

IN-DEPTH

# Artificial Intelligence Law

FRANCE



LEXOLOGY

# Artificial Intelligence Law

EDITION 1

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In Depth: Artificial Intelligence Law is a perceptive global overview of the fast-evolving state of law and practice surrounding artificial intelligence (AI) systems and applications. Focusing on recent developments and their practical implications, it examines key issues including legislative initiatives, government policy, AI risk management principles and standards, enforcement actions and much more.

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**Generated: January 17, 2024**

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# France

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## Summary

INTRODUCTION

YEAR IN REVIEW

LEGISLATIVE AND REGULATORY FRAMEWORK

MANAGING AI RISKS AND IMPACTS

ENFORCEMENT

LEGAL PRACTICE IMPLICATIONS

OUTLOOK AND CONCLUSIONS

ENDNOTES

## Introduction

Currently, France does not have a dedicated law regulating artificial intelligence (AI) or the AI industry. The French government and regulatory authorities have, however, been actively participating in the EU level discussions regarding AI regulation, including the legislative process of the EU Artificial Intelligence Act (the EU AI Act).<sup>[2]</sup> As a matter of national policy, the current French administration emphasises 'digital sovereignty' and seeks to encourage the development of a home-grown AI industry especially through start-ups developing and using innovative AI technology.

Although there is no dedicated legislation applicable to AI, Law No. 2016-1321 of 7 October 2016 for a Digital Republic aims, among other things, to foster innovation and encourage the development of the digital economy and has mandated the French Data Protection Authority (CNIL) to study the ethical issues and societal questions raised by the development of relevant technologies. Since 2017, the CNIL has actively been engaging in identifying ethical and legal issues related to AI, overseeing cases involving its use, publishing tools and resources to improve the understanding of AI, and managing associated risks as part of this mission. Moreover, the CNIL is likely to continue to take a leading role in AI regulation in France, as the French Supreme Administrative Court has recommended that the CNIL continue to be the primary regulatory authority for AI upon the adoption of the EU AI Act.

In France and Europe, therefore, the CNIL has been at the forefront of policy and legislative discussions regarding AI. True to its role as a national data protection authority, the CNIL takes a strong fundamental rights-focused approach, most particularly guided by principles related to the protection of privacy and personal data. In January 2023, the CNIL created a dedicated AI Department (AID) comprising five CNIL agents, including legal experts and engineers. The main missions of the AID will be:

1. improving the understanding of AI systems;
2. strengthening the CNIL's expertise for the identification and prevention of privacy risks related to the implementation of AI systems;
3. preparing for the implementation of the future EU AI Act; and
4. developing relationships with other stakeholders in the AI ecosystem.

In its work regarding AI, the CNIL generally aligns itself with the approach towards AI adopted by EU bodies. For example, in its official glossary, the CNIL defines AI as a logical and automated process that generally relies on an algorithm capable of performing well-defined tasks, but the glossary also mentions the European Parliament's definition of AI alongside its own.

## Year in review

### i Technology

The AI industry is developing on a global basis, with regional and local divergence driven predominantly by policy and regulatory factors, rather than technical factors. The headline trend of the past year, both in France and globally, has been the proliferation of accessible generative AI systems. This new world of generative AI has given rise to intense and divisive debate at policy, regulatory and social levels in an array of areas from individual privacy and the protection of human creativity to existential questions of truth and reality. More recently, enterprise integration has emerged as a key technological shift, as the main providers in the enterprise software-as-a-service and platform-as-a-service markets integrate generative AI systems into their core products.

Overall, France's AI industry is characterised by the dominance of public entities and development of AI systems related to the health and medical sciences, transport and security sectors. In the past year, in addition to the general adoption of generative AI tools and continued development in the above-mentioned fields, France has actively pushed for the development of open-source AI, bringing together developers and researchers to build open-source French-language large language models (LLMs) and other generative AI models.

## **ii Developments in policy and legislation**

Fostering the home-grown AI industry has been a priority area for the government in recent years. France adopted the National AI Strategy for the development of AI in 2018, to support its goal of establishing France as a leader in AI innovation by 2030. The National AI Strategy seeks to create a foundation for long-term development of the AI ecosystem in France, serving all stages of the AI development life cycle from research to supporting market launch and deployment.

