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Subjectivity of an electronic legal entity

The Law of April 23, 1964, Civil Code¹ does not contain a legal definition of an electronic legal entity. Article 1 of the cited Civil Code only indicates the scope of civil law relations in the subject and object layers, i.e. the circle of civil law subjects and the type of matters recognized by the Code as belonging to civil matters.

An attempt to define an electronic legal entity in the legal layer, in my opinion, can be made on the basis of the provisions contained in Titles II and III of the Civil Code, in particular, on the basis of Articles 33 and ³³¹ of the Civil Code in conjunction with Article 35 in conjunction with Articles 37-38 of the Civil Code in conjunction with Article 42 and Article ⁴²¹ of the Civil Code in conjunction with Article 362 § 1 pt. 3 in conjunction with art.³⁰⁰⁴⁷ § 1 pt. 4 in conjunction with Article 494 of the Act of 15.09.2000 - Code of Commercial Companies ²

The Polish law basically mentions three subjects of civil law, i.e. natural persons, legal persons and organizational units that are not legal persons, which are granted legal capacity by the law.

Legal subjectivity allows an entity named by law to be a party to a civil law relationship by having legal capacity. Any of the entities named in the law can be a party to a legal action either in the role of an authorized or obligated party.

Legal subjectivity is *a sine qua non* and a basic condition for a civil law entity to have a certain pool of rights and obligations.

¹ Law of April 23, 1964 Civil Code (i.e., Journal of Laws 2024, item 1061, as amended).<https://sip.lex.pl/#/act/16785996/3537406?directHit=true&directHitQuery=kodeks%20cywilny>(accessed at 2025-01-16 20:56)

² Act of September 15, 2000. Commercial Companies Code (i.e., Journal of Laws of 2024, item 18, as amended).
<https://sip.lex.pl/#/act/16886516/3481694?directHit=true&directHitQuery=%20Kodeks%20Sp%C3%B3%C5%82ek%20Comerce%20> (accessed 2025-01-16 21:22)



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In contrast, legal capacity as a statement of intent of a given subject of civil law, to which the law gives a specific legal effect that may consist in the creation, modification or change of the content of this legal relationship and, ultimately, the cessation of the civil law relationship. The norms of the Civil Code apply to all subjects of civil law unless a provision provides otherwise. Regardless of the direction in which the Polish legislator expands or modifies the catalog of civil law entities, i.e. whether he introduces a kind of new catalog of persons as an electronic person to whom the provisions on natural persons will be applied accordingly, or singles them out in the catalog of legal persons as a new special type of them, or continues to treat them as a thing, a computer program or a component of an enterprise, modifications of regulations will be necessary in my opinion.

The practice of social and economic life will force revolutionary changes in legislation. The change is inevitable and will be a resultant of the need for flexible and convenient legal trading within the framework of the increasing digitization and algorithmization of the economic and economic system of the global economy, of which Poland is a part.

In this paragraph, I will use an analogy from Roman law regarding the legal and social situation of the slave as a possibility, introducing certain legal regulations to protect economic interests, legal certainty and tort liability. The legal situation of a slave in Roman law amounted to something like a hybrid, that is, a thing and a person without legal subjectivity.

Despite this positioning in the Roman legal system, slaves could perform limited legal acts on behalf of their owner, manage property on his behalf.



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The owner granted the slave a portion of the property to manage on his behalf, the so-called *peculium*. Despite such regulations, the owner was responsible for the actions, debts and torts committed by the slave.

Transferring these solutions to the needs of modern legal regulations, it is possible to introduce a *peculium* for new electronic persons as a type of liability insurance for the actions of these persons in economic and social transactions. Using *peculium* as a counterpart to liability insurance will provide an important element in the construction of the entire legal system in the context of the new electronic person. According to the *paremia* , , *Servile captum nullum ius habet- a slave has no legal personality* ³ an electronic person would have no legal subjectivity. I find such a viewpoint and axiological assumptions when remodeling the legal system at the current and future stage of artificial intelligence development inappropriate.

The technological revolution is contributing to the next generation of artificial intelligence algorithms, which will require sophisticated and comprehensive regulatory solutions that are currently lacking. A good example to support the need to regulate in an interdisciplinary and holistic way is the GPT⁴ *chat*, which is not a database, but a deductive algorithm that improves itself, through interaction with billions of people, from different continents in real time, continuously learns people's behavior, their way of thinking, and has unlimited access to knowledge resources. Everything on the world wide web is a knowledge base that will allow GPT to reach the degree of human mind action including initiative and creativity.

3 A. Wiliński , M. Kuryłowicz, *Roman private law. Outline of the lecture*. Edition 6, Warsaw 2016, p. 92 et .

4 R. Markiewicz, *ChatGPT and European Union copyright law*, ZNUJ. PPWI 2023, no. 2, pp. 142-171.



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No legal system in the world is prepared for such challenges. There is a lack of procedures, policies, control bodies, certification and supervision of such entities and especially a lack of laws that give a real answer to such challenges.

An attempt to react quickly and block GPT chat was made in this regard *by the Italian Data Protection Authority*⁵ 2023. This only indicates attempts to follow up on new emerging threats and challenges posed by artificial intelligence. What is lacking is a comprehensive system of legal institutions that would first prevent the uncontrolled use of such technologies and provide effective tools to disable dangerous and untested technology.

