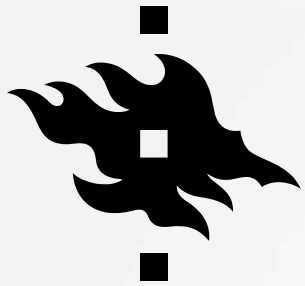


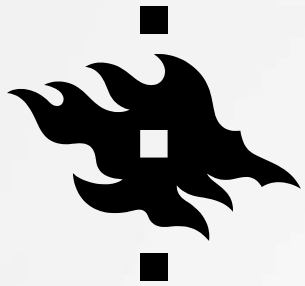


# THE NEW AI LIABILITY DIRECTIVE



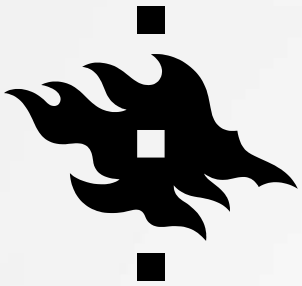
# THE COMMISSION PROPOSAL

- Adopted on 28 September
- Directive, i.e. to be transposed into national laws
- Aims at consistency with related Union policies regarding e.g. AI regulation and product safety
- Actual ‘substance’ enshrined in articles 1- 4



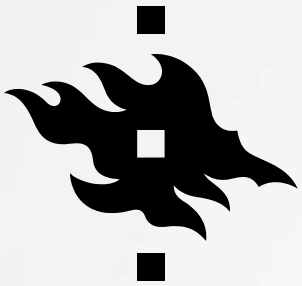
# AI LIABILITY DIRECTIVE – SCOPE OF APPLICATION

- Recital 15, Article 1:
  - applies to non-contractual fault-based civil law claims for damage caused by an AI system's output/failure to produce output following faulty behaviour of a human actor
  - Does not apply to cases where the damage is caused by a human assessment followed by a human act or omission, while the AI system only provided information or advice which was taken into account by the relevant human actor.
  - Does not apply to criminal liability
- The Directive does not affect
  - liability claims in the field of transport (e.g. autonomous vehicles)
  - product liability claims
  - the liability exemption under the DSA



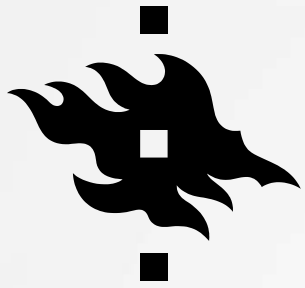
# AI LIABILITY DIRECTIVE – MAIN ASPECTS

- Article 2 – Definitions
  - For the essential definitions regarding AI, article 2 refers to the AI Act, which ensures consistency
  - 2020 EP Resolution on civil liability for AI had its own – different – definitions
- Article 3 – Disclosure of evidence
  - Refers to evidence to be provided before and during litigation (when requested by the claimant and the potential claimant)
  - Reminiscent of pre-trial discovery in US law
  - So far not common in EU courts



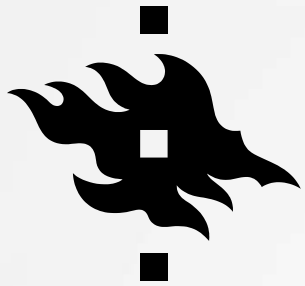
# AI LIABILITY DIRECTIVE – MAIN ASPECTS

- Article 3 – disclosure of evidence
  - Member State Courts may order providers, persons subject to the obligations of a provider pursuant to [Article 24 or Article 28(1) of the AI Act] or users to disclose relevant evidence at their disposal about a specific high-risk AI system suspected of having caused damage, upon request by the claimant or the potential claimant
- Article 3 – rebuttable presumption of non-compliance
  - If the defendant fails to comply with an order to disclose or to preserve evidence, there is a rebuttable presumption that they did not live up to a relevant duty of care



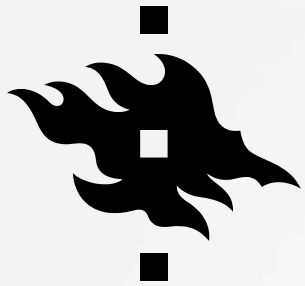
# AI LIABILITY DIRECTIVE – MAIN ASPECTS

- Article 4 – rebuttable presumption of causation between the defendant’s fault and the AI system’s output/failure to produce an output
  - Claimant demonstrated or court presumed the defendant’s fault or the fault of a person the defendant is responsible for
  - (fault in this case is the non-compliance with a duty of care laid down in Union or national law directly intended to protect against the damage that occurred)
  - it can be considered reasonably likely, that the fault has influenced the output produced by the AI system or the failure of the AI system to produce an output
  - the claimant demonstrated that the output produced by the AI system or the failure of the AI system to produce an output gave rise to the damage.



# AI LIABILITY DIRECTIVE – MAIN ASPECTS

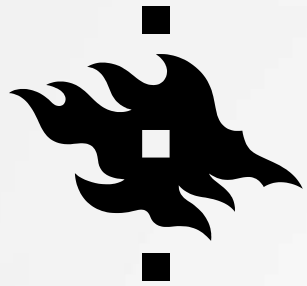
- Article 4 – rebuttable presumption of causation between the defendant’s fault and the AI system’s output/failure to produce an output
  - In case of a damages claim against the provider of a high-risk system or a person subject to the obligations of a provider, the conditions set out in paragraph 1 (a) are met only when the claimant demonstrates that the defendant fails to comply with the specific obligations established related to high-risk systems
  - In case of a claim for damages against a user of a high-risk AI system the condition of paragraph 1 (a) is met where the claimant proves that:
    - the user did not comply with their obligations to use or monitor the AI system in accordance with the accompanying instructions of use or suspend or interrupt its use or
    - exposed the AI system to input data under its control which is not relevant in view of the system’s intended purpose.



# AI LIABILITY DIRECTIVE – OBSERVATIONS

- Drastic change compared to the previous EP Resolution on AI liability
- 2020 EP Resolution strongly recommended a Regulation
- Established actual liability rules
- Proposed Directive does not establish any basis of a damages claim, but refers to national laws
- Commission gave up the approach of establishing the liability of the operator
- Aims at establishing measures that are as little invasive as possible
- Proposed directive only refers to fault-based liability – no further distinction according to the risk classification of an AI system in this regard





# AI LIABILITY DIRECTIVE – OBSERVATIONS

- Risk-based approach is reflected with regard to the disclosure of evidence, which privileges claimants suffering damage caused by a high-risk system
- The Directive does not mention prohibited AI systems
- Sensible approach to establish all relevant definitions in the AI Act
- The proposed Directive leaves the crucial questions regarding liability to the national laws and courts
- EU institutions envision a level playing field with regard to AI regulation – it remains to be seen whether the proposal in its current form can contribute to achieving this



**THANK YOU!**