

El Reglamento de Actuación y Funcionamiento de la Administración Electrónica en España*

O Regulamento da Administração Eletrônica na Espanha

Regulation in Electronic Administration in Spain

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Resumen

El presente estudio tiene como objetivo analizar el actual modelo de Administración electrónica que propone el Real Decreto 203/2021, de 30 de marzo, por el que se aprueba el Reglamento de actuación y Funcionamiento del sector público por medios electrónicos en España, a través de una investigación de enfoque cualitativo bibliográfico y documental. En su contenido observaremos como la clásica arquitectura con la que fue configurada la Administración pública ha cedido paso a una forma emergente de apreciación de la misma que surge con motivo del advenimiento de una revolución tecnológica sin precedentes. En definitiva, nos encontramos ante un momento clave de definición jurídica de las Administraciones públicas que plantea una serie de desafíos digitales que el legislador y los poderes públicos deberán combatir a fin de ofrecer un servicio público más eficiente y de calidad al alcance de todos los ciudadanos.

Palabras clave: administración pública, revolución tecnológica, derecho, desafíos digitales, España.

Resumo


O objetivo deste estudo é abordar o modelo de Administração eletrônica proposto pelo Real Decreto 203/2021, de 30 de março, que aprova o regulamento de ação e funcionamento do setor público por via eletrônica na Espanha. Em seu conteúdo veremos como a arquitetura clássica, com a qual foi criada a configuração da Administração pública, deu lugar a uma forma nova de valorização por ocasião do advento de uma revolução tecnológica sem precedentes. Estamos perante um momento-chave de transição digital e jurídica que está em construção, e que apresenta uma série de desafios aos quais o legislador deve combater para oferecer um serviço público mais eficiente e de qualidade disponível a todos os cidadãos.

Palavras chave: administração pública, revolução tecnológica, direito, desafios digitais, Espanha.

Abstract

This study aims to present the model of electronic administration in Spain in the Real Decreto 203/2021, de 30 de marzo, por el que se aprueba el Reglamento de actuación y Funcionamiento del sector público por medios electrónicos in Spain. In its content, we will see how the classic architecture with which we observed the configuration

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of the public administration changed to a new form of appreciation that arises on the occasion of the advent of an unprecedented technological revolution. We are facing a perfect moment of digital and legal transition, which is in the making, which poses a series of challenges that the legislator must combat to offer a more efficient and quality public service available to all citizens.

Keywords: *Public administration, technological revolution, law, digital transformation, Spain.*

1 Introduction: Electronic Administration, on trial

Citizens who were born at the end of the 20th century and the beginning of the 21st century have been extraordinarily fortunate because, unlike our predecessors, who barely had the resources to be able to deal with any skills, we have a series of digital tools that help us combat many of the problems that already exist. Quite the opposite of what happened, throughout our lives we have seen how absolutely everything improved every day, that our *per capita income* and our standard of living increased exponentially year after year. Also, what has been coined as the welfare state was becoming more and more extensive and more intense, which seemed to have no end and which admitted, without paying attention to too much resistance, the vindication of new rights that were looked at in the mirror of digitalization, giving rise to greater benefits that, once achieved, they came to be consolidated in the State as an intrinsic guarantee of the citizens¹.

However, the arrival of an unknown pathogenic microorganism, scientifically known as SARS-COV-2, has offered us the lesson of how any element that we considered stable could wobble in the most unexpected way². Thus, we have seen how, after the approval of Royal Decree 463/2020, of 14 March, declaring the state of alarm for the management of the situation of the health crisis caused by Covid-19, which would give rise to a few months of confinement, the executive branch has seen the need to approve a series of regulatory texts so that multiple economic sectors would be adapted to a situation without in order to mitigate some of the devastating economic consequences posed by the spread of the virus³.

With the initial fear of contagion diminishing, which is consolidated as there is a decrease in the number of cases of affected and deceased⁴, another no less intense fear is replaced by another, no less intense fear, that of a society that feels increasingly captive to the progress that digitalisation is acquiring. Although it is true that, in its beginnings, its implementation was seen as an opportunity, after the arrival of the health crisis it becomes a

¹ FERNÁNDEZ, Tomás Ramón, "The rule of law, on trial", in the work of AA.VV. CRIADO, David Blanquer, Covid-19 and Public Law (during the state of alarm and beyond), Tirant Lo Blanch alternativa, Valencia, 2020, p.19-24.

² SCHWAB, Klaus and MALLARET, Thierry, *Covid-19: The Great Reset*, Forum Publishing, Geneva, 2020.

³ REYES, Manuel Aragón, "Covid-19: Constitutional Approach to a Crisis", *General Journal of Constitutional Law*, n. 32, p, 1-5, 2020.

