Belgium

Sarah van den Brande, Liedekerke, Brussels

Amélia Goy, Liedekerke, Brussels

Vincent Busschaert, Liedekerke, Brussels

Frank Judo, Liedekerke, Brussels

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

De lege lata

There is currently no legal definition of artificial intelligence (AI) in Belgium. As a consequence, Belgian legal practitioners base themselves on several definitions set forth in publications by national and European authorities.

European guidance

Belgian authorities[129] generally use the definition of AI provided by the European Commission:

> 'Artificial intelligence (AI) refers to systems that display intelligent behaviour by analysing their environment and taking actions – with some degree of autonomy – to achieve specific goals. AI-based systems can be purely software-based, acting in the virtual world (eg voice assistants, image analysis software, search engines, speech and face recognition systems) or AI can be embedded in hardware devices (eg advanced robots, autonomous cars, drones or internet of things applications).'[130]

That definition is also used in the *AI4Belgium Report*, a set of recommendations issued by Belgian experts further to an initiative by the federal public service (FPS) BOSA,[131] with the aim of setting up a national strategy with respect to AI.[132]

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129 See, eg, the website of the FPS Economy: https://economie.fgov.be/nl/themas/ondernemingen/kmos-en-zelfstandigen-cijfers/digitalisering-van-kmos/artificiele-intelligentie-en accessed 25 July 2024.

130 Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions Artificial Intelligence for Europe, COM/2018/237 final https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:52018DC0237 accessed 25 July 2024.

131 The FPS Policy and Support (BOSA) assists the government and supports federal organisations in various areas: IT, human resources (HR), organisational control and integrity policy, budget, accounting and public procurement.

132 *AI4Belgium* (AI4Belgium) www.ai4belgium.be/en/documents/ accessed 8 July 2024. The report is available in English, Dutch and French.

In its report on the work undertaken by the ChatGPT Taskforce, published on 24 May 2024, the European Data Protection Board (EDPB) provided a definition of large language models. According to the EDPB:

> 'Large language models (LLMs) are deep learning models (a subset of machine learning models) that are pre-trained using vast amounts of data. Analysing these massive datasets enables the LLM to learn probability relationships and become proficient in the grammar and syntax of one or more languages. LLMs generate coherent and context-relevant language. To put it simply, LLMs respond to human language by producing coherent text that appears human-like, such as OpenAI's ChatGPT.'[133]

Belgian guidance

In a report on AI in Belgium published in 2020, Digitalcity.brussels[134] points out that AI can be categorised into several types:[135]

- computer vision, which involves the analysis and interpretation of visual content (video, images, scanned images, etc), and is used in a variety of fields, such as medicine (scan analysis), facial recognition, emotion analysis and facial movement;
- natural language processing (NLP), which consists of analysing the meaning of words, phrases or speech, which is the basis for the development of chatbots, Google translation and voice assistants such as Siri;
- robotics – the science of designing and building automatic machines or robots; and
- machine learning/deep learning, which defines the way the machine learns (ie, by processing large amounts of data, AI improves its performance by learning).

In addition to the above, Belgian legal scholars often rely on the distinction made in the industry between weak and strong AI: while weak AI refers to systems that can perform a specific or few tasks very well and which operate within a predefined environment (eg, facial recognition or recommendation systems),

133 *Report of the work undertaken by the ChatGPT Taskforce* (EDPB, 24 May 2024) www.edpb.europa.eu/our-work-tools/our-documents/other-guidance/report-work-undertaken-chatgpt-taskforce_en accessed 25 July 2024.

134 Digitalcity.brussels is a joint initiative of social partners in the digital sector, the Government of the Brussels-Capital Region and the French-speaking Government of Brussels.

135 The report is available in French https://digitalcity.brussels/fr/a-propos/publications and Dutch https://digitalcity.brussels/nl/a-propos/publicaties accessed 25 July 2024.

strong AI refers to machines that exhibit human intelligence and aim to perform any intellectual task that a human being is able to do.[136]

It should also be noted that the term 'AI' is sometimes overused by providers for marketing purposes. However, true AI systems are characterised by a certain level of autonomy, meaning that the output of the system is not necessarily predetermined by a human.