As part of the National AI Strategy, France dedicated close to €1.5 billion over the first phase, spanning from 2018 to 2022, to foster the creation and development of an interdisciplinary network of institutions and an increase in research activities more generally. For the second phase, launched in November 2022, the government has dedicated a budget of €2.22 billion for the diffusion of AI technology in the French economy with a view to fostering development and innovation in priority areas, such as integrated and generative AI. Multiple public calls for projects have been launched to this end, as well a heavy investment programme supporting small and medium-sized enterprises and training new talent. Most recently, the Prime Minister launched the Committee for Generative AI, to bring together stakeholders from various sectors to provide input on adapting the government's AI strategy.

As noted in the introduction, France currently does not have a dedicated AI-related regulatory regime but is actively participating in the discussions at EU level regarding the EU AI Act. At the national level, the CNIL has been actively formulating policy documents on the legal and ethical considerations implicit in the use of AI, including but not limited to privacy and data protection. The CNIL seeks to encourage and lead the development of soft law in the form of guidelines, including the provision of concrete recommendations, technical guidance and best practice advice. This approach is intended to provide greater legal certainty while preventing over-reliance on restrictive regulations, whereby French actors can benefit from clear, practical –and reliable – guidance.

### **The CIL practical guidelines**

As part of these efforts, in October 2023, the CNIL published a set of practical guidelines dedicated to the development phase of AI, in particular the constitution of data sets for AI training.<sup>[3]</sup> The CNIL emphasises that the development and use of AI systems, including generative AI, can be compatible with the protection of privacy and be aligned with European values. To facilitate the development of these AI tools and applications, the CNIL has proposed a set of practical guidelines to provide stakeholders with clear and practical advice on ensuring compliance with data protection laws.

The set of guidelines comprises nine different documents, each dedicated to a data protection topic such as the identification of the applicable legal regime, the determination of the purpose of processing, ensuring that the processing is legitimate, and conducting a privacy impact analysis. Each of the guidelines includes practical examples and hypothetical scenarios to assist stakeholders in applying data protection principles and best practice to their specific use cases.

The guidelines are open for public consultation until 15 December 2023 to further encourage stakeholder participation.

### **The CNIL regulatory sandbox**

In July 2023, the CNIL also launched a regulatory sandbox dedicated to AI projects. Mindful of the increasing use and development of AI, particularly generative AI, the CNIL launched a call for projects using AI for the benefit of public services, in particular to improve the quality of and facilitate access to public services, and to assist public servants. Both public and private entities were invited to participate. The call for projects, which ended on 30 September 2023, mainly targeted projects under development, rather than those that are already operational or marketed.

This regulatory sandbox dedicated to AI is the third in the CNIL's series of regulatory sandboxes, accompanying participants through a six-month support phase during which issues and working methods are identified, an implementation phase and, finally, a 'return to ecosystem' phase, during which a summary of work and recommendations made in relation to the projects are published.

### **The CNIL self-assessment guide for AI systems**

In April 2022, the CNIL published a self-assessment guide<sup>[4]</sup> including a series of checklists with explanations to assist providers or users of AI systems in complying with data protection obligations. The self-evaluation guide comprises a series of nine documents, including practical guidance covering the entire life cycle of AI system use, from the decision to use AI systems, collecting training data, developing an algorithm and using an AI system in production to ensuring the security of data processing, guaranteeing data subject rights and maintaining accountability documents.

### **iii Cases**

As one of the most active European data protection authorities, the CNIL has also been engaged in investigations and enforcement against actors in the AI industry.

## Investigation into OpenAI

The CNIL is currently participating in the EU task force on ChatGPT. It was reported that the CNIL had opened an investigation into ChatGPT after receiving several complaints, including one from a Member of the French Parliament. In February 2023, the CNIL carried out a demonstration of ChatGPT during its plenary session. In May 2023, the CNIL also expressly mentioned foundational models (including LLMs such as ChatGPT) as presenting a major challenge in the design and use of AI tools that comply with data protection and privacy principles.

