

The Legal Guarantees of Artificial Intelligence in Administrative Activity: Reflections and Contributions from the Viewpoint of Spanish Administrative Law and Good Administration Requirements*

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ABSTRACT The unique characteristics of Artificial Intelligence mean that this form of technological innovation does not fit well enough in the current Spanish regulatory framework on the use of electronic media by Public Administration. This paper contributes to the current debate on how Administrative Law should address the regulation of AI in Spain. It specifically analyses what criteria must be considered to ensure the effectiveness of legal guarantees according to the requirements of good administration.

1. The required reconfiguration of legal guarantees: a general approach

Artificial Intelligence (AI) is a technology in full evolution, without a verifiable degree of maturity considering its practical application by Public Administration¹. Therefore, it makes it difficult to tackle the issue of accurately regulating its peculiarities in the context of Administrative Law.

Given the complexity of the current digital context, an antithetical and absolute dichotomy between the protection of individual rights and general measures cannot be stated. As it is uniquely demonstrated by the 2016 European regulation on personal data protection, an approach based on consent² is clearly insufficient, thus inertia based on individual reaction should be avoided³. In fact, the starting point must be the fact that we are facing a technological tool with extraordinary potential in terms of impact, not only on people but also on

essential values for the foundations of the Rule of law beyond a purely individual approach. Particularly if we consider the enormous analytical and predictive potential of AI, which involves the requirement of providing safeguards from the perspective of ethics⁴ and the guarantees offered by the technology itself⁵. In this respect, European legislation on data protection has set a very significant trend by requiring the performance of impact analysis in cases of special risk, and more importantly, by establishing general principles adapted to the supra-individual nature of the legal assets to be protected, as is the case of accountability or protection by default and by design⁶.

Despite the unavoidable criticism of the current regulatory framework⁷, the theoretical approach to address the challenges of the use of AI by Public Administration must be guided by the demands of good administration⁸. In this sense, the question is not whether this technology

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¹ L. Cotino Hueso, *Riesgos e impactos del big data, la inteligencia artificial y la robótica. Enfoques, modelos y principios de la respuesta del Derecho*, in *Revista General de Derecho Administrativo*, n. 50, 2019.

² A. Mantelero, *Ciudadanía y gobernanza digital. Entre política, ética y Derecho*, in *Sociedad digital y Derecho*, T. de la Quadra and J.L. Piñar (dirs.), Madrid, BOE-Red.es, 2018.

³ P. de Filippi, *Gouvernance algorithmique : vie privée et autonomie individuelle à l'ère des Big Data*, in *Open data & Big data. Nouveaux défis pour la vie privée*, D. Bourcier and P. de Filippi (eds.), Paris, Mare & Martin, 2016.

⁴ A. Mantelero, *Ciudadanía y gobernanza digital. Entre política, ética y Derecho*.

⁵ W. Arellano Toledo, *El derecho a la transparencia algorítmica en big data e inteligencia artificial*, in *Revista General de Derecho Administrativo*, n. 50, 2019.

⁶ R. Martínez Martínez, *Inteligencia artificial desde el diseño. Retos y estrategias para el cumplimiento normativo*, in *Revista catalana de Derecho Público*, n. 58, 2019, Id., *Cuestiones de ética jurídica al abordar proyectos de Big Data. El contexto del Reglamento general de protección de datos*, in *Dilemata*, n. 24, 2017.

⁷ I. Martín Delgado, *Automazione, intelligenza artificiale e pubblica amministrazione: vecchie categorie concettuali per nuovi problemi?*, in *Istituzioni del federalismo*, n. 3, 2019.

⁸ J. Ponce Solé, *Inteligencia artificial, Derecho Administrativo y reserva de humanidad: algoritmos y procedimiento administrativo debido tecnológico*, in *Revista General de Derecho Administrativo*, n. 50, 2019.

should be regulated but identifying which elements which should be considered in view of their own features⁹. Therefore, beyond the formal adoption of hard law rules in the mid-term depending on the evolution of this technology, there is a middle ground of adopting soft law criteria, given the weakness of public authorities' leadership,¹⁰ especially in a scenario of technological innovation with a high risk from the legal and, above all, ethical point of view, as is the case with AI.

