

Rewilding in Romania

Liability to Third Parties, including Neighbouring Landowners

*A shepherd leading his flock to a paddock. Southern Carpathians, Munții Țarcu, Caraș-Severin.
Florian Möllers / Rewilding Europe*

Core topics

- Practical steps to limit the risk or impact of liability
- General considerations to establish liability
- Waiver and exemptions of liability
- Liability for damage in particular circumstances related to rewilding

Key takeaways

- 1 There may be liability for damage or injury caused to third parties, including neighbours, so it is reasonable to take steps to avoid damage or injury.
- 2 Practitioners should undertake risk assessments to understand and mitigate risks associated with rewilding activities and obtain insurance to cover potential liabilities.
- 3 There are situations where practitioners may be liable even if the act that caused damage was not their fault.
- 4 There are several factors which may exempt or limit liability, including unforeseeable events or the negligence of the victim.
- 5 There are specific situations where practitioners should be diligent to avoid damage, including the use of fire or excavations.

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1. Practical steps to limit potential civil liability

This note addresses three key areas of civil liability¹ relevant to those undertaking rewilding activities: third-party liability; special consideration of neighbour relationships; and exemptions from liability. Where liability is established, there may be a legal obligation to provide monetary compensation to the injured party.

Although the scope of potential liability arising from rewilding activities can be daunting, there are several practical steps which practitioners can take to reduce the risk of liability being found and to remove the direct financial impact of being required to pay compensation/damages in these situations. In particular, it is advisable to:

- Seek detailed legal advice regarding the specific project being implemented. Practitioners should cover any potential liabilities that may arise from the project and how they can be avoided, including potential actions that may impact neighbouring land.
- Undertake, and keep up to date, detailed risk assessments in relation to all aspects of the project.
- If available, practitioners should get comprehensive third-party liability insurance and ensure that they engage with the insurer about the risks involved in the project and follow their requirements. It should also cover any events / activities that may negatively impact neighbouring landowners.

- Always bear in mind that there is a general duty to avoid damaging neighbours' property. Practitioners must therefore take all reasonable and appropriate measures to avoid causing damage to neighbours' property through acts and omissions.
- Consider building and maintaining a fence and/or other appropriate barriers where animals are kept to (i) prevent the animals escaping from the project and, (ii) prevent the public from entering the project grounds without invitation.
- Use signs / other notifications to make explicitly clear to the public that they are entering a rewilding project. The signs should indicate what animals are present and any associated dangers. They should explicitly warn the public to be careful.
- If the project is not open to the public, practitioners should make it explicitly clear, by using signs / other notifications, that anyone entering the property without authorisation will be trespassing.
- When in doubt, or when faced with a liability claim, practitioners should seek legal advice.

2. What is third-party liability and when might a person be liable?

Third-party liability may occur when the actions of a person cause injury to, or damage to, the property of another person.² Many activities within a rewilding project may cause damage and liability will arise if the necessary conditions are met. It is therefore important to understand the general rules of liability and the elements of which to be aware of.

The Romanian Civil Code³ regulates two types of tort liability:⁴

- *Subjective liability* – liability may arise if someone's actions cause injury to, or damage to, the property of a third party or if someone's actions breach the rights and legitimate interest of others; and
- *Objective tort liability* – in the specific cases provided by law, a person may be liable for damage caused to others regardless of fault. Objective liability arises from the degree of control or care they have for the cause of damage, such as animals⁵ or objects⁶ under their care or possession, defective buildings⁷, and their control over dangerous activities within the property⁸. In cases of objective liability, the practitioner needs to prove that they were not at fault or that, even with the diligence required, the damage could not have been avoided. The notion of *care* relates to the owner of the object or to the person

who, based on a legal provision, an agreement or even just *de facto*, independently exercises the control and the supervision over that object and uses it in his own interest.⁹ To the extent that this is relevant to rewilding, these exceptions are considered in section 3 and in *Rewilding in Romania: Liability for Animals*.

- Broadly, a practitioner may be liable for any intentional or negligent conduct, which causes wrongful damage to another individual or their property. Practitioners can also be liable for damage caused by animals, objects, or defective buildings to the extent they have a duty of care upon these.

