

LEGAL TECH IN PRIVATE CLAIMS SURVEY



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INTRODUCTION



It is my great pleasure to introduce the Legal Tech in Private Claims Survey (the 'Survey'). This report presents the data collected from a sample of Legal Tech companies, in five European countries (France, Germany, Italy, Spain and the UK), that seek redress for claims arising in private relationships.

Legal Tech companies operating in litigation predominantly address B2C relationships, which is odd against the overall Legal Tech backdrop where B2B solutions prevail. A 'no win no fee' policy, whereby consumers are only charged for success, is popular among Legal Tech companies that manage claims. Even though their contingency fees tend to be significant, they attract consumers who would otherwise have abandoned a claim as a result of rational apathy due to its small value.

Unlike the more individualised approach of traditional law firms, Legal Tech companies pre-select the types of claims they handle. Specialisation makes the management of a large portfolio possible and suitable for automation. The option that Legal Tech companies give for certain claims, with their corresponding applicable laws, could reveal important data on the relationship between law and automation. Some claims could be more suitable than others for automation depending on the laws applicable to them.

The data collected under the Survey is interesting in that sense, even more considering it against the backdrop of litigation that involves legal reasoning, which is probably one of the most difficult activities to automate.

The Survey is an output of the EU Jean Monnet Module 'Liability of Robots: a European Vision for a New Legal Regime' that I coordinate. Students and alumni from IE University contributed by translating the survey into five languages and distributing it. I am grateful to Sebastian Arnold, Aurora Dell'Elce, Bárbara Gómez Cortés and Elena Sabau for completing this task. I would like to thank Morgane Grevellec, Eva Moral, Jorge Morell, Macarena Plaza and Pablo Rabanal for supporting the distribution of the Survey. Valeria Podmogilni provided an updated status of the German market. The generous engagement of Legal Tech companies in responding to the Survey made it possible. I am grateful to all participants. The responsibility for errors remains mine alone.

I hope you will find the Survey's findings of interest and that they will provide the basis of enriching discussions on automation of law. I present my own thoughts in the chapter: 'Legal Tech in Consumer Relations and Small Value Claims: A Survey' in L.A. DiMatteo et al, *The Cambridge Handbook of Lawyering in the Digital Age*, CUP, Cambridge, 2021.

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KEY FINDINGS

Legal Tech companies that claim airline rights derived from delayed flights, cancellations and denied boarding, predominate in all the surveyed markets.

The homogeneity of the applicable law and the breadth of the potentially affected parties are the main reasons for companies to handle a type of claim.

Over **90%** of respondents consider homogeneity/standardisation of law an essential or a very important factor for automation.

Automation of claims is heterogeneous. Companies have reported to automatically determine the plausibility of claims and estimate compensation in four sectors only: air carriage, banking, employment and, in Germany, tenancy. The best performing companies in those sectors can do so without the intervention of lawyers. On the other extreme, general claims platforms and companies involved in insurance-related claims have reported not being able to establish the plausibility of claims nor determine compensation without the intervention of lawyers.

More than **75%** of companies use predictive analytics, natural language processing and other forms of machine learning.

The relationship between automation and technology is direct but not proportional. A higher investment in technology leads to more automation. However, companies relying on the same technology but operating in different sectors reach unequal levels of automation.

Highly automated companies report a success rate in court of **75-100%**. It is the highest stratum among Legal Tech companies and, also, the most stable.

Over **70%** of respondents settle **50-90%** of their portfolios in large-scale agreements, involving numerous claimants. Banking and air carriage claims are the ones most frequently settled in large numbers.

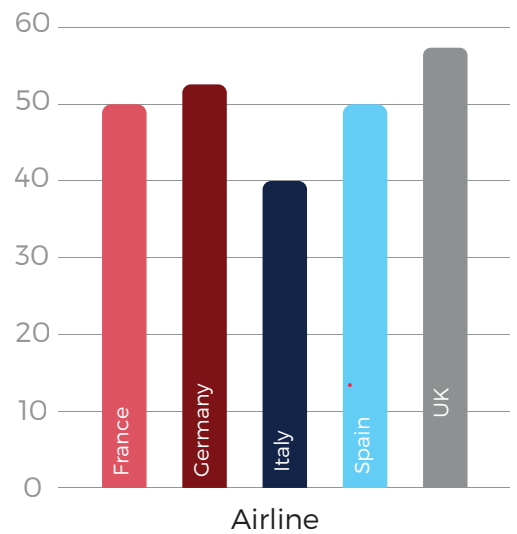
THE SURVEY

1. Companies and Claims

What type of cases do you handle?

A website analysis of the target population determined the specific industry sectors in which Legal Tech companies operate within the broader field of litigation. Participants were requested to select their own sectors. The questionnaire also allowed participants to include non-contemplated sectors.

