

# France

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

The definitions of artificial intelligence (AI) initially proposed within the French legal landscape referred 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'.<sup>332</sup> Similarly, the European Parliament's definition of AI referred to AI as 'the ability of a machine to display human-like capabilities such as reasoning, learning, planning and creativity'.<sup>333</sup>

More recent French legal definitions of AI focus on the algorithm that is behind the human-like task performed by the machine. The French Data Protection Authority defines AI as 'a logical and automated process, typically based on an algorithm, capable of performing well-defined tasks'.<sup>334</sup>

This evolution is also reflected in the definition given by the French State Council (Conseil d'Etat) in 2017 and later in 2022. In a 2017 annual study, the State Council defined AI as 'the science whose aim is to make a machine perform tasks that traditionally require human or animal intelligence'.<sup>335</sup> In a report on the open data of court decisions submitted to the Minister of Justice in 2017, AI is also defined as 'the set of theories and techniques whose purpose is to make a machine that simulates human intelligence perform tasks',<sup>336</sup> whereas in a 2022 annual study, the Conseil d'Etat defined AI as 'a set of digital tools at the service of humans. By enabling rapid problem-solving through machine learning, it offers a unique opportunity to improve the quality of public service'.<sup>337</sup>

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

333 *What is artificial intelligence and how is it used?* (European Parliament, 4 September 2020).

334 CNIL's glossary on artificial intelligence. Translated from the definition in French: 'un processus logique et automatisé, généralement basé sur un algorithme, capable d'accomplir des tâches spécifiques'.

335 *Annual Study* (Conseil d'Etat, 2017). 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'.

336 *Report on the open data of court decisions submitted to the Minister of Justice* (2017). 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'.

337 *Publication Etude du 31 août 2022* (Conseil D'Etat). Translated from the definition in French: 'un ensemble d'outils numériques conçus pour assister et soutenir les humains dans divers domaines. L'une des grandes forces de l'IA réside dans sa capacité à analyser rapidement de grandes quantités de données, à détecter des schémas et à fournir des insights précieux pour la prise de décision'.

As a matter of fact, the French Language Enrichment Commission (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.'<sup>338</sup>

The definitions of this commission are published in the Official Journal of the French Republic: they are then of obligatory use in the administrations and institutions of the state, and serve as a reference.

It has become more and more clear that any comparison between AI and human intelligence, which is a purely anthropocentric approach, is misleading. AI will never be human. On the contrary, some authors point out the risk of AI becoming inhumane, 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 to designate the most advanced and ever-changing area of information processing techniques.<sup>339</sup> Some experts even denounce this confusing term, which should relate less to a form of real intelligence and more to fast, evolved or advanced algorithms.<sup>340</sup>

In the legal sector, the first tools that integrated AI technologies, identified as 'first-generation AI', were mainly expert systems (eg, contract management software). They relied on explicit rules and knowledge bases to solve specific problems. These systems excel in rule-based reasoning, but struggle with adapting to new scenarios or handling unstructured data. That is why first-generation AI tools align more closely with the algorithm-centric definition of AI and definitely less with any definition that refers to human intelligence.

A significant shift was realised with two technologies, machine learning and natural language processing, and the emergence of 'second-generation AI'. These systems can learn from data, allowing for adaptation and the ability to process vast amounts of unstructured information (eg, pattern recognition, sentiment analysis

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338 *Official Journal of the French Republic* (December 2018). 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*'.

339 'L'intelligence artificielle va-t-elle prendre le pouvoir?' (Pierre Levy's Blog, 6 September 2018) <https://pierrelevyblog.com/2018/09/06/lintelligence-artificielle-va-t-elle-prendre-le-pouvoir> accessed 26 April 2024.

340 Robert Bentz, '*L'intelligence artificielle est bien aujourd'hui une escroquerie*' ('Artificial intelligence is indeed now a fraud') *Le Monde* (Paris, 24 November 2019) [www.lemonde.fr/idees/article/2019/11/24/l-intelligence-artificielle-est-bien-aujourd-hui-une-escroquerie\\_6020312\\_3232.html](http://www.lemonde.fr/idees/article/2019/11/24/l-intelligence-artificielle-est-bien-aujourd-hui-une-escroquerie_6020312_3232.html) accessed 25 July 2024.

and predictive analytics). They enable more efficient legal research, contract analysis and document review. Second-generation AI tools narrow the gap between algorithmic approaches and human-like cognition.

The next generation of AI tools aims to give machines greater autonomy, reasoning and understanding of context, often referred to as artificial general intelligence (AGI). Third-generation AI holds the promise of deeper insights, nuanced legal reasoning and potentially, autonomous legal decision-making. These evolutions have the potential to streamline legal processes, enhance accuracy and improve access to justice, but they also raise ethical and regulatory considerations regarding accountability, transparency and bias mitigation. This evolution is reflected in AI's latest definitions.

