

IN-DEPTH

Artificial Intelligence Law

PORTUGAL



LEXOLOGY

Artificial Intelligence Law

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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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Portugal

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Artificial Intelligence regulatory landscape

As an EU Member State, Portugal is directly affected by EU regulatory and policy initiatives, and its laws closely align with those of other EU Member States. Therefore, the Artificial Intelligence Act (the AIA) – the world's first comprehensive regulation on artificial intelligence (AI)^[1] – applies directly in Portugal. However, Portugal has not yet designated its national AI authority. Given the different stages of the AIA's implementation, Portugal must adopt an implementing act by 2 August 2025, one that identifies a national notified authority, at least one market surveillance authority, and establishes rules related to penalties, including administrative fines.

In addition to the AIA, Portugal's legal landscape includes both horizontal and sector-specific regulations at national and EU levels that apply to AI systems, including:

1. existing European and national consumer protection legislation;
2. the privacy and data protection framework, particularly the General Data Protection Regulation (GDPR), which plays a key role in regulating automated decision-making involving AI systems;
3. intellectual property and cybersecurity laws; and
4. sector-specific laws depending on the type of AI system and the sector in which it operates.

In the context of AI liability, considering that the AIA does not regulate liability due to damages caused by non-compliance with the rules stipulated therein, the recently revised Directive on liability for defective products (Directive of the European Parliament and of the Council on liability for defective products – PLD II^[2]) and the AI Liability Directive (Proposal for a Directive Of The European Parliament and of the Council on adapting non-contractual civil liability rules to artificial intelligence - AILD) are poised to bring substantial changes to national liability and consumer protection rules. Once published, on the basis of their current wording, the Portuguese legislator will have a 24-month time frame to transpose these directives into national law.

In light of the above, Portugal's commitment to promoting AI policies and strategies that align with international standards is evident in its Tier II ranking, with a score of 10.00, in the 'Artificial Intelligence and Democratic Values 2023' report by the Center for AI and Digital Policy.^[3]

AI industry landscape

According to a 2023 Eurostat report,^[4] 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, followed by Finland and Luxembourg at 15.2, 15.1 and 14.4 per

cent, respectively. Portugal's share is at around 8 per cent, which is the same as the EU average.

The landscape of the AI industry in Portugal is experiencing substantial growth, encompassing spin-offs, start-ups, small and medium-sized enterprises (SMEs), and unicorns. Concurrently, the sophistication of Portuguese companies has markedly increased in recent years, with a majority of large companies and corporate groups in Portugal 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.

Year in review

Technology

When assessing the AI-related technological advancements and the impact of use cases in Portugal over the past year, it is helpful to distinguish between AI providers, which are entities involved in designing, developing and delivering AI solutions, and AI deployers, which are entities utilising AI solutions either internally to enhance the efficiency of their processes or to offer products and services to end-users.

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 concluded for the funding of various consortia within the framework of the national Recovery and Resilience Mechanism, established by the Portuguese government as part of the Next Generation EU package from the European Council. This mechanism is structured around three key dimensions:

1. resilience;
2. climate transition; and
3. digital transition.

One notable consortium selected in this context is the Centre for Responsible AI Consortium,^[5] comprising 25 Portuguese entities. This consortium includes:

1. two unicorns and 10 start-ups that specialise in AI (i.e., Unbabel, Feedzai, Sword Health, Automaise, Emotai, NeuralShift, Priberam, Visor.ai, YData and YooniK);
2. eight research centres from Lisbon, Porto and Coimbra (i.e., Champalimaud Foundation, Centre for Informatics and Systems of the University of Coimbra, Faculty of Engineering – University of Porto, Fraunhofer Portugal AICOS, The Instituto de Engenharia de Sistemas e Computadores - Investigação e

Desenvolvimento, Instituto Superior Técnico (IST), IST-ID/Institute for Systems and Robotics and IT);

3. one law firm (Vieira de Almeida – VdA); and
4. five industry leaders from the life sciences, tourism and retail sectors (BIAL, Centro Hospitalar de São João, Luz Saúde, Grupo Pestana and SONAE).

The overarching goal of the 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 practices in Responsible AI. Additionally, the initiative aims to contribute to academia by offering 132 postgraduate academic degrees, among other impactful initiatives.

