

France

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1. What is the understanding or definition of AI in your jurisdiction?

The definitions of artificial intelligence (AI) proposed within the French legal landscape always refer to human intelligence. The French Data Protection Authority (Commission nationale de l'informatique et des libertés or CNIL) defined AI as 'the science of making machines do what humans would do with a certain intelligence'¹⁴⁸.

In a 2017 annual study, the French Conseil d'Etat defined AI as 'the science whose aim is to make a machine perform tasks that traditionally require human or animal intelligence'.¹⁴⁹ In a report on the open data of court decisions submitted to the Minister of Justice in 2017, AI is defined as 'the set of theories and techniques whose purpose is to make a machine that simulates human intelligence perform tasks'.¹⁵⁰

The Commission d'enrichissement de la langue française, whose primary purpose is to fill gaps in vocabulary and to designate in French the concepts and realities that appear under foreign names, defined AI as the 'theoretical and practical interdisciplinary field whose purpose is the understanding of mechanisms of cognition and reflection, and their imitation by a hardware and software device, for the purpose of assisting or substituting human activities'.¹⁵¹ The definitions of this commission are published in the *Official Journal of the French Republic*, and are then of obligatory use in the administrations and institutions of the state and serve as a reference.

However, any comparison between AI and human intelligence, which is a purely anthropocentric approach, seems completely misleading. AI will never be human. On the contrary, some authors point out the risk of AI becoming inhumane,

148 Translated from the definition in French: '*la science qui consiste à faire faire aux machines ce que l'homme ferait moyennant une certaine intelligence*'; CNIL, *How can humans keep the upper hand? Report on the ethical matters raised by algorithms and artificial intelligence* (2017).

149 Translated from the definition in French: '*science dont le but est de faire accomplir par une machine des tâches qui requièrent traditionnellement l'intelligence humaine ou animale*'; Conseil d'Etat Annual Study (2017).

150 Translated from the definition in French: '*l'ensemble des théories et techniques dont le but est de faire accomplir des tâches par une machine qui simule l'intelligence humaine*'; Report on the open data of court decisions submitted to the Minister of Justice in 2017.

151 Translated from the definition in French: '*champ interdisciplinaire théorique et pratique qui a pour objet la compréhension de mécanismes de la cognition et de la réflexion, et leur imitation par un dispositif matériel et logiciel, à des fins d'assistance ou de substitution à des activités humaines*'; published in the *Official Journal of the French Republic*, December 2018

controlling our civil liberties. The questions raised by the relationship between AI and humans, its ability to capture our emotions, anticipate or direct our desires, or decipher parts of our personality or health, raise a growing body of ethical questions, from its autonomy to its status or the establishment of responsibility.

As many digital professionals point out, the term AI was first built – and still is today – on a marketing approach in order to designate the most advanced and ever-changing area of information processing techniques.¹⁵² Some experts even denounce the confusing term, which relates less to a form of real intelligence than to fast, evolved or advanced algorithms.¹⁵³

Furthermore, we must bear in mind that the technologies used by AI in the legal sector are mainly expert systems that can be summarised as ‘first AI generation’ (eg, contract management software).

The current interest for AI is renewed by the emergence of two technologies: machine learning and natural language processing, which are currently under-used or too disappointing in their application to law, especially among French legal tech.

AI must therefore be understood within a technological ecosystem that feeds on data exploitable by high-performance algorithms, outside of any fantasy or anthropocentric perspective generated by certain propaganda of innovation.

2. In your jurisdiction, besides legal tech tools (ie, law firm or claim management, data platforms, etc), are there already actual AI tools or use cases in practice for legal services?

Legal professionals are beginning to adopt AI tools in their practice, mostly for the execution of repetitive and time-consuming tasks.

AI in law is characterised by the combined use of ‘Big Data’, machine learning, probability calculations, natural language processing and expert systems (formalisation of the expertise of specialists, notably through hierarchical trees).

