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FAIR AI IN THE PUBLIC SECTOR: THE ROLE OF THE RIGHT TO BE HEARD

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1. THE USE OF AI BY THE PUBLIC SECTOR: THE CONTEXT

The AI Act[2] known as Regulation (Eu) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act)[3] sets a framework of rules with the aim to promote a regulation of artificial intelligence mainly based on a human centric approach, that able a trustworthy use of it, by respecting the rule of law[4] (par. §4). It seems that the use of

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[2] Many are the legal act in force that are referred to AI matters: at a EU primary law level, such as the Treaties of the European Union and its Charter of Fundamental Rights, but also EU secondary law, such as the General Data Protection Regulation, the Product Liability Directive, the Regulation on the Free Flow of Non-Personal Data, the anti-discrimination Directives, the consumer law and Safety and Health at Work Directives, the Medical Device Regulation in the healthcare. At the international level it can refers to the UN Human Rights treaties and the Council of Europe conventions, such as the European Convention on Human Rights, neverthless the national law. Besides horizontally applicable rules, various domain-specific rules exist that apply to particular AI applications (such as for instance). (recital 41).

[3] It has just been transposed into Italian law (l. September 23, 2025, n. 132), but the focus of the article is mainly based on the AI Act.

[4] See Council Decision (EU) 2022/2349 of 21 November 2022 authorising the opening of negotiations on behalf of the European Union with a view to a Council of Europe Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law https://eur-lex. europa.eu/legal-content/ES/TXT/?uri=CELEX:32022D2349; Opinion 20/2022 of the European Data Protection Supervisor on the Recommendation for a Council Decision authorising the opening of negotiations on behalf of the European Union with a view to a Council of Europe Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law (English only) https://www.edps.europa.eu/system/ files/2022-10/22-10-13_edps-opinion-ai-human-rights-democracy-rule-of-law_en.pdf; recently: J. ZILLER, *The Council of Europe Convention on Artificial Intelligence versus the EU Regulation: two very different legal instruments* / *The European Union Artificial Intelligence act. A Systematic Commentary* (L. COTINO-D.-U. GALETTA eds.), Napoli, ES, 2025, p. 58.

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artificial intelligence both in the private and in the public sector is allowed as long as a high level of protection of rule of law, democracy and fundamental rights is guaranteed, as well as health, safety and the environmental[5].

Prior to engaging in an in-depth analysis of the AI Act, it is essential to examine the current state of the art regarding the application of AI in the public sector. In fact, the AI Act was enacted after a relatively long period of interest about potentials as well as risks associated with the use of ICT technologies and artificial intelligence.

This phenomenon stems from the concomitant increase in data production and data collection, otherwise known as datafication. As a result of this transformation, a new means of gaining knowledge through technology and data has been introduced, which has influenced decision-making processes[6].

[5] See S. PALMIERI-T. GOFFIN, *Artificial Intelligence and Fundamental Rights: Under the European Legal Eye* / *The European Artificial Intelligence Act. Law, Governance and Technology Series*, (V.L. RAPOSO eds.), vol 78, Springer, Cham, 2025.

[6] S. DEMKOVÁ, *The Decisional Value of Information in European Semi-automated Decision-making*, in *Review of European Administrative Law*, 14, 2021, p. 29-50; S. RANCHORDAS-A. KLOP, *Data-Driven Regulation and Governance in Smart Cities'* / *Research Handbook on Data Science and Law*, (V. MAK-E. TJONG TJIN TAI-A. BERLEE eds.), Edward Elgar, Cheltenham, 2018, p. 251-276; J. P. SCHNEIDER, *Information Exchange and Its Problems.* / *Research Handbook on EU Administrative Law* (C. HARLOW-P. LEINO-G. DELLA CANANEA eds.), Cheltenham, Edward Elgar, 2017; M. MACIEJEWSKY, *To Do More, Better, Faster and More Cheaply: Using Big Data in Public Administration*, in *International Review of Administrative Sciences,* 2017, p. 83; D.-U. GALETTA-H.C.H. HOFMANN-J.P. SCHNEIDER, *Information Exchange in the European Administrative Union: An Introduction,* in *European Public Law,* 1, 2014, pp. 65-70; for the Italian perspective: R. CAVALLO PERIN, *Pubblica amministrazione e data analysis.* / *L'amministrazione pubblica con i big data: da Torino un dibattito sull'intelligenza artificiale* (R. CAVALLO PERIN eds.), Torino, Quaderni del Dipartimento di Giurisprudenza dell'Università di Torino, Rubbettino, 2021, pp. 11-18; G. CARULLO, *Gestione, fruizione e diffusione dei dati dell'amministrazione digitale e funzione amministrativa*, Torino, Giappichelli, 2018; M. FALCONE, *Le potenzialità conoscitive dei dati amministrativi nell'era della "rivoluzione dei dati": il caso delle politiche di eradicazione dell'epatite C.,* in *Istituzioni del Federalismo*, 2, 2017, pp. 421-446; M. FALCONE, *Big data e pubbliche*

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From the point of view of public sector, it represents the final step of years of digital transformation, that started with the introduction of ICTs tools in the daily activities (briefly known as *e-government*)[7], mainly described for the positive effect in term of efficiency[8], profoundly linked to the principle of good administration[9], due to the large amount of knowledge that can be obtained as well as on the effortless of the digital relations between public authorities and citizens as well as among authorities. In these cases, AI were used

amministrazioni: nuove prospettive per la funzione conoscitiva pubblica, in *Riv. trim. dir. pubb.*, 3, 2017, pp. 601-639.

[7] D. MACLEAN-R. TITAH, *A Systematic Literature Review of Empirical Research on the Impacts of e-Government: A Public Value Perspective,* in *Public Admin Rev,* 82, 2022, pp. 23-38; H. MARGETTS, Electronic Government: A Revolution in Public Administration? / *Handbook of Public Administration* (G. PETERS-J. PIERRE eds.), London, Sage, 2003, pp. 233-244; D. BROWN, *Electronic government and public administration,* in *International Review of Administrative Sciences*, 71, 2005, pp. 241–254; D.-U. GALETTA, *Information and Communication Technology and Public Administration: through the Looking-Glass* / *Information and Communication Technologies Challenging Public Law, beyond Data Protection* (D.-U. GALETTA-J. ZILLER eds.), Nomos Verlagsgesellschaft, 2018, p. 119; for the italian perspective: F. CARDARELLI, *Amministrazione digitale, trasparenza e principio di legalità*, in *Diritto dell'Informazione e dell'Informatica*, 2, 2015, p. 227; F. MERLONI, *Introduzione all'e-government. Pubbliche amministrazioni e società dell'informazione*, Torino, Giappichelli, 2005.

[8] I. WROBEL, *Artificial Intelligence Systems and the Right to Good Administration. Review of European and Comparative Law*, 49, 2022, p. 203.

[9] A. WIDLAK, M. VAN ECK, R. PEETERS, *Towards principles of good digital administration. Fairness, accountability and proportionality in automated decision-making. / The algoritmic society: Technology, power and knowldege* (M. SCHUILENBURG, R. PETERS eds.), Routledge, London, 2020; D.-U. GALETTA*, Digitalizzazione e diritto ad una buona amministrazione. (Il procedimento amministrativo, fra diritto UE e tecnologie ICT)* / *Diritto dell'amministrazione pubblica digitale*, (R. CAVALLO PERIN-D.-U. GALETTA eds.), Torino, Giappichelli, 2020; about the relationship between AI and effectiveness of public administration: R. CAVALLO PERIN, *Dalle riforme astratte dell'amministrazione pubblica alla necessità di amministrare le riforme*, in *Dir. pubbl.*, 1, 2021, 73 e s.

