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The challenges of AI and
GenAI use in the public sector

ALBERT SANCHEZ-GRAELLS



GenAI

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CAPCO CEO WELCOME

DEAR READER,

Welcome to our very special 60th edition of the Capco Journal of Financial Transformation.

The release of this milestone edition, focused on GenAI, reinforces Capco's enduring role in leading conversations at the cutting edge of innovation, and driving the trends shaping the financial services sector.

There is no doubt that GenAI is revolutionizing industries and rapidly accelerating innovation, with the potential to fundamentally reshape how we identify and capitalize on opportunities for transformation.

At Capco, we are embracing an AI infused future today, leveraging the power of GenAI to increase efficiency, innovation and speed to market while ensuring that this technology is used in a pragmatic, secure, and responsible way.

In this edition of the Capco Journal, we are excited to share the expert insights of distinguished contributors across academia and the financial services industry, in addition to drawing on the practical experiences from Capco's industry, consulting, and technology SMEs.

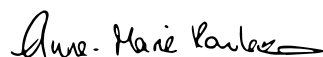
The authors in this edition offer fresh perspectives on the mindful use of GenAI and the implications of advanced GenAI on financial markets, in addition to providing practical and safe frameworks for boards and firms on how to approach GenAI governance.

The latest advancements in this rapidly evolving space demonstrate that the potential of GenAI goes beyond automating and augmenting tasks, to truly helping organizations redefine their business models, processes and workforce strategies. To unlock these benefits of GenAI, I believe that firms need a culture that encourages responsible experimentation and continuous learning across their organization, while assessing the impact of the potential benefits against a strategic approach and GenAI framework.

I am proud that Capco today remains committed to our culture of entrepreneurialism and innovation, harnessed in the foundation of our domain expertise across our global teams. I am proud that we remain committed to our mission to actively push boundaries, championing the ideas that are shaping the future of our industry, and making a genuine difference for our clients and customers – all while ensuring to lead with a strategy that puts sustained growth, integrity and security at the forefront of what we do.

I hope you'll find the articles in this edition both thought-provoking and valuable as you create your organization's GenAI strategy and future direction. As we navigate this journey together, now is the time to be bold, think big, and explore the possibilities.

My greatest thanks and appreciation to our contributors, readers, clients, and teams.



Annie Rowland, **Capco CEO**

THE CHALLENGES OF AI AND GenAI USE IN THE PUBLIC SECTOR

ALBERT SANCHEZ-GRAELLS | Professor of Economic Law, University of Bristol Law School

ABSTRACT

In this short paper, I reflect on the challenges that the public sector faces in adopting artificial intelligence (AI), and generative AI (GenAI) in particular. Despite the increasing pressure on public sector organizations to deploy AI and GenAI to cut costs, this stage of public sector digitalization remains fraught with difficulties. I stress in particular the challenges that arise from the two-tier complexities of: first, designing appropriate use cases and ensuring AI and GenAI are not used for other purposes and, second, successfully acquiring AI and GenAI for the public sector.

1. INTRODUCTION

Given the progressive (and at times sudden) mainstreaming of artificial intelligence (AI), and generative AI (GenAI) in particular, across all industries, it seems unavoidable for public sector organizations to seek to harness the opportunities they bring.

Crucially, AI and GenAI are being targeted as key sources of savings for the public sector. For example, a recent report estimated that, in the U.K., “greater use of AI to support the completion of routine tasks and administration in the public sector could create over £12 billion in savings for the public sector by 2030. By 2035 greater use of AI could save the UK’s public sector £17 billion.”¹ Similar estimates and projections abound for almost all jurisdictions. In a context of fiscal challenges and macroeconomic uncertainty, the promise of savings of this scale cannot be ignored by governments. And, in fact, some governments are putting significant hopes on these technologies to plug funding gaps and/or modernize their public services,² as well as exploring ways in which the public sector can act as an incubator or living lab for tech start-ups.

One would be forgiven for harboring doubts about the feasibility of sticking to this sort of timeline and the viability of organizational and cultural changes of the magnitude required to achieve such savings. They are similar to those required to start to tackle climate change and decarbonization – and the track record in that area is not very encouraging at all. Whether the (seemingly) high-powered public finance incentives involved in the AI context will make a difference is anyone’s guess.

Setting that aside for now, and glossing over the fact that numerous claims on the potential of AI and GenAI (as well as other digital technologies) are but new forms of snake oil,³ I am interested in reflecting on the challenges faced by public sector organizations seeking to deploy AI and GenAI. From my point of view, and after conducting extensive research in the area of public sector digitalization,⁴ there are noticeable challenges that arise from the two-tier complexities of: first, designing appropriate use cases and ensuring AI and GenAI are not used for other purposes and, second, successfully acquiring AI and GenAI for the public sector.

