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ADMINISTRATIVE
LAW DIVISION

The Supreme Court Establishes Doctrine on the Discharge of Unsatisfied Debt

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The Supreme Court has issued a particularly significant line of case law for insolvency practice regarding the discharge of unsatisfied liabilities of individuals. In particular, First Chamber judgments no. 254/2026, 259/2026, 260/2026, 261/2026, 262/2026 and 263/2026, all dated 18 February, address for the first time in depth the scope of the limitation established in Article 489.1.5 of the Consolidated Text of the Insolvency Act (TRLC) in relation to public-law claims.

The importance of these decisions lies in the fact that they clarify an issue that had been generating inconsistent approaches among lower courts and provincial appellate courts: to what extent public claims may be discharged following the reform introduced by Law 16/2022 of 5 September, and how that limitation must be interpreted in light of Directive (EU) 2019/1023 and the case law of the Court of Justice of the European Union.

The starting point of the debate lay in the tension between two principles: on the one hand, the purpose of the "second chance" mechanism, aimed at allowing debtors acting in good faith to free themselves from debt and restart their economic activity; and on the other hand, the special protection afforded to public claims, whose recovery is linked to the financing of public expenditure and the functioning of the welfare state.

The Supreme Court judgments no. 254/2026, 259/2026, 260/2026, 261/2026, 262/2026 and 263/2026, all dated 18 February, introduce several fundamental clarifications that alter day-to-day practice:

1. Subordinated public claims ARE fully dischargeable, without any monetary limit.

2. The limitation contained in Article 489.1.5 TRLC applies only to the remaining public claims (privileged or ordinary claims).

3. The rule applies to all public creditors, not only the Spanish Tax Agency and the General Treasury of the Social Security, but also municipalities, autonomous communities, and other public bodies, regardless of the entity responsible for collection.

4. The limit applies individually to each public creditor, meaning up to €10,000 per creditor.

5. The debtor bears the burden of expressly identifying all claims for which discharge is sought, and the judge must specify in the decision which debts are discharged, thereby avoiding generic rulings.

In addition to establishing doctrine regarding the substantive scope of discharge, the Supreme Court also introduces a major procedural requirement: the debtor must precisely identify the debts whose discharge is sought, thereby reinforcing the debtor's duty of transparency.

The discharge mechanism cannot operate as a generic or undefined clause. The judicial decision granting discharge must specify which claims are discharged and which are not. In this way, legal certainty is strengthened, the true scope of the second-chance mechanism is clarified, and the decision is prevented from becoming a kind of "blank cheque" capable of being completed later.

Accordingly, the First Chamber establishes a balanced doctrine: it recognizes the legitimacy of enhanced protection for public claims, but subjects that protection to the principle of proportionality. Consequently, subordinated public claims are excluded from the restrictive regime and become fully dischargeable, while the limitation contained in Article 489.1.5 TRLC applies only to ordinary and privileged public claims.

Furthermore, the Court extends the rule to all public creditors, irrespective of the collecting authority, and confirms that the €10,000 limit must be applied separately to each public creditor.

The new doctrine also requires a reconsideration of how discharge applications are prepared: a generic request is no longer sufficient. The success of the application will depend to a large extent on a complete, precise, and legally classified list of creditors. Only in this way can the judge clearly determine in the decision which claims are effectively discharged and which remain enforceable.

The CJEU Closes the Debate on VAT Deduction for Client Entertainment Expenses

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Inviting clients to sporting events, shows, or recreational experiences is a common business practice, generally linked to customer loyalty and business development strategies. However, the tax treatment of these expenses for Value Added Tax (VAT) purposes has traditionally been restrictive, a position that has recently been confirmed by the Court of Justice of the European Union (CJEU) in its judgment of 12 March 2026 (Case C-515/24).

In that ruling, the CJEU concluded that Spanish legislation may exclude the right to deduct input VAT incurred on these types of expenses, even when the taxpayer proves that they are connected to the business activity. In this way, the Court upheld the compatibility of Article 96 of Spain's VAT Law 37/1992 with European Union law, reinforcing an interpretation already established in administrative practice.

