D. Workflow Automation*

I. Developments in the legal field

1 In the field of Legal Tech, there are currently many topics on the agenda. Particularly noteworthy are the leading keywords appearing in the social media news channels: Artificial Intelligence, Machine Learning and Blockchain. The subject of Workflows, however, is perceived as only a niche, if at all. In our view, however, this is a fundamental mistake.

2 Business process optimisation has been playing an important role in the legal field for a while now. As a rule, however, this was limited to the back office – at least as far as law firms are concerned. The caution that law firms have shown until now is understandable. If optimised processes are introduced into a standard economic production environment, (production) costs are lowered and profitability increased. If, however, production costs in the legal world are lowered, you effectively reduce your revenue, as the revenue is driven by cost. When reducing billable hours spent, turnover decreases.¹

3 For this reason, it may be argued that the interest shown by law firms in process optimisation has been somewhat limited. Their own business model seems to create a barrier to innovation. Unless of course the business model is changed radically.

4 A more well-known initiative that looked at business optimisation processes at an international level, beyond legal back offices, was SeyfarthLean², which was developed by the American law firm Seyfarth Shaw. The project kicked off in 2007 by mapping workflows in employment law transactions³. The operational processes that were identified in this way were optimised and, as a result, became much more efficient (quicker) and more reliable (in other words, better quality because they are less prone to human error when applied).

5 A further software solution that was developed in this area is ‘iManage Workflow’ (this part of the programme belongs today to Hewlett-Packard and is known as ‘HP Process Automation’). Further providers that are active in this area are the company Neota Logic, which is already working with various large law firms⁴, and the London based start-up Autto⁵. Germany has also seen its initiatives in that area with ‘KnowledgeTools’⁶ and ‘Lexalgo’⁷.

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² Corveleyn/Rackwitz, Legal Innovation Matrix, 2015 (see also www.legalstudio.be).
⁴ Rohrer/DeHoratius, SeyfarthLean: Transforming Legal Service Delivery at Seyfarth Shaw, Case Study Georgetown Law/Harvard Law School (HLS 15-13), 19.05.2015.
⁶ www.autto.io.
⁷ www.knowledgetools.de.
⁸ www.lexalgo.de.
II. What does workflow digitisation mean?

In general, it is less the purpose of digitisation that is crucial here but rather its consequences for and impact on the underlying processes.

In most cases, this revolves around what is known as *unbundling*, which implies dividing up the value chain into its individual component macro and micro parts. To be able to do this, it is necessary to understand developments which in some cases occurred decades ago in other sectors and industries (for example, the automotive industry).

The techniques mentioned previously were only applied at a fairly late stage to legal services as a *Professional Service*, which can be put down to a lack of pressure in the industry in the past, as far as efficiency, costs and innovation were concerned. (Cross-border) tax and, in particular, accounts auditing are much more advanced in this area. One advantage of using such techniques at a later stage is, however, the existence of technical possibilities that the legal market can benefit from nowadays when digitising workflows.

One such opportunity for *unbundling* is the separation of the different types of content that make up the consultancy service that is being provided. In other words, the actual legal knowledge that is applied to the solution, on the one hand, is kept separate from the consultancy and process knowledge, on the other (to lawyers’ minds, these are inseparable). Process knowledge and procedures are always as much a part of legal advice as the subsumption of the constituent elements of a claim.

Breaking through these barriers requires huge steps in several directions, even if it appears simple at first. The existing form manuals would require an important additional section – the operational process.

III. Concrete example: Corporate Housekeeping

The start of the development of the ‘Corporate Housekeeping Solution’ (2015) did not entirely happen by chance, as we had been looking into questions related to changes in the legal market since 2010, with workflow automation already forming the central idea. The path we chose to develop our product came about, however, by chance.

This path originated from a discussion we had with the General Counsel Europe of a US fashion retailer. In this discussion, we were essentially talking about something that was actually not working well and was causing problems for the legal department at the time.

