

ARTIFICIAL INTELLIGENCE – DILEMMAS, CHALLENGES AND SOME ANSWERS TO POSSIBLE QUESTIONS

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Abstract

The article examines the role and impact of artificial intelligence within a legal and social context undergoing continuous transformation at national, European, and international levels. Starting from the need to maintain a balance between technological dynamics and the protection of fundamental rights, the paper highlights the insufficient attention given to the relationship between human and artificial intelligence. It addresses essential conceptual clarifications regarding artificial intelligence, as well as its implications for the regulatory framework and social behavior. The article also provides answers to frequently asked questions and proposes multiple analytical perspectives, emphasizing the need for balanced regulation that ensures both innovation and the respect of fundamental rights and freedoms.

Keywords: *artificial intelligence, legal balance, fundamental rights, data protection, regulation, European legislation, ethics, technological innovation, jurisprudence, digital society.*

1. Why an approach like this?

In a (domestic, European and international) society in which life, as well as the legislative and jurisprudential fields are in an unprecedented dynamic, (at three levels: domestic, European and international), balance is perhaps more necessary than ever. The concern for this balance has been the subject of previous interventions/writings, with multiple dimensions related, for example, to the protection of personal data¹. Data protection and ensuring their freedom of movement, analyzed from the perspective of rights and obligations, rules and exceptions as well as from the point of view of the current approach, make us become increasingly aware of the fact that that dimension relating to the balance that must be maintained

between human and artificial intelligence escapes the attention of even the most prestigious specialists in the fields. This is not just an abstract analysis of such a component of the balance, but we are referring to some concrete aspects related to everyday life, that influence a conduct that is more or less compliant with domestic, European and international legislation, in general, but also with special reference to the protection of fundamental human rights, in particular. Personal data occupies a very important place, but it is increasingly difficult to manage/protect in the context of the unprecedented developments of artificial intelligence, that were difficult to imagine not so long ago, if we refer to its 'performances' that generate both positive and negative 'consequences', difficult, if not impossible, to anticipate.

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¹ A. Fuerea, *Echilibrul în domeniul drepturilor fundamentale ale omului – privire specială asupra protecției datelor cu caracter personal*, *Revista română pentru protecția și securitatea datelor cu caracter personal*, no. 2/2023, pp. 12-26.

We consider the plea for balance to be timely, at this stage that humanity is going through, as well as from the perspective of the policies adopted at national, European (regional) and international levels regarding the harmonious, balanced development of both human and artificial intelligence. Consequently, following such policies oriented towards ‘human performance’ which can’t be obtained otherwise than through quality education at all levels, but also towards initial and continuous professional training, we consider that investments must be balanced, targeting, equally, human intelligence and artificial intelligence.

There are many approaches that refer to the influence of artificial intelligence on the protection of personal data, an important component of private and family life viewed from the perspective of fundamental human rights.

The questions that may arise in such a matter are numerous, and the answers may be diverse, convergent or divergent. They may refer to the usefulness, necessity and opportunity of using human and artificial intelligence or they may concern the relationships between the two types of intelligence and, why not, the supremacy of one over the other (the predictable or unpredictable nature of the two, etc.).

In this sense, we consider Professor Mircea Duțu’s reference to Professor Daron Acemoglu’s (2024 Nobel Prize laureate in economics) statement to be more than inspired, according to which ‘in this nebulous context [regarding the dynamics we were talking about above] it is important to understand, accept and act for an AI in the service of the human being and under its permanent and decisive control and for (...)

[this] to orient it in the direction of the promise it represents’².

2. Conceptual clarifications needed

From a strictly conceptual perspective, we can’t penetrate the mysteries of intelligence, in general, and of AI, in particular, without understanding what ‘intellect’ is. Such an approach was suggested to us during a debate on this matter, and since then, we have appreciated it as extremely effective. Why? Because there is a risk that, precisely given the dynamics invoked, we lean right from the beginning with all deference, on some profound, delicate, controversial aspects, even professionally, those to whom we address, dedicated to the field, may have different meanings of these concepts. That is why, referring to ‘intellect’ we find that it is defined as ‘a subsystem included in the structure of the individual’s cognitive system that brings together the set of psychic functions that ensure logical and abstract thinking, expressed through the capacity to operate with life experience’³ (natural, human or artificial?).

The comments, from anatomical perspective, regarding the neural convolutions and synapses on the basis of which the human brain creates its own algorithms, which we also encounter in artificial intelligence, can be among the most numerous and diverse. The same would be true from a strictly philosophical perspective, and not only.

