Executive summary[1]

1. Introduction

The Yearbook of Good Governance and Regulatory Quality is an **annual publication** of the **Fundación Democracia y Gobierno Local** with the support of the Comisión Nacional del Mercado y de la Competencia, which analyses each year, with the participation of renowned experts from different disciplines (Law, Economics, Public Management, Political Science...), the main **issues related to good governance and good administration**.

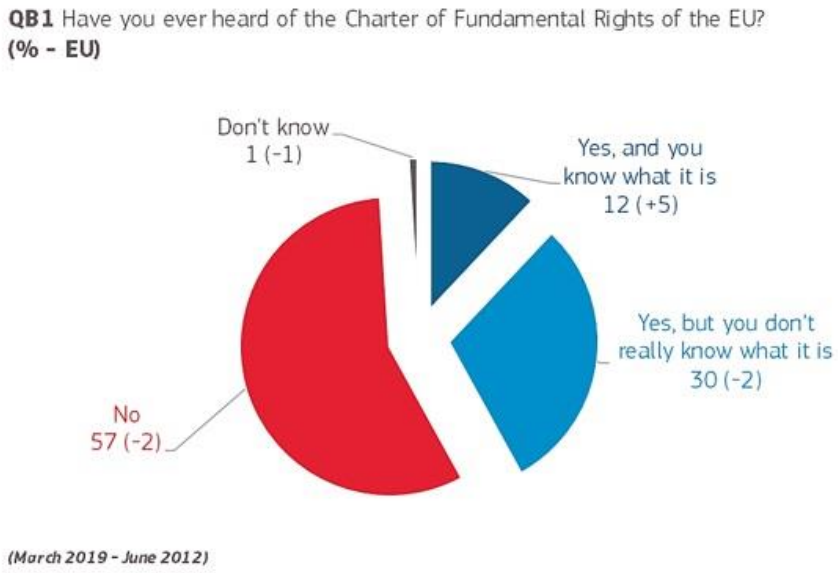
The Yearbook is prepared with the **prior celebration of a *Living Lab***, that is, a methodology to innovate in social challenges in a collaborative way, to share information and experiences. This method provides more creative contexts, with horizontality and empathy; more representative, as the participating community (which goes beyond the purely academic) is articulated according to the challenge to be solved, and seeks experimentation and co-creation.

The Yearbook addresses **issues such as** the quality of regulation, the protection of *whistleblowers*, the impact of behavioural sciences on public management, conflicts of interest, codes of ethics or conduct, artificial intelligence, corruption prevention, the evaluation public policies and the role of *lobbies*, among others. These topics **are dealt with** from an academic and practical management perspective, with analysis of relevant national and international documents and the development of models of management instruments that may be useful, with a special focus on the local level.

As is well known, in addition to Spanish legal norms and case law, the right to good administration is recognised in the Charter of Fundamental Rights of the European Union - approved in 2000 and incorporated into the Treaty on European Union (Treaty of Lisbon) of 13 December 2007, ratified by Instrument of 26 December 2008, in its Article 6 - and is very frequently applied by the European Court of Human Rights. The European

[1] Translated from the Spanish version using Deepl.

Commission published in 2019 a Eurobarometer survey on citizens' awareness of the Charter. According to the survey, although the situation has improved slightly since 2012, only 42% of respondents had heard of the Charter and only 12% were aware of its content.



The results also show that six out of ten respondents would like to have more information about the Charter and where to turn if their rights are violated.

Finally, the importance of good governance has recently been re-emphasised by the 2023 study on good governance in European states, promoted by the Swedish government.

In this context, the *Yearbook of Good Governance and Regulatory Quality 2024,* published in 2025 and directed by Professors Ponce (UB) and Villoria (URJC) and coordinated by Prof. Capdeferro (UB), is devoted in large part, although not only, Artificial Intelligence **with special attention to the local world, because, as is known, in July 2024 the EU Regulation on AI** also known as Artificial Intelligence Law (or AI Law)[2] **was published.** With the new AI Law, the European Union has defined a new legal framework for the development and use of artificial intelligence in Europe, applicable to both the private and public sectors, and within this to all levels of power in the Spanish state, including the local one.

[2] Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules in the field of artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Regulation). Published in OJEU No 1689 of 12 July 2024, pages 1 to 144.