2. The extent of formal guarantees as a reply to the requirements of good administration

2.1. Formal acceptance of the use of AI by the public entity

In early 1992 Spanish legislation on e-Government, the requirement to formally approve applications used for the exercise of administrative powers, was envisaged as a basic guarantee. However, the 2007 reform removed this obligation from the general regime, so that this safeguard would no longer apply except in the field of taxation.

Beyond the incoherence of a diverse regulation depending on the area where Public Administration acts and the opacity caused by the absence of legal obligations in this respect¹¹, a questionable lack of strengthening of the legal guarantees regarding the use of technology was behind that decision. However, it should be clarified that in 2015 Article 41 LRJSP established specific requirements that could also be applied to AI. Thus, according to this precept, when a natural person is not directly involved in the decision-making process, 'the specifications, programming, maintenance, supervision and quality control, and where appropriate, auditing of the information system and its source code' must be defined beforehand. Furthermore, in each case these requirements have to be fulfilled by the competent authority, which leads to a formal administrative act that should be subject to official publishing in accordance with the provisions of Article 45 LPAC. Consequently, non-compliance with this obligation would determine the ineffectiveness of the act of approval and, therefore, the inability to use the automated system that supports AI.

The scope of the previous legal regulation on

automated administrative action established in 2007 was subject to important criticism¹². To a large extent, those objections can also be raised regarding the current legal provisions. Even more so from the AI approach since, as it has been underlined¹³, it is a 'weak, dispersed regulation with gaps regarding issues of access to information, procedure for creating the algorithms and explanation of the decisions taken by them'. Despite such limitations, this is the only statutory provision on the legal regime of administrative action which, with certain nuances, is adjusted to the particularities of AI, so that in any case its provisions should be observed.

However, a strict application of Article 41 LRJSP would lead to the exclusion of those AI systems in which the result must be validated by a natural person from the above-referred guarantee of prior approval. Anyway, the natural person should be able to assume, and therefore understand, the scope and reasons for the result of the algorithms. Otherwise the public body could not be held responsible for the decision taken and it would be difficult to comply with the legal requirements for motivation. The consequence could not be more inconsistent and, unless a specific regulation adapted to the particularities of AI is passed, the requirements of the principle of good administration should lead public entities to assume the decision in all cases, even if there is no automated action strictly speaking.

That said, Spanish public bodies do not usually decide formally to run an algorithm, nor do they publish their decision to use it¹⁴ or do they document the purposes pursued, the sources used or the results obtained¹⁵. Nevertheless, in our opinion the decision to implement an AI system should be formally adopted by an administrative act. This is not only a requirement for the exercise of competence and its inalienable

⁹ L. Cotino Hueso, *Riesgos e impactos del big data, la inteligencia artificial y la robótica. Enfoques, modelos y principios de la respuesta del Derecho*, in *Revista General de Derecho Administrativo*, n. 50, 2019.

¹⁰ D. Sarmiento, *El soft law administrativo. Un estudio de los efectos jurídicos de las normas no vinculantes de la Administración*, Madrid, Thomson-Civitas, 2008.

¹¹ J. Cantero Martínez, *El principio de transparencia en la Ley de acceso electrónico de los ciudadanos a los servicios públicos*, in *Administración electrónica y ciudadanos*, J.L. Piñar (ed.), Madrid, Civitas, 2011.

¹² I. Martín Delgado, *Naturaleza, concepto y régimen jurídico de la actuación administrativa automatizada*, in *Revista de administración pública*, n. 180, 2009; I. Alamillo Domingo and X Uríos Aparisi, *La actuación administrativa automatizada en el ámbito de las Administraciones Públicas. Análisis jurídico y metodológico para la construcción y la explotación de trámites automáticos*, Barcelona, Escuela de Administración Pública de Cataluña, 2011; J. Valero Torrijos, *Derecho, innovación y Administración electrónica*, Sevilla, Global Law Press, 2013.

¹³ J. Ponce Solé, *Inteligencia artificial, Derecho Administrativo y reserva de humanidad: algoritmos y procedimiento administrativo debido tecnológico*.

¹⁴ O. Capdeferro Villagrasa, *Las herramientas inteligentes anticorrupción*, in *Revista General de Derecho Administrativo*, n. 50, 2019.

