3 SESSIONS

- **SESSION 1 – *ARTIFICIAL INTELLIGENCE & THE LAW***
- **SESSION 2 – *BLOCKCHAIN & THE LAW***
- **SESSION 3 – *DESIGNING AND IMPLEMENTING CORPORATE PROCESSES FOR AI TO ENSURE COMPLIANCE WITH DATA PROTECTION REGULATIONS***

1 Exam

- 1 Dissertation to write
- 6 pages, at least
- Deadline: August 15, 2020
- Julie.Martinez@bakermckenzie.com (Object: Name – Surname – Dissertation)

Session 1: Artificial Intelligence & Law

Presentation | LL.M. International Business Law - Dubaï campus

Julie Martinez – IT/C Associate at Baker McKenzie Paris

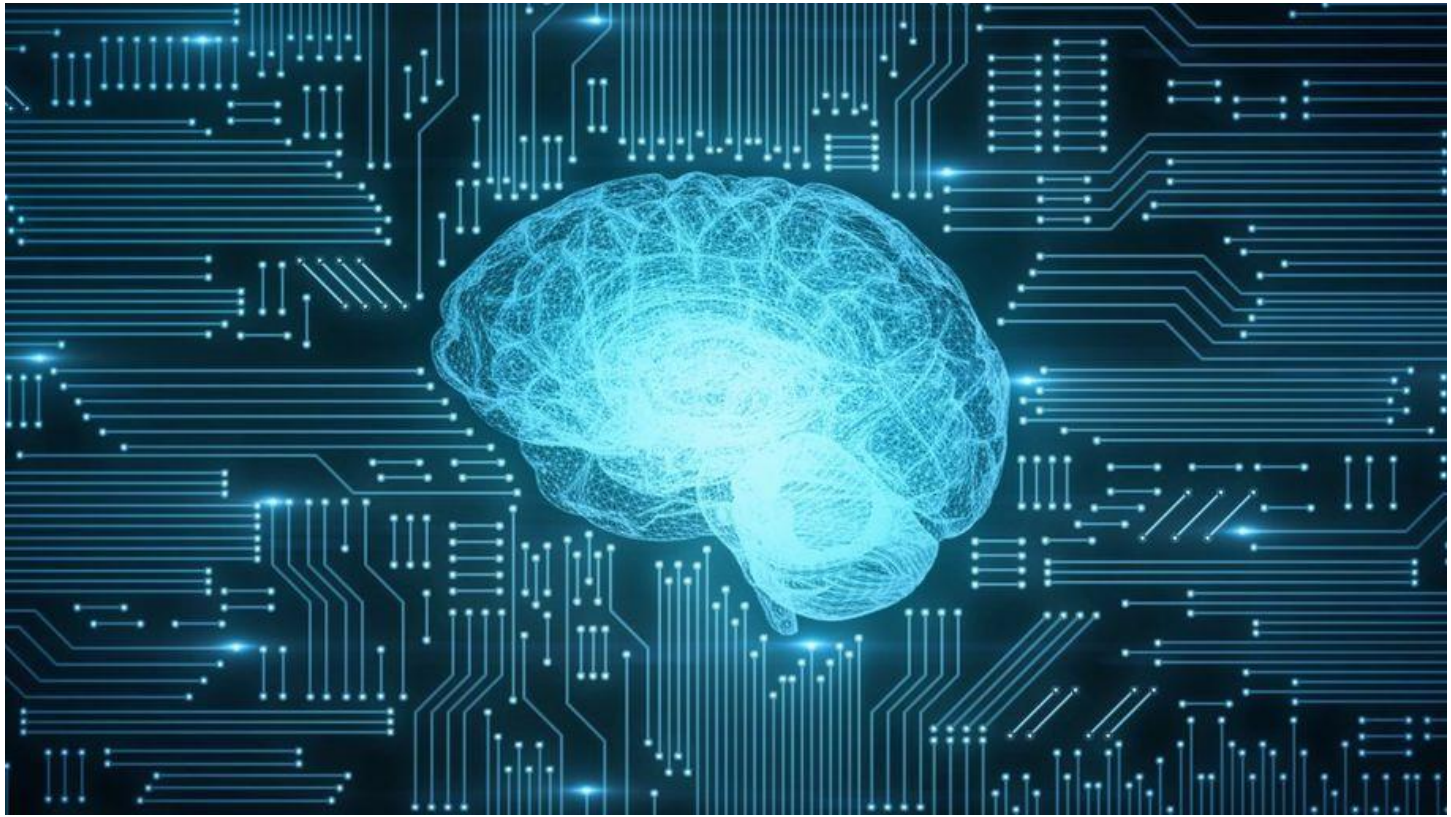
Agenda

1. FIRST DIVE IN AI
2. AI & THE LAW
3. IMPLEMENTATION CHALLENGES
4. INTERNATIONAL CONTEXT

1

First dive in AI

A – What is Artificial Intelligence (AI)



B– AI by the technologies

How does AI work ?