2. Structure of the Yearbook

The Yearbook **includes, firstly, various cross-cutting doctrinal studies by renowned specialists**. Firstly, we have an article by the Judge of the General Court of the European Union, **José Martín y Pérez de Nanclares,** in which he approaches the right to good administration from the perspective of art. 41 CDFUE and the abundant case law of the CJEU. **Jaime Clemente Martínez** then introduces us to good local governance, considered by him as a constitutional right, and the role of planning for its effectiveness. Finally, this initial cross-cutting analysis of issues of good administration and good governance closes with a contribution by **Xavier Forcadell, on** the so-called *defensive bureaucracy*, an expression increasingly used in Spain, and the so-called *fear of the signature*, and the antidotes to this problem linked to good governance and good administration.

In the second section of this Yearbook, devoted **to studies on** Artificial Intelligence, we have a total of 9 studies. The first part includes 6 general studies on this topic. The contributions begin with an American perspective on the European regulation of artificial intelligence**, written by Cary Coglianese, an American professor at the University of Pennsylvania.** After this global analysis of the EU Regulation, through the eyes of a non-European specialist, **Agustí Cerrillo i Martínez** focuses his attention on the regulation of artificial intelligence, taking into account the European Union Regulation on AI, and its impact on Spanish local governments. Next, **Ramon Galindo Caldés** considers the question of the use of artificial intelligence systems by public employees and the necessary competences and skills they must have for this purpose, which will require sufficient knowledge and training (or "literacy" in the terminology of Article 4 of the European Regulation). The fourth contribution is by **Javier Miranzo Díaz**, who addresses the use of AI in local public procurement, considering its opportunities, risks and guarantees. Risks that may lead to damages, which justifies **Rubén Martínez Gutiérrez**'s subsequent work on AI and administrative liability in local administrations. This first section, , closes with a consideration of generative artificial intelligence from the perspective of the promotion of competition, by **Javier Martín Alonso and Renata Sánchez de Lollano Caballero of the CNMC**.

The second section includes a series of analyses referring to specific AI practices. First, a general reflection on its use at the local level, by **Ascensión Moro Cordero**. This

contribution is followed by a presentation of the CNMC's experience with artificial intelligence and data science for the detection of collusion in public procurement, by **Alfonso García Jiménez**. This section closes with an analysis of transparency and access to software source code by **Javier de la Cueva González-Cotera**.

The Yearbook closes with the usual sections on good administration and good governance in general of **documents** of interest, selected and annotated international and national **jurisprudence** and selected and annotated relevant **bibliography**.

As in previous editions, this Yearbook also includes **the section Models for Use**, which in this case incorporates **models for regulatory improvement, in line with the movement of the better regulation,** that are ready to be used by local regulators, thanks to the great work carried out by **Valencia City Council** and its generosity. The models for use are explained by its Secretary General and Plenary Secretary, **Mr. Hilario Llavador Cisternes.**

3. Conclusions, Proposals and Recommendations

In the light of the previous *Living Lab* held in November 2024 and the analyses included in this 2024 Yearbook, the following conclusions and recommendations on Artificial Intelligence can be highlighted here.

Specifically, there are two conclusions and various recommendations relating to three areas (regulation, management - with special attention to public procurement and competition - and asset liability and judicial control), areas in which there are many suggestions for the improvement of the existing situation in various points (thus, improvement of the state, regional and local regulations; of the management of human resources, of public procurement in general and of the respect for competition and the avoidance of collusion in particular; of the application of the regulations on asset liability, with specific consideration of the existence of an AI provider external to the Administration that gives rise to a contract, and of the cases of reuse and transfer between Administrations of technology; of the cases of reuse and transfer between Administrations of technology; and of the cases of reuse and transfer between Administrations of technology; the application of the regulations on patrimonial responsibility, with specific consideration of the existence of an AI provider external to

the Administration that gives rise to a contract, and of the cases of reuse and transfer between Administrations of technology; finally, improvement of judicial control and of the transparency associated with the right of access to the information contained in the source code):

A) Conclusions

1. **Local governments are on the threshold of a digital transformation process to automate their activities and operations and to advance the delivery of inclusive, personalised, proactive and sustainable services.**

   This process should be developed within the framework of the **requirements of good administration, clearly defined by the Court of Justice of the European Union**, avoiding the so-called **defensive bureaucracy and the fear of signature,** which paralyses public policies necessary for society, and allowing for **good local government within the framework of adequate planning**.

   The use of **algorithmic systems and artificial intelligence** in the public sector can be an important element in achieving this, although it also has high environmental costs and risks for the rights of individuals and the known general interest due to its limitations (errors, biases, hallucinations...).

