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*Artificial Intelligence and the Emerging Challenges of Liability**

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ABSTRACT The article analyses the civil and administrative liabilities associated with the use of artificial intelligence, highlighting the human-centred, risk-based approach that characterises European and national legal systems. It examines the main areas of liability and the evidentiary challenges relating to fault and causation. European regulatory initiatives, including the AI Act and product liability legislation, are also discussed, emphasising the need for systemic measures capable of ensuring effective protection without hindering innovation. The article further addresses the critical issues surrounding the potential attribution of legal personality to autonomous AI systems. Particular attention is paid to the civil liability of public administrations and to the administrative and accounting liability of public officials arising from the use of AI systems.

KEYWORDS: Artificial Intelligence - Civil liability - Public Administration liability - Administrative-accounting liability

TABLE OF CONTENTS: 1. The Manifold Areas of Liability Arising from the Deployment of Artificial Intelligence Systems. – 2. Theoretical Challenges in Defining a Legal Framework for AI-Related Liability and the Debate on Granting Legal Personality to AI Systems. – 3. Insights Towards a Potential Civil Liability Regime for Risks Associated with AI Systems. – 4. Artificial Intelligence and Public Administration Liability. – 5. The Difficulty of Establishing Administrative Liability of Public Officials in the Field of AI. – 6. The Subjective Element of Administrative and Accounting Liability: The High Threshold of Gross Negligence. – 7. The Need for Technical Expertise and Potential Liability for Failure to Use AI.

1. *The Manifold Areas of Liability Arising from the Deployment of Artificial Intelligence Systems*

When administrative activity utilizes artificial intelligence systems, a plurality of stakeholders becomes legally relevant.[1] In the public sector, as is well known, in all cases where 'measures by algorithms'[2] must be adopted, it is not possible to resort to systems endowed with a capacity to 'think', but exclusively to 'execute'. This follows from the principle of non-exclusivity of algorithmic decision-making, which requires human intervention capable of reviewing, validating, or disregarding the outcome generated by the automated system.

However, this presupposes that public administrations first equip themselves with qualified personnel possessing the skills and knowledge necessary to critically assess the decision proposed by the artificial intelligence system and, where appropriate, depart from it. Beyond constituting a formal safeguard, this principle lies at the very heart of decision-making responsibility. Nevertheless, identifying a single party responsible for damage arising from the use of artificial intelligence is difficult, since the final outcome results from the joint, coordinated, and complementary contributions of multiple actors and components.

These include the algorithm designer, the software developer, the data provider, the public official responsible for operating the system, and the public administration itself.[3]

From the perspective of validity and judicial review, defects may arise at different stages: in defining the programming rules, collecting or inputting data, operating the software, or translating the computational

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[1] This article revisits the observations already made in S. Cimini, *Profili di responsabilità della pubblica amministrazione nell'uso dell'intelligenza artificiale*, in M.C. Cavallaro and V. Fanti (eds.), *IA – Sanità – Territorio – Pubbliche Amministrazioni*, Naples, Editoriale scientifica, 2026; S. Cimini, *La responsabilità civile e amministrativa di fronte alle sfide dell'intelligenza artificiale*, in *Ceridap*, 2026; R. Morzenti Pellegrini and G.F. Licata (eds.), *Contratti pubblici e intelligenza artificiale*, Naples, Edizioni Scientifiche Italiane, 2026, 153 ff.

[2] On the distinction between an algorithmic administrative decision and an algorithm for mere support, cf. Consiglio di Stato, sec. IV, 4 June 2025, No. 4857.

[3] In this regard, P. Del Vecchio and V. Bignoli, *Le responsabilità amministrative da algoritmo e intelligenza artificiale. La responsabilità da provvedimento algoritmico sia ai fini del risarcimento del danno in sede civilistica che in sede contabile come responsabilità erariale*, in A. Pajno, F. Donati and A. Perrucci (eds.), *Amministrazione, responsabilità, giurisdizione*, Vol II, Bologna, Il Mulino, 2022, 338. See also V. Tenore, *Una riflessione sistematica: l'intelligenza artificiale può sostituire un giudice o trasformarlo da* homo sapiens *in* homo numericus?, in *Intelligenza artificiale. Impiego e implicazioni sotto il profilo tecnologico, etico e giuridico*, in *Quaderni della Rivista della Corte dei Conti,* no. 2, 2024, 77.

output into the final administrative decision. An upstream defect may therefore be transmitted to the final decision.[4]

Within this complex ecosystem, three main areas of liability may be identified: (1) liability relating to the selection of the data fed into the algorithm; (2) liability arising from algorithmic malfunction or systemic errors; and (3) liability relating to the unreasonableness of the automated administrative decision.[5] Although these three areas are conceptually distinct, they frequently overlap in practice, since errors may result from inadequate data, defective models, or improper use of the system by the public administration.