Using the same prestigious source of documentation, both conceptually and from the perspective of forensic medicine, we note that intelligence, in general, is defined as that ‘adaptive mechanism of the psychic capacity [another possible and necessary approach] to

² M. Duțu, *Elemente de dreptul inteligenței artificiale*, Universul Juridic Publishing House, Bucharest, 2025, p. 6.

³ I. R. Urs, M. Duțu, C. Birsan, A. Severin, N. Volonciu (coord.), *Enciclopedia Juridică Română*, vol. III, lit. F-I, Romanian Academy Publishing House and Universul Juridic Publishing House, Bucharest, 2022, p. 430.

understand and solve new problems, to perceive phenomena and the relationships between them'⁴.

Unlike previous approaches, the Explanatory Dictionary of the Romanian Language defines the intellect as representing 'the capacity to think, to know, to have a rational activity, to operate with options, mind, thought, reason'⁵.

According to the same dictionary, intelligence refers to 'the ability to understand easily and well [! Speaking of AI?] to perceive what is essential, to solve new situations or problems based on previously accumulated experience; cleverness'⁶.

At a glance, which we do not claim to be highly specialized in the issue of intelligence, we can't help noticing that the definitions above, par excellence, speak of human intelligence. Remaining faithful to the established documentary sources, invoked above, with reference to artificial intelligence, the authors consider that this is 'the capacity of evolved technical systems to achieve quasi-human performance'⁷.

While using modern technology – the internet – to identify an 'up-to-date' definition, we have reached an often-used source, especially when time is very short, and the speed of formulating an answer is required, and that is Dexonline. According to this source, artificial intelligence is identified with that 'field of computer science that develops technical systems capable of

solving difficult problems related to human intelligence'⁸.

Developing our concerns in the applied conceptual field, we could not resist the temptations of trying to understand what artificial intelligence is and we have navigated through the cryptic labyrinth of information on established websites, this time, at European level⁹. A first meaning that has held our attention is that according to which artificial intelligence is equated with 'the ability of a machine to imitate human functions, such as reasoning, learning, planning and creativity'¹⁰. In this sense, AI 'allows technical systems to perceive the environment in which they operate, to process this perception and to solve problems, acting to achieve a certain objective. The computer receives the data (already prepared or collected through its own sensors, such as a video camera) [with built-in audio system], processes it and reacts'¹¹. From the perspective of proximity to the human behavior, 'AI systems are able to adapt their behavior, to a certain extent, by analyzing the effects of previous actions and operating autonomously'¹².

Given the rapid developments in human actions involving AI, from the point of view of social acts and facts, some of them even contrary to domestic, European and international legislation in force at a given time, regulations on the use of AI and its influence on the protection of personal data have multiplied. Such multiplication has implicitly determined concerns from the

⁴ *Idem.*

⁵ Romanian Academy, "Iorgu Iordan" Institute of Linguistics, *Dicționarul explicativ al limbii române*, 2nd edition, "Univers Enciclopedic" Publishing House, Bucharest, 1998, p. 497.

⁶ *Idem.*

⁷ *Idem.*

⁸ <https://dexonline.ro/intrare/inteligen%C8%9B%C4%83/28535>, accessed on April 8, 2026.

⁹ <https://www.europarl.europa.eu/topics/ro/article/20200827STO85804/ce-este-inteligenta-artificiala-si-cum-este-utilizata>, accessed on April 8, 2026.

¹⁰ *Idem.*

¹¹ *Idem.*

¹² *Idem.*

perspective of the object, respectively the method of regulation. All of this has inevitably led to the emergence of a question, namely: can we currently discuss the existence of a Law of artificial intelligence? In order to find a pertinent answer to such a question that appears more and more often, for academic reasons, we are going to focus our attention on the concept of law in general¹³.

According to the Explanatory Dictionary of the Romanian Language, already cited, law means ‘the totality of rules and legal norms that regulate social relations in a state’¹⁴.

The Romanian Legal Encyclopedia, through its prestigious authors, having a true notoriety in the field, shows that law, from the perspective of the general theory of law, represents a ‘holistic conception regarding the ordering of relations between persons [Is AI a person, a subject of law?], taken individually or collectively, scientifically substantiated and transposed, as an act of will of political power, into binding norms of conduct, the observance of which is guaranteed by the conviction of the society regarding their fairness, viability and reliability, as well as, ultimately, by the coercive force of the state, exercised through its institutions’¹⁵. In the context of these extensive debates, the closer we are to an answer given regarding the existence of the law of artificial intelligence, the further we are moving away because, this time, in recent doctrine, it is appreciated that ‘artificial intelligence appears as an oxymoron as the name juxtaposes two contradictory terms: on the one hand, artificial intelligence is

associated with autonomous cognitive faculties, and, on the other hand, the word artificial refers to computer systems devoid of any consciousness’¹⁶.

