

Sweden

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

Defining AI under Swedish law

There is currently no statutory definition of the term artificial intelligence (AI) in Sweden, nor is there a clear-cut or generally agreed-upon definition of the term.⁵⁶⁰ However, some guidance on the understanding of AI in Sweden may be found in government documents and voluntary industry codes.

In 2018, the Swedish government adopted a national approach to AI, which has remained unchanged since its adoption.⁵⁶¹ The national approach refers to the description of AI in a 2018 report on AI in Swedish business and society from Vinnova, the Swedish government agency for innovation:

'In this analysis, artificial intelligence is defined as the ability of a machine to imitate intelligent human behaviour. Artificial intelligence also denotes the area of science and technology that aims to study, understand and develop computers and software with intelligent behaviour.'⁵⁶²

The definition of AI used in the Vinnova report provides two important insights into what AI is and into how AI is often understood in Sweden. The first insight is that, at its core, AI is computer software. The second is that AI refers to the area of science and technology related to machines imitating intelligent behaviour, often with human intelligence as a reference point.

The government further adds that AI:

560 'Artificial intelligence in Swedish business and society' (Vinnova, May 2018), www.vinnova.se/en/publikationer/artificial-intelligence-in-swedish-business-and-society/ accessed 11 June 2024.

561 *National approach to artificial intelligence* (Government of Sweden, 2018), www.regeringen.se/informationsmaterial/2018/05/nationell-inriktning-for-artificiell-intelligens/ accessed 11 June 2024.

562 'Artificial intelligence in Swedish business and society' (Vinnova, May 2018).

'AI is a broad field that encompasses many technologies, not least machine learning and deep learning. What distinguishes AI from other automation methods is the ability of AI technology to learn and become smarter over time.'⁵⁶³

The Swedish government's national approach to AI provides two further insights into how AI is often understood in Sweden. The first insight is that in most cases, when referring to AI, most people refer to machine learning and deep learning technology. Machine learning and deep learning are subsets of AI research and technology. However, these technologies currently hold the most potential for developing complex AI systems and solutions. The second insight is that AI is usually understood to be technology that, on its own, learns and becomes smarter over time. This is completed through exposing the AI to more data and by letting it attempt to solve the problems it was programmed to complete.

Along with the emergence of generative pre-trained transformer models (GPTs), the Swedish understanding of AI has broadened over the past few years. The generative models are, and will most likely remain, in the centre of the general discourse on AI in Sweden in the nearest future. AI Sweden, the national centre for applied AI, has among other things released a Swedish GPT, called GPT-SW3. GPT-SW3 is an open-source model constructed on extensive text data in Swedish, Norwegian, Danish, Icelandic and English with the purpose of being able to generate Swedish and Nordic languages texts.⁵⁶⁴ AI Sweden is currently developing a multimodal language model to be able to handle images and audio in addition to text. The goal of developing the multimodal language model is to continue to bring Sweden to the forefront of AI development.

AI Sweden has created an AI vision for Sweden. The vision emphasises the necessity of adopting AI technologies to address major societal challenges, improve competitiveness and enhance democratic quality of life. It advocates for an adoption-focused strategy, encouraging significant investment across various sectors to harness AI benefits comprehensively. Key to this approach are bold leadership, cross-sector collaboration and significant investments to ensure wide-ranging benefits and secure Sweden's position as a leader in ethical AI use.⁵⁶⁵ Many discussions concerning AI in Sweden, beside the vision proposed by AI Sweden, centre on similar themes of making AI easily accessible for everyday use, while being well-functioning and in compliance with laws and fundamental rights/ethics.

Definition of AI in Sweden likely to be influenced by EU legislation

We note that no legislative proposals or additional government reports have been published in which an attempt is made at defining AI. Instead, Sweden is likely to

563 *National approach to artificial intelligence* (Government of Sweden, 2018).

564 'GPT-SW3' (AI Sweden), www.ai.se/en/project/gpt-sw3 accessed 21 May 2024.