## CNIL sanction of Clearview AI

On 20 October 2022, the CNIL imposed a penalty of €20 million on Clearview AI and ordered it to stop collecting and using data on individuals in France. Clearview AI is a facial recognition service provider based in the United States, which collects photographs from public websites, including social media. The CNIL had launched an investigation into Clearview AI in May 2020 subsequent to complaints from individuals about Clearview AI's facial recognition software. The CNIL found that Clearview AI was in breach of the EU General Data Protection Regulation (GDPR)<sup>[5]</sup> for unlawful processing of personal data (processing personal data without a valid legal basis) and failure to take into account the rights of individuals. As a result, the CNIL issued a formal notice against Clearview AI on 26 November 2021 to cease processing personal data of persons on French territory and to facilitate the exercise of data subject rights, including complying with requests to erase personal data relating to them. As Clearview AI did not respond to the formal notice, the CNIL imposed a financial penalty of €20 million and a daily penalty of €100,000 for each day of delay in complying with the order. Clearview AI was given two months to comply with the order and to prove compliance to the CNIL. On 13 April 2023, the CNIL found that Clearview AI had not brought itself into compliance and it imposed a further €5.2 million fine on the company for the daily penalties.

## Legislative and regulatory framework

As at October 2023, France has not enacted any AI-specific laws, but the following EU-level proposals aiming to ensure that AI systems are safe and trustworthy are currently being discussed.

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### i EU AI Act

This proposed EU regulation<sup>[6]</sup> aims to ensure AI systems are safe, transparent and non-discriminatory. The European Commission's proposal, most recently amended by the European Parliament in June 2023, categorises AI systems into four risk levels: unacceptable, high, low and minimal. It bans certain practices, imposes strict controls on high-risk AI, mandates transparency for low-risk AI and sets minimum standards

for minimal-risk AI. The legislative process is ongoing, including discussion of the European Parliament amendments (aligning definitions with the Organisation for Economic Co-operation and Development, adjusting risk categories and setting obligations for generative AI). The EU AI Act is expected to be passed before June 2024, with full implementation expected by mid-2026.

## ii Product Liability Directive revision

This revision is to update EU rules to cover AI-related risks, redefining 'product' to include AI systems, addressing liability for AI defects, clarifying supply chain responsibilities and discussing insurance and compensation. The timeline for implementation is still in flux.

## iii AI Liability Directive

The EU is considering a new directive for AI-specific liability issues, focusing on definitions, a risk-based liability approach, accountability, insurance and oversight. The timeline for adoption has not been set.

In France, in the absence of specific AI regulations, existing laws on, inter alia, contract and tort liability, data privacy, intellectual property and employment are used to assess risks related to AI technologies (see Section IV). Sector- and industry-specific laws and regulations will apply in addition to the general rules for any use of AI in regulated sectors.

Because of the importance of personal data use in the development and use of AI models and systems, and the active involvement of the CNIL in regulating AI, the most relevant pieces of legislation currently applicable to AI in France are the French Data Protection Act (DPA)<sup>[7]</sup> and the GDPR, including any sectoral or implementing French law or decree, derogating to or supplementing the GDPR. The DPA and the GDPR will apply to the processing of personal data occurring in the context of AI development and use in France.

AI developers and service providers providing AI models and systems to consumers will also need to be mindful of the provisions of the French Consumer Code, which imposes, among other things, a number of mandatory disclosure requirements, legal guarantees and refund requirements for digital content and services provided to consumers electronically.

# Managing AI risks and impacts

## i Fairness, bias and discrimination

In France, the issue of bias and discrimination is primarily addressed under anti-discrimination laws, which apply to AI systems.

Discriminations based on race, ethnicity, religion, sex or other protected characteristics are prohibited.<sup>[8]</sup> This can apply to AI if, for example, an AI system used in hiring processes systematically disadvantages candidates from a certain demographic.

French labour law<sup>[9]</sup> provides protections against discrimination in hiring, promotion and working conditions. Therefore, employers using AI for these purposes need to ensure



compliance with the regulations and exercise due care such that any use of AI does not result in discriminatory outcomes.

On 16 May 2023, the CNIL published its action plan for the deployment of AI systems that respect the privacy of individuals.<sup>[10]</sup> In this action plan, the CNIL states that the regulation of AI is a main focus of its actions, which will be structured around four objectives, including understanding the functioning of AI systems and their impacts on people.

