

Policy Recommendations

*Before presenting the recommendations, it is important to note that they are not directed at any single jurisdiction or organisation. Rather, they are formulated from a broader transnational perspective and seek to contribute to the development of a common governance framework for the use of AI in litigation and arbitration. This approach reflects the inherently cross-border nature of many disputes and the need for greater international harmonisation of AI governance.

Recommendation 1: Strengthen Human Oversight, Explainability, and Transparency

Policy objective:

Ensure that AI systems used in litigation and arbitration remain transparent, reviewable, and subject to meaningful human oversight.

Responsible actors:

- European institutions and regulators
- Courts and judicial authorities
- Arbitral institutions
- National regulators
- Professional associations and bar associations

Implementation instruments:

- Judicial guidelines
- Arbitral rules
- Professional codes of conduct

Proposed measures:

- Introduce minimum explainability requirements for AI systems used in adjudication.
- Encourage the development and use of Explainable Artificial Intelligence (XAI).
- Require meaningful human review before any AI-assisted judicial decision or arbitral award is finalized.
- Introduce disclosure obligations regarding the use of AI together with a brief explanation of how such systems were used during the proceedings.

Expected impact:

These measures would strengthen transparency, due process, and trust in AI-assisted dispute resolution, while reducing potential difficulties regarding recognition and enforcement in cross-border disputes.

Recommendation 2: Improve Data Governance and Technical Safeguards

Policy objective:

Reduce risks related to bias, poor data quality, confidentiality breaches, and non-compliance with data protection requirements.

Responsible actors:

- AI developers and providers
- Courts and arbitral institutions
- Data protection authorities
- National regulators

Implementation instruments:

- Regulatory standards
- Internal auditing procedures
- Data governance policies

Proposed measures:

- Introduce periodic audits of datasets used for training and operating AI systems.
- Assess datasets for bias, representativeness, and data quality.
- Verify compliance with data protection and cybersecurity requirements.
- Develop safeguards for international data transfers used in AI-assisted proceedings.

Expected impact:

Regular audits would improve the reliability, fairness, and security of AI systems, particularly in cross-border disputes involving parties from different jurisdictions.

Recommendation 3: Promote International Harmonisation of AI Governance

Policy objective:

Reduce regulatory fragmentation and improve legal certainty in cross-border litigation and arbitration.

Responsible actors:

- UNCITRAL
- Hague Conference on Private International Law
- Council of Europe
- National governments
- Arbitral institutions
- International arbitral organisations and professional bodies

Implementation instruments:

- International guidelines
- Model laws
- Soft-law instruments
- Legislative reforms

Proposed measures:

- Develop common principles regarding transparency, human oversight, and explainability in AI-assisted dispute resolution.
- Promote greater consistency between national and international approaches to AI governance.
- Encourage international cooperation regarding the use of AI in judicial and arbitral proceedings.

Expected impact:

Greater harmonisation would increase predictability, strengthen parties' trust, and facilitate the recognition and enforcement of judgments and arbitral awards across jurisdictions.

Recommendation 4: Clarify Existing Legal Frameworks and Adapt Them to AI

Policy objective:

Ensure that existing legal instruments remain effective in the context of AI-assisted dispute resolution.

Responsible actors:

- National legislatures
- International organisations
- Judicial authorities
- Arbitral institutions

Implementation instruments:

- Legislative amendments
- Interpretative guidelines
- Institutional rules

Proposed measures:

- Review existing procedural and judicial/arbitration frameworks in light of AI developments.
- Clarify the legal implications of AI-assisted proceedings with regard to due process, transparency, and accountability.
- Consider future amendments or official guidance concerning the recognition and enforcement of AI-assisted judgments and arbitral awards.
- Review international instruments drafted before the emergence of AI technologies. For example, the New York Convention does not contain any provisions regarding AI, as such technological developments could not have been foreseen at the time of its adoption.

Expected impact:

Clearer legal frameworks would reduce uncertainty and improve the compatibility of AI-assisted dispute resolution with fundamental legal principles.

Recommendation 5: Strengthen Institutional Capacity and Professional Training

Policy objective:

Ensure that legal professionals possess the necessary skills and institutional support to use and supervise AI systems responsibly.

Responsible actors:

- Judicial training academies
- Bar associations
- Arbitral institutions
- Universities and professional organisations

Implementation instruments:

- Professional training programmes
- Ethical codes
- Institutional guidelines
- Institutional governance reforms

Proposed measures:

- Introduce mandatory AI-related training for judges, arbitrators, lawyers, and legal personnel.
- Promote understanding of both the benefits and risks of AI systems.
- Encourage the creation of specialised AI governance and compliance functions within courts and arbitral institutions.
- Consider the introduction of dedicated AI oversight professionals (AI governance officers or AI compliance officers) responsible for monitoring AI systems, managing risks, ensuring compliance, reducing bias, and preventing excessive reliance on automated processes.

Expected impact:

Better-trained professionals and dedicated oversight mechanisms would strengthen accountability, reduce the risks associated with AI use, and improve the quality and reliability of AI-assisted dispute resolution.