

In the Shadow of the AI Act: Legal Services by Artificial Intelligence. A German Perspective

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Abstract: *All'ombra dell'AI Act: servizi legali mediante intelligenza artificiale. Una prospettiva tedesca-* The use of AI poses a challenge to the rule of law. While Art. 1 of the AI Act and recitals testify to this, the Union's legislative strategy is ambiguous. At the example of the legal professions, this article expounds why this might thwart qualified and independent legal services which the Union otherwise cherishes. For EU legislation for the free movement of digital services prevents the Member States from a stricter control of "legal services by AI" which also the AI Act addresses only in part. There is a need for more leeway to effectively protect the rule of law.

Keywords: Artificial intelligence; Legal profession; Rule of law; AI Act; Free movement of services

1. Introduction

While the effects of the AI Act on businesses and public administration have been dealt with in a fair number of publications¹, legal services have not exactly been caught in the limelight yet. The AI Act rather seems to treat them with benign neglect insofar as none of its articles explicitly address lawyers, tax consultants, accountants, not even liberal professions at large. The silence of AI-specific legislative acts is striking and stands in contrast with the importance EU Law² and ECJ jurisprudence³ have been attaching

¹ S. Weerts, *Generative AI in public administration considering the regulatory awakening in the US and EU*, in 1 *Camb. Forum AI: Law & Gov't*, (2025).

² e.g. Directive 98/5/EC of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis, OJ L 77, 14.3.1998, 36–43; Directive 2005/36/EC of 7 September 2005 on the recognition of professional qualifications, OJ L 255, 30.9.2005, 22–142.

³ See, inter alia, Advocate General Léger in Case C-309/99, *Wouters and Others v Algemene Raad van de Nederlandse Orde van Advocaten*, sent. 19-2-2002, par. 175, emphasizing that "[l]awyers" make it possible for individuals to have a better knowledge and understanding of the rights granted to them and to enforce those rights more efficiently. In other words, in a State governed by the rule of law, lawyers ensure the effectiveness of the principle of access to the law and to the courts." See further the Court's consistent rule-of-law jurisprudence in proceedings concerning judicial independence, notably Case C-619/18, *Commission v Poland*, sent. 24-6-2019, par. 42–47, and Case C-156/21, *Hungary v Parliament and Council*, sent. 16-2-2022, par. 127–131, underlining the structural role of legal professions and independent courts in safeguarding the rule of law under Article 2 TEU.

to the legal profession(s) in safeguarding the rule of law – and with the significant degree of disruption which AI is expected to do to legal services. The importance attached to the legal profession and its vulnerability is reflected at the level of the Council of Europe, whose Convention on the Protection of the Profession of Lawyer, underscoring the structural role of lawyers in ensuring independent legal advice and effective access to justice was signed recently, on 26 January 2026, by Germany⁴.

By and large, AI might not only take the place of some natural (or legal) persons in the rendering of legal services, especially the simpler and uniform ones. Moreover, legal service providers themselves incrementally use AI as a tool in preparing or performing services for their clients. This can pose a problem when legal assessment is sourced out on the very AI, but even where no such thing happens, lawyers feeding AI with personal data of clients could trigger interference with an axiom of the liberal professions: secrecy⁵.

The importance of confidentiality has repeatedly been emphasized also by the Court of Justice. In *Ordre des avocats du Barreau de Luxembourg v Administration des contributions directes*, the Court recalled that Article 7 of the Charter, in light of Article 8 ECHR, guarantees the confidentiality not only of the content but also of the very existence of legal advice. Individuals consulting a lawyer must be able to expect that their communication remains private and will not be disclosed without their consent, save in exceptional circumstances⁶. Confidentiality thus forms part of the institutional framework through which access to justice and effective legal protection are secured.

When we shift the focus from the regulation of commercial AI uses to the regulation of trans-border services in general and legal services in particular, the picture gets even blurrier. On the one hand, the EU is very mindful of preserving a high quality of legal services provided in its Member States, as is reflected by the Directive 98/5/EC of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained⁷ and by the access standards imposed by the Directive 2005/36/EC on the recognition of professional qualifications⁸ which sets the criteria for access to “regulated professions”, that is, those requiring specific professional qualifications in the host Member State, which in some countries (inter alia, Germany) is the case with tax advisors⁹. On the other hand, the Union, in

⁴ German Federal Ministry of Justice and Consumer Protection, Press release: *Protection of Lawyers — Federal Government agrees to sign Council of Europe Convention on the Protection of the Profession of Lawyer*, 19-11-2025, hdr4.bmj.de/SharedDocs/Pressemitteilungen/DE/2025/1119_Schutz_des_Anwaltsberufs.html, ich states that Germany has decided to sign the Council of Europe Convention on the Protection of the Profession of Lawyer, aimed at securing the legal profession against attacks and recognising its special role for the rule of law internationally, with the formal signing scheduled for 26 January 2026.

⁵ These concerns are also being discussed in T. Braegelmann, *Anwaltschaft im KI-Dilemma: Zwischen DAV-Optimismus und BRAK-Bedenken*, KIR 2025, 315.

⁶ Judgment of the Court (Second Chamber), c-432/23, *F SCS and Ordre des avocats du Barreau de Luxembourg v Administration des contributions directes*, sent. 26-9-2024.

⁷ Directive 98/5/EC, OJ L 77 of 14 March 1998, 36 ss.