The dispute arose from a common commercial practice consisting of purchasing tickets for sporting events and other recreational activities to be offered free of charge to clients as part of business relationships. The company had deducted the input VAT on the grounds that these expenses were directly related to its economic activity. However, the tax authorities denied the deduction based on the aforementioned Article 96, which expressly excludes VAT incurred on goods and services intended for client entertainment, as well as on shows and recreational services. The matter was brought before the Spanish Supreme Court, which referred a preliminary question to the CJEU to determine whether this limitation was compatible with the harmonized VAT system.

The CJEU's analysis focused on the so-called "standstill clause" contained in Article 176 of the VAT Directive, which allows Member States to maintain certain exclusions from the right to deduct VAT insofar as those exclusions already existed in their domestic legislation at the time they joined the European Union. On that basis, the Court concluded that the Spanish rules are protected by that clause, even though the VAT system itself was only introduced in Spain in 1986, coinciding with Spain's accession to the then European Economic Community on 1 January of that year. In this context, the Court considered that the decisive factor was not the absence of a VAT-like tax before that date, but rather the fact that the Spanish legislature had already contemplated excluding these types of expenses and that the scope of the exclusion had not been substantially expanded afterwards.

The judgment also includes substantive reasoning reinforcing this conclusion by highlighting that these expenses are clearly connected to the satisfaction of private needs, which justifies their exclusion from the general deduction mechanism. European Union law itself allows Member States to deny deduction rights for expenses that do not serve a strictly professional purpose, such as luxury, entertainment, or representation expenses. From this perspective, allowing the deduction could blur the distinction between business consumption and final consumption, thereby undermining the principle of neutrality that characterizes the common VAT system.

From a practical standpoint, the judgment significantly strengthens the position of the tax authorities. Although the restrictive approach had already been applied consistently, the CJEU ruling confirms its compatibility with EU law, leaving little room to challenge this type of adjustment in administrative or judicial proceedings.

The ruling also highlights the necessary distinction between the treatment of these expenses for VAT purposes and their treatment under direct taxation. The fact that certain expenses may be tax-deductible for Corporate Income Tax purposes does not determine their deductibility for VAT purposes, as the two taxes operate under different principles. This point is particularly relevant in practice, where there is often a tendency to automatically apply the treatment of one tax to the other.

In conclusion, the judgment does not introduce a substantial change, but it does provide a high degree of legal certainty by confirming the compatibility of the Spanish system with EU law. This ruling requires businesses to reassess the treatment of expenses associated with client entertainment—such as event tickets, invitations, or corporate experiences—and to accept their non-deductibility for VAT purposes, thereby consolidating a position whose general debate is now practically settled.

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LABOUR
AND SOCIAL
SECURITY
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The Entry of Labour Inspectors and the Inviolability of the Business Domicile: STS 441/2026, 14 April

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Recently, the Spanish Supreme Court issued judgment STS 441/2026, of 14 April, addressing the limits of Labour Inspection powers in business premises. The ruling is particularly significant because it strengthens the protection of the right to the inviolability of the home under Article 18.2 of the Spanish Constitution, extending it to legal persons in the context of inspection actions.

The dispute arose from a Labour Inspectorate intervention carried out in 2024 at an industrial warehouse. The premises had a relevant characteristic: it functioned simultaneously as a workplace and as the company's registered office. The Labour Inspectorate, accompanied by the National Police, entered the premises without judicial authorisation and without the consent of the owner. No search or seizure of documents was carried out during the intervention.

The central issue was whether the inspection entry into company premises that also constituted its registered office infringed the right to the inviolability of the domicile of a legal person, and whether in such cases either the owner's consent or prior judicial authorisation is required to legitimise entry.

The Supreme Court upheld the appeal and ruled in favour of the company, overturning the prior decision of the regional High Court of Justice. It declared the Labour Inspectorate's action unlawful, as it involved entry without consent or judicial authorisation into a constitutionally protected space, namely the domicile.

First, the Supreme Court bases its decision on a broad interpretation of Article 18.2 of the Constitution, concerning the inviolability of the home. Contrary to the regional court's view, it held that constitutional protection is not limited to situations where a search is conducted or documents are seized. The key element is that the Constitution refers to "entry or search", meaning that the guarantee is triggered the moment entry into the domicile occurs, regardless of what is done inside.

Second, the Court addresses the silence of Article 13.1 of Law 23/2015 on inspection powers in the domicile of legal persons. It considers that this omission does not remove the requirement of judicial authorisation, as such requirement derives directly from the Constitution. Consequently, it must apply even if the law does not expressly provide for it, as it does for natural persons.