⁴ The data on the evolution of the health crisis in Spain can be verified in statistical data centers such as the National Institute of Statistics (INE), where it indicates that as of the date of last update on November 8 at 6:30 p.m., the number of cases reported in recent days is 24,271 affected and 52 deaths. with a cumulative incidence of 14 days and 100,000 inhabitants. INE, Health and mortality data. See on the websites: <https://cnecovid.isciii.es/covid19/>. Date of last consultation: 11.11.2021.

necessity. This leads us to an initial in-depth reflection on what the Public Administrations are willing to do in order to establish strategies that allow them to use the means available to them to improve their skills in relation to citizens. To this reflection we must add a second, in order to present a serious analysis of what are the instruments at our disposal, in essence, what are the legal tools that we have at our disposal. Finally, a third mention should be made of the challenges faced by the current configuration of e-Administration, in order to ensure that its attention reaches the objectives set of: efficiency, simplification of procedures, speed and proximity. Thus, the main objective of this study is to analyse the current e-Government model proposed by Royal Decree 203/2021, of 30 March, approving the Regulation on the action and operation of the public sector by electronic means in Spain. With such a horizon, each and every one of the issues mentioned throughout the text will be addressed through a qualitative bibliographic and documentary approach, with analysis of the main legislations on the subject, in order to shed light on the current situation of public administrations in Spain in the face of the advance of digitalization.

2 Funds for Digital and Sustainable Transformation

The public authorities have a key role in guaranteeing the rights of citizens in the face of the evolution that society is experiencing. The European funds represent an undoing of the investment made by the Member States to be able to carry out a transformation of the structure, which concerns each economic area, aimed at its progress through the creation of tractor projects that are committed to a double transition: digital and green. In Spain, a whole set of issues are thus outlined that require a response adapted to each of the needs presented by citizens and that cannot be avoided, in any way, moment, the position occupied by the public administration vis-à-vis the interests presented by private entities. The subjection of the former to Article 103 EC limits its action to collective interests and, with this, it has a series of obligations towards citizens in which, due to its characteristics, the public administration will be affected.

2.1 European funds for the digital transformation of Member States

After a year since the pandemic began, a change in conception has been established that tends to the need to enable public spaces and services more adapted to the needs posed by digitalization. This statement is followed by Europe's firm commitment to the transformation towards digital formats that is accompanied by what are known as the European funds for the economic recovery of the Member States and which aim at two pillars: digital

transformation and the Green Deal⁵. Specifically, we are referring to what are known as the funds: *Next Generation EU*⁶ and the *Multiannual Financial Framework*⁷. For its part, the *Next Generation EU*, endowed with 750,000 million euros for the period covered by 2021-2024, offers alternatives that facilitate this evolution while fully respecting the values and rights of the citizens of the European Union. To achieve this, the fundamental pillars that justify it are: 1) supporting Member States in their recovery; 2) relaunch the economy and support private investment; and 3) to draw lessons from the crisis⁸.

Despite its importance, this will not be the only source of funding for this purpose. The Multiannual Financial Framework (hereinafter MFF) aims to strengthen its implementation by providing a long-term European budget for the period 2021-2027. From both items, the aim is to achieve a position in the market that will provide Europe and its Member States with leadership in the digital market. An element that is currently led by the United States and China. Faced with the possibility of joining forces with the United States or opting to support the Chinese power, Europe makes known its intention to seek in self-management the possibility of evolving towards this double transition. It is in this way that it provides the tools to achieve it. It is now up to the Member States to make this decision a reality, for which a decisive public-private collaboration is required, without which this purpose will become ineffective.

2.2 The Government of Spain in the face of European funds

The arrival of European funds has been a sense of relief for the Government of Spain in order to face the digital and sustainable transformation in its territorial framework. In order to respond to the objectives set by Europe, some reports began to be created that make

⁵ European Commission, Communication from the Commission *The European Green Deal*, Brussels, 11.12.2019, COM(2019) 640 final. Also, the European Commission, Annex to the *Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the European Committee of the Regions, The European Green Deal*, Brussels, 11 Dec.2019, COM(2019) 640 final, and the European Commission, *Proposal for a Regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law)*, Brussels, 4.3.2020, COM/2020/80 final) 2020/0036(COD).

⁶ European Council *Extraordinary meeting of the European Council (17, 18, 19, 20 and 21 July 2020)*, Opinions, Brussels, 21 July 2020 (Or.en), EUCO 10/20, Co EUR 8 and CONCL 4, p. 10-16.

⁷ The amount indicated can be taken from the European Council, *Extraordinary meeting of the European Council (17, 18, 19, 20 and 21 July 2020)*, Opinions, Brussels, 21 July 2020 (Or.en), EUCO 10/20, Co EUR 8 and CONCL 4, p. 5, where it is established that, "*The amounts allocated within the framework of the 'Next Generation EU' for the different programmes will be as follows: recovery and resilience mechanism (672,500 million euros); of which loans (360,000 million euros), of which grants (312,500 million euros); REACT-EU (47,500 million euros); Horizon Europe (5,000 million euros); InvestEU (€5.6 billion); Rural Development (7,500 million euros); Just Transition Fund (€10 billion); rescEU (€1.9 billion), Total: €750 billion*". See the content of the conclusions on page web: <https://www.consilium.europa.eu/media/45124/210720-euco-final-conclusions-es.pdf>. Date of last consultation: 25 Nov. 2020.