The CNIL further provided a list of six new questions raised in relation to AI tools and data protection, including the following:

1. the fairness and transparency of the data processing underlying the operation of these tools;
2. the consequences for individuals' rights to their data, in relation both to data used to train models and to content created by AI systems; and
3. protection against bias and discrimination.

Regarding potential discrimination and bias in the use of AI systems, the CNIL has not only warned of possibilities of this kind when training and using generative AI models but has also published dedicated guidance regarding use of algorithms and AI in relation to human resources. In particular, the CNIL highlights that use of AI can lead to discriminatory practices even if directly discriminatory data are not used, and it recommends that companies always keep a 'human in the loop', they clearly inform employees when decisions concerning them are made through automated means, and they ensure explainability and explore methods guaranteeing the absence of bias when designing algorithms.

## ii Quality and performance

AI systems, especially those based on machine learning, can be characterised as black box models (i.e., complex systems or devices whose internal workings are hidden or not readily understood). This can lead to uncertainty about whether the system will perform as expected or promised, in addition to raising issues related to explainability. Therefore, it is particularly important to ensure that specifications and expected results are clearly stipulated in any contracts related to AI systems, in order to obtain appropriate remedies in the event of non-performance or defective performance, as provided under French law.

Under the DPA and the GDPR, personal data must be accurate and kept up to date. Quality of personal data is a particular point of attention, especially for the use of generative AI. The generation of responses regarding individuals (either identified or identifiable) must be accurate in order to comply with data protection obligations under French law. For example, a generative AI system providing false information regarding an individual when a user inputs a question related to that individual would potentially be in breach of the principle of accuracy of personal data. AI-related errors can occur not only when the system outputs false information but also when the system inadvertently answers a 'different' question from that asked by the user, as a result of misinterpreting the question itself.

On the technical side, the French Standardisation Association, AFNOR, has been actively participating in the development of standards regarding AI, including ISO/IEC 42001

regarding AI management systems, and ISO/IEC 24029-1 and ISO/EIC 24029-2 regarding the assessment of robustness of neural networks. Furthermore, the CNIL's guidance on AI systems supports compliance with standards and norms, including ISO and IEEE standards, certification by organisations and independent authorities such as the National Authority for Health, and best practice and codes of conduct.

### **iii Transparency and disclosure**

Transparency and the information of data subjects is a recurring theme in the CNIL's guidance regarding use of AI systems.

As disclosure of information regarding personal data processing is a legal obligation under the DPA and the GDPR, collection and processing of personal data at any stage of the development and use of AI systems must comply with extensive transparency obligations, including but not limited to the disclosure of the fact that personal data is being processed, the purpose of processing, the data processed, any recipients of the personal data, and data subject rights. Therefore, information notices complying with GDPR transparency requirements must be disclosed, and policies and procedures ensuring the effective exercise of data subject rights must also be implemented, as the CNIL often evaluates compliance with transparency obligations in conjunction with ensuring the effective exercise of data subject rights.

As the training of AI models often involves the processing of massive datasets using personal data that are not collected directly from the individual subjects of this personal data, fulfilling transparency obligations can be particularly challenging. AI developers should ensure that the personal data in training sets they use were collected in compliance with transparency requirements, and they should consider documenting steps taken to fulfil transparency requirements or, alternatively, document and justify the proposition that informing data subjects would involve disproportionate efforts.

An important aspect of the transparency obligation is also ensuring that users are aware that they are interacting with an AI system. The CNIL has specifically warned about the use of generative AI chatbots, stating that clear information must be provided to the user that they are interacting with a machine. This is particularly important in relation to the right to object to automatic decision-making as guaranteed under the DPA and the GDPR. AI system users and providers should ensure, as best practice, that there is a human in the loop when a decision is being taken that can impact on the rights and freedoms of a data subject, and should disclose to end users and data subjects the extent of decisions taken through automated means such as AI systems, and their right to object to such decisions.

When AI systems are provided directly to consumers, extensive pre-contractual information and disclosure requirements under the Consumer Code apply in addition to transparency requirements imposed by data protection laws. For example, if AI systems are provided electronically, at a distance, to consumers, suppliers must provide information regarding the supplier's identity, the price, the services provided, legal guarantees and the right to refund.

The use of AI systems by a company could also lead to certain issues with the company's suppliers or customers. The black box nature of AI could lead a counterparty to question the nature of the content generated by the AI system. In addition, care must be taken to ensure that any content or services provided through the use of AI is identified as such.

