

France

*Iga Kurowska*

Alongside other European countries, France has been trying to embrace the opportunities offered by LegalTech tools since the second decade of the XXI century. Although none of the technologies has proved disruptive for the legal sector, certain disruptive technologies have been successfully integrated into their daily work by French legal practitioners, such as blockchain, big data analytics, or Artificial Intelligence (AI).

### *1. A progressive but satisfactory Legaltech adoption by French law firms*

When it comes to the use of Legaltech tools by the law firms, most of them, no matter the size, have been proficient in the use of the tools from the Legaltech 1.0 category, including basic office-related software for document creation and management, e-billing tools, video-, and tele-communicators, or legal search engines (rendered possible through legal open data project<sup>1</sup>). Also, an important number of law firms have been using electronic signature, as well as communicators created especially for law firms, which presumably guarantee a higher level of security and confidentiality of information exchange.

Certain lawyers have also been implementing in their practices a big part of Legaltech 2.0 solutions, such as Document automation Software, Document Management Software, Customer Management Software, Software for Online Annual General Meetings of companies, or even AI-based document review tools, gradually tested in big international law firms. It can be generally stated that the interest in digitalization and advancement of the tools' adoption is greatly dependent on the lawyer's personal interest in the matter. Legal technology and legal innovation have been promoted by both private and public sectors for several years already through conferences, forums, master classes, and workshops of public access. Therefore, more tech-savvy individuals have had both time and opportunity to famil-

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<sup>1</sup> The loi pour une République numérique (Digital Republic bill), that entered into force on October 7, 2016 was an important step in opening public data in France.

iarize themselves with a vast offer, also of a national origin, and implement selected solutions in their workplace.

French Legaltech ecosystem has also come up with a number of more advanced solutions, such as blockchain registry for Intellectual Property (“IP”) rights, for company registries, or Artificial Intelligence (“AI”) for advanced legal expert systems (also commonly called “chatbots”). However, their use is still very seldom, and their utility is underrated.

## *2. An ambitious but underperformed digital transformation of the French justice system*

Digitalization of procedural civil law has been gradually established in France for the last twenty years. The scope of that transformation includes, among others, recognition of digital evidence and electronic signature in 2000<sup>2</sup>, a possibility of electronic exchange of procedural pieces between the parties in a judicial dispute in 2005<sup>3</sup>, the publication of judgments in a digital form in 2012<sup>4</sup>, electronic identification through eIDAS regulation in 2014; all of the above being a process of paving the road towards the establishment of a fluent and fully dematerialized legal framework for e-delivery of legal documents in France.

Although courts and public administration have been undergoing a digital transformation for many years now<sup>5</sup>, the Covid-19 crisis has demonstrated significant insufficiencies. Although some procedures have been fully dematerialized, such as the ones regarding the IP rights<sup>6</sup>, or pecuniarily-small civil claims<sup>7</sup>, and communication is for most cases possible through email, or specially dedicated for that purpose platforms, a require-

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2 Law no. 2000-230 of March 13, 2000 has introduced to the French Civil code digital proof. Articles 1 and 2 of the Decree no. 2001-272 of March 30, 2001 has specified the requirements for the electronic signature.

3 Decree no 2005-1678 of December 28, 2005.

4 Decree no 2012-1515 of December 28, 2012.

5 Many important initiatives improving efficiency and access to justice have been put in place starting from 2017, such as “Le portail du justiciable” with legal procedural rights written in plain language, downable forms serving as claims for civil procedures, as well as, from January 4, 2021, a possibility to make these claims, together with attachments, directly through the platform.

6 Both registration and amendments can be done fully online, through INPI website: <https://www.inpi.fr/fr> accessed 31 March 2021.

7 Since the reform of 23 march, 2019, civil claims below 5000 euros can be done in a fully dematerialized manner.

ment of an original document in paper form is still a common reality for litigation. Nonetheless, and surprisingly<sup>8</sup>, curiosity and openness towards more high-tech solutions can be noticed among jurisdictions all over the country, which are testing AI-powered solutions<sup>9</sup>, and by the government, which have recently introduced a project for the creation of an algorithmic estimation of corporal damages in civil litigation<sup>10</sup>.