¹ Microsoft/Public First, 2024, “Unlocking the UK’s AI potential: harnessing AI for economic growth,” May, 32, <https://tinyurl.com/4t2ay3j4>

² In the case of the U.K., see Department for Science, Innovation & Technology, Artificial Intelligence (AI) Opportunities Action Plan: terms of reference (July 26, 2024), <https://tinyurl.com/2yb7t48n>

³ Narayanan, A., and S. Kapoor, 2024, AI snake oil: what artificial intelligence can do, what it can’t, and how to tell the difference, Princeton University Press

⁴ Sanchez-Graells, A., 2024, Digital technologies and public procurement. Gatekeeping and experimentation in digital public governance, Oxford University Press

2. HOW TO IDENTIFY “GOOD” USE CASES AND AVOID “BAD” DEPLOYMENTS

Identifying appropriate use cases for AI and GenAI is a challenge for the public sector.

At one level, there are significant issues with the data and IT/software architectures of the public sector that make it hard to “plug AI” on top of them. Limited access to structured historical data can make it difficult to train or fine-tune AI and GenAI models for deployment in public sector specific contexts. Worse still, historical data that embeds biases and discrimination may be impossible to “clean”, and any application of AI based on such data would perpetuate and amplify those historical sources of injustice. It can also be difficult to find ways to integrate AI and GenAI provided over cloud infrastructures with some of the legacy systems still running in the public sector.

However, as far as I can see, these are “technical” challenges and not too different from those faced in other sectors, such as the financial services industry. Given adequate resourcing (and this is a big if, both in terms of total funding but also, crucially, in terms of the public sector digital workforce) they can probably be overcome.

At another, deeper level, the public sector faces significant challenges identifying “good” use cases from the perspective of the duties it owes citizens, and broader concerns with core and fundamental values, as well as legal rights. Just because an administrative process “can”, for example, be automated through AI solutions or “elevated” with GenAI, this clearly does not mean it “should” be. There is a rapidly stacking pile of evidence, across jurisdictions such as Australia⁵ or the Netherlands,⁶ that shows that use cases that may make sense from the narrow perspective of procedural optimization within the public administration (even through forms of automation or algorithmic decision making not involving AI) carry excessive risks and are unlikely to be acceptable to citizens once their operation and effects are uncovered.

This concerns the use of AI or GenAI for citizen-facing services such as the administration of benefits, tax, or the social services, criminal and prison systems. An interesting tension

here is that it seems to be the case that some of the potential big gains of deploying AI and GenAI are linked to mass or population-wide services. However, these are also the services where the deployment of AI or GenAI will be most likely to carry excessive risks.⁷ This poses a particular challenge for the public sector because the effect of failed or perverse AI deployments on citizens’ trust is very different from, say, the reputational effects of similar failures in the private sector. Moreover, the legal risks associated with such AI use cases are also rather particular.

To be sure, the emerging stories of failure in the deployment of AI, and GenAI in particular, in the private and voluntary sectors serve as a cautionary tale for the public sector. Recent months have seen rushed deployments of GenAI result in damages awards against Air Canada where the “hallucination” of its chatbot inaccurately explained the airline’s bereavement policy,⁸ or the reputationally damaging short-lived deployment of a chatbot launched by the National Eating Disorders Association in the U.S. to teach people experiencing eating disorders coping skills, when it became evident that the AI was offering users advice for weight loss instead.⁹ These and other cases show that much more care has to be exercised in the deployment of AI and GenAI where the stakes are high. And, by definition, the stakes will tend to be much higher in (involuntary) interactions with the public sector than in (commercial or nonprofit) interactions with the private and nonprofit sectors.

This restricts most of the relatively less controversial uses of AI to highly technical fields, such as healthcare (in jurisdictions where this is a public service), where AI can more readily be used as a tool to support or enhance processes in narrowly defined application domains (such as radiography). In these cases, deploying AI and GenAI will still face the “procurement challenge” discussed below. In all other circumstances, the public sector needs to approach the identification of “good” use cases with caution and find effective strategies to engage relevant stakeholders, mitigate all relevant risks, and ensure sufficient “social buy in”. Although there are emerging frameworks to support these assessments and decision making processes,¹⁰ they are still in their early stages and will require significant effort in their implementation.

