the damage'. Judgment of the Supreme Administrative Court of 10/05/2006, case no. 0246/04, Rapporteur Counsellor Fernanda Xavier, available at www.dgsi.pt [accessed on 26/01/2026].

[11] In this sense, Diogo Freitas do Amaral states that, 'originally, the concept of administrative act was built on the basis of considerations of a jurisdictional nature: it delimited certain behaviours of the Administration according to the supervision of administrative activity by the courts'. D. Freitas do Amaral, *Curso de Direito Administrativo - Volume II,* 2nd Edition, Coimbra, Almedina, 2011, 231; V. Pereira da Silva, *In search of the Lost Administrative Act*, Coimbra, Almedina, 2016.

[12] M. Miranda Barbosa, *The future of civil liability challenged by artificial intelligence: the difficulties of traditional models and solution paths*, in *Revista de Direito Civil,* vol. 2, Almedina, 2020, 263 ff.

entity. After all, the imputation of the act to the Administration does not depend on the materiality of the human decision, but on the ownership of the function and the public power exercised, so that, even in contexts of automation, the State must be liable for the damages resulting from the defective, unfair or illegal functioning of its algorithmic systems**,** in the light of the principle of trust, good administration and the protection of the rights of the administered.

3.2. *Legal Imputation and the Problem of Algorithmic Causality*

The central question of civil liability for acts of the Tax Administration supported by artificial intelligence lies precisely in legal imputation, namely *how to attribute to the public legal person a behavior that, although triggered within it, results from operations carried out by an algorithmic system endowed with functional autonomy?*

This question lies at the point of confluence between classical administrative law, which has always presupposed human intervention as a representation of the state's will, and algorithmic Tax Administration**,** which introduces a new modality of public action, mediated by computational acts and machine learning.

Traditionally, legal imputation corresponds to a normative translation of factual causality, that is, a process through which the legal system attributes to a legal subject (natural or legal person**)** the legal effects arising from a certain fact or behavior. In the field of non-contractual civil liability of the State, this imputation has been relatively stable, since the action or omission of a body, official or agent is imputed to the Public Administration, because it (the agent) acts in the exercise of its functions and under the authority of the public legal person, constituting an instrument of the administrative will.

Imputation, in the context of administrative activity, is first and foremost an act of legal will**,** by which the legal system decides to consider that the behavior of an individual falls within the sphere of action of the public entity. Thus, the link between the agent and the Administration is a normative relationship, and not merely causal, since the State is not responsible because it 'caused' the damage in a physical sense, but because the Law understands that that behavior, practiced in the exercise of public functions, should be considered its own.

However, the introduction of artificial intelligence in the decision-making structure of the Tax Administration challenges this imputation scheme. With the progressive automation of decisions, the administrative-tax act is no longer the direct result of the conscious deliberation of a human agent, but rather the result of algorithmic processes that operate with technical and cognitive autonomy. In these cases, the administrative decision emerges from statistical inference models, whose internal logic and decision process may be opaque even to the programmers themselves**.**

The question, therefore, is to know how to legally attribute this decision to the Public Administration**,** when there is no immediate human will to which one can resort. *Is the automated act to be regarded as legally attributable to the administration**,** even if its content is the result of autonomous algorithmic transactions? Or is it necessary to identify an intermediary human subject - the programmer, the technician, the manager, a third party with interference in the system - for the imputation to take place?*

The answer must start from the axiology of the concept of imputation that the legal system makes to the agent of the act, since imputation is an instrument of guarantee. The public legal person is liable not because it acted physically, but because it holds the function and the legal power to act. Thus, if the algorithmic system is used by the Administration to carry out decision-making tasks, the algorithm's performance is functionally integrated into the legal sphere of the Administration, constituting a technical extension of its activity.

In this sense, the imputation of algorithmic acts must be brought back to the very logic of the administrative function, and not to the individual human element. This is because the autonomy of artificial intelligence is technical, not legal. The system can operate adaptively, but it remains an instrument normatively subordinated to the legal subject that employs it**.** The functional autonomy of artificial intelligence, therefore, does not break the imputation nexus, but requires a reconfiguration of the way in which the legal system translates technical causality into legal responsibility.

From this perspective, the use of artificial intelligence systems by the Public

Administration does not create an 'imputation gap', but rather a new modality of indirect imputation**,** in which the technical behaviour of the system is legally redirected to the Administration as the holder of public authority.

Such a renewal can be based on different dogmatic foundations:

- *The principle of authority and function*: the system acts in the name and under the direction of the Administration, which uses it as an instrument for the execution of its competence;
- *The principle of vigilance and control*: the Administration has a duty to ensure the correct functioning, transparency and explainability of the systems it uses;
- *The principle of the legitimate expectations of the persons concerned*: individuals have the right to presume that any administrative decision, even if automated, is imputable to the competent public authority.

