

IN-DEPTH

Artificial Intelligence Law

PORTUGAL



LEXOLOGY

Artificial Intelligence Law

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Contributing Editors

Karen Silverman and **Brinson Elliott**

The Cantellus Group

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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Explore on **Lexology** 

Portugal

Magda Cocco and **Iakovina Kindylidi**

Vieira de Almeida & Associados

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Introduction

i Artificial Intelligence regulatory landscape

Artificial Intelligence (AI) is not subject to uniform regulation in Portugal; however, this should not be seen as a regulatory gap. Rather, the existing legal landscape encompasses both horizontal and sector-specific regulations at the national and EU levels, which are applicable to AI systems. Importantly, any forthcoming EU-wide regulatory initiatives, will significantly shape the regulatory environment for the AI industry in Portugal. In this regard, as an EU Member State, Portugal is on the cusp of the first comprehensive law on AI in the world: the European Commission's proposal for a regulation laying down harmonised rules on AI – the Artificial Intelligence Act (AIA).^[2] Once finalised, the AIA will apply directly in Portugal and an implementing law will be adopted.

Furthermore, in the context of AI liability, the proposed new Product Liability Directive (PLD II)^[3] and the proposed AI Liability Directive^[4] are poised to bring substantial changes to national liability and consumer protection rules. Once these Directives have been published, and on the basis of their current wording, the Portuguese legislature will have a two-year time frame in which to transpose them into national law.

ii AI industry landscape

According to a 2021 Eurostat report,^[5] 8 per cent of enterprises in the European Union with 10 or more employees and self-employed persons utilised various AI applications, including text mining, image recognition and natural language processing. When comparing the adoption of at least one AI technology among EU countries, Denmark led with the highest share at 24 per cent, followed by Portugal at 17 per cent and Finland at 16 per cent. This initial qualitative analysis of AI adoption in 2021 highlighted the significance and potential of the burgeoning Portuguese AI industry.

The landscape of the AI industry in Portugal is experiencing substantial growth, encompassing spin-offs, start-ups, SMEs and unicorns. Concurrently, the sophistication of Portuguese companies has increased markedly in recent years, with a majority of large companies and corporate groups in Portugal either experimenting with or already deploying various AI applications. This strategic integration of AI aims to enhance the efficiency of internal processes and deliver innovative products and services to clients, showcasing the evolving dynamism and influence of the Portuguese AI sector.

For the purposes of clarity, note that with the exception of the definition of AI set out in the AIA, there is no uniform definition of AI in Portugal or in the EU. As such, any reference to AI in this chapter should be understood as referring only to machine learning, including deep learning AI, and the terms 'AI', 'AI system' and 'AI model' are used here interchangeably.

Year in review

i Technology

When assessing the AI-related technological advancements and impactful use cases in Portugal over the past year, it is helpful to distinguish between AI providers, entities involved in designing, developing and delivering AI solutions, and AI deployers, entities utilising AI solutions either internally to enhance the efficiency of their processes or to offer products and services to end users. This section will focus on outlining the significant advances made by AI providers. Section II.iii will consider specific use cases from the perspective of those deploying AI.

The AI providers market in Portugal has experienced remarkable growth, with start-ups and SMEs at the forefront, offering a diverse array of AI-based solutions. These range from virtual assistants and translation tools to biometrics and anti-fraud solutions, showcasing the country's dynamic AI ecosystem.

Moreover, in 2022, pivotal negotiations were concluded for the funding of various consortia within the framework of the national Recovery and Resilience Plan, established by the government under the Next Generation EU package from the European Council. This mechanism is structured around three key dimensions: (1) resilience; (2) climate change; and (3) digital transition.