⁸ Directive 2005/36/EC, OJ L 255 of 30 September 2005, 22 ss.

⁹ In German law, tax advisory services are reserved to authorized professionals. §§ 2 and

clinging to the free movement of services, as one of the pillars of the Internal Market, adopted the Directive 2000/31/EC on electronic commerce which in line with Art. 56 TFEU provides for the removal of barriers Member States may have erected¹⁰. This Directive was passed at a time when even visionaries were unable to predict the rise of AI and when information society services (as the Directive calls them) in the legal sphere were also not topical yet¹¹.

One is left with the impression of electronic legal services being, from a Union perspective, left in a dead angle where they are not performed by a professional but “prefabricated” in form of software and most specifically AI. Member States have adopted laws which confine the right to provide legal services to categories of persons which are presumed to be sufficiently qualified for it (including trustworthiness and professional secrecy)¹². It is unclear whether, to the extent that AI takes the place of these persons, such protective legislation can be brought into position against hazards associated with it – that is, false legal advice, including so-called AI “hallucinations”, which may also be due to lack of legal knowledge in software engineers, or lack of secrecy – where the Directive 2000/31/EC seeks to enforce, regardless of the peculiarities of AI and the legal profession, respectively, the freedom to provide services. If the answer is no, the absence of a proper, and lawful, response to the intrusion of AI in legal services might have to be considered a potential threat to the rule of law which the EU and/or its Member States will need to tackle.

2. AI-Induced Changes in Legal and Tax Advisory Services

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AI has entered the legal profession as a technology that directly affects professional activities and may impact organizational structures. It is therefore necessary to identify present and expected technological changes it involves before addressing the legal implications and possible regulatory responses.

2.1 Direct Use by End Users (Disintermediation)

AI systems are increasingly used directly by individuals who seek legal or tax advice, without the involvement of a lawyer or tax adviser¹³. Companies offer AI-based legal software which can be downloaded from the internet, claiming

3 of the German Tax Consultancy Act (Steuerberatungsgesetz) require that assistance in tax matters may be provided on a commercial basis only by persons expressly authorised by statute, in particular certified tax advisers who must fulfil specific qualification and examination requirements and are subject to professional supervision.

¹⁰ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (‘Directive on Electronic Commerce’) OJ L178/1.

¹¹ Early and influential contributions were nevertheless made by R. Susskind, who explored the relationship between law and technology (see, inter alia, R. Susskind, *The Future of Law*, Oxford, 1998; R. Susskind, *Transforming the Law*, Oxford, 2000/2003; R. Susskind, *The End of Lawyers?: Rethinking the Nature of Legal Services*, Oxford, 2008).

¹² See, for example, the German Bundesrechtsanwaltsordnung (BRAO) and the French Loi n° 71-1130 du 31 décembre 1971 regulating the legal profession.

¹³ See C. Leveneur, P. Heudebert, *Blockchain, Disintermediation and the Future of Legal Professions*, in 4(1), *Cardozo Int’l & Comp. L. Rev.*, 275, 282 (2020).

that it will henceforth substitute, or simulate, the legal professional in giving advice on a legal question¹⁴, for instance, setting up tax declarations or generating contracts¹⁵. These digital legal services are commonly cloud-based, and servers are often located in other (European or overseas) countries, as are the providers¹⁶. Some of the latter have taken to personalizing the tool by referring to it as “AI Advisor” or “AI lawyer”, to intimate that its skills and competencies are akin to that of a real person. While they probably are not yet today, sometime in the future they will have gained that capacity.

A client who seeks advice from a legal professional exercising a regulated profession can generally trust the advice given because the profession is regulated, i.e., because the provider of the service underwent a thorough education or training, and because the profession is subject to rules of conduct (such as independence and professional secrecy) to make sure that the client is in good hands¹⁷. The “AI lawyer” or “AI tax advisor” has never been to university but has been fed with data and an algorithm by persons who may or may not be legal experts and whose activities may or may not be regulated (in the terms of the Directive 2005/36/EC) in the country from where they act. Accordingly, there is a hazard of the AI and its “masters” eluding the regulatory grip of the Member State which is adamant to secure the quality and soundness of legal services while at the same time benefitting from the freedoms of the Internal Market.

2.2 Supportive Use of AI by (Regulated) Professionals

However, AI is not only used as a substitute for “classical” legal services but also, and incrementally, as a support tool by lawyers and tax advisers themselves¹⁸. Typical applications include legal research, document drafting,

¹⁴ This “third wave of lawyering” is being extensively discussed by S. Nhemi, *Law without Lawyers: Examining the Limitations of Consumer-Centric Legal Tech Services*, 3(1) in *JIPIT*, 15–76 (2023).

¹⁵ S. Nhemi, *Law without Lawyers: Examining the Limitations of Consumer-Centric Legal Tech Services*, in 3(1) *JIPIT*, 15–76, 26 (2023) also mentions other so called “Do-It-Yourself systems” of B2C legal tech such as legal document generation, online dispute resolution platforms and “legal apps that provide legal information or act as legal service marketplaces”.

¹⁶ See, for example, LegalZoom (US), Rocket Lawyer (US/EU), DoNotPay (US), Taxfix (DE/ES), Smartlaw (DE), ClauseBase (BE), and Luminance (UK), all of which provide cloud-based, AI-supported legal services ranging from tax declaration assistance to automated contract generation.

