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Transfer of company shares without a notary: Greater agility and efficiency or deferred legal uncertainty?

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The reform of the rules governing the transfer of shares in private limited companies contained in the Draft Organic Law on Public Integrity has reopened an important debate for both commercial law and the business economy: whether eliminating notarial intervention truly provides a faster and more efficient method of formalising such transfers by reducing costs and preliminary formalities, or whether it simply shifts preventive control and potential legal disputes to a later stage linked to the Commercial Registry.

The Draft Public Integrity Law proposes that share transfers may be formalised through a private electronic document signed with a digital signature, dispensing with the requirement for a notarial public deed and assigning a central role to the Commercial Registry. The stated objective of the measure is to strengthen corporate transparency, improve the traceability of beneficial ownership, and facilitate the fight against fraud, money laundering, and opaque corporate structures.

At present, Article 106 of the Capital Companies Act requires the transfer of company shares to be recorded in a public document. Although the transfer may initially be agreed between the parties through a private document, its effects against the company and third parties arise only once it is executed before a notary as a public deed. The notary also verifies the identity, legal capacity, and authority of the parties, confirms their consent, and reviews the transaction's compliance with the law and the company's articles of association. The notary's intervention therefore acts as a preventive filter designed to avoid disputes before they arise.

The proposed reform represents a significant change to this framework. Control would no longer be concentrated at the moment the deed is executed before a notary but would instead be transferred largely to the Commercial Registry. Under the new system, the change of ownership of the shares would take effect through registration of the transfer in the Registry. Such registration would become decisive in enabling the purchaser to exercise rights against the company and third parties, including voting at shareholders' meetings, receiving dividends, or being recognised as a shareholder.

From an economic perspective, the proposal may appear attractive. Replacing the public deed with a private electronic document promises lower costs, shorter processing times, and a corporate framework better suited to an increasingly digital environment. For straightforward transfers, this model could provide greater flexibility and simplify the administration of private limited companies, particularly SMEs and family-owned businesses.

However, these apparent savings and gains in efficiency may prove to be only relative. Eliminating notarial control does not eliminate legal risks; it merely shifts them to a later stage. Defects in the private document, doubts regarding the identity or legal capacity of the parties, possible breaches of transfer restrictions contained in the articles of association, or disputes over ownership—issues that are currently identified and, where necessary, corrected before a notary—would under the new system emerge later, either during the Registry's review process or when disputes arise between shareholders.

This situation could generate significant economic costs. A transfer that is not registered or whose validity is disputed may delay corporate transactions, obstruct the exercise of political and economic rights, hinder dividend distributions, or complicate the entry of investors. Rather than reducing burdens, the reform could increase the need for subsequent legal advice, corrective registry procedures, and litigation.

Furthermore, several experts have warned that the use of private documents, even electronic ones, may create opportunities for fraud, identity theft, or the use of nominee shareholders. Concerns have also been raised that certain transfers could remain outside the Registry until the parties choose to disclose them, thereby creating a legal reality separate from the registered one. Consequently, a reform intended to increase transparency could inadvertently create temporary areas of opacity unless accompanied by effective and sufficient safeguards.

The reform would also increase companies' internal obligations. The annual electronic filing of the shareholders' register and coordination with the Commercial Registry would require more organised corporate administration. For many SMEs, this may represent progress in terms of transparency, but it may also create an additional administrative burden. Directors would need to exercise increased diligence to avoid errors, delays, or inconsistencies between internal documentation and registered information.

Ultimately, the debate should not be framed as a choice between tradition and modernisation. The digitalisation of company law is necessary, but digitalisation does not always equate to simplification. The key question is whether the new system genuinely reduces transaction costs or merely replaces a visible and preventive cost—namely, notarial intervention—with less predictable costs arising later in the process: registration defects, delays, uncertainty regarding shareholder status, disputes, and potential liability for directors.

The real challenge is to design a model that combines digital efficiency, transparency, and legal certainty. If the reform succeeds in ensuring that the Commercial Registry provides reliable, up-to-date, and sufficiently verified information, it may strengthen confidence in commercial transactions. However, if it merely replaces public deeds with private documents without equivalent safeguards, the supposed initial savings may ultimately become a deferred cost for shareholders, companies, and third parties alike.

