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EUROPEAN LAWYERS IN THE ERA OF CHATGPT

GUIDELINES 2.0

ON HOW LAWYERS SHOULD
TAKE ADVANTAGE OF THE
OPPORTUNITIES OFFERED BY
LARGE LANGUAGE MODELS
AND GENERATIVE AI

The European Bars Federation
(Fédération des Barreaux d'Europe)
New Technologies Commission

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INTRODUCTION TO GUIDELINES 2.0

**AS AI RESHAPES LEGAL SERVICES, LAWYERS MUST
CONTINUE TO UPHOLD THE PROFESSION'S CORE VALUES.**

“The legal profession is at a crucial turning point as generative AI (GenAI) rapidly advances. Since our initial guidelines on the responsible use of generative AI were published over a year ago, these technologies, including large language models (LLMs), have significantly improved. For lawyers, these advancements offer new opportunities but also present challenges around ethics, data privacy, attorney-client confidentiality, evidence evaluation and sustainability.”

In response to these developments, the regulatory framework has also changed. The AI Act came into force on August 1, 2024. This Act establishes a uniform legal framework for AI development and use in the EU, aiming to foster trustworthy, human-centred AI while protecting health, safety, fundamental rights, democracy, and the environment. The regulation follows a risk-based approach: the higher the risk posed by a particular AI system, the sooner the relevant provisions of the AI Act will apply. A key goal of the AI Act is also to ensure “a sufficient level of AI literacy” among all individuals involved in the operation and use of AI systems (Article 4), including legal professionals.

This updated version of the guidelines offers a fresh perspective, ensuring that AI integration in legal practices remains effective and aligned with the highest standards of our profession. We aim to raise awareness among European lawyers, emphasising the need for continuous education, adaptation and a steadfast commitment to ethical principles.

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GUIDELINE 1

Acknowledge limitations of GenAI in legal practice

Ensure you have a thorough understanding of the GenAI tools used in your legal practice. This involves staying current with ongoing advancements and updates in GenAI capabilities, as well as regularly testing these tools on subjects where you already have strong legal expertise, comparing the genAI's output with your own knowledge to assess its accuracy and usefulness.

PAY ATTENTION TO:

Be mindful of the tendency to rely too heavily on AI-generated output. Exercise caution and critical judgement, avoiding over-reliance on AI outputs without independent verification. Understanding that the technology's primary function is to predict the next token (i.e., the next word in a sequence) rather than to reason logically as a human would, helps in maintaining a healthy scepticism about the results produced. It is advisable to cross-check AI-generated information with verified sources and apply our own expertise to assess the validity of the outputs.

REFERENCES:

Recital 20, Article 4, Article 13, Article 14, Article 26 of AI Act

In addition to this foundational knowledge, you might find it beneficial to recognize the limitations and context-specific nature of AI technology. Not all AI systems are created equal, and those designed for general conversation or consumer use may not be suitable for specialised legal applications. AI-generated results can sometimes lack completeness, accuracy, or timeliness, particularly when deployed outside of their intended scope. This can lead to outputs that are unreliable or misleading, posing significant risks in a professional legal setting. Therefore, it would be advisable to choose and apply AI tools coherently with the contexts and uses for which they were designed, and to know and understand their general and specific limitations.

PRACTICAL EXAMPLE:

Consider the case *Mata v. Avianca*, where lawyers relied on ChatGPT to search for legal precedents. ChatGPT, which is not designed for case law research—generated fabricated case citations that the lawyers failed to independently verify. ChatGPT is intended for general conversations and lacks the intrinsic capability to verify the existence of legal cases or facts. By not accounting for these limitations of the genAI, the lawyers faced repercussions in court.

GUIDELINE 2

Adhere to existing rules on AI use

For European lawyers, the primary regulatory framework remains the AI Act. In addition to regulating prohibited and high-risk AI applications and setting obligations for general-purpose AI providers, the AI Act requires individuals involved in AI operations to have appropriate technical knowledge, experience, education and training. This requirement also extends to us, as lawyers.