   There are already significant examples of this digital transformation process. There are local entities that have implemented predictive tools for situations of vulnerability in the field of social services, through the analysis of different data sources and social trends, identifying population profiles in the territory, relating it to the available information, and applying a series of *machine learning* algorithms, which allows simulations to be carried out in real time and the service to be resized.

Other interesting experiences in the local sphere focus on citizen attention, through the incorporation of *chatbots* or conversational robots that, thanks to artificial intelligence, can respond in real time to certain types of citizen demands.

Also noteworthy in the field of building management and maintenance are the intelligent systems based on the BIM methodology (*Building Innovation Management*), which provide a new way of modelling and managing the entire building process using tools that incorporate artificial intelligence combined with other disruptive technologies, integrating architectural and construction definition, the calculation of installations, measurements and budgets, the planning, modification and management of works and the management of maintenance during the useful life of the building in a single digital file, avoiding problems of lack of coordination by working directly on a virtual reality of the global building and guaranteeing major cost savings throughout the process.

In the same way, strategies are being developed to digitise the functioning of cities and provide intelligence to key sectors such as energy, water, waste collection or mobility, among others, while designing digital twins on which to simulate, for example, new transport routes, traffic light changes, etc.

These are just a few examples among others.

2. In order to advance in this transformation process, it is necessary to have a **legal framework** that responds to the risks that may arise from the intensive use of technology and, in particular, artificial intelligence, **adequate public management**, including **public procurement**, that respects **competition** in markets and **accountability** based on **administrative responsibility** for the damage that may be caused, and **legal control, ultimately judicial, of the legal violation through the use of AI.**

Artificial intelligence is, of course, a sufficiently important issue not to be left to technologists alone. Knowing how to programme does not guarantee the transversal knowledge necessary or the wisdom required to make good use

of AI to guarantee the general interest. And it is certainly not equivalent to knowing the most elementary requirements of a Social and Democratic Rule of Law such as the one we citizens have given ourselves, through our 1978 Constitution (art. 1.1).

B) Recommendations

1. In terms of **legal regulation**, it is necessary to go beyond the EU AI Regulation, which, of course, applies to the Spanish local level, both when local administrations act as providers and when they act as those responsible for the deployment, i.e. users, of AI, as explained in this Yearbook.

   This complementary regulation to the European AI Regulation can be at state, regional and local level.

   a. **At the state level, there is an urgent need to update the regulation of automated administrative action** currently included in Article 41 of Law 40/2015. In particular, automated administrative action should extend its objective scope of application beyond the administrative procedure to also guarantee legal certainty when artificial intelligence and, in general, automation is carried out in the development of the informal activity or the material or performance activity of the public administration. Likewise, the regulation of automated action should identify, as a basic rule, criteria to be taken into account by each public administration when deciding whether or not to automate a certain administrative action or to what extent artificial intelligence systems will be used and, where appropriate, the limits of the use of artificial intelligence in automated administrative action should be determined.

      In addition, the basic legislation should incorporate **other elements** that, beyond the provisions of the RIA, provide an adequate response to the main risks that the use of artificial intelligence in local governments may entail:

      i. Firstly, the catalogue of citizens' rights in their relations with public administrations should be updated, and in particular the

rights of persons interested in an automated administrative procedure or with automated procedures.

ii. Secondly, the principle of algorithmic transparency should be recognised, leaving it up to the regional legislator to regulate the mechanisms through which to channel it and, in particular, the creation of a register of artificial intelligence systems to guarantee the transparency of algorithmic systems at the local level or the dissemination of information on AI systems through the electronic headquarters.

iii. Thirdly, the basic elements of data governance should be identified in order to ensure the quality of the data used by public administrations. Also, in particular, in relation to personal data, it should be considered whether the basic legislation should foresee the cases in which personal data can be processed in an automated way for the performance of certain public tasks or the provision of public services in the light of Article 22 of the General Data Protection Regulation (e.g. for personalised or proactive provision).

iv. Fourthly, the basic aspects of the exclusion of the use of artificial intelligence for certain administrative tasks and the human supervision of the use of artificial intelligence systems in public administrations, and in particular the control of the use of artificial intelligence systems and automated decisions, should be specified.

b. **All these aspects can be further developed by regional legislation and by each local government through digital administration ordinances or regulations in** order to effectively promote the incorporation of artificial intelligence systems as part of their digital transformation strategy.