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mainly for communication and information purposes[10], that actually it does not pose any relevant critical challenges to the right of subjects, because it didn't influence the decision-making process (art. 6, par. III, AI Act).

Indeed, some AI tools[11] pose many challenges[12], especially they may affect fundamental rights when they are used to take decisions automatically: it means that not any uses has been considered risky, but only those that impact on the final decisions and, consequently, on the rights (art. 6 and Annex I and III, AI Act).

In this context, at the European level, the AI Act was adopt to introduce rules on the use of AI technologies in both public and private sectors, firstly introducing a relevant distinction based on the impact on the rights. Consequently, the AI Act establishes different rules for high-risk and low-risk AI, regardless of the nature of authorities (public or private), mainly in order to define a normative framework for an anthropocentric and affordable AI. It means that the regulation is an effort to define rules to protect rights, democracy and rule of law, in addition to establishing rules that set common standards for the creation of a single market[13].

[10] See recently about the AI generative uses: European Commission, L. TANGI, M. COMBETTO, I. HUPONT TORRES, E. FARRELL, S. SCHADE, *The potential of generative AI for the public sector: current use, key questions and policy considerations*, Ispra, 2024, JRC139825.

[11] The notion based on the AI Act refers to "system of AI", namely it "refers to the process of obtaining outputs, such as predictions, content, recommendations or decisions, which can influence physical and virtual environments, and to the ability of AI systems to derive models or algorithms, or both, from inputs or data." (cons. 12, AI Act).

[12] See impact on several fields (migration, justice, data protection): M. VARJU-K. MEZEI (eds.), *The Challenges of Artificial Intelligence for Law in Europe*, Switzerland, Springer, 2025.

[13] To clarify the provisions of the AI Act concerning prohibited practices and to ensure its uniform application, the European Commission provides guidelines on the correct interpretation on these practices, which are relevant here for understanding the implications of the different types of AI, see: *Communication from the commission.*

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In fact, the regulation clarifies that the development of AI technologies should be coherent, at least, with the principles of European Union (art. 2, Treaty of European Union), European Chart of fundamental rights, European Declaration on Digital Rights and Principles for the Digital Decade and Ethical Guidelines for Trustworthy AI from the High-Level Expert Group on Artificial Intelligence.

Recent studies[14] have demonstrated that the number of AI applications in public sector are increasing; consequently, it is relevant to discuss about the implication of the regulation on public administrations, that, recently, have been started to use it in their activities.

Some AI applications in public sector are based on deterministic algorithm, because the outcome is based on the rules, that are fully programmed *ex ante*, and they work on the known input data. In such cases, automated administrative decision-making depends on the prior determination of the rules that the computer system automatically and autonomously observes. Some applications are quite common in Europe in order to reduce repetitive decision making process: AI tools could be used in order to categorize citizens' issues for a

Commission Guidelines on prohibited artificial intelligence practices established by Regulation (EU) 2024/1689 (AI Act), Brussels, 29.7.2025 C(2025) 5052 final.

[14] EU Commission. *Public Sector Tech Watch. Mapping Innovation in the EU Public Services*. Publications Office of the European Union, Luxemburg, 2024; OECD, *Governing with Artificial Intelligence: Are governments ready?, OECD Artificial Intelligence Papers*, No. 20, OECD Publishing, Paris, 2024, https://doi.org/10.1787/26324bc2-en.

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better delivering public services[15] or in a tender procedure to extract data from digital document, summarize and score them on the basis of a predetermined rules and criteria[16].

Many other cases concern communication-oriented purpose, aimed at supporting citizens for many purpose. For examples these AI tools help citizens navigating government website to retrieve information, send personalized notifications and content based on their interests, control the noise during night-time, analyzing data in real-time and giving signal about the level of noise reached, for reducing it[17] and providing basic answers regarding administrative procedures or about public services offered by public administrations[18].

[15] It's an application in use at AOC Consorci Administració Oberta de Catalunya for a general purpose related delivering public services; see a recent study: B. WELBY-E. HUI YAN TAN, *Designing and delivering public services in the digital age, OECD Going Digital Toolkit Notes*, No. 22, OECD Publishing, Paris, 2022, https://doi.org/10.1787/e056ef99-en

[16] See recently OECD, *Governing with Artificial Intelligence: The State of Play and Way Forward in Core Government Functions*, OECD Publishing, Paris, 2025, https://doi.org/10.1787/795de142-en, p. 204; C. KRÖNKE-P. VALCÁRCEL FERNÁNDEZ (eds.), *Buying AI. The Legal Framework for Public Procurement of Artificial Intelligence in the EU*, Edward Elgar, Cheltenham, 2025; for the focus on Italy see: G.M. Racca, *Country report on Italy / Buying AI. The Legal Framework for Public Procurement of Artificial Intelligence in the EU*, (C. KRÖNKE-P. VALCÁRCEL FERNÁNDEZ eds.), Edward Elgar, Cheltenham, 2025; AI is considered as a tool for innovation in a smart city: L. FOLLIOT-LALLIOT-P.T. MCKEEN, *Procurement and Smart Cities: Exploring Examples on Both Sides of the Atlantic / Joint public procurement and Innovation. Lessons across borders* (G.M. RACCA-C.R. YUKINS), Bruxelles, Bruyant, 2019, p. 222.

[17] In Belgium, it was adopt this kind of AI in a very busy street in order to control the noise produced by the people returning to home; it seems that this AI application has reduced the level of noise, without the use of sanctions; click here to reach more information about the case: https://app.powerbi.com/view?r=eyJrIjoiY2E1ZDAzZDUtMTMzNi00NzViLWFiNDAtOGMxYzU4NGQ0MmRkIiwidCI6ImIyNGM4YjA2LTUyMmMtNDZmZS05MDgwLTcwOTI2ZjhkZGRiMSIsImMiOjh9.

[18] For examples INAIL, a central public administration in Italy, has adopted such systems with highly positive effect on organizational efficiency and users satisfaction; likewise, the Finnish tax Administration has developed a similar tool to provide taxpayers with a rapid answers about own tax obligations. For a general overview, see: OECD,

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More critical issues arise when an administrative decision is automatically generated by a machine learning algorithm, due to its capacity to learn from data without human intervention[19].

Some AI applications are used to support data-driven enforcement, for examples, in order to identify fraud: in social benefits there are AI tools, which are based on data about criminal records, population location, social and economic data[20], in order to detect who is not eligible for the grant; the same for the tax frauds[21]. In other cases, indeed, AI systems support inspection activities by processing data extracted from consumer feedback published on online review platforms: civil servants are supported by AI tool in identifying and prioritizing food inspections in restaurants, catering services, food distributors through automated alerts generated by the AI system[22].

Governing with Artificial Intelligence: The State of Play and Way Forward in Core Government Functions, OECD Publishing, Paris, 2025, p. 233.

