

Legal Tech

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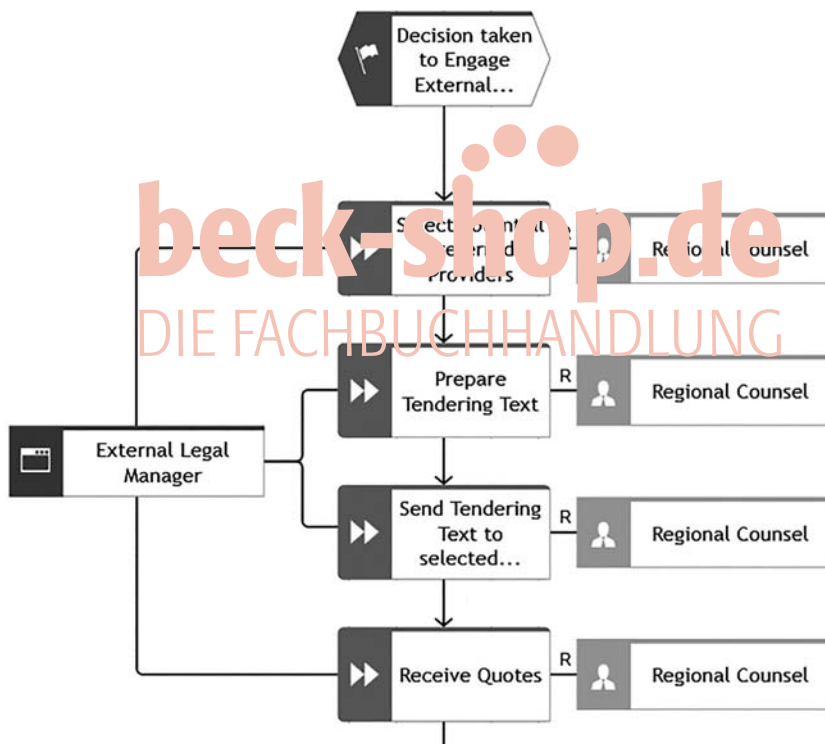
and regional content (in the form of contract clauses and core processes), corresponding to the different jurisdictions, will also be evident accordingly.

Within international legal departments, an ongoing process of comparative law will enhance corporate attorneys' understanding of the various legal systems and will pave the way for a global division of labor between the corporate attorneys in the future. The knowledge and the process information generated in the course of attaining digitalization readiness form the basis for a meaningful, value-added deployment of technology (legal tech).

1. Process documentation and analysis

In principle, every activity undertaken in a legal department can be understood and depicted as a business process. Ideally, however, a legal process model should be used in order to rule out subsequent misunderstandings in the course of collaboration with IT. Below is an example of a process which has been automated in my own legal department and is supported by an agile application (known as an agile or dynamic app). Specifically, it shows the contracting process for external legal services, i.e. a support process:

Fig. 3: Example of documentation of a legal support process in ARIS



- 16 Legal work results are generated through legal work processes, which are basically no different from other business processes, but which are subject to an additional process level (see Fig. 2 above). On this level are the legal core processes, in which subsumption and the interpretation of texts, and so on, are carried out by lawyers. In my view, hermeneutics is the field of legal activity in which – as long as no digital law emerges – human legal experts cannot be dispensed with.
- 17 Think of the legal decisions which are necessary in order to insert appropriate clauses into a draft contract, for example, or to ensure that changes to a draft contract are kept to a minimum while still achieving the envisaged regulatory objective. These are not simple decision switches; rather, they entail complex legal decisions which must be made by a qualified legal expert (similarly to the approval decision in an approval process step).
- 18 However, with the help of legal tech applications, lawyers can already make better-quality decisions today, and can translate typical regulatory requirements into formulations of content and regulatory objectives that enable even non-legal users to generate an appropriate draft contract by responding to questions.
- 19 The more precisely a process is documented and subsequently analyzed, with the participation of all those involved in it, the greater the potential for optimization. Obviously, benchmarks (e.g. across teams, regions, or even other corporate legal departments) can contribute to improved processes as well. Analyzing processes opens the door to harmonizing processes within the company, which is the prerequisite for globally uniform, and thus scalable, digitalization and automation.
- 20 A process in the (digital) legal department should remain lively or agile beyond its initial digitalization. Legal and regulatory changes or organizational changes within the company should not cause a process and its digitalization to become fully obsolete; rather, there should be a focus on ensuring that we corporate attorneys ourselves can implement changes to legal core processes⁷.
- 21 An analysis of compliance with processes, process exceptions, and errors and risks will help to improve service quality and to foster a zero-defect culture in the legal department.
- 22 One requirement of digitalization is that process changes remain possible at all times in the form of adjustments and optimizations, and this can and will have implications for the choice of architecture. These implications are discussed below.

