CHAPTER 8

ITALY

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I. Is there a national act containing a legal definition of Automated Administrative Decisions?

In Italy, there is currently no rule defining what an automated or algorithmic administrative decision or a decision made using artificial intelligence systems is[1]. Article *3-bis* of Law 241/1990 (the general law on administrative procedure) merely provides that, in order to achieve greater efficiency in their activities, public authorities "shall act by means of automated" and telematic tools in internal relations, between the different administrations, and between these and private parties"[2].

It is therefore a provision that does not provide definitions but envisages the possibility for public authorities to use technology as a "mode" or "tool" of action.

Similarly, the main legislation governing the use of technology by the organs of public administration in Italy, namely the Digital Administration Code (Legislative Decree 82/2005), does not define the concept of automated or algorithmic decisions, which are nonetheless present in the practice of administrative action, especially in certain

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[1] In this report, we will use the terms algorithmic decision, automated decision, or decision made using artificial intelligence tools in a very broad sense, encompassing all cases in which a public decision takes place at the end of a procedure in which complex technological algorithmic systems are involved, exploiting the use of "robots", not only in the decision-making phase, but also during the investigation. These could be information-processing systems in which the machine does not intervene exclusively but is decisive in the final human decision. Reference will also be made both to artificial intelligence systems based on systems and parameters rigidly established by humans (rule-based) and to – less frequent – machine learning systems, i.e. systems that perform autonomous action, thanks to machine learning mechanisms. See on these topics: D.U. Galetta, *Artificial Intelligence and Public Administration. A Journey* (2025).

[2] On this provision, D.U. Galetta, *Digitalizzazione e diritto ad una buona amministrazione (Il procedimento amministrativo, fra diritto UE e tecnologie ICT)*, in R. Cavallo Perin, D.U. Galetta (eds.), *Il Diritto dell'Amministrazione Pubblica digitale* (2025).

sectors. On the contrary, it should be noted that the most recent reform of the Digital Administration Code (implemented by Legislative Decree no. 179 of 2016) repealed a rule that provided for the use of automated systems in the context of public decisions (Article 3 of Legislative Decree no. 39/1993)[3].

According to a well-informed opinion on the subject, which I share, the legislation contained in the CAD "takes a 'traditional' view", meaning that it understands information and communication technologies as 'serving' decision-making processes that remain the responsibility of 'human' officials[4].

The recent AI legislation, which the Italian Parliament adopted in September 2025 (see the next paragraph), confirms this approach.

II. Is there a general legal basis (either at the constitutional level or in the Administrative Procedure Act) for the use of algorithmic automation and/or artificial intelligence (AI) by public authorities (government, agencies, local authorities, and specialised bodies)? If no such legal basis exists, are there any legislative provisions that permit public authorities to experiment with algorithmic automation or AI?

In Italy, a law specifically devoted to artificial intelligence was only recently approved, namely Law No. 132 of 23 September 2025. The latter's Article 14, 'Use of artificial intelligence in public administration', expressly provides that "public administrations shall use artificial intelligence for the purpose of increasing the efficiency of their activities, reducing the time employed to complete procedures and increasing the quality and quantity of services provided to citizens and businesses, ensuring that interested parties are aware of how it works and that its use is traceable" (paragraph 1, Article 14). AI systems, as it will be later explained (see the answer to question number 4), may be used by public administrations in compliance with the principles and limits contained in both Article 3 and Article 14[5] (paragraphs 2 ff.).

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[3] On this point, E. Carloni, *I principi della legalità algoritmica. Le decisioni automatizzate di fronte al giudice amministrativo*, 2 Diritto Amministrativo 271 (2020).

[4] E. Carloni, cit. at 3.

[5] The definition of AI system provided by the Italian legislator in Article 2, paragraph 1, letter a) of Law 132/2025 refers to that provided by the European Regulation (2024/1689), according to which an "AI system" is an automated system designed to operate with varying levels of autonomy and which may be adaptable after deployment and which, for explicit or implicit purposes, infers from the input it receives how to generate outputs such as predictions, content, recommendations or decisions that may affect physical or virtual environments (Art. 3 point 1, Reg. cit.).

With reference to the rules established by sector-specific legislation that allow the use of artificial intelligence or automated decision-making systems (regardless of whether the technique used is rule-based or machine learning), and in addition to the details that will be provided in the answers to the subsequent questions, it should be noted that the most important provision on the matter is Article 30 of Legislative Decree 36/2023: the Public Contracts Code.

The provision outlines the scope of application for artificial intelligence tools and the principles they must follow, reflecting current case law on automated or composite decisions that employ these tools.

Please see the explanation of the provision in the answers to the questions that follow.

It should be also noted that the aforementioned new legislation containing provisions and delegated powers to the Government on artificial intelligence (Law 132/2025) provides for the use of artificial intelligence systems in the areas of national security and defence (Article 6), healthcare and disability (Article 7) and judicial activities (Article 15).