[19] The main concerns raised are related to the lack of transparency in the logical process that leads from the input data to the final decision; this is considered incompatible with the principles of administrative law. See recently OECD, *Assessing potential future artificial intelligence risks, benefits and policy imperatives, OECD Artificial Intelligence Papers*, No. 27, OECD Publishing, Paris, 2024, https://doi.org/10.1787/3f4e3dfb-en.

[20] It is the WIL Leak Current a AI system used in the Netherlands; here the website: https://nos.nl/artikel/2286848-overheid-gebruikt-op-grote-schaal-voorspellende-algoritmes-risico-op-discriminatie?utm_source=chatgpt.com.

[21] Furthermore, in a similar way, the AI system is used to collect and to analyze data come from website about the e-commerce activities in order to define the VAT entrepreneur status and to detect any tax frauds. It (X-PIDER) is used by German tax authorities and it is based on an AI system web crawlers that automatically search in the website, then save and index web content and suddenly track other activities.

[22] In France, the French General Directorate for Food use IALim an AI system that allow civil servants to target restaurant health inspections; see: https://agriculture.gouv.fr/telecharger/116478?token=34e41e9143e50e1be2324f7d9bf7f7fceffe7183e5e97acb34d333c90a70b5a6.

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At first glance, these examples could be labelled as high-risk systems because they impact on fundamental rights and are referred to a specific field of application (art. 6, AI Act; annex I and annex III); they are used to determine whether social benefits should be granted, denied o reduced; to sanction or to punish non-compliant behavior.

In these cases, the accuracy of the model is mainly influenced by the quantity and variety of the case history made available to it for training purpose, i.e., according to the relevance and representativeness of the reference data lake.

For example, the AI system is used to prioritize inspection and it is useful for addressing detection activities through some restaurants. It is an efficient tool for targeting investigative activities because reduce time spent searching information; but at the meantime, the scope of this AI system (identification of the restaurant in which doing the inspections) produces an impact on the fundamental rights because the alert delivered by AI could be wrong, based on a misinterpretation of data or malfunctioning of technical rules.

Similar risks arise when AI systems are used to detect fraud in social benefits because they directly affect individual's access to such benefits. Any misinterpretation of personal data may result in the wrongful exclusion of a person from receiving benefits.

These examples, which are mentioned before, could have a direct impact on the subjects, but, for the application of the AI provisions, it is necessary to really understand the scope and the impact of the AI systems on the decision making process (cons. 52 AI act).

For correctly classifying the AI systems, in fact, it is necessary to understand the scope of them and the real impact on the rights, which could be understood inquiring the stage in which the AI has put in the decision-making process (cons. 53)[23]. It is assumed that there is no impact on the decision making process, if the AI system is used only for supporting

[23] For example, AI systems based on machine learning systems which are used only for a preliminary classification of documents or alerts could not affect the decision-making process because of the very limited field of application

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the decision making process by improving result of a previously completed human activity (art. 6, par. III, lett. b) or for preparatory or procedural tasks (art. 6, par. III, lett. a, d), as well as to detect decision-making patterns or deviations from prior decision-making patterns (art. 6, par. III, lett. c.). In these hypothesis the impact on the fundamental rights could be less dangerous or totally absence, so it isn't necessary to follow strict rules required for high risk AI (cons. 53, art. 6, co. III, AI Act)[24].

However, any real impact of the AI tools on individual rights could be correctly understood by public administration, through the analysis of the effectiveness of transparency (art. 13, AI Act, here par. 2) and human oversight (art. 14, AI Act, here par. §3) in order to analyze the resistance of administrative law principles (here par. §4-5)[25].

Particularly, it is crucial to examine duties arising from AI Act in order to assess whether they diverge from rules and principles of administrative law.

In the former case, the AI Act would constitute a new normative framework for public sector; in the latter, by contrast, it would not introduce substantial innovation, but rather plays a supportive and integrative role with respect to existing legal context.

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2. THE AI ACT THROUGH THE LENS OF TRANSPARENCY.

The main goal of the AI Act is to regulate the introduction in the market, as well as the use of AI systems for public and private sector to avoid the introduction of harmful AI

[24] It is required a previously certification by the deployer before introducing it into market place; in any case no exceptions exist when the AI system is used to profile people (art. 6, par. 3, last line, AI Act).

[25] Furthermore, public administrations have a significant point of view on the AI effect, thus, it could monitor the functioning of AI systems and understand the real impact on fundamental rights. This is important to suggest to the European commission the extensions of exceptions from the AI high risk label (art. 6, par. 3 and 6-7, AI Act).

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for health, environmental, democracy as well as rule of law on the European single market. To do that, it poses some rules banning some kind of use (art. 5) and regulating AI high risks (art. 6), but it poses also many exceptions[26].

Besides the risk management approach (art. 9)[27] – as a way to prevent and to limit the risk posed by certain kinds of AI – the provision of harmonized transparency rules for certain AI systems is one of the main purpose of the AI Act (art. 1, co. I, lett. d).

Transparency rules are considered as specific obligations on the AI producers and deployers. It is required to make available variables, measures, data training set of the AI system. Hence, transparency is considered as sufficient way to limit the risk of opacity of AI systems[28].

Coherently to the idea that transparency is a prerequisite for understanding the functioning of AI, the AI Act establishes a set of binding rules aimed at ensuring the intelligibility of high-risk AI systems.

Firstly, transparency rules require to give information in a "concise, complete, correct and clear" way, about the identity and the contact details of producers, as well as the

[26] For example, AI systems used in military or research context are excluded from this regulations (art. 2, AI Act).

[27] See A. PIROZZOLI, *The Human-centric Perspective in the Regulation of Artificial Intelligence*, in *European Papers*, 9, 2024, pp. 105-116; recently: G.G. GASIOLA, *Rebuilding the pyramid: The AI Act's risk-based approach using a binary decision diagram*, in *Computer Law & Security Review,* vol. 58, 2025, p. 1.

[28] Recently see: K. SÖDERLUND, *High-risk AI transparency? On qualified transparency mandates for oversight bodies under the AI Act,* in *Technology and Regulation*, 2025, pp. 96-113.

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technical details related to the characteristics, capabilities and limitations of performance of the high-risk AI system, including its intended purpose (art. 13, AI Act)[29].

From this point of view, the duty of transparency is strictly related to make understandable the performance of AI system: it should be known technical capabilities and characteristics as well as on the input data, or any other relevant information or the summary of content (training, validation and testing data sets), which are used. This documentation could be improved with information about the expected lifetime of the high-risk AI system and any necessary maintenance and care measures, including their frequency, to ensure the proper functioning of that AI system, including as regards software updates (art. 13, AI Act).

The purpose of transparency duty is to enable users to understand how the AI system works, evaluate its functionality, to interpret the output and to comprehend the strengths and limitations of the high-risk AI system. Hence each AI systems – mainly high risk - could be accompanied by appropriate and update information to use it appropriately.

It seems that the AI Act promotes an idea of transparency merely "formal", mainly based on the idea that delivering "documentation", technical documentation is sufficiently and enough, to support informed automated decision making, that not consider the "black box" risk related to AI based on machine learning and deep learning systems[30].

[29] Transparency duties required also that it should be known: the level of accuracy, including its metrics, robustness and cybersecurity and any known and foreseeable circumstances that may have an impact on that expected level of accuracy, robustness and cybersecurity as well as any known or foreseeable circumstance, related to the use of the high-risk AI system, which may lead to risks to the health and safety or fundamental rights.