In the field of litigation, air carriage is the industry in which Legal Tech companies are clearly more numerous. Platforms that manage flight claims exclusively, including delay, cancellation and denied boarding amount to 44.4% of the total. The figure is even larger if we also include those platforms that manage flight claims in addition to others (6.7%). The significant share of Legal Tech companies in air carriage claims, compared to other industries, is constant in the targeted countries with slight variations.



- Airlines
- General Platforms
- Employment
- Debt Collection
- Air & Banking
- Train
- Tenancy
- Telecom
- Insurance
- Accidents
- Fines
- Insurance & Bank

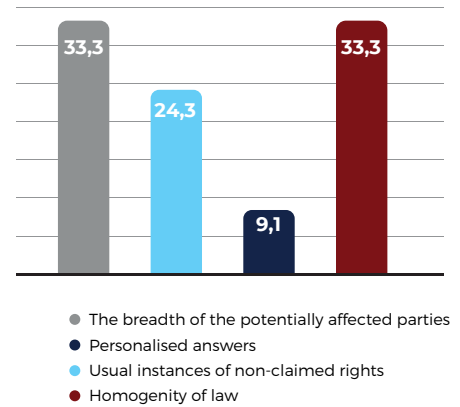
Second in the numerosity rank of Legal Tech companies are general claims platforms, i.e. those that do not focus on claims arising from a specific industry but, instead, deal with a broad spectrum of matters. They represent 13.3% overall.

The third level of companies by number is composed of those that claim employment rights, which amount to 8.9%. That group is followed by those Legal Tech companies that focus on debt collection in general (i.e. not sector specific), amounting to 6.7%. They are spread equally between France, Italy and Spain. The same share goes to companies that manage cumulatively air carriage and banking claims. The subsequent level comprises companies that deal with train carriage or tenancy claims (in Germany). Each one represents 4.4% overall. The less frequented sectors are insurance, telecommunications, accidents, and fines, as well as insurance and banking when handled by the same company. Each type of business model represents 2.2% overall, considering the targeted countries jointly.

The reason for having chosen the types of claims that you handle is...

Participants were asked to explain why they chose those types of claims as the bases for their business models. They could select more than one option and, additionally, they could personalise their answer. Most respondents declared that the reason was the 'homogeneity of the applicable law (i.e. variations between cases being marginal or non-existent)'. An equally important number of answers justified their choice by the 'breadth of the potentially affected parties'. In third place, participants chose that '[t]hey are usual instances of non-claimed rights'. Personalised answers were seldom given.

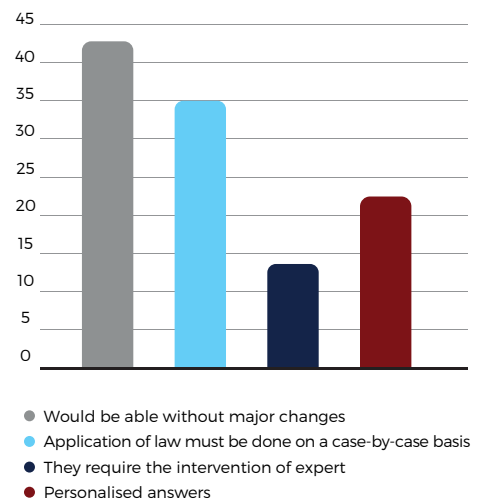
Reason for selection of claims



Why does your company not handle other consumer-related cases?

Participants were also asked why they do not manage other consumer-related cases, beyond those that they currently handle. Those 'other' cases were exemplified with claims arising from car accidents or defective consumer goods. Participants could select more than one option and, additionally, they could personalise their answer. To this, 42.8% of respondents declared that they do not manage those cases but that they would be able to do so without major changes to their business models. In contrast, 35.7% of respondents justified not handling those types of claims on the grounds that the application of the law must be done on a case-by-case basis which complicates automation. In a similar vein, 14.3% of respondents explained the rejection of those other cases on the basis that they require the intervention of experts and, because of this, are more difficult to automate. A 21.4% of the surveyed companies provided a personalised answer. Evidently, some respondents chose more than one answer.

Why not other claims?

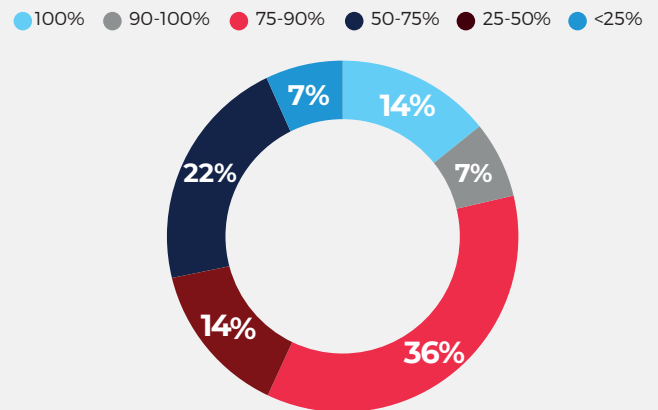


2. Self-assessment of Automation

To what extent are your claims automatised (overall)?