The current AI tools available in France predominantly relate to contract and clause review, predictive justice, regulatory monitoring and even loan and business credit application review, specifically for the banking sectors.

The first area in which significant progress in legal AI has been made is contract and clause review.

152 See <https://pierrelevyblog.com/2018/09/06/intelligence-artificielle-va-t-elle-prendre-le-pouvoir> accessed 6 July 2020.

153 See https://www.lemonde.fr/idees/article/2019/11/24/l-intelligence-artificielle-est-bien-aujourd-hui-une-escoquerie_6020312_3232.html accessed 6 July 2020.

Contract and clause review

Created in 2015, Softlaw specialises in the audit of M&A contracts to detect questionable clauses. This AI software is structured in a way that it performs knowledge management and fosters the exploitation of legal data, using search algorithms based on keywords, natural language processing and machine learning. It also assists with contracts analysis and regulation compliance.

Hyperlex developed an online contract management and analysis solution, allowing its clients to classify their contracts and find specific clauses or specific data (dates and amounts) with an automatic alert system. Founded in 2017, the company ensures accuracy by using all available AI technologies, including image pattern recognition, and intercedes with the Paris Chamber of Notaries to tag notarial documents automatically.¹⁵⁴

Legisway, an AI solution to manage legal activities such as contracts, litigation, delegation of authority or even IPR protection, was launched by French AI contract analytics software provider Della in partnership with Wolters Kluwer Legal & Regulatory. Such a solution frees legal professionals from such time-consuming tasks.

As a robotic process automation (RPA) solution, Legal Suite is a complete software aimed at covering various legal tasks such as contract management – through its GaLexy Contract Authoring Tool – and can be adapted to specific areas of law. For example, Legal Suite solutions can help with IP protection by managing patents, or with real estate law by monitoring leases and calculating rents. There is also Legal Suite's GaLexyBot, a computer-based virtual assistant with the capacity of holding a conversation and answering predefined questions in the legal field.

Chatbots such as GaLexyBot are increasing in their popularity at a high rate, as they relieve legal practitioners from being solicited with questions that have already been dealt with, or are considered to have little added value, allowing them to free up time for the most important tasks.

Still in the field of document analysis, the bank JP Morgan launched Contract Intelligence ('COiN') in 2017, a bot that is able to review complex legal contracts faster and more efficiently than lawyers. According to the bank, within seconds the bot can review the same number of contracts as it would have previously taken over 360,000 staff-hours for the lawyers themselves to complete. Société Générale is additionally developing a scoring engine to detect customers who are likely to leave the bank. According to Société Générale, it has quadrupled the number of detected 'likely to leave customers' since its launch.¹⁵⁵

154 See <https://www.lemondedudroit.fr/professions/241-notaire/68509-victoria-intelligence-artificielle-notaires.html> accessed 6 July 2020.

155 See <https://www.societegenerale.com/en/news/press-release/societe-generale-towards-data-driven-bank> accessed 25 March 2022.

Predictive justice and litigation

AI has also been very effective in predictive justice and litigation.

In the field of predictive justice, Predictice and Case Law Analytics are decision support tools for legal professionals and insurers. They provide access to case law via a natural language search engine. An algorithm then calculates the probabilities of resolving a lawsuit, the amount of potential compensation and identifies the most influential legal arguments or facts in previous decisions handed down by the courts.

Another AI tool fit for litigation was launched by Lexbase in 2018. Legalmetrics is a solution aimed at helping decision-making and litigation strategy by using statistical reporting. By mapping French companies' legal dispute, it indicates the main areas of a company's litigation, its position and the invoked arguments. Such mapping allows legal practitioners to reinforce their legal strategy, by estimating chances of success for instance, by knowing the success rate of a claim, the compensation amount or even the duration of litigation. Another use of Legalmetrics can be the mapping of a company's legal life before a potential legal action by practitioners.