Equally significant is the Council of Europe's Framework Convention on AI, adopted in May 2024, which emphasises digital literacy and specific expert skills for those responsible for identifying, assessing, preventing, and mitigating AI risks—a group that may include lawyers.

REFERENCES:

Article 4 of AI Act (AI literacy), Article 20 of CoE Convention on AI (Digital literacy and skills)

Staying informed about AI regulations is essential for advising clients and using GenAI responsibly. Monitor evolving rules, including national laws or Bar Association guidelines, and review GenAI providers' terms of service to ensure compliance with legal and ethical standards.

AI regulations are constantly evolving, reflecting the rapid development of AI technology and legal frameworks. Therefore, we must remain vigilant, stay updated on changes, and adapt our practices to align with the evolving regulatory landscape.

PRACTICAL EXAMPLE:

Staying informed about AI regulations is essential for advising clients and using GenAI responsibly. Monitor evolving rules, including national laws or Bar Association guidelines, and review GenAI providers' terms of service to ensure compliance with legal and ethical standards. AI regulations are constantly evolving, reflecting the rapid development of AI technology and legal frameworks.



GUIDELINE 3

Consider the use of GenAI by others

The use of GenAI tools is transforming legal practice. Moving forward, it is expected that our colleagues, clients, and even the bodies before which we appear—including courts—will utilise GenAI. Judges, prosecutors or administrative bodies may also use tools based on LLMs, necessitating the verification of decision-making processes and the analysis of factors that lawyers have not traditionally considered (e.g., the extent of automation in legal proceedings and measures taken to prevent automation bias).

PAY ATTENTION TO:

Clients and opposing parties may also use GenAI (e.g. to enhance their strategies or submit evidence). The latter could potentially involve deepfakes—generated or manipulated images, audio, or video that convincingly resemble real content (e.g., existing persons, objects, places, entities, or events) and falsely appear to be authentic. This requires a new approach to handling evidence and the actions we take regarding evidence submitted by clients.

REFERENCES:

Recital 134 and Article 50 of AI Act



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GUIDELINE 4

Complement legal expertise

GenAI should complement your legal competences rather than replace them.. Using GenAI tools to perform time-consuming tasks can unlock additional capacity for other priorities that create value for the client or strengthen the competitiveness on the legal market, but should not substitute your professional judgement and expertise.

To establish where GenAI can be useful in your practice, how to embrace its possibilities and assess the risks, educate yourself and your staff continuously. Ensure regular training and encourage feedback. Before implementing a GenAI tool, learn the needs of your organisation, clients and staff. When dealing with a GenAI tool for the first time, consider testing it internally (e.g. to simplify communication, organise knowledge bases etc.) before client-facing use (e.g. to engage with clients via chatbots).

Consult technology experts when implementing GenAI tools. Reach out to IT or cybersecurity professionals to understand technological aspects of a particular GenAI tool and its possible integration with existing systems within your organisation.

Avoid becoming overly reliant on the outputs of GenAI (the phenomenon known as automation bias) and remember that it should not replace human decision-making. Exercise caution and verify the outputs through analysis and fact-checking. Be aware that incorporating AI-generated content in your legal advice or end-product (e.g. a contract) do not exempt you from liability if the results are false or inaccurate, as professional conduct rules still apply.

REFERENCES: Article 14 of AI Act (Human oversight)

PRACTICAL EXAMPLE:

As a partner of a law firm you explore the possibilities for enhancing the efficiency of legal services by integrating GenAI tools. You organise regular team sessions on GenAI-related tech innovations. During one of those educational events, a colleague suggests using ChatGPT to prepare summaries of legal documents for the clients - complex contracts, memos etc. While working out an approach to such an idea, you conclude that before using the tool for client-related tasks, you will test it for internal purposes - to simplify your website articles or to draft newsletters. Before accessing the tool, you set clear rules and ensure the team is trained on effective prompt writing. All outputs are verified through human analysis, and the tool's impact is regularly reviewed - you might want to track time savings, the accuracy of results and time spent on results improvement.