In addition, the Court rejects the Administration's argument that, since legal persons do not have personal privacy, protection should be limited to access to documents. On the contrary, it affirms that legal persons are also holders of this fundamental right, although with a scope adapted to their nature.

Therefore, as a general rule, prior judicial authorisation is required for Labour Inspectorate entry into business premises that simultaneously constitute the registered office and workplace of a legal person, where the owner has not consented, even if no search is conducted and no documents are seized.

The judgment only contemplates a possible exception, to be assessed case by case, where there is a "clear physical separation" between the office area of the registered office and the area corresponding to the workplace, and where the authority or its agents expressly state that their action is limited exclusively to access to the latter space for the exercise of their legally assigned functions.

In light of this judgment, the Labour and Social Security Inspectorate argues that the requirement of prior judicial authorisation could undermine one of its main enforcement powers. It also emphasises that inspectors are subject to strict duties of confidentiality and professional secrecy, which would already ensure the protection of business information without excessively restricting inspection activity.

In any case, this ruling is particularly relevant for small and medium-sized enterprises, where it is common for the registered office and workplace to coincide in the same physical space. In such cases, it is more difficult in practice to identify the clear physical separation referred to by the Supreme Court, meaning that the requirement of prior judicial authorisation may have a greater impact on inspection activity in these companies.

In conclusion, the judgment strengthens the protection of the right to the inviolability of the domicile in the business context, while also opening a debate on the balance between constitutional guarantees and the effectiveness of labour inspection powers in practice.

The Validity of Instant Messaging Evidence in the Case Law of the Spanisg Supreme Court

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I. Introductory Considerations

The progressive digitalization of personal relationships has brought into judicial proceedings a type of evidentiary source that is now commonplace: communications conducted through instant messaging systems. WhatsApp, as the prime example, along with other similar applications, has come to play a central role in reconstructing the facts of countless disputes.

However, this same ease of use and dissemination is precisely what makes these media especially problematic from an evidentiary perspective. Their extreme malleability, the possibility of manipulating digital files, and the ease of identity impersonation require caution from the courts.

Since Supreme Court Judgment (STS) 300/2015 of 19 May, the Spanish Supreme Court has progressively developed a solid doctrine that has later been refined and clarified. A clear principle emerges from this body of case law: instant messaging evidence is fully admissible, but its evidentiary value depends on sufficiently proving its authenticity, integrity, and origin, as well as the lawfulness of how it was obtained.

II. The Nature of Messages: Beyond Documentary Evidence

One of the most important contributions of STS 300/2015 is the conceptual definition of this type of evidence. The Supreme Court expressly rejects the idea that so-called "screenshots" can be regarded as documents for cassation purposes. They are not documents in the technical legal sense, but rather communications that have later been fixed onto a medium.

This clarification is not merely terminological. It moves these materials away from the realm of documentary evidence – characterized by its self-sufficiency – and into the sphere of documented personal evidence. This means they cannot be assessed in isolation or automatically, but rather in connection with the rest of the available evidence.

Ultimately, the medium in which the messages are presented does not alter their original nature: what matters is not the paper or image itself, but the communication reflected therein.

III. Risks Inherent in Digital Evidence

The 2015 judgment also introduced a warning that has become a structural element of later doctrine: digital communications must be examined "with all due caution." This statement is based on an empirical reality: digital files can be altered relatively easily, and messaging systems allow the creation of fictitious identities without major difficulty.

Thus, it is not uncommon for a nonexistent conversation to be presented as genuine, or for a real dialogue to be selectively fragmented so as to distort its meaning. The outward appearance of authenticity – the chat format, usernames, or apparent chronology – does not by itself guarantee the authenticity of the message.

Aware of these risks, the case law does not exclude digital evidence, but requires it to be evaluated with methodological prudence.

IV. Authenticity and Integrity as the Core of Evidentiary Validity

Case law has increasingly focused on two fundamental requirements, clearly stated in STS 7/2023 of 19 January: authenticity of origin and integrity of content. In other words, the court must be able to conclude, beyond reasonable doubt, that the message genuinely came from the alleged sender and that its content has not been altered.

These are not rigid formal requirements, but rather reliability criteria. They may be proven through different means, but their absence prevents the evidence from being given incriminating value.