⁸ GIMENO FELIU, José María, "The pillars of the Next Generation EU and public procurement", *Public procurement observatory*, 6.10.2020. See in the web: <http://www.obcp.es/opiniones/los-pilares-de-next-generation-eu-y-la-contratacion-publica>. Date of last consultation: 14.Jan.2021.

known the intention of the executive branch to lead this market. Proof of this can be found in the following texts: the *Digital Spain 2025 Agenda*⁹; *Recovery, Transformation and Resilience Plan*¹⁰; *Public Administration Digitalisation Plan 2021-2025: Digital Administration and Digital Public Services Strategy*¹¹, among others.

The *Digital Spain 2025 Agenda*, approved on 23 July 2020, includes for the first time the promotion of the digitalisation of the Public Administration and points them out around ten axes of reform and investment¹². Among the questions that arise from its evolution is the balance between the classic face-to-face service system or the move towards electronic mechanisms. This reflection is important if we intend to *implement a new, more sustainable and intelligent production model*, as has been pointed out on the occasion of the new proposals that arise from the European Commission. An aspect that is not neglected by the public administrations. The answer to this question is to identify the tools offered by electronic media and that are transformed into a set of advantages unknown in paper format: dematerialization, compliance with environmental objectives and the deterritorialization of the object, which will enable us to hyperlink information and have an unusual interactivity with the direct administrator. In short, this document enables the implementation of a series of measures, including the improvement of the regulatory framework, which will allow us to move closer to a more digital Administration.

Subsequently, the Spanish Government's *Recovery, Transformation and Resilience Plan*, approved on 7 October 2020¹³, will be configured, the tenor of which aims to become a boost to achieve *a more modern Administration through digitalisation*. To achieve this, its wording details ten lever policies for structural reform that will encourage sustainable and inclusive development through its digitalisation, both at a cross-cutting level and in strategic areas, which acts as a driver of technological changes. In this way, it foresees a specific allocation of more than 3,000 million euros to achieve the digital transformation of the public sector that will be extended not only to the state level but also to the Autonomous Communities and Local Entities.

⁹ Government of Spain, *Digital Spain 2025 Plan*, July 23, 2020. See the content in the *web*: https://www.lamoncloa.gob.es/presidente/actividades/Documents/2020/230720-Espa%C3%B1aDigital_2025.pdf. Date of last consultation: 02 May 2021.

¹⁰ Government of Spain, *Recovery, Transformation and Resilience Plan*, España Puede, 27 April 2021. See the content on the *website*: https://www.lamoncloa.gob.es/temas/fondos-recuperacion/Documents/30042021-Plan_Recuperacion_%20Transformacion_%20Resiliencia.pdf. Date of last consultation: 02 May 2021.

¹¹ Government of Spain, *Plan for the Digitalisation of Public Administrations (2021-2025)*, ICT Strategy. See on the *website*: https://administracionelectronica.gob.es/pae_Home/pae_Estrategias/Estrategia-TIC/Plan-Digitalizacion-AAPP.html. Date of last consultation: 02 May 2021.

¹² SEGOVIA, Belén Andrés, "Law and Innovation in the Digital Spain 2025 Agenda", *Diario La Ley*, n. 9743, 2020.

¹³ See the Government of Spain, *Recovery, Transformation and Resilience Plan: España Puede*. Presidency of the Government, Madrid, October 2020. See its content on the *website*: https://www.lamoncloa.gob.es/presidente/actividades/Documents/2020/07102020_PlanRecuperacion.pdf. Date of last consultation: 10.01.2021.

The latest milestone in the transformative strategy is the *2021-2025 Public Administration Digitalisation Plan, a strategy for Digital Administration and Digital Public Services*, which is part of component 11 of the Recovery, Transformation and Resilience Plan for the Spanish economy. Its content represents a decisive leap in improving *the efficiency and effectiveness of the public administration, in transparency and the elimination of bureaucratic obstacles*. Thus, it seeks to respond to the main challenges facing health, employment and justice, among other sectors. In addition, it sets out the main critical processes in the relationship between citizens and companies and the Administration, which will be favoured with the implementation of an interoperability system that allows the development of more automatic and transparent mechanisms for public management in key processes, such as: the presentation of declarations, the granting of subsidies, public procurement, among others. Among the high-impact projects, the Plan is divided into three axes that are related to its purpose: *the digital transformation of the General State Administration (Axis 1); High-impact projects in the digitalisation of the Public Sector (Axis 2); and, the Digital Transformation and Modernisation of the Ministry of Territorial Policy and Public Function, Autonomous Communities and Local Entities (Axis 3)*.