One notable group selected in this context is the Center for Responsible AI^[6] consortium, comprising 25 Portuguese entities – two unicorns and 10 start-ups specialising in AI, eight research centres, one law firm and five industry leaders from the life sciences, tourism and retail sectors.^[7]

The overarching goal of the Center for Responsible AI consortium is to position Portugal as a global leader in 'Responsible AI' technologies, principles and regulation. The consortium aims to achieve this by creating 21 new AI products, standards and recommendations for regulation and best practice in Responsible AI. Additionally, the initiative aims to contribute to academia by offering 132 postgraduate academic degrees, among other impactful initiatives.

ii Developments in policy and legislation

As mentioned above, AI is not subject to uniform regulation in Portugal. As the trilogue negotiations of the AIA continue, its implementation in Portugal is only subject to discussion. As at October 2023, there have been no concrete developments regarding the implementation of the AIA in Portugal, particularly in terms of designating a national authority responsible for monitoring compliance with AIA obligations.

In this regard, the following paragraphs briefly present the main national policies and strategies expected to shape the implementation and enforcement of the EU regulatory initiatives in Portugal.

In 2019, as part of Portugal INCoDe.2030, the country's national digital skills initiative, the government introduced AI Portugal 2030^[8] as a pivotal strategy aimed at fostering innovation and investment within the AI ecosystem. The strategy's overarching goals include the encouragement of innovation, the attraction and retention of talent, and the widespread adoption of AI technologies across diverse industries in Portugal. This vision is being realised through a comprehensive action plan encompassing seven strategic vectors:

1. inclusion and education: dissemination of generalist knowledge on AI to ensure a broad understanding of the technology;
2. qualification and specialisation: focused efforts on enhancing skills and expertise in AI, emphasising the importance of specialised knowledge;
3. thematic areas for research and innovation in European and international networks: collaborative engagement in research and innovation initiatives within European and international networks, aligning Portugal with global advancements in AI;
4. public administration and its modernisation: implementation of AI in public administration processes, contributing to modernisation efforts;
5. specific areas of specialisation in Portugal with international impact: identification and development of specific AI-related areas in Portugal to make a global impact;
6. new developments and supporting areas in European and international networks: proactive involvement in emerging developments and supportive roles within AI networks at the European and international levels; and
7. facing societal challenges brought by AI – ethics and safety: addressing ethical and safety considerations associated with AI, and acknowledging and navigating societal challenges.

These objectives closely mirror the principles outlined in 2018 in the EU Declaration of Cooperation on Artificial Intelligence, to which Portugal is a signatory. Additionally, the strategy aligns with the principles on AI set out by the Organisation for Economic Co-operation and Development, reflecting Portugal's commitment to international standards and collaboration in the responsible development and deployment of AI.

In 2023, the revision of the national AI strategy as well as the design of the national 'Data and Web 3.0' strategies began. Joint initiative INCoDe.2030 is responsible for aligning the different strategies, with a focus on people, public and private organisations and the third sector, and ensuring the involvement of all stakeholders.

Notable additional legislative steps have been taken to foster innovation in emerging technologies and in line with the objectives outlined in the action plan adopted by the government in 2020 in 'Portugal Digital: Portugal's Action Plan for Digital Transition'.^[9] Through Council of Ministers Resolution 29/2020, the government established fundamental principles guiding the formulation of a legislative framework for Technological Free Zones (ZLTs). Complementing this, Decree-Law 67/2021 was enacted to provide the legal structure for the establishment of these ZLTs.

The ZLTs are conceived as discrete geographical areas that will function as regulatory sandboxes designed to encourage and streamline activities such as research, development and testing of innovative technologies, products and services across diverse industries, and these could be expected to encompass AI development.

Furthermore, in 2022, the Agency for Administrative Modernisation released its comprehensive 'Guide to Artificial Intelligence: Guide to ethical, transparent and responsible Artificial Intelligence in public administration'.^[10] This Guide serves as an informative resource, presenting an overview of AI's key features, the AI market and

the Portuguese ecosystem. It outlines a set of principles that must be adhered to in the utilisation of AI systems within the public administration.

Although the AIA envisages setting up coordinated AI-specific regulatory sandboxes across the EU to foster innovation, the prospect of integrating such AI sandboxes into the existing ZLT regulatory initiative is uncertain at present. Nevertheless, expectations are high for developments in these areas throughout 2024.

iii Cases

Over the past two years, there has been a notable surge in the adoption of AI solutions across diverse sectors, with entities increasingly acquiring both off-the-shelf and tailor-made AI solutions. The following sectors have emerged as particularly active in integrating AI systems into their operations: (1) life sciences; (2) banking and finance; (3) insurance; (4) public sector; (5) retail; and (6) telecommunications.