[30] At least: F PASQUALE, *The Black Box Society: The Secret Algorithms That Control Money and Information* (Reprint Edition, Harvard), University Press, 2016; critically: L. ZIHAO, *Why the European AI Act transparency obligation is insufficient*, in *Nature Machine Intelligence,* 5, 2023, pp. 559–560; M. BUSUIOC-D. CURTIN-M. ALMADA, *Reclaiming transparency: contesting the logics of secrecy within the AI Act,* in *European Law Open*, 2, no. 1, 2023, pp. 79–105; L. NANNINI, *Habemus a Right to an Explanation: so What? A Framework on Transparency-Explainability Functionality and Tensions in the EU AI Act*, in *Proceedings of the AAAI/ACM Conference on AI,*

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Although the regulation on AI systems seems to be a first step to an advanced regulation, it isn't sufficient to deeply protect rights when the public power is exercised, for the fact that transparency obligations are only a formal way to pose limits to the use of AI. It seems to be not sufficiently in order to obtain an high level of fairness in automated decision making. To reach fairness and transparency with AI systems, it should be required an appropriate human intervention by the person in charge of the public decision making process to oversight the procedure and to control the fairness of output (here par. §3). Concomitantly, fairness could be reached by introducing the possibility to subjects to intervene in the decision making process in order to add and correct information, for example, with an adding of data, missing by the AI system[31] (here par. §5).

Therefore, when AI systems are used by public sector, the transparency and fairness goal could be effectively achieved by exercising the procedural right, such as the right to be heard (here par. §5).

3. THE HUMAN OVERSIGHT IN THE AI ACT.

Ethics, and Society, 7, 2024, pp. 1023-1035; recently, specifically related to the AI Act guarantees: A. LOPEZ-T. MARTINEZ, *Right to lodge a complaint and right to an explanation. Means of redress for individuals in the artificial intelligence act* / *The European Union Artificial Intelligence act. A Systematic Commentary* (L. COTINO-D.-U. GALETTA eds.), Napoli, ES, 2025, p. 970.

[31] See: NOUWS, SEM & DOBBE, ROEL, *The Rule of Law for Artificial Intelligence in Public Administration: A System Safety Perspective* / *Digital Governance: Confronting the Challenges Posed by Artificial Intelligence* (K. Prifti, E. Demir, J. Krämer, K. Heine & E. Stamhuis), The Hague, T.M.C. Asser Press, 2024, pp. 183-208 where the human intervention is described as a way to introduce and correct hazards and, thus, to protect citizens.

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Furthermore transparency duties, the human oversight is considered relevant to check and to control the procedure and the output to promote an AI fair use (art. 14 AI Act)[32]. The human intervention is mentioned in the AI Act as a tool to prevent and to reduce risks emerging from AI systems[33].

From an administrative law perspective, the person responsible for the proceedings can enable the exercise of participation rights. However, doubts remain about its role in the automated decision-making process, since civil servants must be able to understand the capabilities and limitations of the high-risk AI system, so as to guarantee effective monitoring of their functioning, including the identification of anomalies, dysfunctions and unexpected performance.

Concerns arise from the human intervention model envisaged by the AI Act, which promotes a technical approach based on "appropriate human-machine interface tools", which is considered sufficiently to allow effective oversight by civil servants during use (art. 14, par. 1, AI Act).

Furthermore, the AI Act requires a human overseen commensurate with the risk, the level of autonomy and of context of use, but it isn't clear how effective its corrective contribution can be, given the complexity of AI tools work and their profound ability to interpret reality through the data analysis.

[32] M. FINK, *Human Oversight under Article 14 of the EU AI Act*, in (February 14, 2025) / *AI Act Commentary: A Thematic Analysis*, (G. MALGIERI-G. GONZÁLEZ FUSTER-A. MANTELERO- G. ZANFIR-FORTUNA (eds), Hart-Bloomsbury, forthcoming 2026.

[33] For the topic of discrimination based on a social scoring, see M.A. PRESNO LINERA, *The prohibition of artificial intelligence systems that evaluate and classify people based on data that are unrelated to the context in which they were generated and that lead to discrimination* / *The European Union Artificial Intelligence act. A Systematic Commentary* (L. COTINO-D.-U. GALETTA eds.), Napoli, ES, 2025, p. 241.

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For examples, if the AI system denies a subsidiary because of a wrong assessment of relevant data concerning the individual, it is relevant to identify what kind of task the civil servant could make: for example, civil servants should be able to take a decision without AI system (art. 14, par. 4, lett. d) or to correct irregularities (i.e. wrong data about the individual position).Therefore, the concept of human intervention envisaged by the AI Act entails a rather indeterminate obligation "to remain aware of the possible tendency of automatically relying or over-relying on the output produced by a high-risk AI system (automation bias)" (art. 14, par. 4, lett. b): this approach is particularly problematic because it requires a very high technical competence of person in charge; an assumption that normally does not reflect the reality in the public sector, where the workforce does not have solid informatics background[34].

Hence, the absence of informatics background in the public sector could affect the way in which the human overseen is made. Especially when it is required to "correctly interpret the high-risk AI system's output, taking into account, for example, the interpretation tools and methods available" (art. 14, par. 4, lett. c) as well as "to intervene in the operation of the high-risk AI system or interrupt the system through a 'stop' button or a similar procedure that allows the system to come to a halt in a safe state" (art. 14, par. 4, lett. e)[35].

[34] See a survey conducted among 574 public managers across seven EU countries, identifying what are currently the main drivers of AI adoption: S. GRIMMELIKHUIJSEN-L. TANGI, *What factors influence perceived artificial intelligence adoption by public managers*, Publications Office of the European Union, Luxembourg, 2024, https://data.europa.eu/doi/10.2760/0179285, JRC138684; about the AI strategy for the adoption also in the public sector: A. BERTOLETTI-J. COSGROVE-M. LOPEZ COBO, *AI skills supply and demand - An analysis through online job advertisements and education and training offer*, Publications Office of the European Union, Luxembourg, 2025, https://data.europa.eu/doi/10.2760/0059391, JRC143488.

[35] J. LAUX-H. RUSCHEMEIER, *Automation Bias in the AI Act: On the Legal Implications of Attempting to De-Bias Human Oversight of AI* in *European Journal of Risk Regulation*, published online 2025, pp. 1-16.

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Therefore, human intervention, as envisaged by the AI Act, is problematic and does not constitute a satisfactory solution. For these reasons, it appears more appropriate to rely on administrative principles - such as the right to be heard -, as a preferred safeguard, which may operate as a regulatory safeguard and help to ensure the legality of AI outputs (par. §5).

4. THE RULE OF LAW AND THE RIGHT TO BE HEARD AS MILESTONES IN THE AUTOMATHED DECISION MAKING BY PUBLIC AUTHORITIES. THE RULE OF LAW AS THE PRECONDITION OF THE USE OF ARTIFICIAL INTELLIGENCE IN THE PUBLIC SECTOR.

Despite the AI Act provisions, any administrative decision making process must be compliant with the general principle of public law, mainly the rule of law.