The tax authority can be late too: The supreme court limits the attribution of tax liability to directors of insolvent companies

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When a company encounters financial difficulties, its directors tend to focus on the immediate future: urgent payments, suppliers, employees, banks, insolvency proceedings, and whether the business can continue operating. However, the real problem sometimes arises years later, when the company can no longer pay its debts and the Tax Authority seeks to recover the tax debt from the person who once served as its director.

This is what happens in cases of **secondary tax liability**. The General Tax Law allows certain tax debts to be claimed from de facto or de jure directors when the legal requirements are met, particularly where the company has committed tax infringements and the director failed to act with the required diligence. Since this is a form of secondary liability, however, the Administration must first declare the principal debtor insolvent—that is, formally establish the company's inability to pay.

The recent **Supreme Court Judgment No. 545/2026 of 30 April** introduces an important limitation on this practice. The case concerned a Valencian company, **Mitsi Shop, S.L.**, which had entered insolvency proceedings. In September 2014, the insolvency administrator submitted a provisional report stating that the company was insolvent, unviable, and should be liquidated. According to the judgment, this report was known to the Tax Authority.

Despite this, the Tax Authority did not formally declare the company insolvent until September 2018 and did not notify the former director of the commencement of secondary liability proceedings until July 2019. More than four years had passed between the point at which the company's insolvency had been objectively established and the initiation of proceedings against the director.

The issue was simple to formulate but highly significant in practice: **Can the Tax Authority delay the formal declaration of insolvency and thereby postpone the commencement of the limitation period?**

The Supreme Court's answer is **no**.

The key concept is the doctrine of **actio nata**, namely, the moment at which a legal action can first be exercised. In this context, the Court held that the limitation period for attributing liability does not necessarily begin when the Tax Authority formally issues the insolvency declaration, but rather when the principal debtor's insolvency has already been sufficiently established through objective evidence arising from the insolvency proceedings.

Put simply: **the clock starts running when the Administration is able to act, not when it chooses to act.**

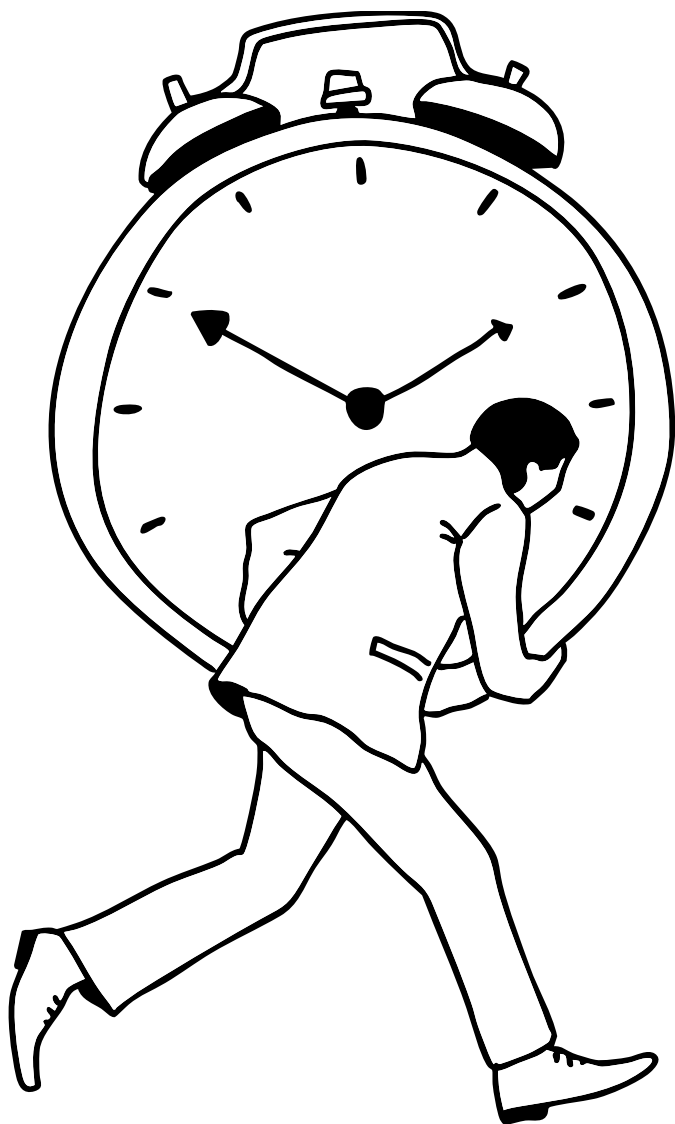
This clarification changes the approach to many cases. Until now, the Administration could argue that the limitation period did not begin until the formal declaration of insolvency. The problem with that interpretation is obvious: it effectively allowed the Tax Authority itself to determine the starting point of the limitation period. By delaying the insolvency declaration, it could also delay the commencement of the prescription period.