565 'AI Sweden launches an AI strategy for Sweden' (AI Sweden, 20 March 2024), www.ai.se/en/news/ai-sweden-launches-ai-strategy-sweden accessed 11 June 2024.

follow the European Union's lead with regard to defining the term. The European Parliament adopted the AI Act in March 2024, and the provisions of the regulation will eventually have binding legal force in Swedish jurisdiction. The AI Act defines AI-systems 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 environments.'⁵⁶⁶

This definition aligns with the approach proposed by the Organisation for Economic Co-operation and Development (OECD).⁵⁶⁷ Deviations from such definitions of AI in Swedish legislation are unlikely unless there are changes on a global or European level.

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?

Actual AI tools are used in Sweden in a manner similar to other jurisdictions. Legal AI tools are used by a number of organisations in practice. We can identify several categories of tools that are currently being used.

One such category is tools based on large language models (LLM). Several large and medium-sized law firms have started using Leya, a generative AI assistant built on OpenAI and ChatGPT technology, created by a Swedish startup company. Leya enables users, for example, to assist with legal research, compare contracts and draft legal documents. Concide chat for legal is currently the dominating legal AI tool on the Norwegian market, spreading into the rest of the Nordic countries. Another tool on the rise in the Nordics is Harvey, built on OpenAI and ChatGPT technology.

An emerging additional category of AI technology is data retrieval with the help of AI to handle organisations' legal knowledge management. Information services such as Juno (Norstedts Juridik) are collaborating with legal tech providers to accelerate the utilisation of AI tools for legal research within the Juno database. Qura is another example, where AI is used for legal research within public legal sources.

Lately, we have seen an increased interest in solutions where relevant legal documentation can be found and retrieved within an organisation's information technology (IT) infrastructure with the help of AI software specialised in natural

⁵⁶⁶ Artificial Intelligence Act, www.europarl.europa.eu/doceo/document/TA-9-2024-0138_EN.pdf accessed 13 June 2024.

⁵⁶⁷ *Artificial Intelligence and Responsible Business Conduct* (OECD), <https://mneguidelines.oecd.org/RBC-and-artificial-intelligence.pdf> accessed 21 May 2024.

language processing. One such example is Henchman, a tool which allows for the user to search and find clauses and definitions in the organisation's own database. Henchman can also rank and find suitable wordings for contract drafting, including adjustments from singular to plural as well as translations.

There are also examples of AI tools used for translation, such as DeepL, and transcription, such as Klang.

Aside from the examples mentioned, there are additional examples of AI tools being developed in Sweden, both by law firms and independent legal tech providers, sometimes in cooperation. In a few cases there are also examples of in-house legal development of legal tech.

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

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

and what are these differences?

The main variation between how different actors in Sweden use AI tools is based on their respective capacity in acquiring legal AI services. Large law firms are, as a main rule, the only actors that are able to develop their own legal AI services: they have done so internationally and implemented such services in Sweden as well.

Several 'off the shelf' products are more widely available, for instance, the examples provided under Question 2 above. Such AI products are widely in use by large and medium-sized Swedish law firms (all large and medium-sized law firms asked had invested in AI according to a survey conducted by the Swedish Bar Association's magazine in 2019).

For smaller actors and law firms, the use of AI technology is more unusual, although there are exceptions and niche use cases where even smaller law firms have developed their own AI technology.

For in-house legal counsels, there are several off-the-shelf products available, as well as a few examples of in-house developments such as the example provided under Question 2 above. However, the general AI maturity of in-house legal departments still seems to be somewhat lower than at the large Swedish law firms. In general, companies tend to invest in digitalisation, but not necessarily in legal tech. This causes the legal tech enhancement to lack behind among in-house legal departments.