¹⁵ A. Cerrillo i Martínez, *El impacto de la inteligencia artificial en el Derecho Administrativo. ¿Nuevos conceptos para nuevas realidades técnicas?*, in *Revista General de Derecho Administrativo*, n. 50, 2019.

nature¹⁶ but also an essential condition to facilitate the proper defence of rights to ensure that the decision of implementing a particular AI system can be questioned. Therefore, to assure the control and responsibility for its operation, as well as the acceptable limit of deviations, this requirement is of the utmost importance¹⁷. This way not only can its reliability be discussed with the appropriate formal guarantees, but also, and above all, that other individual or collective rights are not being infringed.

2.2. The requirement for an adequate administrative procedure

The formal adoption of an administrative act as an inexcusable premise for the use of an AI system must be accomplished within the framework of an administrative procedure¹⁸. Regardless of the substantial discussion on whether algorithms can be strictly considered as provisions¹⁹, the fact is that Spanish regulation on the procedure for drawing up governmental norms provides a number of instruments with great potential if they were projected into the area we are now dealing with, but with the appropriate adjustments. Likewise, GDPR provisions can also be particularly useful as they enable a suitable design and a preventive analysis of the technological tools which allow the better addressing of risks that may arise²⁰.

First and foremost, the intended use of AI should be previously made public and an appropriate time frame should be provided for raising targeted opposition to that decision regardless of the specific configuration of the algorithms. This way, without prejudice to the need for participation as one of the main axes of the procedure²¹, the public information procedure

foreseen in Article 83 LPAC is to be regarded as an unavoidable demand. In fact, transparency by default should be adopted as a general criterion even beyond the mere submission of complaints²², particularly to encourage collaboration of social groups or individuals in order to evaluate the algorithm. Besides, the demand for transparency is essential to avoid the prevalence of unfair corporate or sectoral interests²³.

On the other hand, risk impact assessment should be established as an essential formality regardless of whether personal data is processed and privacy may be affected. This way it will be possible to consider potential risks and meet the requirements of the principle of proportionality when deciding on the use of AI techniques and, more importantly, the specific conditions under which algorithms will operate. Even though impact assessment will have to be carried out in the cases referred to in Article 35 RGPD and under the conditions established in Article 28 LOPDGDD, it is a safeguard of limited scope that should be extended beyond personal data protection legal requirements and also cover ethical aspects with the appropriate methodological adaptations²⁴. This ethical assessment should not be reduced merely to the operation of algorithms. In fact, it must consider as well to what extent a specific administrative decision, whether it be discretionary²⁵ or not, should be adopted in an automated manner using machine learning models based on predictability criteria.

Furthermore, apart from the perspective relating to individual rights and freedoms, risk analysis and impact assessment in the process of digital transformation of public administrations play an important role. In fact, these tools may facilitate the adequate defence of groups and collective interests, particularly when algorithms are used in contexts of singular technological complexity such as smart city environments²⁶.

¹⁶ J. Valero Torrijos, *Derecho, innovación y Administración electrónica*, Sevilla, Global Law Press, 2013.

¹⁷ C. Coglianese and D. Lehr, *Regulating by Robot: Administrative Decision Making in the Machine-Learning Era*, in *University of Pennsylvania Law School Research Papers*, n. 17-8, 2017.

¹⁸ I. Martín Delgado, *Automazione, intelligenza artificiale e pubblica amministrazione: vecchie categorie concettuali per nuovi problemi?*,

¹⁹ On this debate, see A. Boix Palop, *Los algoritmos son reglamentos: La necesidad de extender las garantías propias de las normas reglamentarias a los programas empleados por la administración para la adopción de decisiones*, in *Revista de Derecho Público: teoría y método*, n. 1, 2020; A. Huergo Lora, *Una aproximación a los algoritmos desde el Derecho Administrativo*, in *La regulación de los algoritmos*, A. Huergo (dir.) and G.M. Díaz (coord.), Thomson-Aranzadi Cizur Menor, 2020.

²⁰ R. Martínez Martínez, *Cuestiones de ética jurídica al abordar proyectos de Big Data. El contexto del Reglamento general de protección de datos*.

²¹ J. Ponce Solé, *Inteligencia artificial, Derecho Administrativo y reserva de humanidad: algoritmos y procedimiento administrativo debido tecnológico*; A. Cerrillo i Martínez, *El impacto de la inteligencia artificial en el Derecho Administrativo. ¿Nuevos conceptos para*

nuevas realidades técnicas?

²² C. Velasco Rico, *La ciudad inteligente: entre la transparencia y el control*, in *Revista General de Derecho Administrativo*, n. 50, 2019.