Across these sectors, regardless of the specific industry or the varying complexity levels of the acquired AI systems, there has been a discernible uptick in the utilisation of the following key solutions:

1. **Recruitment and HR management:** increased adoption of AI applications has been witnessed in recruitment processes and human resources management, streamlining and enhancing talent acquisition, workforce management and overall HR functions.
2. **Digital marketing:** the integration of AI in digital marketing strategies has become more prevalent, with entities leveraging AI to optimise advertising campaigns, personalise content and enhance customer engagement.
3. **Biometric data:** the use of biometric data in AI applications has seen a rise, particularly in sectors such as security, healthcare and identity verification, where biometrics contribute to enhanced authentication and identification processes.
4. **Virtual assistants:** virtual assistants powered by AI are increasingly being deployed across sectors to enhance customer services, streamline communications and improve overall operational efficiency.
5. **Natural language models and machine translation:** the adoption of natural language processing (NLP) models and machine translation has gained momentum. These technologies are being employed for tasks such as language translation, sentiment analysis and content generation, contributing to more effective communication and information processing.

This widespread adoption of AI solutions across various sectors underscores the versatility and applicability of AI technologies in addressing diverse business challenges and enhancing operational capabilities. As entities continue to recognise the value of AI in driving efficiency and innovation, the trend of AI integration is expected to sustain and develop further across different industries.

Legislative and regulatory framework

AI is not subject to uniform regulation in Portugal. Nonetheless, the horizontal and sector-specific national and EU legal and regulatory framework is also applicable to AI systems. More specifically, the current panoply of European and national consumer protection legislation and the privacy and data protection framework will all apply to AI systems operating in Portugal, particularly the General Data Protection Regulation (GDPR) provisions pertaining to automated decision-making, cybersecurity and intellectual property laws (see Section IV.iv on intellectual property), as well as sector-specific laws particular to AI applications and the sector in which the user operates.

Moreover, once the AIA is finalised and published in the EU Official Journal it will be directly applicable in Portugal. Similarly, once the PLD II and the AI Liability Directive have been finalised, the Portuguese legislature will be required to transpose these into national law within two years of their publication.

Although an exhaustive mapping of the various national and EU laws applicable to AI systems in Portugal is beyond the scope of the present analysis, without prejudice to the specific paragraphs of this chapter, the following is an overview of the main horizontal frameworks of relevance.

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i Data protection and privacy

Portugal has a well-established data protection framework based on GDPR and the national GDPR Implementing Law^[11] and further supported by EU and national guidelines and case law, as well as the e-Privacy Law.^[12] The Portuguese Data Protection Authority (CNPD) has been particularly active with a focus on international data transfers, marketing communications and data subjects' rights.

ii Cybersecurity

The National Cybersecurity Framework consists of Law 46/2018, introducing security requirements and incident notification obligations for various entities (such as operators of essential services), the Cybersecurity Law, Decree-Law 65/2021 and Commission Implementing Regulation (EU) 2018/151. The national authority responsible for cybersecurity matters is the National Cybersecurity Centre.

iii Consumer protection

The Portuguese Consumer Protection Framework is based on the EU consumer protection directives and the recent EU Digital Services Act (DSA).^[13] The national consumer protection framework aims to safeguard consumer rights, ensuring fair practices in the marketplace and providing mechanisms for dispute resolution. The framework covers areas such as product safety, advertising standards and the right to accurate information, offering a robust foundation for consumer protection in Portugal. Some of the most relevant laws for AI systems are outlined below:

1. the DSA;
2. the e-Commerce Law;^[14]
3. the Distance and Off-Premises Law;^[15]
4. the Digital Goods, Content and Services Law;^[16]
5. the General Contractual Clauses Law;^[17] and
6. the Advertising Code.^[18]

The Directorate-General for Consumer Protection is the entity responsible for ensuring consumer protection in the Portuguese territory, including in relation to the provision of digital products and services, and it has the ability to impose administrative fines.