The Supreme Court prevents this outcome by linking the calculation of the limitation period to the moment when the insolvency was already known, objective, and sufficiently verified.

The judgment does not prevent the Tax Authority from pursuing directors where the legal requirements for secondary liability are met. Nor does it diminish the duty of directors to ensure compliance with tax obligations. What it does make clear is that the Administration's collection powers are not unlimited in time. The Administration may act, but it must do so within the applicable time limits and from the moment it was legally in a position to act.

In this respect, the doctrine established by the Supreme Court reinforces a fundamental principle of tax liability law: **the declaration of insolvency cannot be used as a tool to artificially postpone the start of the limitation period**. If the insolvency was already known and objectively established, time begins to run.

Ultimately, the secondary liability of company directors cannot become an indefinite threat. The Tax Authority may pursue recovery, but it too can be late. And once the Administration was already able to act, the rules on limitation periods apply against it as well.



STS 165/2026 and the limits on employer discretion in variable pay: transparency, objectivity and judicial review

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The recent Supreme Court Judgment (STS) 165/2026 of 17 February, issued by the Labour Chamber of the Supreme Court, is one of the most significant decisions of recent years concerning variable remuneration and incentive schemes.

The judgment fully upholds the position previously adopted by the National Court and declares null and void two clauses incorporated by CaixaBank into its commercial bonus programmes.

Beyond the specific dispute, the legal significance of the ruling lies in the fact that it establishes very precise limits on an employer's ability to unilaterally design incentive systems and, in particular, to influence the accrual of variable remuneration through disciplinary criteria or subjective performance assessments. The judgment also adopts a particularly demanding interpretation of the principles of transparency, predictability, and objectivity in remuneration, which underpin both the Workers' Statute and the most recent European legislation.

The dispute arose from a collective action brought by FeSMC-UGT challenging several clauses contained in CaixaBank's commercial plans and bonus programmes.

The contested clauses were essentially twofold.

The first provided that employees sanctioned for serious or very serious misconduct related to the marketing of financial products would not be entitled to receive the incentive payment. The company argued that this did not constitute an additional disciplinary sanction but rather a necessary condition for the entitlement to the bonus. In its view, the incentive simply did not accrue where significant regulatory breaches had occurred.

The second clause allowed area managers—known as DANs—to adjust the calculated bonus by up to $\pm 15\%$, and even beyond that percentage in “exceptional cases”, taking into account qualitative factors such as customer complaints, commercial evaluations, or compliance with internal conduct rules.

With regard to the first clause, the Court held that the automatic loss of the incentive as a consequence of disciplinary sanctions effectively introduced a punitive mechanism that had not been provided for in the applicable collective bargaining agreement. The Court recalled that Article 58.3 of the Workers' Statute expressly prohibits financial penalties and emphasised that this prohibition applies regardless of the origin of the remuneration affected, including variable remuneration schemes designed unilaterally by the employer.

The judgment stresses a particularly important principle: employers cannot unilaterally create a disciplinary regime parallel to that established by law or collective agreement, even under the guise of conditions governing entitlement to a bonus. The employer's autonomy in designing incentive systems is subject to non-negotiable limits imposed by mandatory labour rules

and the fundamental principles governing employment relationships.

Even more significant is the Court's reasoning regarding the second clause. The Supreme Court concluded that the bonus-adjustment mechanism left the final determination of remuneration to the employer's unfettered discretion, thereby violating Article 1256 of the Civil Code, which provides that the validity and performance of contracts cannot be left to the will of only one of the parties.

The Court found the criteria used by the financial institution to be inadequate and expressly described them as “generic, sparse, and indeterminate references.” Of particular importance is its statement that qualitative objectives based on performance evaluations “fall squarely within the realm of pure subjectivity” when they are not accompanied by clear, verifiable, and previously disclosed parameters known to the employee.