²³ L. Cotino Hueso, *Riesgos e impactos del big data, la inteligencia artificial y la robótica. Enfoques, modelos y principios de la respuesta del Derecho*.

²⁴ A. Mantelero, *AI and Big Data: A Blueprint for a Human Rights, Social and Ethical Impact Assessment*, in *Computer Law & Security Review* 4, 34, 2018; L. Cotino Hueso, *Ética en el diseño para el desarrollo de una inteligencia artificial, robótica*, in *Revista catalana de Derecho Público*, n. 58, 2019.

²⁵ J. Ponce Solé, *Inteligencia artificial, Derecho Administrativo y reserva de humanidad: algoritmos y procedimiento administrativo debido tecnológico*.

²⁶ G. Ritsema van Eyck, *Algorithmic Mapmaking in "Smart Cities": Data Protection Impact Assessments as a means of Protection for Groups*, in *Good data*, A. Daly, S. K. Devitt and M. Mann (eds.), Amsterdam, Institute of Network Cultures, 2019.

This is an essential issue so that, among other aspects of ethical significance, respect for human dignity and fundamental rights, effective responsibility for the decisions adopted, the lawful source of the data and its quality, as well as the transparency and traceability of the systems in singularly sensitive material areas, can be ensured²⁷.

Even more, the very inherent sophistication of AI, the risks to be assessed and, likewise, the diversity of perspectives to be considered justify the need to engage multidisciplinary and specialised teams²⁸. This can be achieved through working groups or formalised bodies composed of duly qualified professionals and experts, both from the respective public entities and social representatives who respond to the open government's demands for participation.

2.3. Collegiate bodies as a response to the complexity inherent in AI

Given these particularities, it seems reasonable to claim that the final decision to terminate the procedure should be taken by a collegiate body. As has been pointed out²⁹, collegiality may encourage a certain degree of avoidance of individual responsibility by basing the personal decision on the arguments of others. It also ensures the fairness of decisions to a higher degree and, above all, provides a valuable mechanism of mutual control by obliging members of the body to check their own individual criteria against those of the rest. Moreover, the fact that a procedure with the aforementioned guarantees has been previously processed is an additional justification for the requirement that, from the point of view of good administration, the final decision is taken collectively. This reinforces the monitoring dimension, not only with respect to the members of the body itself, but even regarding the proposals, statements and reports previously raised; which is of particular relevance insofar as the decision to adopt an AI system will be purely discretionary on most occasions.

2.4. Transparency and the right of access to information

The current technological context requires a vision of transparency and access to information that goes beyond the limited approach adopted

by the Spanish legislator³⁰. In this sense, the effectiveness of legal safeguards necessarily involves modifying the legal framework on transparency and access to public sector information as well as extending the scope of its provisions. In particular, it would be quite appropriate to set up a more extensive right which includes not only awareness of the result of the software or the information system but also, and above all, the origin of the data used and the nature and scope of the processing carried out³¹. This is a fully applicable statement when using AI, particularly for smart city projects, where public bodies face the risk of being bypassed by those private providers who handle them³².

While algorithms have already been considered in some cases in Spain as public information for the purposes of Article 13 LTBG³³ and Article 70 LPAC as regards the content of administrative files³⁴, the legal provisions on transparency and access to public sector information include relevant exemptions that may be applicable. In this regard, Article 14 LTBG limits access when the exercise of that right may affect the prevention, investigation or punishment of criminal and administrative offences; the administrative functions of surveillance and control, economic and commercial interests, or, amongst others, intellectual as well as industrial property. In particular, the lack of transparency may be a problem of singular significance due to the relevant leadership of the private sector in the design of algorithm-based software. Ultimately, this circumstance, in addition to reinforcing dependence upon technological firms³⁵, may also

³⁰ Among others, see J.F. Muñoz Soro and J.L. Bermejo Latre, *La redefinición del ámbito objetivo de la transparencia y el derecho de acceso a la información del sector público*, in *Régimen jurídico de la transparencia del sector público: del derecho de acceso a la reutilización de la información*, J. Valero and M. Fernández (coords.), Cizur Menor, Thomson-Reuters-Aranzadi, 2014; I. Martín Delgado, *Transparencia, reutilización y datos abiertos. Algunas reflexiones generales sobre el acceso libre a la información pública*, in *Régimen jurídico de la transparencia del sector público: del derecho de acceso a la información de la información*, J. Valero and M. Fernández (coords.), Cizur Menor, Thomson-Reuters-Aranzadi, 2014.