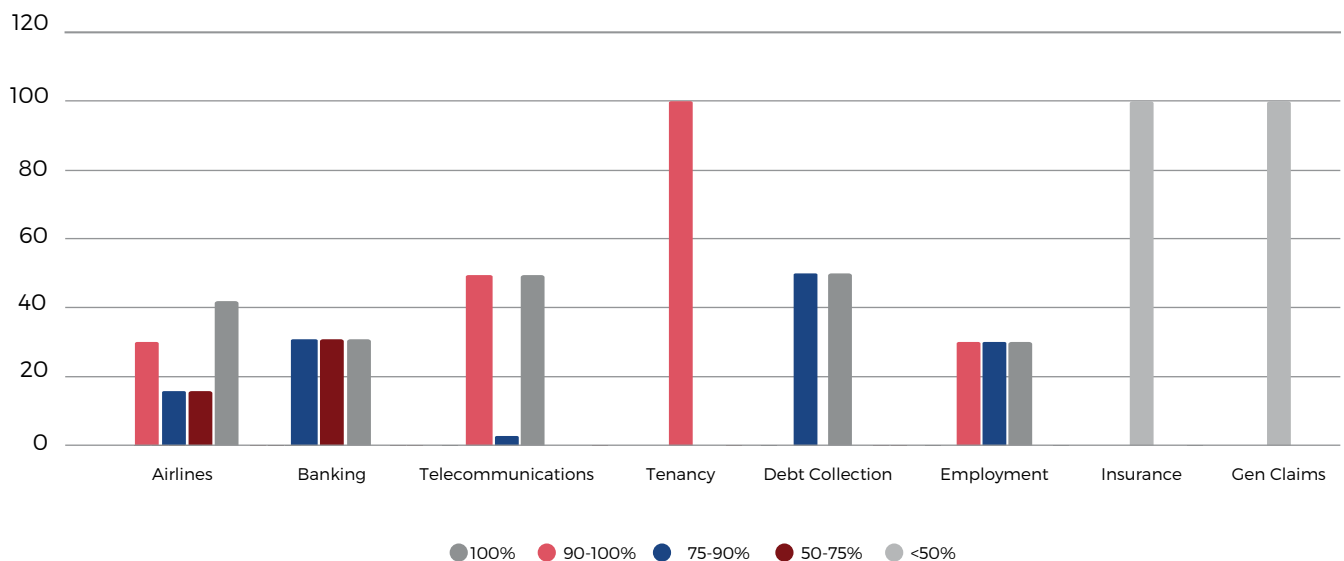
After selecting the industries in which they operate, participants were asked to self-assess the degree of automation of their businesses. For this purpose, they were requested to inform to what extent they automate claims in general and, next, they had to answer a multiple-choice question on automation of claims (out of court) in the specific sectors in which they work. The survey did not provide a definition of automation; at this stage it was left open to the interpretation of participants. Half of the companies automate more than 75% of their claims management.

Automation of claims



Automation by type of claim?

The results of the self-assessment exercise do not follow a common pattern. There is great variation in the automation rate between businesses that operate in the same industry and offer comparable legal services. In air carriage claims, there is a range of automation of activities starting with less than 50% and reaching, in certain companies, 90-100%. In banking, automation ranges from 50 to 90%. In debt collection, telecommunications and employment claims, the range is 75 to 100%. In insurance and general claims platforms, automation was self-assessed in less than 50% in all cases.



If those results are organised according to the degree of automation, they show that it reaches its highest levels (90-100%) in air carriage claims, debt collection, employment, telecommunications, and, in Germany, tenancy. Whereas it is weaker in general claims platforms and in insurance-related claims (less than 50%). In turn, banking claim companies appear in between as the highest levels of automation are in the range of 75-90%.