Regarding the first domain – data input – the Public Administration (PA) must exercise rigorous oversight during the preliminary phase, as the entire process depends on this crucial moment. If the inputs are inaccurate, incomplete, or biased, the outputs will inevitably be flawed, as the algorithm processes information according to the logic initially transmitted. This stage is decisive: through data selection, the algorithm ultimately reflects the administrative rule to be applied. In other words, the automated system merely translates administrative choices into computational form based on defined parameters.[6] Consequently, since data input falls under the PA's purview, it bears responsibility if incorrect information leads to an erroneous decision.

The second domain, concerning malfunctions, primarily implicates the private subjects involved in design and production, such as the author of the algorithm and the producer of the AI, who may also not necessarily coincide.[7] Systems are prone to 'hallucinations' – inaccuracies or the invention of false data – requiring vigilant monitoring. The absence, in artificial intelligence models endowed with autonomous learning capabilities (*self-learning*), of adequate blocking or control mechanisms designed to prevent deviations, unpredictable behaviour, or outcomes inconsistent with the parameters established by the Administration may also constitute a design defect.[8]

The third domain involves the 'unreasonableness' of the act: where data is correct and the system functional, yet the decision is unreasonable or breaches administrative principles. Here, the 'right to a comprehensible decision' – enshrined in Article 30 of the Public Contracts Code (Legislative Decree No. 36 of 31 March 2023) and in Law No. 132 of 23 September 2025 – becomes paramount. Technical formulas must be accompanied by explanations that translate them into the underlying legal rule. Case law clarifies that corporate secrecy cannot override transparency when these tools serve authoritative power.[9] However, the 'opacity' of advanced machine learning models complicates this translation for non-specialists.

The Italian legislator, with Law No. 132/2025, adopts an approach aimed at preserving the so-called 'human reserve', thereby placing human self-determination at the centre of AI activities. As clarified by

[4] See A.G. Orofino, *La patologia dell'atto amministrativo elettronico: sindacato giurisdizionale e strumenti di tutela*, in *Foro amm. CdS*, 2002, 2256 ff., especially 2264 ff. and 2270 ff.; A.G. Orofino and G. Gallone, *L'intelligenza artificiale al servizio delle funzioni amministrative: profili problematici e spunti di riflessione*, in *Giurisprudenza italiana*, 2020, 1738 ff., especially 1744-1746.

[5] More generally, on the issue of liability arising from AI, U. Ruffolo (ed.), *Intelligenza artificiale e responsabilità*, Milan, Giuffrè, 2017; C. Scognamiglio, *Responsabilità civile ed intelligenza artificiale: quali soluzioni per quali problemi?*, in *Responsabilità civile*, no. 4, 2023, 1073 ff.; see also A.G. Orofino and R.G. Orofino, *L'automazione amministrativa: imputazione e responsabilità*, in *Giornale di diritto amministrativo*, 2005, 1300 ff; *Artificial Intelligence and Civil Liability* (EU, 2025); E.M. Menéndez Sebastián, *Preventing Risks to Citizens from the Use of AI by Means of Fundamental Rights Impact Assessment*, in *European Review of Digital Administration & Law*, vol. 6, no. 2, 2025, 81-97; on the pathology of the electronic administrative act, A.G. Orofino, *La patologia dell'atto amministrativo elettronico: sindacato giurisdizionale e strumenti di tutela*, 2256 ff.; on the harms and benefits of artificial intelligence, see O. Bar-Gill and C.R. Sunstein, *Algorithmic Harm: Protecting People in the Age of Artificial Intelligence*, in *SSRN*, 2025; on the use of AI in public administrations, see D.U. Galetta, *Artificial Intelligence and Public Administration*, Naples, Editoriale Scientifica, 2025.

[6] R. Cavallo Perin, *Ragionando come se la digitalizzazione fosse data*, in *Diritto amministrativo*, 2020, 326; Consiglio di Stato, sec. VI, 8 April 2019, no. 2270, in *Diritto amministrativo*, 2019, 784.

[7] U. Ruffolo, *La responsabilità da artificial intelligence, algoritmo e smart product: per i fondamenti di un diritto dell'intelligenza artificiale self learning*, in U. Ruffolo (ed.), *Intelligenza artificiale. Il diritto, i diritti, l'etica*, Milan, Giuffré, 2020, 96-97.

[8] U. Ruffolo, *La responsabilità da artificial intelligence, algoritmo e smart product: per i fondamenti di un diritto dell'intelligenza artificiale self learning*, cit., 107.