Regulatory monitoring

Faced with the burgeoning amount of legislative and regulatory texts in the banking and financial sector, RegMind uses AI to provide automatic regulatory monitoring and follow-up. It informs its users when a new version of a legal text has been released, and compares both versions to highlight the differences. RegMind also analyses regulatory bodies sanctions from both national and European jurisdictions.

Many other legal techs exist, but their degree of technological innovation does not enable them to enter the AI category. Examples include YouSign (electronic signature), Youstice (online dispute resolution) or AirHelp (compensation assistance in case of delayed or cancelled flights).

The 2020 Wolters Kluwer *Future Ready Lawyer Report: Performance Drivers* survey¹⁵⁶ assessed the readiness and resilience in the legal sector by conducting its survey of over 700 legal professionals across the US and several European jurisdictions.

Such survey revealed that:

¹⁵⁶ See https://landing-legisway.wolterskluwer.com/en-whitepaper-future-ready-lawyer-2020?utm_campaign=FR&utm_medium=article&utm_source=lexology accessed 25 March 2022.

- 82 per cent of respondents predicted the greater use of technology will change how they deliver service;
- 63 per cent expected Big Data and predictive analytics to have a significant impact on the sector within three years; and
- 56 per cent expected to increase spending on legal technology solutions over the following three years.

However, it is crucial to highlight that the use of AI tools depends on the data available to train and reinforce AI tools' veracity. Such issues are addressed in question 6 below.

3. If yes, are these AI tools different regarding: (1) independent law firms (2) international law firms (3) in-house counsel, and what are these differences?

There are a large number of software packages claiming to develop AI, but few of them are actually based on the latest machine learning and natural language technologies.

There should be no difference in the use of these tools and software by these different structures, except that international law firms are more likely to use them because of their larger resources and the level of implementation of these tools in the United States.

4. What is the current or planned regulatory approach on AI in general?

It is no coincidence that France is considered to be the leading continental European nation in this field, and Paris is the leading city in continental Europe in terms of attractiveness to AI startups.¹⁵⁷ Indeed, the French Government is eager to make AI attractive, locally and internationally, as demonstrated in President Macron's March 2018 speech, which set out his vision and strategy to make France a leader in AI.¹⁵⁸

The Villani report, titled *AI for Humanity*¹⁵⁹, laid the foundations for an ambitious French strategy, which has truly been the stimulus for a national discussion on the impact of AI, including the issue of what regulations should be implemented. Other studies quickly followed the Villani report, including the report on AI in relation to the labour market,¹⁶⁰ commissioned by the Ministry of the Interior,

157 See https://www.rolandberger.com/publications/publication_pdf/roland_berger_ai_strategy_for_european_startups.pdf accessed 25 March 2022.

158 See www.elysee.fr/emmanuel-macron/2018/03/29/frances-new-national-strategy-for-artificial-intelligence-speech-of-emmanuel-macron.en accessed 6 July 2020.

159 See www.aiforhumanity.fr/en accessed 6 July 2020.

160 See <https://www.vie-publique.fr/sites/default/files/rapport/pdf/184000171.pdf> accessed 25 March 2022.

and the report on AI in the service of defence,¹⁶¹ commissioned by the Ministry of the Army.

Another study was published in February 2019, at the request of the *Direction Générale des Entreprises* (a department of the French public administration). Titled *Artificial Intelligence – State of the Art and Perspectives for France*,¹⁶² it classifies sectors potentially most transformed by the rise of AI, focusing on four: energy and environment, transport and logistics, health, and industry. For each sector, the study assesses the opportunities generated by AI and suggests targeted strategies.

A consensus seems to emerge from various reports and studies tending to conclude that, at this stage in its evolution, there is no pressing need to rethink the current legislative and regulatory framework for AI. Current legal mechanisms and regimes, coupled with contractual flexibility, enable economic actors and consumers to cope with technological change with a satisfactory level of legal safety.

Nevertheless, there are exceptions to this approach, and special regulation may be necessary at a national and regional (European Union (EU)) level, for example, to support data openness, to regulate the activity of platforms or to support the development of specific innovation.