AI is now apprehended within a technological ecosystem that feeds on data exploitable by high-performance algorithms, outside of any fantasy or anthropocentric perspective generated by certain propaganda about 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 progressively adopting 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 AI legal tools has been made is contract and clause review and the latest is generative AI, in particular for corporate legal documents.

### **Contract and clause review – compliance**

Created in 2015, Softlaw provides services relevant to contract lifecycle management (drafting, creation, analysis and renewals) and regulation compliance.

Hyperlex has developed cloud-based contract management software powered by AI. This solution allows companies to dematerialise their contracting process and automate audit tasks. Founded in 2017, the company aims at ensuring accuracy by using all available AI technologies, including image pattern recognition, retainment

of search habits and intercedes with the Paris Chamber of Notaries to tag notarial documents automatically.<sup>341</sup>

Legisway, formerly known as Della AI, is leading AI technology specialising in advanced natural language processing for legal professionals. The services offered today include an enhanced and efficient solution for accelerating and simplifying contract reviews and audits in multiple languages.

Legal Suite offers expertise in legal management, contract lifecycle management, and governance, risk and compliance. The solution streamlines legal operations, from contract tracking to advanced document generation, promising transparency and proactive risk management. With features like litigation management, subsidiary oversight and secure delegation, Legal Suite aims at bridging the gap between legal expertise and technological performance in order to provide businesses worldwide with efficient and legally compliant tools.

There is also Lexy, a ChatGPT-like website chatbot, a computer-based virtual assistant with the capacity of holding a conversation and answering predefined questions in the legal field.

Chatbots are increasing in 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 more important tasks.

Still in the field of document analysis, the bank JP Morgan launched Contract Intelligence (COiN) in 2017, a bot that can review complex legal contracts faster and more efficiently than lawyers. According to the bank's 2016 annual report, the bot can review the same number of contracts within seconds as it would have previously taken over 360,000 staff hours<sup>342</sup> for the lawyers themselves to complete. Société Générale has also been integrating AI and data science into its operations to enhance its service. As of 2022, the group's portfolio has around 340 data and AI use cases in production, of which 170 are AI-based. These use cases are designed to apply their strategy with an expected value creation of €500m.

Created in 2023 and launched in March 2024, Autolex is a French startup, using generative AI technology to organise, summarise, analyse, review and edit contracts, allowing for the quick identification of risks and compliance verification. According to Autolex, it has been trained on over 500,000 legal and administrative procedures, including court opinions, contracts, administrative rules and legislative documents.

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341 'VictorlA: l'intelligence artificielle au service des notaires' (Le Monde du Droit, 17 February 2020) [www.lemondedudroit.fr/professions/241-notaire/68509-victoria-intelligence-artificielle-notaires.html](http://www.lemondedudroit.fr/professions/241-notaire/68509-victoria-intelligence-artificielle-notaires.html) accessed 25 July 2024.

342 'JP Morgan COIN: A Bank's Side Project Spells Disruption for the Legal Industry' (HBS Digital Initiative, 13 November 2018) <https://d3.harvard.edu/platform-rctom/submission/jp-morgan-coin-a-banks-side-project-spells-disruption-for-the-legal-industry> accessed 25 July 2024.

## **Predictive justice and litigation – legal research**

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. According to Predictice, its tool is used by hundreds of law firms, legal departments and insurance companies. It is meant to improve the rate of amicable resolution, increase insured satisfaction and reduce management costs.

Legalmetrics is a solution aimed at helping decision-making and litigation strategy by using statistical reporting. By mapping French companies' legal disputes, it indicates the main areas of a company's litigation. 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 potential legal action by practitioners.

JurisData Analytics is a service for quantitative and 'predictive' analysis of French case law provided by Lexis 360. It is a decision-making tool that supplements the traditional textual approach with interactive data visualisation and correlation analysis. This tool also allows for a quick evaluation of the amount of compensation or any other monetary provision by exploiting the numerical data contained in case law.

LegiGPT is a chatbot designed to provide legal information to users in the field of French law. Users can ask very specific questions and it answers their legal questions, providing legislation that must be applied.

Ordalie is designed to enhance legal research and decision-making. Leveraging AI, it provides the efficient analysis of legal cases and claims to be 250 times faster than a human brain.

## **Regulatory monitoring**

Faced with the burgeoning amount of legislative and regulatory text 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.

Compliance.ai provides a regulatory compliance and risk management solution that applies purpose-built machine learning models to automatically monitor the

regulatory environment for relevant changes and maps them to the client's internal policies, procedures and controls.

### Other AI tools

Many other legaltech tools exist, but their degree of technological innovation does not enable them to enter the AI category. Examples include YouSign (a tool that offers a safe electronic signature), Youstice (an online dispute resolution tool) and AirHelp (compensation assistance in the case of delayed or cancelled flights).