3. A few answers to possible questions and multiple approaches

A possible question that is naturally originated in the current or future status of artificial intelligence, but also in the final part of the above assessments, refers to whether or not AI has consciousness? This would be a possible limit of AI, resulting from a series of conceptual clarifications. All of them have their origin in the reality according to which, in a philosophical sense, consciousness is a function of the human brain. It is ‘a feeling, an intuition that a human being has about its own existence, an intuitive or reflective knowledge that each one has about its own existence and about the things around it, an understanding of all of these’¹⁷.

The inevitable nature of AI developments contributes to an increased degree of acceptability. This determines the formulation of another question: is AI truth or challenge? The answer is unequivocal: AI is both truth and challenge. It is true because, practically, in the domestic and, especially, international context (post pandemic, epidemic, energy, financial, budgetary crisis; the surrounding natural and social environment in constant resettlement; the increasingly numerous wars, classic and hybrid) you can’t ignore AI with all that it implies, with the advantages and disadvantages that it undoubtedly generates.

¹³ A. Furea, *Statul de drept, o perspectivă europeană*, Revista “Palatul de Justiție”, serie nouă, June 2024, pp. 18-21.

¹⁴ Romanian Academy, “Iorgu Iordan” Institute of Linguistics, *Dicționarul...*, op. cit., p. 320.

¹⁵ I. R. Urs, M. Duțu, C. Bîrsan, A. Severin, N. Volonciu (coord.), *Enciclopedia juridică română*, vol. II, lit. D-E, Romanian Academy Publishing House and Universul Juridic Publishing House, Bucharest, 2022, p. 287.

¹⁶ M. Dutu, op. cit. p. 12.

¹⁷ <https://dexonline.ro/definitie/con%C8%99tiin%C8%9B%C4%83>, accessed on April 8, 2026.

Why is it a challenge? Because, under the sign of arguments that are hard to ignore, many other questions that await just as many answers, arise: are the legal, economic, social, political environments, etc. prepared to cope with the developments that AI is recording? Does AI increase or decrease the differences/conflicts between generations, as parts/segments/representations of the old and the new? Are the discrepancies between traditional and modern, innovative jobs becoming more acute, even ending in the disappearance of some of the old jobs and the multiplication, respectively, the consolidation of the new ones? What will be the future of some traditional professions? In the interview I gave to the Romanian Magazine of Criminal Business Law in 2020, I was generously asked a question that still lingers in my mind: 'How much will artificial intelligence and new technologies influence the legal professions? How do you think criminal trials will be solutioned in 10-20 years? Will artificial intelligence be able, in the foreseeable future, to replace legal professionals (judges, prosecutors, lawyers, etc.)?' I still reflect on what I said then, over 5 years ago, thinking of whether my opinions have changed after deepening the presence of artificial intelligence in our daily lives¹⁸.

Computer literacy vs. resistance, reservations existing in the matter represent so many challenges that we, from the perspective of our human intelligence, will respond to.

How should we view artificial intelligence? As a partner or an adversary? If we understand it, human wisdom will always triumph. If we accept it and constantly prepare to keep up with AI, it will certainly be our partner. It will certainly be considered an adversary by those who, with or without science, will try to ignore artificial intelligence, the positive contributions it has to improving the quality of human life, the beneficial nature of its influences. Without a doubt, if we view AI as an adversary, we place it in competitive relations and it is very difficult, if not impossible, to determine which of the two intelligences (human and artificial) could be declared victorious.

The professional deformation of legal experts urges us to reflect on a possible answer to a natural question, especially in the current conditions. Is there or is there not an AI liability (civil, criminal, contraventional, tortious)? Liability can be related to the rights and obligations of AI, in peacetime and in wartime¹⁹.

¹⁸ A. Fuerea, *Revista de drept penal al afacerilor*, no. 2 (July-December)/2020, pp. 110-111: 'The answer can be simple, but also sophisticated. I am trying to strike a balance. In 2017, I drafted a country report for the Congress of the International Federation of European Law (held in Estoril, Portugal, in 2018), a report entitled 'Internal market and digital economy'. While documenting myself for the report, I found that, inevitably, in the future, even the legal professions will be influenced by artificial intelligence and new technologies, just as, without exception, all other professions will be influenced by them. In summary, I believe that research and documentation activities will be influenced, as well as those concerning the development of regulations and their application by all legal professions. An example in this regard is that of the protection of personal data. Another country report, of which I am a co-author, was the one prepared in 2019, for the 2020 Congress in The Hague (Netherlands), of the same Federation of European and International Law, a report that also includes aspects regarding digitalization in the era of globalization, which I also wrote about in an article that will appear in 2021. Regardless of developments, I appreciate that the human being will remain the 'piece of resistance', with all the connotations, positive or negative, that we must assume, including within the solutions that will be given in criminal trials. Perhaps the ratio between objective and subjective will change, more or less, in the decisions that will be pronounced in certain cases. Artificial intelligence will help a lot, but I find it hard to believe that replacing legal professionals will happen, at least in the next 10-20 years. In the future, I'm also very curious to find out what will happen..., as long as I am in a position to find out'.