At the same time, the Supreme Court has rejected any automatic exclusionary rule. Merely challenging authenticity does not automatically expel the evidence from the proceedings. Instead, it triggers a more demanding assessment of credibility in light of the body of evidence as a whole.

V. Challenging the Evidence and the Shift in the Burden of Proof

STS 300/2015 introduced the principle that, when the authenticity of a conversation is contested, the burden of proving its evidentiary reliability shifts to the party seeking to rely on it. This does not amount to a radical reversal of the burden of proof, but rather a logical consequence of the adversarial principle.

Subsequent case law, however, has refined the scope of this rule. STS 116/2025 of 13 February warns that the challenge must be real and substantiated, not merely generic or strategic denial. Only when concrete reasons are alleged that raise doubts about authenticity or integrity does the need for stronger evidentiary support arise.

This prevents both the uncritical acceptance of digital evidence and its systematic, unfounded rejection.

VI. Computer Forensic Evidence and Its Non-Absolute Nature

The statement in STS 300/2015 regarding the need for expert forensic evidence when authenticity is challenged has since been interpreted flexibly. STS 7/2023 clarifies that, although computer forensic analysis is the most appropriate means of verifying the origin and integrity of messages, it cannot be treated as an indispensable requirement.

Authenticity may also be established through a convergence of evidentiary elements: testimony from the participants, submission of the original device, verification of content before a public official, or consistency of the messages with the overall factual narrative. In some cases, this collective corroboration may suffice to dispel doubts.

Thus, forensic analysis is the strongest instrument, but not the only possible one. Its necessity depends on the circumstances of the case and the seriousness of the challenge raised.

VII. Procedural Timing of the Challenge

A particularly relevant issue concerns the stage at which authenticity must be challenged. STS 116/2025, relying on STS 332/2019 of 27 June, establishes that a genuine challenge may be raised in the statement of defence, without needing to have been anticipated during the investigation phase.

This doctrine has practical consequences, as it allows the defence to react to the final configuration of the accusation without being burdened with excessive anticipatory obligations. At the same time, it obliges the prosecution to strengthen its evidentiary activity when authenticity is challenged at that stage, and prevents objections based on the alleged lateness of the proposed evidence.

VIII. Lawfulness of Obtaining the Messages

The lawfulness of obtaining messages has also been clearly addressed by the case law. STS 90/2021 of 7 October, issued by the Military Chamber of the Supreme Court, in line with constitutional doctrine, states that recording or preserving a conversation by one of the participants does not violate the right to secrecy of communications protected under Article 18.3 of the Spanish Constitution.

The reason is that secrecy protects communications against third parties external to the conversation, not against those who participate in it. There is no secrecy vis-à-vis the recipient of the message. Consequently, introducing a conversation into evidence by one of its participants is, in principle, lawful.

This does not exclude potential issues relating to privacy rights or the right against self-incrimination in cases involving deception, provocation, or institutional superiority. Outside such scenarios, however, the obtaining of the evidence is generally lawful.

IX. Evidentiary Assessment and the Presumption of Innocence

Finally, the case law stresses that instant messaging evidence is subject to the principle of free evaluation of evidence. However, this freedom does not equate to arbitrariness. Where such messages form the core of the accusation, the evidentiary standard must be more demanding.

STS 90/2021 provides a paradigmatic example by denying sufficient incriminating value to uncorroborated screenshots lacking identification of the device or proof of authorship. Under such conditions, the evidence lacks the solidity necessary to rebut the presumption of innocence.