In particular, each municipality should specify the procedure to be followed to decide on the use of artificial intelligence systems both in its relations with citizens and internally by its staff. This procedure should

not only guarantee the reliability, security or robustness of the artificial intelligence systems used, but should also be adequate to ensure the legitimacy of their use through the participation of the bodies in which democratic legitimacy resides at local level, as well as the participation of citizens.

In particular, it is advisable for local entities to have their own regulatory instruments, together with guides, protocols, instructions, to ground the application of RIA in line with the corporate strategy and its management model, with a view to its deployment, but also to avoid these potential risks to the rights and freedoms of citizens. Specifically, these instructions should clarify in which cases and how these tools can be used for corporate use and under what conditions, which, moreover, must be duly authorised. These local documents are of great help for the literacy that is mandatory for compliance with the RIA. **We already have examples such as the standard Ordinance on transparency and digital administration of the Localret Consortium (2025) or the Ordinance on Digital Administration of Tarragona City Council (2024).**

Among other issues, it would be appropriate to regulate internally

- Determine and approve the uses of generative AI tools by staff, which should be published on the City Council's transparency portal
- Have a municipal registry of AI systems (or adhere to a supra-municipal algorithmic transparency instrument
- Internal instructions regarding the use of generative AI tools, in the sense of
    - Approve a protocol for the authorisation of the use of these tools in professional activity. The City Council must ensure that these tools comply with current regulations and have the least environmental impact.
    - That they are used by people who, beforehand, have the necessary knowledge and skills to make proper use of the tool, and always as

a support for the development of their tasks and responsibilities, never to replace their .

- Be responsible for and critically monitor the results obtained with its
- Report on its use in relation to the information that has been produced with this .
- Do not use personal data or documents that are protected by property rights.
- Use only on devices provided by the
- Immediately inform the City Council of any incident in the use or operation of the tool

2. **Beyond regulatory aspects, and moving on to public management itself**, the introduction of artificial intelligence (AI) in the public sector raises various needs that will have to be met by managing the cultural change and productive structure required by this revolution, truly transforming the foundations of the public sector, in particular by guaranteeing solid governance of the data on which to apply AI, which will also need to be governed to ensure its use respects regulations, is ethical, responsible, guarantees fundamental rights and is transparent, with access to the source code.

   Thus:

   a. **From the point of view of human resources in the public sector, there is a** need for AI-literate staff, in the words of the European AI Regulation, based on the need for human resources with digital competences and skills in the public sector. In this sense, the European Artificial Intelligence Regulation highlights the need for AI literacy, as entities that implement AI systems must have staff with sufficient AI competences to use them in a way that is aware of the opportunities and risks involved in their use. The public sector has an obligation to make its staff literate so that they can make efficient but also aware use of any system where directly or

indirectly data-driven decisions are made, especially if the system is an AI system.

At the local level, the main human resources problems are the management, selection and retention of employees, and dependence on other local authorities (especially small municipalities on the Provincial Councils). The solutions involve cooperation and/or assistance, either through the provision of services by other local administrations (county councils or county councils), the use of associative formulas (community or consortium), or collaborative formulas. This is true for small municipalities, but also for the rest in terms of AI literacy and the availability of personnel qualified in the implementation and use of AI-based systems.

There are many questions to be answered**, but three are worth highlighting**: who and how should be responsible for the training and selection of employees, and whether the sharing of specialised staff is possible. The training of existing employees in the administration **does not preclude the need to select new staff, bearing in mind the generational changeover that will have to be faced in the coming years.** The selection processes should incorporate the assessment of competences, knowledge and skills linked to digitalisation and AI.

b. **In terms of public procurement**, AI can improve the transparency, efficiency and integrity of contractual processes in their different phases, facilitating the planning of contracts and the monitoring of procedures, as well as the detection of fraud and corruption. However, its implementation must be accompanied by adequate monitoring mechanisms, including explainability, human control and adaptation to the operational reality of local administrations, avoiding generating new administrative barriers or compromising legal certainty.

c. **From a competition perspective**, the competitive dynamics in AI have the potential to greatly affect the efficiency of this sector and, ultimately, the economy as a whole, by presenting relevant risks related to data, computing capacity, training, financial resources, bundling/tying practices (bundling of several related services or products with AI tools), restrictive or discriminatory practices, partnership agreements or minority stakes of large technology companies in innovative *start-ups* to restrict competition and reduce innovation in the market (*killer acquisitions*).