The practical significance of this ruling extends far beyond the financial sector. STS 165/2026 potentially affects any company that uses bonus schemes, commercial incentives, or performance evaluations linked to variable remuneration.

For years, many remuneration models have relied on partially implicit criteria, subjective assessments by middle management, or broad clauses granting employers considerable discretion. The judgment does not prohibit such mechanisms, but it significantly raises the standard of judicial scrutiny to which they will be subjected.

The true significance of the decision becomes clearer when one considers the distinction the Court appears to draw between business rationality and legal demonstrability. Most organisations use internal criteria that may be entirely reasonable and coherent from an operational perspective. However, the judgment shifts the focus to a different issue: the ability to objectively demonstrate how and why a particular remuneration decision was made.

The ruling also forms part of an increasingly strong European regulatory trend towards pay transparency and predictability in working conditions. The Court expressly links its reasoning to Directive (EU) 2019/1152 on transparent and predictable working conditions, as well as to the European Pillar of Social Rights, both of which promote remuneration systems that are transparent and understandable for workers.

From this perspective, the judgment is likely to herald stricter judicial scrutiny of poorly defined remuneration policies, particularly in sectors where qualitative performance assessments play a significant role.

The principal practical consequence of STS 165/2026 is that it requires a thorough review of many internal bonus and performance-evaluation systems.

However, compliance does not simply consist of putting previously unwritten criteria into writing. The logic of the judgment demands something more sophisticated: the transformation of subjective criteria into objective, verifiable, and auditable standards.

Common expressions such as “proactive attitude,” “corporate commitment,” “alignment with company values,” or “customer orientation” are unlikely to withstand judicial review unless they are accompanied by specific indicators showing how they are assessed and what remuneration consequences they produce.

In this regard, advanced performance-evaluation methodologies that have long been used in human resources management become particularly relevant. Systems such as Behaviorally Anchored Rating Scales (BARS) make it possible to translate qualitative concepts into observable and measurable behaviours. A criterion ceases to be a purely subjective assessment when employees know in advance which specific behaviours correspond to each evaluation level.

In light of the judgment, at least three essential requirements can be identified for the future validity of incentive systems:

- The criteria governing both entitlement to and adjustment of bonuses must be defined before the start of the evaluation period.
- Employees must clearly understand how the various elements of the bonus are weighted.
- The employer must maintain sufficient documentary evidence to reconstruct the decision-making process and justify it in the event of judicial challenge.

Ultimately, STS 165/2026 does not eliminate employer discretion in the field of incentives, but it does impose significantly stricter limits upon it. Employers will continue to be able to design bonus policies and assess qualitative aspects of performance; what they will no longer be able to do is rely on ambiguous formulas or mechanisms whose application depends exclusively on the unreviewable judgment of the evaluator.

The judgment therefore marks a paradigm shift in the management of variable remuneration: from employer discretion towards remuneration transparency and traceability. It is likely to compel many organisations to reconsider remuneration systems that, until now, had been regarded as firmly established.

The “Proto-suspect” and the prohibition on artificially delaying the right of defense

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One of the issues of greatest constitutional sensitivity in criminal proceedings arises when a person appears and gives evidence formally as a witness even though objective evidence already exists that could attribute possible criminal responsibility to that individual in relation to the facts under investigation.

It is in this context that legal scholarship and case law have developed the concept of the so-called “**proto-suspect**” (protoimputado).

This issue is far from being merely terminological or conceptual. On the contrary, it has significant practical consequences from the perspective of procedural safeguards. A witness is subject to the legal duty to tell the truth, whereas a person under investigation enjoys a reinforced set of defence rights, including the right to remain silent, the right not to incriminate oneself, the privilege against self-incrimination, and the right to legal assistance from the very moment criminal responsibility is attributed.

For this reason, European, constitutional, and ordinary courts have repeatedly stressed that the right of defence cannot depend upon the formal decision of when a person is officially designated as a suspect.

Particularly relevant in this regard is **Supreme Court Judgment (Criminal Chamber) No. 836/2021 of 3 November** [ES:TS:2021:4054], which contains an important reflection on the need to activate defence rights immediately from the moment a person becomes objectively linked to a criminal offence. Specifically, the Supreme Court stated:

“There can be no doubt—or there should be none—that from the moment a criminal act is attributed to a person, that individual has the right, with the greatest possible promptness, to defend themselves and to be informed of the reasons for such attribution of criminal responsibility.”