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

The regulatory approach related to AI has historically not been clearly defined in Sweden, although the work done in the area is increasing gradually. The Swedish government has set out several general goals in its national approach to AI. The general ambition is for Sweden to be a leading country in exploiting the benefits of AI, both through strengthened welfare and increased competitiveness.⁵⁶⁸ Sweden has an ambition to become a world leader in AI technology, and one ambition is for the legislative tempo to be increased and unnecessary regulatory obstacles that prevent digitalisation to be removed.⁵⁶⁹

An area of importance as indicated by the Swedish government and other actors is the creation of and adherence to ethical principles for developing and using AI technology, for instance the guidelines issued by the European Union High Level Expert Group on Artificial Intelligence (AI HLEG). Furthermore, specific Swedish guidelines have been issued by some stakeholders, for instance, the tech industry interest organisation TechSverige.⁵⁷⁰ The Agency for Digital Government (Myndigheten för digital förvaltning, or DIGG) together with other Swedish agencies has released a report on how to promote the ability of public administrations to foster AI⁵⁷¹ and AI Sweden has released AI guidelines based on the principles of Global Impact from the UN.⁵⁷²

Another area of importance that has been identified is the question regarding access and ownership of data, as will be further outlined below. It should also be added that much of the planned regulatory approach for AI in Sweden is coordinated within the framework of the EU, led by the European Commission, to increase harmonisation within the EU and also to increase competitiveness in relation to the rest of the world.⁵⁷³ The Swedish government has expressed the ambition that Sweden should have a high level of competence and participate actively in the regulatory discussion regarding AI on the EU level. The Swedish government was positive to the proposed AI Act presented by the European Commission in April 2021 and eventually adopted by the European Parliament

568 *National approach to artificial intelligence* (Government of Sweden, 2018).

569 *Hur Sverige blir bäst i världen på att använda digitaliseringens möjligheter – en skrivelse om politikens inriktning (How Sweden becomes the best in the world at using the possibilities of digitisation – a letter about the direction of politics*)* (*Publisher's Translation) (Government of Sweden, 21 November 2017), pp 19–20, www.regeringen.se/rattsliga-dokument/skrivelse/2017/11/skr.-20171847/ accessed 13 June 2024.

570 *TechSveriges branschkod för AI (TechSverige's industry code for AI*)* (*Publisher's Translation) (TechSverige, 2023), www.techsverige.se/ittelekomforetagens-branschkod-for-ai/ accessed 21 May 2024.

571 'Slutrapport: Uppdrag att främja offentlig förvaltnings förmåga att använda artificiell intelligens' ('Final report: Mission to promote public administration's ability to use artificial intelligence') (*Publisher's translation) (DIGG), www.digg.se/analys-och-uppfoljning/publikationer/publikationer/2023-01-23-slutrapport-uppdrag-att-framja-offentlig-forvaltnings-formaga-att-anvanda-artificiell-intelligens accessed 21 May 2024.

572 'AI Sweden – Riktlinjer' (AI Sweden), www.ai.se/sv/om-oss/styrning/ai-sweden-riktlinjer accessed 21 May 2024.

573 *White Paper on Artificial Intelligence: a European approach to excellence and trust* (European Commission, 2020), https://ec.europa.eu/info/sites/default/files/commission-white-paper-artificial-intelligence-feb2020_en.pdf accessed 21 May 2024.

in 2024. The government supported the approach, arguing that the proposal is based on human rights, including the right to privacy, freedom of expression, non-discrimination and gender equality, as well as human integrity, the protection of natural persons with regard to the processing of personal data and information and cybersecurity.⁵⁷⁴

In a mapping of the view on regulation among stakeholders, a concern raised is that it is unclear how current rules apply for the use of AI technology, particularly sector-specific legislation.⁵⁷⁵ That could be, for instance, with regards to data protection and the specific rules for healthcare, where there are limitations on the purposes for which personal data can be processed.