As this is a new and rapidly evolving sector where, as in other digital markets, speed of action is key, competition advocacy plays a particularly important role in facilitating understanding and driving efficiency-enhancing changes. In this context, to date, numerous competition authorities in Europe and beyond have conducted competition advocacy studies on the sector, identifying different challenges and **proposing recommendations to improve the competitive functioning of AI, especially Generative AI, . In particular, the following are worth noting:**

1. The promotion of competition is not limited to AI itself, but depends on input markets, such as cloud services or specialised hardware. Access to data, computing, hardware and specialised talent without unjustified restrictions is essential.
2. Investment in public supercomputers can help provide greater access to computing power and how to facilitate this access in an open and non-discriminatory way can be explored.
3. Regulation should be balanced: it should not slow down the expansion of smaller operators, but neither should it favour larger ones.
4. International cooperation is necessary to avoid introducing distortions and additional costs for companies. Competition authorities can undertake joint monitoring efforts, exchanging information on the most relevant market developments with international repercussions and knowledge about the sector and its trends.

5. Competition advocacy plays an important role in promoting the competitive functioning of the sector and competition authorities should use the tools at their disposal.
6. Greater transparency about minority investments in the sector can allow closer monitoring of concentration. Pro-competitive alliances between AI developers and firms with access to inputs can drive innovation development.
7. The possible development of interoperability standards on foundational models and on the different levels of the AI value chain, and the presence of *open-source* models can serve to promote choice and innovation.
8. The role of competition authorities and their use of AI to effectively monitor the use of AI by operators.

In particular, collusion in public procurement and other markets represents a persistent threat to competition and the proper use of public resources. Collusion occurs when firms that should normally compete with each other co-ordinate their actions to manipulate key variables such as prices, output or areas of influence, with the aim of maximising joint profits to the detriment of the general interest. This coordination can be explicit, through formal agreements, or tacit, when firms adjust their behaviour by observing the actions of their competitors without the need for direct communication. In recent years, a new form of collusion has emerged, facilitated by the use of algorithms. This is algorithmic collusion, where computer programmes optimise business decisions autonomously and end up generating outcomes similar to traditional collusion. This can occur even without the explicit intention of firms, when algorithms learn, through artificial intelligence, that avoiding competition is the best way to maximise profits.

One of the areas where this conduct is particularly serious is public tenders. The CNMC has incorporated advanced artificial intelligence and data science techniques to detect collusive practices, most notably the development of the BRAVA (*Bid Rigging Algorithm for Vigilance in Antitrust*) system. Far from

being a "black box", BRAVA is designed to provide clear explanations of its results. Each time it flags a bid as suspicious, it also shows which variables have influenced that decision, to what degree, and how that case compares with others. This allows CNMC analysts to understand, question or qualify the results, integrating them into their regular work

The CNMC's experience shows that it is possible to move towards more informed, proactive and adaptive supervision, based on the responsible use of advanced technologies. This path, however, requires remaining committed to the fundamental principles of public action: legality, proportionality, impartiality and humane supervision. Only in this way can we ensure that the use of artificial intelligence not only improves the efficiency of our institutions, but also strengthens their legitimacy and their ability to protect the general interest.

3.Good regulation and good administration in the deployment of AI in public administrations in general and in local administrations in particular **must be accompanied in a state governed by the rule of law by administrative liability for damages that may be caused by the use of AI and judicial control of the administrative activity that uses it, as institutions to close the system**

As the well-known French jurist Hauriou pointed out in the introduction to his *Precís de Droit Administratif et de Droit Publique Général,* published in 1903, there are two correctives of the powers of the Administration that "the popular instinct demands": that the Administration should act (we would add now in the 21st century that with AI, if necessary), but obey the law (and otherwise be controlled, ultimately by impartial courts of justice); that it should act (with AI, if necessary), but pay for the damage.

a. **The most common cases in which financial liability may arise** from the use of AI systems in local government are varied and will undoubtedly increase over time. For example, the following cases can be identified:

(1) automated processing operations linked to administrative decision-making procedures that generate bias and thus unlawful damage and harm. These cases could occur at local level in several of the systems referred to in Annex III of the EU Artificial

Intelligence Regulation: (a) education and training; (b) management of local government employees; and, (c) access to municipal public services and benefits;

(2) data breaches and breaches of personal data and security in Artificial Intelligence systems;

(3) the use of Bots or ChatBots, which guide in carrying out administrative procedures, due to defects or errors in the information may cause damage; or,

(4) direct damage caused by errors in Artificial Intelligence systems, e.g. in the case of a crash of a self-piloted drone, or in ambulance service delivery systems when the algorithm decides on preferences, etc.