Within the regulatory framework governing the use of AI in the public sector, the rule of law requires that administrative decisions remain subject to legality, transparency and accountability. In light of the inadequacy of transparency as well as human intervention provisions (parr. §2-3), as discussed above, relying on administrative principles appears to be the more appropriate solution. Thus, the right to be heard operates as a fundamental procedural guarantee ensuring that individuals can effectively challenge or influence automated decision affecting their rights. So that, the right to be heard is an expression of rule of law, because make concrete the requirements that public decisions be not only lawful in a formal way, but also in a substantial way ensuring the fairness of automated decisions.

The right to be heard is a concrete procedural right deriving from the rule of law, which is one of the fundamental values of the European union, stemming from the common traditions of the Member States and it is adopted as general principles of EU law[36] in ECJ

[36] H.C.H. HOFMANN, *General Principles of EU law and EU administrative law / European Union Law*, (C. BARNARD-S. PEERS eds.), Oxford, Oxford University Press, 2014; H.C.H. HOFMANN-B.C. MIHAESCU-EVANS, *The Relation between the Charter's Fundamental Rights and the Unwritten General Principles of EU Law: Good Administration as the Test Case,* in *European constitutional Law* Review, 9, 2013, pp. 73-101; recently, J. ZILLER,

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case law[37], later codified in primary law, such as the Treaty on European Union (TEU) and the Charter of Fundamental Rights (CFR), under the definition of good administration principles (art. 41, CFR)[38]. The rule of law is one of the EU's fundamental values, that now it is enshrined in the Treaty on European Union (Article 2) as well as in the European Charter of Fundamental Rights (Article 41).

As a general principle, it must be respected by the Member States, including in areas not covered by EU law[39], even in the absence of explicit statements because it belongs to common traditions of them[40].

The Council of Europe Convention on Artificial Intelligence versus the EU Regulation: two very different legal instruments, / *The European Union Artificial Intelligence act. A Systematic Commentary* (L. COTINO-D.-U. GALETTA eds.), Napoli, ES, 2025, p. 62.

[37] T. VON DANWITZ , *The Rule of Law in the Recent Jurisprudence of the ECJ,* in *Fordham Int.*LJ, 37, 2014, pp. 1314-1316.

[38] P. CRAIG, *Article 41 – Right to Good Administration* / *The EU Charter of Fundamental Rights* (S. PEERS AND OTHERS eds.), Hart-Nomos, 2014, pp. 1069-1098; H.P. NEHL, *Good Administration as Procedural Right and/or General Principle?* / *Legal Challenges in EU Administrative Law: Towards an Integrated Administration,* Chelternham, Edward Elgar, 2009, pp. 322-351; J. MENDES, *Good Administration in EULaw and the European Code of Good Administrative Behaviour,* in *EUI Law Working Papers*, 13, 2009.

[39] B. WRIGHT, *Technology and the Rule of Law in the Digital Age*, in *Notre Dame Journal of Law, Ethics & Public Policy*, 2, 2014, pp. 705–710; F. PEIRONE, *The Rule of Law in the EU: Between Union and Unity*, in *Croatian Yearbook of European Law and Policy*, 15, 2019, 57–98.

[40] P. CRAIG. *Administrative Law*, Oxford, 1983; E.C.S. WADE-A.W. BRADLEY, *Constitutional And Administrative Law*, A.W. Bradley, 10th Ed., 1985; H.C.H. HOFMANN, *General Principles of EU law and EU administrative law / European Union Law*, (C. BARNARD-S. PEERS eds.), Oxford, Oxford University Press, 2014.

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Generally, the principle of the rule of law states that the governmental powers are limited by law[41] and may be exercised only based on law[42] (principle of legality) [43], thus it could reduce the arbitrariness of officials' decisions[44], thus they have to act within the framework of law[45]. Besides that, the rule of law is understood somewhat differently[46] and it

[41] I.e. about limits of discretionary powers at European level, see: Recommendation of the Committee of Ministers on good administration, 2007, Article 2.4 ("Principle of lawfulness") where it is stated that the Public authorities "shall exercise their powers only if the established facts and the applicable law entitle them to do so and solely for the purpose for which they have been conferred". For the interpretation of "law" in a sostantive sense: Judgment 6th november 2008, Case 58911/00, Leela Forderkreis E.V. and Others V. Germany, where it is stated that: "the term "law" in its "substantive" sense, not its "formal" one".

[42] However, a number of key elements of the notion can be identified; as stated by B. Z. TAMANAHA, *The History and elements of the Rule of Law*, in *Singapore Journal of Legal Studies*, 2012, p. 236; R. STEIN, *Rule of Law: What Does it Mean?*, in *Minnesota Journal of International* Law, 18, 2009, pp. 293-303; M. KRYGIER, *The Rule of Law*, in *The Oxford Handbook of Comparative Law*, 2012, pp. 234-235.

[43] S. C. STIMSON, *Constitutionalism and the Rule of Law* / *The Oxford Handbook of Political Theory*, (JOHN S DRYZEK-BONNIE HONIG-ANNE PHILLIPS (eds.), Oxford, Oxford University Press, 2008, pp. 322-323.

[44] TH. KONSTADINIDES, *The Rule of Law in the European Union: The Internal Dimension*, Hart, 2017, p. 47.

[45] It's the idea of principle of *lawful administration*: R. GEIGER, *European Union Treaties*, C.H. Beck and Hart, 2015, pp. 15-16; protection against arbitrariness was mentioned by the European Court of Human Rights in a number of cases: judgement 16 September 2014, Case 29750/09, Grand Chamber case Hassan v. the United Kingdom, para. 106 related to the restriction in time of war.

[46] The rule of law has been defined as an "umbrella principle": see H.C.H. HOFMANN, *General Principles of EU law and EU administrative law / European Union Law*, (C. BARNARD-S. PEERS eds.), Oxford, Oxford University Press, 2014; TH. KONSTADINIDES, *The Rule of Law in the European Union: The Internal Dimension*, Hart, 2017, pp. 38-39; see also: R. KENNEDY, *The rule of law and algorithmic governance* / *The Cambridge handbook of the law of algorithms,* (W. Barfield (ed.), Cambridge, Cambridge University Press, 2021, pp. 218-220.

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faces with new challenges[47], which requires a permanent monitoring mechanism about its application[48].

In the AI Act, this principle is recurrent and affirms that a use of artificial intelligence be allowed within the framework defined by the limits of rule of law and all the values enshrined in Article 2 Treaty of European Union, as well as the fundamental rights and freedoms protected in the EU Treaties, in the Charter, and from the international human rights law[49].

The AI in the public sector thus requires a use compatible with the limits that govern the activities of public power, because of the need to comply with the rule of law principle[50]. The respect of limits posed by the rule of law allows for the definition of AI that could be trusthworthy[51], as a way to avoid harmful effects against society and people that are subjected to the automated decision, adopted by artificial intelligence, mainly with the aim to avoid the

[47] W. WEISS, *Pandemic and Administrative EU Soft Law: Persistent Challenges to the Rule of Law in the EU and Possible Solutions*, in *Review of European Administrative Law*, 15, 2022, pp. 7-28.

[48] In the EU, the EU Commission has put forward the idea of a "rule of law review cycle", into a general aim of promoting a "rule of law culture", as well as a solution to prevent the backwardness of the rule of law in Member States. More about this political mechanism to control the respect of rule of law is provided by European Parliament, *Protecting the rule of law in the EU. Existing mechanisms and possible improvements*, 2019.