GUIDELINE 5

Maintain attorney-client privilege

The attorney-client privilege remains crucial despite technological advancements, as the use of GenAI carries risks of improper processing or disclosure of client data. When using GenAI, it is essential to safeguard client confidentiality, taking all necessary precautions to protect client information. Depending on the relevant terms of service or similar regulations, inputting client data directly or indirectly into GenAI systems may not be permissible due to the potential for further processing of that information.

To maintain professional confidentiality, ensure that GenAI systems have zero data retention policies and prohibit the use of any input data for purposes such as training AI models. Additionally, always verify that the GenAI systems you use have appropriate security measures in place.

REFERENCES:

Article 15, Article 26 of AI Act

PRACTICAL EXAMPLE:

Before initiating large-scale GenAI projects in your legal practice or permitting widespread use of publicly available GenAI tools by your staff, implement a controlled testing phase. During this phase, use the AI tool exclusively for non-confidential tasks, such as drafting generic legal templates. Conduct staff training on which types of information can be shared with GenAI tools and how to handle client data securely.

GUIDELINE 6

Ensure data protection

A detailed assessment of compliance with the General Data Protection Regulation (GDPR; or other relevant legislation on data protection) is a crucial first step when introducing genAI into your legal practice. This assessment underscores the importance of exercising caution, implementing appropriate measures, and addressing privacy concerns and emerging risks.

Be aware that inputting personal data into genAI systems requires a proper legal basis and adherence to data protection provisions. You should consider the types of personal data processed and ensure that data subjects' rights are upheld (which can be challenging with LLMs, especially regarding the right to rectification or erasure of data once submitted to the LLM provider).

It is essential to accurately determine the roles of various entities in the data processing chain (i.e., controllers, co-controllers, and data processors), particularly in light of evolving policies from genAI providers. It remains prudent to conduct risk analyses, including Data Protection Impact Assessments (DPIAs).

Remember that genAI tools not only process data to generate outputs (e.g., responses to prompts) but often use the provided data to enhance the model itself. In the era of LLMs, options for processing personal data exclusively within the EEA (European Economic Area) are not readily available, as is the case with cloud services from leading providers.

PRACTICAL EXAMPLE:

Before introducing a GenAI tool into daily workflow, conduct a Data Protection Impact Assessment (DPIA). During this assessment, you may identify that the system uses input data to enhance its capabilities, which could pose a threat to data privacy. To mitigate these risks, you may implement genAI tool through secure application programming interfaces (APIs) that provide greater control over data processing. Ensure that “opt-out” options are activated to prevent the tool from using personal data to improve AI performance (meaning the data is not retained or used for further system development). Additionally, if zero retention policy is not accessible, you may establish a firm-wide policy that prohibits entering personally identifiable information or sensitive client data into AI tools without proper anonymization.

REFERENCES:

Article 5 - 6 of GDPR, Article 12 - 22 of GDPR, Article 26 of AI Act

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GUIDELINE 7

Guarantee (external and internal) transparency

When considering whether and to what extent clients should be informed about the use of genAI in their cases, the principle is that lawyers should have the discretion to determine the best approach for achieving results. Informing clients about the use of genAI can be done voluntarily and may even serve as a marketing tool. However, in some situations, maintaining external transparency is advisable, e.g., when handling a large number of similar cases that are difficult to manage individually. In such cases, the lawyer and client should agree on which AI tools will be used and the extent to which their results will be applied.