Based on the observation of the absence of specific regulation in the EU Regulation and the **need to establish standards of good administration** that allow for a quality functioning of AI that avoids damage, **it seems that this area could involve the revitalisation of the strict liability theory**

On the other hand, it does not seem that **the clause of exemption from responsibility for the state of the art** does not apply here, not even in relation to generative AI systems in which the programme learns with a certain independence with respect to the initial operation, given that in cases of use of AI systems the administration always has a responsibility with respect to the decision as to whether or not to continue using these systems for decision-making, and it would certainly be questionable for an administration to justify the continued use of these systems without precise knowledge of how they work.

The avenues of possible liability will exist depending on how the technology has been acquired. Thus, in cases of public procurement, be it through the use of service contracts, supply contracts, or the innovation partnership procedure, a question that may not be so simple will have to be resolved, that of knowing whether or not damage produced by the use

of AI technologies derived from the execution of a contract has been "a consequence of an immediate and direct order of the Administration or of the defects of the project drawn up by it", as this will certainly require the contribution of expert evidence with a high degree of technical specialisation in this area, a question that will not be simple. Article 196 of Law 9/2017 on Public Sector Contracts, which regulates the "compensation for damages caused to third parties", refers to this issue. Likewise, article 311 of the same law, which specifically regulates the "execution, liability of the contractor and performance of service contracts", raises the question that in order to ultimately determine who is liable, the technical specifications must be analysed in detail and it must be verified whether the damage to third parties has been caused by "omissions, errors, inadequate methods or incorrect conclusions in the execution of the contract", cases in which the contractor would be liable, since with regard to other matters the full liability would be for the local administration.

On the other hand, one of the options that also appear to be likely for access to AI systems by local administrations is the **reuse and transfer of technology**. A relevant article in this respect is Article 157 of the Public Sector Legal Regime Law, which regulates the "reuse of systems and applications owned by the Administration", obviously connecting with Article 158 of the same Law, which establishes the conditions for "technology transfer between Administrations". This is a way to avoid dispersion and inefficiency in the use of this technology by different administrations. With regard to administrative liability for the use of reused technology that causes damage, a distinction must be made between two cases, bearing in mind that it will probably be the agreement that determines the liability regime:

i. The first scenario would be the acquisition of reused technology for use by the local administration, without any joint use with another administration. In this case, we are

faced with what would be like a local government's own design of the IA system.

ii. The second scenario would be the joint use of an IA system by two or more administrations, an issue that is becoming common in areas such as digital administration in tax collection. In these cases, different administrations use the same technology jointly and simultaneously, the use being defined in the agreement, as well as the distribution of the costs of maintenance and operation of the systems. In these cases, the regime foreseen in Article 33 of the Public Sector Legal Regime Law, which refers to the "concurrent responsibility of the Public Administrations", must be applied.

b) Finally, in the event that the use of AI by the public sector violates the legal system**, judicial control is the last bastion of the social and democratic rule of law provided for in the Constitution.**

Throughout Europe and the world, various disputes have arisen over the use of AI by governments and administrations, such as the **25 February 2025 ruling of the Colombian Constitutional Court, which granted access to the source code of a programme used by the Colombian Administration**, stating that:

"Indeed, in a constitutional and democratic system, citizens must know the form, rationale and process by which public policy decisions that affect them are made. When citizens do not know how decision-making applications or systems are constructed, , they cannot fully understand the purpose for which the state uses people's data. Nor can they know if there are flaws in the design that could generate or reproduce serious discrimination or bias. Therefore, the right of citizens to have access, as far as possible, to information about the algorithmic systems used by the state for decision-making, and the use that is made of them, is a fundamental guarantee to prevent these technologies from leading to the violation of other fundamental rights".

This is also the case in Spain, where the so-called Bosco case has already generated several court rulings in relation to transparency and source code. The source code is the file or set of files that have a set of very precise instructions, based on a programming language, which is used to compile the different computer programmes that use it so that they can be executed without major problems. Users can use the software without major concerns thanks to a simple graphical interface that is based on the development of the source code. The user does not need to know the programming language used to develop a given software. **In this area, access to source code, in its dual role as a guarantor of state security and of the necessary transparency of a democratic system, must begin to be a reality** on which a new constitutional model is designed that takes into account new power relations, fundamental rights, the construction of interoperable bodies and the right of citizens to participate in the production of regulations using formal languages.