[49] Some EU soft law defines the ethical standards that AI should be respect, i.e. by the Joint Declaration on Digital Rights of the Union and the Ethics Guidelines for Trustworthy Artificial Intelligence (AI) of the High-Level Expert Group on Artificial Intelligence.

[50] J. VALERO TORRIJOS, *The Legal Guarantees of Artificial Intelligence in Administrative Activity Reflections and Contributions from the Viewpoint of Spanish Administrative Law and Good Administration Requirements*, in *European review of digital administration & law*, 1, 2020, pp. 55-62.

[51] The AI Act uses "trustworthy" in a recurring way that denotes a desire to define what the conditions are for the eligibility of artificial intelligence.

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substitution of human autonomy or the loss of individual freedom, but at most it should serve to the needs of the society and the common good (recitals 1, 2, 8, 28, 62, 176 and art. 1 AI Act).

As seen above (here, par. §1) huge number of AI are used by public authorities. Some concerns arise from the risks of potential biases, errors as well as the opacity of the decision-making process. These risks could have a significant impact on the rule of law and individual freedoms, on one hand and on the right to an effective remedy and to have a fair trial or decision making process, on the other hand (recital 40).

For these reasons, the AI Act suggests a use of AI that should be in line with the rule of law, that it means ensuring transparency and explicability[52] of the decision making process, the reasons and the variables and facts that are put as the basis of the decision (right to have a motivation)[53].

Beyond the inadequacy of certain provisions of the AI Act, referring to the rule of law in the automated decision making processes allows the concrete protections of rights

[52] The topic of explicability of AI, especially when it is used in the decision-making process, is also take into account by the AI Act, as a way to counter the deterrent effects of digital asymmetry and so-called 'dark patterns' targeting individuals and their informed consent (recital 47 of the AI Act). For the general reflections on the topic, see: S. WACHTER-B. MITTELSTADT-C. RUSSELL, *Counterfactual explanations without opening the black box: automated decisions and the GDPR*, in *Harvard Journal of Law & Technology*, 31, 2018, pp. 842-887; S. WACHTER- B. MITTELSTADT-L. FLORIDI, *Why a Right to Explanation of Automated Decision Making Does Not Exist in the General Data Protection Regulation*, in *International Data Privacy L.*, 7, 2017, pp. 79-90; B. GOODMAN-S. FLAXMAN, *European Union Regulations on Algorithmic Decision-Making and a «Right to Explanation»*, in *AI Magazine* 38, 3, 2016, pp. 50-57; A.D. SELBST-J. POWELS, *Meaningful Information and the Right to Explanation,* in *International Data Privacy L.*, 7, 2017, pp. 233-242.

[53] On the right to receive an explanation about the AI result, see: European Parliament resolution of 22 November 2023 with recommendations to the Commission on digitalisation and administrative law (2021/2161(INL)), (C/2024/4215), especially art. 3, par. III, lett. v), of Recommendation 2 (on the principles guiding the digitalisation of the Union's administrative procedures); also art. 22, GDPR.

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deriving from the right to good administration (art. 41, Charter)[54], the right to an effective remedy[55] and a fair trial[56]. The principle of good administration, indeed, is a specific expression of the rule of law in the public administration, because it gives duties about to act fairly, impartially, proportionately, in a reasonable time, as well as respecting procedural rights such as the right to be heard. Thus, the principle of good administration concretes legal standards that lead public administration activities and ensure the guarantees for the individuals; meanwhile the interconnection of this principles describes guarantees for individuals, in order to obtain a high level of fairness in the (automated) decision making process.

Grounding on this legal context, public administration have to announce when an activity is made by AI (as principle of publicity)[57], what are the rules at the basis of the AI

[54] M. BATALLI-A. FEJZULLAHU, *Principles of Good Administration under the European Code of Good Administrative Behavior*, in *Journal of International and European Law*, I, 2018, pp. 26-35; R. BOUSTA, *Who Said There is a 'Right to Good Administration'? A Critical Analysis of Article 41 of the Charter of Fundamental Rights of the European Union,* in *European Public Law*, 19, 2018, pp. 481-488.

[55] About the principle of effectiveness: M. ELIANTONIO-E. MUIR, *The Principle of Effectiveness: under Strain?*, in *Review of European Administrative Law*, 2, 2019; M. BONELLI, *Effective Judicial Protection in EU Law: an Evolving Principle of a Constitutional Nature*, in *Review of European Administrative Law*, 12, 2019, pp. 35-62.

[56] For the relation between the right to be heard and a fair trial: Micallef v. Malta, 17056/06, judgement 15 October 2009, para. 78 especially where it is considered: "The Court observes that there is widespread consensus among Council of Europe member States, which either implicitly or explicitly provide for the applicability of Article 6 guarantees to interim measures, including injunction proceedings (as explained in paragraph 31 above). Similarly, as can be seen from its case-law (see paragraph 32 above), the European Court of Justice ("the ECJ") considers that provisional measures must be subject to the guarantees of a fair trial, particularly to the right to be heard."; judgement 8 November 2012, case 30804/07, Neziraj v. Germany, para. 45.

[57] For example the UK government has published a pioneering standard for algorithmic transparency with the Centre for Data Ethics and Innovation in order to set mandatory duties of transparency on public sector that use AI system.

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functioning[58], what is the datalake used and other relevant variables that could impact on the decision (principle of explicability)[59].

In this context, the right to be heard could be qualified as a milestone for the use of AI in the public sector, because it allows the recipients of an automated decisions to present their point of view. These safeguards appear to have a greater impact on decision-making than transparency or human intervention alone. In fact, through the right to be heard subjects affected by the decision making process have the possibility to shed lights on some elements of fact taken into account by public administration, perhaps not clear to it, as well as to add new elements and new documents, not yet analyzed.

5. THE RIGHT TO BE HEARD FOR A (POSSIBLE) FAIR AI OUTPUT.

The content of the right to be heard is that the subject could make own point of view known in front of a public authority that could be adopted the act (art. 86, AI Act). The right to be heard must be guaranteed in an effective way[60], with communication that allows

[58] About the relation between AI and transparency: J.C. BERTOT-P.T. JAEGER-J. M. GRIMES, *Using ICTs to create a culture of transparency: E-government and social media as openness and anti-corruption tools for societies*, in *Government Information Quarterly*, 27, 2010, pp. 264-271.

[59] For the right of interpretability alongside to explicability and transparency, see: Law Society response to UK Government white paper: A pro-innovation approach to AI regulation, June 2023, Recommendation 4.3. Including interpretability alongside transparency and explainability: Transparency and explainability must be accompanied by interpretability. It is critical that when AI systems generate erroneous predictions, it is understood not only why a particular decision was incorrect, but also that an error within the decision-making mechanism or underlying connections is located.

[60] P. BEQIRAJ, *The Right to Be Heard in the European Union – Case Law of the Court of Justice of the European Union*, in *European Journal of Multidisciplinary Studies*, 1, 2011, p. 266.

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participant to be informed on the proposal in time, effectively and personally[61]. It seems to be the minimum requirement of guarantee given to participants, with the aim of clarifying the factual situation as much as possible[62].