3. Automation in Litigation

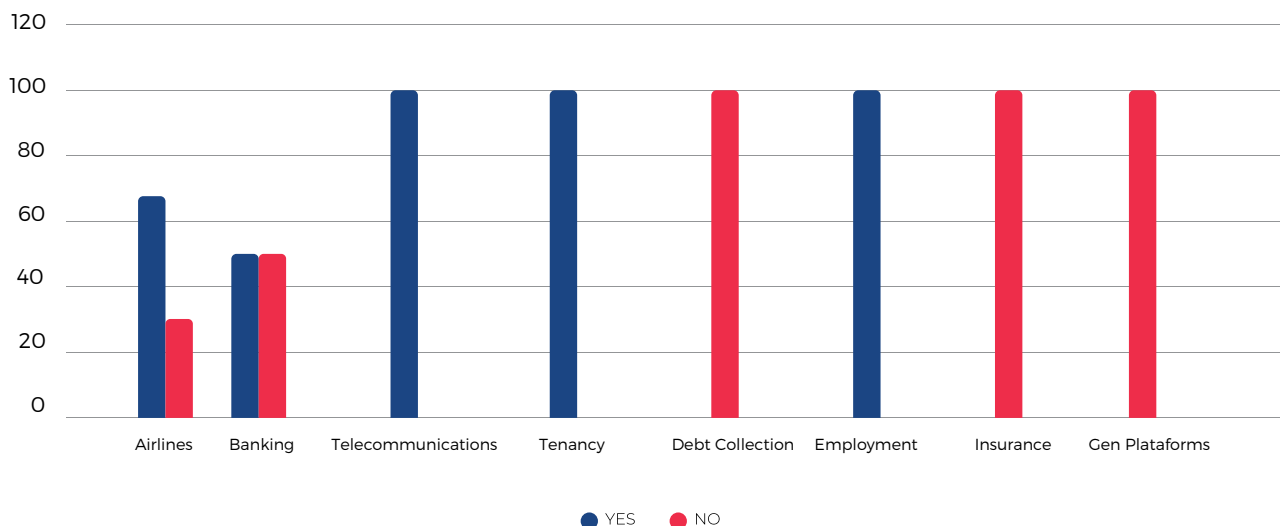


In litigation, automation in a compound meaning refers to an autonomous operation that reduces or eliminates the intervention of lawyers. It is benchmarked by the answers to two fundamental questions: first, whether an IT system can determine if a client has a plausible claim without the intervention of lawyers in the assessment of every single case; second, whether an IT system can autonomously calculate the exact compensation that is due. In both cases, of course, this needs to be done in a way that is likely to be confirmed in court. If an IT system is able to conduct a legal assessment on the plausibility of a claim and can determine the exact compensation that is due, automation is high as technology would be substituting lawyers in providing legal advice

Is your IT system able to determine if your client has a plausible claim and calculate compensation without the intervention of a lawyer in the assessment of every single case?

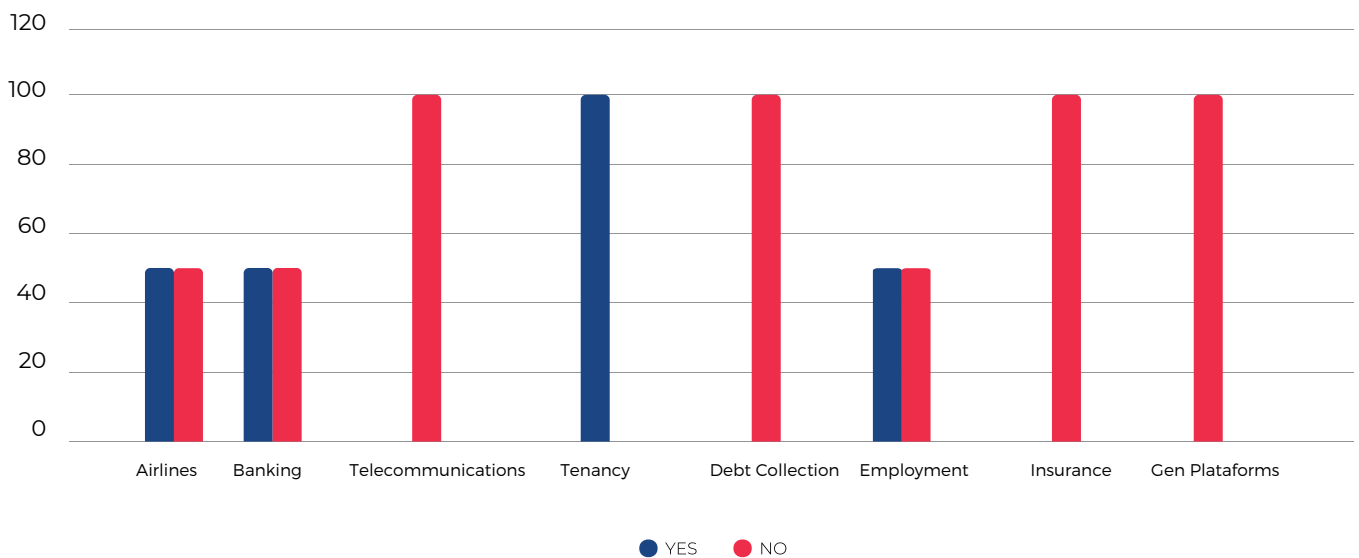
Due to a generalised requirement of human intervention in court, the survey focused on the pre-contentious (out of court) phase of claims to determine the degree of automation of the targeted companies at that stage. Participants were asked to inform whether their IT systems could determine if a client has a plausible claim without the intervention of lawyers and, in a separate question, whether they could calculate the exact compensation due.