Transparency guideline also has an internal dimension. Lawyers must communicate to their staff how AI-generated results should be handled and ensure that these internal guidelines are implemented within the firm. It is beneficial to establish a practice where anyone using genAI outputs in client work informs co-workers and lets them verify the effects. This approach enhances supervision and ensures that the outcomes are thoroughly reviewed before any actions are taken regarding the client or their case.

Ultimately, as a lawyer, you bear personal responsibility for the solutions you propose to your clients.

REFERENCES:

Article 13, Article 50 of AI Act

PRACTICAL EXAMPLE:

Imagine your law firm handles many similar cases, like debt collection, and you introduce a GenAI tool to automate parts of the process. You meet with clients to discuss AI involvement, agreeing it will manage initial document generation and case analysis, while human lawyers will review all final decisions. Internally, you set guidelines requiring staff to review AI outputs before submission, and ensure through training that employees understand their responsibilities.



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GUIDELINE 8

Consider the impact on intellectual property

If you want to increase the likelihood that genAI output does not infringe on the intellectual property rights of others, check whether the tool provider indemnifies its users or otherwise mitigates risks.

If you want to mitigate the risks associated with using genAI or increase the likelihood that the genAI outputs will be protected by copyright, remember that:

- (1) the genAI-assisted outcome must result from human intellectual effort;
- (2) such intellectual effort can take the form of, for example, preparation, collection and selection of data, supervision of the creation process, editing, modification, post-production - the more human work, the greater the likelihood of protection;
- (3) the final result of the intellectual process must be established and express the creativity of the creator - a human.

Both data provided by clients and materials provided by lawyers to clients can serve as training data for GenAI models. However, each party may opt out based on Article 4 of the DSM.

REFERENCES: Recitals 104-108, Article 25, Article 53 of AI Act
DSM Directive and national implementing acts

PRACTICAL EXAMPLE:

You use genAI to create new contract templates based on content provided by your clients (e.g., their previous contracts). To address intellectual property concerns, you include the following clause in the contract with your client:

“

Subject to this provision, all data inputted, processed or generated by any genAI in connection with the service shall be the customer's exclusive property, and the customer shall own all intellectual property rights therein. The customer consents to the law firm using the customer data for delivering services to the customer. The customer also consents to the law firm using the customer data to input, develop and train shared or communal models, datasets or resources, provided that confidentiality and professional secrecy obligations are maintained. The law firm has the right to retain and use the outcomes generated from developing or training in a private or communal model, datasets, or resources.

”

GUIDELINE 9

Use GenAI with awareness of its environmental impact

GenAI offers significant opportunities for efficiency and sustainability, but its development and use involve substantial energy, water, and resource consumption, contributing to environmental pollution and risks to local communities. As legal professionals, it is crucial to be mindful of these issues and adopt practices that align with environmental sustainability while leveraging genAI:

a. **Optimise genAI usage:** Use genAI judiciously by focusing on applications where it delivers the most significant benefits; avoid unnecessary computations and optimise AI processes to reduce resource consumption.

b. **Choose efficient genAI:** Opt for tools and data centres that prioritise energy and water efficiency; encourage the use of data centres powered by renewable energy sources and those employing advanced, water-efficient cooling systems.

c. **Encourage transparency:** Ensure genAI developers and service providers disclose the environmental impacts of their technologies.

d. **Sustainable procurement:** When procuring genAI consider the environmental impact of the supply chain, choose suppliers that follow sustainable mining and manufacturing practices.

REFERENCES:

Recital 140 of AI Act

PRACTICAL EXAMPLE:

A mid-sized law firm decides to integrate genAI-driven legal research tools to improve efficiency. Aware of the environmental impact, the firm: (1) identifies processes where the use of genAI is truly necessary; (2) trains its staff to use genAI tools effectively, minimising redundant searches and computations; (3) requires genAI providers to disclose the environmental impact of their operations, including energy and water usage data.

LEGAL ACTS

AI Act - Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act)

CoE Convention on AI - The Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law adopted on 17 May 2024

GDPR - 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

DSM - 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

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