At the European Law[63], the right to be heard is a general principle[64] of law[65], also considered as a fundamental principle of Community law, or as part of the fundamental

[61] See: J. M. ALVAREZ-A. BRINGAS COLMENAREJO-A. ELOBAID-S. FABBRIZZI-M. FAHIMI-A. FERRARA-S. GHODSI-C. MOUGAN-I. PAPAGEORGIOU-P. REYERO-M. RUSSO-K. M. SCOTT-L. STATE-X. ZHAO- S. RUGGIERI, *Policy advice and best practices on bias and fairness in AI,* in Ethics and Informations technology, 26, 2024, 1-26.

[62] R. KENNEDY, *The rule of law and algorithmic governance* / *The Cambridge handbook of the law of algorithms,* (W. Barfield (ed.), Cambridge, Cambridge University Press, 2021, p. 216 on the relevance of updating data.

[63] The EU law seems to define the protection of individual rights better than the internation law. For further consideration, see J. HILLEBRAND POHL, *The right to be heard in European union law and the international minimum standard —due process, transparency and the rule of law,* in *CERiM Online Paper Series*, 6, 2018, p. 6.

[64] T. TRIDIMAS-N.A. PATTERSON, *The general principles of EU law and the Europeanisation of national laws,* in *Review of European Administrative Law,* 13, 2020, pp. 5-31*;* H.C.H. HOFMANN*, The Duty of Care in EU Public Law – A Principle Between Discretion and Proportionality*, in *Review of European Administrative Law,* 2, 2020, pp. 87-112.

[65] In some jurisprudence case, the right to be heard has been considered as "a general rule", where it appears that the legislative provisions, i.e. in the field of competition law, is an expression of the recognition of this rule. On of the first case law is Transocean Marine Paint v Commission, Case 17/74. In other cases, the right to be heard is also considered as a fundamental principle of Community law in the decisions that impose sanctions, as a way to give complaints made against them. About the right to be heard: P. CRAIG-G. DELLA CANANEA-O. MIR-J.P. SCHNEIDER-V. M. TÜNSMEYE- M. WIERZBOWSKI, *ReNEUAL Model Rules on EU Administrative Procedure*. *Book III – Single Case Decision-Making*, 2014.

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rights[66], so that it must be guaranteed even in the absence of any specific rules[67] and it is considered as essential procedural requirements. As said, the right to be heard has been developed as a part of the right to good administration, also taken into account by soft law of Council Europe[68] and other sectoral studies[69]. Furthermore, the Court of Justice has extent

[66] For the fundamental nature of right to be heard: Transoceanic Marine Paint Association, Case 17/74; also Al-Jubail Fertilizer Company (Samad) and Saudi Arabian Fertilizer Company (Safco) v Council of the European Communities, Case 49/88, judgement 27 June 1991 where it is stated that "the right to a fair hearing, a principle whose fundamental character has been stressed on numerous occasions in the case-law of the Court (see in particular the judgment of 17 October 1989 in Case 85/87 Dow Benelux v Commission [1989] ECR 3137)" (para. 15). For the statement that fundamental rights are considered as integral part of general principles of law: see judgement 27 June 1991, case 49/88, Al-Jubail Fertilizer Company (Samad) and Saudi Arabian Fertilizer Company (Safco) v Council of the European Communities, where it states "according to the well-established case-law of the Court

[67] Netherlands and Others v Commission, Case 66/90, 12 february1992, where it is stated that the right to be heard "is a fundamental principle of Community law" (para. 44), thus it requires that the interest receive "an exact and complete statement of the objections" (para. 45).

[68] For example: *The administration and you. A handbook. Principles of administrative law concerning the relations between administrative authorities and private persons, issued by the Council of Europe*, Strasbourg, (2018, 1980); Recommendation of the Committee of Ministers (2007, Article 14); Resolution of the Committee of Ministers of the Council of Europe (1997) define the right to be heard one of the crucial principles of the protection of individuals and their rights when they become part of the administrative procedure; Recommendation of the Committee of Ministers of the Council of Europe, 1991, (Principle 6, par. 1, section IV).

[69] Research Network on EU Administrative Law (ReNEUAL), which has included the right to be heard in Model Rules on EU Administrative Procedure (art. III-23).

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the application to individual measures which could affect someone adversely, as "significantly affected" [70], also in case of composite administrative procedures [71].

As said, the human intervention creates the reference dataset, gives the label to data (labelling), as well as cleanses the dataset of any distortions, inadequacies of the data[72]. Anyway not completely satisfactory is the human intervention, so that the right to be heard seems to be mainly relevant in the automated decision era. It ensures the adequate protection

[70] Legislative provisions of the right to be heard are often related to the power of EU administrative institutions, mainly in competition law, where the public power affects individuals' right. See Netherlands and Others v Commission, Case 66/90, 12 february 1992; Primex Produkte Import-Export GmbH v Commission, Case 50/96, 17 september 1998 where it is stated that "the rights of the defence comprise not only the right of the person concerned to make known his views, but also the right to be informed, before the adoption of the decision, of all the important facts" (para. 44). Commission v Lisrestal, C-32/95, Judgment of 24 October 1996, where it is stated that "That principle requires that the addressees of decisions which significantly affect their interests should be placed in a position in which they may effectively make known their views" (para. 21).

[71] The right to be heard in a composite procedural proceeding has received a different conformation by the ECJ, in absence of a specific regulation, for a further analysis, see: C. ECKES-J. MENDES, *The Right to Be Heard in Composite Administrative Procedures: Lost in between Protection?*, in *European Law Review,* 36, 2011, pp. 651-670.

[72] Moreover, the choice of variables and rules on which AI works must be considered relevant in the process of making the administrative decision must also be the subject of appropriate evaluation by competent officials, given that computer variables are equivalent, in the world of administrative law, to the factual and legal prerequisites of the final decision. Control over the variables must therefore be conducted both on the variables themselves and on the weight given to them, to prevent certain variables from leading to disproportionality in the final decision made.

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of the subjects' rights during the proceedings before the adoption of an act, with or without the AI, by the administrative authority[73], as a declination of the rule of law principle[74].

The right to be heard, in fact, enables the subjects' to participate to the decision making process, in a different support, written or oral[75]: to voice complaints[76], to submit proposals and to offer further information, evidence and facts[77], as well as to give comment

[73] G. GATTINARA, *The Right to Be Heard in European Union Civil Service Law: By Whom, When and on What? Answers from the Recent Case Law of the General Court,* in *Era Forum*, 4, 2019, p. 571.

[74] A. ANDRIJAUSKAITĖ, *The Principle of Legality and Administrative Punishment under the ECHR: A Fused Protection*, in *Review of European Administrative Law*, 13, 2020, pp. 33-51.

[75] For example, in the competition matter, there's the Hearing Office that receives oral complaints against the proposal of decision: S. DURANDE-K. WILLIAMS, *The practical impact of the exercise of the right to be heard: A special focus on the effect of Oral Hearings and the role of the Hearing Officers*, in *Competion policy newsletter*, 2, 2005, pp. 22-28.

