

Malta

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

Malta does not have a dedicated legal framework to govern artificial intelligence (AI) per se; however, various initiatives have been taken locally. In October 2018, the Malta.AI Taskforce (the 'Taskforce') was set up by the Government of Malta. Two documents have been published by the Taskforce: (1) Malta's Ethical AI Framework (the 'Framework'); and (2) A Strategy and Vision for Artificial Intelligence in Malta 2030 (the 'Strategy'). The Framework, published in October 2019, does not have the binding force of law but establishes a set of guiding principles for trustworthy AI governance. It builds upon the *AI Ethics Guidelines for Trustworthy AI*, published in April 2019 by the European Commission's High-Level Expert Group on Artificial Intelligence (AI HLEG),⁴⁹⁰ but adds thereto a number of control practices which aim to provide guidance in terms of the manner in which the principles set out therein should translate in practice.

The European Commission's AI HLEG published a definition which states as follows:

'Artificial intelligence (AI) refers to systems designed by humans that, given a complex goal, act in the physical or digital world by perceiving their environment, interpreting the collected structured or unstructured data, reasoning on the knowledge derived from this data and deciding the best action(s) to take (according to predefined parameters) to achieve the given goal. AI systems can also be designed to learn to adapt their behaviour by analysing how the environment is affected by their previous actions. As a scientific discipline, AI includes several approaches and techniques, such as machine learning (of which deep learning and reinforcement learning are specific examples), machine reasoning (which includes planning, scheduling, knowledge representation and reasoning, search and optimisation), and robotics (which includes control, perception, sensors and actuators, as well as the integration of all other techniques into cyber-physical systems).'

The above-mentioned Malta documents, on the other hand, provide no definition of AI. The reason provided therein for the lack of a definition is the fact that AI has many different definitions which are constantly evolving, considering that AI consists of a wide range of technologies, scientific approaches and definitions which are simultaneously being researched, discovered and taken forward to expand what is possible.

⁴⁹⁰ *AI Ethics Guidelines for Trustworthy AI* (European Commission's High-Level Expert Group on Artificial Intelligence (AI HLEG), April 2019).

Having said that, Malta, as an EU Member State, is subject to and will be required to abide by the EU's Artificial Intelligence Act (the 'AI Act') when it comes into force. The AI Act defines an 'AI system' as:

'a machine-based system that is designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments.'

The European Commission's AI HLEG published *A definition of Artificial Intelligence: main capabilities and scientific discipline* in December 2018.⁴⁹¹ This seven-page document opened with a disclaimer:

'The following description and definition of AI capabilities and research areas is a very crude oversimplification of the state of the art. The intent of this document is not to precisely and comprehensively define all AI techniques and capabilities, but to describe summarily the joint understanding of this discipline that the High-Level Expert Group is using in its deliverables.'

The definition provided in the document states:

'Artificial intelligence (AI) refers to systems designed by humans that, given a complex goal, act in the physical or digital world by perceiving their environment, interpreting the collected structured or unstructured data, reasoning on the knowledge derived from this data and deciding the best action(s) to take (according to predefined parameters) to achieve the given goal. AI systems can also be designed to learn to adapt their behaviour by analysing how the environment is affected by their previous actions. As a scientific discipline, AI includes several approaches and techniques, such as machine learning (of which deep learning and reinforcement learning are specific examples), machine reasoning (which includes planning, scheduling, knowledge representation and reasoning, search and optimisation), and robotics (which includes control, perception, sensors and actuators, as well as the integration of all other techniques into cyber-physical systems).'

Put simply, AI uses data and algorithms (a set of instructions using mathematical formulae) on computers or other technological systems to perform specific tasks or make decisions that usually require human intelligence, such as learning, problem solving, pattern recognition, visual perception and speech recognition. Trained AI can perform these tasks or make these decisions without explicit human instructions using a series of techniques and technologies.