2. Target areas for digitalization

- 23 Before turning to strategic considerations, I would like to give a brief overview of the areas of the legal department's work where, in my view, the deployment of legal tech makes fundamental sense and is worth carrying out. Later on (see below under E. Use cases), I will go into the possible applications in more detail.
- 24 In my view, the three following areas constitute natural starting points for the digitalization of the legal department:
- (a) Smart contracts: The processes relating to documents and to the generation of digital "smart" contract documents. This key application area is a natural candidate for technical support, because manual contracts and documents are the main obstacle to genuine digitalization of the legal department.
 - (b) External legal management: Mandate and cost transparency is a key tool for effectively guiding the work of external law firms.

⁷ Here I think of the simple analogy of the relationship between printed commentary and online commentary. The print version becomes obsolete due to changes in law and the passage of time and requires expensive reprinting, while an online post can be updated in real time, and is cheaper for both the publisher and the reader over its life cycle. We will probably think of this win-win situation again when we come to the considerations on the architecture of the digital legal department.

- (c) Project and risk management: These areas are also a natural fit for digitalization. It is only necessary to think here, for example, of litigation risks: Today, in most legal departments, they are documented in Excel spreadsheets and updated only once per quarter. These risks can be much more efficiently monitored, however, and useful information derived accordingly, if the lawyers (both in-house and external) responsible for the case are able to capture their risk assessments in an app, on a consistently current basis.

III. Strategy and architecture

Developing and implementing strategies is part of an attorney's day-to-day work. This applies both to contract negotiations and to transactions and legal disputes of every kind. A corporate attorney is accustomed, in addition, to dealing not only with an individual client, but rather with a large number of stakeholders, i.e. colleagues from other departments. In-house legal processes typically depend on input from other departments/processes (see also Fig. 2: Levels and dimensions of legal work processes), and the results of the legal work processes are "delivered to" other business processes. This also indicates a need for technological integration. 25

For purposes of establishing a digitalization strategy and determining the architecture of the digital legal department, it is advantageous to understand the integration requirements and the departmental/process-related interfaces. In this way, silos can be avoided and the investments fairly distributed. 26

1. Strategy

Apart from litigating and negotiating strategies, or mediation strategies, we corporate attorneys are frequently not (yet) accustomed to thinking in terms of company or departmental strategies and to formulating them and carrying them out. However, digitalization forces us to do so. Without a strategy, a digitalization project will necessarily remain only a patchwork effort, and the great opportunity that digitalization represents for the legal department will be wasted. A tactic⁸ in the sense of long-term planning is necessary if a digital infrastructure is to be created that will support the future functioning of the legal department in a precisely tailored manner. 27

The systems and applications of a digital legal department supply and process data and make it possible, among other things, to open up the legal department, e.g. through self-service options for non-lawyers. The data and its use, as well as the implications of a changed range of services and level of transparency, must be thought through at the outset, and the concept then rigorously implemented in the course of future-oriented development. If digitalization has been properly undertaken and implemented, the digital legal department will be able to help consistently improve the processes and work results of the legal team, provide data supporting their decisions, and, with the proper tools, allow forecasting of probable outcomes (in particular the projected course and outcome of disputes and legal proceedings). In sum: Our individual experience and expertise is replaced with institutionalized knowledge which is available to the legal department and to the company in scalable form. Digitalization can contribute to a shift in the perception of corporate attorneys – away from well-trained, conservative "naysayers", and towards well-informed "decision-makers" serving as strategic consultants. 28

⁸ As a translation of the Ancient Greek στρατηγία.

