Denmark

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

There is no legal definition of AI specific to Denmark. The term is used broadly to refer to various technologies that can perform tasks that normally require human intelligence, such as natural language processing, computer vision, machine learning and robotics.

The Danish government has adopted a national strategy for AI, which defines AI as '[…] systems based on algorithms (mathematical formulae) that, by analysing and identifying patterns in data, can identify the most appropriate solution'.[259] The definition in the national strategy can serve as guidance, but is not binding.

In October 2023, the Danish Data Protection Authority issued guidelines for the use of AI by public authorities.[260] The guidelines conclude that there is no generally accepted definition of AI, but points to the definition utilised in the forthcoming EU AI Act.

In conclusion, there is no universally agreed national definition of AI in Denmark.

2. In your jurisdiction, besides legal tech tools (ie, law firm or claim management, data platforms, etc), are there already actual AI tools or use cases in practice for legal services?

Yes, there is. AI tools are used in Denmark by several legal actors. The AI tools in use can be sub-categorised into, primarily: (i) document review tools; (ii) case law review tools; and (iii) miscellaneous tools. In summary, AI tools are widely used in Denmark. There is high demand for AI tools and new tools are regularly emerging.

3. If yes, are these AI tools different regarding:
• independent law firms;
• international law firms; and
• in-house counsel;
and what are these differences?

Some national independent law firms, especially bigger ones, will probably employ AI as a real component of their core work. They will mainly use general

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259 See https://en.digst.dk/media/19337/305755_gb_version_final-a.pdf accessed on 13 May 2024.

260 See https://www.datatilsynet.dk/Media/638321084132236143/Offentlige%20myndigheders%20brug%20af%20kunstig%20intelligens%20-%20Inden%20I%20g%C3%A5r%20i%20gang.pdf (in Danish) accessed on 13 May 2024.

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productivity tools like Microsoft Copilot, but they will also use AI tools specifically designed for the legal sector. These AI tools purposely tailored to the legal sector could have various uses, such as:

- document review and analysis;

- legal research;

- contract drafting; or

- due diligence reporting.

A common denominator for independent law firms is that their use of AI tools will mostly be based on licensing third-party solutions.

International law firms tend to have access to certain other AI tools, but there is no clear comprehensive overview of this aspect of AI use by law firms. That being said, only a few international law firms are present in Denmark.

In-house counsel will most likely use AI tools to complete certain tasks, previously delegated to external counsel. This will, on one hand, allow in-house counsel to solve more issues on their own without external assistance, thereby keeping costs down. On the other hand, these cost savings can be used to enable external counsel to concentrate more thoroughly on material matters.

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

The Danish government has adopted a national strategy for AI. The strategy contains four objectives on how Denmark can become a frontrunner in the development and use of AI, which are:

(i)   Denmark should have a common ethical and human-centred basis for AI;

(ii)   Danish researchers should research and develop AI;

(iii)   Danish businesses should achieve growth through developing and using AI; and

(iv)   the public sector should use AI to offer world-class services.

These objectives are to be realised through 24 initiatives, subdivided into the following main topics:

- a responsible foundation for AI;

- more and better data;

- strong competences and new knowledge;

- increased investment in AI; and

- priority areas.

The national strategy is non-binding in regard to the regulation of AI, but will serve as guidance for the Danish government.

Denmark adheres to the Organisation for Economic Co-operation and Development's (OECD) Recommendation on Artificial Intelligence, which was approved on 22 May 2019.[261] The recommendation sets out principles for responsible stewardship of trustworthy AI and obligates the adherents to invest in AI, foster a digital AI ecosystem, shape an enabling policy environment for AI, build human capacity and prepare for the labour market transformation, and co-operate internationally in regard to AI.

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

In Denmark, there is no national (binding) regulation on the use of AI, as such. At the moment, in general, the development and use of AI depends largely on already established legal frameworks.

For example, the use of personal data must comply with the European General Data Protection Regulation and the Danish Data Protection Law (Databeskyttelsesloven).

In June 2023, the Danish Copyright Act (Ophavsretsloven) was amended by including sections 11(b) and 11(c), required by the EU Directive on copyright and related rights in the Digital Single Market (the 'DSM Directive'), in order to implement the rules on text and data mining. While the DSM Directive is not primarily concerned with the regulation of AI, the implications of these new rules are crucial for the development of AI solutions. The new rules mandate that rightsholders must make a declaration if they wish to prevent their copyright protected material from being used for text and data mining. By creating an opt-out scheme, the new rules can be said to be an anomaly in terms of copyright principles, where it is normally the user that must ask for permission to use copyright protected material.

In the future, an important regulation on AI will be the EU AI Act, which was approved by the European Parliament on 13 March 2024. The EU AI Act is awaiting formal endorsement by the European Council and will enter into force 20 days after its publication in the Official Journal of the European Union and will

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261 See https://legalinstruments.oecd.org/en/instruments/oecd-legal-0449 accessed on 13 May 2024.

be fully applicable 24 months thereafter (except for certain parts of the regulation which will apply from six to 36 months after its entry into force).

Further, the EU AI Act will be supplemented by the proposed EU AI liability directive and the new EU Product Liability Directive. The former will yield national statutory rules on the liability of AI systems and their operators. The latter will yield national statutory rules on liability for defective products, including AI.

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

Yes. Access to free data, let alone access to free high-quality data, is a major problem. AI tools are currently (narrow AI that is) limited by their training data. As long as AI tools depend on the quality and quantity of their training data, free access to high-quality data will be an issue.

Statistics Denmark is the organisation with a mission to collect, compile and publish statistics on Danish society. Such data are published in the so-called StatBank Denmark database.[262] The data in StatBank Denmark are free to use, including for commercial purposes, as long as the data source is referenced.

Open Data DK is an organisation providing free access to a wide range of public (non-personal) data.[263] This includes data about air quality or traffic, and such data can be used when developing AI tools in general.

Of particular relevance to the application of AI within the legal sector is the national Judgment Database.[264] Here, a wide range of case law from the Danish courts is published and made freely available. API-based access can be granted if the applicant has a legitimate interest.

While some free data sources are available, more sources are needed to fully enable AI developers to enhance their tools. This is particularly true in regard to the development of legal AI. The required data for such tools are currently ringfenced by large providers of legal knowledge.

7. Are there already actual court decisions on the provision of legal services using AI or decisions concerning other sectors that might be applicable to the use of AI in the provision of legal services?

No.

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262 See https://www.dst.dk/en/Statistik/brug-statistikken/muligheder-i-statistikbanken accessed on 13 May 2024.

263 See https://www.opendata.dk/ accessed on 13 May 2024.

264 See https://domsdatabasen.dk/ accessed on 13 May 2024.

8. What is the current status – planned, discussed or implemented – of the sectorial legislation in your jurisdiction on the use of AI in the legal profession or services that are traditionally provided by lawyers?

There are no specific laws that regulate the use of AI in the legal profession, as such.

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

Danish attorneys are obligated to act in accordance with the Danish legal ethics rules issued by the Danish Bar and Law Society. The Danish Bar and Law Society have not issued specific guidance on AI, but have focused on providing certain relevant information.

In addition to this, the Association of Danish Law Firms has launched an AI working group to look further into the use of AI in law firms.