Example 1

Landowner A cuts the fence belonging to their neighbour without permission.

This action constitutes a clear infringement of the neighbour's property rights and is therefore wrongful. As a result, Landowner A may be held liable for any damage caused by their action. This could include the cost of repairing the fence and any additional losses resulting from the breach, such as the cost of recovering livestock that escaped through the opening, for example.

2.1 What are the general requirements for third-party liability?

There are four elements which must be established for third-party liability to arise:¹⁰

- *Wrongful conduct* – an unlawful voluntary act or omission by the practitioner.
- *Fault (by intention, negligence, or imprudence)* – the conduct of the practitioner is reprehensible because the person (i) intended to cause damage; (ii) acted negligently or recklessly; or (iii) accepted that their action could cause damage. Intention implies willingness and awareness of one's harmful actions. Negligence implies a failure to duly consider the possible consequences of one's actions or a failure to exercise ordinary diligence. Recklessness as to the impact of one's actions or failure to comply with laws, regulations, orders, or instructions will constitute negligent behaviour. Negligence arises even when there is no intention to cause harm.
- *Damage* – the injured person must have suffered loss or damage. Damage can be material or non-material, depending on whether the damage is assessable in monetary terms. Examples of material damage may be damage to property, hospital

bills, loss of profit, etc. An example of non-material damage may be pain and suffering.

- *Causation* – there must be a causal link between the practitioner’s conduct and the damage suffered by the injured person. Generally, the causal link is expressed in terms of probability, i.e. such conduct would normally cause such damage. Causation may be interrupted by an intervening event, in which case liability may not arise.

If liability is established, the practitioner may be required to pay compensation.¹¹ The amount of compensation is determined based on the nature and extent of the damages, as well on the circumstances in which the damage occurred.¹²

What does it mean to be negligent and what steps may be taken to avoid negligence?

Being negligent means failing to exercise ordinary diligence. Whether or not actions are considered negligent is a question of fact and will be considered objectively. The test for negligence is whether the practitioner acted as expected of a reasonable person in the specific circumstances of the situation. If they are acting in a professional or skilled capacity, then their actions will be measured against how a professional or expert would have acted in the same situation.

In practice, it is recommended to act in a way that leaves no doubt that the person did all they could to

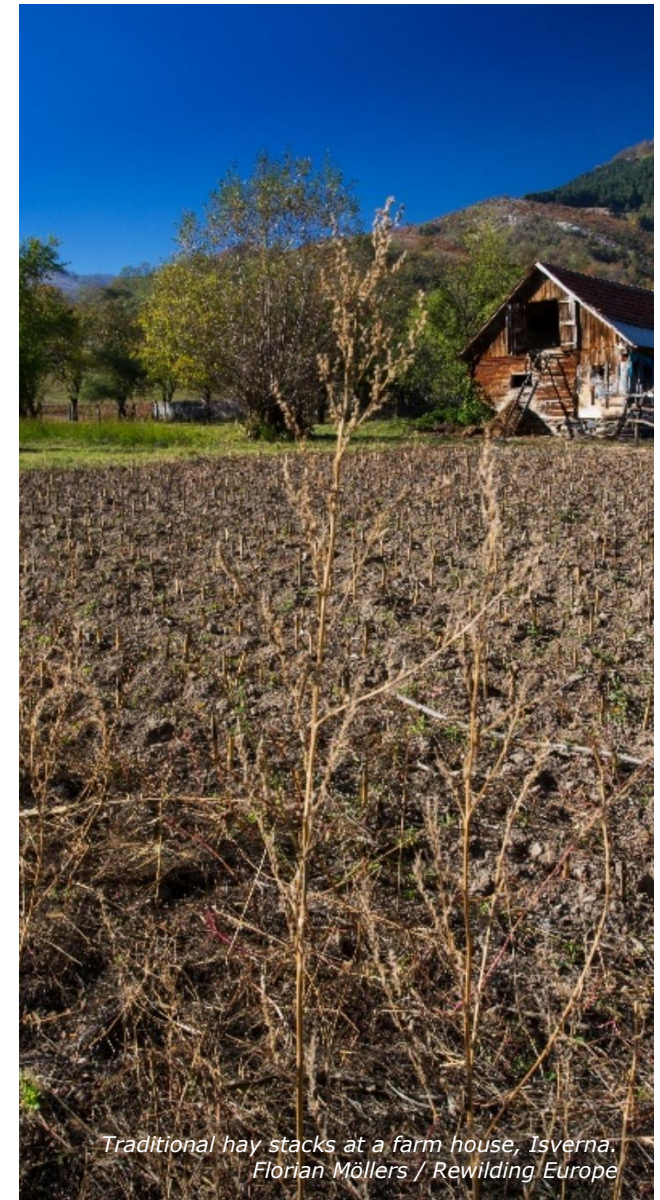
avoid any damage and that they never had intention to cause any harm. It is in this context that risk assessments become important. Risk assessments record the risks the practitioners has identified, and the steps taken to avoid or mitigate such risks. This can help to show that the practitioner acted reasonably, were not negligent and that the damage suffered was unavoidable.