De lege ferenda

In the near future,[137] the definition of AI used in Belgium will be the one provided by the pending regulation on laying down harmonised rules on artificial intelligence (the 'AI Act'), which set forth an extended array of definitions related to AI (of, eg, general-purpose AI systems, deepfakes and AI regulatory sandbox).

The current draft of the AI Act defines an AI system as:

> 'a machine-based system designed to operate with varying levels of autonomy, 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 environment'.[138]

Other specific definitions are provided in the draft AI Act. Notably, general-purpose AI models (of which generative AI such as ChatGPT is a typical example) are defined as:

> 'an AI model, including where such an AI model is trained with a large amount of data using self-supervision at scale, that displays significant generality and is capable of competently performing a wide range of distinct tasks regardless of the way the model is placed on the market and that can be integrated into a variety of downstream systems or applications, except AI models that are used for research, development or prototyping activities before they are released on the market'.

136 Study on Potential Policy Measures to Promote the Uptake and the Use of AI in Belgium in Specific Economic Domains (FPS Economy, 14 April 2022), p10 https://economie.fgov.be/en/publication/study-potential-policy accessed 25 July 2024.

137 The AI Act is currently in the final stage of the adoption process (see the response to Question 4).

138 See Art 3(1) of the current draft of the AI Act www.europarl.europa.eu/doceo/document/TA-9-2024-0138_EN.html accessed 25 July 2024.

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?

Like everywhere else, the use of AI in Belgium has increased significantly in recent years. According to the results of a survey on the use of information and communications technology (ICT) and e-commerce in enterprises conducted by Statbel, the Belgian statistical office, almost one in seven enterprises (13.8 per cent) used AI in 2023.[139] For companies with more than 250 employees, the figure is almost one in two (47.9 per cent).[140]

Providers of legal services are no exception to this trend: in Belgium, the legal sector is increasingly incorporating AI tools and technologies to boost efficiency and accuracy.[141] The current challenge for small jurisdictions like Belgium is to assess to what extent AI tools that have been developed abroad and trained relying on data input covering mainly one jurisdiction and in one particular language (eg, in the US) are really suited to be applied in other jurisdictions with a different set of rules, language, culture and so on.

AI tools can be used for several purposes:

Contract management

Some tools are used for managing contracts by integrating AI to automate creation, review and approval processes, significantly reducing the time required. They also claim to provide features for tracking and renewing contracts, improving consistency and compliance with legal standards. Such tools include Contractify,[142] Henchman,[143] Juro[144] and Leya.[145]

Due diligence

Kira[146] automatically identifies and extracts information from contracts and claims to come with built-in provision models and standard search results, including all the provisions generally reviewed over the course of a due diligence exercise.

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139 According to that study, the most commonly used AI technologies are the ones performing analysis of written language (six per cent), automating different workflows or assisting in decision making (5.1 per cent) and machine learning, eg deep learning (4.8 per cent). 'Nearly one in two large enterprises uses artificial intelligence' (Statbel, 7 December 2023) https://statbel.fgov.be/en/news/nearly-one-two-large-enterprises-uses-artificial-intelligence accessed 25 July 2024.

140 *Ibid*.

141 '*L'IA générative : opportunité ou menace pour les professionnels du droit?*' (Wolters Kluwer, 8 November 2023) www.wolterskluwer.com/fr-be/expert-insights/ai-for-lawyers-trends-impact-on-law-firms accessed 25 July 2024.

142 See www.contractify.io accessed 25 July 2024.

143 See https://henchman.io accessed 25 July 2024.

144 See https://juro.com accessed 25 July 2024.

145 See www.leya.law accessed 25 July 2024.

146 See https://kirasystems.com accessed 25 July 2024.

Microsoft Office tool

Microsoft's Copilot147 can assist with a large array of tasks, including creating a PowerPoint presentation based on a text and summarising a Microsoft Teams meeting.148

Legal research

GenIA-L149 is a generative AI tool that provides answers to legal questions based on legislation, case law and doctrine within the legal search engine Strada lex. It claims to be able to generate summaries of case law documents and to extract essential elements such as the parties involved, facts, claims, legal considerations and the conclusion of the case.