The recent Covid-19 pandemic has also been a chance to implement fully virtual court hearings. Starting on April 2, 2020<sup>11</sup>, and concerning a limited number of matters, parties, judges, clerks, and attorneys were provided with a platform to participate in hearings in respect of security and procedural requirements. Also, due to a pandemic, new platforms enabling judicial claims, such as opening a liquidation process<sup>12</sup>, or claims for judicial resolution of employee-employer conflicts<sup>13</sup>, have gained utility.

### 3. E-delivery

Since 2005, “The electronic communication”<sup>14</sup> is a separate part of the French Civil Procedure Code applicable to procedures before most jurisdictions and instances, with that mode being explicitly permitted both

8 Also due to the fact that France was the first country in the world to prohibit in 2017 judicial analytics, which was a controversial decision commented all over the world. See more: Artificial Lawyer, ‘France’s Controversial Judge Data Ban – The Reaction’ (Artificial Lawyer, 5 June 2019) <<https://www.artificiallawyer.com/2019/06/05/frances-controversial-judge-data-ban-the-reaction/>> accessed 31 March 2021.

9 The first agreement of collaboration between Predictice, a predictive justice startup, and Lille Bar Association have been signed in 2017. More: Louis Larret-Chahine, ‘Lille, premier barreau à tester la justice prédictive!’ (Predictice Blog, 1 August 2017) <<https://blog.predictice.com/lille-est-le-premier-barreau-%C3%A0-tester-la-justice-pr%C3%A9dictive>> accessed 31 March 2021.

10 Decree no 2020-356 of March 27, 2020 creating an automated personal data processing algorithm ,DataJust’.

11 Enabled by a series of *Ordonnances of March 25, 2020*, amending the rules of judicial procedures. More: <<https://www.gouvernement.fr/conseil-des-ministres/2020-03-25/faire-face-a-l-epidemie-de-covid-19>> accessed 31 March 2021.

12 <<https://www.tribundigital.fr>> accessed 31 March 2021.

13 <<https://www.saisirprudhommes.com>> accessed 31 March 2021.

14 La communication par voie électronique – Livre I<sup>er</sup> of French Civil Procedure Code, art. 748-1 to 748-7. Notification du droit commun et les notifications spéciales : titre XXI of Livre 1<sup>er</sup> of French Civil Procedure Code.

for ordinary and special notifications, judicial procedures with mandatory representation, as well as in front of the French Court of Appeal and the highest Court of Cassation<sup>15</sup>. The articles have been amended on multiple occasions, completed by several purely technical orders, with a real revolution being made in 2015 by simplifying the formal requirements and focusing on two problematic matters: security and cost-sharing. After years of “reality checks,” richer in the knowledge of numerous particularities related to modernizing the legal justice system, today’s regime, as described recently by the French legislator<sup>16</sup>, is a mix of proper for paperless and traditional civil procedure rules, the latter applying also to conventional ways of service of documents in France.

Nevertheless, despite numerous efforts of progressive construction through extensive legislation, both practitioners and academia agree that the digitalization plane has been missing a pilot, and the recent crisis of Covid-19 has confirmed it. The actors of the French legal system point out the inconsistencies and contrarieties, impeding a proper functioning of the justice system and creating legal insecurities, not to mention a missed chance to embrace the opportunities arising from legal technology.

The e-delivery of judicial decisions has been first allowed in 2008 and concerned exclusively the decisions given by the Cour de Cassation. The procedure has been extended to other jurisdictions in 2012, which allowed for a codification of e-delivery in the French Civil Procedure Code. In order for it to be served in conditions deemed equivalent to its paper version, the document needs to be elaborated by bailiff through specialized software, sealed, e-signed, and made available to the recipient in a secure way – through a virtual private network (“RPSH”) accessible exclusively after a correct encrypted identification through a platform “e-huissier”. The recipient is informed of the e-delivery by means of an email or through a text message (SMS) that is sent through a specially elaborated for this purposes platform and requires identification through a login and password. Both forms require a notice of receipt sent automatically by the system when the recipient logs into the platform.

However, for the e-delivery to be sufficient, the recipient needs to give prior consent to the method of e-delivery. It is a complex three-stage proce-

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15 As for the Court of Appeal: Article 930-1 of French Civil Procedure Code, which has been modified by a recent *Arrêté* of May 20, 2020 in order to clarify the rules applicable to that electronic communication. As for Court of Cassation: order of June 17, 2008.