In the beginning of 2021, the Swedish state research institute RISE issued 25 recommendations for increased AI adoption in Sweden in its AI Agenda (the 'Agenda') for Sweden.⁵⁷⁶ The legal challenges of AI technology are many and are also discussed in the AI Agenda. The proposal states that laws need to be modernised and adapted to the new reality where AI is a natural part of society. Laws should, according to the proposal, be drafted from a human-centred ethical perspective and it is essential that laws are drafted in a technology-neutral way. The EU is a key player and the proposal stresses the need to adapt EU-level regulation while maintaining data protection. Furthermore, the EU needs to ensure that the legal conditions for experimentation in AI are in place for AI to be effectively introduced into society.

The Agenda identifies some legal issues as particularly important for enabling the use of AI: data protection, patents, liability issues and product safety. It proposes, among other things, that the Swedish Supervisory Authority for Data Protection (Integritetsskyddsmyndigheten) should be tasked with developing simple and clear examples of how personal data can be handled in a legally secure way when using AI, and that responsibility for automated decision-making should be clarified. It is also proposed that legislative changes be made to enable further sharing of data and information.

In June 2021, the Swedish government gave four Swedish authorities the mission to investigate how the public sector can improve its use of AI to strengthen the Swedish welfare system and the global competitiveness of Swedish society. The final report was given in February 2023 and resulted in the following:

574 *Förordning om artificiell intelligens (Regulation on artificial intelligence*)* (*Publisher's translation), (Government of Sweden, 26 May 2021), www.regeringen.se/faktapromemorior/2021/05/2021052021fpm-109/ accessed 11 June 2024.

575 'Slutrapport: Uppdrag att främja den offentliga förvaltningens förmåga att använda AI' ('Final report: Mission to promote public administration's ability to use artificial intelligence*') (*Publisher's translation), (DIGG) pp 29–30, www.digg.se/analys-och-uppfoljning/publikationer/publikationer/2023-01-23-slutrapport-uppdrag-att-framja-offentlig-forvaltnings-formaga-att-anvanda-artificiell-intelligens accessed 11 June 2024.

576 '25 förslag för accelererad AI-användning i Sverige' ('The AI agenda – Accelerated AI use in Sweden*') (*Publisher's translation) (RISE, 2021), www.ri.se/sv/ai-agendan/forslag-for-accelererad-ai-anvandning-i-sverige accessed 21 May 2024.

- a collaborative platform where the deliverables of the AI mission are delivered;
- an AI guide, trust model and information on relevant AI projects;
- two AI building blocks (a translation and transcription service) that are planned to be made available in the ENA structure (the cross-governmental digital infrastructure);
- a policy lab with the aim of investigating how the forthcoming AI regulation can affect AI work in practice; and
- analyses that show a clear need for a joint administrative effort to make an AI infrastructure available to all public actors in Sweden.⁵⁷⁷

Furthermore, in December 2023, the Swedish government appointed an AI Committee to identify the need for and to propose measures that can help strengthen the development and use of AI in Sweden in a sustainable and safe way. More specifically, the mission is to identify the need for and to submit proposals that promote competitive, safe and ethical AI development and AI use in Sweden, identify prioritised international efforts and submit proposals for how Sweden can act proactively and in a coordinated manner in the creation and development of international policies and regulations for AI, analyse and describe how the use of AI can affect and promote Sweden's security and democracy, and if necessary, submit legislative proposals. The final report will be published in July 2025.

To summarise, it is of central priority for the Swedish legislator to assess current legislation from an AI perspective and implement necessary changes. Furthermore, support in the interpretation of legislation is required from courts and public authorities. Access to data, information security and robustness, together with the ethical use of AI, are principles of central importance in the future regulatory approach.

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

Introduction

There are currently no 'AI laws' in Sweden. Historically, the legislative approach in Sweden has been to pass technology-agnostic legislation that does not need to be changed with every advance in technology. As a result, existing legislation can, in many cases, be applied to AI or machine learning systems. However, existing legislation is, in some cases, ill-suited for dealing with the unique challenges

⁵⁷⁷ 'Slutrapport: Uppdrag att främja offentlig förvaltnings förmåga att använda artificiell intelligens' (DIGG).

brought by AI. In some cases, existing legislation has been updated to better deal with the challenges brought by AI.