This statement is particularly significant because it shifts the focus from **formal accusation** to the **substantive reality of the investigation**. In other words, what matters is not merely when the investigating judge formally grants a person the status of suspect, but rather when objective elements already exist that allow that person to be regarded as a potential criminally liable party. It is precisely at that point that the issue of the proto-suspect arises.

The judgment recalls that both **Directive 2012/13/EU on the right to information in criminal proceedings** and Articles 118 and 520 of the Spanish Criminal Procedure Act require that a person be informed of the accusation against them at an early and effective stage, ensuring the immediate activation of the rights inherent in the right of defence. This is not simply a formal or procedural requirement; rather, it is a structural guarantee directly linked to the fairness of criminal proceedings and the effective protection of defence rights.

The prompt communication of an accusation constitutes an essential safeguard of both the right of defence and the fairness of criminal proceedings. Accordingly, the Supreme Court emphasises that unjustified delays in granting a person the status of suspect may not only create a situation of material defencelessness but may also undermine the validity of certain investigative measures:

“The Constitutional Court, in its important Judgment STC 135/1989, emphasised that the bundle of defence guarantees derived from the Constitution requires Article 118 of the Criminal Procedure Act to be interpreted as prohibiting, on the one hand, the unjustified delay in conferring the status of suspect upon a person who may appear responsible for the criminal act under investigation and, on the other hand, taking advantage of such delay to question the proto-suspect in the capacity of a witness.”

The principle underlying this doctrine is unequivocal: it is constitutionally unacceptable to use witness testimony as a means of obtaining potentially incriminating information from someone who, in light of the objective circumstances of the investigation, should already be protected by the safeguards attached to the status of a person under investigation.

This is because criminal proceedings cannot rest upon purely formal constructions that, in practice, result in the restriction or erosion of the right of defence and the fundamental guarantees that comprise it.

Indeed, the judgment itself warns that such improper delay may have significant procedural consequences, including the possible loss of evidential value of certain statements made during the investigation phase where the defence has been improperly deprived of the opportunity to participate and challenge the evidence through adversarial proceedings.

Ultimately, the concept of the **proto-suspect** highlights a fundamental principle of procedural safeguards: the rights associated with the status of a person under investigation under Article 118 of the Criminal Procedure Act are not dependent upon a formal declaration of suspicion. Rather, those rights must arise from the very moment a person materially occupies a position of suspicion or potential criminal liability within the proceedings.

For precisely that reason, artificially delaying the granting of that procedural status is not merely a technical irregularity. It is an issue directly linked to the fundamental right of defence and to the overall fairness of the criminal process itself.

Main developments of the 2026-2030 state housing plan: the shift towards permanent social housing

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The **2026–2030 State Housing Plan**, approved by **Royal Decree 326/2026 of 22 April**, comes at a time when access to housing has become one of Spain's most significant economic and social challenges. It is not merely another package of housing subsidies; rather, it is the first State Housing Plan approved under **Law 12/2023 on the Right to Housing**, and it is presented as a tool to strengthen the role of public authorities in the creation and preservation of affordable housing.

With an allocated budget of **€7 billion**, the Plan structures its measures around three major objectives:

- Increasing the supply of social housing, to which at least 40% of the funding must be allocated;
- Promoting urban and rural rehabilitation projects, receiving 30% of the funding;
- Reducing the financial burden on those who face the greatest difficulties in accessing housing, through the remaining 30%.

One of the groups receiving particular attention under the Plan is **young people**, defined as adults aged 35 or under, for whom access to housing has become one of the principal barriers to independent living.

The Plan provides for direct rental assistance of up to **€300 per month** for a primary residence and up to **€200 per month** for the rental of a room. These grants may initially be awarded for two years and subsequently extended for a further two years.

In addition, grants of up to **€15,000** are introduced for young people who purchase or build a home in municipalities or population centres with no more than 10,000 inhabitants.

The Plan also strengthens protection for individuals in situations of particular vulnerability. In this regard, it establishes a programme of assistance aimed at providing immediate housing solutions for victims of gender-based violence, sexual violence, human trafficking, human exploitation, and other vulnerable groups.

These grants are intended for individuals with limited financial resources, assessed according to income thresholds linked to Spain's Public Income Indicator (IPREM), and provided that they do not own or hold a usufruct right over another dwelling. Assistance may consist of access to rented accommodation or a rented room and may cover up to **100% of the rent**. It may also be supplemented by additional aid for community charges, utilities, and internet services for a period of up to five years.