³¹ J. Valero Torrijos, *La necesaria reconfiguración de las garantías jurídicas en el contexto de la transformación digital del sector público*, in *Sociedad digital y Derecho*, T. de la Quadra and J.L. Piñar (dirs.), Madrid, BOE-Red.es, 2018.

³² R. Brauneis and E.P. Goodman, *Algorithmic Transparency for the Smart City*, in *The Yale Journal of Law & Technology* 20, 103, 2018.

³³ A. Cerrillo i Martínez, *El impacto de la inteligencia artificial en el Derecho Administrativo. ¿Nuevos conceptos para nuevas realidades técnicas?*.

³⁴ A. Huerigo Lora, *Una aproximación a los algoritmos desde el Derecho Administrativo*, in *La regulación de los algoritmos*.

³⁵ C. Ramio, *Inteligencia artificial y Administración*

²⁷ R. Martínez Martínez, *Inteligencia artificial, Derecho y derechos fundamentales in Sociedad digital y Derecho*, T. de la Quadra and L.P. Piñar (dirs.), Madrid, BOE-Red.es, 2018.

²⁸ J. Turner, *Robot Rules. Regulating Artificial Intelligence*, Cham, Palgrave Macmillan, 2019.

²⁹ J. Valero Torrijos, *Los órganos colegiados*, Madrid, Centro de Estudios Políticos y Constitucionales-Instituto Nacional de Administración Pública, 2001.

lead to a serious problem when negotiating contractual conditions. In any case, it must be highlighted that the decision to deny access not only has to be motivated, but also proportionate and it has to weigh up the reasons why these interests should prevail in each specific case; so that this reasoning must pay close attention to the particular problems and difficulties posed by AI, especially when it comes to fundamental rights³⁶.

Nonetheless, the legal regulation under analysis has not been specifically designed bearing in mind the characteristics of AI and, moreover, it is envisaged in relation to the exercise of the right of access -Chapter III of Title I - and not in relation to the regime of active dissemination. In this respect, the example of the French Law 2016/1321, of 7 October, should be taken as a starting point. Its regulation on AI is based on the distinction between the exercise of the right of access and, on the contrary, an obligation of active disclosure by Public Administration, which implies the diffusion of the essential rules according to which algorithms are being designed. Furthermore, there are also insightful proposals for audits systems based on zero-knowledge tests, counterfactual explanations³⁷ and cryptographic witnesses³⁸. To the extent that even the seeds of a new profession have already been glimpsed³⁹, with its own standards and processes, which could be legally reinforced. Eventually, the proper use of advanced and innovative technology would make it an ideal instrument for deepening awareness and transparency of the ultimate reasons underlying administrative decisions and public policies adopted on the basis of AI.

2.5. The granting of rights as an essential counterbalance

Beyond the scope of the right of access, the control of administrative activity according to constitutional requirements implies the establishment of an adequate legal status for those persons whose rights and interests may be affected when using AI tools. First of all, it should be pointed out that Article 22 GDPR

confers on natural persons the right not to be affected by an automated decision unless, apart from those cases of contractual performance or explicit consent, which are certainly uncommon in the administrative field, such a possibility is provided for by a previous legal provision and suitable measures are laid down to safeguard rights and freedoms. Therefore, on the basis of the demanding position of the Court of Justice of the European Union on the subject, the legitimization of the processing of personal data using an algorithm, without human intervention, would only be admissible under the appropriate regulation; which, furthermore, must provide adequate safeguards in the light of GDPR mechanisms and principles.

However, the use of AI will not always happen in the above-mentioned conditions, either because it affects legal entities or because it does not involve a fully automated decision. Thus, in these situations it would be convenient to apply those guarantees that are generally relevant in the relationship with Public Administration, although in some cases they had to be nuanced taking into account the special nature of the technology under analysis.

Regarding the motivation of administrative decisions, beyond the 'brief reference to facts and legal grounds' mentioned in Article 35 LPAC, the general principles referred to in Article 3 LRJSP and the special requirement to state the reasons imposed by the principle of good administration⁴⁰ demand an adaptation of the legal obligation, making it essential⁴¹ to provide a suitable justification for those decisions adopted using AI. And it should be highlighted that understandability has to be referred to human standards, so that it would not simply be enough for it to be comprehensible by another computer⁴².