It is enough to read the justification that addresses each of these documents to understand that digitalisation will be a turning point in public administrations in order to improve the effectiveness and efficiency of citizens' relations with public administrations through mechanisms such as transparency and the elimination of administrative obstacles through: the automation of management, the search for an optimal orientation to the personalization of services and with respect to the user experience. The aforementioned elements will act as a catalyst for technological innovation in Spain from the public sphere.

3 Digitalization and Public Administrations: An Essential Collaboration

The terms digitalisation and Public Administrations are configured as two large enclaves at the service of people's needs. The establishment of appropriate public policies that enable: on the one hand, the adoption of adequate knowledge on how to carry out their management and, on the other hand, that favour the consolidation of a regulation that meets the new challenges that arise due to the digital transformation will allow States to develop the strategies set out in Europe for the justification of the investment materialised through European funds.

In order to achieve a design of public administrations that is adequate and efficient at the service of citizens, it is essential to determine an appropriate regulation so that we can guarantee the intrinsic rights of citizens and that, with the passage of time, they are exposed to new scenarios previously unimagined. For this reason, it seems right that Andrés (2020, p.17) begins his study by warning of this reality, alluding to the fact that "*digital law is, at the*

present time, at a very sensitive point of indefiniteness, since doctrinal and jurisprudential trends converge in it that have pushed its evolution in recent decades towards a very significant expansion to include emerging matters such as robotics and artificial intelligence and, at the same time, there are factors that make it advisable to subject it to a certain amount of restriction, since not in all cases a new law has to be enacted¹⁴. In the face of these defining deficiencies, the analysis of how the virtues offered by Public Administrations and digitalisation are combined, from a legal perspective, causes both knowledge to converge in a service that aims to provide a better service for citizens who must be considered, with the rest they deserve, in order to obtain the trust and guarantee the safety of citizens. However, it is not exempt from a series of criticisms that arise from the first steps of its adoption. That is why we consider it relevant to address the current regulation of e-Government in order to observe, subsequently, some of the challenges it poses, with respect to the current context posed by digitalisation in Spain.

3.1 The regulation of e-Government

A study that covers the regulation that deals with e-Government requires entering fully into the complex world of inter-administrative relations and their adaptation to the new needs that the technological revolution is marking. Although its activity is rich and varied, it has not always been considered in the same way from a legal point of view. The regulation proposed by Law 30/1992, of 26 November, on the Legal Regime of Public Administrations and the Common Administrative Procedure provided, timidly, for the existence of a scenario based on electronic strategies¹⁵. It would not be until years later that the enormous scope that this small mention would be able to obtain from a factual level would be glimpsed.

After a long period of reflection on the aspects that should be addressed in its regulatory configuration, Law 11/2007, of 22 June, was approved, which will be responsible for answering the questions about the new realities, demands and experiences, consubstantial to the emerging technological, cultural and social realities that occupy citizens and their correlative relationship, through electronic formats with the Public Administrations¹⁶. In this sense, the

¹⁴ ANDRÉS, Moisés Barrio, *Manual de Derecho Digital*, Valencia: Tirant Lo Blanch Manuales, 2020, p. 17.

¹⁵ A number of authors have spoken on the regulation of Law 30/1992 of 26 November 1992. Among them, OLIVER, José María Boquera, *Derecho Administrativo I*, 10th edition, Madrid: Civitas, 1996; PAREJO ALFONSO, Luciano, *Derecho Administrativo*, Ariel, 2003; LINDE PANIAGUA, Enrique (Coord.), *Parte Especial de Derecho Administrativo*, Colex, 2007; MACHADO, Santiago Muñoz, *Lecciones y materiales para el estudio del Derecho Administrativo*, 1st edition, Madrid: lustel, 2009; MONTANER, Luis Cosculluela, *Manual de Derecho Administrativo*, 22nd edition. Madrid: Civitas, 2011; FARRERES, German Fernández, *Sistema de Derecho Administrativo*. Madrid: Civitas, 2012; VERA, José Bermejo *et al.*, *Basic Administrative Law. General Part*, 11th edition, Thomson Civitas, Madrid, 2013; *Administrative law. Special Part*, 6th edition, Madrid: Civitas, 2005; and GARCÍA DE ENTERRÍA, Eduardo and FERNÁNDEZ, Tomás Ramón, *Curso de Derecho Administrativo I*, 16th Edition, Pamplona: Civitas, 2013; *Course on Administrative Law II*, 13th Edition, Pamplona: Civitas, 2013, among others.

¹⁶ MARTÍN, Isaac Delgado, "Identification and authentication of citizens", in the work of AA.VV. de CASADO,

change that occurs is not minor, since the possibility of resorting to electronic means in their relationship with the Public Administrations (which was defended by Law 30/1992, of 26 November) changed to the possibility that, by regulatory means, the obligation to communicate with the Public Administrations through these formats was required (as indicated by Law 11/2007, of 22 June). This second case will take place when the interested persons are either legal persons or, where appropriate, groups of natural persons who, due to their technical or economic capacity, professional dedication, among other causes, have guaranteed the rights of access and availability of the necessary technological means. Both laws, which would acquire an important role in the origins that occupy the transformation of the Public Administrations, are currently repealed, giving rise to new regulatory texts that have had to adapt the reality that occupy the Public Administrations with respect to the growing demand for these means.