¹⁹ A.-Al. Stoica, *Răspunderea internațională a statelor pentru utilizarea aparatelor de zbor fără pilot*, doctoral thesis held at the Doctoral School of the Faculty of Law, "Nicolae Titulescu" University of Bucharest, in 2023 (doctoral supervisors, PhD Professor Raluca Miga Beșteliu and PhD Professor Augustin Fuerea), published by

From a regulatory perspective, the protection of personal data, for example, can't be separated from artificial intelligence. More than fifteen years ago, the European Union adopted a 'European strategy for smart, green and inclusive growth'. This led to the need for effective investment in vocational training, within a coherent legal context at European level. The current Digital Agenda for Europe (for the period 2020-2030) refers to the fact that 'digital service platforms and emerging technologies, such as artificial intelligence, are profoundly shaping our society. These innovations have transformed the way we communicate, shop and access information online, becoming part of our daily lives. The Agenda (...) responds to these changes, seeking to create safe digital spaces, ensure fair competition in digital markets and strengthen Europe's digital sovereignty, in line with the digital and green transitions'.

The dimensions of AI, from the perspective of multiple approaches, are becoming increasingly numerous, even if, at a superficial glance, we would be tempted to believe that three of these are the most important: technical, economic and legal. Many others are added to these, at least as important, if not more important, all of which need to be viewed and analyzed systemically, interconditioning each other, because they are interdependent, deriving from each other and mutually conditioning each other. This is the psychological dimension (acceptance/rejection; favorability/unfavorability; intellectual comfort/intellectual discomfort), to which is added, for example, the philological, linguistic dimension, at least as relevant, the newly appeared words, thousands of them, being edifying, in this sense. Without going

into detail, the political, philosophical, religious or sociological dimensions can't be ignored either, all of which are the subject of consistent specialized analyses.

Possible problems, risks, vulnerabilities and threats generated by artificial intelligence refer, among others, to: fears about job loss, even in the case of legal professions (which legal professions would be most exposed to such a process?); concerns about professional retraining (fragility of jobs); investments in the technology necessary to understand and use AI; confusions arising from the perspective of digitization, digitalization and modern technologies, including AI; competition, not with AI, but with people who use AI; the evolution of rights in the 4th generation (AI); facial recognition; fingerprinting; genetic data and their use and, equally important, the electronic signature, respectively the use of the electronic wallet.

As a reflection, other possible vulnerabilities could be added, some of them quite realistic (e.g. AI – employee with work card; transition from the physical format of activities to the online/teleworking system, etc.) others that, now, may have science-fiction connotations, such as the case of the multiplication of holograms depending on intellectual performance, concerns about cloning and abandoning the classic system of movement or feeding. In the case of AI, we can even state, without fear of being wrong, that 'the sky is the limit', in the concrete or abstract sense of the word.

However, coming down to earth, from the perspective of the relations between AI and humans with their personal data, we can't help but notice that even if we often think that things are happening differently, diametrically opposite, AI is trained with the

C.H.Beck Publishing House, Bucharest, 2024, p. 493. The author believes that 'liability will be complex, with the internal automation of states [n.n. see AI], where decisions are calculated by an algorithm and implemented by different devices'. A possible beginning of regulation in the matter of liability for AI could be represented by Directive (EU) 2024/2853 on liability for defective products (?).

help of humans, respectively important personal data that belong to them, namely voice and image.

An essential moment in the developments recorded in the field of personal data protection is represented, at the level of the European Union, after Directive 95/46/EC²⁰, by the adoption and entry into force of Regulation (EU) 2016/679²¹ which, from the point of view of legal effects, was likely to stimulate the attention of both operators and data subjects, including from the perspective of rights and obligations, but especially of the sanctions applied²².

Concerns have intensified, in terms of the protection of personal data, and not only, as digitalization, respectively modern technologies (AI) have evolved. That is why, even if there are many criticisms regarding

the fact that the EU is concerned with regulation, and others with creativity in the field, a truly important landmark, among many others, is the (EU) AI Act²³.

