Law Society of Ireland: AI- Consultation

A Chara,

The Society provides some views below; and confirms its interest in engaging with the Department in its ongoing consideration of the theme and issues arising.

What do you consider to be the issues of particular importance that a National AI Strategy should address.

- Standards, Governance and Regulatory Framework
- Ethics, Human Rights, diversity and inclusion in AI
- Data Protection & Privacy
- Trust and Cybersecurity
- Social and Economic implications of AI

Why?

The Law Society has a particular interest in AI, both as a development impacting on legal practice, as well as a more fundamental impact on issues such as:

- access to justice (in particular in the case of criminal justice, court process and dispute resolution, as well as being used by non-court bodies (eg Social Welfare, Policing).
- wider human rights and ethical considerations (in respect of the formulation and transparency of back end-design).
- rule of law implications (in relation to adoption by State in the absence of consent, transparency, fairness and due diligence.
- regulatory and legislative response (on matters such as where liability arises, authorship etc)

We welcome the consideration being given to the issue by the Department and based on the above, are interested stakeholders in the strategy's development and implementation. Indeed, as active members of the Council of European Bars and Law Societies (CCBE), we carefully monitor and contribute to wider EU debates and consultations on AI in the Justice field. The EU Commission's Ethical Framework for AI consultation is closely followed and the CCBE will be adding to that process in the coming months and years.

We set out some initial comments below to provide an insight into how AI might interact and impact on the Justice sector. Recognising the pace of change, we appreciate that the variants (AI, Machine Learning, Deep Neural Networks etc) will also have a profound impact in the coming years. The comments below are not exhaustive, and we would welcome the opportunity to expand on these in the coming months.

1. At the current stage of its development, there is a lack transparency associated with conclusions arrived at through AI. These can be harmless conclusions such as recognizing a car on a photo, but also conclusions that can lead the selection of a person as less tending to reoffend based on his/her race, sex or residence. These conclusions, whether correct or not, cannot be necessarily linked to a fault of the algorithm, but are examples of its nature and the way the algorithms learn themselves.

2. Will we allow AI to assess evidence and decide on the merits? Complex algorithms capable of such tasks can be easily available and being used in traffic violation proceedings. In these repetitive cases, often undisputed, one can imagine that the use of automated decision-making tool will be advantageous. But, would we let AI decide in matters that require assessment and interpretation of the moral and nuanced values?

3. In the field of justice, there are strong incentives for using AI. Public authorities have fully identified the budgetary benefits that could be obtained by replacing some judicial staff with automated systems. The possible use of automated systems in judicial decision-making processes enabling programmable and predictable judicial outcomes also brings a number of significant challenges and risks to fair trial rights and the delivery of justice. In democratic regimes, their introduction may also be justified by the desire to broaden the supply of justice, to make it more accessible, faster and less costly. It is an area that contains considerable ethical dimensions.

4. The potential use of AI as a decision-making tool could also enable judges to make more consistent and higher-quality judgments more quickly, rationally and efficiently. Such an use within the judiciary is already mentioned in the European Parliament's resolution of 12 February 2019 for "A comprehensive European industrial policy on AI and robotics"[2]. There is therefore no doubt that AI will be used in the field of justice. The issue will be how it's used. Applications must be reconciled with the fundamental principles that govern the judicial process and guarantee a fair trial: equality of arms, impartiality, adversarial procedures, etc.