More recently, in 2024, the Bridge AI was launched.^[6] Funded by the Fundação para a Ciência e a Tecnologia, the General Secretariat of the Presidency of the Council of Ministers, and Portugal's Recovery and Resilience Plan, with support from the Competence Centre for Planning, Policy and Foresight in Public Administration, the project is coordinated by INESC-ID, with the collaboration of Champalimaud Foundation and Unbabel, involving international partners and experts in different fields with the objective of producing ethical, legal and literacy recommendations to national decision-makers based on sound scientific knowledge, experts' guidance, and the concrete cases from the Centre for Responsible AI, while at the same time creating an ecosystem of collaboration between key stakeholders.

Developments in policy and legislation

As mentioned above, the AIA applies directly in Portugal. Portugal has not yet designated its national AI authority, although, representatives from the Agency for Administrative Modernization (AMA) are representing Portugal in the EU AI Board meetings.

Considering the phased implementation of the AI Act, an implementing act must be adopted by 2 August 2025 to designate the national notified authority, at least one market surveillance authority, and to specify rules related to penalties, including administrative fines. As of now, there is no public enforcement mechanism specifically related to the AI Act.

In addition to the European framework, in the following paragraphs we will briefly present the main national policies and strategies that are expected to shape the implementation and enforcement of the EU regulatory initiatives in Portugal.

In 2019, the Portuguese government introduced, as part of the Portugal Digital Strategy 2030, the AI Portugal 2030 Strategy,^[7] as a pivotal initiative 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 operationalised through a comprehensive Action Plan encompassing seven strategic lines of action:

- 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 in 2018, to which Portugal is a signatory. Additionally, the strategy aligns with the principles on AI set out by the Organization for Economic Co-operation and Development on AI, 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 – the joint initiative of the essential governmental areas – 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 players.

Additionally, in pursuit of fostering innovation within emerging technology and aligning with the objectives outlined in the Portuguese Government's Action Plan for Digital Transition,^[8] notable legislative steps have been taken. The Portuguese government, through Resolution 29/2020 of the Council of Ministers, has established fundamental principles guiding the formulation of a legislative framework for Technological Free Zones (ZLTs). Complementing this, Decree-Law 67/2021 has been enacted to provide the legal structure for the establishment of ZLTs.

ZLTs, conceived as tangible geographical areas, function as regulatory sandboxes designed to encourage and streamline activities such as research, development and the testing of innovative technologies, products and services, encompassing AI across diverse industries.

Moreover, Law 27/2021 (the Portuguese Declaration of Human Rights in the Digital Area) establishes that the utilisation of AI systems must:

1. adhere to the foundational respect for fundamental rights;

2. strike a delicate equilibrium between the principles of explicability, security, transparency and responsibility; and
3. refrain from discriminatory practices.

The Law stipulates that any decision bearing significant impact on the user must be communicated and be subject to auditability.

The integration of some of the existing ZLTs in the mandatory regulatory sandboxes under the AIA is possible. As the implementation of the AIA and the meetings of the EU AI Board continue, further developments are expected by the first semester of 2025. Moreover, in 2021, the Portuguese government enacted the Portuguese Declaration of Human Rights in the Digital Area (Law 27/2021), which establishes that the use of AI systems must:

1. respect fundamental rights;
2. maintain a careful balance between the principles of explicability, security, transparency and accountability; and
3. avoid discriminatory practices.

Additionally, the Law requires that any decision with a significant impact on the user must be communicated and be subject to audit. Importantly, it emphasises that the development of robots must adhere to the principles of beneficence, non-maleficence, respect for human autonomy, justice and the values outlined in Article 2 of the Treaty on European Union, including non-discrimination and tolerance. This legislation highlights the importance of ethical and equitable AI deployment, encompassing a wide range of principles and responsibilities.

Finally, in 2022, the AMA released its comprehensive Guide to ethical, transparent and responsible Artificial Intelligence in the Public Administration.^[9] 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.