(AI) commonly refers to a combination of:

- **machine learning** techniques used for searching and analysing large volumes of data;
- **robotics** dealing with the conception, design, manufacture and operation of programmable machines;
- and **algorithms and automated decisionmaking systems** (ADMS) able to predict human and machine behaviour and to make autonomous decisions.

C– Use case : connected and autonomous vehicles

A short presentation

D – What AI is and is NOT

AI's Current Capabilities and Limits

Capabilities	Limits
• Automated chatting • Health Care • Accountancy	• Cannot match abstract reasoning • Lack of knowledge • Bias

2

AI & the Law

A - AI, public policy & regulation

1) Should AI systems be regulated ?

CONs	PROs
Regulations already exist	Regulations already exist but are limited to specific topics (*data protection, algorithms…)*
Too early to impose rules that would necessarily become inadequate	Laws should go hand in hand with AI developments
Soft laws could do the job	Ethical principles are not enough to govern IA developments
	Regulations should be industry-specific (*autonomous vehicles, healthcare*…)

A - AI, public policy & regulation

2) Regulating ex-ante, ex-post ?

	Ex-ante	Ex-post
Definition	Regulation of AI before it is developed	Regulation that would be enacted after an AI system causes harm
Issues	Challenges because AI development “may be discreet, diffuse, discrete and opaque” (Scherer)	Lack of foreseeability, causation & control. Poorly suited to minimizing public risk

The debate on how to regulate AI does not occur in academic isolation. It is complicated by the increasingly competitive development of AI by both corporations and states.

A self regulatory approach ?

A - AI, public policy & regulation

3) An effective self-regulatory approach ?

Clear set of principles

Intrinsic motivation to pursue collective-action solutions

Independent and authoritative governing body

Credible enforcement mechanisms

Internal and external transparency

A - AI, public policy & regulation

4) Regulatory sandboxes ?

- A **regulatory sandbox** is a process and a tool for regulation.
- It is a *laboratory environment* but its key function *i.e*. to test innovations against the existing regulatory framework, is achieved via a process involving the participating business entities and the regulator.
- It aims to mitigate a risk.
- The regulatory sandbox is a legal fiction and, as such, it is subject to the rules of legal logic.

A - AI, public policy & regulation

5) EU regulatory framework

- A number of proposals on AI legislation have been discussed in the EU:

  - Legislation on transparency and decision making;
  - Sector-specific legislation in health-care;
  - Legislation on face recognition technologies.

