

EXPLORING THE LEGALITY OF AI IN CUSTOMS PROCEDURES

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Abstract

This paper explores the complex interaction between AI and customs procedures, aiming to uncover the legal ramifications associated with the integration of AI technologies in this field.

With the rapid advancement of AI, customs authorities worldwide are increasingly adopting automated systems to improve the efficiency, accuracy, and security of cross-border trade operations. However, as AI systems take on significant roles in decision-making processes traditionally overseen by humans, concerns regarding legality, accountability, and transparency become prominent.

Through a thorough examination of existing legal frameworks, international agreements, and relevant case law related to AI implementation in customs procedures, this research conducts a comprehensive analysis. It seeks to shed light on the evolving legal landscape surrounding AI in customs operations through a comparative study of various regulatory approaches and interpretations.

Additionally, the paper scrutinises emerging ethical considerations and policy challenges arising from AI adoption, emphasising the necessity for coherent legal frameworks that uphold fundamental rights while promoting innovation and facilitating trade. By synthesising legal, ethical, and practical viewpoints, this study contributes to a nuanced comprehension of the intricate dynamics influencing the legality of artificial intelligence in customs procedures.

Keywords: AI, customs, public international law, European law, administrative procedures.

1. Introduction - Defining AI

Artificial intelligence (AI) has become an expanding technology that will help public authorities in tackling shortcomings in regards to human resources and overbearing administration procedures. This paper will focus on how AI has become a staple in the public administration and will analyse its legal status. Furthermore, we will outline how AI can help improve customs procedures seeing as how Romania and the European Union have started developing and implementing electronic means to monitor goods that are being shipped to EU states or are just transiting the joint customs territory.

Artificial intelligence, a term introduced by Stanford Professor John McCarthy in 1955, refers to the field dedicated to creating intelligent machines. Initially, AI focused on programming machines to execute tasks cleverly, such as playing chess. However, contemporary emphasis lies on developing machines capable of learning, akin to human cognitive processes.

A frequently cited definition of AI characterises it as a technology allowing machines to replicate intricate human abilities. However, this description lacks specificity, essentially rephrasing the term 'artificial intelligence'. Without detailing the specific 'complex human skills' involved, the essence of AI remains ambiguous. Similarly, defining AI as the execution of complex tasks by computers in intricate environments suffers from the same vagueness¹.

These definitions based on tasks do provide some insight into AI, but they still have their limitations. Terms like „some degree of autonomy”² remain ambiguous. Furthermore, these definitions are still quite broad, encompassing phenomena that many wouldn't typically associate with AI.

A legal definition for artificial intelligence has been consecrated in the European Union AI Law which states that: «„AI system” is a machine-based system designed to operate with varying levels of autonomy and that may

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¹ H. Sheikh, C. Prins, E. Schrijvers, *Mission AI - the new system technology*, Springer, The Hague, 2023, pp. 15-16.

² *Ibidem*.

exhibit adaptiveness after deployment and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments»³.

This marks one of the most important legal definitions in the world, seeing as how a lot of states are steadily adopting AI yet have not adopted specialised legislation regarding this important technology. The EU have been regularly adopting legal means to ensure that AI will be available in a legal and controlled environment with the Coordinated Plan on AI⁴ with which it will increase the pace of investment in AI technologies to foster a robust economic and social recovery, supported by the adoption of innovative digital solutions and harmonise AI policies to eliminate fragmentation and tackle global challenges.

It's also important to note that the EU AI Act has implemented an AI Office which will monitor, supervise, and enforce the AI Act requirements on general purpose AI models and systems across the 27 EU Member States⁵ and will enforce the AI Act with decisions, implementing acts, delegated acts, guidance and guidelines and standardisation requests.

However, AI in the usage of customs authorities is still a long way towards truly attaining operational status seeing as how artificial general intelligence has yet to be achieved.