The problem was as follows: a senior member of the legal department of the General Counsel in question had spent more than 500 hours in 2014 dealing with the project management of Corporate Housekeeping for the almost 30 country offices in continental Europe. The key activity involved was the communication and coordination required to manage the different country legal and administrative processes – both internally and at the interface with external law firms and notaries, who together in turn then sent an annual six-figure invoice for their work. Even though the amount had decreased in recent years, it still seemed to be very high for standard company law transactions. Even though these were simple services that were being requested, the number of processing errors was rather high.
The challenge presented to us was to figure out how to develop a productized service able to handle the repetitive Corporate Housekeeping volume business which included at least four types of standardized business transaction:

- Annual Shareholder Meetings;
- The removal and reappointment of company officers;
- The granting and revocation of powers of attorney and Apostilles/Legalisations.

We started our search for a solution by examining unstructured data and actual processes that had, however, not been documented until then – commissioning negotiations, email correspondence, telephone calls, document templates, the requesting of the required information and internal cross-functional queries relating to this, the lack of central data containers etc.

Brad Smith, the CEO of Intuit (a leading manufacturer of standard application software) described this approach, which was also the one that we selected, as *follow you home*. When transferred to this context, it means that we also observed, among other things, how the senior team member in question worked. We also worked hard to develop a customer-centric solution – by using, among other techniques, the Design Thinking methodology.

A central part of the development process involved mapping the workflow of each individual legal transaction in each jurisdiction. The mapping process was and is not done superficially: processes are, on the basis of swimming lane charts, broken down into their finest possible level of detail and documented, taking into account the different steps, decision processes and participants, as well as the interaction among them. To represent them, the standard tool for business process model and notation BPMN proved to be very useful.

These workflows, which were completely unbundled, were optimised by using techniques such as Lean SixSigma and reassembled again to take account of their operational processes. Instead of requesting individual pieces of information time and again in a linear sequence, just when they happened to be needed, we have made such general, basic data available on an on-going basis. The increases in efficiency that we achieved as a result of this were already considerable in their own right, in comparison with the previous approach.

As this exercise affected many jurisdictions at the same time, it provided us with broader insights into the processes involved. The opportunity to put aside the legal details, which make many things look different from what they actually are, also opened our eyes to the basic opportunities for change. The process underlying everything was always the same in standard business, irrespective of the individual business transaction or of which country office or jurisdiction was affected:

- A need to take action is triggered.
- Something needs to be drafted.
- Something needs to be approved.
- Something needs to be signed.
- Something needs to be published.

If these activities are combined and represented visually in a simple manner, it produces an overview of the situation and already a simple workflow tracking system:

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8 Also known as ‘Corporate Secretary’ or ‘Legal Entity Management’.  
11 Just an example: George, Lean Six Sigma for Service (New York, 2003).
The tracking system consists of the four process steps described above and offers the customer the possibility to access the information at any time, irrespective of which stage in the process a particular business transaction may currently be at.

In its very simple representation, this is already the heart of the optimisation process – the focus is no longer on the legal processes but the sequence of events in an operational process.

None of this is particularly new when we look at it from the Business Process Re-engineering perspective. Companies have been subjecting their processes to such ways of thinking already for decades. The application, however, to legal processes showed where there is a huge growth potential in addition to making use of IT solutions.

The result of these exercises was the creation of new, clearly more efficient workflows without the waste that had previously been invoiced by the hour. In addition, there is clarity as to how much of the process is really of a legal nature and how much is a simple operational process. Based on our inquiries, we estimate that the effort that is put into this simple business process is a good 80 % and in some cases even up to 95 % of the overall process.

These processes all consist of tasks that lawyers (in particular highly paid external ones) should not be doing. In addition, such a representation of business processes is responsible for a much lower error rate which leads to a substantial improvement in quality.

If we were only to take into account these theoretical explanations, we would actually reach the conclusion that such a change of processes really ought to be a no-brainer. The realities of the legal and general working world mean, however, that things are ultimately not quite so simple.
IV. Challenges

1. Challenge no. 1: Who is interested in workflow efficiency?

It is the legal departments of companies that have an interest in this, not the law firms. Whereas this approach results directly in internal time savings and external cost savings for the former, for the latter it implies a decrease in turnover when applied to (what is at the moment still) billable legal work (see above). It becomes interesting once they understand indeed, that volume and repeat-business and not singled-out maximum billing, is the key to change the model.