[76] The European courts have stated that the rights of defence include, in particular the right to be heard, the right of access to file and the principle of good and sound administration. See case Atlantic Container Line v. Commission, T-191/98, judgement 30th september 2003; S. PRECHAL (2020). *Effective Judicial Protection: some recent developments – moving to the essence*, in *Review of European Administrative Law*, 13(2), 175-190; J. HILLEBRAND POHL, *The right to be heard in European union law and the international minimum standard —due process, transparency and the rule of law,* in *CERiM Online Paper Series*, 6, 2018, p. 10. For the consequences of this equiparation on the content of the information that the authority must give to the subjects: see Commission v Kadi, C-584/10, judgment 18th July 2013, para. 111; in addition: T402/13, Orange v. European Commission, 25 November 2014, where it is stated that "it is necessary to prevent the rights of the defence from being irremediably compromised during that stage of the administrative procedure since the measures of inquiry taken may be decisive in providing evidence of the unlawful nature of conduct engaged in by undertakings for which they may be liable; see also: Hoechst v Commission, 46/87 and 227/88, judgment of 21 September 1989, para. 15.

[77] In the similar sense, see European Parliament resolution of 22 November 2023 with recommendations to the Commission on digitalisation and administrative law (2021/2161(INL)), (C/2024/4215), especially art. 3, par. III, lett. v), of Recommendation 3, (on the principles for the development and dissemination of digital solutions), lett. ii) that it seems to give an idea of right to be heard by design.

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on the truthfulness and relevance of the facts reached by public administration, with the aim to influence the forthcoming outcome of the automated proceedings (art. 86 AI Act)[78].

6. CONCLUDING REMARKS.

As argued, the AI Act wouldn't constitute a new normative framework for public sector but rather it plays a supportive and integrative role with respect to existing legal context. In fact, transparency principles and human overseen introduced in the AI Act, actually, are principles of the administrative law. To overcome the limit of inadequacy of AI provisions on transparency and human overseen (parr. §2-3), the administrative law principles offer yet the effective way to allow AI in the public sector as well as its fairness (par. §4-5). Besides the inadequacy of these provisions, the right to be heard principles

[78] In other European regulation, there is a provision that seems to give space to the right to be heard, when it argues that "the data controller shall implement suitable measures to safeguard the data subject's rights and freedoms and legitimate interests, at least the right to obtain human intervention on the part of the controller, to express his or her point of view and to contest the decision" (art. 22, par. 3, GDPR 679/2016). Especially, an exception to the rule banning the use of automated decisions is the provision of the European Union or member state law. While an express provision authorizes the automated decisions, it also must indicate the appropriate measures that could safeguard and protect the rights, freedoms, and legitimate interests of the recipient of the measure (Art. 22(II), EU Reg. 679/2016, subpara. c). From this point of view, general principles of administrative law as well as specific provisions of law could define a framework where decision could be adopted with AI with respect to the rights of subjects, despite the AI Act provisions. Accordingly, the proposal idea here is that one of the "appropriate measures" to protect the rights is the provisions that the person in charge of the procedure provides a communication to subjects' affected, thus the right to participate is guaranteed.

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represents a more effective way to preserve the rule of law and the fundamental rights[79] in an automated decision era[80].

The AI Act doesn't introduce the time in which the right to be heard could be exercised, but it should be made at the end of the inquiry stage, on the outcome, which it could be considered as a "proposal of decision". Thus, it should be subjected to a procedural cross-examination, through the exercise of the right to be heard by the subjects[81].

Accordingly, it seems that the use of AI in the public sector and, consequently, the automated decision requires two ineliminable stages: the first in which the person in charge uses AI to achieve information and offers a preliminary decision to the subject to allow its participation (as human intervention); afterwards, the subject has the right to give own point of view, in order to add or correct some information that has been put at the basis of automated decisions.

[79] It is important to underline that "there is no hierarchy among Union values, respect for the rule of law is essential for the protection of the other fundamental values on which the Union is founded, such as freedom, democracy, equality and respect for human rights. Respect for the rule of law is intrinsically linked to respect for democracy and for fundamental rights. There can be no democracy and respect for fundamental rights without respect for the rule of law and viceversa": C-156/21, judgment 16 February 2022, para. 18.

[80] It is interesting the proposal of Conference on the Future of Europe - European Citizens' Panel 2: "European democracy/Values and rights, rule of law, security" - Recommendations about a way to protect democracy and the rule of law that fight all kind of breaches of the rule of law, not only those affects the EU budget (stream 2, substream 2.1.), in order to overcome the reductive idea of punishing the only infringements that arises from the breaches of rule of law that attempt to budget (the Regulation (eu, euratom) 2020/2092 of the European parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget takes into account the only breaches that can seriously harm the financial interests of the Union, recital 15, also article 1, article 3).

[81] The Italian act transposing the AI Act (l. September 23, 2025, n. 132) confirm the relevance of person in charge in the automatic decision making process (art. 14, l. 132/2025.)

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Especially, the right to be heard allows the participant to introduce new information to the person in charge, in order to correct AI output through a cross-examination method. Providing individuals – affected by AI systems – with the opportunity to present their views serves as a procedural safeguards, enabling them to contest unlawful decisions and ensuring accountability within public administration. In fact, after the exercise of the right to be heard, at least are two the main solution: a) public authority accepts the information proposed by the subjects, but it doesn't consider the relevance to the decision making process and, substantially, doesn't change the decision; b) public authority accepts the information proposed by the subjects and, suddenly, it changes the datalake if there is mistakes as well as change the content of the decision, that it will be fair, proportionate and reasonable, because previously checked by human (person in charge as well as subjects). In both cases, the cognitive input given by the interested parties ensures that the automated administrative decision is based on in-depth and complete knowledge, thus limiting the annulment of the act due to lack of knowledge or error of assumptions[82]. In fact, the right to be heard defines a duty on the competent institution to examine carefully and impartially all the relevant aspects of the individual case and to adopt an adequately reasoned decision[83].

Thus, the subjects' point of view could change or modify the proposal of decision, because it could give new elements of fact, or variables, data that could be considered in the re-thinking or correction of algorithms' functioning.

From this point of view, the right to be heard seems to have a double effects.

[82] J. BENJAMIN, *Safeguarding the Right to an Effective Remedy in Algorithmic Multi-Governance Systems: An Inquiry in Artificial Intelligence-Powered Informational Cooperation in the EU Administrative Space,* in *Review of European Administrative Law*, 2, 2023.

[83] F. BORRIELLO, *Principle of Proportionality and The Principle of Reasonableness,* in *Review of European Administrative Law,* 13, 2020, pp. 155-174.

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Firstly, it is a supply of information at the individual level because public administration is made aware of the particularities of the concrete case, not highlighted by the algorithmic decision because perhaps exceptional hypothesis or hypothesis not considered by the reference datalake). At the same time, the additional information given has an effect on a collective level, because the increase in information available to the algorithm allows it to operate in a more accurate way.

Abstract. *The AI Act sets a framework promoting a regulation of artificial intelligence mainly based on a human centric approach, that able a trustworthy use of it, by respecting the rule of law with a provision of compatibility of AI with the "fundamental rights, democracy and rule of law". The regulation clarifies that the development of AI technologies should be coherent, at least, with the principles of European Union (art. 2, Treaty of European Union), European Chart of fundamental rights, European, Declaration on Digital Rights and Principles for the Digital Decade and Ethical Guidelines for Trustworthy AI from the High-Level Expert Group on Artificial Intelligence. Recent studies recognize the raising number of AI application in public sector; consequently, it is relevant to discuss the implication of the regulation on public administrations, that, recently, have been using it in their activities. Therefore, it is crucial to examine duties arising from AI Act in order to assess whether they diverge from rules and principles of public administration.*

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