Even more, due to the exceptional significance of the obligation to motivate administrative decisions as one of the cornerstones of the right to good administration⁴³, the explanation to be provided is especially relevant when it comes to addressing the challenge of using algorithms and, particularly, the greater potential of AI in strengthening the control of administrative

pública. Robots y humanos compartiendo el servicio público, Madrid, Catarata, 2018.

³⁶ T. de la Quadra-Salcedo Fernández Rodríguez, *Retos, riesgos y oportunidades de la sociedad digital*, in *Sociedad digital y Derecho*, T. de la Quadra and L.P Piñar (dirs.), Madrid, BOE-Red.es, 2018.

³⁷ S. Watchers, B. Mittelstadt and C. Russell, *Counterfactual explanations without opening the black box: automated decisions and the GDPR*, in *Harvard Journal of Law & Technology*, vol. 31, Issue 2, 2018.

³⁸ J. Ponce Solé, *Inteligencia artificial, Derecho Administrativo y reserva de humanidad: algoritmos y procedimiento administrativo debido tecnológico*.

³⁹ J. Turner, *Robot Rules. Regulating Artificial Intelligence*, Cham, Palgrave Macmillian, 2019.

⁴⁰ J. Ponce Solé, *La prevención de riesgos de mala administración y corrupción, la inteligencia artificial y el derecho a una buena administración*, in *Revista internacional de Transparencia e Integridad*, n. 6, 2018.

⁴¹ C. Ramio, *Inteligencia artificial y Administración pública. Robots y humanos compartiendo el servicio público*.

⁴² A. Mantelero, *Ciudadanía y gobernanza digital. Entre política, ética y Derecho*.

⁴³ J. Rodríguez-Arana Muñoz, *El ciudadano y el poder público: el principio y el derecho al buen gobierno y a la buena administración*, Madrid, Reus, 2012.

decision making⁴⁴. In this respect, the requirement for motivation should be extended beyond formal administrative acts. Even more, the explanation to be provided must not only be reasonable, but also adapted to the singularity of the technology and, therefore, this safeguard should be embedded in the design of AI systems⁴⁵.

2.6. The deployment of proper control standards

Although current Spanish legal provisions are not sufficiently adapted to the singularities of public sector digital transformation's requirements, it is unquestionable that accountability is a basic requirement to reinforce democratic control of the use of innovative technology⁴⁶. Therefore, and bearing in mind the high risk that the use of AI systems may entail, monitoring mechanisms should take this priority into account in accordance with the demands of good administration.

First, it has been suggested that there should be specific control mechanisms to meet the particular requirements of AI, such as product certification or the creation of specialised agencies⁴⁷. Nonetheless, while admitting the need for these tools, in the case of the public sector, it is particularly important to set up external systems with at least functional independence. In any case, Article 112 LPAC requires that this decision has to be adopted by the legislator if that guarantee is conceived to supersede the traditional version of ordinary administrative appeals.

Secondly, and especially in those cases where systems based on machine learning are implemented, the requirements and safeguards should not only be subject to initial approval but also to periodic evaluation systems. This is an essential provision to ensure that the evolution of algorithms continues to be in conformity with the initial assumptions or, where appropriate, that they are truly updated so that the original assessments remain fully meaningful. It is not merely a matter of ensuring compliance with the

appropriate security requirements, particularly in the case of personal data processing, as required by Article. 5.1.f) RGPD, or a simple legal issue, but should also refer to the suitable ethical safeguards that this sort of technology demands.

3. Concluding remarks

Beyond whether or not AI will lead to the birth of a new field of legal studies⁴⁸, current regulatory framework in Spain on e-Government is largely based on a regulatory model inspired by a late twentieth-century model even if it was approved in 2015⁴⁹. Despite this, in practice very relevant steps have already been taken. Beyond the information systems that work autonomously, *chat boxes*, so popular at current times, the use of AI has yet to reach a certain degree of maturity in the public sector. In many areas it could become an inestimable resource for better decision-making and improve accountability, especially from the perspective of auditing administrative activity and for predictive police purposes⁵⁰. In this respect, it would be of particular interest in digital ecosystems where administrative action must be immediate and it is not always possible to wait for a delayed human response, as is the case with certain provisional measures in exercising enforcement powers or in preventing unlawful actions.

