

The Future of Litigation Funding: The Role of Artificial Intelligence and the Impact of the EU AI Act

Explore the use of artificial intelligence for litigation funders and strategies to manoeuvre through the new regulatory landscape of the EU AI Act.

BRUSSELS, BELGIUM, August 28, 2024 /EINPresswire.com/ -- Authored by [Deminor](#) Senior Legal Counsel [Patrick Rode](#), In this latest article, Patrick explores uses for artificial intelligence that may be beneficial for litigation funders, also discussing strategies to manoeuvre through the new regulatory landscape of the EU AI Act to best leverage the benefits of AI.

Ever since the launch of OpenAI's large language model "ChatGPT" in late 2022, Artificial Intelligence ("AI") has gained a great deal of attention in the public. AI is also finding its way into the legal landscape and deeply impacting the sector. The advantages of using AI are obvious, its capacity to analyse vast datasets, predict case outcomes, and streamline decision-making processes offers the legal world and also litigation funders the ability to optimize their investments and enhance profitability. However, with great power also comes great responsibility and as the European Union ("EU") moves towards regulating AI through the EU AI Act, the potential for disruption in this sector is significant. This article explores how AI is currently being used in [litigation funding](#) within Europe, and the possible impact of the EU AI Act on this emerging practice.

The Role of AI in Litigation Funding -

Litigation funding involves third-party financiers investing in legal cases in exchange for a portion



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of the financial recovery if the case is successful. Traditionally, litigation funding decisions have been based on legal expertise, risk assessment, and financial analysis. However, there is an increasing case to be made that AI may need to be employed to enhance these processes, offering funders a competitive edge in selecting and managing cases. A number of tasks could potentially benefit from the use of AI:

1) Case Evaluation and Risk Assessment: AI algorithms can evaluate the merits of a case by analysing historical data, including past judgments, legal precedents, and case outcomes. By leveraging machine learning models, funders can predict the statistical likelihood of success of a case and the potential financial return on investment. This can enable a more accurate risk assessment, allowing funders to allocate resources more efficiently.

2) Predictive Analytics: Predictive analytics is a key application of AI in litigation funding. AI systems can process and analyse large volumes of data to identify patterns and correlations that may not be evident to human analysts. For example, AI may be able to assess the performance of specific law firms, (in some jurisdictions even of) judges, or jurisdictions in general, helping funders make informed decisions about which cases to back.

3) Automation of Decision-Making: AI can automate many aspects of the decision-making process in litigation funding. From initial case screening to ongoing portfolio management, AI-driven tools can handle routine tasks, reduce human error, and increase the speed of decision-making. This allows litigation funders to scale their operations and manage a larger number of cases simultaneously.

4) Due Diligence: AI can streamline the due diligence process by quickly sifting through vast amounts of legal documents, contracts, and other relevant materials. Natural language processing (NLP) tools can identify key clauses, terms, and potential risks, ensuring that funders have a comprehensive understanding of the cases they are considering.

Impact of the EU AI Act on Litigation Funding -

The EU AI Act, which was published in the Official Journal in July 2024, is one of the first comprehensive legislative efforts to regulate AI. The EU AI Act came into force in August 2024 and categorizes AI systems based on the risk they pose, ranging from minimal risk to unacceptable risk.

According to Article 6(2) in connection with Annex III.8. of the AI Act many areas closely connected to the law are considered "high-risk". This applies to certain aspects of law enforcement, migration, asylum and border control management and most importantly the administration of justice. Specifically, AI systems "intended to be used by a judicial authority or on their behalf to assist a judicial authority in researching and interpreting facts and the law and in applying the law to a concrete set of facts, or to be used in a similar way in alternative dispute resolution " are considered "high-risk". Litigation funding does not fall under this section of the AI Act and therefore AI systems that are intended to be used in litigation funding are prima facie

not “high-risk”, However, the fact that AI-driven predictive analytics and automated decision-making may be involved, the use of AI systems may nonetheless fall under the "high-risk" category, subjecting it to stringent regulatory requirements.

1) Transparency and Accountability: One of the core principles of the EU AI Act is the requirement for transparency in AI systems. Litigation funders using AI will need to ensure that their models are explainable and that the decision-making process is transparent to stakeholders. This may require significant adjustments to existing AI tools, particularly in terms of how decisions are documented and justified.

2) Compliance with Legal Standards: AI systems used in high-risk areas will need to comply with strict legal standards. This includes conducting impact assessments, ensuring data protection, and implementing robust risk management frameworks. For litigation funders, this could mean additional costs and resources dedicated to compliance, potentially slowing down the adoption of AI technologies.

3) Ethical Considerations: The EU AI Act emphasizes the ethical use of AI, particularly in areas that can significantly impact individuals' rights and freedoms. In the context of litigation funding, this raises questions about the fairness of AI-driven decisions, potential biases in predictive models, and the overall impact on the justice system. Funders will need to address these ethical concerns to avoid reputational damage and legal challenges.

4) Potential for Innovation Stifling: While the EU AI Act aims to create a safe and trustworthy AI environment, there is a risk that overly restrictive regulations could stifle innovation in litigation funding. Smaller litigation funders, in particular, may struggle to meet the compliance requirements, leading to reduced competition and potentially slowing the growth of AI adoption in the industry.

5) AI Literacy: Further, for systems that, while not high-risk, still require users to understand the implications of their interactions with AI. The Act emphasizes the following: (i) User Awareness; (ii) Education and Training and (iii) Transparency in Communication. These obligations aim to enhance public understanding and responsible use of AI, thereby reducing risks associated with misinterpretation or misuse of AI technologies. Funders that intend to use AI in their due diligence or any other part of the funding process will need to comply with the above.

Concept of the EU recently adopted the AI Act

Strategic Responses to the EU AI Act -

To navigate the challenges posed by the EU AI Act, litigation funders will need to adopt strategic measures to ensure compliance while continuing to leverage AI's benefits. Here are some potential strategies:

1) Investing in Compliance Infrastructure: Litigation funders should consider investing in compliance infrastructure to meet the requirements of the EU AI Act. This may involve investing

in legal technology that ensures transparency, and conducting regular audits of AI systems or even hiring compliance officers.

2) Collaboration with AI Experts: Engaging with AI experts and legal technologists will be crucial for funders to understand the technical and legal aspects of the EU AI Act. Collaborative efforts can help develop AI systems that are both effective and compliant with regulatory standards.

3) Ethical AI Development: Funders should prioritize the development of ethical AI systems that minimize biases and ensure fairness in decision-making. This could involve using diverse training data, implementing bias detection tools, and regularly updating AI models to reflect changes in the legal landscape.

4) Advocacy and Dialogue with Regulators: Active participation in discussions with EU regulators and industry bodies can help litigation funders voice their concerns and contribute to the shaping of AI regulations. By engaging in advocacy, funders can influence the regulatory framework to be more supportive of innovation while safeguarding ethical and legal standards.

Conclusion -

AI has the potential to revolutionize the legal sector in Europe, offering enhanced efficiency, predictive accuracy, and scalability also to litigation funders. However, the implementation of the EU AI Act presents significant challenges that not only litigation funders must address. By proactively adapting to the new regulatory environment, investing in compliance, and prioritizing ethical AI practices, funders can continue to benefit from AI technologies while ensuring they align with the evolving legal framework in Europe. The future of AI in litigation funding will depend on the industry's ability to balance innovation with compliance and ethical considerations.

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