Managing AI risks and impacts

Given the intricate nature of AI systems and the current absence of regulatory clarity, risk assessments stand out as the prevailing methodologies for evaluating the potential impact of AI systems on fundamental rights, user health and safety, and for ensuring compliance with legal requirements and ethical principles.

Despite various efforts in recent years to assess certain risks, such as those pertaining to fundamental rights, data protection and ethics, a comprehensive impact assessment framework capable of identifying all challenges associated with the use of AI and proposing appropriate mitigation measures is still lacking. In essence, although various systems and methodologies address specific criteria for a Responsible AI system, such as ethics, fundamental rights, privacy and cybersecurity, there is currently no unified methodology that encompasses all these aspects. The ongoing absence of such a comprehensive framework underscores the evolving and multifaceted nature of Responsible AI development and implementation.

In Portugal, one of the most widely employed frameworks for AI risk assessment is the 'Ethical Guidelines and the Assessment List for Trustworthy AI' published by the High-Level

Expert Group on Artificial Intelligence, an independent expert group set up by the European Commission; the Ethical Guidelines are commonly used either directly or as a basis for the development of AI legal impact assessments.

This framework when adapted and analysed in light of the applicable legal and regulatory framework can assist in identifying the key assessment criteria for a Responsible AI application and can facilitate the identification of the main legal risks of AI, as well as effective risk mitigation measures.

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i Fairness, bias and discrimination

Identifying and mitigating risks associated with the fundamental rights of individuals is a paramount responsibility in the development and deployment of AI systems. This includes a proactive approach to addressing potential issues related to bias and errors in datasets, with a concurrent focus on preventing discriminatory outputs from AI systems.

This risk management process involves thorough scrutiny of datasets to identify any inherent biases or errors that may compromise the fairness and equity of AI outcomes. Measures should be implemented to minimise these risks, ensuring that the AI system respects fundamental rights and avoids producing discriminatory outputs. Similarly, obligations associated with the quality and inclusivity of data sets are also imposed contractually.

Finally, also of note is the fact that in its current wording the AIA imposes a requirement for a fundamental rights impact assessment to be conducted by high-risk AI system providers and those deploying such systems.

ii Quality and performance

The robust and secure operation of an AI system throughout its life cycle necessitates a systematic approach encompassing identification, implementation, monitoring and continuous updates of both organisational and technical security measures. This comprehensive strategy is essential to guarantee the system's robustness, quality, safety and security, and is also in line with the obligations contemplated in the AIA.

In this regard, it is imperative to ensure compliance with obligations stemming from the existing and upcoming EU product safety framework, and the sector-specific cybersecurity rules and international standards and recommendations of the European Union Agency for Cybersecurity are crucial to ensure future-proof compliance. Adherence to these obligations can also be required contractually.

By undertaking these measures, organisations can create a resilient and secure environment for their AI systems, mitigating potential risks and vulnerabilities throughout the value chain. This proactive approach not only supports the effectiveness and safety of AI operations but also demonstrates a commitment to compliance with industry-specific rules and global standards, thereby fostering trust among stakeholders.

iii Transparency and accountability

To ensure compliance with consumer protection and data protection frameworks, as well as best business practice, it is imperative for AI providers and deployers to prioritise transparency and clarity in their communications. This commitment aligns with the reporting obligations delineated in AIA.

Specifically, the AIA outlines transparency obligations for providers and deployers of high-risk AI systems, encompassing information on the intended purpose of the high-risk system, the type of decisions or outputs generated by the system and the right to explanation afforded to individuals, along with the means of exercising this right.

These transparency requirements echo the recommendations of the Article 29 Working Party (WP29), emphasising best practice for the use of AI systems, irrespective of whether they fall under the scope of Article 22 of the GDPR. According to WP29, individuals should be clearly informed about:

1. the nature of the interaction with the AI system;
2. the intended purpose of the system;
3. the type of results produced by the system; and
4. the right to an explanation of the system's outputs and their consequences.