## iv Intellectual property

French intellectual property (IP) law is evolving to address the unique challenges posed by AI systems.

### Authorship and ownership of output content

Under French IP rules, authorship requires a human creator.<sup>[11]</sup> As an AI system is not a physical person and does not have legal personality, it cannot be considered an author or owner of IP rights. Therefore, French legal scholars are still debating whether IP rights to AI-generated output would vest in (1) the human user, or (2) the entity that created or commissioned the AI. In practice, this question is settled through parties contractually agreeing as to the party in which the IP rights to AI generated output would vest. Note that, unless otherwise agreed, for software created by an employee in the execution of work duties or following the employer's instructions, the employer is considered the author.<sup>[12]</sup>

Consequently, if the generated output content includes text, images, code or other elements that infringe third-party IP rights, the human user or the entity that created or commissioned the AI (whichever is considered to be the AI owner) may be held liable for copyright infringement.

### Underlying issues with the use of input data content

AI systems often rely on pre-existing works to operate or create new content. French law mandates that use of existing protected works must respect the rights of the author.<sup>[13]</sup>

Databases are often crucial for AI systems, and *sui generis* protection under the French Intellectual Property Code provides the producer of a database with exclusive rights for extraction and reutilisation of the database content. Such rights are especially relevant for AI systems and models that process or are based on large datasets.<sup>[14]</sup>

The risk of third party IP infringement can be realised if the input data uploaded by an AI system user are:

1. subject to copyright protection or are otherwise proprietary; and
2. the relevant IP rights are owned by a third party and the AI system user has no rights over or licence to use the input data.

It cannot be excluded that even mere incorporation by reproduction of an IP protected work (e.g., copyrighted work) into the input data could be considered IP infringement in certain circumstances.<sup>[15]</sup>

Use of IP protected work as input data without the permission of the IP rights holder could then be considered infringement of IP rights unless there exists an exception<sup>[16]</sup> on which the AI user may rely; for example:

1. the non-profit use of the protected content within the 'family circle' (which could not apply for professional purposes, for example); or

2. the use of only a 'short excerpt' of the protected content for an authorised purpose, provided that the IP right holder is being clearly credited (note that such authorised purposes must relate to, notably, pedagogic or scientific works or works of criticism).

## v Liability

The French law liability framework, as embodied in the French Civil Code, rests on the twin pillars of contractual liability and tort liability.

Contractual liability arises when there is a breach of a contractual obligation and the parties to a contract have predefined their rights and duties. If an AI system fails to perform as contractually stipulated, the party responsible for the AI could be held liable for breach of contract. For instance, if an AI system used in manufacturing fails to perform, resulting in, for instance, a failure to deliver products on time, the supplier of that AI system could face claims for damages under the terms of the contract.

Tort liability, on the other hand, is not dependent on the existence of a contract and can be invoked by any individual who suffers harm because of the actions or omissions of another. In the context of the use of AI systems, this could encompass a wide array of situations, such as a self-driving vehicle causing an accident or an AI system making a faulty medical diagnosis. The injured party must establish fault, damage and a causal link between the two to succeed in a tort claim.

Within these broad categories, French law recognises several specific types of liability that could apply to AI systems:

1. Product liability – governed by both the Civil Code and the EU Product Liability Directive,<sup>[17]</sup> this applies when damage is caused by a defective product. If an AI system embedded within a product is defective and causes harm, the producer of that product may be held liable.
2. Manufacturer liability – similarly to product liability, this holds manufacturers responsible for damage caused by defects in their products. However, with AI systems, determining who is the 'manufacturer' (e.g., the developer of the AI system or the producer of the hardware) can be complex.
3. Strict liability – for certain activities deemed hazardous, French law imposes strict liability on the operator. With the integration of AI systems into such activities (e.g., the operation of drones), the operator could be strictly liable for any resulting damage.
4. Negligence – if an entity fails to exercise due care in the deployment or maintenance of an AI system, and this failure results in harm, they may be held liable for negligence.

In the context of an employment relationships, employers providing AI systems for use by employees should be aware that in the event of damage caused to any third party as a result of the use of AI systems by the employees, the employer is likely to be held exclusively liable.