⁵ Royal Commission into the Robodebt Scheme, 2023, “Final report,” July 7, <https://tinyurl.com/mrx6c42j>

⁶ Heikkilä, M., 2022, “Dutch scandal serves as a warning for Europe over risks of using algorithms,” Politico, March 29, <https://tinyurl.com/4ckjbxky>

⁷ Sanchez-Graells, A., 2024, “Resh(AI)ping good administration: addressing the mass effects of public sector digitalization,” *Laws* 13:1, 9, <https://tinyurl.com/mrxkr3xd>

⁸ Belanger, A., 2024, “Air Canada has to honor a refund policy its chatbot made up,” *Wired*, February 17, <https://tinyurl.com/273scqpb>

⁹ Van Amburg, J., 2023, “AI is now a destructive steward of diet culture,” *Well + Good*, August 17, <https://tinyurl.com/485kfkej>

¹⁰ See, e.g., IEEE, 2021, “Standard for the procurement of artificial intelligence and automated decision systems (in progress),” <https://tinyurl.com/3ywehywh>. See also, Waters, G., and C, Miller, 2024, “5 ways to strengthen the AI acquisition process,” *IEEE Spectrum*, March 26, <https://tinyurl.com/yk6478yj>

In general, this does not seem to necessarily dissuade public sector leaders from seeking to use AI and GenAI, and there are clear indications that some sectors, such as education, are being targeted for AI-related investments¹¹ despite the absence of evidence (or a clear ethical and legal framework) on the effects of AI and GenAI exposure on schoolchildren and students¹² – but it tends to push those pilots and deployments behind a curtain of opacity and secrecy. In most jurisdictions, there have been very limited advances in ensuring adequate transparency and accountability for public sector AI use. Although there is an emerging trend to strengthen governance of the use of AI in the public sector – such as with the U.S. Executive Order on AI,¹³ some aspects of the E.U. AI Act,¹⁴ or the very recent Framework Convention on artificial intelligence and human rights, democracy, and the rule of law¹⁵ – there is still a long way to go to ensure adequate and effective implementation. It will be a few years until the regulatory and governance frameworks required by these emerging international and domestic norms are fully embedded.

This leads to a final related challenge concerning the “unauthorized” or “unregulated” use of AI and GenAI in the public sector. In many cases, public sector organizations will not yet have adopted AI or GenAI solutions that “could” be deployed in their activities. This places those organizations in a difficult position if individuals within them make use of those technologies, or if incumbent IT vendors embed AI in ways that are not visible or traceable for the organization, or from which it cannot (technically) opt out. Even if organizations formally ban the use of those technologies (e.g., by preventing access through organization-administered IT), or issue guidelines on what they consider appropriate use,¹⁶ they need to come up with additional measures to avoid individuals working around such bans or technical or organizational constraints (e.g., by using GenAI on their personal devices and then forwarding the relevant outputs to their work email for subsequent use within the “permitted” official workflow). They also need to develop ways to audit (inadvertent) AI embeddings in increasingly complex digital supply chains. To some extent, AI and GenAI use “in” the public sector is distinct from its use

“by” the public sector and this requires organizations to align individual and vendor behavior with their official position and legal obligations.

3. HOW TO SUCCESSFULLY PROCURE AI AND GenAI

As mentioned above, where a public sector organization finds a “good” and viable use case, there is still the challenge of acquiring (or procuring) the technology – as very few organizations will be in a position to develop it in-house. AI procurement, and GenAI in particular, poses a particular challenge, even compared to that of other types of complex (software) systems because, except for “off-the-shelf” AI solutions, it poses technical and contextual risks that we are yet to fully understand, and because public buyers cannot (yet) rely on traditional de-risking tools – which leaves them exposed to regulatory and commercial capture. This challenge breaks down into many different dimensions.

Public buyers will have a difficulty defining the type of AI (or GenAI) solution they seek to acquire. This will be difficult because they may not want to (or be able to) prescribe a specific solution in a quickly-changing marketplace, or because there may be different technical ways of achieving a similar functionality and the procurement process will need to tease out the overall preferable approach once trade-offs between technical, financial, and governance implications are clear. It can also be difficult because the public buyer may have gaps in its digital capabilities or market research and may need to use the tendering process to get a better view of what the market can offer (that is, to gauge the “state-of-the-art”).