Automated assessment of plausibility of claims





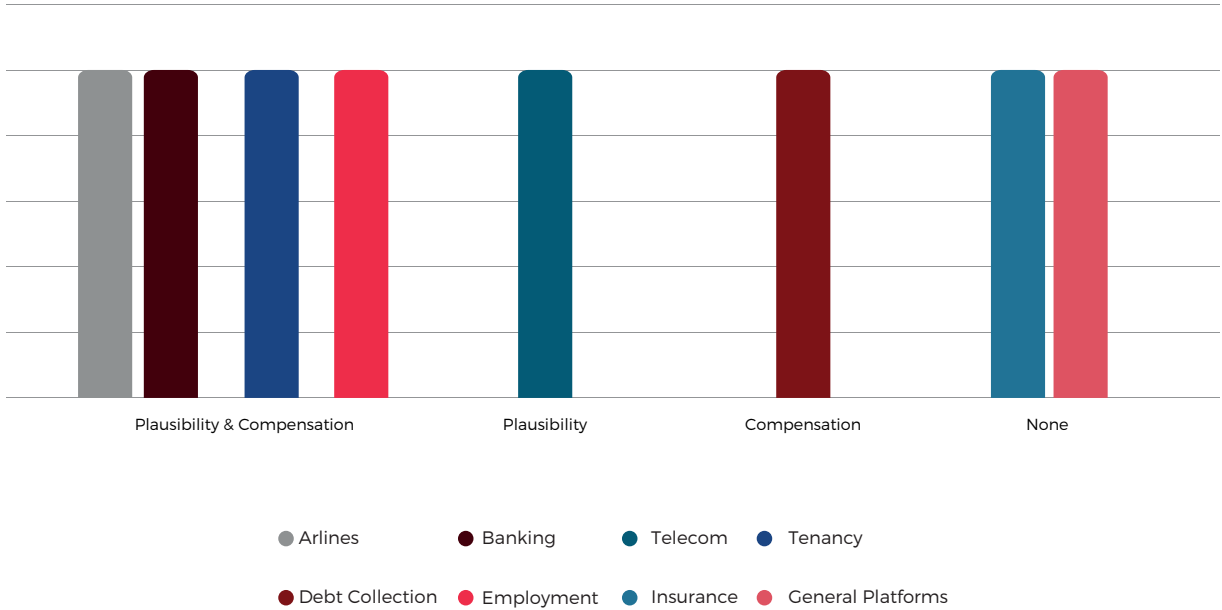
Automated calculation of compensation



The answers of participants to this section of the survey reflect the heterogeneity in automation. Comparable companies that deal with the same type of claims and in the same sector automate their clients' claims to a very different extent. For Legal Tech companies in the air carriage sector, the range goes from those that cannot determine whether a client has a plausible claim nor calculate compensation to others whose IT systems can do both. The same occurs in banking, while in employment claims, all participants are able to automate the plausibility of the claim but diverge in their ability to autonomously calculate compensation. However, there is some homogeneity within certain sectors. In telecommunications, IT systems can autonomously assess claims but cannot estimate compensation. In general claims platforms, all Legal Tech companies have reported being unable to determine the plausibility of the claim and calculate compensation. In debt collection, IT systems cannot assess the claim although they can estimate the compensation due.

The results can be organised around the degrees of automation, taking into consideration the extent to which IT systems can operate autonomously without the intervention of lawyers in every case. The survey reveals that only in respect of four types of claims can IT systems determine the plausibility of claims and calculate the exact compensation due without lawyers: air carriage, banking, employment and, in Germany, tenancy. In telecommunications claims, IT systems can determine the plausibility of claims but not compensation. In the general debt collection sector, they can determine compensation but not the plausibility of claims. In general claims platforms, according to the data collected, IT systems do not establish the plausibility of claims nor determine compensation without the intervention of lawyers.

Automation by sectors (best performing companies)

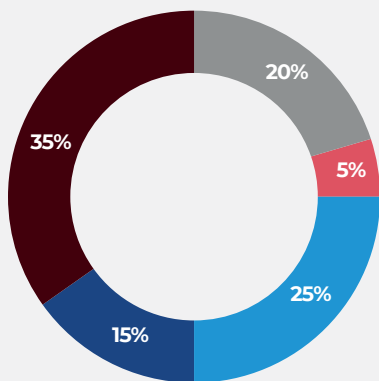


Does your company use any of these technologies?

As a further control question on automation, participants were requested to inform about the technology deployed in the service. Overall, the responses included: traditional coding (only), blockchain, predictive analytics, natural language processing and other forms of machine learning, alone or combined. The figures are adjusted by mention.