2.2 What are the causes to exempt or limit liability?

There are situations where the general rule of establishing liability, as outline above, does not apply and the practitioner may not be liable even if their actions caused wrongful damage or injury and/or they were negligent.

Liability is removed or limited when damage is caused by:

- *Force majeure*¹³ – these are events that are completely outside of any person’s control, like natural disasters (earthquakes, severe flooding) or wars. If a force majeure event occurs, it can limit or remove liability because it is assumed that no one could have avoided it, but there is also the need to show that they took all possible measures to avoid or limit causing damage.



Traditional hay stacks at a farm house, Isverna.
Florian Möllers / Rewilding Europe

- *Unforeseeable event*¹⁴ – these are unexpected events that may happen within the person’s own activities or responsibilities, like a sudden mechanical failure. These can also be external events that are not extraordinary but still could not be prevented even by an extremely diligent person, such as an unusually strong storm.
- *Fault from the victim*¹⁵ – if the person suffering damage, either intentionally or negligently, contributed to the caused damage or if they increased the caused damage or did not avoid it, in whole or in part, even though they could have done so, the liable person only answers for the part of the damage they caused.
- *Self-defence (or defence of others)*¹⁶ – in this case, damage is caused as a consequence of stopping an imminent, serious, and otherwise unavoidable harm from an unlawful attack. An attack may be directed at the person, but also other people, animals, and rights recognised by law, such as property rights and livelihood. In the case of self-defence, it is necessary to strike a balance when accessing the necessity and proportionality of the defensive action in comparison to the attack, as excessive self-defence may make the person liable.¹⁷
- *State of necessity*¹⁸ – if the person acted under the state of necessity, they are only liable to the extent of the benefit they received from their action. For example, if a person destroys someone else’s property to save its own, the threshold of their liability is the value of the saved property.
- *Exoneration of liability in cases of objective liability*¹⁹ – although fault is not required for objective liability to be found, there are certain exemptions that can remove or limit liability, such as:
 - force majeure: if a rewilding project is responsible for an enclosure of wild horses, but a sudden earthquake destroys the fences, allowing the animals to escape and cause damage, the project might not be liable because the escape resulted from force majeure;
 - exclusive fault of the victim: if a person trespasses into a nature reserve, where reintroduced bison roam, and gets injured despite clear warning signs the rewilding project might not be held liable; or
 - exclusive fault of a third party: if a poacher deliberately cuts open an enclosure, letting wolves escape which attack livestock, the liability might fall on the poacher, and not on the owner of the enclosure.

Example 2

A rewilding project keeps a herd of wild horses. A third party is walking their dog off-leash nearby. The dog approaches and aggressively attacks one of the horses. The keeper of the horses, who is present to collect GPS data from the collars, intervenes and injures the dog while attempting to scare it away and protect the horse.

Under normal circumstances, causing harm to another person’s animal may lead to liability. However, in this case, the keeper’s intervention may fall under the justification of legitimate defence.

Liability may be excluded if:

- the action was proportional and necessary to defend the horse from immediate harm;
- the injury to the dog was not excessive relative to the threat posed; and
- there was no reasonable alternative to prevent injury to the horse without causing harm to the dog.