5. Key provisions of that resolution include:

> ***Embedded values in technology – ethical-by-design***
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> 147. Points out that the guiding ethical framework should be based on the principles of beneficence, non-maleficence, autonomy and justice, on the principles and values enshrined in Article 2 of the Treaty on European Union and in the Charter of Fundamental Rights, such as human dignity, equality, justice and equity, non-discrimination, informed consent, private and family life and data protection, as well as on other underlying principles and values of Union law, such as non-stigmatisation, transparency, autonomy, individual responsibility and social responsibility, and on existing ethical practices and codes;
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> 148. Believes that Europe should take the lead on the global stage by deploying only ethically embedded AI; underlines that, to achieve this, the governance of ethics in AI must be ensured at different levels; recommends that the Member States establish AI ethics monitoring and oversight bodies and encourage companies developing AI to set up ethics boards and draw up ethical guidelines for their AI developers;
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> 149. Stresses that European standards for AI must be based on the principles of digital ethics, human dignity, respect for fundamental rights, data protection, and security, thus contributing to building trust among users; emphasises the importance of capitalising on the EU's potential for creating a strong infrastructure for AI systems

[2] European Parliament resolution of 12 February 2019 on a comprehensive European industrial policy on artificial intelligence and robotics, Recital W: "Whereas further development and increased use of automated and algorithmic decision-making undoubtedly has an impact on the choices that an individual (such as a businessperson or an internet user) and an administrative, judicial or other public authority make in reaching a final decision of a consumer, business or authoritative nature; whereas safeguards and the possibility of human control and verification need to be built in to the process of automated and algorithmic decision-making", available here: http://www.europarl.europa.eu/doceo/document/TA-8-2019-0081_EN.html.

rooted in high standards of data and respect for humans; notes that transparency and explainability need to be embedded in the development of AI;

Transparency, bias and explainability of algorithms

177. Points out that even high-quality training data can lead to a perpetuation of existing discrimination and injustice when not used carefully and consciously; notes that the use of low-quality, outdated, incomplete or incorrect data at different stages of data processing may lead to poor predictions and assessments and in turn bias, which can eventually result in infringements of the fundamental rights of individuals or purely incorrect conclusions or false outcomes; believes, therefore, that it is important in the age of big data to ensure that algorithms are trained on representative samples of high-quality data in order to achieve statistical parity; emphasises that even if accurate high-quality data is used, predictive analysis based on AI can only offer a statistical probability; recalls that, under the GDPR, the further processing of personal data for statistical purposes, including AI training, may only result in aggregate data which cannot be re-applied to individuals

6. The CEPEJ (Council of Europe European Commission for the efficiency of justice) has submitted a report proposing the adoption of an Ethical charter on the use of AI in judicial systems and their environment; and this should be considered alongside the work of the DBEI.

7. The use of AI in criminal justice systems is mainly happening in the field of work of the various police forces and law enforcement authorities. The main areas, for the moment, are:

    - Prevention of crimes (predictive AI use)
    - Gathering and analysis of evidence

    This should form a distinct component of a future AI Strategy in the Department of Justice, together with agencies such as IHREC and wider Justice stakeholders.

8. All legal systems already have a fully developed jurisprudence to deal with civil liability in general which would be applicable in principle to the use of AI systems: for example, liability arising from a failure of the persons who market or use the systems to exercise reasonable care; and there may also be applicable statutory strict liability regimes. In particular, in the case of products which incorporate AI systems, there is the strict liability regime imposed by the EU Product Liability Directive. The question then arises as to whether principles and provisions of existing regimes are 'AI-ready', or whether they need to be amended.

If you have any additional information related to AI research, development or policy, or recommendations for the use of AI that you believe the Government should consider, please provide details.

While this consultation is being conducted by the Department of Business, Enterprise and Innovation, it is vital that the issue of AI is considered across the economic and social spectrum of the State - a whole of Government approach.

- In so far as it impacts on the Justice sector, and legal issues relating to its impact on a wider number of legal disciplines (IP – Data Protection, Liability, Banking, Criminal law, Human Rights, etc); the Society would be enthusiastic to host/participate in a

roundtable or seminar for the Department with interested practitioners so that perspectives may be exchanged.

- Finally, as part of the Society's educational remit; both for trainee lawyers and continuing development of qualified lawyers; the Society's Continuing Professional Development (CPD) Unit and Diploma Centre would welcome the opportunity to contribute to the ongoing training and education of AI and related themes to the profession and wider audiences.