Autonomous vehicles that are currently in the testing phase are leading the government to support the development of testing in an open environment. In March 2018, the President announced that by 2022, a regulatory framework allowing the circulation of autonomous vehicles will be put in place and that an exceptional legal framework on liability for intelligent objects will be necessary.¹⁶³ And the publication of a decree on 1 July 2021, makes France the first country to proceed to a simultaneous evolution of its traffic and transport regulations to promote the deployment of automated driving.¹⁶⁴

Furthermore, the view that the development of AI should be regulated is widely shared because of its significant impact on the everyday life of citizens. The implementation of soft law measures should encourage actors to respect the principles of transparency and fairness of algorithmic processing. Indeed, AI technologies must be explainable if they are to be socially acceptable, and this is why their development cannot be carried out without certain ethical considerations.

At a national level, various reports and studies encourage the development of an initiative among AI stakeholders for the establishment of general guidelines in this area. The CNIL has therefore issued a report following a public debate on the theme 'Algorithms in the Age of AI', which has identified two founding principles for AI at the service of humans. The two principles are:

161 See <https://www.vie-publique.fr/sites/default/files/rapport/pdf/194000723.pdf> accessed 25 March 2022.

162 See <https://www.entreprises.gouv.fr/files/files/en-pratique/etudes-et-statistiques/etudes/2019-02-intelligence-artificielle-etat-de-l-art-et-perspectives.pdf> accessed 25 March 2022.

163 See footnote no 11.

164 See <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000043729532> accessed 25 March 2022.

- fairness applied to all sorts of algorithms, and ensuring that the users' interests prevail in any case; and
- continued attention and vigilance in response to the unpredictable nature (inherent in machine learning) and the excessive reliance on technological objects.

These principles begin to take shape through six policy recommendations intended for both public authorities and civil society (companies, citizens, etc):¹⁶⁵

1. fostering education of all players involved in algorithmic systems (designers, professionals and citizens);
2. making algorithmic systems comprehensible by strengthening existing rights and by rethinking mediation with users;
3. improving algorithmic system design at the service of freedom to prevent the 'black box' effect;
4. creating a national platform in order to audit algorithms;
5. increasing incentives for research on ethical AI and launching a major participative national cause around general interest research projects; and
6. strengthening ethics in companies (eg, by creating ethics committees, by spreading good practices in each sector or by revising code of ethics).

As another illustration of this desire to favour soft law for the time being, Etalab (a government body responsible for coordinating the open data policy for public data) has published a guide for administrations and public organisations that design, develop and operate algorithmic processing.¹⁶⁶

These guidelines set out four criteria that must be met for a decision based on an algorithm to be considered fair:

1. transparency;
2. intelligibility: the procedure must be described;
3. loyalty: the procedure described must actually be used completely and faithfully; and
4. equal treatment: no individual should be treated more favourably (or unfavourably).

¹⁶⁵ See www.cnil.fr/fr/comment-permettre-lhomme-de-garder-la-main-rapport-sur-les-enjeux-ethiques-des-algorithmes-et-de accessed 6 July 2020.

¹⁶⁶ See <https://guides.etalab.gouv.fr/accueil.html> accessed 6 July 2020.

At a regional level, the EU's approach to AI is based on excellence and trust and aims to boost industries while still ensuring fundamental rights.

In this perspective, the European Commission has undertaken to provide a framework for the development of AI across Europe to facilitate the development of a technology that is both efficient and respectful of European laws, principles and values. Therefore, the European Commission established a High-Level Expert Group that published guidelines on trustworthy AI in April 2019, in which seven key requirements were identified:¹⁶⁷

- human agency and oversight;
- technical robustness and safety;
- privacy and data governance;
- transparency;
- diversity, non-discrimination and fairness;
- societal and environmental wellbeing; and
- accountability.

These guidelines also contain an assessment list for practical use by companies. The High-Level Expert Group revised its guidelines in light of this feedback and finalised this work in June 2020.