Additionally, the dog owner may be partially or fully liable for the incident due to their failure to control their dog, especially in an area where animals are known to be present. The lack of a leash may constitute contributory fault, further supporting the defence of the keeper.

Example 3

Camping is permitted on Landowner B's land and a group of campers are staying overnight. One of the campers injures herself by tripping over a fallen branch.

In this case, Landowner B has invited or allowed access to third parties for recreational purposes. Once the landowner consents to such use, they assume a duty of care towards the individuals entering the land. This includes an obligation to take reasonable steps to prevent foreseeable harm.

Fallen branches are a natural occurrence and not every hazard will give rise to liability. However, Landowner B may be liable if:

- the branch had fallen earlier and was left in a spot where injury was likely; and
- the landowner failed to either remove the hazard or adequately warn campers of the risk.

To avoid liability, Landowner B would need to show that they:

- took reasonable precautions, such as regular inspections of camping areas;
- put up appropriate warning signs; or
- that the branch fell recently and unexpectedly, making it impossible to intervene in time.

If these precautions were taken and the incident was truly unforeseeable, liability may be excluded.

Example 4

A person enters private land without permission and falls off a cliff where no warning signs are posted. They suffer serious injuries.

The landowner is not automatically liable for injuries suffered by individuals who trespass on their property. Liability typically arises where the landowner has a legal duty of care, which is significantly reduced or even absent in the case of trespassers.

In this scenario, although no sign warned of the cliff, the injured party was unlawfully present on the land. Their unauthorised access and failure to exercise caution may be considered contributory fault, which reduces or excludes the landowner's liability.

The landowner could still be held liable if there were proven circumstances which would meet all conditions for liability to arise. In the absence of these circumstances, it is unlikely that civil liability would apply to the landowner in this case.

Example 5

A child is visiting a rewilding project with their parents. While the parents are not paying attention, the child approaches a wild horse too closely and is kicked, resulting in a broken arm.

The general rule is that the keeper of an animal (in this case, the rewilding project) is objectively liable for damage caused by that animal, even in the absence of fault. However, liability may be excluded if the project can prove that:

- it took all reasonable safety precautions, such as clearly visible signs warning visitors not to approach, feed, or touch the animals;
- the area was marked with instructions for supervising children and pets;
- the horse was not provoked and was behaving within the bounds of its natural instincts.

If these conditions are met, and the child's parents failed to properly supervise their child despite clear warnings, liability may shift to the parents, who are legally responsible for supervising their child.

In short, if the rewilding project acted with due diligence and the injury resulted from the parents' failure to supervise, the project may be exempt from liability, and the parents could be held liable for the injury caused.

3. What is the liability for damage caused by man-made structures?

There is objective liability for damage caused by weak constructions (*edifices*) or detachment of any part thereof as a result of a construction or maintenance defect.²⁰ This means that a practitioner who has a building or other type of construction is liable, regardless of fault, if damage caused by it was the result of either a failure to maintain the structure in good condition or a defect in construction. This would be the case where a practitioner fails to maintain an old boundary wall and during a harsh winter part of the wall collapses onto the neighbouring land damaging crops. The practitioner would be liable for the damages caused by the fallen wall.

What is understood by constructions (*edifices*)?

The notion of *edifices* includes immovable assets, erected at ground level, such as buildings and related ancillary structures, fences, towers, bridges, dams, etc., but also underground ones, such as canals and pipelines.

Improvised or temporary structures are not considered edifices and natural features such as rocks, plantations, or trees are also excluded from the definition. However, a hide for birdwatching or a feeding station for vultures might be considered *edifices* if they are erected at the ground level.

Example 6

Landowner C builds a bird-watching lookout on their property. The structure has a hidden construction defect, which ultimately causes it collapse. A passer-by is injured in the incident and part of the structure damages neighbouring land.

Prior to the collapse, Landowner C discovered the defect and contacted a contractor to repair it. They agreed on a specific date for the intervention, but the contractor failed to attend as scheduled. The lookout collapsed the day before the contractor eventually arrived, four days later.

In this scenario, Landowner C is likely to be held liable under rules of objective liability for damage caused by things under one's custody, even if the defect was not obvious or visible.