With regard to the first sector, the provision refers to the authorities responsible for national security and defence, which develop research, experimentation, development, adoption, application and use of artificial intelligence systems and models. The provision is therefore rather generic.

With regard to healthcare, on the other hand, "the use of artificial intelligence systems contributes to the improvement of the healthcare system, the prevention, diagnosis and treatment of diseases" while respecting the rights and freedoms of citizens (Art. 7(1)). In this sense, artificial intelligence systems in healthcare "provide support in the processes of prevention, diagnosis, treatment and therapeutic choice, without prejudice to the decision, which is always left to medical professionals" (para. 5, art. cit.). In Art. 10, the law also sets out provisions on electronic health records, surveillance systems in the healthcare sector and digital healthcare governance.

Finally, it is important to mention the recent law's provisions concerning the use of artificial intelligence systems in judicial activities. In this regard, given the problems associated with the inappropriate application of such systems to judicial decisions, the legislator has taken care to place significant limits on their use, making it subject, among other things, to the adoption of implementing legislation. Apart from what will be discussed in the section devoted to question number 4, the law stipulates that, in cases where artificial intelligence systems are used in judicial activities, all decisions on the interpretation and application of

the law, the assessment of facts and evidence, and the adoption of measures "shall always be reserved to the judge (Article 15(1)). The use of AI systems, which will be regulated by subsequent implementing regulations, will concern exclusively "the organisation of services relating to justice, for the simplification of judicial work and for ancillary administrative activities" (para. 2 of the aforementioned article). In any case, until the full implementation of Regulation (EU) 2024/1689, the testing and use of artificial intelligence systems in ordinary judicial offices are authorised by the Ministry of Justice (para. 3 of the aforementioned article).

III. Do public authorities rely on algorithmic automation/AI in their daily operations? If yes, to what extent? Which areas are most affected by automation (e.g., security, policing, immigration, transport, tax management, welfare, health and employment services, education, justice, or digital identity)?

In 2018, the Agency for Digital Italy, the body responsible for the technological development of public administration (AgID), published a White Paper on artificial intelligence at the service of citizens. In December 2023, the AgID adopted the Three-Year Plan for IT in Public Administration 2024-2026, which includes a section dedicated to AI in public administration. The plan is supplemented by the Italian Strategy for Artificial Intelligence 2024-2026, also prepared by the agency[6].

The AgID report recognises the "*significant experience*" of the Italian public authorities in the development and use of artificial intelligence solutions.

Aside from the discussion on the development of algorithmic systems in specific sectors, the report notes that, in general, algorithmic solutions or artificial intelligence systems can be effectively utilised, particularly for delivering online services by public administrations (especially user contact services), for fraud prevention, and for supervisory and control activities assigned by law to public administrations. More broadly, these systems can improve the efficiency and speed of administrative tasks.

Some examples include the use of intelligent systems by the *Agenzia delle Entrate* (the Italian tax authority), which uses machine learning algorithms to analyse suspicious patterns and behaviour,

[6] See in this regard L. Casini, *Il futuro dello Stato (digitale)*, 2 Rivista Trimestrale di Diritto Pubblico 431 (2024).

contributing to the prevention and detection of tax fraud. The tool that allows taxpayers' data in databases and on the web to be cross-referenced in order to carry out an audit of financial relations is called Vera and implements the provisions of the Budget Law for 2020 (Article 1(681-686))[7]. The financial regulations establish limits and rules to protect the confidentiality and quality of the data of individuals affected by automated processing.

INPS, the Italian social security agency, has been adopting chatbot systems for some now in order to simplify and personalise user interaction, thereby improving the accessibility and usability of the services it provides to citizens.

INAIL, the agency that upholds safety in the workplace, also uses artificial intelligence systems to manage user requests and complaints through a chat box. In addition, the organisation's data on fatal and other types of accidents is used to design AI systems that predict the risk of accidents at work. In addition, INAIL uses AI systems to automate public tenders and contract management, which speeds up processes and reduces manual errors.

Furthermore, it should be noted that cognitive and AI systems can be utilised to enhance the efficiency of both internal and external processes related to the procedures for ISI calls for tenders (public competitions between enterprises aimed at awarding incentives for the implementation of projects designed to improve workers' health and safety conditions). This takes place through the deployment of a Personal Assistant for users, the analysis of ISI administrative and technical documents, and document classification to alert enterprises during uploads (*https://docs.italia.it/italia/piano-triennale- ict/pianotriennale-ict-doc/en/2024-2026/struments/tool-5_intelligenza-artificiale-nella-pubblica-amministrazione.html*).

In addition to what is mentioned in the AgID report, the survey highlights the need to analyse the specific areas most interested in the use of artificial intelligence algorithms and systems.

The public procurement sector is undoubtedly one of the areas where the legislator has authorised the use of these tools[8]. Article 58 of

[7] For risk analysis activities, the Revenue Agency, also after the pseudonymisation of personal data, makes use of the technologies, processing and interconnections with the other databases at its disposal in order to identify risk criteria useful for identifying positions to be audited and encouraging spontaneous compliance.