Under French law, employers are indeed deemed liable for damage caused by their employees. This presumption can only be overturned if it can be proved that the employee who has caused damage to a third party has committed a fault unrelated to the employee's duties, without authorisation and for purposes unrelated to work duties, or has committed an intentional criminal or civil offence.

Furthermore, specific sectors such as healthcare, finance and transportation have detailed regulations that may impose additional or specific liability considerations for the use of AI systems.

The landscape of AI liability in France is, however, under pressure to evolve. The rapid development of AI technology challenges the capacity of traditional liability rules to provide adequate remedies. Questions around autonomy, decision-making processes and the potential lack of foreseeability associated with AI-generated outcomes necessitate an updated or wholly new liability framework. In anticipation, French legal scholars and practitioners are actively engaging with these issues, while keeping a close eye on developments at EU level, notably the proposed EU AI Act and its implications for liability regimes across Member States.

As French law currently stands, anyone operating AI systems must exercise due diligence in their deployment and use to ensure compliance with existing laws, and must be prepared to face conventional liability risks, albeit in relation to potentially unconventional scenarios presented by AI.

## **vi Consumer protection**

The general framework for consumer protection is laid out in the Consumer Code, which outlines the rights of consumers and the obligations of businesses towards them. While the Consumer Code does not address AI specifically, its broad provisions are applicable to AI-related transactions and services.

At the heart of consumer protection is the principle of fairness, which requires that consumers be treated equitably and not be subject to misleading or aggressive commercial practices. When it comes to AI, compliance with this principle is of particular importance, notably in relation to online contracts, automated decision-making and personalised pricing (i.e., areas where AI is increasingly prevalent and presents increased risks of unfairly disadvantaging consumers because of information asymmetry and lack of choice).

The Consumer Code mandates that businesses and professionals provide clear information to consumers. Providers of AI-based products or services must inform consumers about the commercial nature of the content, the parameters that determine personalised pricing and the existence of any automated decision-making, including profiling.

Moreover, consumers have a right to contractual information being presented in a clear and understandable manner. With AI, the complexity of algorithms can make transparency challenging. Nevertheless, businesses must strive to simplify the information so that the average consumer can comprehend the essentials of the AI system with which they are engaging.

In terms of safety and liability, French consumer law ensures that products meet safety standards, and this applies to software or digital services. Should an AI system cause harm

to a consumer, that consumer would have the right to seek remedies under product liability rules. Moreover, in addition to any commercial guarantees that may be provided by the service or content providers, consumers have recourse against defective digital services through legal guarantees of conformity applicable to digital content and services, which could cover a range of AI applications.

French law protects consumers against unfair terms in consumer contracts, which could potentially cover scenarios where consumers are locked into asymmetrical contracts by AI-based systems or where their rights are limited by terms that are not clear or fair.

Consumers harmed by AI systems could seek judicial redress and businesses could be held accountable for not adhering to consumer protection standards. French authorities such as the Directorate General for Competition Policy, Consumer Affairs and Fraud Control are vigilant in overseeing the marketplace and enforcing these rules.

## **vii Accountability and data protection principles**

In addition to requirements outlined above, the DPA and the GDPR set out important principles and obligations that are particularly relevant to the development and use of AI models and systems.

In particular, developers and providers of AI systems should ensure that they comply with the data minimisation principle and ensure that any personal data processing is adequate, relevant and limited to what is necessary in relation to the purposes for which the data are processed. Developers and providers must also ensure that the processing of personal data for the development and use of AI systems is legitimate by identifying the most appropriate legal basis for the processing activities (e.g., contractual necessity, legitimate interest, consent). Regarding AI systems trained on or using special category data such as health data, data involving political opinions or ethnicity information, an additional legal basis for the processing of the special category data must be identified. Compliance with all data protection obligations and, as best practice, the design and deployment process of the AI systems should be carefully documented in accordance with the principle of accountability.

Furthermore, as AI systems are likely to involve the processing of large datasets and technological innovation, developers, providers and users of AI systems should analyse whether a data protection impact assessment is required under the DPA and the GDPR and implement it as necessary.

