

AI Liability in Switzerland: Who Pays When Your AI Agent Errs?

MANAGEMENT SUMMARY & CORE TAKEAWAY

When an AI agent makes a mistake, the AI itself is not liable — your company is. Under Swiss Code of Obligations Articles 41, 55 and 97, the operator bears responsibility for auxiliary persons, including digital ones. OpenAI, Anthropic and Google all disclaim liability in their terms, leaving the gap with you.

CONTEXT & EXECUTIVE RELEVANCE

When an agent that reviews invoices, answers customer emails or drafts contracts makes a mistake, the first question in the boardroom is usually: who pays for this? The short answer: not the AI. It has no legal personality, no assets and no liability a court could assign to it. Under current Swiss law, responsibility rests with the same company that deployed the agent — just as it would for a human employee.

Swiss contract and tort law has no special provision for artificial intelligence. It does not need one: the existing liability rules are technology-neutral and treat an AI agent like any other tool or auxiliary person acting on a company's behalf. For boards and executive teams, this means the question is not whether liability exists, but how it is allocated — and whether it is insured.

CORE ACTION ITEMS

- 01 Art. 41 CO (unlawful harm): Anyone who unlawfully causes damage to another is liable for it — regardless of whether a human or an AI agent triggered the error.
- 02 Art. 55 CO (vicarious liability): A company is liable for damage caused by its auxiliary persons while carrying out their assigned tasks. The prevailing interpretation increasingly extends this to digital auxiliaries such as AI agents acting on the company's behalf.
- 03 Art. 97 CO (contractual liability): Anyone who defectively performs a contractual obligation — for example toward a customer — is liable for the resulting damage, even if an AI system executed the process.

SWISS COMPLIANCE & ARCHITECTURE GUIDELINES

- ☑ Full compliance with revised Swiss Data Protection Act (revDSG).
- ☑ Zero vendor lock-in on closed proprietary models.
- ☑ Seamless integration into Abacus, Bexio and M365 ecosystems.

Non-Binding Process Analysis

Let us review in 20 minutes where AI agents create immediate measurable efficiency in your workflows.

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