2. AI used by customs authorities

AI has been slowly integrated in some state's customs authorities, such as the Arab United Emirates, where Dubai has been seen by the World Customs Organization⁶ as one of the most advanced customs hubs where an AI platform helps e-commerce companies and other beneficiaries with automated declaration preparation and immediate clearance. To help implement AI in its customs offices, national authorities integrated the iDeclare and AI Munasiq applications.

These two systems allow beneficiaries to scan objects with their phones so that the applications will help select the harmonised system code for their goods, while also filling in information in the customs import declarations.

The United States of America has also implemented AI for its border and customs offices⁷ which can also improve screening time with facial recognition, image classification and object detection. However, China has been a leading state in regards to implementing AI in customs procedures as it has included biometric processing and placing a five checkpoint system that uses AI to identify possible goods that have a higher degree of risk (such as contraband goods). This means that customs agents can act alongside computer algorithms and robotic helpers, such as the ones already active in Hong Kong⁸.

The General Administration of Customs of China have released public information regarding⁹ the usage of AI and robotics in their activity in order to safely check the content of cargo containers. Similarly, the World Customs Organization has noted that Netherlands have used automated detection for X-ray scanners in order to identify hidden objects inside packages and cargo containers, we note that these types of procedures have yet to become a standard at an EU level¹⁰.

³ Art. 3 para. 1 from the Proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (AI Act) and amending certain Union legislative acts published as 2021/0106(COD), <https://data.consilium.europa.eu/doc/document/ST-5662-2024-INIT/en/pdf>, last consulted on 25.03.2024.

⁴ European Commission communication COM(2021)205final, Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions Fostering a European approach to Artificial Intelligence, 21.04.2021.

⁵ According to its directives published on its own website, <https://artificialintelligenceact.eu/the-ai-office-summary/>, last consulted on 25.03.2024.

⁶ A. Mahboob Musabih, *Transforming trade: how Dubai Customs is harnessing AI for enhanced trade facilitation and border control*, World Customs Organization - Panorama, issue 3/2023, 18.10.2023.

⁷ As seen on the Homeland Security website, <https://www.dhs.gov/ai/using-ai-to-secure-the-homeland>, 29.02.2024, last consulted on 25.03.2024.

⁸ A. Aleksandrovna Chebotareva, N. Gennadiyevna Kazantseva and others, *Digital transformation and artificial intelligence in the activities of customs services in Russia and foreign countries*, SHS Web of Conferences 118, RUDN LTMRP Conference 2021 04014 (2021).

⁹ According to the official Chinese customs authority website last consulted on <http://english.customs.gov.cn/Statics/6483b197-5ea9-4f90-a04a-89bc9e28de74.html>, information was published at 01.09.2020, last consulted on 25.03.2024.

¹⁰ World Customs Organisation, *Automated detection: Dutch Customs shares its experience*, Dossier: Disruptive Technologies, issue 3/2022, 12.10.2022.

A similar approach has also been noted in the USA, where US Customs and Border Protection have started using drones to identify possible illicit goods or unlawful border crossing incidents¹¹. Researchers at the CATO Institute have determined that the US have used military grade and civilian grade drones in their customs procedures, but the costs outweigh the results with 32.000\$ per arrest¹², where as drones had been used in only 8000 missions, where as in 2018 the Customs and Border Protection Agency had over 1.7 million operations.

Furthermore, the US Customs Artificial Intelligence Center of Innovation¹³ has been established for video and image redaction in order to identify frames where objects are detected, label the detected object, and perform redaction on frames that contain sensitive information.

We would like to recall that the EU had funded a promising Intelligent Portable Border Control System (commercially named iBorderCtrl)¹⁴ which was tested in three EU Member States. The project was supposed to allow border and customs agents to interact with incoming travellers, immigrants and economic operators so that they could evaluate if there were deceit attempts about the data specified during the pre-arrival registration, while also allowing face matching combined with palm vein scanning¹⁵.