16 Law n° 2019-222 of March 23, 2019, of planning for 2018-2022 and the justice reform.

dure including a provision by a person of detailed information, including the email address of their choice and emission of a dematerialized confirmation of the consent. The subscription to e-delivery is thus voluntary. In the future, the prior consent requirement can be erased by creating personal judicial email addresses attributed to all legal persons. Since 2015, an e-delivery, with a more restricted material scope as limited to convocations and excluding judgments, can also be made to moral persons. In any case, for both natural and moral persons, a fault of such prior consent could be considered by a court as a substantial formality and thus sanctioned by the nullity of service of the judicial document within the court proceedings.

According to the article 662-1 al. 3 of the French Civil Procedure Code, a properly established e-delivery is equivalent to its highest form of service of judicial documents in France – personal service - if the notice of receipt is received by the bailiff on the day that the act had been sent. The date and time of sending (as opposed to receiving) of the document to its addressee are the ones that make run the procedural terms. On the contrary, if the person's prior consent to e-delivery is listed in the system, nevertheless, the notice of receipt has been received after the day of its issue or the message has never been read, the e-delivery is equivalent to a “service done at home”. Alike in a traditional material service, paperless delivery needs to respect the time constraints, that is, be delivered between 6 PM-9 PM on workdays. In case of a plurality of recipients, under the condition of all of the concerned having priorly consented to the e-delivery mechanism, a single bailiff is authorized to serve the parties, no matter of their geographical resort; and thus, creating a derogation from a general competence rule<sup>17</sup> applicable to serving judicial documents. A similar exception of territorial principles of e-delivery applies if a third party is to intervene in the trial. Meanwhile, an interesting, simple but progressive initiative emerged from a student-founded legaltech: an online intermediary platform for traditional service<sup>18</sup>. It allows for finding and contacting the competent bailiff, managing the case through a SaaS tool, and receiving SMS updates on its progress

When it comes to e-delivery to French attorneys-at-law, which is covered by a different procedural legal framework than the one described above, an e-delivery has been rendered possible slowly but progressively,

<sup>17</sup> L. 111-1 du Code des procédures civiles d'exécution. Such exception has been allowed by articles 5-1 and 5-2 of Decree no 56-222 of February 29, 1956, created by a Decree no 2012-366 of March 15, 2012.

<sup>18</sup> <https://isignif.fr> accessed 31 March 2021.

starting from 2008 for proceedings before the Cour de Cassation<sup>19</sup> and through an application known as “Comavo”. Today, the e-delivery and exchange of other judicial documents is done through RPVA (Réseau Privé Virtuel Avocats). Subsequently, a necessary legal arsenal has been put in place in order to allow for a dematerialized exchange of documents between lawyers at different levels of the procedure and before different jurisdictions. However, although the whole judiciary chain is theoretically possible to be performed online, imperfections, as mentioned above, and gaps still exist. For instance, although a court decision can be signed and delivered online, the enforceable copy of the court’s decision – an essential element for the execution of the judgment – has not yet received the technical specifications allowing for its practical execution by the French Courts.

Besides administrative procedures that have not been covered by that brief resume of the French legal framework, e-delivery is also possible in criminal matters if such choice is made by the bailiff and, if not expressly excluded by the Ministry of Justice in the name of the traditional serving method. Therefore, so far, both for civil and criminal procedures, electronic delivery stays optional. In practice, however, it is still far from being a preferred option of both judiciaries and legal persons, if not a marginal one, a conclusion drawn from its invisible presence in the day-to-day litigation reality.

#### *4. Plans for the future*

On the European scene, France is considered a relatively developed and dynamic Legaltech market. Indeed, it is still not comparable to the one of the United States of the United Kingdom, but for the last consecutive years, it has had a growing number of investments, private actors, and public engagement. Its expansion is expected to continue during the upcoming years, with more strategic acquisitions and maturing startups. The Covid-19 pandemic has definitely contributed to the review of many initiatives, led by and for the private and public sector, as well as to a significant shift of approach of all legal professionals – from dreaming of ambitious futuristic applications to more pragmatic, modest but realistic projects, with possible immediate implementation.

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19 Order of June 17, 2008.