In this section, an overview of four areas of legislation that are relevant to AI – torts and liability, intellectual property rights, data protection and privacy, and automated decision-making – will be presented. AI technology does not have legal capacity in Sweden (ie, electronic personhood), meaning that the natural and legal persons behind the AI carry all relevant rights and responsibilities related to the AI.

Torts and liability

The primary Swedish legislation governing liability in tort (non-contractual liability) is the Tort Liability Act (Skadeståndslagen). The Tort Liability Act is applicable when a party has suffered injury or damage caused by AI caused by another party's negligent or intentional acts. Furthermore, there must be a causal link between the negligent act and the injury or damage.⁵⁷⁸ However, because AI cannot be held liable under Swedish law, claims for damages must be directed toward the people behind the AI – eg, the programmer, the user or the person responsible for training the AI. Due to the autonomous nature of AI, as well as the black box problem, it may be difficult to establish negligence and a causal link between the actions of the people behind the AI and the injury or damage.

A tortfeasor may be held liable also on other grounds, primarily strict liability, if there is support for such liability in other legislation. This is the case, for instance, for damages caused by defective products under the Product Liability Act (Produktansvarslagen). In most cases, AI technology falls outside the scope of the Product Liability Act because software is not a product under Swedish law. However, if the AI is embedded in a product the Product Liability Act may be applicable to the product.

In 2024, the European New Product Liability Directive (PLD) and the AI Liability Directive are expected to be adopted. The AI Liability Directive contains specific liability rules which are intended to apply when an AI system has been involved in an event leading to damage. The current Product Liability Directive is somewhat outdated and, according to the European Commission, not adapted to the digital and circular economy. Therefore, the European Commission is proposing a series of modernisations to the Product Liability Directive,⁵⁷⁹ to complement the AI Liability Directive. The intention is to cover, for example, damages caused by robots, smart home products and other systems based on AI, and to clarify that these are covered by the provisions of the directive.

578 The legal assessment here may be complicated, but it is essentially a requirement of foreseeability.

579 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.

Intellectual property rights

Three main issues are relevant to the protection of intellectual property rights (IPR) related to AI – protection of data and input, protection of the AI itself, and protection of results and AI generated works. The primary IPR legislation of relevance in relation to AI is the Copyright Act (Upphovsrättslagen). However, other legislation such as the Patent Act (Patentlagen) and the Trade Secrets Act (Lag om företagshemligheter) may, in some cases, also be relevant. Due to the difficulties in protecting IPR related to AI, companies and organisations may choose to protect them as confidential information and trade secrets.

Across the globe, a fierce debate is underway regarding the permissibility of training AI on copyrighted material. The development of AI necessitates the accumulation of vast data sets, often obtained via a process known as ‘web scraping’ using a ‘web crawler tool’. This tool autonomously navigates from one website to another, extracting (or ‘scraping’) the site’s content, which may include both text and images, irrespective of copyright status. According to the Swedish Copyright Act, the unauthorised duplication of copyrighted works is generally prohibited. However, an exception exists for text- and data-mining activities, a provision that AI developers argue encompasses the scraping and training of AI models. This exemption is, however, contested among creatives and some cases in jurisdictions with similar exceptions are currently being tried in court.

The main rule in Sweden is that data, such as industrial or transaction data, is not eligible for copyright protection under Swedish law. However, if data is organised into a database, the database as a whole may be eligible for protection under the Copyright Act. Protecting AI technology under the current copyright framework also poses significant challenges. The Copyright Act protects the AI’s code and algorithms but provides no protection for the idea or concept behind the AI – meaning anyone can create similar AI using different code or algorithms. Finally, works autonomously created by AI are not eligible for copyright protection under the Copyright Act. However, where humans and AI collaborate in the creative process, AI generated works may be eligible for copyright protection.