¹⁷ On the regulated nature of legal advice and the resulting trustworthiness for clients, Germany provides a particularly clear and strict regulatory framework, see §§ 1, 43, 43a(1)–(2), (4) BRAO (independence, confidentiality, and professional conduct of lawyers); § 2 RDG (legal services require legal examination and are reserved to qualified providers); § 203(1) No. 3 StGB (criminal sanction for breach of professional secrecy); BVerfG, 1 BvR 537/81, sent. 14-7-1987, BVerfGE 76, 171 (182 ff.) (professional secrecy as a functional guarantee of the rule of law); BVerfG, 1 BvL 6/13, ord. 12-1-2016, BVerfGE 141, 82 (96 ff.) (independence of the legal profession as a structural principle).

¹⁸ Especially in order to enhance efficiency as shown by M. Plaza, *Future-Proof Legal Services: How Innovation, LegalTech and AI Have Been Reshaping the Legal Market*, in R. de Caria and S. Martinelli, *Future-Proof Legal Services: How Innovation, Legal Tech and AI Have Been Reshaping the Legal Market*, Oxford, 2025, 293.

contract analysis, and decision-support systems. AI is welcome as a tool that helps speeding up not just fact finding but also the generation of contracts, manuscripts and legal documents¹⁹. While AI use by individuals remains almost always in the extra-judicial sphere, its use by a lawyer can resonate on judicial proceedings. Courts have already begun to confront the phenomenon of AI-generated hallucinations in submitted briefs, identifying instances in which fictitious case law or inaccurately reproduced authorities were relied upon, thereby raising not merely questions of professional diligence but of procedural integrity and the administration of justice itself²⁰.

AI for lawyers is developing fast. Modern AI platforms such as Beck-Noxtua²¹, developed and provided by the largest legal publishing house in Germany, or comparable systems such as Libra²², now part of the Wolters Kluwer ecosystem²³, Legora²⁴, and others offer a broad range of legal tools and solutions to lawyers (and possibly judges). Beck-Noxtua combines access to relevant case law and legal literature on their extensive online platform with a structuring of legal analysis, legal reasoning, arguments and counterarguments, and so on. Moreover, large law firms have taken to develop their own AI tools. Since these AI uses remain in the hands of legal professionals, who stay responsible for the choice and results of AI-assisted services, the prerogatives of legal professions are not undermined in the same way as by the “AI lawyer for everyone”. Yet, the dependency of legal professionals on AI and the potential inability (or unwillingness) to verify the soundness of its output, on which they may rely, could become a concern, and people will wonder if the official tariffs charged are still adequate for legal solutions largely resting upon “products of convenience”,²⁵ warmed up quickly and just seasoned with some own findings of who officially still figures as the provider of the legal service²⁶. Still another problem, especially with “one stop shop” AI solutions such as Beck-Noxtua, is monopolization: Since the AI tool and the legal information it draws from are behind one and

¹⁹ According to R. Susskind we can witness a legal task decomposition, cf. R. Susskind, *Tomorrow's Lawyers: An Introduction to Your Future*, Oxford, 2023, 65.

²⁰ See KI vor Gericht (AI before the courts), documentation of cases in which German courts have dealt with the use of artificial intelligence in judicial proceedings, available at: ki-vor-gericht.de/; see also the discussion of a decision of the Local Court of Cologne, T. Braegelmann, *AG Köln: KI-Halluzinationen vor Gericht: Berufsrechtlicher Tadel ohne prozessuale Sanktion?*, KIR, 2025, 341.

²¹ Available under www.beck-noxtua.de/

²² Available under libratech.ai/de/

²³ See www.wolterskluwer.com/de-de/news/wolters-kluwer-integriert-inhalte-fuer-deutschland-in-libra-ai-workspace.

²⁴ Available under legora.com/

²⁵ See also M. Kilian, *KI-assistierte Rechtsdienstleistungen und Vergütungsrecht*, Anwaltsblatt 1/2025, p. 19 ff who examines how the growing use of AI in legal practice calls established fee structures into question. By reshaping how legal services generate value, AI-assisted workflows raise doubts about the continued suitability of the RVG (German Lawyers' Remuneration Act) as a regulatory framework for lawyer remuneration.

²⁶ A central issue in this context concerns the duty of personal performance owed by legal professionals to their clients. This duty reflects the specific relationship of trust inherent in the provision of legal advice and traditionally requires that legal services be rendered personally by the lawyer rather than outsourced to third parties or automated systems as shown by C. Horz, E. Dubovitskaya, *Legal Technology und die anwaltliche Pflicht zur persönlichen Leistungserbringung*, LTZ, 2025, 284, 287.

the same paywall, there is, at least in theory, a risk of a monoculturalization of law-finding²⁷. Eventually, how to abide by the legal standards of professional secrecy is also a challenge, especially with US-based open-source generative AI such as ChatGPT. Highly specialized software providers such as DATEV have therefore been developing specific AI solutions for legal professionals designed to match those standards²⁸.

As a rule of thumb, one may say that the more complicated a field of law is (and German tax law is particularly complicated), the lower is the probability of reaping benefits from AI because it may not be matching or not be available as a customized tool. This could change over time, however²⁹. For the legal profession(s), there is both boon and curse in AI. Some professionals, especially in the tax area, could be driven from the markets by AI, and many of the remaining ones could face that destiny if they refuse the use of AI tools and subsequently lose their competitiveness to the more efficient. Irrespective of this, AI will change the legal profession, and its biggest hazard probably is the “outsourcing” of legal thinking to the very AI and the loss of professional autonomy of lawyers or tax advisors who have become dependent on third-party legal assessment whose ways and means of reasoning are not disclosed.