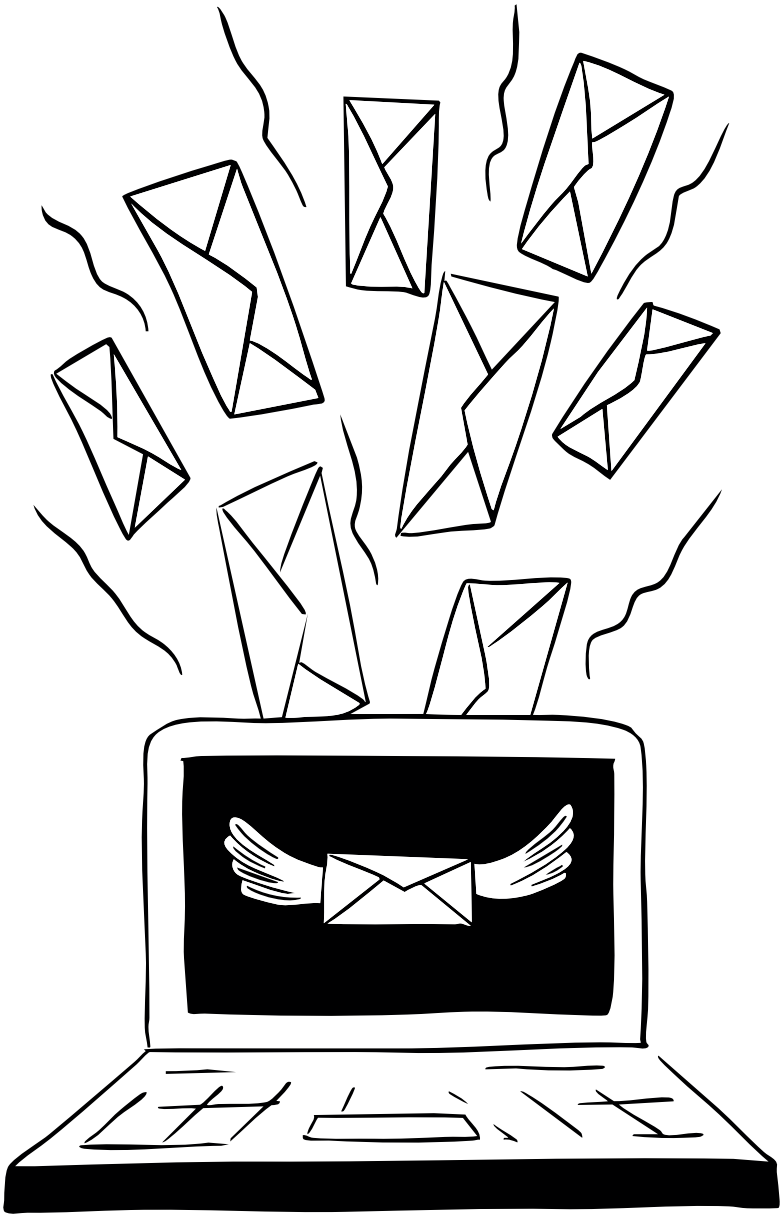
The essential principle reaffirmed is that digital evidence alone may be insufficient unless accompanied by additional guarantees ensuring its authenticity and reliability.

X. Conclusion

The Supreme Court's doctrine regarding instant messaging evidence reflects a carefully balanced approach. Far from adopting either total distrust or uncritical acceptance, the case law recognizes the usefulness of these means while subjecting their evidentiary value to rigorous scrutiny.

Authenticity of origin, integrity of content, proper identification of the participants, and lawfulness of acquisition stand as the pillars of their validity. On this basis, and through a joint assessment of all the evidence, courts may assign these messages the evidentiary weight they deserve in each individual case.

Ultimately, digital evidence is neither inferior nor superior to other forms of evidence – but it is different. And that difference requires, as the Supreme Court has repeatedly emphasized since STS 300/2015, a degree of caution that has now become a true standard of judicial assessment.



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Fixed Income in Spanish Regulated Markets

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For many years, the listing of fixed-income instruments on other European markets has been common practice among certain Spanish issuers. The reasons typically cited to explain this preference included the greater complexity of the listing process in Spain, resulting from the simultaneous involvement of the Comisión Nacional del Mercado de Valores ("**CNMV**") and **AIAF** Mercado de Renta Fija ("AIAF"). This dual layer of oversight was perceived as less efficient compared to other European jurisdictions. The framework began to change with the approval of Law 6/2023 of 17 March on Securities Markets and Investment Services ("**LMVSI**"), together with its implementing regulations.

New Regime for the Admission of Non-Equity Securities

The new regime is essentially structured around three instruments:

(i) Article 63 of the LMVSI, which grants the market governing body the authority to verify compliance requirements; (ii) Royal Decree 814/2023 of 8 November, which regulates the admission-to-trading procedure; and (iii) AIAF Circular 1/2023, which specifies the procedures and documentation required for the admission and delisting of securities on that market.

From an operational standpoint, the reform contains four key elements worthy of analysis.

First, verification of compliance with admission requirements is now entrusted to AIAF.

Second, the role of the CNMV no longer extends to the entire admission file and is instead focused primarily on the approval or supervision of the prospectus, where required under applicable regulations. Nevertheless, the CNMV retains indirect supervisory powers through the notifications that AIAF must provide regarding incidents or risks that may affect the market or investors.