Public buyers will also face issues setting technical specifications and organizational arrangements in a context where there is no clear consensus on what these need to entail and where work by international standardization bodies is still in progress. Moreover, some of the parameters that public buyers will need to specify, such as the accuracy, robustness (including cybersecurity), and explainability of the

¹¹ See, for example, in the U.K., Department for Education and Department for Science, Innovation & Technology, Research on public attitudes towards the use of AI in education (28 August 2024), <https://tinyurl.com/ykafk2hn>

¹² See, for example, Ali, O., P. A. Murray, M. Momin, Y. K. Dwivedi, and T. Malik, 2024, “The effects of artificial intelligence applications in educational settings: Challenges and strategies,” *Technological Forecasting and Social Change*, 199: 123076, <https://tinyurl.com/bdrx353y>

¹³ Executive Order 14110 on safe, secure, and trustworthy development and use of artificial intelligence of October 30, 2023, <https://tinyurl.com/3c7apx5d>

¹⁴ Regulation (EU) 2024/1689 of the European Parliament and of the Council of June 13, 2024 laying down harmonized rules on artificial intelligence, <https://tinyurl.com/4e3s3h23>

¹⁵ Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law, CETS No. 225, <https://tinyurl.com/99pvrz7m>. The U.S., E.U., and U.K. all signed the treaty on the first day it was open for signature.

¹⁶ See, for example, for the U.K., Cabinet Office and Central Data Office, Guidance to civil servants on use of generative AI (January 29, 2024), <https://tinyurl.com/3crbwp6f>

AI and GenAI systems are very much in flux and under ongoing research. In this context, it can be difficult to run a procurement process with the required level of predictability and to ensure a level playing field in the conduct of negotiations and technical dialogs.

Public buyers will also have difficulties coming up with award criteria and structured ways to assess offers that could vary across a wide range on cost and quality (e.g., capability or environmental impact), as well as ensure that the terms and conditions that get embedded in the contract do not generate unforeseeable costs or carry undesirable implications (such as lock-in). Given the different strategies used by AI and GenAI companies to monetize their products, this can be a particular challenge where there is no industry standard.

This is linked to the difficulty in assessing claims of compliance with whichever technical specifications are used, or to assess the adequacy of “state-of-the-art” offers where the public buyer does not have the technical competency or capability to, for example, directly test the AI or GenAI. Alternative approaches, such as third-party certification or assurance are also not yet well-developed and, in the same way that there are no generally accepted industry technical standards, there are no generally accepted audit techniques and standards either. This places public buyers in a difficult position because requiring third-party certification or audit can well displace the focus of the market for lemons (from the AI solution to the auditor and its methods), but not solve the problem.

Relatedly, public buyers will find it difficult to impose their terms and conditions and to negotiate specific issues where there is an imbalance of power with the tech vendors (or a Big Tech company embedded along the supply chain, such as when “start-up offers” are built on “off-the-shelf” platforms or components controlled by bigger players). Public buyers cannot (just) hope to have market power to an extent that allows them to dictate the terms of the relevant contract.

There are further complications, but these should suffice to show that procuring AI will be challenging and that public buyers will not have ready access to de-risking tools they can usually use in other contexts, such as requirements to comply with technical standards, audit and certification, or “take it or leave it” tendering and contract conditions.

4. CONCLUSION: A DIFFERENT APPROACH

Given the significant challenges in identifying adequate good cases for AI and GenAI in the public sector and to successfully procure the technology, I would argue that a different approach is required. The emerging strategy of self-regulation by the public sector in choice of use cases and the attempt to use contract-based regulation to govern the acquisition and deployment of AI and GenAI are unlikely to result in robust processes for public sector digitalization capable of protecting the public interest and fostering citizen trust.

In my view, governments that want to take the opportunities of AI and GenAI seriously will have to start by putting an adequate legislative and regulatory framework in place. My specific proposal¹⁷ is for a dedicated regulator in charge of a system of licensing of public sector AI use not too dissimilar in its foundations to the food and drug regulators in Western jurisdictions. To put it differently, jurisdictions need to quickly move away from the light-touch regulatory approach that is becoming the global standard. This will require investment in this needed additional layer of administration, as well as in upskilling the public sector on digital issues. However, this investment is required to ensure that the public sector is in the driving seat in the process of digitalization and that it brings citizens with it in a safe and trustworthy way.

The alternative perhaps looks bleak. A jurisdiction that pushed ahead with the deployment of AI and GenAI in the public sector solely in pursuit of (medium term) financial savings would likely be betting on a losing strategy and one that could well leave it locked into technologies and tech vendors over which it has limited effective regulatory levers, and with waning support and trust from its citizens after repeated scandals and instances of discrimination and human rights breaches. I think it is no exaggeration to say that the window of opportunity to put the fundamentals in place to steer the digitalization of the public sector is relatively narrow. And this is also something the digital transition has in common with the much urgently required green transition. I for one hope to see swift regulatory and legislative change and for the dominating trend of decision making in the AI and GenAI context to be brought back to the public sphere and away from Big Tech vendors.

¹⁷ Sanchez-Graells, A., 2024, ‘Responsibly buying artificial intelligence: a “regulatory hallucination”’ Current Legal Problems, cuae003, <https://tinyurl.com/4xpzs28n>

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