Transparency obligations can also be enforced contractually.

It is also essential to emphasise that adherence to transparency obligations does not mandate the disclosure of the AI algorithm or proprietary information belonging to the AI provider or user. Instead, the emphasis is on providing pertinent and understandable information to stakeholders, fostering transparency within ethical boundaries. This

approach seeks to strike a balance between transparency requirements and the protection of proprietary and confidential AI-related information.

See Section IV.v on liability for insights into accountability challenges associated with these transparency obligations.

iv Intellectual property

In Portugal, there are no intellectual property provisions specifically referring to AI. Nonetheless, the Code of Copyright and Related Rights^[19] and the Industrial Property Code (CPI)^[20] are both applicable. The CPI transposes the EU intellectual property framework into national law.

Intellectual property concerns arise at different stages of the AI life cycle, and the complexity of the AI ecosystem and the involvement of various stakeholders in the AI value chain exacerbate the intellectual property-related issues.

A brief overview of the main intellectual property concerns is presented below.

Data-related intellectual property issues

Without prejudice to the data protection concerns, datasets utilised for AI training, validation, verification and implementation may be protected by *sui generis* database rights, in line with Directive 96/9/EC, transposed into national law by Decree 122/2000.

The information within these datasets can range from copyrighted material to trade secrets and other confidential information. In this regard, any tensions that arise are usually resolved contractually between the stakeholders.

The challenge of using copyrighted work for AI training has become more pronounced with the increase in use of generative AI.

Moreover, Decree-Law 47/2003 transposing the Directive on Copyright in the Digital Single Market (DCM)^[21] entered into force on 4 July 2023, with certain amendments taking effect on 1 January 2024.

The Decree-Law introduces an exception for data mining.^[22] This exception is in line with the DCM, permitting reproductions and extractions of lawfully accessible works for the purposes of text and data mining. Rights holders also have the option to opt out or adequately reserve the right to data mining. In addition, Reproductions and extractions made for this exception must be maintained at an appropriate security level and retained only for as long as necessary for text and data mining purposes.

Furthermore, although the AIA does not address specific aspects related to intellectual property, its provisions^[23] covering specific intellectual property obligations for foundation model providers will impact on the training of generative AI.

Intellectual property protection of AI

The source code of both the base and the trained AI models is protected by copyright in accordance with the EU framework, including the EU Software Directive, transposed into national law by Decree-Law 252/94. The challenges associated with the identification of

the owner of the intellectual property of the AI model is resolved contractually, through licensing agreements between the parties, especially in cases where the trained model is trained on deployers' data.

Although not discussed extensively in Portugal, there has been some discourse surrounding the potential intellectual property protection of works generated by AI.

Notably, although it is not impossible to obtain a patent for a software-based AI under the European patent framework, doing so is challenging.

v Liability

Although there are not specific rules on liability of AI in Portugal, the current civil law liability rules apply, and liability is usually also regulated contractually by the parties.

Notwithstanding, there is lack of clarity as to the rules related to non-contractual liability for damages arising from the use of AI systems. As in most Member States, the Portuguese Product Liability Law transposing the Product Liability Directive^[24] does not cover AI. Therefore, until the transposition of the PLD II and the AI Liability Directive into national law, to ensure future-proof compliance of AI systems currently being developed or deployed, some obligations of the proposals for PLD II and the AI Civil Liability Directive (in their current wording) are already being adopted contractually.

Furthermore, to promote the accountability of AI outputs, it is crucial to establish robust technical, organisational and contractual mechanisms. This involves implementing measures that enable transparent examination of AI-generated outcomes. Additionally, clear contractual agreements between stakeholders are essential to allocate responsibility for any harms resulting from errors and biases in the AI system.

In more detail, key components of this approach include the following:

1. Technical mechanisms: implementing technical features that facilitate the auditing of AI outputs – this may involve logging, tracking and documenting the decisions made by the AI system, allowing for retrospective analysis.
2. Organisational mechanisms: developing internal processes and structures within organisations that support the auditing of AI outputs – this may include establishing dedicated teams or procedures for monitoring and evaluating the performance of AI systems.
3. Contractual mechanisms: clearly defining responsibilities and liabilities in contractual agreements among stakeholders – this includes specifying the obligations of each party in addressing errors and biases and providing evidence or relevant information to support or refute any claims arising from AI-related issues.