Cases

Over the past three 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. **Generative AI:** the adoption of generative AI solutions from large language models to multimodal generative AI solutions has gained momentum. These technologies are being employed for tasks, such as language translation, sentiment analysis, content generation, virtual assistants and workflow management, contributing to more effective communication and information processing. Particularly in relation to virtual assistants, AI are being increasingly deployed across sectors to enhance customer service, streamline communication and improve overall operational efficiency.
2. **Recruitment and HR management:** AI applications in recruitment processes and human resources management have witnessed increased adoption, streamlining and enhancing talent acquisition, workforce management and overall HR functions.
3. **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.
4. **Biometric data:** the use of biometric data in AI applications has seen a rise, particularly in sectors such as security, healthcare, finance and identity verification, where biometrics contribute to enhanced authentication and identification processes.

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

In addition to the AIA, 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, the privacy and data protection framework, particularly the GDPR provisions pertaining to automated-decision-making, the intellectual property (see the section on 'Intellectual property', below) and cybersecurity laws, as well as sector-specific laws that depend on the AI application and the sector of the AI user, will all apply to AI systems operating in Portugal.

Moreover, the AIA will be directly applicable in Portugal, while the Portuguese legislator will be required to transpose, within two years from their publication to the Official Journal of the European Union, the PLD II and AI Liability Directive, once finalised.

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.

Data protection and privacy

AI presents distinct challenges in terms of data protection and privacy, particularly in defining a robust data strategy. This involves clearly identifying personal and non-personal data used throughout the AI life cycle, ensuring data quality for mining purposes, specifying its sources and processing objectives, and managing data protection relationships with stakeholders.

As the AIA is directly applicable to Portugal, its data governance provisions will take effect in stages, depending on the risk classification of the AI system and the stakeholder involved.

In addition to the AIA, existing EU and national data protection frameworks address AI-related data protection and privacy issues. In addition to the General Data Protection Regulation (GDPR), Portugal's national GDPR Implementing Act (Law 58/2019) clarifies specific national provisions, such as the age of consent for data processing and the role of the national data protection authority. The ePrivacy Law (Law 41/2004, as amended) also regulates electronic communications, aligned with the European Union's ePrivacy Directive.

The Portuguese Data Protection Authority (CNPD) has been particularly active in areas such as international data transfers, marketing communications and data subjects' rights, recently expanding its focus to include AI in biometrics. Over the years, the CNPD has issued guidelines and best practices, some of which mention AI in line with European Data Protection Board recommendations.

Several upcoming EU regulatory measures are expected to have a direct impact on Portugal's AI market:

1. the Data Governance Act (effective since September 2023), which facilitates data sharing and governance across the European Union and is expected to influence Portugal's AI sector;
2. the Data Act (recently approved), which contributes to the EU Data Strategy by promoting data accessibility and empowering stakeholders with greater control over their data. It supports data-driven innovation, particularly in AI, where large datasets are crucial for effective algorithm training; and
3. Common European Data Spaces initiatives, which include the Regulation on European Health Data Space and the forthcoming European Financial Data Spaces. These initiatives aim to ensure the availability of high-quality data to support AI innovation, validation and verification within the European Union. As mentioned above, the recently approved regulation on European Health Data Space is already sharing the initiatives of the Portuguese government in relation to sharing health-related data.

In addition to its national AI strategy, Portugal is advancing its efforts to facilitate data sharing. The EU Data Strategy, which directly impacts Portugal, includes the Data

Governance Act, the Data Act and EU Common Data Spaces. These initiatives align with the overarching goal of promoting the availability of high-quality data for AI development within the European Union. The regulatory measures – key pillars of the EU Data Strategy – aim to balance the need for high-quality data for AI with the protection of privacy and proprietary information.

Following the approval of the Regulation to establish a European Health Data Space (EHDS) on 24 April 2024, the Portuguese Shared Services of the Ministry of Health is coordinating the HealthData@PT initiative. This represents a significant milestone in the implementation of the EHDS in Portugal and in building the national infrastructure, network and foundational elements necessary for secure access and use of health data for research, medical innovation and health policymaking. This initiative is expected to have a direct positive impact on AI development in Portugal's healthcare sector.

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.