2.3 Excursus: AI in Court

While judges have been known to resort to generative AI in preparing judicial decisions³⁰, the usual financial constraints and (not completely unfounded) concerns about judicial independence are likely to slow down its trickling into the third power³¹. Yet, to maintain the equality of arms between lawyers and

²⁷ The concerns about an algorithmic monoculture are shared by S. Gur-Arieh and C. Lee, *Consistently Arbitrary or Arbitrarily Consistent: Navigating the Tensions Between Homogenization and Multiplicity in Algorithmic Decision-Making*, in *Proceedings of the 2025 ACM Conference on Fairness, Accountability, and Transparency (FAccT '25)*, 3336, 3338 (2025), who similarly warn that reliance on uniform algorithmic systems can lead to homogenized outcomes, whereas human decision-makers introduce variability through diverse priorities, individual idiosyncrasies, and differing interpretations, allowing for more varied results even within the same decision-making context.

²⁸ This DATEV AI-Laboratory also includes a so called “DATEV GPT” allowing the processing of personal and sensitive data while complying with strict data protection standards, see www.datev.de/web/de/berufsgruppenuebergreifend/ueber-datev/innovation/kuenstliche-intelligenz/datev-ki-werkstatt.

²⁹ The literature generally emphasizes the broad and increasing potential of AI, particularly generative AI, in legal practice, including for drafting support, document analysis and legal research, see e.g. T. Rodríguez *De Las Heras Ballell*, *AI-Provided and AI-Assisted Legal Advice: Promises and Perils*, in R. de Caria and S. Martinelli, *Future-Proof Legal Services: How Innovation, Legal Tech and AI Have Been Reshaping the Legal Market*, Oxford, 2025, 133.

³⁰ C. Cancela-Outed, *The EU's AI act: A framework for collaborative governance*, in 27 *Internet of Things*, 3 (2024) shows that AI is specifically being used to predict judicial outcomes (e.g. by analysing past judgements etc. and referring to J. Collenette, K. Atkinson, T. Bench-Capon, *Explainable AI tools for legal reasoning about cases: a study on the european court of human rights*, in *Artif. Intell.*, 317 (2023).

³¹ In the German constitutional framework, judicial power is vested in judges (Art. 92 GG), who are independent and subject only to the law (Art. 97(1) GG). The constitutional guarantee of personal and institutional independence may raise structural concerns where adjudicative reasoning relies on externally developed AI systems whose design

the courts which is indispensable to the operability of the judicial systems, the latter must be enabled to follow suit in the availability and use of AI, especially so if no restrictions will be imposed on AI uses by lawyers. However, where the court resorts to the same AI-based legal software as the lawyers (on both sides), drawing on the same legal information, justifying the supreme authority of its judgment will become trickier³². A problem German courts have to grapple within their current use of AI and which limits its benefits for the judiciary is secrecy, which cannot be granted for information on individual cases entered by the judges into the provider's mask. For efficient AI uses by the judiciary, one has to wait for customized "semipermeable" systems which permit the court to apply the AI tool to the case while ensuring a "safe space" from which no case-specific information can be released to anyone³³.

3. A Shortsighted AI Act

The AI Act has been criticized as over-protective, intrusive and patronizing³⁴. The overregulation of AI-specific matters in this legislative act stands in contrast with the deficient awareness of regulatory needs as regards the effects of AI uses on service markets that otherwise are shielded by regulatory standards for the protection of liberal professions and their clients³⁵, i.e., the consumers. "Lawyers" (save for one casual mention in Art. 91 (5)), "legal services" and "legal tech" do not figure anywhere in the wording of the AI Act or its recitals.

Annex III No. 6 lists various forms of law enforcement AI as high-risk AI systems in terms of Art. 6 (2) AI Act and according to its No. 8 lit. a, AI intended for uses in the administration of justice also falls within this

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and operation are beyond judicial control as discussed by J.P. Francken, C. Wörl, *Künstliche Intelligenz im Arbeitsgerichtsprozess der Zukunft*, NZA, 2026, 1, 2.

³² UNESCO, *Guidelines for the Use of AI Systems in Courts and Tribunals*, 4 -12- 2025, unesdoc.unesco.org/ark:/48223/pf0000396582 can serve as a starting point as their objective is to "propose specific guidance to ensure the judiciary's integration of AI systems that are ethical and respectful of human rights", p. 12.

³³ See E-Justice Council (E-Justice-Rat), *Strategie für den Einsatz von Künstlicher Intelligenz in der Justiz Entwicklung, Einkauf und Einsatz von KI-Systemen in der Justiz*, 2025, p. 16, describing ongoing efforts of the Federation and the Länder to identify suitable AI use cases for the judiciary and stressing the importance of compliance with data protection and confidentiality requirements, including approaches such as anonymisation and technically controlled environments. These considerations illustrate that effective judicial use of AI presupposes system architectures that prevent the outflow of case-specific information.