Data protection and privacy

The primary legislation governing data protection in Sweden is the General Data Protection Regulation (GDPR).⁵⁸⁰ The GDPR is complemented by the Swedish Data Protection Act (Lag med kompletterande bestämmelser till EU:s dataskyddsförordning), and sector-specific regulations such as the Patient Data Act (Patientdatalagen). Training and using AI requires large quantities of data. Where that data is personal data, the need to use large quantities of data comes into conflict with the GDPR and compliance with legislation must be observed.

⁵⁸⁰ 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.

There is yet no clarification on which Swedish authority will have overall responsibility for the AI Act. However, in February of 2024, the Swedish data protection authority (IMY or Integritetsskyddsmyndigheten) issued guidelines on GDPR and the usage of AI. The guideline outlines how GDPR applies when AI involves the processing of personal data, emphasising the necessity to comply with GDPR regulations throughout AI development and deployment. All actions involving personal data, such as collection, storage and processing, must respect GDPR. It addresses the principle of purpose limitation, which restricts data use to explicitly stated and legitimate purposes originally communicated to data subjects, which might be an obstacle for companies that want to use previously gathered and stored data for AI training. Furthermore, it discusses the challenges of data minimisation in AI, stressing the need to balance the amount of data collected, the time it is stored and used against the importance of protecting individuals' privacy.⁵⁸¹ Most likely, further recommendations are to be expected.

IMY has issued a few decisions related to the processing of personal data with the help of AI-systems. In 2019, IMY issued an administrative fine to a municipality that used an AI system to take student attendance in classrooms. IMY stated that the processing of personal data and sensitive personal data was not compliant with Articles 5 and 9 of the GDPR. In a more recent case from 2021, IMY issued an administrative fine to the Swedish Police Authority for using a facial recognition application. The IMY issued the fine on the grounds that the Swedish Police Authority (1) had processed biometric data in breach of the Swedish Criminal Data Act (Brottsdatalagen); (2) had not implemented appropriate technical and organisational measures; and (3) had not carried out a data protection impact assessment relating to using the facial recognition application.

IMY has, in March 2023, finished its first sandbox pilot with Region Halland, Sahlgrenska Universitetssjukhuset and AI Sweden regarding decentralised AI use between two healthcare providers. The entities jointly identified the legal issues on which the guidance should focus, guidance was provided orally on several occasions over a period of a few months in the form of workshops or other dialogue-based formats, and then the work resulted in a public report summarising the reasoning and assessments to enable learning from the pilot case more broadly.⁵⁸²

Sweden has implemented the Open Data Directive⁵⁸³ into Swedish law which will potentially improve free data access in Sweden (see Question 6).⁵⁸⁴

581 21 'GDPR och AI' ('GDPR and AI') (*Publisher's translation) (IMY, 4 June 2024), www.imy.se/verksamhet/dataskydd/innovationsportalen/vagledning-om-gdpr-och-ai/gdpr-och-ai/ accessed 11 June 2024.

582 'Framgångsrik pilot med regulatorisk testverksamhet om AI' ('Successful pilot with regulatory test business on AI') (*Publisher's translation) (IMY, 15 March 2023), www.imy.se/nyheter/framgangsrik-pilot-med-regulatorisk-testverksamhet-om-ai/ accessed 11 June 2024.

583 Directive 2019/1024 on open data and the re-use of public sector information [2019] OJ L172/56.

584 Lag (2022:818) om den offentliga sektorns tillgängliggörande av data (Riksdagen), (Act (2022:818) on the public sector making data available*) (*Publisher's translation)) www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/lag-2022818-om-den-offentliga-sektorns_sfs-2022-818/ accessed 13 June 2024.

Automated decision-making

The main legislation that governs automated decision-making under Swedish law is the GDPR. Under GDPR Article 22, data subjects have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects. GDPR Article 22 paragraph 2 contains some exceptions to the main rule, including, for instance, that automated decision-making is permitted when it is authorised by EU or Member State law, which also lays down suitable measures to safeguard the rights of data subjects.