The 2020 *Wolters Kluwer Future Ready Lawyer* survey<sup>343</sup> assessed the readiness and resilience in the legal sector by conducting its survey of over 750 legal professionals across the United States and several European jurisdictions. The survey revealed that:

- 82 per cent of respondents predicted that the greater use of technology will change how they deliver services;
- 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.

The survey was again conducted in 2022 and revealed the following evolution:<sup>344</sup>

- 91 per cent of corporate legal departments say it will be important to have a law firm that fully leverages technology;
- 63 per cent of lawyers expect to increase their investment in software to support legal work;
- 36 per cent (or fewer) lawyers are very prepared to address the most significant legal trends coming at them; and
- 63 per cent of technology leading law firms report their profitability increased over the past year – more than any other firms.

There is no doubt that legal AI tools are becoming increasingly important in the legal sector, and even indispensable.

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343 *2020 Wolters Kluwer Future Ready Lawyer* (Wolters Kluwer, 16 July 2020) [www.wolterskluwer.com/en-gb/expert-insights/performance-drivers-and-change-in-the-legal-sector](http://www.wolterskluwer.com/en-gb/expert-insights/performance-drivers-and-change-in-the-legal-sector) accessed 25 July 2024.

344 *2022 Wolters Kluwer Future Ready Lawyer: Leading Change* (Wolters Kluwer) [www.wolterskluwer.com/en/know/future-ready-lawyer-2022](http://www.wolterskluwer.com/en/know/future-ready-lawyer-2022) accessed 26 April 2024.

The extent of the use of AI tools depends of course on the data available to train and reinforce AI tools' veracity. Such issues are addressed in the response to Question 6.

### **3. If yes, are these AI tools different regarding: independent law firms; international law firms; in-house counsel; and what are these differences?**

There are many software packages claiming to develop AI, but few of those currently on the market are based on the latest machine learning and natural language technologies.

There is no significant difference in the way these tools are used by different types and sizes of structures, except that international law firms are more likely to use them because of their larger resources. Whether at an independent law firm, big international law firm or corporation, lawyers face similar issues, but have access to a different range of tools. In the next few years, international law firms and big corporations will probably have tailor-made AI tools, trained for their specific needs for each department and each task.

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

France aims to be a pioneer in innovation by 2030 as a part of the France 2030 plan presented by the President of the Republic.<sup>345</sup> To achieve this, the French Government launched a national strategy for AI in 2018. Indeed, the French Government is eager to make France attractive for AI tech companies, locally and internationally, as early demonstrated in President Macron's March 2018 speech, and confirmed in his June 2023 speech, which set out his vision and strategy to make France a leader in AI<sup>346</sup> thanks to a €500m contribution from the government.<sup>347</sup>

The foundation for this ambitious strategy was laid by the 2018 Villani report,<sup>348</sup> titled *AI for Humanity*, which sparked a national dialogue on AI's impact and the necessary regulatory framework. Subsequent studies, including the report on AI in

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345 'La stratégie nationale pour l'intelligence artificielle' (Ministère de l'Economie des Finances et de la Souveraineté Industrielle et Numérique, 22 May 2024) [www.economie.gouv.fr/strategie-nationale-intelligence-artificielle](http://www.economie.gouv.fr/strategie-nationale-intelligence-artificielle) accessed 25 July 2024.

346 'France's new national strategy for artificial intelligence' (Élysée, 29 March 2018) [www.elysee.fr/en/emmanuel-macron/2018/03/29/frances-new-national-strategy-for-artificial-intelligence-speech-of-emmanuel-macron](http://www.elysee.fr/en/emmanuel-macron/2018/03/29/frances-new-national-strategy-for-artificial-intelligence-speech-of-emmanuel-macron) accessed 25 July 2024.

347 'Will France Be the AI Hub of Continental Europe?' (Center for a New American Security, 2 April 2024) [www.cnas.org/publications/commentary/will-france-be-the-ai-hub-of-continental-europe](http://www.cnas.org/publications/commentary/will-france-be-the-ai-hub-of-continental-europe); 'Macron announces €500 million in funding for AI' *Le Monde* (Paris, 14 June 2023) [www.lemonde.fr/en/france/article/2023/06/14/macron-wants-france-to-be-among-ai-leaders\\_6031624\\_7.html](http://www.lemonde.fr/en/france/article/2023/06/14/macron-wants-france-to-be-among-ai-leaders_6031624_7.html) accessed 25 July 2024.