The approval of Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations and Law 40/2015, of 1 October, on the Legal Regime of the Public Sector (both of which replace the previous Law 30/1992), enshrine and materialise the right of all citizens to be able to interact with public administrations through electronic formats¹⁷. The purpose of this is to simplify tedious administrative procedures, guarantee access to services, strengthen the use of information and communication technologies, as well as improve the efficiency of their management in order to achieve the possibility of strengthening and favouring any of the collaborative and/or cooperation relationships that are to be developed. Its entry into force, which was expected to take place a year later after its enactment, would introduce a paradigm in the relations between public administrations and citizens that would go beyond the content that inspired the previous Law 11/2007, of 22 June, on electronic access of citizens to Public Services and its corresponding regulatory development. of a partial nature, in relation to the General State Administration, as well as its public bodies, whose link is deduced or depends on Royal Decree 1671/2009, of 6 November, according to which electronic processing was nothing more than a form of management of procedures. As a general rule, Law 39/2015, of 1 October and Law 40/2015, of 1 October, have made it possible to cover the present needs of carrying out the electronic processing of procedures as part of the daily action of the Public Administrations. This means that it provides for a series of inter-administrative relationships, establishing the obligation to relate electronically to: legal persons, entities without personality, and in certain cases taxed, it will be applicable to certain natural persons. All that

Eduardo Gamero and TORRIHOS, Julián Valero (Coords.), *The Electronic Administration Law. Systematic commentary on Law 11/2007, on electronic access of citizens to public services*. Navarra: Thomson-Aranzadi, 2008, p. 356.

¹⁷ Among other authors, VERA, José Bermejo, *Basic Administrative Law. General Part*, Aranzadi Thomson-Reuters, Navarra: Cizur Menor, 2019; PARADA VÁZQUEZ, Ramón, *Derecho Administrativo I, Parte General*, Madrid: Dykinson, 2019; CASADO, Eduardo Gamero, *Basic Manual of Administrative Law*, Madrid: Tecnos, 2019; GARCÍA DE ENTERRÍA, Eduardo and FERNÁNDEZ, Tomás Ramón, *Curso de Derecho administrativo II*, Pamplona: Aranzadi Thomson-Reuters, 2020; PARDO, José Esteve, *Lecciones de Derecho Administrativo*, 10th Edition, Madrid: Marcial Pons, 2021.

indicated may be extended by regulation.

Taking the regulatory texts just described as a background, it was appropriate to carry out regulatory work that would materialize the development and specification of certain provisions, which had been treated on a generic basis and which are becoming more concrete with the advance of new electronic formats. So much so, that the different agents involved need an emerging regulatory text that allows clarifying some of the elements that have been used effectively. This is due to the fact that Law 39/2015, of 1 October, and Law 40/2015, of 1 October, have a generic scope that may have a margin of regulatory action. This intention led to the approval of Royal Decree 203/2021, of 30 March, approving the Regulation on the action and operation of the public sector by electronic means. The purpose of this regulatory text is to satisfy the interested party in accordance with the new realities posed by technological evolution and the needs formulated by the market. Specifically, it announces the use of digital public services as a tool that will allow the fulfilment of the obligations that Public Administrations have adopted with respect to citizens.

As can be seen, there is a need of the first order, not only the *technological adaptation*, with supports prepared for this purpose, of the different headquarters, but also training *in electronic strategies*. Only in this way will it be possible to invite any interested party to go to the respective Administration through electronic mechanisms that are: easy, non-discriminatory, intuitive, efficient and effective. In short, Royal Decree, 203/2021, of 30 March, aims to promote four enclaves of the action of public administrations, which have been detailed in the Preamble of its text, and which will differentiate it from previous regulatory texts, "*improve administrative efficiency, increase transparency and participation, guarantee easily usable digital services and improve legal certainty*".

3.2 Challenges facing e-Government regulation

As we have had the opportunity to advance, the approval of Royal Decree 203/2021 is an opportunity to be able to specify some of the strategies that public administrations intend to consolidate in their adaptation through electronic means. In this way, it aims to comply with some of the needs raised by the executive branch reflected in the Plan for the digitalisation of public administrations, as they pointed out that the pandemic "*has highlighted the urgency and need to develop a digital administration that can respond to the needs of citizens in an agile and effective way*". Carrying out this Plan involves addressing such relevant aspects as: transparency and elimination of administrative obstacles thanks to the automation of procedures; personalisation of services and user experience, thus overcoming the digital divide of citizens; modernisation and innovation of technology; guaranteeing the same quality and supply of services throughout the territory; respond to the

challenges of the main driving areas such as: *employment* (benefits and new public policies), *justice* (bring it closer to citizens and improve care and effectiveness) and *health* (efficient management of documentation).