Creation of text

GPT-3 is a language model developed by the company OpenAI, which, with the input of a number of keywords, can generate text through AI.150

These AI tools are designed to complement the expertise of legal professionals, enhancing their capabilities and reducing the time spent on routine tasks, allowing lawyers to focus on more complex and high-value activities.

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

As there is no data available for Belgium in this respect, we can only work on assumptions. Moreover, as a general remark, we learned that many full-service law firms are closely following the trend. Some of them have hired an AI project manager to test different types of tools and develop AI within the firm.

In Belgium, the adoption and utilisation of AI tools in the legal sector seem to differ among independent law firms, international law firms and in-house legal departments. Each of these entities has unique needs and operational frameworks, influencing how they implement and leverage AI technology.

147 See www.microsoft.com/fr-fr/microsoft-copilot accessed 25 July 2024.

148 See https://latribune.avocats.be/fr/l-intelligence-artificielle-et-l-avocat accessed 25 July 2024.

149 See www.stradalex.com/en/genial/about accessed 25 July 2024.

150 See https://rytr.me/ accessed 25 July 2024.

Independent law firms are often smaller and may have limited resources compared to larger international firms.

International law firms possess extensive resources and a broader client base. They handle complex, high-volume cases that require advanced AI tools for tasks like large-scale document review, cross-jurisdictional legal research and comprehensive contract management. They usually invest in sophisticated AI technologies.

In-house counsel need tools that integrate well with other business software and provide insights specific to the company's needs. In-house teams may prioritise tools that streamline processes, reduce costs and ensure compliance with internal policies and regulations.

There are a few key differences in our opinion.

With respect to resource allocation, independent firms seem to focus on cost-effective and easy-to-use tools, while international firms invest in high-end, comprehensive AI solutions.

Regarding operational needs, international firms might require AI tools that can manage complex and large-scale operations, whereas independent firms need tools that enhance day-to-day efficiency and service delivery.

Finally, from an integration and compliance perspective, in-house legal departments appear to emphasise AI tools that integrate with other business operations and ensure industry-specific regulatory compliance.

Overall, the choice of AI tools in the Belgian legal sector is shaped by the specific needs, resources and operational frameworks of independent law firms, international law firms and in-house counsel. Each entity adopts AI solutions that best fit its unique requirements, ensuring improved efficiency, compliance and cost effectiveness.

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

There is currently no legal framework in Belgium that specifically regulates the use of AI in a transversal way. However, there are some fragmented initiatives at the federal and regional151 levels to regulate and/or boost the use of AI, for example:

Public authority initiatives

In 2019, the Flemish government launched the Flemish AI Plan, aimed at fostering AI in Flanders by strengthening strategic basic research, stimulating the use of AI by companies and raising awareness, training and ethical frameworks.

151 Belgium is characterised by different levels of legislative powers (federal, regional and communal). It has three regions: the Flemish Region, the Brussels-Capital Region and the Walloon Region.

Also in 2019, the Walloon region launched the DigitalWallonia4.ai program. DigitalWallonia4.ai aims to accelerate the adoption of AI in Wallonia and strengthen its ecosystem. The strategy can be broken down into four key areas: society and AI; business and AI; education and AI; and partnerships, innovation, research and AI.

The Brussels region does not have a dedicated action plan for AI. It has, however, launched a wide range of initiatives to boost AI-related activities in Brussels.

Employment law

Certain legal provisions impose obligations on the employer when using new technologies in the workplace.

In particular, Collective Bargaining Agreement No 39 of 13 December 1983 establishes a specific procedure to be followed when an employer decides to introduce a new technology that has a significant collective impact on employment, work organisation or working conditions.[152]

In many cases, the introduction of technologies using AI may have such a significant impact, hence triggering related additional obligations (which mainly consist of transparency and consultation obligations).

Digitisation of justice

The Belgian federal legislator has recently adopted three legislative measures in respect of the digitisation of justice:

- the Act of 19 December 2023[153] that establishes, among other things, a centralised computer system for the management of electronic files within the FPS Justice; one of the purposes of this system is to allow judges and other court personnel to access electronic files in civil and criminal cases in order to facilitate the management of these files and hearings;
- the Act of 27 March 2024[154] that introduces, among other things, digital files in criminal cases; and

152 In that regard, Collective Bargaining Agreement No 5 of 24 May 1971 concerning the status of trade union delegations of company personnel and Collective Bargaining Agreement No 9 of 9 March 1972 coordinating national agreements and collective bargaining agreements relating to works councils concluded within the Conseil National du Travail also provide for additional information obligations under certain conditions.