By integrating these mechanisms, organisations can not only enhance the transparency and accountability of AI systems but also establish a clear framework for addressing potential challenges, thereby contributing to a more responsible and reliable deployment of AI technologies.

vi Fraud and consumer protection

For the transparency-related measures implemented to mitigate the risks of fraud and promote consumer protection see Section IV.iii on transparency and accountability and Section IV.vii on disclosure and notice-of-use requirements.

In addition, for the security-related measures aiming, inter alia, to mitigate the risks associated with cyber incidents and ensuring systems' robustness, see Section IV.ii on quality and performance.

vii Disclosure and notice-of-use requirements

See Section IV.iii on transparency and accountability in relation to disclosure and notice-of-use requirements.

In addition to the general approach to transparency and provision of information regarding the use of the system, the sector-specific obligations that mandate notice-of-use may also apply.

Furthermore, the AIA includes specific notice-of-use obligations for those AI systems that present specific risks because of their possible direct interaction with individuals, such as virtual assistants, permitted emotion recognition and categorisation systems and deepfakes.

viii Jurisdiction

To determine the jurisdiction applicable in the event of a dispute involving AI, the current civil procedural rules, as well as private international rules and case law of the Court of Justice of the European Union (CJEU) apply. Moreover, jurisdiction is usually regulated contractually by the parties.

ix Other

Competition in Portugal is primarily governed by the Competition Law,^[25] and the broader framework of EU competition law and jurisprudence from the CJEU is applicable as Portugal is an EU Member State. Moreover, the Portuguese Competition Authority (AdC) has enhanced its investigative tools for detecting potential breaches involving AI-driven tools. The AdC has established a digital sector task force, conducted surveys on monitoring and pricing algorithms, and published the 'Defence of Competition in the Digital Sector in Portugal' policy brief in 2022. The increasing delegation of pricing decisions to algorithms raises concerns, and the AdC is actively addressing potential algorithmic collusion and other antitrust issues, emphasising that companies are responsible for the algorithms they use.

Enforcement

i Public enforcement

Currently there is no public enforcement under way relating to or affecting AI.

Although it does not constitute an enforcement procedure, the CNPD addressed for the first time the data protection implications of AI in the context of a legislative procedure related to the implementation of new electronic identification schemes in public administration. More specifically, these schemes were designed for authentication purposes on public administration portals and websites, utilising facial recognition technologies and deep learning algorithms to verify the security of identity documents. In its opinion, the CNPD primarily emphasised the controller's obligation to furnish information to data subjects regarding automated decision-making. This includes providing meaningful details about the underlying logic and anticipated consequences of data processing of this kind.

ii Private litigation

There is currently no ongoing private litigation relating to or affecting AI.

Legal practice implications

Over the past years, law firms, including those in Portugal, have been exploring various applications of different AI systems of variable levels of sophistication for their internal processes, as well as for the delivery of their services to promote time- and cost-efficiency. In addition, in view of recent developments in generative AI, law firms have been investing in various generative AI tools and applications during 2023,^[26] and training their own models.

The main AI-powered applications employed by law firms in Portugal are outlined below.

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i Lawyer–client issues

Billing and time tracking

AI systems are being used to automate the billing process by tracking billable hours, saving time and reducing the likelihood of errors.

Large language models

Large language models (LLMs) and generative AI have been used extensively in the past year by lawyers for the completion of administrative tasks, correction and editing of simple texts and emails, as well as for translation and ideas generation. As the technology becomes more sophisticated, law firms are training LLMs using their own databases.

ii Knowledge management

NLP tools are used to extract and understand information from unstructured legal texts, making it easier to organise, categorise and analyse vast amounts of textual data that can be used later to support the use of LLMs and generative AI tools by law firms.