[9] Consiglio di Stato, sec. VI, 4 February 2020, no. 881.

Article 14 of Law No. 132 of 2025, public administrations use artificial intelligence with the aim of increasing the efficiency of their activities, reducing the time required to conclude proceedings, and enhancing the quality and quantity of services provided to citizens and businesses, thus serving the function of ensuring the proper performance of the administration.[10] For the PA, this implies AI may only serve as a supportive tool, while the decision remains a human prerogative. In accordance with Article 14 of Law No. 132 of 23 September 2025, AI is used to enhance efficiency and service quality, while responsibility for the decision remains exclusively with the human operator and the public administration.

Furthermore, the full participation of interested parties is important in preventing errors and ensuring effective oversight.

2. *Theoretical Challenges in Defining a Legal Framework for AI-Related Liability and the Debate on Granting Legal Personality to AI Systems*

Defining a liability regime for AI is a complex task. Some scholars have proposed relying on contractual liability under Arts. 1218 et seq. of the Italian Civil Code to allocate technological risks, although this solution presupposes an existing contractual relationship.[11] Others have suggested applying Art. 1228 c.c., treating AI as an 'auxiliary', or resorting to the product liability regime laid down in the Consumer Code.[12] The prevailing view, however, favours a strict liability regime. In this regard, reference is often made to Art. 2050 c.c., concerning dangerous activities, or Art. 2051 c.c., concerning damage caused by things in custody. Analogies have also been drawn with the liability of guardians and employers under Arts. 2047–2049 c.c. Nevertheless, classifying AI as a 'servant' or an 'incapacitated person' is problematic, since these provisions are designed to govern human conduct. Moreover, establishing fault under Article 2043 of the Italian Civil Code may prove extremely difficult owing to the opacity of AI self-learning processes. Ultimately, none of the liability regimes developed by legal scholarship on the basis of the existing provisions of the Italian Civil Code appears to be fully suited to addressing damage caused by AI; each would require, at the very least, appropriate legislative adaptation.[13]

The difficulty of identifying a truly satisfactory liability regime for damage caused by AI systems has led some legal scholars to advance more radical proposals. In particular, some have suggested granting AI systems autonomous legal personality, so that harmful consequences could be directly attributed to the algorithmic entity itself. In its Resolution of 16 February 2017 on robotics, the European Parliament also invited the Commission to explore the creation of a specific legal status for sophisticated autonomous robots, enabling them to be regarded as 'electronic persons' liable for the damage they cause. The Commission, however, did not follow up on this proposal.

Such recognition of legal personality for AI systems would require safeguards, including mandatory insurance schemes and possibly guarantee funds, to ensure solvency and effective compensation.[14] This approach might be conceivable only for so-called 'strong' AI

[10] On the use of AI in the context of public administrations, see, recently D.U. Galetta, *Artificial Intelligence and Public Administration,* cit.; R. Cavallo Perin and D.U. Galetta, *Il Diritto dell'Amministrazione Pubblica digitale*, 2nd ed., Turin, Giappichelli, 2025; E. Carloni, *Critica dell'amministrazione artificiale*, Bologna, Il Mulino, 2026. On the principle of good performance, see A. Contieri, *Principio di buon andamento e vizi dell'atto amministrativo*, in A. Contieri, F. Francario, M. Immordino and A. Zito (eds.), *L'interesse pubblico tra politica e amministrazione*, II, Naples, Editoriale scientifica, 2010, 95 ff.

[11] C. Ferrari*, Esecuzione del contratto e intelligenza artificiale*, in *www.deiustitia.it*, 2024, 5.

[12] D. Marino, *Che responsabilità civile per l'uso di strumenti di intelligenza artificiale?*, in *Dirittoaldigitale.com*, 23 March 2023; S. Aceto di Capriglia, *Intelligenza artificiale: una sfida globale tra rischi, prospettive e responsabilità. Le soluzioni assunte dai governi unionale, statunitense e sinico. Uno studio comparato*, in *Federalismi*, 2024, 10.

[13] As also noted by C. Ferrari, *Esecuzione del contratto*, cit., 3.