B – AI & Ethics: the EU approach

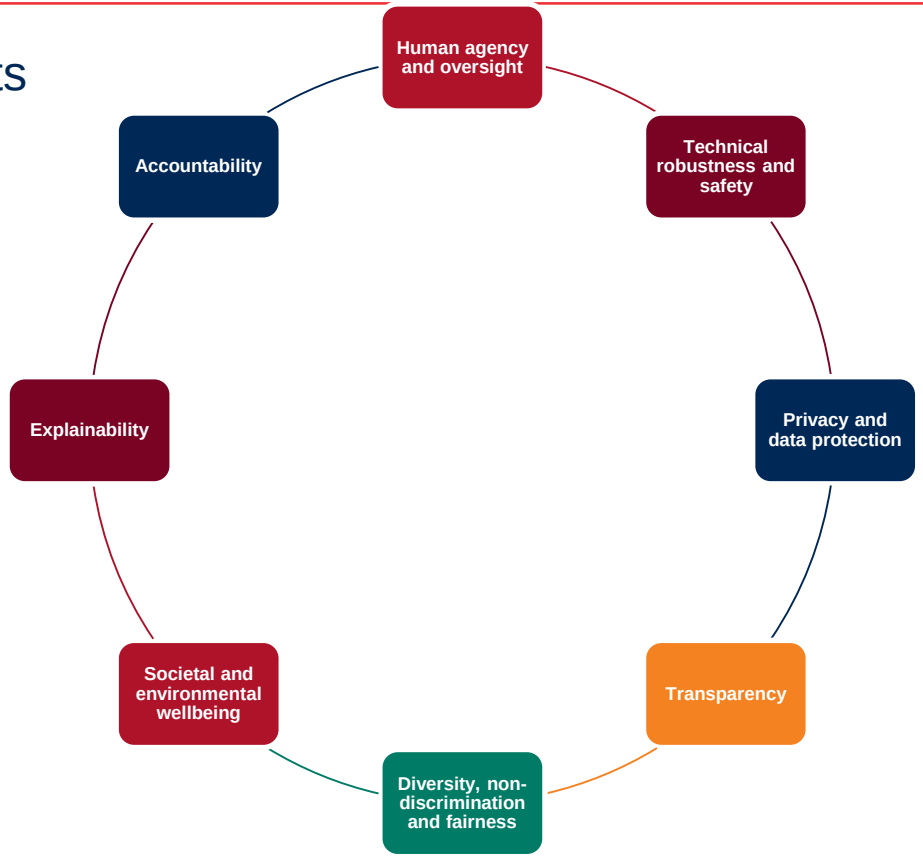
1) Notion of human-centric approach

"The human-centric approach to AI strives to ensure ***that human values are central to the way in which AI systems are developed, deployed, used and monitored****, by ensuring respect for fundamental rights, including those set out in the Treaties of the European Union and Charter of Fundamental Rights of the European Union, all of which are united by reference to a common foundation rooted in respect for human dignity, in which the human being enjoys a unique and inalienable moral status. This also entails consideration of the natural environment and of other living beings that are part of the human ecosystem, as well as a sustainable approach enabling the flourishing of future generations to come."*

Ethics guidelines for trustworthy AI, European Commission - 2019

B – AI & Ethics: the EU approach

2) Key ethical requirements



3

Implementation challenges

Implementation challenges

Example 1: a car, ambulance and bus operating autonomously collide

Legal Actors	Legal and regulatory issues			
	A. Contract Law	**B. Tort Law**	**C. Regulation**	**D. Other issues**
1- Vehicle owner 2 – Vehicle operator 3 – Vehicle manufacturer 4 – Vehicle dealer 5 – All vendor (if different)	• No contract between operators of different vehicles • Chain of contracts between vehicle owner / operator – dealer (leasing co) – manufacturer – AI vendor • Provider will seek to get customer to acknowledge AI risk & to limit its liability & legal responsibility	• Contracts will seek to exclude tort liability • Negligence liability – duty of care owed ?; establish breach or normal principles ? • Actionable breach of statutory duty ? • Manufacturer strict liability ?	• Vehicle: AI to be tested, data recording. Data protection, data security, transition to human control, failure warning • Road traffic law: setting AI vehicle requirements; operators' duty to comply • Liability of ambulance & bus operators & management • Ownership of data generated	• Black box recording all data to be kept on board/in-cloud for all 3 vehicles to enable evidence-based determination of fault • Regulatory framework to ensure black boxes are installed • International regulatory framework update (Geneva/ Vienna Road Traffic Convention)…
6 – Insurers	• Insurance contract required between each of actors ?	-	• Who must carry insurance, for what risks & what liability minimum ?	• De-mutualisation of insurance risk through AI/big data & treatment of marginal cases? • Evidence of testing/performance of Ais as part of insurability evaluations?
7 – Highways authority	• Contractual arrangements where operations (AI-IT related) are outsourced	• Actionable statutory duty ? • Limits of liability?	• Extend duty to functioning sensors, etc?	• Growing importance of ISO standards • Approach by state to AI where regulated: unitary/centralized agency or fragmented/sector ?
8 – Vehicle licensing authority			• Testing of AI-enable vehicles	

Example 2: multiple robots work with each other in a home

Legal Actors	Legal and regulatory issues			
	A. Contract Law	**B. Tort Law**	**C. Regulation**	**D. Other issues**
1- Robot owner 2 – Robot operator 3 –Robot manufacturer 4 – All vendor (if different)	• No contract between operators of different robots • Chain of contracts between robot ehicle owner / operator – manufacturer – AI vendor • Provider will seek to get customer to acknowledge AI risk & to limit its liability & legal responsibility	• Contracts will seek to exclude tort liability • Negligence liability – duty of care owed ?; establish breach or normal principles ? • Actionable breach of statutory duty ? • Manufacturer strict liability ?	• Consumer protection – re user in the home in the event of accident caused by faultily operating robot either singly (vacuum cleaner injures owner) or together (vacuum cleaner and home sensing AI)	• Note common misconception that robots can be agents or have legal personality – BUT robots are **goods** of their owner with no capacity for independent legal action • Data protection and security issues
5 – Insurers	• Insurance contract required between each of actors ?	-	-	
6 – Standard setting organizations (e.g. ISO)	• /	• /	• /	• Growing importance of ISO standards
7 – Regulatory authorities	• Contractual arrangements where operations (e.g. AI-IT related) are outsourced	• Actionable statutory duty ? • Limits of liability?	• Extend occupiers' liability to cover robot activities? • Liability for robot use outside the home?	• How to address growing volume of sensors? • Approach by State to AI

4

International context

A – EU: selected countries

B – United States

- For now → self-regulation : Industry players' code of conducts
- Call for more government-led regulation

C – China

- Interest in developing an ethical framework for AI
- Artificial Intelligence Industry Alliance: draft guidelines for self-regulation
- Generation AI Governance Expert Committee : 8 non-binding rules

D – Canada

- Guiding principles governing the use of AI in the administration and public services

E – United Arab Emirates

- UAE Strategy for Artificial Intelligence (2017)
- A new ministry in the Cabinet called the Ministry for Artificial Intelligence (2017)
- Practical implementation of AI: traffic & security