348 'France AI Strategy Report' (European Commission) [https://ai-watch.ec.europa.eu/countries/france/france-ai-strategy-report\\_en](https://ai-watch.ec.europa.eu/countries/france/france-ai-strategy-report_en) accessed 8 July 2024.

relation to the labour market in March 2018,<sup>349</sup> commissioned by the Ministry of the Interior, and the report on AI in the service of defence in September 2019,<sup>350</sup> commissioned by the Ministry of the Army, further contributed to shaping France's approach to AI, emphasising sector-specific opportunities and strategies.<sup>351</sup>

In 2019, another study was published 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*,<sup>352</sup> it classifies the 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.

Until recently, there was a consensus around the idea that there was no pressing need to rethink the legislative and regulatory framework for AI. Nevertheless, back then, exceptions to that theory emerged, and special regulation still seemed necessary at a national and regional (European Union) level, for example, to support data openness, to regulate the activity of platforms or to support the development of specific innovation.

Furthermore, the view that the development of AI should be regulated was, and still 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, and since 2018, various reports and studies started encouraging the development of an initiative among AI stakeholders for the establishment of general guidelines in this area. CNIL issued a report following a public debate on the theme, *Algorithms in the Age of AI*, which has identified the two following founding principles for AI at the service of humans:

- 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 excessive reliance on technological objects.

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349 *Intelligence artificielle et travail* (France Stratégie, March 2018) [www.strategie.gouv.fr/sites/strategie.gouv.fr/files/atoms/files/fs-rapport-intelligence-artificielle-28-mars-2018.pdf](http://www.strategie.gouv.fr/sites/strategie.gouv.fr/files/atoms/files/fs-rapport-intelligence-artificielle-28-mars-2018.pdf) accessed 25 July 2024.

350 'Report of the AI Task Force by the French Armed Forces Ministry' (AI-Regulation.com, 1 January 2020) <https://ai-regulation.com/report-of-the-ai-task-force-by-the-french-armed-forces-ministry> accessed 25 July 2024.

351 'Donner un sens à l'intelligence artificielle : pour une stratégie nationale et européenne' (République Française, 28 March 2018) [www.vie-publique.fr/rapport/37225-donner-un-sens-lintelligence-artificielle-pour-une-strategie-nation](http://www.vie-publique.fr/rapport/37225-donner-un-sens-lintelligence-artificielle-pour-une-strategie-nation) accessed 25 July 2024.

352 *Intelligence artificielle - État de l'art et perspectives pour la France* (République Française, February 2019) [www.entreprises.gouv.fr/files/files/en-pratique/etudes-et-statistiques/etudes/2019-02-intelligence-artificielle-etat-de-l-art-et-perspectives.pdf](http://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 July 2024.

At the same time, as another illustration of this desire to regulate via soft law, Etalab (a government body responsible for coordinating the open data policy for public data) published a guide for administrations and public organisations that design, develop and operate algorithmic processing.<sup>353</sup> These guidelines set out four criteria that must be met for a decision based on an algorithm to be considered fair:

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

On the other hand, at a regional level, the EU's approach to AI, sharing principles with the national approach, aims to boost industries while still ensuring fundamental rights. From 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.

The first step in 2019 was to establish seven guidelines with a high-level expert group. The second step in 2020 was to extend them to companies:<sup>354</sup>

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

In February 2020, the European Commission launched the European Data Strategy, during which it published its *White Paper on Artificial Intelligence – A European*

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353 'Le guides du Etalab', (Etalab), see <https://guides.etalab.gouv.fr/accueil.html> accessed 8 July 2024.

354 'High-level expert group on artificial intelligence' (European Commission) <https://digital-strategy.ec.europa.eu/en/policies/expert-group-ai> accessed 8 July 2024.

*approach to excellence and trust*.<sup>355</sup> It states that a clear European regulatory framework would build trust in AI among consumers and businesses, 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 to make the EU legal framework fit for current and anticipated technological and commercial developments.

This resulted in a significant step to regulate the use of AI through the AI Act. The AI Act represents the first-ever comprehensive legal framework on AI. Proposed by the European Commission in April 2021, the AI Act aims to foster trustworthy AI by ensuring that AI systems respect fundamental rights, safety and ethical principles.

The core principles implemented are the ones issued by the high-level expert group in 2019 and 2020. In addition, it specifically addresses risks posed by AI applications and sets clear requirements for high-risk AI systems. Notably, the AI Act prohibits certain AI practices that pose unacceptable risks and establishes a governance structure at both European and national levels.

Practically, the AI Act has set requirements for high-risk AI systems, such as:

- risk management systems: developers must establish a risk management system for high-risk AI systems;
- data governance and management: ensuring appropriate data handling practices;
- technical documentation: comprehensive documentation describing the AI system;
- record-keeping: maintaining records of system development, deployment and updates;
- transparency and information provision: providing clear information to users and stakeholders;
- human oversight: ensuring human control and intervention capabilities; and
- high-risk AI systems must meet accuracy and cybersecurity standards.