2. Challenge no. 2: Rebundling/point solutions

Whatever has to be unbundled so that it can function properly must also be rebundled. This is an area of conflict, as the new approach, and precisely those offered by Legal Tech start-ups (for example, document automation, collaboration platforms, eDiscovery tools) in general ‘only’ solve a specific problem or represent a stage in the process (so-called point solutions).

That which was traditionally supplied by a single source (law firms) can now be unbundled into tasks. These individual sections can then be executed differently, by using technology, among other approaches.

A failure, however, to connect the individual steps after unbundling them appears to be one of the main development obstacles. The development of improved point solutions hides the risk that a customer of legal services might rapidly acquire a large number of individual solutions that, at the end of the day, require extra coordination or are inefficient when combined together, if, for example, interfaces or required API’s are lacking between the individual tools.

There will therefore be a need for solutions that represent entire processes and procedures (so-called end-to-end solutions) or connect individual suppliers to each other, both new and traditional.

3. Challenge no. 3: Change management and individual understanding of roles

Business processes do exist, also in the legal domain. They are, however, generally not captured or documented separately from the actual legal knowledge (and even if they are, efficiency was not the driver behind their existence). Documenting processes causes a considerable amount of change.

If IT-based workflow tools are employed, they ought to be able to feed into the processes already existing in organisations or at least be able to be adapted correspondingly. In any case, the introduction of new processes or the adaptation of existing ones means that it is necessary to introduce and closely monitor a change management programme, in order to ensure that the implementation is successful. This ought to be even more the case if the change affects qualified legal staff, who are in any case generally more conservative.

This change management programme is also required to solve the supposed contradiction that occurs when developing expert knowledge in software. As long as the sharing of knowledge is voluntary, the act of sharing means that something is divulged that could serve as expertise with the potential to increase an individual’s value. This is also the case with the knowledge of processes and procedures.

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https://doi.org/10.17104/9783406759109-166
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At the end of the day, standardising and representing that knowledge in workflows creates simple processes of a higher quality and the freedom for individuals to take on more challenging tasks. Reengineering and the need to represent processes visually will ensure that completely new areas of activity will emerge. In addition to organisational change, individual users will have to change their understanding of their own roles.

4. Challenge no. 4: regulatory hurdles

When developing a solution and its associated business model, it is necessary to take the regulatory framework into account. For Germany, this may refer to the 'Rechtsdienstleistungsgesetz' (RDG) or 'Legal Services Act'.

It is a subject for discussion whether workflow solutions present an challenge to corporatist and usually protectionist frameworks.

One could opt, as many German Legaltech Start-ups do, to work with a hybrid structure consisting out of an authorised law firm (Rechtsanwaltsgesellschaft mbH) and a software solution company (regular GmbH). That in itself creates of course other issues such as how to properly fund the business, where is value actually created and to what extent can this type of structure actually scale, which is what volume driven business at some point all have to do.

V. Outlook

The progress being made in the recording of workflows within the framework of digitisation and the separation of the process from the content (legal knowledge) mark an important step away from manual work towards the industrialisation of legal practice via standardisation, as described some time ago.

Workflows are the key requirement for this. In addition, new technologies will also be used (document automation, digital signatures, e-filing – which in turn also contain workflows themselves), that are, however, located at the corresponding interface of the 'meta' process – and not only as point solutions in a predominately manually controlled workflow.

Beyond the level of individual learning, the representation of such workflows prepares the ground for the emergence of (legal) 'learning organisations'. Standardising workflows, representing them visually, automating them step by step and connecting them will, in the very near future, be used in legal work and remove or substitute the manual tasks performed by individuals.

At the end of the day, we are only talking about things that, from an efficiency, cost and quality perspective, external lawyers, in particular, should not have been doing for a long time now.

12 Susskind, Tomorrow’s Lawyers, see Table 11.1 with the ‘New jobs for lawyers’, P. 111 (Oxford, 2013).
13 Regarding the subjects ‘Legal Tech und Berufsrecht’ (‘Legal Tech and Employment Law’), compare Markus Hartung’s chapter, Rn. 1031 ff.