Albeit at the earliest stages of implementation, one of the main objectives of LLMs being trained on the law firm's databases is ultimately to assist lawyers in conducting legal research by quickly analysing large volumes of templates, case law and statutes to provide relevant information.

iii Diligence

One of the most common applications of AI systems by law firms is in the area of due diligence processes. AI-powered tools have been successfully used to analyse and review vast amounts of legal documents quickly and accurately, helping with such processes during mergers and acquisitions.

iv Contract drafting

In addition to diligence-related tasks, AI applications can review contracts, identify key clauses and even suggest modifications or flag potential issues. This helps in contract management and reduces the time spent on manual review.

v Courts and judiciary

Currently there are no AI applications employed to support the Portuguese judiciary in its decision-making processes. Nonetheless in collaboration with Microsoft and genesis.studio, the Ministry of Justice has launched a Practical Guide to Justice,^[27] which uses OpenAI's ChatGPT to address more than 16,000 questions on (1) marriage and divorce processes, in Portuguese, and (2) business incorporation, in Portuguese and English.

vi Remedies and dispute resolution

e-Discovery

AI is used to streamline the e-discovery process by automating the identification and categorisation of relevant information.

Predictive analytics

AI algorithms can analyse historical legal data to predict case outcomes, helping lawyers and clients make more informed decisions about how to approach a case. However, despite the capacity of the AI models deployed, the developments in this area are limited as not all Portuguese court decisions are made available electronically, or they are not made available in a timely manner, and the limited accessibility of quality data is also limiting application of the technology.

Outlook and conclusions

Without prejudice to the direct impact of EU-wide AI regulatory initiatives in Portugal, the following EU regulatory measures are expected to exert a direct and crucial influence on the Portuguese AI market:

1. Data Governance Act: this Act, which has been effective since September 2023, is designed to facilitate data sharing and governance across the EU. Its impact is expected to resonate in the Portuguese AI landscape.
2. Data Act: the recent approval of the Data Act represents a significant development, contributing to the overarching EU data strategy. Its primary goals are to maximise the value of the EU data economy by promoting data accessibility while empowering stakeholders by granting them more control over the use of their data, and fostering data-driven innovation, especially in AI, where extensive datasets are essential for effective algorithm training.
3. Common European data spaces initiatives: comprising the European Health Data Space^[28] and the forthcoming proposal for a European framework for financial data access, these initiatives constitute integral components of the EU strategy for data. They aim to ensure the availability of high-quality data, supporting innovation, training and the validation and verification of AI systems within the EU.

These regulatory initiatives form the three pillars of the EU data strategy, in line with the overarching goals outlined above. They strike a balance between the need for access to quality data for AI training and use and the protection of privacy and proprietary information.

Furthermore, as regards AI in the context of cybersecurity, attention must be drawn to the NIS 2 Directive,^[29] whose importance in Portugal will lie in shaping AI applications in essential sectors and ensuring robust cybersecurity practices. Based on the current wording of the AIA, certain essential sectors are considered particularly high-risk. The NIS 2 Directive is expected to be transposed into national law by 17 October 2024.

Similarly, in relation to the financial sector and slated to take effect from 17 January 2025, the Digital Operational Resilience Act (known as DORA) Regulation^[30] also introduces an additional layer of complexity to the financial sector by setting out requirements for information and communications technology risk management (and including AI systems).

Endnotes

- 1 Magda Cocco is a partner and Iakovina Kindylidi is a senior international adviser at Vieira de Almeida. [^ 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:52021PC0206>. [^ Back to section](#)