If an AI system is deployed in critical infrastructure, further obligations from the NIS 2 Directive (Directive (EU) 2022/2555) would apply. NIS 2 must be transposed into national law by 17 October 2024. Moreover, in the financial sector, the DORA Regulation (Regulation (EU) 2022/2554), set to take effect on 17 January 2025, adds complexity by introducing a series of ICT risk management requirements, including those that impact AI systems used in the sector.

Consumer protection

The Portuguese Consumer Protection Framework is based on the EU consumer protection directives and the recent EU Digital Services Act (DSA) (Regulation (EU) 2022/2065). 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,^[10]
3. the Distance and Off-Premises Law;^[11]
4. the Digital Goods, Content and Services Law;^[12]
5. the General Contractual Clauses Law;^[13] and
6. the Advertising Code.^[14]

With the exception of the DSA that is monitored by the National Communications Authority, 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

The Portuguese government is actively addressing the ethical and human rights challenges associated with the deployment of AI systems, including concerns about algorithmic bias. Its approach to managing these issues is comprehensive and multi-faceted, drawing from both EU and international guidelines, while developing national strategies that promote responsible AI use.

Portugal's national strategy for AI, AI Portugal 2030, covers various aspects aimed at fostering the ethical and human-centric development of AI technologies. This strategy aligns with international frameworks such as the OECD AI Principles and UNESCO's Recommendation on the Ethics of AI.^[15] It also incorporates the Ethical Guidelines and the Assessment List for Trustworthy AI (ALTAI) developed by the High-Level Expert Group on Artificial Intelligence (AI HLEG).^[16]

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 that is 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 of these aspects. The ongoing absence of such a comprehensive framework underscores the evolving and multifaceted nature of Responsible AI development and implementation. In this regard, we propose a holistic approach that takes into consideration some of the existing methodologies (such as ALTAI outlined by AI HLEG) and standards, as well as the various legal, ethical and commercial risks that AI systems may present.

In doing so, it is crucial to establish robust technical, organisational and contractual mechanisms that take into consideration the health, safety and fundamental rights of individuals. This involves implementing measures that enable transparent examination of AI-generated outcomes. Additionally, clear contractual agreements among stakeholders are essential to allocate responsibility for any damages resulting from errors and biases in the AI system developed by third parties.

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

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.

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.

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 the AIA.

Specifically, the AIA outlines different transparency obligations for:

1. providers of models and systems to downstream providers and deployers;
2. deployers of high risk AI systems to individuals using their products and services;
and
3. providers and deployers of certain systems that present higher risks of manipulation and misrepresentation.

Although a detailed presentation of the various transparency obligations of the AIA is beyond the scope of the present analysis, it is worth noting that affected individuals have a right to receive a clear and meaningful explanation when decisions that significantly impact their health, safety or fundamental rights are made primarily based on high-risk AI systems. This right applies where such decisions produce legal effects or have an adverse impact, allowing affected persons to exercise their rights effectively. However, this right may not apply to AI systems where union or national law, as in the case of GDPR, imposes exceptions or restrictions and is limited to areas not already covered under existing union law.

These transparency requirements echo the recommendations of 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 under 'Liability' for insights into accountability challenges associated with these transparency obligations.

Intellectual property

In Portugal, there are no intellectual property provisions specifically referring to AI. Nonetheless, the Code of Copyright and Related Rights and the Industrial Property Code (CPI), which transpose the EU IP framework into national law, are both applicable.

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)^[17] 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.^[18] 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, the AIA's provisions related to specific intellectual property obligations for providers of the general purpose AI model will impact the training of generative AI.

Intellectual property protection of AI

Regarding AI models, the source code of both the base and trained 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, especially where the trained model is trained on deployers' data, is resolved contractually through licensing agreements between the parties.

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.

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.

As in most Member States, the Portuguese Product Liability Law, transposing the Product Liability Directive (Council Directive 85/374/EEC), 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.

Fraud and consumer protection

For the transparency-related measures implemented to mitigate the risks of fraud and promote consumer protection see under 'Transparency and accountability' and under '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 also under 'Quality and performance'.

Disclosure and notice-of-use requirements

See also under 'Transparency and accountability'.

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 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.

Jurisdiction

To determine the jurisdiction applicable in the event of a dispute involving AI, the current civil procedural rules, and 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.

Other

Competition in Portugal is primarily governed by the Competition Law,^[19] 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 that they use.