³⁴ The general weaknesses of the AI Act are extensively discussed by M. Wörsdorfer, *The E.U.'s artificial intelligence act—hype or hope?*, Working Paper, University of Maine, 18 ff (2023); D. Roth-Isigkeit, *Der neue Rechtsrahmen für Künstliche Intelligenz in der Europäischen Union: Regelungsgegenstand, Lücken und Problemstellungen der neuen KI-Regulierung*, KIR, 2024, 15.

³⁵ M. Wörsdorfer likewise points out that a large number of AI systems remain unregulated despite posing significant risks (p.22), a concern also emphasized by K. Stuurman, E. Lachaud, *Regulating AI. A label to complete the proposed Act on Artificial Intelligence*, in 44 *Comput. Law Secur. Rev.* (2022), who argue that substantial regulatory gaps persist in the governance of artificial intelligence.

category, which is subject to strict regulatory standards as provided for in Art. 8 et seq. of the AI Act. However, AI systems rate as high-risk only when they are “intended to be used by or on behalf of” public administration or the judiciary, respectively. Conversely, providers or deployers whose AI systems do not specifically cater to the judiciary or public administration but to anyone involved in the legal sphere do not fall within the scope of these articles³⁶ and neither does AI devised for the internal use by law firms. In other words, neither all-purpose AI such as ChatGPT nor AI-backed legal tech applications designed for and used by lawyers or tax consultants (or laymen) evolve to high-risk AI systems and this will not change if courts find them useful and apply them for the preparation (or in the making) of their judgments. One is left with the impression that the AI Act is either blind to possible hazards associated with legal AI – or that its approach at least is a highly short-sighted one insofar AI designed for general legal uses is not rated as high-risk.

In summary, the AI Act is only a blunt weapon against potential hazards stemming from AI designed for legal uses but not for any specific legal use, or when that specific use is that by the legal profession, or from AI intended to substitute the legal profession. The “AI lawyer” or the “AI Tax Advisor” are plainly and simply not on the radar of the AI Act³⁷. This leads us to the question as to whether, in the absence of protective regulatory provisions on Union level, its Member States are permitted to step in, and whether they have braced for the challenge at all. The subsequent chapter shall focus on the German regulation of extra-judicial legal services (Rechtsdienstleistungsgesetz), its – disputed – applicability to AI software – and on whether the relevance of that dispute is eclipsed by the free movement of services and EU law applying to the country-of-origin principle to all kinds of digital services.

4. National Legal Services Legislation under AI Pressure

In Germany, legal services – both in curia and ex curia – have always been subject to strict regulation. The focus of this article lies on out-of-court legal services insofar as here AI is most likely to thrive anytime soon. The professional chambers in Germany are watchful of how AI interferes with professional obligations. In its guidance on the use of AI in legal practice, the BRAK emphasizes that the provisions of the AI Act and professional conduct rules operate in parallel. Compliance with the AI Act does therefore not guarantee conformity with professional obligations³⁸. While this finding is

³⁶ This interpretation is also shared by the Bundesrechtsanwaltskammer (BRAK), Hinweise zum Einsatz von künstlicher Intelligenz (KI), www.brak.de/fileadmin/service/publikationen/Handlungshinweise/BRAK_Leitfaden_mit_Hinweisen_zum_KI-Einsatz_Stand_12_2024.pdf cf. § 5.3.

³⁷ Also T. Rodríguez De Las Heras Ballell, *AI-Provided and AI-Assisted Legal Advice: Promises and Perils*, in R. de Caria and S. Martinelli (cur.), *Future-Proof Legal Services: How Innovation, Legal Tech and AI Have Been Reshaping the Legal Market*, Oxford, 2025, 145 agrees that “The potential impact of the AI Act prohibitions on certain practices in the legal sector, in particular to provide or facilitate the provision of automated legal advice, therefore appears limited”.

³⁸ See BRAK Guidelines (n 36) § 5.4 ; M. Ebers, *Die KI-Verordnung ante portas: Ein neuer Rechtsrahmen für Legal Tech?*, in *LTZ*, 2024, 1, 2.

correct, it fails to address the actual hazard, namely that AI-based legal services might circumvent and limbo those high legal standards where they take the place of traditional professional legal advice.

4.1 Structure and Rationale of the German Legal Services

Today, the Rechtsdienstleistungsgesetz (RDG, i.e., Legal Services Act) is the centerpiece of the legislative framework governing the right to provide legal services. In principle, providing legal services is forbidden (§ 3 para. 1) to anyone not explicitly allowed to it by the RDG or any other law. Among those other laws is the Bundesrechtsanwaltsordnung (Federal Lawyers' Act), whose § 3 entitles lawyers to all categories of legal services, and the Steuerberatungsgesetz (StBerG – Tax Consultancy Act) which reserves the right of giving paid advice on tax (law) issues to tax advisors (a regulated profession in terms of Directive 2005/36/EC) and, to a lesser extent, categories of actors listed in the first part of that law. The legislator is convinced that tax advice, due to its economic relevance and the complexity of German tax law, requires strict professional safeguards³⁹. At the same time, as depicted further above, advice on tax matters, especially tax declarations, is the area which is most prone to AI uses⁴⁰. One reason for this is that tax advisors predominantly operate *ex curia* (which is why the StBerG focusses on extra-judicial legal services) and are therefore particularly susceptible to technological disruption.