153 The Act of 19 December 2023 on the digitisation of justice and miscellaneous provisions was published in the Belgian Official Gazette on 29 December 2023.

154 The Act of 27 March 2024 on provisions relating to the digitisation of justice and miscellaneous provisions Ibis was published in the Belgian Official Gazette on 29 March 2024.

- the Act of 15 May 2024[155] that provides a legal basis for rolling out electronic auditing of third-party accounts.

The implementation of these measures often relies on the use of AI technologies (also see the response to Question 8 below).

Automated vehicles

In 2016, FPS Mobility issued a Code of Good Practice containing recommendations to companies willing to test automated assisted driving technologies or vehicles in public areas in Belgium.[156] The code also provides a definition of 'autonomous vehicle' and 'fully autonomous vehicle'.

A few years later, the Belgian Highway Code was amended by the Royal Decree of 18 March 2018 to allow companies, under certain conditions, to carry out tests with automated vehicles on public roads.

Further to a legislative amendment in April 2023, the legal wording of the aforementioned Royal Decree no longer refers to 'test vehicles', but to exemptions in the context of a 'trials or pilot project'. According to the preparatory works, this will make it possible to test, among other things, new road signs, markings or new technologies within the framework of pilot projects, thus widening the scope of application of that exemption.

Advisory Committee on Data Ethics and AI

The Belgian legislator issued the Royal Decree of 4 October 2023 creating an Advisory Committee on Data Ethics and Artificial Intelligence for the federal administration. This Royal Decree aims to establish an ethical framework regarding the impact of new data-driven technologies (in particular AI systems) on certain fundamental rights of citizens and workers, such as privacy, dignity and non-discrimination. It has set up an Advisory Committee on Data Ethics, composed of five members who are experts in the field of AI and algorithms. This initiative has several objectives, in particular:

- making officials more responsible in their use of data and AI, and removing uncertainty within public services in the implementation of technology;
- raising awareness among officials on the ethical aspects related to the use of data, and ensuring continued inclusiveness, transparency and respect for values such as human rights and democracy; and

155 Act of 15 May 2024 on provisions relating to the digitisation of justice and miscellaneous provisions II.

156 The Code of Good Practice (FPS Mobility, updated 14 February 2024) https://mobilit.belgium.be/fr/route/vehicules/vehicules-semi-autonomes accessed 25 July 2024.

- sending a signal to citizens that the federal administration is leading by example and using digital technology in an ethical and innovative way.

The Advisory Committee's opinions are, however, not binding.

Personal data protection

Regulation (EU) 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data (the General Data Protection Regulation or GDPR) provides the right for data subjects not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning them or similarly significantly affects them (eg, automatic refusal of an online credit application or e-recruiting practices) without any human intervention.[157]

The Belgian Data Protection Authority (BDPA) has provided limited guidance on AI. In 2020, it provided guidance in the context of the pandemic and stated that it is, in principle, not permissible to install a closed-circuit television (CCTV)[158] system in the workplace that relies on AI to send an alert to an employer when an employee is not wearing a face mask.[159]

The BDPA occasionally provides guidance on data protection and AI in opinions on legislative proposals involving the use of AI. For instance, the BDPA issued two opinions on the use of AI by public authorities in 2022[160] and 2020[161] in which it emphasised the need for safeguards against discrimination or bias in the rankings produced by these tools, and the need for a prior data protection impact assessment in relation to the use of AI algorithms.

At the European level, the Joint Opinion 5/2021 of the EDPB and the European Data Protection Supervisor (EDPS) on the Proposal for an AI Act was published on 18 June 2021, addressing important data protection implications under this act,[162] for example, by highlighting the importance that any type of social scoring be prohibited.

157 Art 22 of the GDPR.

158 A remote monitoring system using cameras.

159 The guidance is available in French www.autoriteprotectiondonnees.be/professionnel/themes/covid-19/covid-19-sur-le-lieu-de-travail and Dutch at www.gegevensbeschermingsautoriteit.be/professioneel/thema-s/covid-19/covid-19-op-de-werkvloer accessed 25 July 2024.