Although Landowner C took reasonable steps to address the issue, the fact that they were aware

of the defect and did not take temporary safety measures, such as closing off access or reinforcing the structure, may weigh against them in terms of exemption. However, the efforts to have a contractor resolve the defect may be relevant in limiting the extent of liability or apportioning fault.

Landowner C may also have grounds to seek recourse against the contractor for their failure to attend on the agreed date, particularly if a contractual obligation existed and the delay contributed directly to the damage.²¹

As the injured party (the passer-by) did not contribute to the incident, there is no contributory fault, and the primary responsibility remains with Landowner C.

Example 7

A visitor enters Landowner D's property and, while walking, trips over a hidden drainage grate, breaking their leg.

Although this incident does not fall under the specific Civil Code provision on structural collapse due to construction or maintenance defects, liability may still arise under objective liability for damage caused by things under one's custody. The drainage grate, as part of the landowner's property, is considered to be under their care.

If no exemption applies, e.g. force majeure or third-party fault, Landowner D may be liable for the injury, even in the absence of fault.

However, if the visitor entered a restricted or clearly marked private area without restrictions to manage liability risks on private land, particularly in rewilding contexts where passive land management may increase terrain irregularities.



*Old wooden building at the old Meteorological Station at Cuntu. Southern Carpathians, Munții Țarcu, Caraș-Severin.
Florian Möllers / Rewilding Europe*

4. What is the liability for damage caused by landslides and flooding?

Landslides and flooding situations do not fall under objective liability, therefore all of the requirements for establishing subjective liability need to apply.

To the extent a rewilding project involves certain actions shaping the natural landscape (e.g. by felling non-native trees, excavating land to create a natural pond, or allowing a river to return to its natural course), the practitioner should consider whether such action may negatively impact the neighbouring land and cause crumbling, landslides, or floods.

In such situations, liability is more likely to arise where the practitioner proceeded with such actions while being aware, for example, that the land is located in an area where such events are quite frequent and likely to occur.

Example 8

A rewilding project decides to drain a small artificial lake to restore the surrounding area to marshland. A drainage channel is created for this purpose. However, due to a design error, the water is inadvertently redirected through neighbouring farmland, causing flooding and crop damage.

In this scenario, the rewilding project is likely to be held liable under general tort liability rules for causing unjustified harm through fault. The design error represents a culpable act (negligence) that directly caused the damage to the neighbour's land.

The rewilding project may be required to compensate the neighbour for the full extent of the loss, including crop damage and any related economic impacts. The project may also be required to remedy or stop the faulty drainage to prevent further harm.

Example 9

As part of a large rewilding project, a river is allowed to regain its natural floodplain. To enable this, the landowner deliberately stops maintaining embankments and river defences on their property.

During a period of unusually heavy rainfall, neighbouring land is flooded, causing damage to property. Over time, the river also erodes adjacent land owned by a neighbour, rendering parts of it unsafe for grazing.

In this case, the heavy rainfall may qualify as a force majeure event if it meets these criteria to exclude or mitigate liability (e.g. it was truly exceptional and not part of normal seasonal variation).

However, foreseeability and preventive measures also matter. If it can be shown that may be able to invoke force majeure as a complete defence.

The landowner should also consider whether the erosion over time could have been foreseen or mitigated. If erosion was a gradual, predictable consequence of altering river defences, liability might arise from negligence or failure to take precautionary measures, rather than from a single force majeure event.

5. What is the liability for damage caused by trees, branches, or roots?

As a general rule, trees must be planted at a distance of at least 2 meters from the boundary line, with the exception of trees smaller than 2 meters, plantations, and hedges. The general rule is overridden if otherwise provided by law, urban planning regulations, or local custom.²²

Failure to observe such distance requirements entitles the neighbouring landowner to ask the landowner / land manager to remove vegetation or cut them to an appropriate height. This is done at the landowner's / land manager's expense.

The neighbouring landowner also has the right to cut the roots or branches of trees that extend over their land. This applies both where the trees were planted in compliance with the legal distance and where that limitation distance was not observed.²³

Example 10

The roots of a tree in Landowner E's property extend into neighbouring land and destroy part of a boundary wall.