In February 2020, the European Commission launched the European Data Strategy, during which it published its White Paper on 'Artificial Intelligence – A European approach to excellence and trust'.¹⁶⁸ It states that a clear European regulatory framework would build trust in AI among consumers and business, and therefore speed up the acceptance of the technology. The European Commission concluded that, in addition to possible adjustments to existing legislation, new legislation specifically on AI may be needed in order to make EU legal framework fit for current and anticipated technological and commercial developments.

The European Commission expanded its vision by developing an AI strategy suggesting new rules and actions to make the EU the global hub for trustworthy AI. Such a strategy includes a 'Communication on Fostering a European Approach to Artificial Intelligence',¹⁶⁹ the updated 'Coordinated Plan with Member States'¹⁷⁰

167 See https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=60419 accessed 6 July 2020.

168 See https://ec.europa.eu/info/sites/info/files/commission-white-paper-artificial-intelligence-feb2020_en.pdf accessed 6 July 2020.

169 See <https://digital-strategy.ec.europa.eu/news-redirect/709089> accessed 25 March 2022.

170 See <https://digital-strategy.ec.europa.eu/news-redirect/709091> accessed 25 March 2022.

and a proposal for an AI Regulation laying down harmonised rules, called 'Artificial Intelligence Act',¹⁷¹ more details of which are given in question 5 below.

A genuine European AI ecosystem is thus taking shape, with the French strategy being in line from the outset with the strategy pursued on the scale of continental Europe.

5. Which are the current or planned regulations on the general use of AI or machine learning systems?

Although regulations are emerging which cover the general use of AI or machine learning systems, there are few regulations currently in force which apply to the use of AI. The French Data Protection Act¹⁷² and the EU's General Data Protection Regulation (GDPR)¹⁷³ both apply to the use of AI in a general way to the extent that it processes personal data.

The French Data Protection Act formally controls algorithmic decisions by a principle of prohibition. It provides that no court decision or any decision of any kind producing legal effects in respect of a person or significantly affecting them may be taken on the basis of the automated processing of personal data intended to foresee or evaluate certain personal aspects relating to the data subject.¹⁷⁴ The GDPR also provides for the prohibition of automated individual decisions.¹⁷⁵

However, there are some fairly broad exceptions to this principle in French law. The Digital Republic Act No 2016-1321 of 7 October 2016 authorised the administration to make decisions regarding a person on the basis of an algorithm on the condition that it includes an explicit mention of the interested party information.¹⁷⁶ In addition, the source code of the algorithms used by the administration has been included among the documents that any citizen has the right to request access to.¹⁷⁷

Another exception exists in the area of intelligence agencies. Act No 2015-912 of 24 July 2015 allows the services concerned to use an algorithm aimed at detecting low signals of a terrorist threat by the massive processing of connection data without the need for personal identification.¹⁷⁸

171 See <https://digital-strategy.ec.europa.eu/news-redirect/709090> accessed 25 March 2022.

172 Law No 78-17 of 6 January 1978 on Information Technology, Data Files and Civil Liberties (also known as 'French Data Protection Act') as updated further to the EU Regulation No. 2016/679, known as the General Data Protection Regulation (GDPR), with the enactment of Law No 2018-493 of 20 June 2018, on the protection of personal data, and the Order No 2018-1125 of 12 December 2018, adopted pursuant to Art 32 of Law No 2018-493. The French Data Protection Act has been further updated with the adoption of Decree No 2019-536.

173 EU Regulation No 2016/679, known as the General Data Protection Regulation (GDPR).

174 Art 120 of the Act No 78-17 of 6 January 1978 on Information Technology, Data Files and Civil Liberties.

175 Art 22 of the GDPR.

176 Art L 311-3-1 of the French *code des relations entre le public et l'administration*.

177 Art L 300-2 of the French *code des relations entre le public et l'administration*.

178 Art L 851-3 of the French *code de la sécurité intérieure*.

More recently, the 2018-2022 Programming and Reform Law for Justice¹⁷⁹ broadened the availability of court decisions to the public in electronic form. This modification was specified by a decree of 29 June 2020.¹⁸⁰ To date, approximately 20,000 administrative decisions and 15,000 judicial decisions are published online each year. The objective of the open data of court decisions is to promote access to law and to reinforce the transparency of justice with the publication online by 2025 of 300,000 administrative decisions and three million judicial decisions each year.