160 The decision is available at www.autoriteprotectiondonnees.be/publications/avis-n-94-2022.pdf accessed 25 July 2024.

161 The decision is available at www.autoriteprotectiondonnees.be/publications/avis-n-90-2020.pdf accessed 25 July 2024.

162 'EDPB–EDPS Joint Opinion 5/2021 on the proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act)' (EDPB, 18 June 2021) www.edpb.europa.eu/our-work-tools/our-documents/edpbedps-joint-opinion/edpb-edps-joint-opinion-52021-proposal_en accessed 25 July 2024.

Furthermore, on 3 June 2024, the EDPS published guidelines on generative AI and personal data for EU institutions, bodies, offices and agencies.[163]

European level: the AI Act

The pending AI Act establishes obligations with respect to the use of AI based on its potential risks and level of impact. It applies to anyone who makes, uses, imports or distributes AI systems in the EU, regardless of where they are based.

The new rules will apply to both public and private actors inside and outside the EU, as long as the AI system is placed on the EU market or its use affects people located in the EU. The AI Act is the major legal framework that will soon be applicable in Belgium.

The AI Act is currently in the final stage of the adoption process. It will enter into force 20 days after its publication in the Official Journal of the EU, and most of its provisions will be applicable 24 months after its entry into force.

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

While, at the European level, the AI Act will govern several regulatory aspects with respect to AI, there are currently no planned regulations at the national level. However, as there is a great deal of uncertainty about many aspects of the use of AI, it is expected that case law will shed some light in this regard; Belgian scholars are closely following the evolutions abroad in this respect.[164] Areas of uncertainty include the following.

Input

AI systems require a significant amount of data in their training and operational phases. This data may be subject to (intellectual property) rights of third parties (eg, database rights, copyright, and also trademarks and personal data protection), and AI developers may therefore need to obtain (contractual) permission to access and use (including training, temporary storage, etc) this data.

In Europe, the text and data mining (TDM) exception to copyright[165] is of particular relevance as it allows the automated computational analysis of information in

163 'First EDPS Orientations for EUIs using Generative AI' (EDPS, 3 June 2024) www.edps.europa.eu/data-protection/our-work/publications/guidelines/2024-06-03-first-edps-orientations-euis-using-generative-ai_en accessed 25 July 2024.

164 Notable examples are the ongoing legal action brought by the New York Times against ChatGPT in the US, and the ongoing dispute between Getty Images and Stability AI in the United Kingdom.

165 Arts 3 and 4 of the Council Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market (2019), transposed in Belgium in Book XI Code of Economic Law in Arts XI.190, XI.191/1, XI.191/2, XI.217/1 and XI.310.

digital form, such as text, sounds, images or data, thereby making the processing of large amounts of information possible. The TDM exception can be carried out:

- For the purposes of scientific research, research organisations and cultural heritage institutions may carry out TDM of works to which they have lawful access. This is a mandatory exception that does not allow for an opt-out by the right holder.
- For other purposes, TDM can be carried out insofar as this has not been expressly reserved by the rights holders 'in an appropriate manner'. Rights holders can therefore opt out for non-scientific purposes, for example, through metadata and the terms and conditions of a website or service, or through contractual agreements or a unilateral declaration.

Another challenge is verifying the accuracy of the input data, especially when the data is generated by the AI itself.

Prompts

The use of prompts raises a number of issues, such as whether the prompt itself may infringe intellectual property rights (eg, copyrights and trademarks).

There are also ongoing discussions about whether a prompt can be protected by copyright.[166]

Output

Finally, there is the question of the extent to which AI-generated output:

- may be subject to the protection of intellectual property rights (and which ones), including uncertainty regarding the elements that should be taken into account when determining the importance of the contribution of all participants in the overall AI system to determine the rights holders concerned; and
- may infringe the (intellectual property) rights of third parties, including questions such as the importance of exceptions and exemptions, and whether good faith can be an exemption (eg, in a situation where one can prove that neither the input nor the algorithm is infringing and that the AI system is trained not

166 According to some Belgian scholars, prompts that follow the initial prompt could be considered 'retouching' (especially if they are numerous and detailed). Because retouching can, in principle, give rise to originality in the case of photographs, it cannot be ruled out that a long series of very precise and detailed instructions by a (human) user could, in certain situations, justify copyright protection. See www.fredericlejeune.be/ia-et-droit-dauteur-quelques-actualites/ accessed 25 July 2024.

to generate an infringing output, yet the output turns out to be infringing: can good faith be an exemption?).