Another significant aspect of the Plan concerns the rehabilitation of the existing housing stock. One of the most practical measures focuses on vacant properties.

The Plan provides grants for the refurbishment of dwellings that have remained unoccupied for at least two years, provided that, once renovated, they are dedicated to social rental housing for a minimum period of five years. The subsidy may amount to as much as **€30,000 per dwelling**.

The most important innovation, however, lies not merely in the volume of financial assistance but in a fundamental change in the approach to **protected housing**.

For decades, much of Spain's protected housing stock has effectively been created with an expiration date. During the protection period, sale and rental prices were capped, transfers were subject to specific requirements, and the property served a social purpose. However, once the protection period expired, the dwellings could enter the open market and be sold at prices significantly higher than those originally permitted.

As a result, a mechanism designed to facilitate access to housing could ultimately become a vehicle for real-estate speculation, undermining the social purpose that justified the original public support.

The Plan seeks to correct this dynamic by making certain public funding programmes conditional upon the property maintaining its social function over time.

This shift may significantly alter the way buyers, developers, and investors approach this type of asset. Protected housing may continue to provide access to homes at controlled prices, but it will cease to make sense as an investment strategy based on the expectation of future deregulation. Its value will no longer lie in waiting for protection measures to expire before selling at market rates; rather, it will lie in becoming part of a stable stock of affordable housing permanently linked to its social purpose.

Ultimately, the Plan aims to change the underlying logic of the system: helping those who face the greatest difficulties in accessing housing, bringing properties currently outside the market back into use, and preventing publicly supported housing from disappearing over time.

Protected housing is therefore no longer conceived as a temporary solution. Instead, it is intended to become a permanent component of the affordable housing market, ensuring that public investment does not ultimately translate into private capital gains.



Civil liability in the age of artificial intelligence

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We are witnessing an unprecedented technological transformation.

For the first time in history, millions of individuals and organisations rely daily on artificial intelligence systems capable of generating immediate responses to complex legal, medical, financial, and commercial questions. Such systems are increasingly integrated into decision-making processes, often occupying a role traditionally reserved for qualified professionals.

Yet this technological advancement raises a fundamental legal question: who bears responsibility when reliance on artificial intelligence results in damage?

The law of civil liability has long been founded upon a relatively straightforward premise: where unlawful conduct causes damage, the party responsible for that conduct may be held liable for the resulting loss. The traditional framework requires the identification of a wrongful act or omission, damage, and a causal link between the two.

Artificial intelligence challenges each of these elements.

Where an individual relies upon inaccurate legal information generated by an AI system and subsequently suffers loss, the attribution of liability becomes considerably more complex. Should liability rest with the developer of the system, the provider of the service, the professional who relied upon the output without adequate verification, or the user who chose to act upon the information received?

Neither legal doctrine nor existing legislative frameworks provide definitive answers.

The difficulty arises, in part, from the very nature of contemporary AI systems. These technologies are designed to generate coherent, persuasive, and apparently authoritative outputs. Their increasing sophistication creates a heightened risk that users will attribute to them a degree of reliability that may exceed their actual capacity to produce accurate or contextually appropriate responses.

At the same time, it is essential to recognise that artificial intelligence remains a tool rather than an autonomous legal actor. Regardless of its technological complexity, AI lacks legal personality, intentionality, judgment, and the capacity to appreciate the legal consequences of its outputs.

This distinction is of critical importance.

Human professionals may commit errors; however, those errors are ordinarily attributable to identifiable people who are capable of assuming legal responsibility for their decisions and conduct. By contrast, artificial intelligence may generate inaccurate or misleading information without awareness, intent, or understanding of the consequences that may arise from reliance upon such information.

For legal practitioners, the implications are particularly significant. Reliance upon inaccurate legal advice or erroneous interpretations of the law may result in substantial economic losses, procedural disadvantages, or the forfeiture of legal rights. Consequently, professional judgment, independent verification, and critical assessment remain indispensable, irrespective of the technological tools employed.

It is therefore concerning to observe a growing tendency to delegate functions requiring legal analysis, prudential assessment, and professional accountability to systems that cannot themselves bear responsibility for the consequences of their outputs.

