

Spain

Sönke Lund, ÉCIJA Abogados, Barcelona

Vanesa Alarcón, ÉCIJA Abogados, Barcelona

1. What is the understanding or definition of AI in your jurisdiction?

In Spain, artificial intelligence (AI) systems have been recently defined as per the proposed Royal Decree that should regulate the controlled testing environment for artificial intelligence systems in Spain (AI Sandbox regulation).⁵⁴⁸ An AI system is a setup designed to function autonomously to some degree and it infers how to accomplish specified objectives using learning, logic or knowledge-based strategies based on human or machine-provided input data. Additionally, it generates outputs such as content (in generative AI systems), predictions, recommendations or decisions, influencing the environments it interacts with.

This proposed AI Sandbox regulation also addresses high-risk AI systems. Such a system is deemed high-risk if it meets one of the following conditions:

- it is a product under EU harmonised legislation specified in Annex IV to the proposal, requiring third-party conformity assessment for market placement or service provision;
- it serves as a safety component for a product under EU harmonised standards, necessitating third-party conformity assessment for market placement or service provision. This applies even if the AI system is marketed or serviced separately from the product; or
- it is a system referenced in Annex I, significant in decision-making processes and likely to pose substantial risks to health, safety, or fundamental rights.

Moreover, the regulation outlines the concept of AI systems for public interest or general purpose. These are AI systems intended by providers to perform general functions such as text, image and speech recognition; algorithm-driven generation of new text, audio, images and/or videos; pattern detection; question answering; and translation, among others. This encompasses foundational models and generative AI systems, versatile for multiple contexts and potentially high-risk transformations.

This regulation also includes definitions for AI providers, users and eligibility criteria for Sandbox participation.

⁵⁴⁸ For further information on the Royal Decree that regulates the creation of the Sandbox, see https://portal.mineco.gob.es/RecursosArticulo/mineco/ministerio/participacion_publica/audiencia/ficheros/Proyecto_RD_Sandbox_IA-1.pdf accessed 1 April 2024.

2. In your jurisdiction, besides legal tech tools (ie, law firm or claim management, data platforms, etc), are there already actual AI tools or use cases in practice for legal services?

In Spain, AI is progressively transforming legal services and reshaping how legal professionals work. Notably, AI tools are utilised for legal research and due diligence. Kira Systems and Luminance, for example, are contract analysis tools leveraging AI to identify patterns and anomalies in legal documents. eBrevia is another notable tool, capable of analysing contracts in multiple languages and highlighting key terms and clauses.

However, in the realm of AI tools specialised in analysing legal sentences and predicting outcomes of judicial processes, the data in Spain remains limited. A commonly referenced tool is Lex Machina, an AI-powered platform for extensive legal research. It enables users to analyse courts, judges, opposing counsel, various parties and law firms. Lex Machina also provides access to court dockets, case law and features comprehensive reports displaying awarded damages, case statistics and other critical metrics. This tool also facilitates comparisons between judges, law firms and parties.

3. If yes, are these AI tools different regarding: (1) independent law firms (2) international law firms (3) in-house counsel, and what are these differences?

The use of AI tools in legal services in Spain varies depending on the type of law firm or legal department. While specific data for Spain is limited, general trends can be observed.

Independent law firms

Smaller, independent law firms are well-positioned to leverage AI tools, especially in areas such as research, document review, case analytics and client services. AI helps these firms achieve greater efficiency, manage administrative tasks and compete with larger firms by offering high-quality, responsive services and informed, data-backed advice.

International law firms

Larger international firms often have more resources to invest in advanced AI tools. They might use AI for more complex applications such as large-scale document analysis, predictive analytics and more sophisticated client relationship management systems. The scale of international law firms allows for a broader integration of AI across various legal tasks and departments.

In-house counsel

In-house legal departments may utilise AI differently, focusing on tasks specific to their organisation's needs. This could include contract management, compliance monitoring and internal legal queries. In-house counsel often seek AI solutions that can integrate with other corporate systems and offer tailored analytics and reporting for corporate decision-making.

These differences stem mainly from the scale of operations, resource availability and the specific legal needs of each type of legal entity. While independent firms might focus on AI tools that enhance efficiency and client services, international firms and in-house counsel may use AI for more diverse and complex legal tasks.

4. What is the current or planned regulatory approach on AI in general?

In Spain, there are several ongoing projects and regulations related to the adoption of AI in the market.