[14] In this regard, S. Aceto di Capriglia, *Intelligenza artificiale: una sfida globale tra rischi, prospettive e responsabilità. Le soluzioni assunte dai governi unionale, statunitense e sinico. Uno studio comparato*, cit., 12 ff. The Author emphasizes that the recognition of legal personality is not precluded in abstract terms by the fact that the entity in question is not a natural person. He observes that there are already comparable cases — such as associations or committees — and that, unlike certain rights and duties, proprietary liability may well be attributed to an entity that is not a 'person.' On liability models inspired by risk theory, sometimes involving the introduction of guarantee funds or mandatory insurance schemes, see M.M. Barbosa, *Sistemas autónomos e responsabilidade: autoria e causalidade*, in *Revista de Direito da Responsabilidade*, 2022, 1126.

systems, such as emerging agentic AI, capable of autonomous planning and decision-making with minimal human intervention. In these cases, both fault-based and strict liability models appear inadequate, since the damage may stem from outputs not fully traceable to human conduct or to a typical human-created risk.

At present, however, this scenario remains largely theoretical. European and national law do not allow fully automated decision-making without meaningful human oversight, in line with the principle of 'human reserve' .Most scholars also reject the attribution of electronic legal personality to AI, as such systems are still regarded as objects rather than subjects of law, and such recognition would conflict with fundamental principles of civil law.

These limits apply even more strictly to public authorities, which cannot delegate decision-making power to machines without violating principles of transparency, participation, reason-giving, and accountability. Accordingly, AI may be used only as a supportive tool, not as a substitute for human judgment. This is now expressly confirmed by Article 14 of Law No. 132 of 2025, which states that AI must serve a merely instrumental and supportive function, while the human decision-maker remains solely responsible for the acts and procedures in which AI is used.

3. *Insights Towards a Potential Civil Liability Regime for Risks Associated with AI Systems*

Given the theoretical and practical difficulties involved in granting legal personality to an AI system, an alternative way to address the risks associated with generative or high-risk AI systems would be to introduce a strict liability regime combined with mandatory insurance coverage. Such a framework would ensure effective protection for injured parties, regardless of proof of fault.

This approach was only partially reflected in the European proposal for a directive adapting non-contractual civil liability rules to artificial intelligence, which was subsequently withdrawn. The proposal sought to facilitate access to evidence and introduced a rebuttable presumption of causation in fault-based liability claims.

However, the solution of introducing a strict liability regime is not without drawbacks. Its practical implementation raises concerns, as assessing damage and risks ex ante makes it difficult to calculate insurance premiums, which could become prohibitively expensive. Moreover, the unpredictable nature of AI-related risks might discourage insurers from entering into such contracts. One way to mitigate this obstacle would be to cap compensation amounts.

A further concern is that strict liability, while overcoming the difficulties of proving fault, may impose disproportionate burdens on developers and businesses, potentially discouraging experimentation and technological innovation. For this reason, the model should be tempered by rebuttable presumptions allowing proof to the contrary. Such presumptions, together with insurance mechanisms, could help alleviate producers' concerns.

A mixed liability regime – combining strict and fault-based elements – could also be envisaged, calibrated according to the level of risk associated with the AI system. This model could rely on rebuttable (iuris tantum) presumptions relating to causation, fault, and defectiveness particularly relevant where malfunction and causal links are often difficult to demonstrate.

European legislation appears to be moving in this direction. The European Union has adopted a new Product Liability Directive, which expressly extends the product liability regime to software and AI systems.[15] While the Directive maintains a strict liability model, it acknowledges that proving defect and causation in AI cases can be especially complex. Article 10 therefore introduces rebuttable presumptions concerning both defectiveness (for instance, in cases of failure to disclose evidence, non-compliance with safety requirements, or manifest malfunction) and causation (where a defect is established and the damage is consistent with it).

This approach is commendable: it facilitates the injured party's position through a more favourable evidentiary regime, without fully reversing the burden of proof, an option that would have significantly affected the economic operators involved.

These presumptions also apply when, despite the disclosure of evidence, the claimant encounters excessive difficulties in

[15] Directive (EU) 2024/2853 of the European Parliament and of the Council of 23 October 2024.

proving the defect or the causal link due to the technical or scientific complexity of the product; or when the claimant succeeds in demonstrating the probability of the existence of the defect, the causal link, or both. In essence, these presumptions operate in cases of particular evidentiary complexity but also when there is mere proof of the 'probability' of the existence of the required elements. The Directive is therefore based on rebuttable presumptions concerning defectiveness and causation, without fully reversing the burden of proof. A full reversal would have imposed a significantly heavier burden on the economic operators concerned. This balanced solution is to be welcomed.

However, legislative intervention at both the national and the European levels is necessary, as the contribution of case law and legal scholarship alone cannot be regarded as sufficient to resolve the issue of liability arising from artificial intelligence. The current regulatory vacuum creates confusion and interpretive uncertainty.

At the European level, as already noted, the regulatory framework remains incomplete, especially following the withdrawal of the proposed AI Liability Directive.