- 29 The controlling function has succeeded in establishing itself in recent years thanks to the data which is made available, and analyzable, by ERP systems. As digitalization progresses, the legal discipline will increasingly become an empirical one: Dogmatics will continue to play an important role in methodological terms, but due to the availability of historical data (essentially already available today), current data, and probability assumptions, it will also be possible to generate increasingly accurate forecasts.
- 30 The form a digitalization strategy takes, or can take, depends on the strategy of the company to which the legal department belongs, the key legal risks faced by that company, and the role of the legal department within it. There is a wide gap at present between the perception and understanding of the legal department's role from the point of view of the company, and from the point of view of the department itself. Through personal conversations with other general counsels and with managing directors, I am aware that the legal department is often understood as a corporate actor which is expected to contribute to a system of checks and balances. It is not uncommon for the legal department to be confronted with exaggerated expectations in this regard, because CEOs expect the legal department to avoid all risks, yet at the same time to facilitate and enable all business opportunities.
- 31 All possible role scenarios should be gone over in discussion with the responsible board member/managing director for as long as necessary until a clearly defined role has emerged that is both in line with the desired objectives and feasible. In my view, the ideal legal department is one which can provide information at any time as to the contracts under negotiation and their content, the content of contracts which have already been executed, the relationships in which there is a threat of legal escalation, and an assessment of the company's position in situations where escalation has already occurred. Furthermore, the ideal legal department is consistently able to offer the best possible mix of resources (in-house and external lawyers) for the tasks, transactions and projects at hand, and it fulfills both its compliance function and its overall consultancy and risk management function. Legal mediation and ongoing quality enhancement are also an integral part of its role. The long-term plan for my legal department (department strategy) is formulated as follows:
- 32 "We aim to be a highly efficient in-house law firm that is involved in all material and relevant company decisions and developments. We are able at all times to quickly provide individualized digital contracts whose contents are fully transparent. The legal department also guides complex negotiations, settlements and legal proceedings in a forward-looking manner and has consultancy and/or decision-making competence in all legal issues, involving external lawyers at its discretion. The legal department ensures that applicable legal norms and standards are communicated within the company in an understandable manner. We adapt our processes at short notice to reflect both changes in the law and changes in company processes and structures. We maintain our data on the company's own servers and make it utilizable for corporate decisions."
- 33 With the department strategy as the basis, general counsels can then decide on the appropriate architecture for our digital legal departments.

2. Architecture

- 34 Implementing any strategy (quite apart from the issue of digitalization) requires certain architectural decisions, whether in regard to the composition of the team, the regional distribution of the employees, interfaces, reporting lines, etc. The same applies to digitalization, all the more so given that in this case, the legal department is beginning to consider and adopt new tools with which it is not generally associated at present.

As we have seen, data is currently still held in silos in the vast majority of companies. 35
One aspect of digitalizing processes in the legal department will thus be to work towards opening up these silos so that processes can be digitalized on a truly “end-to-end” basis. Anyone who has ever attempted to integrate a “homemade” application into his department (e.g. an Access database) knows how difficult it can be to integrate such an application into the company’s existing IT, regardless of the quality of the application itself.

Every architecture must take the legacy construction into account, in this case the 36
existing systems and applications. Next, it is necessary to consider a plan for the target situation. Since it will not be possible to achieve the new situation without investments, the issue of openness to future change should be considered in regard to a possible architecture, as it is a key criterion for safeguarding investments. A truly future-proof investment also takes interfaces into account, and the need and the scope for integration. And today, the deployment model is also a key aspect: cloud, on premise or both (hybrid)?

In my experience, general counsels should not take on these fundamental architec- 37
tural considerations alone. We should involve the company’s IT department early on, and we are well advised to drawn on both internal and external expertise in the course of planning. The perspectives of the internal IT department and of external IT consultants or software providers are an important input, and a direct discussion between the internal and external IT specialists can help to accelerate decision-making processes. The same applies to the preparation of business cases.

Against the background of data law (data security and data protection law, etc.), the 38
legal department also has to decide, when considering architecture (to the extent that a strategic decision has not already been made by the company), where data will be maintained/stored and who will have access to it.

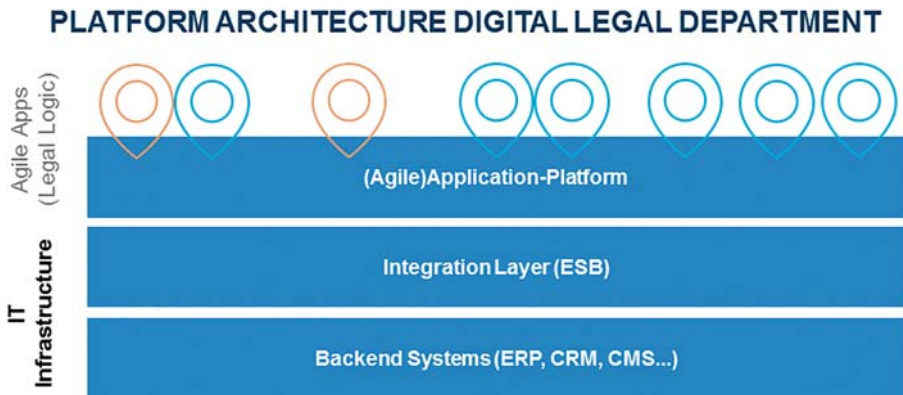
The basic principle is that as many legacy systems as possible should be retained, but 39
going forward, only the minimum number of silo effects and limitations necessary should be accepted. There are two possible architectures which a legal department can choose between for digitalization. The following explanations are technical by nature:

a) An application platform architecture

In my view, the architecture which offers the greatest security for the future, in terms 40
of scope for integration and openness to change, is one in which the existing back-end systems – e.g. the ERP application, the contract management system, customer relationship management systems, etc. – are fully integrated via a uniform application platform. The applications provided or developed on the application platform can access data in the back-end systems, and/or write data to them, without any further integration being required. Such an architecture makes it easier to ensure scalability and improves the return on investment, including for the company as a whole, and thus strengthens the business case for the digital legal department as well. However, the prerequisite for this architecture is either an existing application platform which has already been fully integrated and deployed company-wide, or the acquisition or development of such a platform.

The advantages of the application platform are obvious: It enables the cost-effective 41
development of new applications on the platform, which – depending on the nature of the platform – can even be carried out by so-called power users, civil developers or “low coders”, including legal department staff.

Fig. 4: Platform architecture



b) A complex, integrated single-point solution application architecture

- 42 The other option is an architecture in which complex individual applications are deployed that can be integrated with one another and with the back-end systems as required by means of modern integration tools. Today, it is also possible to integrate cloud and non-cloud applications, meaning that this architecture offers the digital legal department an IT infrastructure which is open to future options and scalable. The advantage of this architecture is that the legal department can purchase the best individual applications on the market (best-of-breed) without being tied to a specific platform.
- 43 The best-of-breed idea contrasts with the best-of-suite approach of a platform architecture. The latter offers the advantage, however, of silo-free data storage and the unlimited exchange of data across the platform, as well as the agile adaptability of platform applications.
- 44 As noted, most legal department heads will neither be able to make this architecture decision alone, nor wish to. This makes it all the more important to be as well-informed on these issues as possible and to have fully assessed the strategic considerations. With this preparation, it is then possible to engage in discussions with the chief information officer (CIO), chief digitalization officer (CDO), or other responsible individuals in the company as an equal. Legal department heads who can afford their “own” CDO for the legal department have an advantage in this regard. In my view, the best-qualified person for this role is an in-house lawyer with a strong affinity for IT, who will take over this task in addition to his legal workload (which will presumably then be reduced accordingly).

IV. The digital legal department as software development department?

- 45 Depending on the choice of architecture, the question then arises as to whether to develop software for the digital legal department, or to purchase applications. This question should already have played a role in the strategic considerations and in the choice of architecture.

1. Standard applications

- 46 Standard applications typically delight their users with functionalities and features which are fully matured and tailored to the application’s intended use. Thanks to

maintenance by the software manufacturer, the application is ideally adapted and optimized to meet users' needs on an ongoing basis. As a rule, standard applications reflect a standard process which, in the absence of any customizing by the developer or the manufacturer's consultants, can be tailored to the individual processes of a legal department only within narrow parameters. Thus, with standard applications, it is possible to achieve "process optimization", on the one hand; on the other, however, the legal department must orient its work to the application and to the process defined in it. An example which clearly illustrates this is the electronic insider list, as required under Article 18 of the European Market Abuse Directive (*Marktmissbrauchsverordnung*), an issue on which many corporate attorneys focused intensively in 2016. In a standard application for the maintenance of such a list, certain processes must be established, and at the same time, certain decisions must be made about the interpretation of the applicable law, such as whether to set up a list early on of projects where the insider issue may potentially prove relevant. As a lawyer, I feel most comfortable when I make a decision of this kind together with my team, possibly consulting external consultants, and only then implement (digitalize) it for the company.