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<sup>355</sup> *White Paper on Artificial Intelligence – A European approach to excellence and trust* (European Commission, 19 February 2020) [https://commission.europa.eu/publications/white-paper-artificial-intelligence-european-approach-excellence-and-trust\\_en](https://commission.europa.eu/publications/white-paper-artificial-intelligence-european-approach-excellence-and-trust_en) accessed 25 July 2024.

Since the implementation of the AI Act, the CNIL published an action plan on the regulation of AI in May 2023.<sup>356</sup> It deals mainly with challenges related to the protection of freedoms, the acceleration of AI and the emergence of generative AI.

This regulation is structured around four objectives:

- addressing these issues involves protecting individual rights, preventing bias and discrimination, and tackling security challenges;
- promoting AI development respecting personal data, CNIL offers educational resources and compliance guidance, and is preparing a guide on data sharing rules and continues work on AI system design and database creation; ethical considerations include addressing biases and discrimination in machine learning models;
- supporting AI innovation in France and Europe through sandboxes, specific programmes, and ongoing dialogue with research teams and companies to ensure compliance with data protection rules; and
- ensuring compliance with data protection regulations, focusing on areas such as video surveillance, fraud detection and complaints investigation.

The EU and France have both recently established committees to ensure better regulation of AI's impacts.

In September 2023, the Generative Artificial Intelligence Committee was established<sup>357</sup> by the former French Prime Minister Elizabeth Borne. It brings together stakeholders from different sectors (cultural, economic, technological and research) to inform government decisions and position France at the forefront of the AI revolution.

In February 2024, the European AI Office was finally established (see the response to Question 5) following a series of milestones, including the January 2024 release of an AI innovation package to support startups, a December 2023 political agreement on the AI Act and earlier developments, such as the September 2022 proposal for an AI liability directive and the June 2022 launch of the first AI regulatory sandbox in Spain.

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.

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356 Artificial intelligence: the action plan of the CNIL (CNIL, 16 May 2023) [www.cnil.fr/en/artificial-intelligence-action-plan-cnil](http://www.cnil.fr/en/artificial-intelligence-action-plan-cnil) accessed 25 July 2024.

357 'Élisabeth Borne lance le premier comité de l'intelligence artificielle générative' (Gouvernement, 20 September 2023) [www.info.gouv.fr/actualite/elisabeth-borne-lance-le-premier-comite-de-lintelligence-artificielle](http://www.info.gouv.fr/actualite/elisabeth-borne-lance-le-premier-comite-de-lintelligence-artificielle) accessed 25 July 2024.

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

Before the AI Act, there were few regulations applying to the use of AI. However, the French Data Protection Act<sup>358</sup> and the EU's General Data Protection Regulation (GDPR)<sup>359</sup> already both applied to the use of AI in a general way to the extent that it processes personal data.

The French Data Protection Act formally provided 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.<sup>360</sup> The GDPR also provided for the prohibition of automated individual decisions.<sup>361</sup>

However, there are some fairly broad exceptions to this principle in French law. The Digital Republic Act No 2016-1321 of 7 October 2016 authorises the administration to make decisions regarding a person on the basis of an algorithm on the condition that it included an explicit mention of the interested party information.<sup>362</sup> In addition, the source code of the algorithms used by the administration was included among the documents that any citizen has the right to request access to.<sup>363</sup>

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 internet connection data without the need for personal identification.<sup>364</sup>

More recently, the 2018–2022 Programming and Reform Law for Justice<sup>365</sup> broadened the availability of court decisions to the public in electronic form.

In France, alongside the EU's efforts, specific provisions have been enacted to regulate AI. For instance, law proposal No 1630<sup>366</sup> was submitted in

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358 Law No 78-17 of 6 January 1978 on Information Technology, Data Files and Civil Liberties (also known as the French Data Protection Act) as updated further to the EU Regulation No 2016/679 (the 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.

359 EU Regulation No 2016/679 (the 'GDPR').

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

361 Art 22 of the GDPR.

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

363 Art L 300-2, *ibid.*

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

365 'LOI no 2019-222 du 23 mars 2019 de programmation 2018-2022 et de réforme pour la justice' (Légifrance, 23 March 2019) [www.legifrance.gouv.fr/jorf/id/JORFTEXT000038261631](http://www.legifrance.gouv.fr/jorf/id/JORFTEXT000038261631) accessed 25 July 2024.

366 'Proposition de loi no 1630'(Assemblée Nationale, 12 September 2023) [www.assemblee-nationale.fr/dyn/16/textes/116b1630\\_proposition-loi](http://www.assemblee-nationale.fr/dyn/16/textes/116b1630_proposition-loi) accessed 25 July 2024.

