

### **Personal Liability for Ex-Ante Obligations – State of the Art, Knowledge Status, Time Horizon and Duty to Act**

#### **Audience**

This document is addressed exclusively to individuals to whom the condition of an organization is formally, personally, and non-delegably attributed:

- Managing Directors
- Executive Boards
- Managing Partners / Owners
- Supervisory and Control Bodies, insofar as organizational or oversight duties apply

Not addressed are operational managers, IT, compliance or security functions, as well as internal or external advisors. These may prepare – they do not bear personal liability.

#### **Nature of this Document**

This document is not legal advice, not a recommendation to implement specific systems, and not a position paper. It describes an already existing liability-relevant situation arising from applicable law, technical reality, and objectively established knowledge.

It serves as orientation under time pressure.

#### **1. The Immutable Core of Personal Liability**

- Responsibility is personally attributable and non-delegable.
- What is required is control of relevant risks – not mere reaction.
- The standard is evidentiary proof, not plausibility.
- Subsequent explanations are insufficient where prior precaution is required.

The laws differ in content. The liability mechanism is identical.

#### **2. The Two Objective Duties That Set Today's Standard**

##### **2.1 Ex-Ante Verifiability**

What is decisive is no longer merely what can be reconstructed after an event, but whether it is provable that an impermissible condition could not technically arise in the first place.

Once a technical means exists to enforce regulatory compliance before a condition arises, purely organizational, manual, or ex-post controls lose their exculpatory effect.

## 2.2 Transparency Despite Black Boxes

Modern IT reality is characterized by black boxes (cloud infrastructures, platforms, AI models, third-party providers).

This lack of transparency is not accepted as exculpatory from a legal perspective.

- Attributable transparency at the state and impact level,
- independent of whether internal logic or code is accessible.

## 3. Why Classical IT Cannot Structurally Fulfill These Duties

- Part of the events to be controlled,
- effective only ex post,
- patchable, interpretable, and circumventable,
- dependent on human review, approval, and escalation.

They can explain and reconstruct.

- Make impermissible states technically impossible,
- enforce ex-ante verifiability,
- establish transparency independent of black boxes.

This is not an implementation deficit, but a system-class mismatch between legal requirements and technical reality.

## 4. State of the Art – Determination

The defense of technical impossibility is valid only as long as no known, verifiable alternative exists. This prerequisite no longer applies.

Since the end of 2025, a publicly described, fully documented, and technically verifiable system class has existed for the first time that precisely addresses the legally required properties:

- Ex-ante verifiability of compliant states
- Attributable transparency even in black-box systems
- Technically feasible
- Fully documented
- Publicly accessible without NDA, registration, or trust advance
- Accessible and verifiable by anyone
- Known to relevant market participants
- Not refuted to date

Accordingly, this system class effectively constitutes the state of the art.

## **5. Knowledge Status – Objectively Established**

- 25 November 2025 – formal delivery of documentation to insurers
- 11 December 2025 – formal information of supervisory authorities
- 22 December 2025 – formal information of central associations

Knowledge is established in the relevant market. Individual lack of knowledge is no longer exculpatory.

## **6. Time Horizon – Judicial Perspective**

Courts allow only a short reaction and review window after knowledge has been established. Realistically: a few weeks, not months.

Inaction shifts from permissible review to delay. Time acts against those responsible.

## **7. Mandatory Course of Action**

### **7.1 Evidentiary Review**

- Dated review mandate
- Documented results
- Clear personal attribution

### **7.2 Permissible Review Outcomes**

- Technically non-functional
- Not feasible in context
- Suitable to meet requirements

### **7.3 Duty of Consequence**

Cases A/B require documented mitigation. Case C requires immediate implementation.

## **8. What Is No Longer Sufficient**

- Waiting for regulatory guidance
- Lack of case law
- Market observation without review
- Existing certifications
- Unsubstantiated claims of unreasonableness
- Delegation without attribution

## **9. Core Statement**

The liability situation is already in effect. What matters is timely, attributable, and verifiable action.

Status: January 2026.