491 *A definition of Artificial Intelligence: main capabilities and scientific discipline* (AI HLEG, December 2018).

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?

Some Maltese law firms have implemented some basic AI tools – certainly, ChatGPT is used significantly within the profession. We are also aware that Luminance and similar software has been used by certain firms.

3. If yes, are these AI tools different regarding:

- **independent law firms;**
- **international law firms; and**
- **in-house counsel;**

and what are these differences?

There is no significant difference.

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

The regulatory process in terms of AI is still in its initial stages in Malta, and no legislative amendments, or new acts/regulations, have yet been introduced. So far, the efforts made by the Taskforce involve the publication of the abovementioned Framework and the Strategy. As mentioned therein, a Technology Regulation Advisory Committee is to be set up to carry out a gap analysis as to how the existing laws and regulations can address the challenges brought about by AI technologies and to recommend relevant amendments. Malta has also focused on a national AI Certification Programme, which will be based on the Framework and its underlying control practices, and which will provide applicants with valuable recognition in the marketplace that their AI systems have been developed in an ethically aligned, transparent and socially responsible manner.

As an EU Member State, Malta is subject to and will be required to abide by the EU's AI Act. The AI Act is part of a wider package of policy measures to support the development of trustworthy AI, which also includes the AI Innovation Package and the Coordinated Plan on AI. Together, these regulations are intended to guarantee people's fundamental human rights and rights of business and safety when it comes to AI. Important measures implemented by the AI Act include:

- safeguards on general purpose AI;
- limits on the use of biometric identification systems by law enforcement;
- bans on social scoring and AI used to manipulate or exploit user vulnerabilities; and
- rights of consumers to launch complaints and receive proper explanations.

The AI Act – which is still to be formally endorsed by the Council (likely to be in June 2024) – will enter into force 20 days after its publication in the Official Journal, and be fully applicable 24 months after its entry into force, except for some parts thereof which will apply at varying timeframes after the entry into force date (between six and 36 months).

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

The Framework aims to formulate the ethical principles as to how AI technologies should be developed and used. These four main principles are:

1. *Human autonomy*: humans interacting with AI systems must be able to keep full and effective self-determination over themselves.
2. *Prevent harm*: AI systems must not cause harm at any stage of their lifecycle to humans, the natural environment, or other living beings.
3. *Fairness*: the development, deployment, use and operation of AI systems must be fair.
4. *Explicability*: end users and other members of the public should be able to understand and challenge the operation of AI systems as required for the particular use case.

The achievement of these objectives is already embedded, in part, in existing legal and regulatory requirements. In terms of liability, for example, under the Maltese law of obligations, pursuant to Article 1032(1) of the Civil Code, 'a person shall be deemed to be in fault if, in his own acts, he does not use the prudence, diligence, and attention of a *bonus paterfamilias*'. Furthermore, Article 1032(2) of the Civil Code goes on to state that 'no person shall, in the absence of an express provision of the law, be liable for any damage caused by want of prudence, diligence, or attention in a higher degree'. It appears that the standard of reasonable care which is required is that of a reasonable man, or a *bonus paterfamilias*. In principle, therefore, whoever causes harm by acting in a manner which falls below the level of diligence of a *bonus paterfamilias* would be liable to compensate for the harm that they have caused as a result of such negligence. The duty which is mentioned in Article 1032 of the Civil Code has not been amended in order to cater for AI issues, and there is no express provision or principle in Maltese law stating that there is a duty of reasonable care when using AI. The duty of care which exists under Maltese law is of a general nature and does not specifically discuss AI matters.