September 2023 to provide a copyright framework for AI-generated work, protecting authors and regulating the exploitation of such works. The proposal recognises that AI algorithms can autonomously create original content, including text, music and visual art, so it seeks to grant copyright protection to these AI-generated works and treats them similarly to human-authored creations. It outlines mechanisms to attribute authorship, considering factors such as the AI model used, training data and the role of human input. Moreover, it establishes guidelines for licensing, royalties and usage rights.

Autonomous vehicles also benefited from a specific regulation. In March 2018, the President announced plans to establish a regulatory framework by 2022 that allows the circulation of autonomous vehicles. Additionally, an exceptional legal framework on liability for intelligent objects was deemed necessary. France further solidified its commitment to automated driving by publishing a decree on 1 July 2021, making it the first country to simultaneously evolve its traffic and transport regulations to promote the deployment of automated driving.

Finally, Law Proposal No 1630 emphasises ethical considerations as it encourages transparency about AI's role in content creation and addresses potential biases. While specific to France, the proposal aligns with broader EU efforts to regulate AI and with the proposal for an AI liability directive.<sup>367</sup>

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

Having a maximum amount of data is essential to train AI tools. However, when AI tools were first developed, what some would call a 'data war' seemed to emerge in the French legal landscape.

A typical example of this 'data war' is the ROSS case concerning 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 a hypothesis. However, ROSS Intelligence was forced to shut down its operations as a lawsuit was filed by Thomson Reuters in May 2020, who 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 had to shut down its services in January 2021.<sup>368</sup>

In France, this data war materialised through litigation relevant to the legal search engine Doctrine.fr, which specialised in the aggregation of court decisions

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367 'Liability Rules for Artificial Intelligence' (European Commission, 28 September 2022) [https://commission.europa.eu/business-economy-euro/doing-business-eu/contract-rules/digital-contracts/liability-rules-artificial-intelligence\\_en](https://commission.europa.eu/business-economy-euro/doing-business-eu/contract-rules/digital-contracts/liability-rules-artificial-intelligence_en) accessed 25 July 2024.

368 'Announcement' (ROSS, 11 December 2020) <https://blog.rossintelligence.com/post/announcement> accessed 25 July 2024.

for legal practitioners. It faced an important lawsuit and was accused of having used unfair methods to obtain a very extensive database of case law.

The French National Bar (Conseil national des barreaux or CNB) and the Paris Bar Association filed a complaint against the startup, claiming that lawyers' personal data was manipulated without their knowledge. A complaint was also filed before CNIL regarding the misuse of legal practitioners' personal information. A third complaint was filled by five major legal publishers: Dalloz, Lexbase, LexisNexis, Lextenso and Wolters Kluwers France. They collectively demanded nearly €2.5m from Forseti, the company that runs Doctrine.fr. However, in February 2023, the Paris Commercial Court dismissed the claims of the five publishers and condemned them for abusive procedure. The court criticised the companies for exerting 'judicial pressure out of proportion with the criticisms formulated' on Forseti. The five publishers were jointly sentenced to €50,000 for abusive procedure and €125,000 for legal fees.

Despite this decision, the legal controversy persisted. Lexbase filed a criminal complaint in January 2023 against Doctrine for 'receiving' legal decisions it considers fraudulently obtained.

Apart from the 'data war', the emergence of AI tools and free data access is also subject to the development of startups. The startup ecosystem in France experienced a notable decline during the pandemic year, impacting the number of new ventures. However, in 2023, there was a resurgence in new startups, indicating a potential recovery in the startup landscape.

In the specific area of law, the development of AI remains limited by the lack of openly usable data. Unlike AI, no human can read millions of pages per second or accumulate a memory equivalent to that of an AI. However, in order to thrive, AI tools need quantities of pages to read or analyse, and this is not easily met in France 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 Cour de Cassation and the Conseil d'Etat, are consequently shorter and sometimes only implicitly indicate the real motivations behind the decision. However, the future may hold promise for AI in the legal field in France. New methods of editing decisions of legal bodies include enriched motivations, potentially allowing algorithms to improve how they read and analyse these decisions.

These new methods of editing the decisions of the Constitutional Court, the State Council and, more recently, the French Supreme Court now include an enriched motivation for the most important decisions (eg, reversal of established case law), which includes the precedents, so the decision is placed in a common pattern. According to some authors, this could well allow algorithms to improve how they read and analyse these decisions.

Finally, there is a significant push to make legal information more accessible through an open data programme for all court cases. However, there is a challenge: the available metadata (the additional information about the cases) is often limited.

France has launched, with the Cour de Cassation, an ambitious open data programme<sup>369</sup> for judicial decisions designed to provide the public with unrestricted access to court case information in a digital format. Implemented in a phased approach, the programme began with the release of open data for decisions from the Cour de Cassation in September 2021. Subsequent phases include expanding the scope to decisions from courts of appeal by April 2022 and gradually incorporating decisions from trial courts by the end of 2023, excluding criminal cases.