Standard applications are possible both as stand-alone applications and as platform applications, and are available in both forms. A vital platform with an active legal developer community could offer numerous standard applications via an app store. Today, the legal tech market is (still) clearly skewed in favor of stand-alone standard apps. 47

2. Self-developed applications

The diametrical opposite of the standard application is the self-developed application. 48 As individual applications, self-developed applications can be precisely tailored to the target processes in the company and in the legal department. "Own development" can be carried out either externally, in the form of an IT development project, or by the company's own IT department. In rare individual cases, software has allegedly also been developed by legal department staff. This approach appears more, or less, advisable to me depending on the architecture, because the maintenance and further development of an individual application usually depends on the person who initially developed it. This is generally different in the case of a platform architecture, as the basic functionalities of all platform applications are maintained and enhanced by the platform manufacturer. The application is merely a logical add-on and can easily be taken over and maintained by other developers familiar with the platform or by the platform manufacturer. The more functionality an application platform offers, the better the development, analysis and test functionalities it will contain, making it possible to use own applications even for so-called mission-critical application areas such as the insider database mentioned above. See section IV. below for more on this point.

3. Customizing

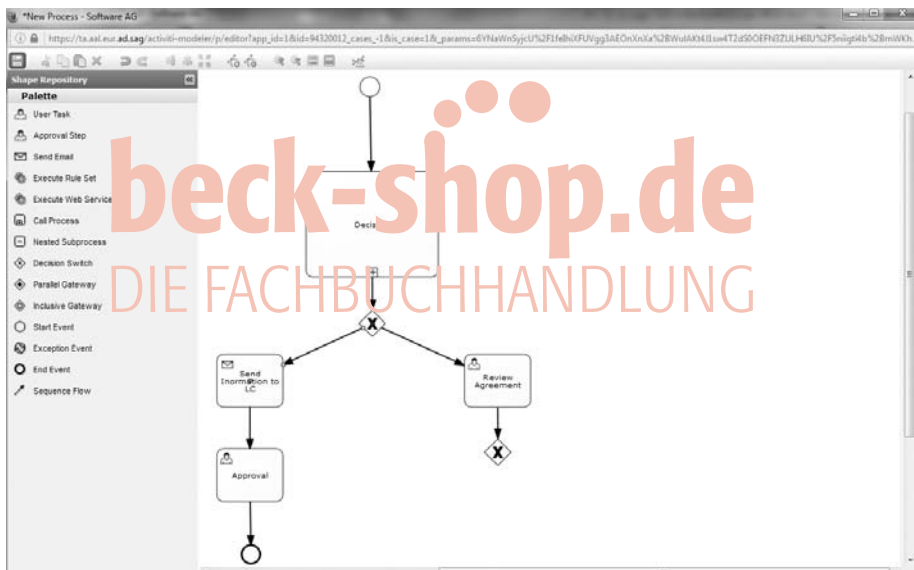
A distinction must be made between self-developed applications (whether stand-alone or platform applications) and customized standard applications, which fall in the middle, so to speak, between standard and self-developed and are conceivable in either architecture. The expense, time and effort required for company- or legal department-specific customization of standard applications, and the scope of customization as well, varies with the chosen architecture: On a platform, the platform itself sets the limits for customization. Customizing an application to reflect the specific requirements of a given legal department will generally require less effort and give rise to fewer (additional) costs; stand-alone applications can be adapted to customer needs to such a great extent 49

that it comes close to own development. Such customization, however, will generally entail more effort and higher costs than the adaptation of a platform application, if the application (development) platform offers a broad range of functionality.

4. Agile applications

- 50 A fourth category is the standard applications known as “agile applications”, which enable “civil developers” or “low coders” to carry out extensive adjustments on a platform. In this way, applications can be adapted even by non-programmers – including members of the legal departments, i.e. lawyers – to reflect the legal situation, own interpretations of regulations, or company/department processes.
- 51 Visual development of applications by modelling processes is possible, for example. A process editor of this type is shown below as an example. It makes the development and customization of even complex applications simple; the process changes are saved as process versions, which also ensures the necessary documentation security in compliance-relevant areas. It is thus also possible, without any additional cost or effort, to document the compliance system as a learning system.

Fig. 5: Interactive graphical process development editor in webMethods Agile Apps



V. Use cases

- 52 Happily, the pace of innovation in the legal tech area has picked up sharply, with new use cases, application areas and solutions becoming available almost daily. From the point of view of a legal department head, there are certain areas that are stronger candidates for digitalization than others (see also the comments on this point under section B. II. Target areas for digitalization).
- 53 In the final analysis, however, which use cases in a legal department are (or should be) digitalized (first) depends on the digitalization strategy of the legal department and on the business model of the company.