The Italian legislature has likewise taken a cautious approach. A specific provision of Law No. 132 of 2025 delegates the Government, in matters of civil liability, to adopt measures aimed at protecting injured parties, including through specific rules on the allocation of the burden of proof, taking into account the classification of AI systems and the related obligations identified by Regulation (EU) 2024/1689.[16]

Pending the implementing decrees, the Italian legal system appears aligned with the European approach, opening the way to evidentiary rules that address the claimant's difficulties of proof.

Nevertheless, clearer guidance from the national legislature would be desirable, expressly identifying the liability regime to be adopted: either strict liability, based on the risks inherent in the development and deployment of AI systems, or fault-based liability, requiring proof of intent or negligence. A mixed liability model, combining strict and fault-based liability, could also be envisaged. Consistent with the EU's risk-based approach, it could rely on rebuttable presumptions regarding fault, defectiveness, and causation to ease the evidential burden on injured parties, particularly where the complexity or opacity of AI systems makes these elements difficult to prove.

4. *Artificial Intelligence and Public Administration Liability*

With regard to public entities, as the legislator relegates the deployment of Artificial Intelligence to a purely instrumental role in support of administrative decision-making, no substantial departures from the ordinary liability regime governing the unlawful exercise of public power seem to emerge. Indeed, Article 14 of Law No. 132/2025 explicitly provides that AI is employed instrumentally to support decision-making and that the human decision-maker shall remain solely responsible for the measures and proceedings in which artificial intelligence has been employed.[17]

Nevertheless, in cases involving unlawful algorithmic measures, it appears untenable to invoke the traditional doctrines of excusable error (errore scusabile) developed by Italian administrative jurisprudence. As is well known, such doctrines exclude the liability of the Public Administration in instances of normative ambiguity, fluctuating judicial interpretations, significant factual complexity, novel legal issues, or errors induced by the conduct of private parties.[18] In this evolving landscape, it might become necessary to conceptualise a novel category of 'excusable algorithmic error'.

[16] See art. 24, par. 5(d), Law no. 132 of 2025, which provides: 'In cases of civil liability, provision of measures protecting the injured party, including through specific rules on the allocation of the burden of proof, taking into account the classification of artificial intelligence systems and the related obligations as identified by Regulation (EU) 2024/1689' (translation by the author). On the Regulation (EU) 2024/1689, see L. Cotino Hueso and D.U. Galetta (eds.), *The European Union Artificial Intelligence Act. A Systematic Commentary*, Naples, Editoriale Scientifica, 2025.

[17] Art. 14, par. 2: 'The use of artificial intelligence is instrumental and supportive in decision-making activities, while respecting the autonomy and decision-making power of the person, who shall remain solely responsible for the measures and proceedings in which artificial intelligence has been employed' (translation by the author).

[18] On the doctrine of excusable error, see recently TAR Lazio, sec. I *ter*, 16 July 2025, no. 14014; see also S. Cimini, *La colpa nella responsabilità civile delle Amministrazioni pubbliche*, Turin, Giappichelli, 2008, 251 ff.

Naturally, in the event of AI system malfunctions, the Administration may seek redress before civil courts by asserting contractual liability against the software developer or the supplier of the defective product.

Where the Administration is ordered to compensate the injured party, the conduct of officials who failed to exercise the required oversight may also give rise, where the relevant conditions are met, to administrative liability before the Court of Auditors.

Indeed, pursuant to the anthropocentric approach – which mandates meaningful human oversight over automated decisions – Public authorities must identify the public officials tasked with verifying the logical coherence and lawfulness of any system-generated measure. The algorithmic decision should be attributed to these public officials and, by virtue of the principle of organic identification (*immedesimazione organica*), to the public administration itself.

This necessitates a comprehensive redefinition of the organizational model, ensuring the identification of necessary safeguards and the proper attribution of automated acts for the purpose of establishing legal accountability.[19] Administrations should therefore identify the bodies responsible for programming, maintenance, supervision, quality control, and auditing, and preserve logs capable of reconstructing individual operations. The absence of such safeguards may prevent identification of the person responsible for the error and may itself reveal an organizational deficiency attributable to the Administration.[20]

The responsible party may also be identified as the head of the body responsible for issuing the measure.

It must be noted, however, that these considerations primarily apply to administrative measures based on simple algorithms. Should the Administration resort to machine learning processes, the level of complexity would increase significantly. In such scenarios, established legal principles – particularly those concerning the transparency of the algorithm and the non-exclusivity of the decision-making process – may prove unenforceable. The transparency of the algorithm is hindered by the opacity and 'black-box' nature inherent in self-learning systems, while the principle of non-exclusivity risks becoming a mere illusion of control in a context where the machine tends to eclipse the human decision-maker.