In a 2019 report by the European Commission on the liability for AI and other emerging digital technologies, it was discussed that from the 19th century onwards, legislators generally responded to risks brought about by new technologies by introducing strict liability. So far, these changes to the law have concerned, for example, means of transport, such as trains or motor vehicles and

energy or pipelines. Even before that, tort laws often responded to increased risks by shifting the burden of proving fault, making it easier for the victim to succeed if the defendant was in control of particular sources of harm such as animals or defective immovables. Under the Maltese Civil Code, Article 1038 states that 'any person who without the necessary skill undertakes any work or service shall be liable for any damage which, through his unskilfulness, he may cause to others'. Furthermore, Article 1040 provides that 'the owner of an animal, or any person using an animal during such time as such person is using it, shall be liable for any damage caused by it, whether the animal was under his charge or had strayed or escaped'. Many academic writers are drawing a parallel with such a situation and one where, for example, a robot runs amok, stating that such provisions should be used in such a case. This comparison is being made in parallel with similar articles in foreign legislation.

Furthermore, the Product Liability Directive⁴⁹² was transposed into Maltese law through Articles 56 to 71 of the Consumer Affairs Act which introduce the principle of strict (no fault) liability into the product liability regime. This legislation is of course subject to the limitations of the Product Liability Directive itself.

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

As a Member State of the EU, Malta's data protection regime comprises the General Data Protection Regulation (GDPR)⁴⁹³ and the local law which supplements it, namely the Data Protection Act, Chapter 586 of the Laws of Malta, together with guidelines issued by the EU European Data Protection Board (EDPB) and the Office of the Information and Data Protection Commissioner (IDPC).

AI systems require colossal amounts of data in order to be properly trained to build their algorithmic models and to achieve accurate results. Many times, such data is personal data. When such reliance is specifically on personal data, the principles as outlined in the GDPR must be adhered to. Thus, given such heavily reliance on data, the implications of the GDPR on AI companies and applications which involve the use of personal data in particular are quite significant. In the first place, the GDPR generally restricts access to and collection of data. Secondly, data can only be used for its original intended purpose, thus restricting reuse of data for novel purposes and the possibility of new value through combination of datasets. Under the GDPR, decisions that were taken *solely* in an automated manner must allow for human review of that decision if it significantly affects the data subject. Furthermore, the data subject has a right to an explanation as to how a decision was reached. These factors can render automation of processes impractical and costly, and many argue that this defeats the purpose of automated processes.

492 Directive 85/374 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products [1985] OJ L210/29.

493 Regulation 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 [2016] OJ L119/1.

On a final note, AI companies and applications which involve the use of personal data need to implement safeguards and data protection must be present by design and by default. Malta does, however, have legislation in place to cater for situational reuse of data in certain scenarios, such as the Re-Use of Public Sector Information Act and the Processing of Personal Data (Secondary Processing) (Health Sector) Regulations.

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?

At the time of writing, there are no actual court decisions on the provision of legal services using AI. There are various judgments relating to Article 1038 of the Maltese Civil Code, that may be applicable. The said Article (as detailed above) states that ‘any person who without the necessary skill undertakes any work or service shall be liable for any damage which, through his unskilfulness, he may cause to others’.

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 provided by lawyers?

There is currently no planned, discussed or implemented sectorial legislation in Malta which deals specifically with the use of AI in the legal profession or services that are traditionally being rendered by lawyers, other than as discussed above.

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

The national bar organisation, the Chamber of Advocates, is currently actively involved in discussions relating to the use of AI in the legal profession. Various other entities play a role in relation to the general use of AI:

- The Malta Digital Innovation Authority (MDIA) has the power to oversee and provide for registration and certification of innovative technology arrangements.
- The Office for Consumer Affairs is responsible for the promotion and protection of consumer rights and welfare.
- The Standardisation Directorate of the Standards and Metrology Institute (SMI), a Maltese independent body set up under the Malta Competition and Consumer Affairs (MCCAA) Act, is entrusted with

the coordination of standardisation and related activities at various corporate, national, regional and international levels.

- Finally, the IDPC is the national supervisory authority responsible for monitoring and enforcing the provisions of the GDPR and the Data Protection Act.