Thus, the legal imputation of automated tax acts does not dissolve in technical complexity, but is reaffirmed as a normative act of linking technology and public power**.** The algorithm is not a legal subject, but a means of action by the Administration**,** which must answer for its results, under the terms of Article 22 of the Constitution of the Portuguese Republic and Law No. 67/2007, of 31 December. The transition to an algorithmic Administration does not eliminate the foundations of the State's civil liability, but calls for the expansion of the dogmatics of imputation to encompass the technological forms of exercising the administrative function. It is a matter of recognizing that, in the twenty-first century, the administrative will can be expressed not only by human acts, but also by legally controlled automated processes**,** while maintaining ownership and responsibility in the sphere of the public legal person**.**

3.3. *Between Guilt and Risk: Rethinking the Foundations of Liability*

The Regime of Extracontractual Civil Liability of the State and other Public Entities, approved by Law No. 67/2007, of 31 December, is based, as a general rule, on fault as a criterion for imputation, reflecting the Portuguese and European legal tradition according to which the liability of the State presupposes the demonstration of unlawful and culpable behaviour on the part of a public official, acting in the exercise of their functions.[13] Article 7 of the law establishes that 'the State and other legal persons governed by public law are liable for damages resulting from unlawful and culpable actions or omissions of their organs, employees or agents', confirming the predominance of a subjective model of liability, in which fault functions as a structuring element of imputation.

Guilt, in this context, performs a double function:

- *Ethics*: translates the personal reprehensibility of the conduct — the possibility of reproaching the agent for not having acted with the required diligence;
- *Normative:* it is an instrument for limiting the State's liability, avoiding its excessive objectification and ensuring a balance between the protection of individuals and the stability of administrative action.

The legislator does, however, allow for exceptions to strict liability, namely in cases of special risks created by the Administration (Article 11), abnormal functioning of the public service (Article 10) or damage arising from the exercise of the judicial function (Article 12(2)).

However, the dogmatics of the assumption of *guilt* proves to be insufficient and conceptually inadequate when transposed to the domain of artificial intelligence**.** The algorithmic systems used by the Tax Administration operate with significant degrees of functional and cognitive autonomy, learning and evolving from previous data and experiences, and may even be influenced by external agents without the user's own knowledge. Such autonomy implies that the behavior of the system is not entirely predictable or controllable by any individual human agent**,** even by those who designed or supervise it.

In a scenario in which the administrative decision results from machine learning processes, the traditional requirement of proof of guilt – understood as a breach of a duty of care subjectively attributable to an agent – becomes inoperative or artificial**.** Indeed, who would be 'to blame' for an algorithmic error? The programmer who developed the code?

[13] The legal regime of civil liability, enshrined in Law No. 67/2007, of 31 December, is based on a true Aquilian civil liability. J. Lopes de Sousa, *Sobre a Responsabilidade Civil da Administração Tributária por atos ilegals,* Lisboa, Áreas Editora, 2010, 17-18.

The leader who decided to adopt the system? The computer technician who parameterized it? Or the State itself, for having relied on an automated process? A third party (agent or system) that interfered in the formation of the decision-making design?

The difficulty is that none of these subjects has full control over the algorithmic decision-making process**,** given that it unfolds at levels of complexity and opacity that escape human comprehension (*black box problem*). The error can emerge from unpredictable interactions between data and mathematical models, or through interference with other related systems, without corresponding to any recognizable omission of care in the traditional molds of guilt.

This situation challenges the subjective paradigm of State responsibility and highlights the need to reformulate the imputation criterion. If the imputation of guilt depends on the possibility of censuring the conduct of an agent, then, in contexts of automated decision-making, guilt ceases to be the appropriate instrument to guarantee the effective protection of individuals. The inherent unpredictability of artificial intelligence creates areas of potential irliability, where the injured party cannot identify a culpable human agent and therefore cannot access fair redress**.**

In view of this, the idea that the State's civil liability regime should evolve towards greater objectification gains strength, especially when the Administration resorts to technologies endowed with technical autonomy. The decision to use artificial intelligence systems – with all the risks that come with it – is, in itself, an act of public management that implies the assumption of responsibility for the results that arise from it**.** Thus, regardless of whether there is individual fault, the Administration must be considered to be objectively liable for damages resulting from the abnormal or defective operation of its algorithmic systems, similar to what already happens with damage caused by risky instruments, equipment or[14] infrastructures.