The most notable among these is the National AI Strategy or Estrategia Nacional de Inteligencia Artificial (ENIA). This strategy serves as a reference framework for the development of AI that is inclusive, sustainable and focused on the citizens' welfare. ENIA is a pivotal element of the Digital Spain 2026⁵⁴⁹ agenda and a component of the Recovery, Transformation and Resilience Plan aimed at revamping the Spanish economy.

The primary objective of this agenda is to position Spain as a leader in the transformation of the data economy and business, using AI as a catalyst for innovation, social inclusion and sustainable economic growth. This initiative is intended to prepare Spain for the socio-economic transformations brought about by AI and to enhance with the competitiveness through research and development (R&D) in digital enabling technologies (DETs).

The strategy includes the ENIA, a Data Office and Chief Data Officer (CDO), an AI Advisory Council and the National Cloud Services Strategy, incorporating Common European Data Spaces.

Additionally, the Ministry of Economic Affairs and Digital Transformation has published a draft of the Royal Decree that should regulate the controlled testing environment (Sandbox)⁵⁵⁰ for AI systems in Spain. This future regulation will apply to public administrations, public sector entities and private entities that will be selected to participate in the controlled AI testing environment.

549 For further information on the Agenda Digital 2026, see <https://espanadigital.gob.es/> accessed 1 April 2024.

550 For further information on the Royal Decree that regulates the creation of the Sandbox, see https://portal.mineco.gob.es/RecursosArticulo/mineco/ministerio/participacion_publica/audiencia/ficheros/Proyecto_RD_Sandbox_IA-1.pdf accessed 1 April 2024.

A significant development was the approval by the Council of Ministers of a Royal Decree establishing the statute of the Spanish Agency for the Supervision of AI (AESIA). This joint venture by the Ministry of Finance and Public Function and the Ministry of Economic Affairs and Digital Transformation positions Spain as the first European country to establish such an agency, anticipating the request by European Regulation on AI.

5. Which are the current or planned regulations on the general use of AI or machine learning systems?

In Spain, the regulatory landscape for AI and machine learning is shaped by several key statutes and initiatives. The creation of the AESIA, already mentioned, is a significant milestone in Europe for the supervision of the AI.⁵⁵¹

Another critical development is the Ministry of Universities' issuance of regulatory bases for financial aid to foster cooperative research plans in AI. These grants, totalling €31 million, are aimed at promoting interdisciplinary and groundbreaking investigation into AI, integrating this approach into Spanish research culture and facilitating greater interaction among researchers.⁵⁵²

Additionally, the law 15/2022, of 12 July, on equal treatment and non-discrimination⁵⁵³ establishes specific requirements for AI usage. It contains the first regulation of AI usage by public administrations and companies in Spain.

Article 23 of the Law mandates that within the framework of the National AI Strategy, the Charter of Digital Rights and European initiatives on AI, Public Administrations encourage the implementation of bias minimisation, transparency and accountability in decision-making algorithms. To this end, impact assessments are promoted to identify potential discriminatory biases, emphasising transparency in design and decision interpretability.

With a focus on minimising biases and promoting fundamental rights, Spain is aligning its AI strategy with broader EU initiatives, aiming to create a trustworthy and inclusive AI environment.

6. Is free data access an issue in relation with AI?

Free data access is indeed a significant consideration in relation to AI development in Spain. The country's approach to data governance, especially in the context

551 For further information on the AI Spanish Agency or Agencia de Supervisión de la IA, see www.hacienda.gob.es/Documentacion/Publico/GabineteMinistro/Notas%20Prensa/2023/CONSEJO-DE-MINISTROS/22-08-23-NP-CM-Estatutos-Agencia-Inteligencia-Artificial.pdf accessed 1 April 2024.

552 Agencia Estatal Boletín Oficial del Estado, Order UNI/777//2023 of 7 July which establishes the regulatory bases and calls for the granting of aid for the financing of cooperative research plans in the area of artificial intelligence developed by interdisciplinary research groups, within the framework of the European Recovery, Transformation and Resilience Plan, www.boe.es/diario_boe/txt.php?id=BOE-A-2023-16210 accessed 1 April 2024.

553 Agencia Estatal Boletín Oficial del Estado, Law 15/2022, of 12 July, on equal treatment and non-discrimination, www.boe.es/buscar/act.php?id=BOE-A-2022-11589 accessed 1 April 2024.

of AI, reflects a comprehensive strategy that addresses various aspects of data management and usage.