These standards extend *mutatis mutandis* to providers of legal services from other EU countries. The services and the establishment of lawyers are governed by Directives 77/249/EEC and 98/5/EC, which allow lawyers to practice permanently in other Member States under their domestic professional designation. The legal basis is the Act on the Activities of European Lawyers – this is how these persons are officially known as – in Germany (Gesetz über die Tätigkeit europäischer Rechtsanwälte in Deutschland – EuRAG⁴¹). Establishing a practice as a European lawyer requires an application and admission. After three years of continuous professional practice in Germany, full admission to the bar can be obtained; prior to this, it is only possible on the basis of an aptitude test (§§ 11 et seq. and 16 et seq. EuRAG). Those who want to provide services as a lawyer without an establishment in Germany (*dienstleistender europäischer Rechtsanwalt*) only need to comply with some administrative requirements. These access hurdles are rather modest because lawyer is a highly regulated profession in all Member States which one can access only after a long period

³⁹ On the demanding admission requirements for tax advisers under German law and on repeated calls for reform of these high entry barriers (whether by lowering substantive examination standards or revising procedural aspects, see the ongoing debate *inter alia* T. Mann, *Nachwuchsgewinnung in der Generation Z – Reformbedarf bei der Steuerberaterprüfung*, DStR, 2024, 65.

⁴⁰ For effective deployment scenarios of various AI tools within tax administration, see C. Schmidt, *KI-Einsatz in der Finanzverwaltung*, Kurzstudie des Nationalen E-Government Kompetenzzentrum e.V., available at negz.org/wp-content/uploads/2024/02/31_Kurzstudie_KI-Einsatz-in-der-Finanzverwaltung_2023.pdf.

⁴¹ BGBl. 2000 I, 182, 1349.

of legal studies and professional training. Not so tax advisor, which in Germany is a regulated profession in terms of Directive 2005/36/EC but not in all other States of the Union. In line with that Directive, the *Steuerberatungsgesetz* demands an aptitude test from every foreign professional desirous to take her establishment in Germany; if tax advisor is not a regulated profession in the State of origin, the person must comply with additional requirements, among these having exercised the profession in that State for at least a year. Professional training may also apply as a prerequisite for being permitted to temporary tax consultancy in Germany⁴². Where AI takes over as the de-facto provider of the legal service, and especially where it takes the place of what otherwise would have been a legal professional, this complex system of qualification-based access hurdles cannot take effect (unless professional qualification standards are transferred on the very AI), and it will be shown that the unilateral emphasis placed by EU law on the legal standards of the country of origin in trans-border digital services could trigger an erosion of those protective professional standards.

4.2 The Concept of “Legal Service” (and its anthropocentric premises)

In both the RDG and the StGB, “legal service” is a key term. The common rationale of these laws is to respond to the structural information asymmetry between the service provider, who has been educated and trained in her field, and the client who is presumed to be a layperson lacking the expertise necessary to assess the correctness or completeness of the advice received. The underlying presumption is that this asymmetry must be compensated through a regulatory framework that ties the provision of such services to formal qualification, personal responsibility, and ongoing professional supervision. In doing so, the legislator considers as self-evident that the legal service is provided by, or through, a human who is not only capable of professional judgment but also bound by professional duties of independence and confidentiality. When the statute was drafted, no one was anticipating AI. The objective of the RDG was to define the persons who were permitted to render legal services and those who were not. A legal service is understood as “any activity in alien concrete matters, as soon as it requires a legal assessment of an individual case”⁴³. This means that the areas left for non-lawyers were textbooks, treaty forms or general recommendations related to legal issues which do not touch upon the legal issues of specific individuals in specific cases.

This may change with AI arriving ante portas. Even if one holds AI not to be capable of providing a comprehensive legal assessment of individual cases yet, it can hardly be doubted that this will soon be the case. Legal scholars in Germany are divided on how to rate the service of the “AI lawyer”: Some are inclined to conclude that, since AI is not a person, not even a legal one, the RDG imposes no barriers on it (while admitting that what AI has

⁴² For details, cf. J. A. Kämmerer, *Berufszugang von Steuerberatern – Europarechtliche Aspekte*, *Deutsches Steuerrecht*, DStR, 2024, 196 (1 97).

⁴³ See § 2 RDG.

generated may in the medium run become very much akin to a legal service in terms of the RDG)⁴⁴. Others, in referring to the “human factor” always associated with AI, that is, the natural person who has created and/or has been providing it and to whom it can hence be attributed, see no obstacle in ranking its performance as a “legal service” according to the RDG⁴⁵. Where AI systems go beyond rule-based automation and generate case-specific assessments, they perform functions that are substantively equivalent to professional legal advice⁴⁶. AI users might not see a big difference between AI-backed software setting up their tax declaration and tax advisors doing this (possibly assisted by AI) in their office. What matters to them is the output at hand, as what appears to be an authoritative evaluation of an individual legal or tax situation. This would imply, however, that to be made available on the German market, AI-based legal software would either have to be unsuited for dealing with individual cases – a confinement which could well be a challenge to meet – or be devised and produced by or under the guidance of a lawyer or other person which law allows to provide this as a legal service to German clients.

5. The State of Origin Principle, Leeway for AI?

The afore-mentioned controversy on the scope and meaning of § 2 (1) RDG could, however, have been rendered moot by EU law. The Directive 2000/31/EC on electronic commerce, in endorsing the State of origin principle in the free movement of digital services (Art. 56 TFEU) within the Union, gives priority to the law of the State of origin. Correspondingly, a Member State must not bring its stricter standards in what it believes to be the defense of general values in position against digital services emanating from elsewhere in the Union, irrespective of whether the State of origin has similar protective standards or not.