There are also discussions about the need for other types of protection and different subject matters (eg, style, personality and voice), as we are now very often redirected to concepts like passing off, unfair commercial practices, portrait rights and so on, which do not cover all the pending issues.

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

Yes it is an issue as AI systems require a significant amount of data in their training and operational phases, but this data may be subject to the rights of third parties and AI developers may therefore need to obtain (contractual) permission to access and use it.

As explained in the response to Question 5, the TDM exception in Europe, while theoretically allowing both the scientific and commercial use of TDM for AI, is of limited practical relevance given the opt-out for commercial (ie, non-scientific) use. Moreover, given the fact that intellectual property rights like copyrights, database rights and so on are often governed nationally, other exceptions may (or may not) apply in other jurisdictions.[167]

Because it is essential for performant AI solutions to rely on vast and diverse data sets, the need for an international specific solution is urgent. If AI developers/users are not able to secure a licence for (training) data, it can be expected that they will either use old public domain data, look for data under open licences or even infringe intellectual property rights hoping that the rights holders do not notice.[168]

In its National Convergence Plan for the Development of Artificial Intelligence,[169] the FPS BOSA recognises the importance of facilitating access to data and making it available for citizens, businesses, public authorities and researchers. It states that AI needs reliable, structured digital data to learn, validate models and deliver added value through inference. It lists the following action areas with respect to data and AI:[170]

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167 AI technology can be used worldwide, whereas exceptions do not exist everywhere in the world or to the same extent. Eg, legal scholars have pointed out that the rather limited scope of the TDM exception may appear to contrast with the broader fair use exception under US copyright law and the broader data analysis exception under Japanese copyright law.

168 Study on Potential Policy Measures to Promote the Uptake and the Use of AI in Belgium in Specific Economic Domains (FPS Economy, 14 April 2022), p 53 https://economie.fgov.be/en/publication/study-potential-policy accessed 25 July 2024.

169 'National convergence plan for the development of artificial intelligence' (BOSA, 28 October 2022) https://bosa.belgium.be/en/themes/digital-administration/digital-strategy-and-policy/national-convergence-plan-development. The National Convergence Plan is available in French https://bosa.belgium.be/sites/default/files/content/documents/DTdocs/AI/Plan_national_de_convergence_pour_le_d%C3%A9veloppement_de_lintelligence_artificielle.pdf and in Dutch at https://bosa.belgium.be/sites/default/files/content/documents/DTdocs/AI/Nationaal_convergentieplan_voor_de_ontwikkeling_van_artificiele_intelligentie.pdf accessed 25 July 2024.

170 See p 22 et seq of the National Convergence Plan.

- integrating the AI dimension into the development of a data strategy;
- data governance, including data generation, digitisation, formatting, security, transfer and storage;
- encouraging companies and knowledge institutions to open up their infrastructure and data to entrepreneurs and small and medium-sized enterprises (SMEs) to develop new AI solutions;
- improving access to cloud services by bundling offerings from selected providers and/or through a consolidated framework agreement for information and knowledge sharing; and
- optimising the re-use of government data by facilitating data intelligent processes and results through data standardisation, data fusion and the use of AI.

The European Commission has also developed a data strategy to make the EU a leader in the data-driven society, which complements and supports its global AI strategy (notably the Data Governance Act[171] and the Data Act[172]).

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?

There is no Belgian court decision on the provision of legal services using AI to the best of the authors' knowledge.

Useful reference could, however, be made to a decision of the Constitutional Court of 12 October 2023. Although this decision concerns a very specific area, some of its findings may be relevant.