Although there is no current French legislation specifically applicable to the general use of AI or machine learning systems, such regulation is currently being instilled by the EU, before being transposed into French law.

For instance, the Data Governance Act¹⁸¹ and the Data Act¹⁸² respectively adopted on 25 November 2020, and 23 February 2022, are meant to remove data-access barriers, such as trust in data sharing, or technical obstacles to data reuse, while preserving incentives to invest in data generation.

The EU also proposed its 'Artificial Intelligence Act'¹⁸³ on 21 April 2021. The first regional AI law, it allocates AI applications according to three risk categories:

- AI applications creating unacceptable risk are forbidden;
- high-risk AI applications are subject to particular legal requirements; and
- AI applications that are not considered to create an unacceptable or high risk are left unregulated for now.

The proposed AI Act is consistent with the EU's regulatory approach, such as its Industrial Strategy, as the new Act would introduce and implement the EU Strategy for Data, by enshrining the principle of free flow of data within the internal market for instance, introduced by Regulation (EU) 2018/1807 on a framework for the free flow of non-personal data in the EU.¹⁸⁴

6. Is free data access an issue in relation with AI?

Having a maximum amount of data is essential to train AI tools. However, what some would call a 'data war' is currently taking place and slowing down the development and implementation of AI tools in the French legal landscape.

179 See <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000038261631> accessed 28 March 2022.

180 See <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042055251?r=FSiRIBv4yG> accessed 28 March 2022.

181 See <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020PC0767> accessed 25 March 2022.

182 See <https://ec.europa.eu/newsroom/dae/redirection/document/83521> accessed 25 March 2022.

183 See <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0206> accessed 25 March 2022.

184 See <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32018R1807> accessed 25 March 2022.

A typical example of this data war is the *ROSS* case, an AI software launched by IBM in 2017 and capable of researching case law faster than an associate lawyer.

The so-called ‘world’s first artificial intelligent lawyer’ was designed to understand legal language, provide answers to legal issues and formulate hypothesis. However, ROSS Intelligence was forced to shut down its operations as a lawsuit was filed by Thomson Reuters in May 2020, claimed theft of proprietary data, crippling the ROSS company’s ability to attract new investors and leaving it without sufficient funds to run its operations. ROSS founders announced that its services would end by 31 January 2021.¹⁸⁵

In France, this data war is still raging, as the innovative legal search engine *Doctrine.fr*, which specialised in the aggregation of court decisions for legal practitioners, is facing an important lawsuit, being accused of having used unfair methods to obtain a very extensive database of case law.

The French National Bar (CNB) and the Paris Bar Association have filed a complaint against the startup, claiming that lawyers’ personal data was manipulated without their knowledge. A complaint was also filed before the French Data Protection Authority (CNIL) regarding the misuse of legal practitioners’ personal information.

Finally, the emergence of AI tools is also subject to the development of startups. However, the Covid-19 pandemic has dealt a negative blow to their expansion. As an illustration, the French Government registered 103 new startups in 2019 against 18 in 2020.

In the specific area of law, the development of AI is limited by the lack of openly usable data. The reason why AI could have a massive impact for lawyers is that unlike AI, no human can read millions of pages per second. No human can accumulate a memory equivalent to that of an AI. But the AI must have something to read or analyse, and this is not a condition that can be easily met in France.

The first explanation is due to the French legal tradition concerning how court decisions are made. In fact, unlike their Anglo-Saxon counterparts and their dissenting opinions, French judges do not reflect in their decisions the debates and positions taken by each of the judges. The decisions of French judges, particularly those of the French Court of Cassation and the Conseil d’Etat, are consequently shorter and sometimes only implicitly indicate the real motivations behind the decision.