Some German scholars argue that this does not in any way affect the right to regulate digital legal services and that the Directive does not overrule the provisions of the RDG.⁴⁷ This, however, is not backed by the Directive, which, as corroborated by the ECJ, leaves no room for general individual exceptions by Member States and whose spectrum of potential grounds for lawful interference is rather narrow⁴⁸. Preserving the quality and reliability

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44 Some authors therefore share the view that RDG and StBerG “activity” only applies to a human activity, C. Deckenbrock, M. Henssler, RDG, 2021, § 2 RDG Rn. 54 b; M. Hartung, *Smartlaw, ChatGPT und das RDG*, RD i, 2023, 209 para. 33; M. Schlegl, Die Vereinbarkeit von Sprachmodellen wie “Chat-GPT” mit dem Rechtsdienstleistungsgesetz, in *Abwärtsblatt online*, 27-5- 2024, anwaltsblatt.anwaltverein.de/de/themen/kanzlei-praxis/vereinbarkeit-sprachmodelle-rdg.

45 See F. Remmert, *KI und Rechtsdienstleistungsrecht*, AnwBl 1/2025, p. 27.

46 This view is shared by the BGH, I ZR 113/20, sent. 9-9-2021, p.to 25. See on ChatGPT A. Nickl, *ChatGPT als Rechtsdienstleister*, MMR, 2023, 328, 332.

47 See Ebers, Heinze, Krügel, Steinrötter, Werthmann (Eds), *Künstliche Intelligenz und Robotik*, § 22 para. 76. More reserved Krenzler/Remmertz, RDG, 2023, RDG § 1 para. 108 ff.; against it B. Brechmann, *Legal Tech und das Anwaltsmonopol*, Tübingen, 2021, 124 ff.

48 ECJ, c-376/22, *Google Ireland Limited ua/Kommunikationsbehörde Austria (Komm.Austria)*, sent. 9-11-2023, p.to 49.

of legal services is not among them. This must be perceived as odd on several grounds: First, Art. 62, 52 TFEU acknowledge the right of a Member State to interfere with the influx of services where this is indispensable to protect a mandatory interest such as public policy and public security, which include the rule of law and the availability of adequate judicial protection⁴⁹. Second, the EU, in recent years, has almost incessantly underlined the importance of the latter⁵⁰ and its dedication to protect and preserve the legal profession⁵¹. Third, when passing the AI Act, the EU unmistakably signalised its awareness of the hazards inherent in that technology for, inter alia, human rights, privacy, democracy and aspects of the rule of law⁵².

It is unsurprising that the Directive on electronic commerce digital service fails to address the issue, as the triumphal march of AI could hardly be anticipated in 2000. More surprising is that, as highlighted further above, the AI Act, already in the face of the latter, does not address it either. The resulting legal situation is ambivalent. While the EU does little to protect the clients from hazards associated with legal AI (for the clients as well as for the legal profession), it simultaneously forbids the Member States to take precautionary measures. While they leave room for measures against domestic providers (which do not fall within the scope of the 2000 Directive and who would be subject to reverse discrimination, not prohibited by primary EU law), the Member State have nothing at hand against AI services originating from other Member States. Domestic AI providers could then be inclined to evade the firm grip of their State of origin by migrating to an EU State with

49 However, the measures are designed as a ultima ratio (Art. 3 Abs. 4 lit.b E-Commerce Directive). The ECJ has in particular concluded from this that “Member States cannot adopt, under Article 3(4), general and abstract measures aimed at a category of given information society services described in general terms and applying without distinction to any provider of that category of services, see ECJ, c-376/22, *Google Ireland Limited and Others v Kommunikationsbehörde Austria (Komm Austria)*, sent. 9-11-2023, p.to 27.

50 See, inter alia the following ECJ Judgments: *Commission v Poland* (Independence of ordinary courts), c 192/2018, sent. 5-11-2019; *A.K. and Others v Krajowa Rada Sądownictwa and Others*, c-585/18, c-624/18 e c-625/18, sent. 19-11-2019; and the subsequent consolidation of judicial independence requirements under Art. 19(1) TEU in the Court’s case-law. For an analytical account, see B. Grabowska-Moroz, Judicial dialogue about judicial independence in times of rule of law backsliding, CEU Democracy Institute Working Paper No 12/2023; D.V. Kochenov and P. Bárd, *Kirchberg Salami Lost in Bosphorus: The Multiplication of Judicial Independence Standards and the Future of the Rule of Law in Europe*, in 60(S1), *J. Common Mkt. Stud.* (2023); European Parliamentary Research Service, Recent ECJ case-law on judicial independence (EPRS Briefing, 2023).

51 On the recognition and progressive clarification of legal professional privilege (LPP) in EU law, see *AM & S Europe v Commission*, c-155/1979, sent. 18-5-1982, para 13, where the Court first acknowledged confidentiality of lawyer–client communications as a limit on the Commission’s investigative powers; *Hilti v Commission*, c-30/1989, sent. 12-12-1991, para 18, extending protection to internal documents reflecting the content of external legal advice; and *Akzo Nobel Chemicals and Akros Chemicals v Commission*, c-550/07, sent. 14.9.2010, addressing documents prepared for the purpose of obtaining legal advice in the exercise of rights of defence.