Spain's National AI Strategy, as noted above, launched in December 2020, and aims to facilitate the development and deployment of AI in various sectors. A key component of this strategy is the emphasis on developing human capital in AI, promoting scientific excellence in the field and enhancing the use of AI technologies in both public and private sectors. This strategy is aligned with the broader EU policies and includes the establishment of a robust ethical framework for AI. The strategy is backed by significant public investment, with €600 million allocated for its implementation between 2021 and 2023.⁵⁵⁴

The Spanish central data governance body, the Data Office ENIA, at the national level, coordinates AI applications in public administrations and participates in initiatives to create secure data repositories within the EU. Additionally, this strategy involves creating decentralised and accessible data repositories, promoting public data access and encouraging the use of open data. These efforts are part of a broader commitment to data sharing among businesses, public administrations, governmental institutions and citizens.

While Spain is progressing the ethical and regulatory framework for AI, challenges persist in the practical implementation of AI programs. This includes difficulties in project monitoring and selection. Moreover, the heterogeneity in AI use across different regions of Spain is noted, concentrating mainly in service sector companies. A significant portion of Spanish companies that considered but do not currently use AI cited a lack of knowledge or capabilities within the company as the main reason.⁵⁵⁵

These points suggest that while Spain is making strides in developing AI capabilities and ensuring data accessibility, there are ongoing challenges related to the practical implementation of AI strategies and data accessibility at a broader level. The emphasis on creating a secure and open data environment aligns with the objectives of fostering AI development while addressing concerns related to data privacy and ethical use of AI.

Key aspects of Spain's AI and data strategy are:

- The national AI strategy includes the establishment of an ethical framework that outlines individual and collective rights, building an environment of trust in AI. This framework is essential for addressing data protection concerns.
- European legislation such as the Data Governance Act, which Spain is aligning with, is becoming a global reference for data management.

⁵⁵⁴ See https://ai-watch.ec.europa.eu/countries/spain/spain-ai-strategy-report_en accessed 1 April 2024.

⁵⁵⁵ Noelia Cámara, Alejandro Neut and Pep Ruiz, 'Inteligencia Artificial retos y avances para la economía española' 'Artificial Intelligence; advances and challenges' 10 October 2022, www.bbva.com/en/publicaciones/spain-artificial-intelligence-advances-challenges/ accessed 1 April 2024.

It outlines governance frameworks for data exchange processes, aiming to generate traceability, trust and enhance coordination on data.

- In terms of data privacy and security, Spain's participation in European initiatives such as Gaia-X focuses on developing high-quality data-driven AI with strong governance, complying with European regulatory frameworks. These initiatives emphasise interoperability, data protection and algorithmic transparency, addressing key data protection concerns in the context of AI.

7. Are there already actual court decisions on the provision of legal services using AI or decisions concerning other sectors that might be applicable to the use of AI in the provision of legal services?

At the time of writing, Spain has not witnessed unequivocal court decisions specifically addressing the provision of legal services through AI. However, there are notable discussions and analyses concerning AI's integration in various sectors, including public administration and regulatory bodies, that could influence the legal services sector.

For instance, the National Markets and Competition Commission (Comisión Nacional de los Mercados y la Competencia or CNMC) has recently analysed⁵⁵⁶ the Sandbox regulation proposal. This proposal aims to establish a controlling test space for artificial intelligence projects in Spain. The CNMC's analysis focuses on the potential benefits for economic operators and consumers while emphasising the need to align with good regulatory principles. Key considerations include avoiding unfair competitive advantages for Sandbox participants, ensuring objective and non-discriminatory access and maintaining a balance between private interests and overarching public objectives.

Another relevant entity, the Spanish Data Protection Agency (SDPA or AEPD) initiated a preliminary investigation⁵⁵⁷ in April 2023 against the US company OpenAI, owner of the ChatGPT service. This investigation centres around a possible breach of data protection regulations.

The AEPD, as part of European Data Protection Board (EDPB), seeks to coordinate at the European level to address the widespread impact of global data processing operations such as ChatGPT, considering that global processing operations may have a significant impact on the rights of individuals and thus require harmonised and coordinated actions in the application of the General Data Protection Regulation.