The corollary of this shift would be an unacceptable transfer of liability onto the official formally tasked with oversight, despite their lack of effective instruments to exercise it.[21] Ultimately, the difficulty – if not the impossibility – of establishing gross negligence ('colpa grave') on the part of the official would effectively transform the liability of the Public Administration into a form of strict liability based exclusively on systemic risk.

The distinction between AI systems that merely support the administrative decision and systems that tend to replace it is therefore also relevant to the attribution of liability.

As regards transparency, it should extend beyond the source code to encompass the data and criteria used, the decision-making mechanisms, the system's designers, and the competent authority. This serves both defensive and accountability purposes, making it possible to identify each party's contribution and the corresponding liabilities.[22]

[19] As noted by G.M. Racca, *Trasformazioni e innovazioni digitali nella riforma dei contratti pubblici*, in *Diritto Amministrativo*, 2023, 746. The Author states that 'digital transformations require a redefinition of organizational models and the management of "positional" risks; an "apparatus" must ensure the identification of monitoring and control measures to redefine organizational accountability and recognize the imputation of acts – including automated ones – to establish relative liabilities, including those of public officials in the event of a breach of standards'. On this point, see also M.C. Cavallaro and G. Smorto, *Decisione pubblica e responsabilità dell'Amministrazione nella società dell'algoritmo*, in *www.federalismi.it*, 2019, 1 ff.; R. Cavallo Perin, *La responsabilità della pubblica amministrazione al tempo dell'intelligenza artificiale*, in *Diritto Amministrativo*, 2024, 1059 ff, specifically para. 5, observing that 'Artificial intelligence allows for a more precise definition of risk exposure for each type of administrative activity, enabling the selection of best practices as activity standards, thereby reducing the organization's exposure to recurrent risks'.

[20] See A.G. Orofino and R.G. Orofino, *L'automazione amministrativa: imputazione e responsabilità*, cit., 1310-1312; A.G. Orofino and G. Gallone, *L'intelligenza artificiale al servizio delle funzioni amministrative*, cit., 1745-1748.

[21] M. Corradino and P.D. Garrone, *Potere pubblico, comunicazione e nuovi algoritmi*, in *Il Sole24ore*, 18 February 2025.

[22] See A.G. Orofino, *La patologia dell'atto amministrativo elettronico: sindacato giurisdizionale e strumenti di tutela*, 2264 ff. and 2270 ff.; A.G. Orofino and G. Gallone, *L'intelligenza artificiale al servizio*

5. *The Difficulty of Establishing Administrative Liability of Public Officials in the Field of AI*

What has been observed so far highlights how the administrative liability of public officials connected with the use of artificial intelligence systems may arise.[23] Under the Italian legal system, such liability must be pursued before the Court of Auditors (*Corte dei conti*), which exercises not only audit and supervisory functions but also judicial functions, acting as the court with jurisdiction over liability for damage to public finances and public accounting matters.

As we have seen, within the anthropocentric approach characterizing the use of artificial intelligence by public administrations, it is necessary to identify the public official responsible for the administrative measures and proceedings in which an AI-based system has been used.

These subjects may therefore be held administratively liable for direct or indirect damage resulting from the use of artificial intelligence in the performance of administrative activities or the provision of public services.

Direct financial loss may consist, for example, of expenditure incurred by the public administration as a result of an erroneous automated measure. Indirect damage, on the other hand, would arise where the public administration incurs expenditure to pay damages, under civil law, for the harm suffered by a third party as a result of the algorithmic measure. In such a case, the public administration must seek recourse against the public official responsible for the error by initiating administrative liability proceedings before the Court of Auditors through the competent Regional Prosecutor of the Court of Auditors.

It is also possible to envisage the administrative liability of the private party that produced the AI system, considering the well-known jurisprudential expansion of the notion of 'service relationship' which may well include private subjects who integrate into the activity of the public Administration.[24] Indeed, when the private party's activity is functional and bound to the realization of the public interest purposes pursued by the P.A., a service relationship is established that is not 'organic' but 'functional'.[25]

Legal scholarship has thus hypothesised an extension of administrative liability also to the provider of the AI system, the developer of the algorithm, and the company supplying the AI system to the public administration, for the damage produced to the Administration by an incorrect algorithmic measure: in such a hypothesis, the service relationship could arise from the preparatory activity performed by the private party through the AI system.[26]

It appears preferable, however, to bring an action against such parties before the civil courts, where it is sufficient to prove ordinary negligence rather than gross negligence. It should not be forgotten, in fact, that the public administration may always bring civil proceedings against those who have caused it damage. A civil action is also preferable because, upon closer inspection, administrative liability does not appear easy to pursue. For example, administrative liability may be difficult to establish where it is impossible to identify with sufficient certainty which component of the system caused the damage and, consequently, which of the parties involved is responsible.