Addressing the importance of the configuration of an electronic Administration through the normative formula of a implementing regulation only shows that it is a positive, necessary, but insufficient regulatory text. We must highlight, from the favorable side, the regulation of matters as important as: *the presentation and processing of documents in the registry* (art. 39.2); *practices of notifications through electronic formats* (art. 42.5); *notice of making available of the notification* (art. 43.2); *Notification through the single Enabled Electronic Address* (art. 44.3); *Time for the preservation and destruction of documents* (art. 53); *Preservation of electronic documents* (art. 54); *Data transmissions* (art. 61); and *Adhesion to the platforms of the General State Administration* (art. 65). However, we can affirm that it is not a sufficient advance to address all the challenges to which public administrations are subjected in this area. For this reason, we will now list some of the elements that remain to be considered in its tenor, such as: artificial intelligence and data automation; *blockchain* at the state level; the absence of responsibility of public administrations in the face of a management carried out by someone whose identification is different from the one they express; absences with respect to the General Electronic Access Point; increase in the bureaucratic burden for administrations and citizens; the adaptation of records to new electronic formats.

3.2.1 Artificial intelligence and data automation

As with the evolution of the mobile phone system, the artificial intelligence system is going to become an indispensable element in the lives of citizens¹⁸. Among them, in their interaction with the Administration. Automation and the creation of robots, through this system, will make it possible to transform the way we understood public administrations. The European Commission seeks to highlight the importance of regulating artificial intelligence through a *European Commission Communication on Artificial Intelligence for Europe*¹⁹. The issue is of the utmost importance. Proof of this can be found in *the current objectives of artificial intelligence in the public sector*, which indicate that, "*it is necessary for the public sector (at national and EU level) and the private sector to join forces in order to gradually increase global investments between now and 2020, in line with the economic importance of the EU and investments in other continents*". Artificial intelligence thus becomes a tool for public-private and economic progress that will affect practically all areas: security, autonomous vehicles, health, industry,

¹⁸ SCHWAB, Klaus, *The Fourth Industrial Revolution*, Barcelona: Penguin Random House Grupo Editorial, 2016, p. 13-14.

¹⁹ *Communication from the European Commission on Artificial Intelligence for Europe* (SWD(2018) 137 final), Brussels, 25 Apr.2018).

etc., and of course, Public Administrations.

Unlike what was stated in the document submitted for public information by the Ministry of Finance and Public Function of the Government of Spain, dated 23 May 2018, with the heading of the Draft Royal Decree implementing Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations and Law 40/2015, of 1 October, on the Legal Regime of the Public Sector, on the action and operation of the public sector by electronic means, which will give rise to Royal Decree 203/2021, of 30 March, approving the Regulation on the action and operation of the public sector by electronic means, has not had the scope that was expected since its constitution, regarding the regulation of the automation of public administration data. Specifically, the 2018 draft indicated, in its article 9.1.a), that the administrative action must be carried out in a manner that: "*a) Automated: when the criteria on which the decision is based can be subject to computerized processing in relation to the supporting information of the same, not being necessary the direct intervention of a public employee*". However, the resulting regulatory text, Royal Decree 203/2021, of 30 March, says nothing about its content. In this way, it leaves its regulation in the legal trap that will have to be contemplated and addressed in future regulatory texts.

3.2.2 Statewide Blockchain

Blockchain technologies are revolutionizing e-government systems. Communities Autonomous regions such as Aragon and Catalonia through Article 51 of Law 1/2011, of 11 February, on simplification administrative – Identification and signature systems in the electronic office and associated offices – and article 58 of Decree 76/2020, of 4 August, on Digital Administration – Catalogue and guide to electronic signature identification systems – demonstrate this. However, Royal Decree 203/2021, of 30 March, approving the Regulation on the action and operation of the public sector by electronic means, neglects this aspect and does not incorporate it into the new regulation established, on a national basis, for electronic Administration. Consequently, Royal Decree Law 14/2019, of 31 October, which adopts urgent measures for reasons of public security in the field of digital administration, public sector procurement and telecommunications, does not allow the use of the *Blockchain* system in identification. This aspect has been reiterated in Royal Decree 203/2021, of 30 March, approving the Regulation on the action and operation of the public sector by electronic means.

3.2.3 It exempts the Administration from liability in the event of malpractice with respect to authorship

In terms of e-Administration, the emotional prejudice arises from considering that it

should become the key instrument for the correct interaction between the parts that make up the subjective part of administrative relations. Position currently occupied by: the public administration and the regulator, private entities, citizens and machines?²⁰. Any harmful damage caused by this interaction must be foreseen in order to be able to face the challenges that new technologies propose and that are made available to citizens in order to improve the quality in the provision of different public services²¹. In order to shed light on this situation, article 15.4 of Royal Decree 203/2021, of 30 March, approving the Regulation on the action and operation of the public sector by electronic means, is extremely interesting. From its wording we observe that, *"the Administration will not be responsible for the use by third parties of the means of personal identification and electronic signature of the interested party, unless the requirements established in Article 32 of Law 40/2015, of 1 October, for the demand for financial liability are met"*. In this way, the Royal Decree exempts the Public Administration from liability in the event of improper use of the identification and/or signature system by a third party.