Third, the procedure is now comprehensively regulated both through secondary legislation and through the market's own internal rules.

Finally, verification must be completed within a maximum period of five business days from the submission of complete documentation, without prejudice to requests for additional information, which must be answered within three business days.

From a practical perspective, the CNMV has indicated that this new framework may result in lower costs and reduced administrative burdens for issuers.

Effect on the Market

The data referred to in the text suggests that the reform may have helped strengthen the attractiveness of the Spanish fixed-income market. In particular, according to a press release issued by Bolsas y Mercados Españoles (**BME**) in March of this year, the cumulative repatriation of programmes previously listed on the Dublin and Luxembourg stock exchanges exceeded €60 billion since 2019.

Although this figure covers a period beginning before the entry into force of the LMVSI, it reflects a structural trend toward the repositioning of the Spanish market, which the reform has helped consolidate.

This policy direction was already apparent in the explanatory memorandum to the draft LMVSI, which justified the removal of superfluous and redundant requirements for the admission to trading of fixed-income securities in order to enhance the attractiveness of the Spanish market in this segment.

Similarly, as stated by the CNMV in a June 2023 press release, the new wording of Article 63 sought to improve the competitiveness and attractiveness of Spanish securities markets, align them with the supervisory practices of neighbouring countries, and encourage their use by issuers.

In addition, the BME Market Report (2025) reflects an increase in corporate debt issuances in Spain and links this development, among other factors, to the regulatory reform.

Conclusion

The reform has significantly simplified the admission procedure for fixed-income securities in Spanish regulated markets, and the first indicators point to a genuine improvement in their attractiveness.

Spain is therefore positioning itself as a competitive alternative to other European financial centres, with solid foundations for consolidating that leadership.

Generative AI and Confidentiality: The Invisible Risk

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The growing adoption of generative artificial intelligence tools, such as ChatGPT or Microsoft Copilot, has profoundly transformed the way organizations and professionals interact with information. Their ability to generate content, analyze documents, and support decision-making processes in real time results in clear efficiency gains. However, this technological evolution also exposes a particularly sensitive and frequently underestimated legal risk: the loss of control over the confidentiality of information. This risk must be analyzed in light of the applicable European regulatory framework, in particular the General Data Protection Regulation (GDPR) and the Artificial Intelligence Act (AI Act), whose interaction reinforces the need for a preventive, structured, and risk-based approach.

From the GDPR perspective, confidentiality plays a central role. Under Article 5(1)(f), personal data must be processed in a manner that ensures appropriate security, including protection against unauthorized or unlawful processing. This principle is further reinforced by Article 32, concerning appropriate technical and organizational measures. In addition, the rules governing international data transfers (Articles 44 et seq.) become particularly relevant in the context of using technology providers established outside the European Union.

Within this framework, the use of generative AI tools raises critical issues. Entering data through prompts may involve disclosure to third parties, often without users being fully aware of the legal implications. Such use may amount to an unlawful disclosure of personal data, an unauthorized international data transfer, or, in certain cases, a personal data breach within the meaning of Article 4(12) GDPR.

The open and decentralized nature of these technologies aggravates this risk. In practice, employees use these tools to support everyday tasks – from analyzing résumés to reviewing contracts – by entering information that may include personal data, sensitive content, or strategic information. This reality creates a difficult-to-control risk zone and may compromise compliance with the accountability principle established in Article 5(2) GDPR.

These risks are compounded by the opacity inherent in AI systems, particularly regarding the storage, access, and potential reuse of the information entered, thereby limiting organizations' ability to scrutinize such processing. It is in this context that the AI Act becomes particularly relevant, as it reinforces these concerns by imposing obligations relating to transparency, documentation, governance, and risk mitigation, depending on the classification of the relevant system or model. These obligations apply especially to general-purpose AI models and, more stringently, to models presenting systemic risk.

In this context, particular attention should be given to the publication by the European Commission on 10 July 2025 of the Code of Conduct for General-Purpose AI Models, a voluntary instrument intended to support compliance with the obligations established under the AI Act, particularly those set out in Articles 53 and 55. Although it does not constitute automatic proof of compliance, it serves as an important benchmark for implementing appropriate governance practices.