## **viii Other**

### **Employment law**

Use of AI in the employment context may trigger certain obligations under the French Labour Code. For example, the implementation of a new technological tool for employee monitoring within a company requires a mandatory prior consultation with the works council where there is one. The mandatory consultation process is required even if the tool simply allows employee monitoring; this means that even if the tool is not intended to be used for

employee monitoring purposes, the mere fact of it making employee monitoring possible will trigger the consultation obligation.

## Enforcement

### Public enforcement

As there is currently no dedicated regulatory regime regarding AI under French law, public enforcement efforts related to AI are led by the CNIL, which carries out investigations and enforcement actions based on data protection laws. Recent enforcement actions by the CNIL are discussed in greater detail in Section II.iii.

## Legal practice implications

In France, a survey<sup>[18]</sup> has found that 80 per cent of legal professionals believe that generative AI tools will enhance their work efficiency. This survey included lawyers, corporate legal officers, notaries and other legal experts. These professionals are witnessing a significant shift in their field as generative AI changes the way they conduct research, draft documents and perform complex tasks with a new level of precision.

The real revolution is not in algorithms per se but in the quantification of the legal world and its processing by algorithms, replacing deductive with inductive logic.

Lawyers today cannot overlook the field of 'jurimetrics', which involves the use of predictive justice data to prepare cases, negotiate or persuade a court. Certain firms have partnered with IT vendors to develop tools for quantifying the uncertainty in trademark infringement litigation.

The use of AI could also increase professional responsibility risks for lawyers. Clients might raise liability issues with their lawyers for not informing them about jurimetrics data indicating a low probability of winning a case or, conversely, for not leveraging all their skills to win a supposedly unlosable case as suggested by statistics.

While the adoption of AI in law promises many advantages, it also raises important ethical and security concerns, including those around privacy and professional responsibility.

## Outlook and conclusions

The AI regulatory landscape in France is in flux and largely unsettled because of the legislation currently in the process of being adopted and negotiated at EU level. In the interim, and in the absence of dedicated laws and regulations at national level, general, non-sector-specific laws continue to apply to the development and use of AI systems.

Of particular note are the DPA and the GDPR, which govern the processing of personal data in the entire life cycle of AI development and use, as well as IP laws that are being actively used by various stakeholders, namely in relation to the use of generative AI to create content. Entities providing AI systems to consumers should also be mindful of French consumer protection laws, which impose specific obligations, including disclosure

and refund requirements for the provision of digital content and services provided electronically.

## Endnotes

- 1 Jean-Luc Juhan and Myria Saarinen are partners and Daniel Martel and Alex Park are associates at Latham & Watkins LLP. [^ Back to section](#)
- 2 Proposal for a regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain Union legislative acts, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52021PC0206>. [^ Back to section](#)
- 3 <https://www.cnil.fr/en/artificial-intelligence-cnile-opens-consultation-creation-datasets-ai>. [^ Back to section](#)
- 4 <https://www.cnil.fr/en/self-assessment-guide-artificial-intelligence-ai-systems>. [^ Back to section](#)
- 5 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 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/EC (General Data Protection Regulation). [^ Back to section](#)
- 6 COM(2021)206 – Regulation: Harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain Union legislative acts. [^ Back to section](#)
- 7 Law No. 78-17 of 6 January 1978, as amended. [^ Back to section](#)
- 8 Criminal law: under Articles 225-1 to 225-4 of the French Criminal Code. [^ Back to section](#)
- 9 Articles L1132-1 and following of the French Labour Code. [^ Back to section](#)
- 10 <https://www.cnil.fr/en/artificial-intelligence-action-plan-cnile>. [^ Back to section](#)
- 11 Article L. 111-1 of the French Intellectual Property Code. [^ Back to section](#)
- 12 *ibid.*, Article L. 113-9. [^ Back to section](#)
- 13 *ibid.*, Article L. 122-4. [^ Back to section](#)
- 14 *ibid.*, Article L. 341-1. [^ Back to section](#)
- 15 *ibid.*, Article L. 335-3 with respect to copyrighted work. [^ Back to section](#)



- 16 *ibid.*, Article L. 122-5 with respect to copyrights. [^ Back to section](#)
- 17 Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products. [^ Back to section](#)
- 18 LexisNexis: La Semaine Juridique Edition Générale No. 37, 18 septembre 2023, doct. 1044. [^ Back to section](#)

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