The programme has multiples objectives:<sup>370</sup>

- First, it aims to enhance transparency within the legal system by making judicial decisions readily available to all citizens. By doing so, the programme promotes accountability and trust in the judiciary.
- Second, the programme seeks to create a deeper understanding and analysis of legal disputes by enabling explanations and highlighting the significance of legal precedents. This aspect is crucial for fostering legal knowledge and promoting informed discussions on legal matters.

To support these efforts, the Cour de Cassation is developing a new technical infrastructure to ensure the secure pseudonymisation of decisions while adhering to legal provisions. Ultimately, the programme's overarching goal is to democratise access to legal information and promote a more transparent and informed legal landscape in France.

Nevertheless, free access to data is not sufficient. Data is valuable when it is properly exploited. New techniques and algorithms are required to be able to use the data available. For example, a technique called named-entity recognition (NER)<sup>371</sup> can be used by researchers and legal professionals in order to understand court cases better. It works as a way to highlight key details within the text of each case. These details can include up to 26 different labels, regardless of what the case is about. Some labels are common, while others are rare.

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369 'Open data : déclaration commune avec le CNB' (Cour de Cassation, 25 March 2019) [www.courdecassation.fr/toutes-les-actualites/2019/03/25/open-data-declaration-commune-avec-le-cnb](http://www.courdecassation.fr/toutes-les-actualites/2019/03/25/open-data-declaration-commune-avec-le-cnb) accessed 25 July 2024.

370 'Open data des décisions des tribunaux judiciaires : une nouvelle étape novatrice' (Dalloz Actualité, 11 January 2024) [www.dalloz-actualite.fr/interview/open-data-des-decisions-des-tribunaux-judiciaires-une-nouvelle-etape-novatrice](http://www.dalloz-actualite.fr/interview/open-data-des-decisions-des-tribunaux-judiciaires-une-nouvelle-etape-novatrice) accessed 25 July 2024.

371 'Unveiling the impact of open data: Insights from the Use Case Observatory' (European Union, 24 April 2024) <https://data.europa.eu/en/news-events/news/unveiling-impact-open-data-insights-use-case-observatory> accessed 25 July 2024.

Recently, a study evaluated different algorithms, including Flair, which achieved an impressive 87.5 per cent accuracy in extracting valuable data. To improve data quality further, future efforts may involve combining NER models based on specific data types. As France continues its data-driven legal transformation, NER remains a powerful tool for unlocking valuable insights from court decisions. Future efforts may involve combining NER models based on specific data types, enhancing data quality even further.

Interestingly, 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.

Finally, the use of openly available data may be hindered by material limitations. For example, 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) and 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.

Free access to data is a necessary prerequisite for AI to emerge and develop steadily. French and EU regulatory bodies have understood such a correlation and are passing regulations to remove data access barriers. New techniques are also required in order to be able to make the most of the openly available data.

## **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 sectorial legislation in your jurisdiction on the use of AI in the legal profession or services that are traditionally provided by lawyers?**

No regulations specific to the use of AI in services rendered by lawyers appear to be in place at this time.

In the absence of sectorial litigation, a few law firms took the initiative to write and adhere to the first charter for the responsible use of generative AI in the legal field, which was notably shared with the Ethical and Scientific Committee for

Predictive Justice.<sup>372</sup> The charter has four guiding principles for generative AI in legal practice:

- confidentiality: lawyers must uphold client confidentiality when using generative AI and ensure that data submitted to generative AI is not used to benefit other users;
- competence: generative AI serves as a complementary tool to legal expertise, not a replacement; hence, lawyers should critically analyse AI-generated results, considering case specifics and contextual elements beyond the algorithm's scope;
- loyalty: lawyers must verify the reliability and accuracy of information generated by AI before presenting it to a court; and
- billing transparency: lawyers should transparently communicate with clients about the use of generative AI and its impact on legal service pricing.

Concurrently, questions are being raised about the possibility of seeing robots handing down court decisions in the future. 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 2020, 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 the 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 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; and
- the information or documentation of judges called upon to rule on personal injury compensation claims.

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372 '10 cabinets d'avocats adhèrent à la première Charte pour une utilisation responsable de l'IA générative' (Predictice, 14 February 2024) <https://blog.predictice.com/avocats-charte-ia-generative>; *Charte pour une utilisation responsable de l'IA générative responsable* (Predictice, 14 February 2024) <https://4129959.fs1.hubspotusercontent-na1.net/hubfs/4129959/Predictice%20-%20Charte%20pour%20une%20utilisation%20responsable%20de%20IA%20générative.pdf> accessed 25 July 2024.

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

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.'<sup>373</sup>

Due to its complexity, DataJust was abandoned in January 2022, 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. 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.