Landowner E may be liable for the damage, unless they can demonstrate that the damage was not caused by their fault or that it would have occurred even if they had taken all reasonable precautions. In assessing liability, specific characteristics of the tree and whether it was foreseeable that the roots would reach the neighbouring property are all relevant factors.

To exclude or limit liability, Landowner E would need to prove that:

- they planted or maintained the tree in compliance with the 2-metre minimum distance from the property boundary, as required by law;
- they took reasonable steps to monitor and control root spread; or
- the roots would have caused the damage even if they had acted diligently.

However, if the roots not only caused damage but physically encroached onto the neighbour's land, then Landowner E may still be liable, even if the tree was planted at the required distance. Encroachment is considered an infringement of the neighbour's property rights regardless of the initial compliance with planting rules.

6. Is there liability for damage caused by fire?

If rewilding practitioners are using fire, it is important to pay special attention to the conditions under which they are using it and adopt all necessary measures to minimise and mitigate risk. If practitioners fail to take reasonable measures to prevent, reduce, and/or control the spread of fire,

they may be liable and the affected landowners may seek an injunction and/or compensation.²⁴

There are specific obligations that practitioners need to be aware of. Landholders of a forest may endanger the population and its assets, or they may

cause damage to the environment when using fire in their activities. As such, they are obliged to undertake certain measures to prevent and extinguish fires. This includes not starting fires in February-March and September-October because these periods precede the critical periods of fires in

national forest areas. They must also abstain from using fire during the high season for tourism, during which more people visit the forests. Dry areas near constructions (e.g. cantons, tourist cabins) must also be cleared of debris. Moreover, boards and placards with appropriate information explaining how to prevent and extinguish forest fires should be placed at the entrance and on the tourist routes in the forest.²⁵

Example 11

A wooded area is to be rewilded and, as part of this, Landowner F stops maintaining it and clearing it of debris. Over time, dry brush and vegetation begin to accumulate. During a particularly dry summer, a wildfire breaks out and spreads to neighbouring land, damaging crops and causing injuries. The neighbour alleges that wild campers – who were invited onto the land – have regularly been lighting campfires and that Landowner F tolerated this behaviour.

In such a case, Landowner F may be held liable for failing to take reasonable measures to (i) prevent a fire from starting, and (ii) prevent or limit its spread to neighbouring land. Liability could arise if Landowner F is found to have been negligent in managing known risks, such as permitting campfires during dry conditions and allowing combustible materials to accumulate.

However, Landowner F may limit or exclude liability by showing that they had taken appropriate and timely fire prevention measures. For instance, if Landowner F had clearly prohibited fires (e.g. by putting up warning signs), regularly removed dry brush near structures or paths and maintained defensible space around key areas, this could support an argument that they acted diligently and fulfilled their legal obligations.

End Notes:

1. Civil Code, articles 1349-1395.
2. Civil Code, article 1349(1).
3. Law no. 287/2009, as amended, available [here](#).
4. Civil Code, article 1349(2)(3).
5. Civil Code, article 1375.
6. Civil Code, article 1376.
7. Civil Code, article 1378.
8. While the Civil Code does not contain a specific provision that broadly covers liability for dangerous activities, this is governed by special laws, such as Environmental Liability or Product Liability.
9. Civil Code, article 1377.
10. Civil Code, articles 1357 and 1358. While article 1357 serves as the legal reference concerning the conditions of subjective tort liability, article 1358 contains specific criteria for evaluating fault.
11. Civil Code, article 1381.
12. Civil Code, article 1385.
13. Civil Code, article 1351(2).
14. Civil Code, article 1351(3).
15. Civil Code, article 1352.
16. Civil Code, article 1360(1).
17. Civil Code, article 1360(2).
18. Civil Code, article 1361.
19. Civil Code, article 1380.
20. Civil Code, article 1378.
21. Civil Code, article 1350.
22. Civil Code, article 613(1).
23. Civil Code, article 613(2).
24. Civil Code, article 1376.
25. Article 40 of the [Regulation](#) on the management of emergency situations following forest fires, approved by Order 1475/2006 of the Ministry of Agriculture, Forestry and Rural Development.

Contact Us

More information about rewilding and the issues addressed in this guidance note is available on [The Lifescape Project](#) and [Rewilding Europe](#) websites.

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