However, the iBorderCtrl project was heavily contested by Patrick Breyer, a European Parliament member, who filed a complaint against the European Research Executive Agency in which the Tribunal of the European Union (Case T-158/19¹⁶) and the European Court of Justice, in the appeal procedure (Case C-135/22P¹⁷) stated that the requirement for participants in the iBorderCtrl project was to adhere to fundamental rights and principles, as recognized by the Charter, and it was the Commission's responsibility to ensure such adherence, does not automatically imply that these rights have not been violated.

According to the World Customs Organization, only 10% of the member states that had responded to the study had adopted AI tools as of 2022¹⁸ while another 12% of the respondents claimed they are planning to implement AI tools in the future. The study cites as main benefits of AI tools the following: better risk management, profiling, fraud detection and greater compliance; facilitated customs audits and anomaly identification; predict future trends; improved facilitation; improve revenue collection; and improved imaging (containers) and searches¹⁹.

However, we would like to outline that such tools come with caveats such as costs, lack of good practices, lack of a governmental strategy and legal issues. The World Customs Organization²⁰ outlines that some member states have created special AI Departments in their customs authorities which ensures risk management, image processing and valuation of goods.

The World Customs Organization warns that AI has some risks such as malicious data generated with fake content and as such would render the harmonized classification tool inefficient, yet AI has been implemented more efficiently as chat bot helpers for interested parties when they search relevant information in the customs open-source data bases.

Researchers from McKinsey&Company²¹ pointed out that growing e-commerce will force customs authorities to carry out extensive updates to their operational procedures seeing as it the declaration volumes require better risk management tools. The researchers found that a lot of the current risk identifying

¹¹ As seen on the US Customs website <https://www.cbp.gov/frontline/cbp-small-drones-program>, information was published on 09.11.2020, last consulted on 25.03.2024.

¹² D.J. Bier, M. Feeney, *Drones on the Border: Efficacy and Privacy Implications*, CATO Institute, Immigration Research and Policy Brief no. 5/01.05.2018.

¹³ As seen on the website <https://www.cbp.gov/newsroom/spotlights/artificial-intelligence-harness-key-insights-cbp>, last consulted on 25.03.2024.

¹⁴ As seen in the EU Cordis funding programme for Horizon 2020, project no. 700626, <https://cordis.europa.eu/project/id/700626>, last consulted on 25.03.2024.

¹⁵ L. Endregard Hemat, *A Case Study of EU-funded Research with Experimental Artificial Intelligence Technology for Border Control*, Universitetet I Oslo - Norwegian Centre for Human Rights, master thesis, 07.11.2022, pp. 33-34.

¹⁶ Judgment of the General Court from 15.12.2021, Case no. T-158/19, *Patrick Breyer v. REA*.

¹⁷ Judgment of the Court from 07.09.2023, Case no. C-135/22P, *Patric Breyer v. REA and European Commission*, para. 105, 106 and 108.

¹⁸ World Customs Organisation, *The role of advanced technologies in cross-border trade: A customs perspective*, WTO and WCO, WTO Publication, London, 2022, p. 34.

¹⁹ *Ibidem*.

²⁰ World Customs Organisation, World Trade Organisation, *WCO/WTO Study Report on Disruptive Technologies*, published by World Trade Organisation, Publication Number: FAC 2022-2, June 2022, p. 67.

²¹ A. Busheri, C. Marcati, S. Zaidi, *Using advanced analytics to improve performance in customs agencies*, McKinsey&Company, 21.09.2022, <https://www.mckinsey.com/industries/public-sector/our-insights/using-advanced-analytics-to-improve-performance-in-customs-agencies#/>, last consulted on 25.03.2024.

infrastructure is outdated when forced to tackle large quantities of declarations and physical inspections. The EU funded project PROFILE²² which uses AI analytical data and shares the information with all the EU Member States in order to update, as fast as possible, the data bases regarding customs risks.

This could provide an improvement over the Customs Decisions System that was introduced in 2017 and updated in 2020²³, which focuses on customs cooperation inside the EU in order to allow economic operators to conduct imports and exports based on the classic EORI registration.