6. *The Subjective Element of Administrative and Accounting Liability: The High Threshold of Gross Negligence*

It should also be noted that, in addition to intent, the subjective element required for administrative liability is gross negligence. Following the recent reform, however, establishing such liability is likely to become increasingly difficult. Indeed, Law No. 1 of 7 January 2026, amending Law No. 20 of 14 January 1994, introduced a statutory definition of gross negligence, thereby narrowing its scope.

In particular, Art. 1, para. 1, let. a), point

delle funzioni amministrative: profili problematici e spunti di riflessione, 1744-1746.

[23] On the subject, cf. N.M. Tritto, *Il danno erariale da intelligenza artificiale*, in *Federalismi.it*, 2024; P. Evangelista, *Intelligenza artificiale e responsabilità amministrativo-contabile*, in *Quaderni della Rivista della Corte dei Conti,* 2, 2024, 139 ff.

[24] On the service relationship, permit me to refer to S. Cimini, *La responsabilità amministrativa e contabile,* in G.F. Ferrari and E. Madeo (eds.), *Manuale di contabilità pubblica*, Milan, Giuffrè, 2019, 226 ff.

[25] Cass., S.U., 14 September 2017, no. 21297; Cass., 24 July 2018, no. 19654.

[26] P. Del Vecchio and V. Bignoli, *Le responsabilità amministrative da algoritmo e intelligenza artificiale*, cit., 342.

1), of Law No. 1 of 2026, defines gross negligence by limiting it to the manifest violation of applicable rules of law, the misrepresentation of facts, the assertion of a fact whose existence is undeniably excluded by the records of the proceeding, or the denial of a fact whose existence is undeniably shown by the records of the proceeding. It is further specified that, for the purpose of determining the cases in which a manifest violation of applicable rules of law exists, account must be taken, in particular, of the degree of clarity and precision of the rules violated, as well as the inexcusability and gravity of the non-compliance; finally, the possibility of configuring gross negligence is excluded in the face of a violation or omission determined by reference to prevailing jurisprudential trends or opinions of competent authorities.

The notion of gross negligence was also already defined by Art. 2, para. 3, of Legislative Decree No. 36/2023 (Public Contracts Code), where it is provided that within the framework of activities carried out in the phases of programming, design, awarding, and execution of contracts (therefore the entire life cycle of contracts) 'for the purposes of administrative liability, gross negligence constitutes the violation of rules of law and administrative self-constraints, as well as the manifest violation of rules of prudence, expertise, and diligence and the omission of cautions, verifications, and preventive information normally required in administrative activity, insofar as they are exigible from the public agent based on specific skills and in relation to the specific case. The violation or omission determined by reference to prevailing jurisprudential trends or opinions of competent authorities does not constitute gross negligence'.

On this point, it should be noted critically that Law No. 1 of 2026, cited above, in rewriting the notion of gross negligence, omits any reference to the definition contained in Art. 2, para. 3, of the Public Contracts Code. However, in order to avoid overlaps or interpretive inconsistencies, coordination between the two regulations would have been appropriate. Indeed, there is no apparent reason to justify the coexistence of two distinct notions of gross negligence, one of which specifically refers to procedures concerning public contracts.

In any case, both disciplines defining gross negligence tend to restrict the scope of the subjective element of administrative and accounting liability before the Italian Court of Auditors, with the consequence that it will be difficult to prove such a level of fault in hypotheses of financial loss resulting from the use of artificial intelligence systems.

It is difficult, in fact, to attribute grossly negligent conduct to a public employee lacking the skills necessary to detect the error or illegitimacy of the so-called 'algorithmic decision'.[27]

Such conduct could be attributed only to persons equipped with adequate technical knowledge and would concern, in particular, the profile of expertise. In this perspective, in particularly difficult hypotheses of using AI-based tools, the principle underlying Art. 2236 of the Civil Code may also serve as an interpretative criterion in assessing gross negligence, particularly where the activity involves technical problems of exceptional difficulty.[28]

Administrative and accounting liability may also arise from gross negligence occurring during the internal procedural stages preceding the automated administrative decision, including the selection and approval of the software, where the 'human' intervention of the public employee is relevant, who, by virtue of internal and supranational rules, must guarantee the correct use of AI, verifying upstream the accuracy of the data to be processed and maintaining constant control of the algorithmic proceeding. Consider the violation of the principles enshrined in Art. 30 of the Public Contracts Code, relating to the knowability and understandability of the system's functioning logic, algorithmic non-discrimination, and the non-exclusivity of the algorithmic decision.