Artificial intelligence as a social and legal phenomenon requires societies, lawmakers at the global level, regional level and in terms of nation-states and global corporations to actively, holistically and interdisciplinarily interact in terms of regulation, markets, security, ethics and predictability.

The actions of international organizations, states in regulating entities referred to as artificial intelligence resemble the wild west. They are *ad hoc* and lack a coordinated, long-term plan to bring about change. The reason for this is the belief that in the physical and digital world we have artificial intelligence entities referred to as weak artificial intelligence. Personally, I don't share this point of view, as in many areas technology is already beyond human control, and worse in many cases also beyond the ability to understand deep learning algorithms. The next generations of these algorithms are already self-programmable, which means that algorithms create algorithms, humans no longer do.



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The legal subjectivity of an electronic legal entity could, by some analogy, be interpreted from Article 33¹ of the Civil Code with some differences and distinctiveness in their application and under subsequent amendments. We will not find a legal definition of artificial intelligence in Polish law. Nor can it be found in the case law of Polish courts.

Legal subjectivity is a kind of legal fiction sanctioned by the law, a procedure of the legislator indicating by means of legal norms expressed in the law that a given entity is recognized by the law under the conditions set forth in a given legal system as capable of being an independent party to a legal action in this case a party to a civil law relationship.

This is very relevant to my considerations in the context of the legal subjectivity of an electronic legal entity.

The Polish Civil Code distinguishes as subjects of civil law natural persons, legal persons, organizational units without legal personality.

A legal entity acquires legal subjectivity upon entry in the relevant register. Special provisions are an exception to this rule.

In the context described above, it can be assumed that there are no obstacles to giving legal subjectivity to an electronic legal entity, since it is up to the will of the legislator to change the way a legal institution is described, modify its content or abrogate it in the context of achieving certain results through legal concepts.

5 Data behind the :

<https://www.garanteprivacy.it/web/guest/home/docweb/-/docweb-display/docweb/9870847> (accessed 2025-01-16)



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Such an initiative by the legislator usually arises from social needs to regulate new, commonly occurring phenomena hitherto not subject to legal regulation, e.g. the need to regulate economic relations, social security.

The legal system in Poland grants legal personality to public sector institutions, associations, foundations and in other legal systems to still other entities such as rivers, temples.

, "The very idea of treating abstract entities as subjects of law with rights and obligations attached to them is nothing new. [...]Of course, it should be noted , that - unlike legal persons as we know them - AGI will not be acted upon by human beings, so that granting it the status of an independent legal entity should not use one-to-one the existing legal constructions adopted, for example, for legal persons. "6

The system of law is changing because the addressee of the hypothesis of a legal norm becomes a new subject of law possessing autonomy and decisiveness in a sense hitherto unknown to the classical view of legal construction. Up to now, the addressee of legal norms in the subjective context has been man and his action, omission as an expression of will resulting from the autonomy of man as a separate entity.

The legal subjectivity of an electronic legal entity will require changes in the representation of legal entities, since in the current state of the law, the bodies of legal entities are natural persons. An electronic legal entity could have its own assets, which, in the context of liability for damage caused, would make it possible to satisfy the claims of injured parties. At the same time, such an entity could be controlled by the people, just like other legal entities.

6 L.Lai, M. Świerczyński (eds.), *The Law of Artificial Intelligence*, Warsaw 2020, p. 36 et .



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The provisions of Article 33¹ of the Civil Code can be appropriately applied to the described construction of an electronic legal person because , *"the legislator prescribes the appropriate application to crippled legal persons of the provisions on legal persons. These provisions are the provisions of the Civil Code and the CCP on legal persons because only these laws contain general regulations for all legal persons.*"⁷

Some attempts to regulate artificial intelligence systems are being made in various legal systems and at the regional level as well as international and supranational organizations such as the European Union.

In the *Regulation of the European Parliament and of the Council Establishing Harmonized Provisions on Artificial Intelligence (Artificial Intelligence Act) and Amending Certain Legislative Acts of the Union* hereinafter referred to as , "AI ACT," the EU legislator introduces in Article 3 point. 1 defines artificial intelligence systems as , *"software developed using one or more of the techniques and approaches listed in Annex I, i.e. machine learning mechanisms, including supervised learning, unsupervised machine learning and reinforcement learning, using a wide range of methods, including deep learning; logic and knowledge-based methods, including knowledge representation, inductive (logic) programming, knowledge bases, inference and deduction engines, reasoning (symbolic) and expert systems; statistical approaches, Bayesian estimation, search and optimization methods. , which can - for a given set of human-defined goals - generate results, such as content, predictions, recommendations or decisions affecting the environments, with which interacts."*⁸

⁷ K. Osajda(series editor), W. Borysiak (volume editor), *Kodeks cywilny, Komentarz*. Wyd.28, Warsaw 2021, Legalis, commentary to art.33¹, Nb 6.

⁸ Data behind the website: <https://eur-lex.europa.eu/legal-content/PL/TXT/HTML/?uri=CELEX:52021PC0206> (accessed 2025-01-16)

I will continue the issues concerning artificial intelligence and its subjectivity in a series of subsequent articles.

Author:

Pawel Krzyzanowski

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