AI could be used to help traders to fill the customs declaration based on their needs, as this is not contrary to Regulation (EU) no. 952/2013²⁴ which ensures that electronic documents can be processed by authorities. However, without specialised AI tools licensed under the EU AI Act economic operators must rely on applications that could pose risks to both their infrastructure and that of the customs authorities.

We would like to recall that using emerging technology is not seen as frowned upon seeing as how the European Court of Justice²⁵ considers drones as viable tools to flag potential surveillance methods that can be used to help protect the EU borders.

Despite the trend of technology being adopted in certain procedures, taxpayer compliance and data publishing have yet to be addressed by customs authorities. Literature²⁶ outlines these drawbacks as cumbersome for public institutions as costs for personalised Big Data can affect the functionality of a customs database and its questionable as to why open-source information would not be better suited for such a task.

Furthermore, in customs, it's very important to be able to distinguish between origin and provenance which AI technology is not yet capable of as it requires extensive training in order to figure out particularities in the means of production that are accessible for each state.

We consider AI a very notable tool in risk management, as Regulation (EU) no. 952/2013²⁷ allows customs authorities, alongside the European Commission, to analyse risks in customs controls, meaning that economic operators are obliged to share data with the authorities in order to determine if goods are being correctly identified in the harmonised description and coding system. As such, a web-crawling AI application could help customs agents determine risks and whether or not to commit to a control by offering prices technical information for said goods²⁸.

AI used alongside other means of conducting customs controls, such as drones, can help achieve better tax compliance and fraud avoidance, as seen in Netherlands, where the customs authority identify drugs with the drone cameras, while all data is being filtered in order to respect data protection laws²⁹.

In summary, AI offers numerous advantages for customs agencies since it enhances efficiency and precision in handling customs data, while allowing agencies to streamline border control procedures, detect illicit activities like smuggling or trafficking more efficiently, and ensure adherence to trade regulations. Additionally, AI can automate routine tasks and so it allows public institutions to redistribute human resources towards more intricate and strategic endeavors, such as risk management.

We endorse Professor Karim Lakhani's conclusion regarding the utilisation of AI, which emphasises that „AI won't replace humans - but humans with AI will replace humans without“³⁰. Consequently, customs agents should embrace AI adoption to enhance job performance and bolster tax compliance.

²² More information can be obtained on their website <https://www.profile-project.eu/>, last consulted on 25.03.2024. T. Mannisto, J. Hintsala, *PROFILE: Enhancing Customs Risk Management*, WCO, Panorama, 06.06.2019.

²³ As seen on the European Commission website https://taxation-customs.ec.europa.eu/online-services/online-services-and-databases-customs/cds-customs-decisions-system_en, last consulted on 25.03.2024.

²⁴ As seen in art. 6 of the Regulation (EU) no. 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (recast), OJ L 269/10.10.2013.

²⁵ Judgment of the European Court of Justice, 27.11.2019, *Luisa Izuzquiza, Arne Semsrott v. Frontex*, para. 71 and 101-102.

²⁶ K. Mikuriya, Th. Cantens, *If algorithms dream of Customs, do customs officials dream of algorithms? A manifesto for data mobilisation in Customs*, in *World Customs Journal*, vol. 14, no. 2, 2020, pp. 3-22.

²⁷ Art. 13, 46 and 128 from the Regulation (UE) no. 952/2013.

²⁸ Al. Giordani, *Artificial Intelligence in Customs Risk Management for e-Commerce Design of a Web-crawling Architecture for the Dutch Customs Administration*, Delft University of Technology Faculty of Technology, Policy and Management, study funded by TUDelft and IBM, 14.08.2018, pp. 106-107.

²⁹ W. de Jager, *Dutch customs are increasingly using drones to combat drug smuggling*, DroneWatchEU, 20.01.2022.

³⁰ K. Lakhani, *AI Won't Replace Humans — But Humans With AI Will Replace Humans Without AI*, Harvard Business Review, interview, 04.08.2023, <https://hbr.org/2023/08/ai-wont-replace-humans-but-humans-with-ai-will-replace-humans-without-ai>, last consulted on 25.03.2024.