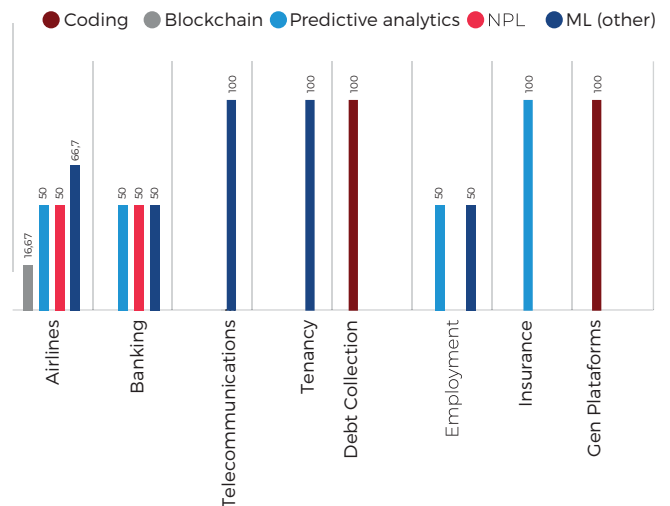
By sector, traditional coding (only) is used in general claims platforms and debt collection. Blockchain has been reported in air carriage. Predictive analytics is used in air carriage, banking, insurance and employment claims. Natural language processing has been reported in air carriage and banking. Other forms of machine learning are used in air carriage, telecommunications, employment, banking and tenancy claims (the latter in Germany). Some companies use more than one type of technology.

Technologies



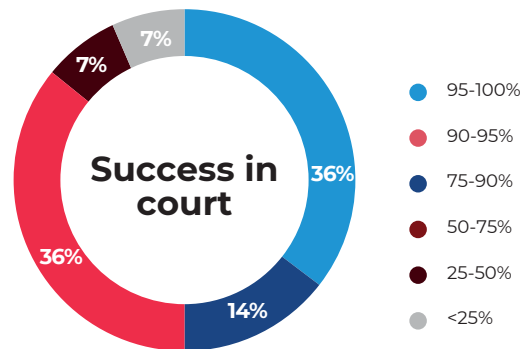
- Coding
- Blockchain
- Predictive analytics
- Natural language processing
- Machine learning (other)

Technologies by sector



Which is your actual ratio of success in court?

The Survey sought information on the success rates in court of the target population. The purpose of gathering that information was to further control automation. Automation in Legal Tech depends on the possibility of companies of assessing the plausibility of claims and determining compensation without the intervention of lawyers. The accuracy of the answers on that aspect should be benchmarked with the success rates in court of Legal Tech companies.



Respondents that declared to automate both the assessment of the claim and the calculation of compensation reported a success rate in court in the range of 75-100%. Within those, participants in air carriage claims declared a success rate of 90-100%. In banking, the rate is 90-95%. In employment and, in Germany, tenancy, the success rate in court is in the range of 75-90%.

Participants that automate the assessment of the claim but do not autonomously calculate compensation reported a success rate of 75-100%. In contrast, companies that do not automate the assessment of the claim but calculate compensation reported a success rate of 25-100%.

4. Applicable Law and Automation

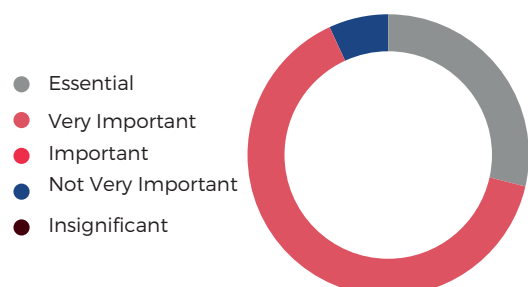
A block of questions in the Survey was designed to collect information on the relationship between law and automation. The questions were aimed at determining whether the drafting of the applicable law has an impact on the automation of claims.

On this, it was assumed that laws can either be drafted to address the subtleties of individual situations or regulate them in a more homogeneous or standardised manner. Participants were not informed of this distinction although one question explicitly addressed homogeneity and individualisation in the drafting of law. Additionally, one question contained an example of homogeneity (compensation in air carriage under Regulation 261/04 -European Flight Compensation Regulation-) and another included an example of individualisation (damages exceeding the fixed amounts of compensation in flights).

Is homogeneity/standardisation of law an important factor for automation?

Participants were asked whether homogeneity/standardisation of law is an important factor in the automation of their businesses. The options were: essential, very important, important, not important, and insignificant. Overall, 28.6% of respondents chose the option 'essential', 64.3% preferred 'very important', and 7.1% went for 'insignificant'.

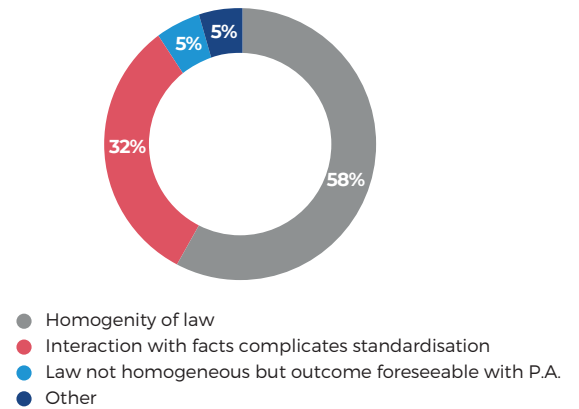
Homogeneity of Law: Importance



Is the applicable law relevant to the ratio of success in court?