⁵⁵⁶ For analysis of the CNMC, see www.cnmc.es/prensa/ipn-entorno-pruebas-ia-20230828 accessed 1 April 2024.

⁵⁵⁷ For further information on the investigation carried out by the SDPA on OpenAI, see www.aepd.es/es/prensa-y-comunicacion/notas-de-prensa/aepd-inicia-de-oficio-actuaciones-de-investigacion-a-openai accessed 1 April 2024.

The creation of a task force by the Committee to promote cooperation and information exchange among data protection authorities highlights the growing concern about AI's role in data protection and privacy.

Furthermore, in January 2021, the AEPD published a guide⁵⁵⁸ outlining requirements for audits of personal data processing involving AI. This document provides critical guidance on objectives and controls that could be incorporated into audits reflecting a data protection perspective.

8. What is the current status – planned, discussed or implemented – of the sectorial legislation in your jurisdiction on the use of AI in the legal profession or services that are traditionally being rendered by lawyers?

Although there is currently no sectorial legislation, Spain is actively developing regulations regarding the use of AI, which include factors for the legal profession to consider. The key developments are:

1. The Spanish Council of Ministers approved the creation of the Spanish Agency for the Supervision of AI (AESIA) in August 2023. AESIA is the first AI regulatory body in the EU and is set to start operating from December 2023. It was established in anticipation of the upcoming EU AI Act and is part of Spain's commitment to develop an inclusive, sustainable and citizen-centred AI. The AESIA is not intended to replace the role of the Spanish Data Protection Authority (AEPD) but will work alongside it, especially since many AI applications involve personal data processing and fall under the General Data Protection Regulation (GDPR).⁵⁵⁹
2. The AEPD has developed its guidance for companies on using AI, mentioned above in 7., which is part of its broader digital strategy on how to audit personal data processing activities that involve AI. The AEPD's guidance is directed at data controllers and processors, as well as AI developers, data protection officers (DPOs) and auditors. The guidance aims to help ensure that products and services which incorporate AI comply with the requirements of the GDPR.

While the AESIA and AEPD provide regulatory oversight and non-binding recommendations, specific sectorial legislation for the use of AI in legal services or professions traditionally rendered by lawyers is still developing. In our view, the coordination between AESIA and AEPD will be crucial in shaping consistent AI regulation in Spain, including its application in legal services.

558 AEPD, Guide with the requirements for audits of personal data processing involving AI, www.aepd.es/es/prensa-y-comunicacion/notas-de-prensa/aepd-publica-guia-requisitos-auditorias-tratamiento-ia accessed 1 April 2024.

559 Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 [2016] OJ L119/1.

These initiatives indicate that Spain is moving towards a more regulated AI environment, with implications for various sectors, including legal services. However, the specifics of how AI will be regulated within the legal profession are still evolving as part of Spain's broader alignment with the EU's AI strategy and regulations.

9. What is the role of the national bar organisations or other official professional institutions?

The crucial role for bar organisations is the adaptation to the evolving landscape of AI within the legal profession. It must be emphasised that the ability of these organisations to effectively integrate AI depends significantly on their human resources, budgets, the number of members and the public subsidies they receive.

As AI tools become more integral to a lawyer's toolkit, bar organisations must consider supporting lawyers in their jurisdictions appropriately. However, there is no one-size-fits-all approach for bar organisations within the EU, as actions depend on varying national circumstances. Several measures should be implemented such as creating AI solution directories, reviewing and reporting on these solutions, hiring third parties for validation and promoting standardisation in data exchange formats and APIs to address market fragmentation and vendor dependency issues.

Furthermore, bar organisations must actively defend the fundamental principles of the profession, particularly in protecting small firms and independent lawyers offering services via online platforms, where algorithmic recommendations may not be independent. Risks to lawyers' freedom of thought and expression, as well as to free competition, are at stake.

Bar organisations can play a crucial role in filtering Legaltech offerings, analysing solutions and creating informative materials, while maintaining technological neutrality to avoid market distortion and provide a comprehensive view of available options.

Additionally, all this should be part of a broader digital transformation plan for the legal profession. An action plan should include the creation of analysis and foresight centres, mechanisms for interdisciplinary collaboration, specialised centres in user experience (UX) to better understand client needs, activities for experiential learning in innovation and technology development and the integration of sustainable development goals (SDGs) to promote sustainable development and fundamental rights within the legal community.