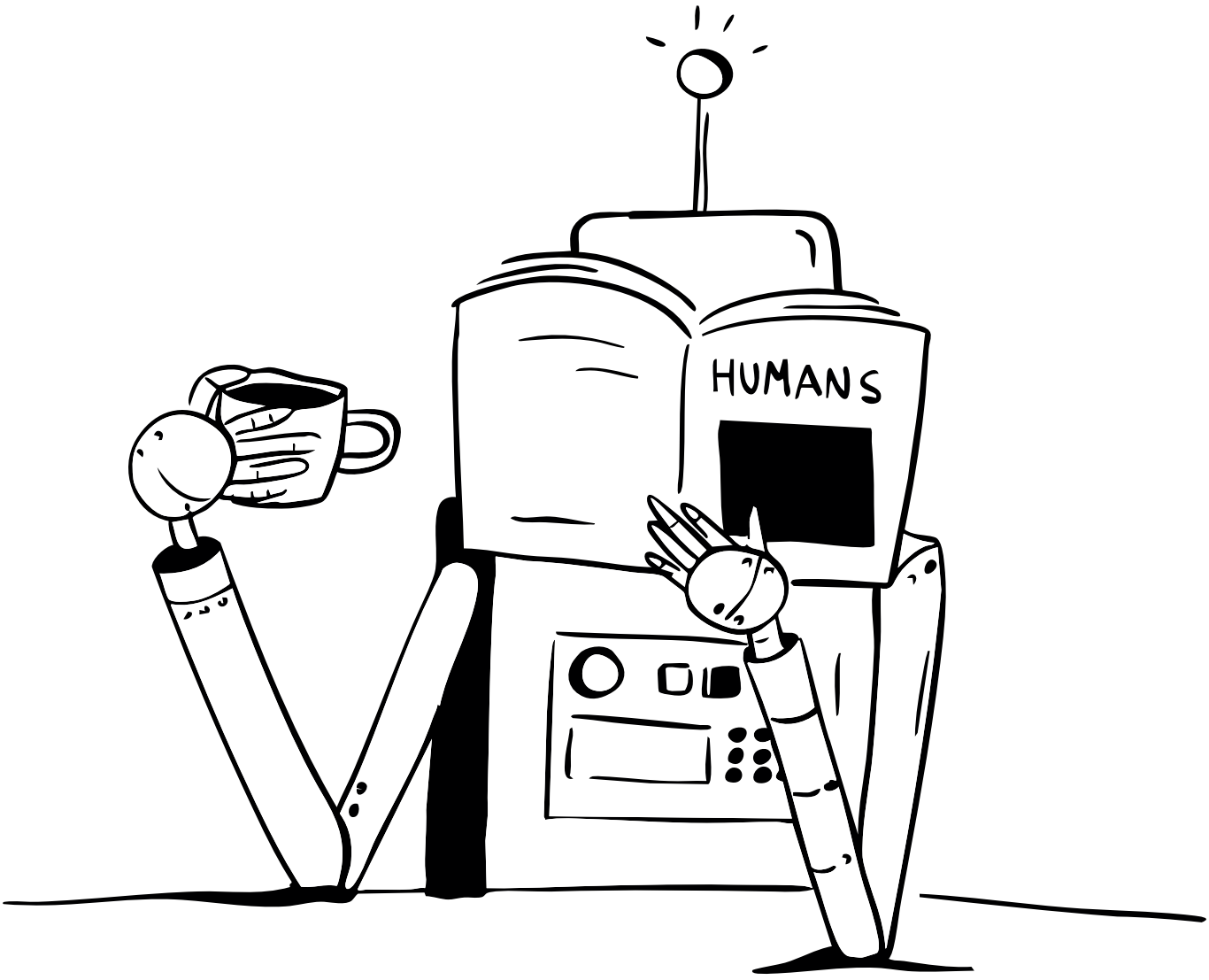
From the perspective of confidentiality, the Code is especially significant because it:

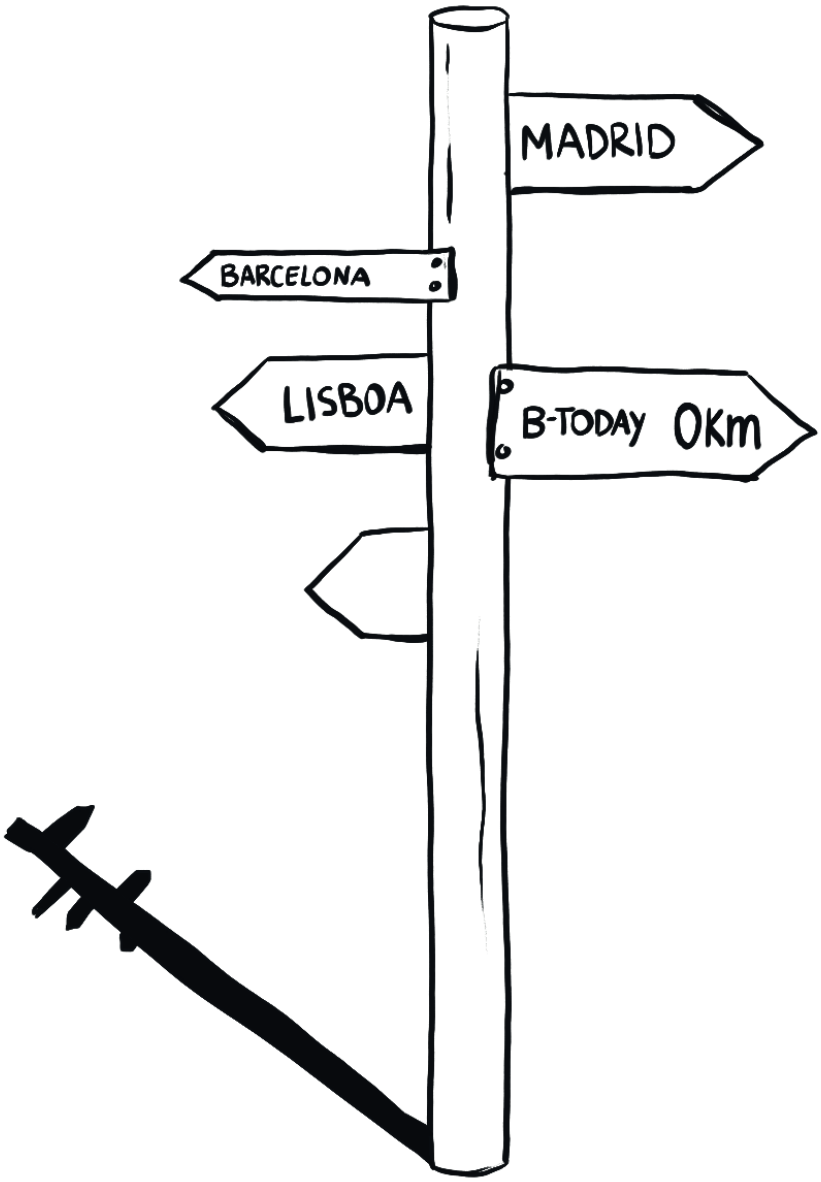
- requires the maintenance of up-to-date technical documentation while simultaneously ensuring the protection of trade secrets, intellectual property, and confidential information, as well as the adoption of appropriate cybersecurity measures;
- imposes a continuous approach to risk assessment and mitigation, including risks to fundamental rights such as privacy and personal data protection, especially in the case of models with systemic risk;
- establishes safeguards to prevent access to or processing of sensitive or confidential data in violation of EU law, including in evaluation or monitoring contexts.

Beyond personal data, the use of AI tools may also compromise the protection of trade secrets, insofar as the disclosure of strategic information or know-how may eliminate the requirement of confidentiality, with potentially irreversible consequences. A prudent approach is therefore required, based on clear internal policies, limitations on the input of personal and confidential data, and employee training.

At the same time, it is essential to evaluate providers according to criteria such as contractual terms, data protection guarantees, and data localization. Whenever applicable, organizations should also consider conducting Data Protection Impact Assessments (DPIAs), particularly where systematic or large-scale processing is involved. From a technical standpoint, preference should be given to solutions that minimize data exposure, such as anonymization or pseudonymization, as well as the use of controlled environments or enterprise versions of the tools.

In conclusion, generative AI represents a significant opportunity, but also a substantial risk in the fields of confidentiality and data protection. The principal challenge lies not in the technology itself, but in the lack of control over its use. In a context where the GDPR imposes high standards of protection and the AI Act reinforces a logic of risk management and governance, only a prudent, structured, and legally informed approach will allow innovation to be reconciled with the effective safeguarding of fundamental rights.

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