This transition from fault to responsibility for technological risk is based not only on equity, but also on structuring principles of the rule of law, such as legitimate expectations, proportionality and effective judicial protection (Articles 2 and 20 of the Constitution of the Portuguese Republic). The person who is harmed by an automated administrative decision – for example, the undue rejection of an application for a tax advantage – should not bear the evidential burden of proving fault in a complex and opaque technical chain**,** but only the causal link between the defective operation of the system and the damage suffered.

In summary, the classic model of liability based on fault proves to be inappropriate in a context in which the Administration acts through autonomous and probabilistic decision-making systems. Technological developments require a rereading of Article 7 of Law No. 67/2007, of 31 December**,** in the light of the principles of substantive justice and the protection of fundamental rights, in order to recognise that the imputation must objectively fall on the Administration as the holder and user of algorithmic systems**,** regardless of the possibility of individualizing a human fault. Such a solution not only reinforces the coherence of the regime, but also reaffirms the centrality of state accountability as a corollary of the rule of law in the digital age**.**

3.4. *Strict Liability and Duties of Human Oversight*

The establishment of a model of strict liability for technological risk should, however, be complemented by strengthened obligations of supervision and human control, in order to ensure that the adoption of artificial intelligence systems by the Public Administration does not lead to a diffuse lack of responsibility or a blind automatism of the administrative decision. The objectification of liability – necessary to ensure the effective protection of individuals in the face of algorithmic opacity and unpredictability – cannot be dissociated from a preventive regime of ethical and legal governance of artificial intelligence systems.

In this context, Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024,[15] known as the AI Act,

[14] In this sense, J. González, *Responsabilidade por danos e Inteligência Artificial (IA)*, in *Revista de Direito Comercial,* n. 1, 2020, 69-112, available at: https://static1.squarespace.com/static/58596f8a29687fe710cf45cd/t/5e5c279317c29a501a4c55e2/1583097749667/2020-02+-+069-112.pdf [consulted on 26/01/2026].

[15] Available at: *https://eur-lex.europa.eu/legal-content/PT/TXT/PDF/?uri=OJ:L_202401689* [consulted on 24.01.2026].

constitutes a fundamental normative framework, by establishing a uniform legal framework for the use of artificial intelligence in the European space. The AI Act is based on a risk-based approach, distinguishing between unacceptable-risk, high-risk, limited-risk, and low-risk systems, and imposing gradual compliance obligations on entities that develop, implement, or use artificial intelligence systems.

For systems classified as 'high risk', the AI Act imposes particularly stringent requirements, including the principle of 'meaningful human oversight' enshrined in Article 14 of the Regulation. This principle requires that high-risk artificial intelligence systems be designed and operated in a way that allows for effective human intervention, both to prevent or correct potentially harmful outcomes and to ensure the legitimacy and accountability of administrative decisions. Human control is thus not limited to a mere 'symbolic presence' of an official, but implies the effective ability to understand, question, modify or annul the automated decision, when it proves to be inappropriate, discriminatory or contrary to the legal rules in force.[16] From a dogmatic point of view, the principle of meaningful human control reinforces the imputation link between the algorithmic act and the Administration, by reintroducing the dimension of human will and deliberation in the decision-making chain. Even when the artificial intelligence system operates autonomously, there must be an administrative officer who has the power to supervise, understand and intervene,[17] which makes it possible to maintain consistency with the constitutional requirement that the Administration act 'in accordance with the law and the law' (cf. Article 266(2) of the Constitution of the Portuguese Republic).

The implementation of this principle translates, in practical terms, into the need for the Administration to adopt institutional mechanisms for continuous surveillance and auditing of artificial intelligence systems, including:

. Impact assessments prior to implementation, to identify legal, ethical and social risks;
. Transparent records of automated decisions, allowing the reasons behind the decision to be tracked and to ensure its auditability;
. Mandatory human intervention at critical moments in the decision-making process, especially when the decision may affect legally protected rights or interests;
. Training and qualification of public agents, so that they can exercise informed and critical control over the systems they use.

Meaningful human control thus functions as an essential counterweight to the objectification of state responsibility. If, on the one hand, the State must be objectively liable for the damage caused by the artificial intelligence systems it uses – due to the technological risk it assumes – on the other hand, it must organize its administrative action in such a way as to minimize these risks, through active supervision, technical diligence and responsible governance. In dogmatic terms, a double duty is instituted in the form of ex post strict liability and an ex ante monitoring obligation, which reveal a structural evolution of administrative liability. Guilt is no longer the centre of imputation, but becomes a positive duty of prevention and control. Failure to comply with this duty may constitute, in itself, a new form of administrative illegality, relevant for the purposes of liability.

Thus, the principle of meaningful human control is not only a technical requirement of the AI Act, but must be understood as a new norm of administrative conduct, with legal and dogmatic value. It concretizes, at the level of public action, the constitutional principles of legality, good administration and the protection of fundamental rights, ensuring that, even in the digital age, the administrative decision remains human in the legal sense, that is, subject to public reason, responsibility and the possibility of scrutiny.