However, that limit may well be lifted in the future. The new methods of editing the decisions of the Constitutional Court, the Conseil d’Etat and, more recently, the French Court of Cassation now include an enriched motivation for the most important decisions (eg, reversal of jurisprudence), which includes the precedents, so the decision is placed in a common pattern. According to some authors, this

¹⁸⁵ See <https://blog.rossintelligence.com/post/announcement> accessed 25 March 2022.

could well allow algorithms to improve how they read and analyse these decisions. Finally, French legal publishers who have the *doctrine* (the data that links court decisions together and allows them to be understood) do not yet include machine learning in their work. But they are working on it and will soon be able to provide additional data to the AI.

The second explanation for the lack of openly usable data is related to material limitations. First, the data must be available in a format that is usable for AI. However, many court decisions are not delivered in a format that the AI can read (paper format, poor quality scan, etc). Second, the conciliation of open data of court decisions with privacy requires these decisions to be anonymised. However, the justice system does not have sufficient human and technical means to anonymise thousands of court decisions.

It seems that although free access to data is a prerequisite for AI to emerge and develop steadily, French and EU regulatory bodies have understood such correlation by passing regulations in order to remove data-access barriers, as explained above in question 5.

7. Are there already actual court decisions on the provision of legal services using AI or decisions concerning other sectors that might be applicable to the use of AI in the provision of legal services?

To the best of the authors' knowledge, no decision has been made to date regarding the use of AI.

8. What is the current status – planned, discussed or implemented – of the sectorial legislation in your jurisdiction on the use of AI in the legal profession or services that are traditionally being rendered by lawyers?

No regulations specific to the use of AI in services rendered by lawyers appear to be in place at this time. The discussion is at a more global level.

However, questions are being raised about the possibility of in future seeing robots handing down court decisions. This particularly concerns alternative dispute resolution methods that have recently been deployed in electronic form because – once online – the resolution method could be based on self-learning algorithms that could gradually result in a form of artificial justice.

In this regard, the French Government launched an experiment in the justice field, by issuing a decree, allowing the Minister of Justice to implement, for a two-year period, the creation of an automated processing of personal data for the purpose of developing an algorithm, called DataJust.

DataJust was created to allow the retrospective and prospective evaluation of public policies in matters of civil and administrative liability, the elaboration of an indicative reference system for personal injury compensation, the information of the parties and the assistance in the evaluation of the amount of compensation to which the victims may be entitled in order to encourage an amicable settlement of disputes, as well as the information or documentation of judges called upon to rule on personal injury compensation claims.

However, this experimentation was badly perceived by French legal professionals, who highlighted the algorithm's limits of the Ministry of Justice, which was considered to be biased because it was incomplete, due to the absence of first instance decisions for example.

The project was sued in court by lawyers and associations defending the rights of people with disabilities. According to lawyer Hervé Gerbi, the algorithm of DataJust will be 'the implementation of a scale that will standardise the decisions of judges' and 'penalise the victims', before adding 'a cut finger is in general two per cent of incapacity. But for a professional pianist, his whole career is at stake. The algorithm of DataJust will deny this particularity. By wanting to make justice equal, it will make it unfair. This algorithm will penalise victims and standardise their compensation'.¹⁸⁶

Due to its complexity, DataJust was abandoned last January, two months before its end. But although this first official experimentation in France regarding the application of AI into the legal sector was not considered satisfactory, it is important to note that AI technology, while growing, is still in its infancy stage. But above all, DataJust shows the current state of the majority opinion of legal and justice professionals regarding the implementation of AI in their practices.