The dynamics of social relations, after the speed century (20th century), were also reflected in the legislative activity at the EU level. If 21 years passed from the adoption of Directive 95/46/EC until it was repealed by Regulation (EU) 2016/679, after the adoption of this regulation, legislation in the field has become extremely prolific. Without presenting an exhaustive list, in this sense, we can't ignore some of them, as they are incidental to our analysis. The above are joined, by way of example: Regulation (EU) 2022/1925 on digital markets (abuse of dominant position, anti-competitive practice)²⁴; Regulation (EU) 2022/2065 on

²⁰ Directive of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, published in OJ L 281, November 23, 1995. 'Overall, the EU directive serves as a vital instrument for the development and enforcement of EU law. It empowers individuals, harmonizes national legal systems, and contributes to legal consistency and the protection of individual rights within the European Union' (M.-A. Niță, *Directiva - izvor important al dreptului Uniunii Europene cu rol de armonizare a legislațiilor naționale ale statelor membre*. Buletin de informare legislative, nr. 1 / 2024, p. 37).

²¹ Regulation of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), published in OJ L 119, May 4, 2016. 'The increasing concerns regarding the protection of personal data have been favoured, among others, by the unprecedented developments in the field of technology and digitalisation. These concerns have increased over time, at the level of the European Union, in the sense that the issue of human rights has progressively come to the attention of European decision-makers. These aspects have materialized in the inclusion of generous objectives in the amending treaties of the European Union, in the adoption of an adequate derived legislation, but also in a consistent case law' (R.-M. Popescu, *Legislative and Jurisprudential Aspects Regarding the Protection Of Personal Data*, CKS 2021 – Challenges of the Knowledge Society 2021 - http://cks.univnt.ro/cks_2021.html -, "Nicolae Titulescu" University Publishing House, p. 460 – 465).

²² A. Fuerea, *Aplicarea Regulamentului general privind protecția datelor*, Revista Dreptul, no. 7/2018, pp.110-116. 'We appreciate that, even though the main contraventional sanction, the fine, is rather burdensome for the sanctioned operators, the existence of the admonition and the remediation plan, in an established term, represents a very important factor for the public and private area to respect the new legislation, prevention being what we consider is emerging from the law philosophy and not sanctioning. The impact of this European act – G.D.P.R. stretches equally over the public and private area, because, like we know, in law, *no one is above the law*' (E.E. Ștefan, *Interference Between the Protection of Personal Data and Contraventional Legislation*, Perspectives of Law and Public Administration Volume 7, Issue 2, December 2018, p. 163).

²³ Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 establishing 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) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Regulation), published in OJ L 2024/1689, July 12, 2024.

²⁴ Regulation of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828, published in OJ L 265, October 12, 2022.

digital services (illegal content and forms of disinformation online)²⁵ and, most recently, Regulation (EU) 2025/2518 laying down additional procedural rules for the enforcement of Regulation (EU) 2016/679²⁶.

4. Instead of conclusions

With a force of indisputable argument, we invoke Opinion 28/2024 of the European Data Protection Board on certain aspects of data protection related to the processing of data in the context of AI models²⁷, in which we identify at least three questions formulated by the Irish supervisory authority and as many answers provided by the board.

The first question refers to whether ‘it is considered that, in all cases, the final AI model, which was trained using personal data, does not correspond to the definition of personal data’ as provided for in Art. 4 point 1 of the GDPR?

The second concerns the situation regarding ‘if a data controller relies on legitimate interests as a legal basis for processing personal data for the purpose of creating, updating and/or developing an AI model, how should that controller demonstrate the adequacy of the legitimate interests as a legal basis, both in relation to the processing of data received from third parties and data collected directly from data subjects?’.

Thirdly, ‘after training, if a data controller relies on legitimate interests as a legal basis for the processing of personal data that takes place within an AI model or an AI system of which an AI model is part, how should a controller demonstrate the adequacy of the legitimate interests as a legal basis?’.

These are questions raised by Ireland, to which the Committee has provided answers, but above all, which have stimulated some of the most profound and diverse reflections.

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²⁵ Regulation of the European Parliament and of the Council of 19 October 2022 on a single market for digital services and amending Directive 2000/31/EC (Digital Services Regulation), published in OJ L 277, October 27, 2022.

²⁶ Regulation of the European Parliament and of the Council of 26 November 2025 laying down additional procedural rules for the enforcement of Regulation (EU) 2016/679, published in OJ L 2025/2518, December 12, 2025.

²⁷ Opinion of 17 December 2024.

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