Although an overwhelming role of Law in the administrative culture has been highlighted as a handicap, it has been stressed that AI could even be a tool for its own digital transformation⁵¹. However, while recognising the beneficial nature of this approach, it is essential to address a reconstruction of the legal safeguards in the context of technological innovation. However, the tendency of public authorities not to take into account long-term scenarios may explain why more disruptive approaches have not yet been adopted for the implementation of technology, so that the focus is still largely on data collection and storage⁵².

⁴⁴ O. Capdeferro Villagrasa, *Las herramientas inteligentes anticorrupción*.

⁴⁵ L. Steels and R. López de Mantaras, *The Barcelona declaration for the proper development and usage of artificial intelligence in Europe*, in *AI Communications*, 31, 2018.

⁴⁶ J. Vida Fernández, *Los retos de la regulación de la inteligencia artificial: algunas aportaciones desde la perspectiva europea*, in *Sociedad digital y Derecho*, T. de la Quadra and J.L. Piñar (dirs.), Madrid, BOE-Red.es, 2018; C. Velasco Rico, *La ciudad inteligente: entre la transparencia y el control*.

⁴⁷ A. Cerrillo i Martínez, *El impacto de la inteligencia artificial en las Administraciones Públicas*, in *Retos jurídicos de la inteligencia artificial*, A. Cerrillo and M. Peguera (coords.), Thomson-Aranzadi Cizur Menor, 2020.

⁴⁸ D. Canals Ametller, *Incidencia del avance tecnológico en el derecho público (elaboración, práctica, docencia e investigación)*, in *El derecho ante la transformación digital. Oportunidad, riesgos y garantías*, B. Puentes and A. Quintiá (dirs.), Barcelona, Atelier, 2019.

⁴⁹ E. Gamero Casado, *Panorama de la Administración electrónica en la nueva legislación administrativa básica*, in *Revista Española de Derecho Administrativo*, n. 175, 2016.

⁵⁰ G.M. Díaz González, *Algoritmos y actuación policial: la policía predictiva*, in *La regulación de los algoritmos*, A. Huergo (dir.) and G.M. Díaz (coord.), Thomson-Aranzadi Cizur Menor, 2020.

⁵¹ C. Ramio, *Inteligencia artificial y Administración pública. Robots y humanos compartiendo el servicio público*.

⁵² M. Chegus, *Big Data and Analytics in Government Organizations. A Knowledge-Based Perspective*, in *Big Data and Analytics Applications in Government. Current Practices and Future Opportunities*, G. Richards (ed.), Boca Raton, CRD Press, 2018.

Beyond the convenience of an exhaustive and accurate regulation, particularly regarding citizens' rights⁵³, the leadership of the public sector in this field can be threatened, even concerning the use of AI in its own activity. This would lead Public Administrations to adopt merely reactive approaches and, consequently, general interest could be harmed⁵⁴. Therefore, considering the role that Administrative Law is expected to play, it is necessary to reshape legal safeguards so that, in short, bureaucratisation is not replaced by a mere technologicalization seeking mainly effectiveness and efficiency. Therefore, as long as the formal adoption of a specific regulatory framework is not envisaged, public authorities cannot fail to assume their responsibility and they have to adopt demanding policies encouraged by their leadership. This challenge has to be based on the best defence of general interests and the ethical principles of a fully democratic Rule of Law taking into account the singularities of AI.

Whilst waiting for a more mature technology that would allow a better understanding of the scope of legal challenges to be addressed, the demand for basic formal safeguards in the use of AI in administrative activity becomes even more urgent and, until the legal framework is updated, it is an issue that can only be tackled by Courts on a case-by-case basis⁵⁵. This work aims to contribute to the necessary academic debate of how to face this challenge from good administration requirements. Therefore, the considerations that have been made are merely proposals that may be helpful when it comes to examining more deeply some of the main troubling issues raised by AI from Administrative Law perspective.

⁵³ A. Cerrillo i Martínez, *El impacto de la inteligencia artificial en las Administraciones Públicas*, in *Retos jurídicos de la inteligencia artificial*, A. Cerrillo and M. Peguera (coords.), Thomson-Aranzadi Cizur Menor, 2020.

⁵⁴ C. Ramio, *Inteligencia artificial y Administración pública. Robots y humanos compartiendo el servicio público*.

⁵⁵ A.G. Orofino and G. Gallone, *L'intelligenza artificiale al servizio delle funzioni amministrative: profili problematici e spunti di riflessione*, in *Giurisprudenza italiana*, 2020, 1738-1748.