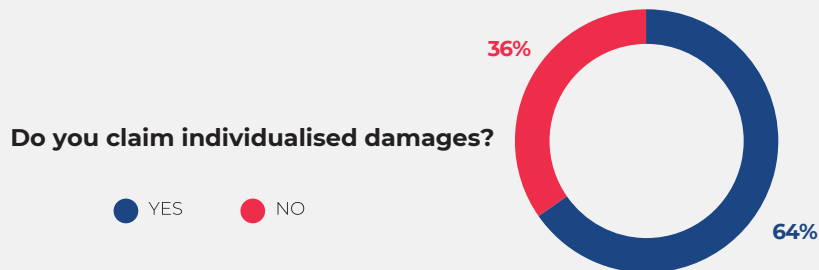
Companies were required to justify their success rates in court in relation to the applicable law. Several options were available to participants; they could select more than one and even personalise their answer. The results show that 57.9% of respondents explain their success rate by the fact that 'the applicable law is homogeneous and it is possible to standardise with optimal results'. Second in preference, 31.6% of respondents selected 'the law interacts with concrete facts which vary from case to case, making standardisation difficult'. The third most selected option (5.2%) was 'the applicable law is not homogeneous but we are able to foresee an outcome based on predictive analytics'. The figures are adjusted by mention.

Reason for ratio of success in court



Do you claim individualised damages?

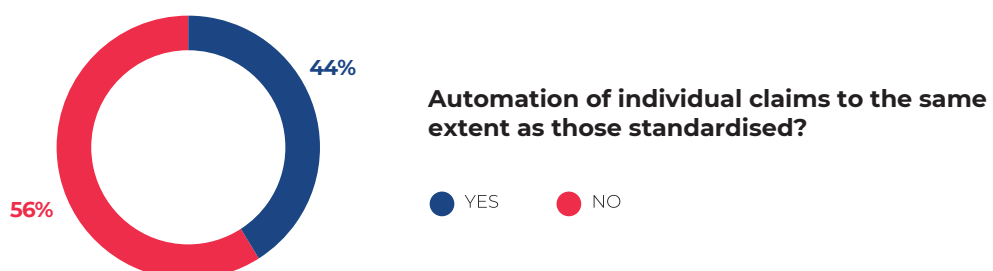
Participants were asked whether they claim individualised damages. There was no definition provided as to what 'individualised damages' meant. However, these were exemplified with compensation in air carriage beyond the fixed amounts of the European Flight Compensation Regulation.



Do you automatise the claim of individual damages to the same extent as those non-individualised?

Those respondents that handle individualised damages were asked if they automate individualised claims to the same extent as the non-individualised ones.

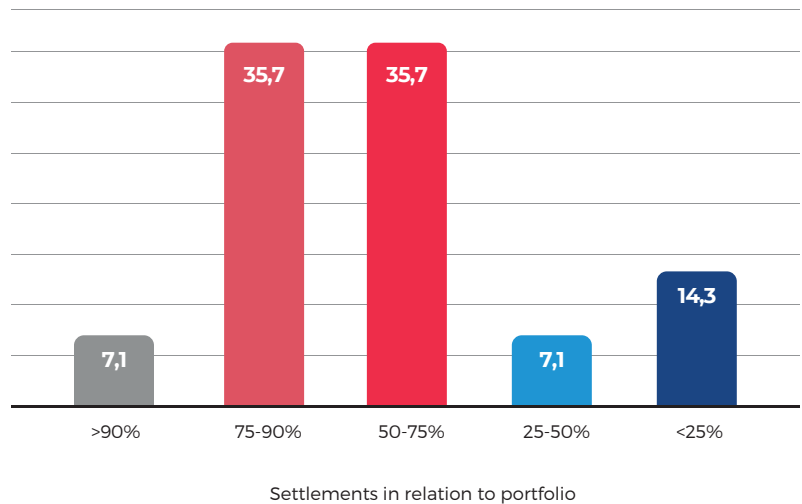
A slight majority answered in the negative over those that answered in the positive. All companies that manage flight claims gave a negative answer whereas the positive answers came from a variety of sectors including telecommunications and employment, and tenancy in Germany.



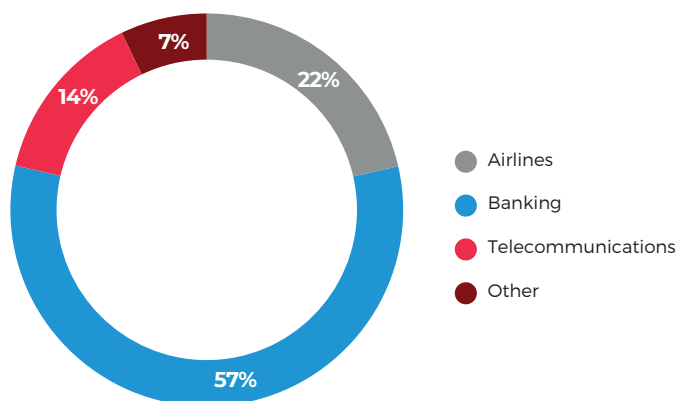
Massive settlements?