At the European level, the European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe has adopted the first European Ethical Charter on the use of AI in judicial systems and their environment.<sup>374</sup> Providing a framework to guide legal and justice professionals, this text is the very first setting forth of ethical principles relating to the use of AI in judicial systems, such as:

- respect of fundamental rights: ensuring that the design and implementation of AI tools and services are compatible with fundamental rights;
- non-discrimination: specifically preventing the development or intensification of any discrimination between individuals or groups of individuals;
- quality and security: about 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;
- transparency, impartiality and fairness: making data processing methods accessible and understandable, authorising external audits; and

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373 Serge Pueyo, 'Un avocat attaque DataJust, «l'algorithme qui va transformer les juges en robots»', *Le Parisien* (Paris, 21 May 2020) [www.leparisien.fr/faits-divers/un-avocat-attaque-datajust-le-logiciel-qui-va-transformer-les-juges-en-robot-21-05-2020-8321205.php](http://www.leparisien.fr/faits-divers/un-avocat-attaque-datajust-le-logiciel-qui-va-transformer-les-juges-en-robot-21-05-2020-8321205.php) accessed 25 July 2024.

374 *European ethical Charter on the use of Artificial Intelligence in judicial systems and their environment* (CEPEJ, December 2018) <https://rm.coe.int/ethical-charter-en-for-publication-4-december-2018/16808f699c> accessed 25 July 2024.

- ‘under user control’: precluding a prescriptive approach and ensuring that users are informed actors and in control of their choices.

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 national bar organisations or other official professional institutions?

The 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 about 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 to prevent unfair competition between large and small law firms.

Moreover, the first president of the French Supreme Court (Premier President de la Cour de Cassation) and the President of the CNB signed a joint declaration on 25 March 2019<sup>375</sup> that contains the following proposals to:

- give the Cour de 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 Cour de 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.

In 2019, the Cour de 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 Cour de 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 Cour de

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375 ‘Déclaration commune’ (Cour de Cassation) [www.courdecassation.fr/files/files/Num per centC3 per centA9rique/D per centC3 per centA9claration per cent20commune per cent20Cour per cent20de per cent20cassation per cent20- per cent20CNB.pdf](http://www.courdecassation.fr/files/files/Num%20per%20C3%20per%20A9rique/D%20per%20C3%20per%20A9claration%20commune%20per%20Cour%20de%20per%20cassation%20per%20CNB.pdf) accessed 8 July 2024.

Cassation appears to be now at the forefront at the EU level of the automated pseudonymisation of court decisions.<sup>376</sup>

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.<sup>377</sup> Recently, the CCBE also published a position paper on the AI Act,<sup>378</sup> in which legal professionals advocated for specific provisions on the use of AI in the particular field of justice and pleaded 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'.<sup>379</sup>

Finally, in the context of the digital transformation of the legal profession, the CNB has increased its initiatives. The Paris Bar organises regular events and debates entirely dedicated to AI. The objective of these initiatives is to provide participants with a concrete vision of the possibilities offered by AI in the practice of the legal profession.

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376 'Le travail de l'Intelligence Artificielle: concevoir et entraîner un outil de pseudonymisation automatique à la Cour de Cassation' (OpenEdition Journals, December 2023) <https://doi.org/10.4000/reset.4731>; 'Open Justice' (Cour de Cassation) [https://eig.numerique.gouv.fr/defis/open-justice/#:~:text=La per cent20Cour per cent20de per cent20cassation per cent2C per cent20en,les per cent20rendre per cent20accessibles per cent20et per cent20r per centA9utilisables](https://eig.numerique.gouv.fr/defis/open-justice/#:~:text=La%20Cour%20de%20cassation%20en,les%20rendre%20accessibles%20et%20per%20C3%20utilisables) accessed 8 July 2024.

377 *CCBE Considerations on the Legal Aspects of Artificial Intelligence* (CCBE, 2020) [www.ccbe.eu/fileadmin/speciality\\_distribution/public/documents/IT\\_LAW/ITL\\_Guides\\_recommandations/EN\\_ITL\\_20200220\\_CCBE-considerations-on-the-Legal-Aspects-of-AI.pdf](http://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/IT_LAW/ITL_Guides_recommandations/EN_ITL_20200220_CCBE-considerations-on-the-Legal-Aspects-of-AI.pdf) accessed 8 July 2024.

378 'CCBE position paper on the proposal for a regulation laying down harmonised rules on Artificial Intelligence (the AI Act)' (CCBE, 9 October 2021), [EN\\_ITL\\_20211008\\_CCBE-position-paper-on-the-AIA.pdf](https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/IT_LAW/ITL_Guides_recommandations/EN_ITL_20211008_CCBE-position-paper-on-the-AIA.pdf) accessed 25 July 2024.

379 *Ibid*, p 7.