Following a reform of the Administrative Procedures Act (Förvaltningslagen), Swedish public authorities are permitted to use automated decision-making when making decisions. The change was made to permit automated decision with the ambition to make public authorities compliant with Article 22 of the GDPR.

Planned legislation and legislative initiatives

The majority of legislative initiatives and planned regulations concerning the use of AI and machine learning in Sweden come from the EU.

In 2017, the Swedish government adopted an ordinance permitting the trial of autonomous vehicles on public roads. A year later, the government released its official government report on autonomous vehicles.⁵⁸⁵ The report contains, inter alia, discussions on introducing a new definition for the term 'driver', regulating the obligations and responsibilities of drivers and owners of autonomous vehicles, as well as on introducing new crimes such as 'gross negligence during automated driving on roads'. As of yet, the report has not resulted in any new legislation.

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

Yes, free data access is an issue in relation with AI. Training and using AI requires large quantities of data. One of the main issues preventing free access to data is that there is, as a general rule, little to no IPR protection for data, meaning that data is free to use for anybody with access to the data (see Question 5). Many companies, therefore, try to protect the data as confidential information and as a trade secret in order to maintain a competitive advantage.

Most legislative initiatives to improve free data access have come from the EU. These legislative initiatives include the Regulation on a framework for the free flow

⁵⁸⁵ *Vägen till självkörande fordon – introduktion (The road to self-driving vehicles – introduction*)* (*Publisher's translation) (Swedish Government Official Reports, 7 March 2018), www.regeringen.se/rattsliga-dokument/statens-offentliga-utredningar/2018/03/vagen-till-sjalkvkorande-fordon---introduktion/ accessed 13 June 2024.

of non-personal data in the EU,⁵⁸⁶ the Open Data Directive, the DSM Directive,⁵⁸⁷ the second Payment Services Directive (PSD2), and the newly adopted Data Act.⁵⁸⁸ Further initiatives on free data access are likely to come after the elections for the European Parliament in June 2024.

Improving access to data in relation to AI is important to the Swedish government. In its national approach to AI, the Swedish government states that:

'Access to data is the lifeblood of AI and a crucial part of the infrastructure [...] Appropriate frameworks of principles, norms, standards and rules are therefore important prerequisites if Sweden is to realise the benefits of AI in society. Such frameworks must balance fundamental needs for privacy, ethics, trust and social protection with access to the data needed to realise the potential of AI.'⁵⁸⁹

In June 2022, Swedish legislation implementing the Open Data Directive entered into force.⁵⁹⁰ This legislation enhances the availability of public sector data for reuse, particularly in open data formats, while safeguarding information security and the protection of personal data. It is applicable to governmental bodies and select public enterprises, with exceptions for cultural, educational and public service broadcasting entities.

Data must be made available in existing formats or, where practical, in open, machine-readable formats accompanied by relevant metadata. Priority datasets are to be accessible either through direct interfaces or via bulk download options, and dynamic data should be disseminated promptly or within a reasonable timeframe. Conditions for reuse can only be imposed when they are justified by public interest and must be objective, proportionate and non-discriminatory.

Exclusive rights to reuse data may be granted if necessary for providing a service of general public interest, with contract terms published digitally and reviewed every three years. Authorities and public companies may charge fees for data provision, not exceeding the costs of reproduction, provision, dissemination and anonymisation of personal data. Research data and valuable datasets should be provided free of charge, with some exceptions.

The increase in the accessibility of public sector data in open and machine-readable formats is expected to promote the development and application of AI

586 Regulation (EU) 2018/1807 on a framework for the free flow of non-personal data in the European Union [2018] OJ L303/59.

587 Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market and amending Directives 96/9 and 2001/29 [2019] OJ L130/92.

588 Directive (EU) 2015/2366 on payment services in the internal market, amending Directives 2002/65, 2009/110 and 2013/36 and Regulation (EU) 093/2010, and repealing Directive 2007/64 [2015] OJ L337/35.

589 *National approach to artificial intelligence* (Government of Sweden, 2018).