3.2.4 Absences from the General Electronic Access Point

The satisfaction of the general interest is the key to the correct use of digital public services. It is for these circumstances that it will become a priority to have digital services that are easier, more accessible and usable. The Administration must ensure that the interaction, either between the interested party and the Administration, or between the Administrations themselves, is: simple, efficient, effective, non-discriminatory and intuitive. In this effort, Spain's strategy is based on promoting the different procedures that allow complete electronic processing to be achieved, as well as the development of the different services so that they can be used by all public administrations and are thus aligned with European interoperability schemes. Its complexity has been highlighted by authors such as Casado (2009)²² who described interoperability as one of the main challenges facing e-Government and makes Martínez (2008)²³ see it as its driving force. To achieve these objectives, Royal Decree

²⁰ SEGOVIA, Belén Andrés, "The technological restart of artificial intelligence in the public health service", *Ius et Scientia*, v. 7, n. 1, p. 340-347, 2021.

²¹ In this regard, the Judgment of the Supreme Court (Contentious-Administrative Chamber), of 31 May 2021, rec. n. 6119/2019 (Tol8.454.669), has been pronounced, in that it states that, *"this Chamber has no doubt about the answer: the duty to give a period of ten days for the correction of applications that have omitted the 'signature of the applicant or accreditation of the authenticity of his will expressed by any means', in the words of the current art. 66.1.e) of Law 39/2015, is expressly provided for by art. 68 of the same legal body. And that the current legislation on administrative procedure has already been designed for the so-called "electronic Administration" is evident from the simple reading of the aforementioned Law 39/2015, for which the generally normal mode of communication between the Administration and individuals is electronic. Thus, it would be extremely difficult - if not impossible - to argue that the legal provision of the remediable nature of the omission of signature in applications is not applicable to applications filed electronically. This also applies to those omissions that, without referring to the electronic signature itself, affect the "accreditation of the authenticity of the will" of the applicant, such as the final step of validating what is formulated and sent electronically"* (F.D.5°).

²² CASADO, Eduardo Gamero, "Interoperability and electronic administration: connect, please", *Revista de Administración Pública*, Madrid, n. 179, p.291-332, May-August 2009.

²³ MARTÍNEZ, Agustín Cerrillo, "Cooperation between public administrations for the promotion of electronic administration", in the work of CASADO, Eduardo Gamero and TORRIJOS, Julián Valero (Coords.), *The Electronic Administration Law. Systematic commentary on Law 11/2007, on electronic access of citizens to public services*, Navarra: Thomson-Aranzadi, 2008, 497p.

203/2021, of 30 March, aims to implement strategies that enable interoperability between the different administrative headquarters. However, it still has an important way to go since it focuses its reference at all times on the General State Administration. This assertion is confirmed by the reality that draws its heterogeneity. The Autonomous Communities have solved this issue in a disparate way, therefore, its interposition adds more opacity to its application.

3.2.5 Increased bureaucratic burden for administrations and citizens

The bureaucratic burden is a reality in the public administration that has increased in the face of digitalisation. Its notoriety can be observed from two levels. For their part, public *administrations* focus their efforts on converting paper documentation to digital format. The expected period for its complete execution is 2 years. Meanwhile, *citizens*, for their part, will have to adapt to the imminent mutation of the classic system to the electronic format. It is therefore necessary to provide a digital literacy service that allows both citizens and staff who hold a position in the Administration to be provided with knowledge in electronic matters so that they can help them to face the systems proposed by the new model of Administration based on electronic strategies.

The approval of the Second Additional Provision, which establishes the training of public employees of the General State Administration²⁴, of Royal Decree 203/2021, of 30 March, approving the Regulation on the action and operation of the public sector by electronic means, obliges all public employees of the General State Administration to interact by electronic means regardless of the group of public function to which they belong, their educational level and their training for these technologies. The introduction of multiple innovative tools en bloc, in general, taking it to *hard law*, has been a challenge for citizens and for the personnel who hold a position in the Administration, when these elements required a slow learning and training process that has been dispensed with. This leads us to remember that what we managed to capture in the Official State Gazette passes into reality directly, but its correct interpretation will be necessary to avoid any dysfunction that it may generate in the guarantee of the rights of citizens to have public administrations attend to their needs in accordance with the general interest.

²⁴ Specifically, the Second Additional Provision, with regard to the training of public employees of the General State Administration, states that "*The General State Administration shall promote the training of personnel in its service to guarantee the right of interested persons to be assisted in the use of electronic means in their relations with the Public Administration, established in Law 39/2015, of 1 October*".