In July 2017, the Human Rights League brought an action before the Constitutional Court for the annulment of a law requiring the transmission of passenger data. The court referred ten questions to the Court of Justice of the EU (CJEU) for a preliminary ruling, which was issued on 21 June 2022.[173]

The context was the following: the Act of 25 December 2016 on the processing of passenger data requires air carriers and tour operators to transmit passenger data (PNR data) to the FPS Interior. This law implements the Passenger Name Record (PNR) Directive 2016/681/EU. The transmitted data is stored in a database

171 Council Regulation (EU) 2022/868 on European data governance and amending Regulation (EU) 2018/1724 (2022), OJ L 152.

172 Council Regulation (EU) 2023/2854 on harmonised rules on fair access to and use of data and amending Regulation (EU) 2017/2394 and Directive (EU) 2020/1828 (2023), OJ L, 2023/2854.

173 Case C-817/19 *Ligue des droits humains ASBL v Conseil des ministres* (2022).

managed by the Passenger Information Unit (PIU), a body within the FPS Interior. In Belgium, the PNR system applies not only to air transport (as required by the PNR Directive) but also to rail and bus transport.

Regarding the pre-screening of passengers, the Constitutional Court ruled that the PIU may not use AI technologies in machine learning systems that could modify the evaluation process without human intervention and control.

The decision points out that, given the opacity that characterises the way in which AI technology works, it might be impossible to understand the reason that a given program arrived at a positive match. In those circumstances, the use of such technology may also deprive data subjects of their right to an effective judicial remedy, in particular in order to challenge the non-discriminatory nature of the results obtained.

In that decision, the Constitutional Court highlights the transparency requirements, as well as the right of the individual concerned to challenge a decision issued by 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?

AI in the justice system

Traditionally, the Belgian justice system has lagged behind in terms of digitalisation.

This has notably been highlighted by the EU Justice Scoreboard, a comparative information tool[174] that presents an annual overview of indicators on the efficiency, quality and independence of justice systems in EU countries. It provides comparative data with respect to, inter alia, certain aspects of ICT in justice systems. According to the latest edition issued in 2023,[175] the Belgian system still has a long way to go when it comes to digitalisation in the following areas:

- procedural rules allowing digital technology in courts in civil/commercial, administrative and criminal cases (eg, admissibility of evidence filed in digital format only, parties/defendants/victims can be heard by distance communication technology, and language

174 The EU Justice Scoreboard is an annual comparative information tool. Its purpose is to assist the EU and Member States to improve the effectiveness of their national justice systems by providing comparable data on a number of indicators relevant for the assessment of the (1) efficiency; (2) quality; and (3) independence of justice systems in all Member States.

175 The EU Justice Scoreboard is available at https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/eu-justice-scoreboard_en accessed 25 July 2024. See in particular p 42 et seq.

interpretation is possible while using distance communication technology): Belgium ranked 20th out of the 27 Member States;

- use of digital technology by courts and the prosecution service (eg, use of distributed ledger technologies (blockchain), use of AI applications in core activities, and use of distance communication technology, particularly for videoconferencing): Belgium ranked 24th out of the 27 Member States; and

- digital solutions to initiate and follow proceedings in civil/commercial and administrative cases (eg, possibility to initiate proceedings/file a claim online, possibility for clients to access the electronic file of their ongoing cases, and official court documents can be served electronically on citizens and businesses): Belgium ranked 22nd out of the 27 Member States.

Since the current government took office in October 2020, the digitisation of justice has been a priority. In particular, additional funding has been allocated to improve the digitisation of the justice system.[176]

A number of (legal) measures to digitise the justice system have been and are in the process of being carried out, some of which will integrate AI technologies. For instance:

- JustJudgment is a central digital database containing all judgments and rulings. The gradual roll-out is scheduled for the second half of 2024. Eventually, all digital judgments from all courts and tribunals will be included in the database. JustJudgment will also have an external section where all decisions, albeit pseudonymised, will be published. A pseudonymisation engine using AI is being developed for this purpose.

- JustPublish is the Belgian Official Gazette's new file management system, which has been introduced to make data processing smoother. An AI tool will be integrated to further improve the search function. The government is currently testing different AI search engines on the non-personal content of the Belgian Official Gazette to see which model delivers the best results, both in terms of accuracy of results and cost.

Other tools that will integrate AI are still in development.