Liability could also arise from the failed adoption or adjustment of security measures intended to avoid damages resulting from the use of AI systems.

Even in these cases, however, grossly negligent conduct could be attributed only to technically qualified and adequately trained personnel, capable of mastering artificial intelligence systems.

[27] As noted by P. Evangelista, *Intelligenza artificiale e responsabilità amministrativo-contabile*, cit., 142.

[28] The limitation of liability under Art. 2236 c.c. does not find application in cases of negligence or imprudence. On this subject, permit me to refer to S. Cimini, *La colpa nella responsabilità civile delle Amministrazioni pubbliche*, cit., 237 ff.

This is also confirmed by a reading of Art. 2 of the Contracts Code, where it is provided that the violation of rules of law and rules of prudence, professional competence, diligence and the omission of cautions, but also the verifications and the preliminary information normally required in administrative activity, may give rise to liability only insofar as compliance with those requirements is 'exigible' from the public official, having regard to their specific skills and the circumstances of the case.

Thus, in determining whether the failure to exercise human oversight over an automated decision constitutes a manifest breach of the standards of prudence, professional competence, and diligence, due account must be taken of the public official's skills and training.

Moreover, Art. 30 of the Contracts Code, in enshrining the principle of non-exclusivity of the algorithmic decision, also establishes that a human contribution 'capable' of controlling, validating, or possibly contradicting the automated decision must be guaranteed. The reference to 'capability' highlights the need for a competent subject, able to implement effective intervention for control, verification, or contradiction of the algorithmic decision. Accordingly, gross negligence arises only where it is established that the individual possessed the skills, expertise, and knowledge necessary to perform the activity in question. In the absence of such requirements, liability for damages resulting from the use of artificial intelligence systems falls on the Administration, constituting a defect of organization.

7. *The Need for Technical Expertise and Potential Liability for Failure to Use AI*

This mitigation of administrative liability should encourage a less fearful use of artificial intelligence systems by public employees, tools that are now essential for improving the efficiency of public Administration.

At the same time, however, it should push Administrations to equip themselves with qualified and adequately trained personnel, with not only legal but also technical, computer science, and statistical expertise. Specifically, specialists in algorithmic systems are needed: professionals with computer science expertise who are able to assess and verify the correctness of an algorithm and its operation. This is an indispensable condition for preventing errors and the resulting (even substantial) claims for damages.[29]

Finally, it must be noted that not only the use but, in principle, also an unjustified failure to use available artificial intelligence systems may contribute to financial loss. This may occur where their use was specifically required or clearly appropriate and would have produced demonstrable gains in efficiency or economy. Consider, for example, the possible reduction of procedural times or the strengthening of impartiality,[30] also through the overcoming of cognitive biases, which the adoption of AI-based solutions in the preliminary stage could guarantee. Such benefits may be lost if these technologies are not used. Administrative liability, however, may arise only where all its constituent elements – including actual financial loss, causation, and gross negligence – are established.

Ultimately, the use of AI should be encouraged, as the Italian legislature has done through Article 30 of the Public Contracts Code, also with a view to improving the efficiency and effectiveness of administrative action.[31]

[29] See S. Cimini, *La responsabilità civile e amministrativa di fronte alle sfide dell'intelligenza artificiale*, 55 ff.

[30] The reference to impartiality brings to light the extensive scholarly and jurisprudential debate on the use of AI within the discretionary activity of the P.A. (Consiglio di Stato, sec. VI, 4 February 2020, no. 881 extends the possibility of resorting to automatic decisions even to the discretionary activities of the P.A., as the automation of procedures can be seen as akin to a technical assessment, which then flows into the final administrative measure; what must be avoided is the so-called depersonalization of the administrative decision).

[31] Also Consiglio di Stato, sec. VI, 8 April 2019, no. 2270, in *Diritto amministrativo*, 2019, 784, with a note by R. Ferrara, *Il giudice amministrativo e gli algoritmi, note estemporanee a margine di un recente dibattito giurisprudenziale,* encourages the use of automated procedures observing that this is 'in line with the canons of efficiency and economy of administrative action (Art. 1 law 241/90), which, according to the constitutional principle of good administration (Art. 97 Const.), require the Administration to achieve its ends with the least expenditure of means and resources and through the streamlining and acceleration of the procedural process'. In this direction, Art. 3-bis of law 241 of 1990 can also be recalled, which provides that to 'achieve greater efficiency in their activity, public administrations act by means of computer and electronic tools' including, it is to be believed, tools based on AI.