- 3 Proposal for a Directive of the European Parliament and of the Council on liability for defective products, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0495>. ^ [Back to section](#)
- 4 Proposal for a Directive of the European Parliament and of the Council on adapting non-contractual civil liability rules to artificial intelligence (AI Liability Directive), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0496>. ^ [Back to section](#)
- 5 The Report is available at: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Use_of_artificial_intelligence_in_enterprises#Enterprises_using_artificial_intelligence_technologies. ^ [Back to section](#)
- 6 Center for Responsible AI website available at: <https://centerforresponsible.ai>. ^ [Back to section](#)
- 7 This consortium includes two unicorns and 10 start-ups specialising in AI (Unbabel, Feedzai, Sword Health, Automaise, Emotai, NeuralShift, Priberam, Visor.ai, YData and Youverse, formerly YooniK), eight Portuguese research centres (the Champalimaud Foundation, the Centre for Informatics and Systems of the University of Coimbra, the Faculty of Engineering at the University of Porto, Fraunhofer Portugal AICOS, INESC-ID, the Lisbon Technical Institute (IST), IST-ID/Institute for Systems and Robotics (ISR), one law firm (Vieira de Almeida) and five industry leaders from the life sciences, tourism and retail sectors (BIAL, Centro Hospitalar de São João, Luz Saúde, Pestana Group and Sonae). ^ [Back to section](#)
- 8 Available in English at: <https://www.portugal.gov.pt/download-ficheiros/ficheiro.aspx?v=%3D%3DBAAAAB%2BLCAAAAAAABACzMDQxAQC3h%2ByrBAAAAA%3D%3D>. ^ [Back to section](#)
- 9 Available in English at: https://portugaldigital.gov.pt/wp-content/uploads/2022/01/Portugal_Action_Plan_for_Digital_Transition.pdf. ^ [Back to section](#)
- 10 Available only in Portuguese at: <https://tic.gov.pt/documentos/guia-para-uma-inteligencia-artificial-etica-transparente-e-responsavel-na-administracao-publica>. ^ [Back to section](#)
- 11 Law 58/2019. ^ [Back to section](#)
- 12 Law 41/2004, as amended. ^ [Back to section](#)
- 13 Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act). ^ [Back to section](#)

- 14 Decree-Law 7/2004, as amended. ^ [Back to section](#)
- 15 Decree-Law 24/2014, as amended. ^ [Back to section](#)
- 16 Decree-Law 84/2021. ^ [Back to section](#)
- 17 Decree-Law 446/85, as amended. ^ [Back to section](#)
- 18 Decree-Law 33/90, as amended. ^ [Back to section](#)
- 19 Code of Copyright and Related Rights, approved by Decree-Law 63/85 of 14 March 1985, and amended up to Decree-Law 9/2021 of 29 January 2021. ^ [Back to section](#)
- 20 Decree-Law 110/2018 approving the new Industrial Property Code and transposing Directives (EU) 2015/2436 and (EU) 2016/943. ^ [Back to section](#)
- 21 Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC. ^ [Back to section](#)
- 22 Data mining is defined as any automated analytical technique analysing text and data in digital form to generate information, including patterns, trends and correlations. ^ [Back to section](#)
- 23 Based on the wording of the European Parliament's compromise AIA text adopted on 14 June 2023. ^ [Back to section](#)
- 24 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, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31985L0374>. ^ [Back to section](#)
- 25 Law 19/2012, as amended. ^ [Back to section](#)
- 26 See among others, Reena SenGupta, 22 September, 2023, Generative AI: a legal revolution is coming – eventually, Financial Times, <https://www.ft.com/content/0f36eb4e-b90f-4ffe-befc-daf01829c182>. ^ [Back to section](#)
- 27 The Guide is available at <https://justica.gov.pt/Servicos/Guia-pratico-da-Justica-Versao-Beta>. ^ [Back to section](#)
- 28 Proposal for a Regulation of the European Parliament and of the Council on the European Health Data Space, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52022PC0197>. ^ [Back to section](#)

- 29** Directive (EU) 2022/2555 of the European Parliament and of the Council of 14 December 2022 on measures for a high common level of cybersecurity across the Union, amending Regulation (EU) No. 910/2014 and Directive (EU) 2018/1972, and repealing Directive (EU) 2016/1148 (NIS 2 Directive). [^ Back to section](#)
- 30** Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector and amending Regulations (EC) No. 1060/2009, (EU) No. 648/2012, (EU) No. 600/2014, (EU) No. 909/2014 and (EU) 2016/1011. [^ Back to section](#)



Magda Cocco
Iakovina Kindylidi

mcomm@vda.pt
imk@vda.pt

Vieira de Almeida & Associados

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