590 Lag (2022:818) om den offentliga sektorns tillgängliggörande av data (Riksdagen).

technologies. This enhancement is likely to stimulate innovation and improve the efficacy of public services by providing richer datasets for algorithm training.⁵⁹¹

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 authors' knowledge, there are not yet any legal cases in Sweden regarding the provision of legal services or other sectors of relevance related to the use of AI.

It should be added that there are few limitations on how legal services can be provided in Sweden, with no restrictions on actors not admitted to or acting under the supervision of the Swedish Bar Association. Actors are generally free to provide legal advice and services, including with the help of technology, with potential legal disputes expected to be ruled by the normal civil law legislation related to contracts and torts.

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?

As mentioned above, there are generally few regulatory limitations in Sweden with regards to the provision of legal services. What is regulated is generally the procedures of court and the lawyers practising under the supervision of the Swedish Bar Association (membership of which in general, with a few exceptions, is not compulsory for the provision of legal services in Sweden). What could be expected is an oversight of the Swedish procedural legislation for courts in conjunction with possibility to use AI technology in Swedish courts. A governmental inquiry has already been made into public authorities' use of AI for making legally binding decisions and how the legislation should be adapted.⁵⁹²

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

The Swedish Bar Association has yet to give recommendations specifically on the use of AI technology. The bar association has, however, discussed questions regarding AI in its podcast *Advokatsamfundspodden*, as well as in its monthly

591 Prop. 2021/22:225.

592 *Juridik som stöd för förvaltningens digitalisering (Law as support for the digitisation of administration*)* (*Publisher's translation) (Swedish Government Official Reports), www.regeringen.se/rattsliga-dokument/statens-offentliga-utredningar/2018/03/sou-201825/ accessed 21 May 2024.

magazine *Advokaten* (in issue 4 from 2023 and issue 2 from 2024).⁵⁹³ The bar association did not make any recommendations in the magazine for lawyers acting under the bar.

Of related significance are the guidelines on how lawyers under the bar can use external information technology (IT) services,⁵⁹⁴ which may have an impact on the use of AI since many Swedish law firms use off-the-shelf products that often are provided as cloud services. 'A question of importance is, for instance, storage of confidential information related to clients, where adequate protection must be ensured both from a regulatory and technical perspective. This is especially the case where information is stored in countries other than Sweden, as could be the case when legal tech service providers are being used by a lawyer/law firm. The guidelines have not, however, been updated since 2019.

593 'Advokatsamfundspodden: Hur ska advokater använda AI?' ('The Bar Association Podcast: How should lawyers use AI?') (*Publisher's translation) (*Advocat*, 28 September 2023), <https://www.advokatsamfundet.se/Nyhetsarkiv/2023/september/advokatsamfundspodden-hur-ska-advokater-anvanda-ai/> accessed 13 June 2024; 'Tekniken skapar möjligheter – men många faror lurar' 'Technology creates opportunities – but many dangers lurk') (*Publisher's translation) (*Advocat*), www.advokaten.se/tidigare-nummer/2023/nr-4-2023-argang-89/tekniken-skapar-mojligheter--men-manga-faror-lurar/ accessed 21 May 2024; 'Mellan juridisk fixering och flexibilitet i den europeiska AI-förordningen' ('Between legal fixation and flexibility in the European AI regulation') (*Publisher's translation) (*Advocat*), www.advokaten.se/tidigare-nummer/2024/nr-2-2024-argang-90/mellan-juridisk-fixering-och-flexibilitet-i-den-europeiska-ai-forordningen/ accessed 21 May 2024.

594 *Uppdaterad vägledning om användningen av externa IT-tjänster i advokatverksamhet (Updated guidance on external IT services in law practice*)* (*Publisher's translation) (Swedish Bar Association (Advokatsamfundet), 15 April 2019), www.advokatsamfundet.se/Nyhetsarkiv/2019/april/uppdaterad-vagledning-om-externa-it-tjanster-vid-advokatverksamhet/ accessed 11 June 2024.