Enforcement

Public enforcement

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

While not constituting an enforcement procedure, it is noteworthy to mention that CNPD has been particularly active in areas such as international data transfers, marketing communications and data subjects' rights, recently expanding its focus to include AI in biometrics. Over the years, the CNPD has issued guidelines and best practices, some of which mention AI in line with European Data Protection Board recommendations.

Private litigation

To the best of our knowledge, 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,^[20] and training their own models.

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

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.

Generative AI

Large language models (LLMs) and generative AI have been used extensively in the past years 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 or acquiring expert AI systems for document summarisation, drafting and analysis.

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.

Although 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.

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 due diligence processes during mergers and acquisitions.

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.

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,^[21] 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.

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. the Data Governance Act: this Act, which has been effective since September 2023, is designed to facilitate data sharing and governance across the European Union. It is expected to influence Portugal's AI sector;
2. the Data Act: this significant legislation contributes to the EU Data Strategy by promoting data accessibility and empowering stakeholders with greater control over their data. It supports data-driven innovation, particularly in AI, where large datasets are crucial for effective algorithm training. The Data Act will come into effect on 12 September 2025; and
3. common European data spaces initiatives: these include the Regulation on European Health Data Space and the forthcoming European Financial Data Spaces. These initiatives aim to ensure the availability of high-quality data to support AI innovation, validation and verification within the European Union. The recently approved regulation on European Health Data Space is already sharing the initiatives of the Portuguese government in relation to sharing health-related data.

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, concerning cybersecurity and the application of AI in essential sectors, particular attention is drawn to the NIS 2 Directive (Directive (EU) 2022/2555). The importance of this Directive, which is expected to be transposed into national law by 17 October 2024, lies in shaping AI applications in essential sectors (some of which are considered high risk based on the current wording of the AIA) in Portugal and ensuring robust cybersecurity practices.

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^[22] also introduces an additional layer of complexity to the financial sector by setting out a series of requirements for information and communications technology risk management, including AI systems.

Endnotes

- 1 For clarity, any reference to 'AI' herein refers solely to AI systems as defined in Regulation 2024/1689 (AIA), with the terms 'AI' and 'AI system' used interchangeably.
[^ Back to section](#)
- 2 At the time of writing, PLD II was formally approved by the Council of the European Union and it is currently awaiting publication in the Official Journal of the European Union. [^ Back to section](#)
- 3 <https://www.caidp.org/reports/aidv-2023/>. [^ Back to section](#)
- 4 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](#)
- 5 The site of the Centre is available at: <https://centerforresponsible.ai/>. [^ Back to section](#)
- 6 <https://bridge-ai.eu/wp/en/>. [^ Back to section](#)
- 7 Available in English at:
<https://www.portugal.gov.pt/download-ficheiros/ficheiro.aspx?v=%3D%3DBAAAAB%2BLCAAAAAAABACzMDQxMQC3h%2ByrBAAAAA%3D%3D>. [^ Back to section](#)
- 8 Available in English at:
https://portugaldigital.gov.pt/wp-content/uploads/2022/01/Portugal_Action_Plan_for_Digital_Transition.pdf. [^ Back to section](#)
- 9 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](#)
- 10 Decree-Law 7/2004, as amended. [^ Back to section](#)

- 11 Decree-Law 24/2014, as amended. ^ [Back to section](#)
- 12 Decree-Law 84/2021. ^ [Back to section](#)
- 13 Decree-Law 446/85, as amended. ^ [Back to section](#)
- 14 Decree-Law 33/90, as amended. ^ [Back to section](#)
- 15 <https://unesdoc.unesco.org/ark:/48223/pf0000380455>. ^ [Back to section](#)
- 16 <https://digital-strategy.ec.europa.eu/en/library/assessment-list-trust-worthy-artificial-intelligence-altai-self-assessment>. ^ [Back to section](#)
- 17 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](#)
- 18 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](#)
- 19 Law 19/2012, as amended. ^ [Back to section](#)
- 20 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](#)
- 21 The Guide is available at <https://justica.gov.pt/Servicos/Guia-pratico-da-Justica-Versao-Beta>. ^ [Back to section](#)
- 22 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](#)



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