Artificial intelligence undoubtedly represents a powerful instrument capable of enhancing legal research, improving efficiency, and facilitating access to information. However, it cannot replace the inherently human responsibilities of verification, evaluation, and decision-making.

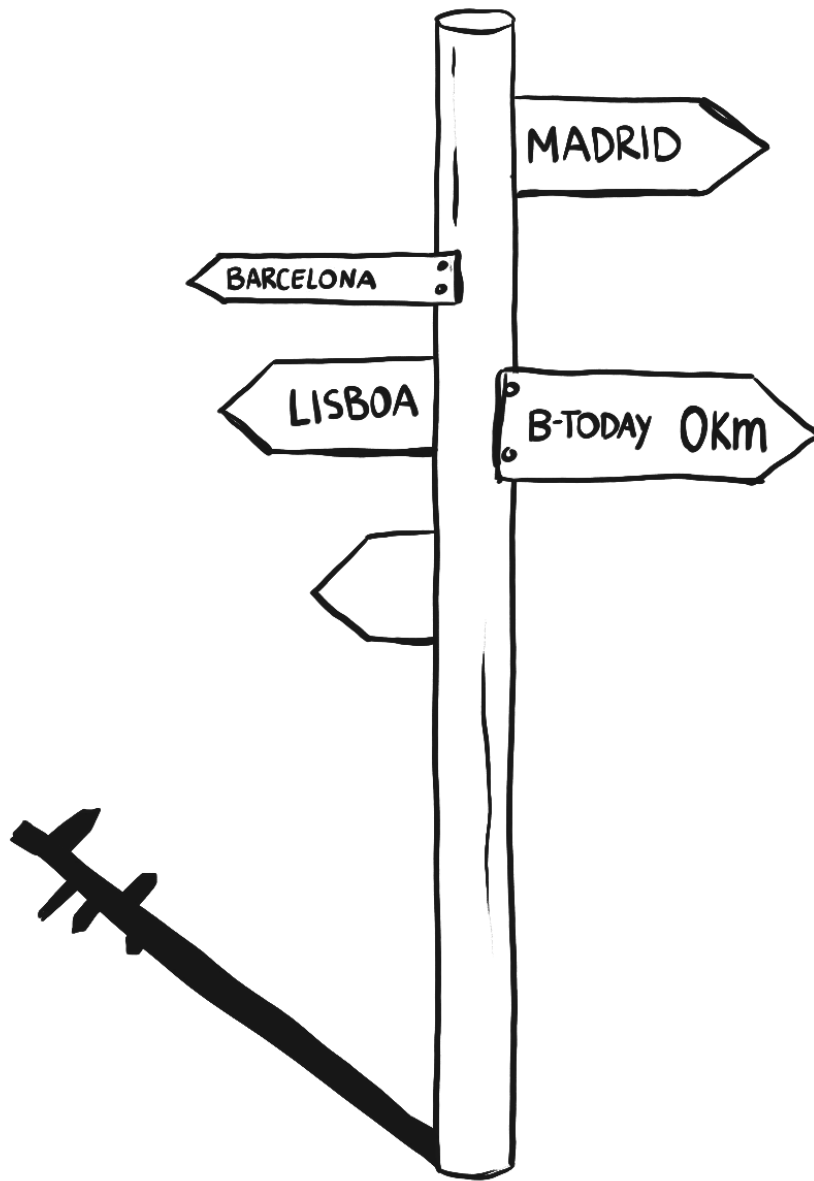
From a legal perspective, technological innovation must not result in the erosion of the fundamental principles underpinning civil liability. The increasing complexity of AI systems cannot be permitted to create a legal vacuum in which damage occurs, but responsibility becomes impossible to attribute.

The central issue is not whether artificial intelligence is capable of making mistakes. Rather, it is whether legal systems are adequately prepared to address the consequences of those mistakes and to ensure that accountability remains attached to the individuals and entities that design, deploy, rely upon, and benefit from such technologies.

The challenge facing the law is therefore not to impede innovation, but to ensure that technological progress develops within a framework of legal certainty, accountability, and effective protection of rights.

In an increasingly automated society, the objective should not be to shield ourselves from artificial intelligence, but to preserve the human judgment that remains indispensable to its responsible use.

No matter how sophisticated algorithms may become, legal responsibility ultimately continues to rest with those who choose to create, implement, rely upon, and act on their outputs.



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