3.2.6 Adapting registries to new electronic mechanisms

At the end we will observe how the registry has had to postpone the incorporation of the new electronic mechanisms until their entry into force. The constant interpretative dispute that has occupied the Seventh Final Provision intrinsically leads us to the Fourth Transitional Provision in that it stated *ab initio* that, "*Until the provisions relating to the electronic register of powers of attorney, electronic register, general electronic access point of the Administration and single electronic file come into force, the Public Administrations will maintain the same channels, electronic means or systems in force relating to such matters, which guarantee the right of people to interact electronically with the Administrations*". According to its literal wording, the legislator wanted to give delayed effectiveness to certain provisions. And without a doubt this is the key concept. This expression, that of the provisions, is unequivocal because in this case it does appear both in the Provision

Seventh final and in the fourth Transitional Provision, where it can only be interpreted as meaning that said delay in effectiveness refers to the legal regime contained in Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations, on the electronic register of powers of attorney, the electronic register, the general electronic access point of the Administration and the single electronic file, which were already in force and also needed to be in force to comply with the rest of the Law. This fact has only generated a feeling of continuous uncertainty since the approval of Law 11/2007, of 22 June, on electronic access of citizens to Public Services.

This process required a space, so depending on the type of Administration in question: state, regional and local, a period of time was given for its adaptation. Royal Decree-Law 11/2018, of 31 August, on the transposition of directives on the protection of pension commitments with workers, prevention of money laundering and entry and residence requirements for third-country nationals and amending Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations, allowed citizens to get started to be able to incorporate a culture based on digital strategies while the Administration not only created this knowledge but also incorporated it into its strategies. That is why the citizen is configured as a right and not as an obligation and there are already individuals who have incorporated it into their daily work with the Administration.

4 Conclusion

Based on the analysis defended in this study, we can conclude that Spain has an e-Government model, whose results in terms of quality and efficiency of the service are beginning to restart their steps, driven by European funds, whose objective is to achieve digital and green

transformation. The Digital Spain 2025 Agenda, the Recovery, Transformation and Resilience Plan, and the Public Administration Digitalisation Plan, all of them from the Government of Spain, will serve to identify the characteristics that a future regulatory model must contain to achieve an efficient e-Administration. As evidenced by its content, these three documents constitute the rules of the game, so it is drawn as an external component that will facilitate, determine and limit the quality that its implementation must adopt if what is intended is to comply with the objectives indicated by Europe. This is perhaps the time to affirm that if we have an electronic Administration system, considered by many to be excellent, it is thanks not only to the commitment of public agents but also to the firm commitment that private companies and citizens with whom they will develop their interaction have acquired, as they are the ones to whom their services are directed. It is therefore necessary to provide training to public administrations with a series of knowledge that will subsequently enhance the use of their tools both in the field of management, in the technical field and in human relations. Spain is determined to lead this digital transformation based on these values and virtues.

The introduction of a more modern and efficient public administration model must also be accompanied by an appropriate regulatory system. Taking into account the wording of Royal Decree 203/2021, of 30 March, the main characteristics can be identified as the pursuit of a new model of Administration that seeks: to improve administrative efficiency, increase transparency and participation, guarantee easily usable digital services and improve legal certainty. In other words, a system that becomes: *consistent* – with a certain stability and that allows future challenges that may arise from the technical and legal level to be addressed – that have a *marked identity* – that identify the guarantee of the general interest as opposed to the particular interest, typical of private companies – their *suitability* – which makes it possible to combat any issue that may occur in the Administration and which acts with criteria that are committed to efficiency and equity, with full respect for the rights and freedoms of citizens.

With all this, we consider that, although its current regulation is shown to be necessary and positive, it is still insufficient. At present, challenges continue to arise that in turn require established criteria and solutions. In this sense, digitalization works in a pedagogical way and as an animating element of the current context. It is true that on some occasions, from a technological point of view, there is an advance with respect to the legal plane. Which is no less true that while in some digital issues you have to be cautious, there are other phases in which you need to speed up. For example, the Law on Access to Public Services, which was drafted in 2007, was drafted with a certain haste that led to the establishment of criteria based on that classic Enlightenment model that consisted of determining the model of action of the citizen with respect to the Administration. However, there is a turning point from which the citizen has the right to interact by electronic means and this recognition makes the Administration occupy the position of obligation. In the study we

have addressed, a notable evolution of the public administration regulation model is identified, which has helped us to evaluate the equity and effectiveness of the three models that constitute the roadmap offered by the Government to achieve the total digitalisation of the Administrations, and to assess to what extent they fit into a model such as the one proposed by Laws 39/2015, of 1 October and 40/2015, of 1 October. That is why we can point out that a reform of both laws is needed to address the challenges highlighted and thus dispel the basic character that characterises Royal Decree 203/2021, of 30 March, which currently does not have an express legal cover for it.

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