52 This is also emphasized in recital 2 of the AI Act: “This Regulation should be applied in accordance with the values of the Union enshrined as in the Charter, facilitating the protection of natural persons, undertakings, democracy, the rule of law and environmental protection [...]”.

a more lenient legal strategy towards AI uses. Technically, this is unlikely to pose major problems and may in many cases require not much more than the relocation of a server.

The assessment reveals a paradox. On the one hand, Union law grants Member States a considerable margin of discretion when safeguarding the quality of the administration of justice in traditional settings. The Court of Justice has repeatedly acknowledged that maintaining high professional standards in the legal profession may justify restrictions imposed by national law, for instance, on third-party ownership of shares of law firms and their organisation⁵³. On the other hand, where equivalent advisory services are performed digitally through AI-based systems, across borders and without the involvement of a legal professional, the Member States' regulatory autonomy is significantly curtailed. In the interest of the rule of law, EU law must address these counterproductive effects. It must be ensured that legal AI in the hands of laypersons is as exact, reliable and trustworthy as services provided by a real lawyer or law firm, and where it is not the case or cannot be ensured, take the necessary precautions or at least allow its Member States to adopt the necessary legislative measures.

6. Conclusion

With AI infiltrating the legal services markets, the traditional regulatory instruments for the protection of the legal profession(s) from providers who are unqualified or oblivious and disrespectful of professional values and ethics risk losing their grip. The EU contributes to this through maladjustment of its legislation, which indiscriminately clings to the state-of-origin principle in the performance of digital services, to the specificities of AI. The preceding analysis has revealed that the regulatory approach of the EU on AI, utterly specific in the AI Act and unspecific in the Digital Services Act and Digital Markets Act, remains ill-adjusted to what AI is likely to soon evolve to in the field of legal services: The accent placed, 25 years back, on the freedom of services, is so much stronger than the one on service quality which is also by no means alien to the law of the Union.

AI will transform legal services, not only those provided by lawyers or tax advisors but in the medium run also those of the judiciary, and it will likely transform the legal profession(s). Some larger law firms have purportedly stopped hiring new staff, including associates, which is indicative of the degree of uncertainty about how far and deep this transformation will go. Sector-specific AI regulation should not aim to protect the legal profession for their own sake but those elements in their regulation which makes them essential as stakeholders ("organs", as § 1 Bundesrechtsanwaltsordnung and § 32 (2) Steuerberatungsgesetz call them) of the administration of justice and hence of the rule of law. AI is gradually evolving from tool to master. To the extent that it gains the capacity of fully emulating a lawyer or tax advisor, its regulation ought not to be substandard compared to what legal services regulation requires. Any future regulation of legal AI therefore has to ensure, or enable the Member States to ensure, that the key standards of the legal

⁵³ ECJ, c-295/23, *Halmer Rechtsanwalts-gesellschaft/Rechtsanwaltskammer München*, sen. 19-12-2024, p.to 66 ff.

professions be, to the maximum extent possible, be observed by legal AI or the persons responsible for its deployment: underlying qualification, secrecy and data protection, responsibility and liability and trust.

Any future regulation should seek to address both AI designed for legal professionals and AI that may be used by laypersons and is intended to spare them the services of a lawyer or tax advisor (which is usually confined to out-of-court legal services). For the use of AI by legal professions, despite differences across Member States in their organisation, guidelines with a remarkable convergence in substance have been developed⁵⁴. In Germany, the abovementioned guidance issued by the Federal Bar Association of Germany (Bundesrechtsanwaltskammer, BRAK) transposes existing duties to AI-assisted work⁵⁵, emphasizing personal responsibility, mandatory verification of outputs and strict limits derived from professional legal secrecy and data protection. Yet these standards run at idle in the face of the increasing disintermediation of legal services, that is, where legal services are provided by or through AI systems designed, operated and/or disseminated by non-professionals.

The first move towards a solution must be made by EU law, which must bring AI-based legal services from the shadow of the AI Act into light and consider extending the standards which apply to AI intended for “administration of justice” to other categories of legal service AI. The EU should also reassess the appropriateness of the standards enshrined in the 2000 Directive on Electronic Commerce and enable the Member States to adopt general protective standards where the rule of law so requires. If so, the disputed question, now rendered obsolete by that Directive, of whether AI is structurally able to provide legal services or not, would again gain momentum and Germany would need be well advised to specify this question. In recent years, calls for reforms of the RDG and for a better protection of the legal profession have grown louder⁵⁶ and by recently ratifying the Convention for the Protection of the Profession of Lawyer, Germany underpinned its awareness of these concerns. However, any future legislation on the uses of AI in what sensu latu may be referred to as administration of justice will need to strike a fair and wise balance between protecting the rule of law and fostering what the benefits this technology may have in store for the latter, between taming and enabling. There is no way of turning back time.

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⁵⁴ As shown by M. Hartung, *Internationale Guidelines für den Einsatz von KI-Software in der Rechtspflege*, in *LTZ*, 2025, 108.

⁵⁵ BRAK, *Hinweise zum Einsatz von künstlicher Intelligenz (KI)* (n 36), p. 2-7.

⁵⁶ See M. Ebers, B. Quarch, *Rechtshandbuch ChatGPT*, Baden-Baden, 2024, §13, para. 61; F. Remmert, M. Krenzler, *Rechtsdienstleistungsgesetz*, RDG, Baden-Baden, 2023, § 1 Rn. 5.