2.1. Romania and AI integration

Romania has adopted a National Strategy regarding AI³¹ in which it establishes some general objectives for the central authorities in order to ensure standardisation in this field. Romania will utilise AI in order to allow a green transition, digital transformation and productivity, rectitude, and most importantly, from our point of view, macroeconomic stability, meaning transitioning from "protective" fiscal measures - necessary in the short term as a response to the effects of the pandemic - to measures that facilitate resource reallocation and support recovery; there is an emphasis on the need to increase the efficiency of public administration and reduce private debt, as well as the introduction of fiscal instruments to support the green transition.

However, in an Ipsos study³² it was found that Romania has a growing appetite for AI, yet Romanians oscillate between ignorance, pragmatism, and possibly, naivety out of the 31 countries that were targeted by the study. The study shows that 54% of Romanians had their lives impacted by AI. We consider that this research is very comforting when analysing the growing need for digitization in Romania and showcases that taxpayers are willing to work with AI better than with human agents, because technology does not discriminate or waste time.

The Romanian Government has adopted the Ministry of Research, Innovation and Digitization Order no. 20484/2023³³ which establishes the Romanian Committee for AI which will oversee implementation of AI tools in governmental agencies. With the help of the Committee, the Government will help the Ministry of Finance and its subsidiaries (including the Romanian Customs Authority) to create specialised AI tools and use them to collect taxes in a more efficient manner.

Without proper AI monitoring tools, Law no. 296/2023³⁴ regarding certain fiscal-budgetary measures to ensure Romania's long-term financial sustainability, which introduces the eSeal - a specialised monitoring tool for transports of goods and excise duty goods, will require a lot of manpower in order to ensure compliance. AI will help risk management and monitoring without an excessive amount of trained human resources.

The most recognized AI tool in Romania is Ion, a „governmental counsellor”³⁵. Its makers hope that it will act as a front desk for people to send complaints or requests in order for the authorities to act faster and more efficiently. However, the project still has a long way from being a simple chat-bot, while the Government hopes it will act in a similar fashion to ChatGPT, meaning that it's supposed to offer simple solutions or recommendations for interested parties.

A 2022-2023 AI map in Romania³⁶ outlines that a lot of companies face shortcomings when operating in this state. The primary hurdles confronting startup founders include difficulty in sourcing the right talent, struggles in attracting necessary financing, and challenges in maintaining sufficient cash flow for operations. Additionally, expanding internationally is perceived as arduous, and navigating bureaucratic processes, both in Romania and other countries where they operate, poses significant challenges.

In order to prepare specialised human resources, the Romanian Government adopted GD no. 650/2023 amending Annexes no. 1-6 to GD no. 367/2023 approving the Nomenclature of fields and specialisations/programs of university studies and the structure of higher education institutions for the academic year 2023-2024³⁷ which allows universities to prepare students in the field of AI and cybersecurity. This decision will be useful in the long term, but it does not provide a short-term solution as highly trained workers will most likely prefer other places with better offers. Romania's Prime Minister considers that AI will help recover the gaps in competitiveness and can be a crucial key in how public authorities will handle digitization³⁸.

It's imperative that Romania implements AI for its fiscal and customs authorities seeing as how its candidature to the Organization for Economic Co-operation and Development has an AI national strategy

³¹ Ministerul Cercetării, Inovării și Digitalizării, *Strategia națională în domeniul inteligenței artificiale 2024-2027*, MCID, published at 01.02.2024, <https://www.mcid.gov.ro/wp-content/uploads/2024/01/Strategie-Inteligenta-Artificiala-22012024.pdf>, last consulted on 25.03.2024, p. 36.

³² Published online at <https://www.ipsos.com/ro-ro/romanii-si-inteligenta-artificiala-intre-ignoranta-si-fascinatie>, study conducted in 26.05 - 09.06.2023, last consulted on 25.03.2024.

³³ Published in the Romanian Official Gazette, Part I, no. 382/04.05.2023.