Out-of-court settlements of claims could provide further clues about the relationship between law and automation. Settlements, especially if they occur on a large scale, could signal homogeneity in the claims. However, other unrelated factors could influence settlements, such as a strategy of defendants not to settle in order to deter claims. Therefore, participants were asked about settlements, but the questions were drafted as stand-alone ones without an aim of controlling others. On this topic, the answers to the survey were varied. The rate of settlements covered the full range (i.e. 0-100%), with over 70% of respondents declaring that they settle in the range of 50-90%. Massive settlements were the most frequent in banking, followed by air carriage claims.

Out of court settlements



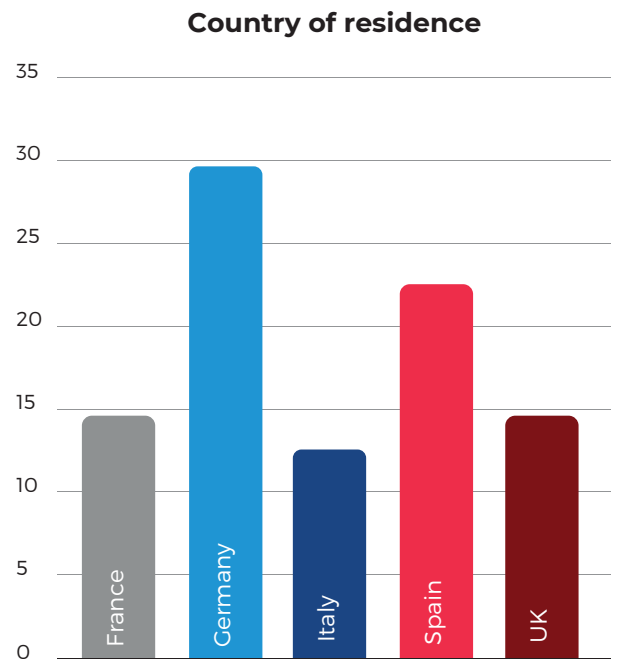
Settlements by Sector



METHODOLOGY

The target population of the Survey comprised Legal Tech companies involved in litigation of consumer and small value claims. In the absence of a harmonised classification of Legal Tech companies, the target population was limited to those platforms that are not traditional law firms or technologised versions of them and that, notwithstanding, represent clients vis-à-vis businesses out of court and before the courts. Due to this restriction, electronic marketplaces that enable clients to find a lawyer were discarded. For the same reason, the Survey included neither mediation nor dispute resolution platforms. Companies that do not represent clients in court were not targeted.

Geographically, the target population included all Legal Tech companies in the defined field in France, Germany, Italy, Spain and the UK, which are the five largest markets for legal services in Europe. The sample encompassed 30% of the overall target population and contained a proportional representation of companies from those countries.



The sampling frame of the Survey was obtained from the available lists of Legal Tech companies from the target population, which was checked with requests to legal innovation centres, including Forschungsstelle Legal Tech (Germany), Incubateur du Barreau de Paris (France) and IE Legal Tech Innovation Farm (Spain), which remain alien to errors. The sampling frame was supplemented by a plethora of searches in internet search engines of the countries of residence of the targeted companies, in their own languages.

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The sample of the Survey was selected following stratification of the targeted companies, which were partitioned into subpopulations according to the sector in which they operate: air carriage, debt collection, employment, banking, telecommunications, insurance, tenancy, and general claims platforms.

The Survey data was collected through the internet, complying with the European General Data Protection Regulation (GDPR). Using the internet as the mode of data collection was deemed optimal as the targeted companies are IT savvy. In this respect, the risk of noncoverage error (i.e. ignoring relevant populations whose responses the survey was designed to measure) was trivial, if it existed at all. Companies in the sample received the Survey in a corporate email, after agreeing to have it sent to them. The responses were anonymous, untracked, and the only corporate information that was requested from the participants was their country of residence. The data was collected from 1 to 30 June 2020.

The Survey was drafted in clear and unambiguous language, which was pretested by a small sample of the targeted population. All questions were close-ended except for one that was open-ended. In order to avoid bias arising from close-ended questions such as, for example, ignoring possible answers that a participant could have, the options presented to the participants were exhaustive. In several questions, participants could select more than one option and the option 'other' was recurrently offered, giving the possibility of a personalised answer. A concern raised when drafting the Survey was the likelihood that participants would inflate their answers to present a better picture of themselves (in this context, of higher automation). To tackle that bias, control questions were frequent in the Survey and the websites of all companies of the target population were conscientiously scrutinised to understand how they operate.



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