3.5. *Proposals for the Adjustment of the Portuguese Regime*

In view of the new normative and technological context, the regime of Law No. 67/2007, of 31 December, is insufficient, and three lines of adjustment can be pointed out that seem to us to be necessary: i) express recognition of responsibility for technological risk; ii) reinforced duties of transparency and

[16] L.M. Pica, *A Inteligência Artificial no Direito Tributários: Fundamentos e Limites Constitucionais,* cit., 89.

[17] However, the role of the agent who supervises the artificial intelligence system is questioned, as it cannot fail to mention that, biologically, it is 'limited', since it will have a period of necessary rests and a delimited working schedule, while the machine will work during all days of the week, without rest and autonomously without supervision.

explainability; iii) and organizational responsibility.

Let's see.

i) ***Express Recognition of Responsibility for Technological Risk***

It would be useful to introduce in Law No. 67/2007, of 31 December, an express provision regarding the use of automated or intelligent technologies, presuming the strict liability of the State for the damage caused by such systems when acting in the exercise of administrative functions. This model, inspired by Article 11, would recognise the existence of high-risk activities, in which the Administration must bear the damage regardless of fault, unless there is evidence of extraneous cause.

ii) ***Enhanced Transparency and Explainability Duties***

Civil liability should be articulated with the *principles of transparency and administrative motivation***,** requiring that automated decisions be accompanied by sufficient documentation to allow *for judicial understanding and control.*

One of the great risks of artificial intelligence is the so-called *algorithmic 'black box',* that is, decisions whose reasoning is unintelligible. The absence of explainability not only undermines the principle of legality, but also hinders the exercise of the adversarial procedure and the verification of the existence of guilt.

In this scenario, the duty of traceability emerges as a central element of legal imputation. Traceability consists of the ability to reconstruct who interacted with the system, what data was entered and what changes were made, allowing the identification of the exact point at which the error or bias that led to the damage originated.

Thus, the lack of transparency must constitute a *presumed unlawful act*, reversing the burden of proof, that is, it would be up to the Administration to demonstrate that the system was used in a diligent and controlled manner.

iii) ***Organisational Responsibility and Duty of Continuous Audit***

Responsibility should shift from the individual to the organisational level**,** focusing on the adequacy of supervision, training and internal audit arrangements.

This implies that the responsibility of the State is based on the failure of the technological governance system**,** and not on the fault of an isolated agent. In addition, a permanent duty to audit the artificial intelligence systems used by the Administration should be provided, with the obligation of periodic public reports on risks, failures and corrective measures.

Such changes would strengthen citizens' trust and ensure transparent, preventive and digitally fit accountability**.**

4. ***Conclusion***

Having reached this conclusive moment, we cannot fail to assume a premise that seems to us to be of unmistakable importance: the necessary refoundation of the State's civil liability in the face of the use of artificial intelligence systems imposes itself as one of the most urgent challenges of contemporary Administrative (and Tax) Law.

The current legal model, historically built under the aegis of human action, is structurally incapable of responding to the complexities introduced by algorithms that are not limited to executing orders, but that learn and make decisions autonomously. Insisting on the strict application of the traditional paradigm, which requires the unequivocal demonstration of an individual fault of a public agent and the establishment of a linear and direct causal link, is equivalent to creating a zone of immunity for the Public Administration, leaving the subject unprotected against damage caused by the opacity or bias of the machines.

This regulatory insufficiency becomes evident when confronted with the evolving nature of machine learning technologies. Unlike classic administrative acts, where it is possible to track human will and error, the decisions made by artificial intelligence systems often operate under a '*black box' logic,* where the decision-making process is unfathomable and the autonomy of the system dilutes the figure of the responsible official. Therefore, the attribution of liability must move from a subjective basis, focused on culpable conduct, to an objective or risk-based perspective, assuming that, if the State benefits from the efficiency and speed provided by technology, it must also bear the risks inherent in its fallibility, without transferring that burden to the individual.

In this new scenario, the function of civil liability transcends the simple patrimonial reparation of the damage suffered. It must be reconfigured as a powerful instrument of regulation and prior control, acting as an indispensable incentive for good technological governance. Knowing that it will be accountable for the errors of its algorithms, the Public Administration will be compelled to adopt a proactive posture of vigilance, implementing constant audits, ensuring data transparency and ensuring that digital innovation respects fundamental rights by design.

Thus, civil liability is no longer just an 'invoice' for the error committed, becoming what is found in its axiological genesis, namely, the principle of reparation for damages that should not be borne by those who suffer them, resulting as a guarantee that the modernization of the State effectively serves the public interest with security and justice.