³⁴ Published in Romanian Official Gazette, Part I, no. 977/27.10.2023.

³⁵ As seen on the bio available online at <https://ion.gov.ro/cine-e-ion>, last consulted on 25.03.2024.

³⁶ V. Andriescu, *AI MAP Romania 2022/2023: half of AI startups launched after 2020*, Start-Up, 03.08.2023.

³⁷ Published in the Romanian Official Gazette, Part I, no. 722/04.08.2023.

³⁸ The Prime Minister's speech can be read at <https://gov.ro/ro/media/comunicate/mesajul-premierului-nicolae-ionel-ciuca-pentru-evenimentul-inteligenta-artificiala-sursa-de-dezvoltare-pentru-romania-a-iv-a-editie-tehnologiile-bazate-pe-inteligenta-artificiala-pot-influenta-s>, was held at 15.03.2024, last consulted on 25.03.2024.

adoption checklist that must comply to the OECD AI Principles adopted in 2019³⁹. Furthermore, Romania has contributed and learned a great deal of good practices from other states and the OECD through its participation in the preparation of the report titled „The State Of Implementation Of The OECD AI Principles Four Years On”⁴⁰ with the USA, Japan, Canada, Israel and the United Kingdom already having a proper administrative apparatus capable of using AI and acknowledging the risks associated with the technology.

3. Conclusions

AI represents a great stimulant for Romania to play catch-up with other states seeing as how the technology focuses on fast gains and quick adoption. A lot of companies have shown interest in adopting AI tools to help their bureaucratic processes. The World Customs Organization has shown a lot of interest to help states in order to implement AI solutions, even offering a free tool based on the Bacuda application⁴¹, which offers an AI harmonised system code recommendations. The tools help users to identify goods based on description and number of harmonised system code. The more details offered to the AI algorithm the better the results are.

Yet, generative AI content and unlawful practices can create a disruptive environment⁴² based on insecurity (terrorism, counterfeit goods, fiscal fraud and others) and organised crime. We agree with how literature portraits that⁴³: „(...) technologies are tools and not the objectives. They are ever-evolving, and today’s disruptive technologies will become obsolete in the future. People are innovative: fraudsters can be beneficiaries of disruptive technologies; it is easily imagined that fraudsters will run artificial intelligence (AI) to find out how they can smuggle goods without being detected by customs.”

Utilising AI represents an immense opportunity for the Romanian Customs Authority, especially considering the extensive data collection within customs. AI offers the capability to analyse the vast and continually expanding datasets, accurately detecting and predicting patterns at a faster rate than humans. The potential contributions of AI to customs are extensive, including modelling duty and tax collection patterns to ensure the accurate collection of duties and taxes at border crossings. Also, AI can help implement automatic classification of HS codes for commodities through natural language processing, leading to improved classification accuracy and the correct application of tariff rates.

This tied with robotic process automation which can be programmed to mimic most human- computer interactions to carry out error-free tasks at high volume and speed⁴⁴ will help beneficiaries and customs agents in thwarting frauds and commit to tax compliance, even if there is not a high number of agents on-hand. Technology can offer a proper solution to the lack of manpower and will speed up interactions, increasing performance and lessen human workloads.

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³⁹ The principles can be read at <https://oecd.ai/en/ai-principles>, last consulted on 25.03.2024.

⁴⁰ K. Perset (coord.), *The State Of Implementation Of The OECD AI Principles Four Years On*, OECD Publishing, OECD Artificial Intelligence Papers no. 3, October 2023, pp. 15-17.

⁴¹ Which can be used at <http://49.50.165.5:19090/page/mainFormEn>, last consulted on 26.03.2024.

⁴² A.A. Perez Azcarraga, T. Matsudaira, G. Montagnat-Rentier, J. Nagy, R.J. Clark, *Customs Matters Strengthening Customs Administration in a Changing World*, published by International Monetary Fund, 15.06.2022, p. 219.

⁴³ *Idem*, p. 220.

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