Use of AI by attorneys-at-law

176 'Numérisation de la Justice en 2024 : état des lieux' (Team Justice, 15 May 2024) www.teamjustitie.be/fr/2024/05/15/15-05-numerisation-de-la-justice-en-2024-etat-des-lieux/ accessed 25 July 2024.

Belgian attorneys-at-law are bound by a code of ethics. Although this code does not to this day provide provision in respect of the use of AI, on 31 May 2024, the Ordre des Barreaux francophones et germanophone (French and German-speaking Bars in Belgium) published some guidance on the use of AI from an ethical point of view, which was inspired by rules published by the Californian bar.[177] It was highlighted that:

- An attorney-at-law must not input any confidential information about the client into any generative AI solution that lacks adequate confidentiality and security protections.
- An attorney-at-law must anonymise client information and avoid entering details that can be used to identify the client. The attorney-at-law should consult with IT professionals or cybersecurity experts to ensure that any AI system in which he/she would input confidential client information adheres to stringent security, confidentiality and data retention protocols.
- An attorney-at-law must ensure the competent use of the technology, including the associated benefits and risks, and apply diligence and prudence with respect to facts and law. Before using generative AI, the attorney-at-law should understand, to a reasonable degree, how the technology works, its limitations, and the applicable terms of use and other policies governing the use and exploitation of client data by the product. Over-reliance on AI tools is inconsistent with the active practice of law and application of trained judgment by the lawyer.
- AI-generated outputs can be used as a starting point, but must be carefully scrutinised. They should be analysed critically.
- The duty of competence requires more than the mere detection and elimination of false AI-generated results. An attorney-at-law's professional judgment cannot be delegated to generative AI and remains the attorney-at-law's responsibility at all times.
- An attorney-at-law should take steps to avoid over-reliance on generative AI to such a degree that it hinders critical attorney analysis fostered by traditional research and writing. For example, the attorney-at-law may supplement any AI-generated research with human-performed research, and supplement any AI-generated argument with critical, human-performed analysis and analysis of case law.
- An attorney-at-law must evaluate his/her communication obligations

177 Jean-Noël Bastenière, 'La déontologie et l'IA font-elles bon ménage?' (La Tribune) https://latribune.avocats.be/fr/la-deontologie-et-l-ia-font-elles-bon-menage accessed 8 July 2024.

throughout the representation based on the facts and circumstances, including the novelty of the technology, risks associated with generative AI use, scope of the representation and sophistication of the client. The attorney-at-law should consider disclosing to his/her client that he/she intends to use generative AI in the representation, including how the technology will be used, and the benefits and risks of such use.

- An attorney-at-law must review all generative AI outputs, including, but not limited to, analysis and citations to authority, for accuracy before submission to the court and correct any errors or misleading statements made to the court.

Overall, the Ordre des Barreaux francophones et germanophone highlights the importance of professional secrecy, competence and diligence.

Useful reference can also be made to the *Guide on the use of Artificial Intelligence-based tools by lawyers and law firms in the EU*, issued on 31 March 2022 by the Council of Bars and Law Societies of Europe (CCBE).[178]

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

National bar associations (Order of Flemish Bars and Ordre des Barreaux francophones et germanophone) have for some time been intensively studying the impact AI may have on the attorney-at-law's professional practice – in particular, its ethical and deontological aspects.

Both organisations have already organised several study and discussion sessions on the topic and have internal expert committees that follow up on the topic. Recently, both committees have joined forces with a view to functioning in a more integrated way. They also participate in reflection on the framework of international organisations, notably the CCBE.

To better prepare individual attorneys-at-law for the roll-out of AI, training moments are organised. Particular attention is paid to the challenges that arise in terms of professional secrecy and the attorney-at-law's duty of independence.

A major achievement is the Digital Platform for Attorneys (DPA), a joint initiative of bar associations and the Ministry of Justice. The platform already offers various IT services, and it is expected that additional services will follow, including in the sphere of AI.

178 The Council of Bars and Law Societies of Europe (CCBE), founded in 1960, is an international non-profit association that aims to advance the views of European lawyers and to defend the legal principles on which democracy and the rule of law are based. *Guide on the use of Artificial Intelligence-based tools by lawyers and law firms in the EU* www.ccbe.eu/fr/actions/evenements/ai4lawyers/ accessed 25 July 2024.