Finally, the first European Ethical Charter on the use of AI in judicial systems and their environment was adopted by the European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe.¹⁸⁷ Providing a framework to guide legal and justice professionals, this text is the very first setting forth ethical principles relating to the use of AI in judicial systems such as:

- 'Principle of respect of fundamental rights: ensuring that the design and implementation of artificial intelligence tools and services are compatible with fundamental rights;
- Principle of non-discrimination: specifically preventing the development or intensification of any discrimination between individuals or groups of individuals;

186 See <https://www.leparisien.fr/faits-divers/un-avocat-attaque-datajust-le-logiciel-qui-va-transformer-les-juges-en-robot-21-05-2020-8321205.php> Interview of M. Hervé GERBI, accessed 25 March 2022.

187 See <https://rm.coe.int/ethical-charter-en-for-publication-4-december-2018/16808f699c> accessed 25 March 2022.

- Principle of quality and security: with regard to the processing of judicial decisions and data, using certified sources and intangible data with models conceived in a multi-disciplinary manner, in a secure technological environment;
- Principle of transparency, impartiality and fairness: making data processing methods accessible and understandable, authorising external audits;
- Principle “under user control”: precluding a prescriptive approach and ensuring that users are informed actors and in control of their choices¹⁸⁸.

The CEPEJ Charter also includes an in-depth 40-page study on the use of AI in judicial systems, especially regarding AI applications processing judicial decisions and data.

9. What is the role of the national bar organisations or other official professional institutions?

The French National Bar (CNB) plays a role at several levels in the understanding of AI by legal actors.

The CNB primarily contributes to the debate by organising conferences on the subject of AI and formulating proposals.

Above all, it plays an advocacy role for the legal profession regarding the risks of AI use. In particular, the CNB has adopted a position on open data for court decisions: in November 2018, the general assembly of the CNB formulated some proposals aimed at ensuring equal access to court decisions between lawyers and magistrates, but also equal access for lawyers to court decisions in order to prevent unfair competition between large and small law firms.

Moreover, the Premier President of the Court of Cassation and the President of the CNB signed a joint declaration on 25 March 2018.¹⁸⁹ It contains the following proposals to:

- give the Court of Cassation the responsibility of collecting and circulating the decisions of the judiciary and making available to the public a single database of judicial decisions of the judiciary;
- involve the Court of Cassation, the first-degree and appeals jurisdictions, and the CNB in the regulation and control of the use of the database of court decisions; and
- create a public entity in charge of the regulation and control of the algorithms used for the processing of the database of court decisions and the reuse of the information contained therein.

¹⁸⁸ *Ibid*, page 8

¹⁸⁹ *Revue pratique de la prospective et de l'innovation* n°2, October 2019, p 10.

In 2019, the Court of Cassation, in collaboration with the Ministry of Justice, hosted two data scientists whose mission was to identify data to be pseudonymised in court decisions before making them publicly available. Today, the project is being continued within the Court of Cassation. It has demonstrated the effectiveness of machine learning on pseudonymisation and opens the way for other data science projects (eg, the search for discrepancies in jurisprudence). The Court of Cassation appears to be now at the forefront at EU level of the automated pseudonymisation of court decisions.¹⁹⁰

Moreover, the CNB is part of the Council of Bars and Law Societies of Europe (CCBE), an EU association gathering bar associations of 32 European countries, which published its considerations on the legal aspects of AI in 2020.¹⁹¹ Recently, the CCBE also published a position paper on the AI Act¹⁹², in which legal professionals advocated for specific provisions on the use of AI in the particular field of justice and pled that ‘the proposal should require that not only the final decision itself but also the entire decision-making process should remain a human-driven activity’.¹⁹³

190 See <https://fichiers.eig-forever.org/posters/eig3/openjustice.pdf> accessed 6 July 2020.

191 See https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/IT_LAW/ITL_Guides_recommendations/EN_ITL_20200220_CCBE-considerations-on-the-Legal-Aspects-of-AI.pdf accessed 25 March 2022.

192 See https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/IT_LAW/ITL_Position_papers/EN_ITL_20211008_CCBE-position-paper-on-the-AIA.pdf accessed 25 March 2022.

193 *Ibid*, p 7.