[8] D.U. Galetta, *Digitalizzazione, Intelligenza artificiale e Pubbliche Amministrazioni: il nuovo Codice dei contratti pubblici e le sfide che ci attendono*, 12 Federalismi.it 1 (2023).

the Public Contracts Code (Legislative Decree 36/2023) permits the use of telematic negotiation platforms where the entire tender procedure is managed by electronic systems in accordance with regulations governing participant requirements and the principles of the Code (transparency, efficiency, simplification, etc.).

Article 19(7) of Legislative Decree 36/2023 provides that "where possible, and in relation to the type of award procedure, contracting stations and awarding authorities shall use automated procedures in the evaluation of tenders pursuant to Article 30".

Consequently, the use of algorithms to make decisions within the limits of Article 30 of the Code, which we will review, is not only permitted but also encouraged, as some commentators have highlighted[9]. The provision states that, in order to improve efficiency, administrations shall, where possible, "automate their activities by resorting to technological solutions, including artificial intelligence and distributed ledger technologies, in compliance with the specific provisions on the subject". In conclusion, the provision on public procurement and tenders provides that, in addition to automation, i.e. the possibility of automatically defining the procedure without human intervention and mediation (this was mainly so in cases of non-discretionary administrative activity), the authority may introduce AI systems, thus not excluding their use in cases of discretionary activity. The combination of automation and the use of AI undoubtedly leads to uncharted territory[10].

Another area of use for AI systems is public health[11]. The AgID Three-Year Plan (2024-2026) envisages a report on digital health procurement (chronic patient care and management systems, diagnostic systems, etc.).

More specifically, AI systems are currently employed in numerous national healthcare facilities to analyse and interpret video images, such as X-rays, for diagnostic purposes. This field is referred to as Computer Vision. Artificial Intelligence, for example, is used for the detection, localisation, and classification of conditions such as lung

[9] E. Carloni, *La regolazione dell'intelligenza artificiale tra giudice e legislatore: notazioni a margine dell'art. 30 del D.lgs. n. 36/2023*, in A. Lalli (ed.), *La regolazione pubblica delle tecnologie digitali e dell'intelligenza artificiale* (2024).

[10] The 'advanced' automation envisaged by this standard (E. Carloni, cit. at 7) is not only viable but preferable.

[11] On the topic, D. U. Galetta, G. Carullo, *Using Technology to support Administrations in controlling the SARS-CoV-2 Pandemic*, in I. Lipowicz, G. Szpor, A. Syryt (eds.), *Instruments of Public Law. Digital Transformation during the Pandemic* (2023).

nodules and breast abnormalities (at the IRCCS Policlinico di Sant'Orsola). An AI system is also used at the Azienda Ospedaliera Universitaria Senese for the improvement of clinical-diagnostic pathways, especially for the analysis of images obtained with MRI and CT (computed tomography) in order to assess the extent of strokes and make more timely and effective therapeutic decisions[12].

Also, at the Aldo Moro and the Polytechnic Universities, researchers have designed an AI algorithm capable of identifying pathological changes due to Alzheimer's disease, using MRI images at a very early stage, especially during the mild cognitive impairment phase[13].

In Rome, the Policlinico Gemelli has created the Generator Heart Failure Data Mart, a digital platform that integrates and combines a substantial amount of diverse data to develop and train multi-parameter predictive models aimed at identifying patient re-hospitalisation after their most recent discharge for heart failure[14].

Another area where automated decisions have become prevalent is the traffic violation sanctioning sector. Article 201 of the Highway Code, for instance, permits the automatic evaluation of several violations, including speeding, lack of insurance, and failure to conduct vehicle inspections[15]. Case law has indicated a limit on the legitimate use of these tools: automatic decisions are only permissible when there is technical approval of the automatic detection tool (Civil Cassation section II, 10/05/2023, no. 12681).

There is extensive use of automatic decision-making systems in the context of non-discretionary administrative activities. One example is the sector of private productive activities subject to self-reporting (S.C.I.A.)

In this case, since no prior authorisation is required from the authority, the legislator has stipulated that the report be forwarded electronically by the private individual and that the SUAP (One-Stop Shop for Productive Activities) verify the completeness of the declarations and their consistency with the object (Presidential Decree 160/2010, which governs the 'automated procedure' in Article 5 and

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12 *https://www.ilsole24ore.com/art/dalla-clinica-all-imaging-senso-dell-ai-la-sanita-AFSKWm* (July 2023).

13 *https://www.agendadigitale.eu/sanita/ia-in-sanita-ce-fermento-le-iniziative-in-italia-e-ue/* (November 2023).

14 *https://www.agendadigitale.eu/sanita/ia-in-sanita-ce-fermento-le-iniziative-in-italia-e-ue/* (November 2023).

15 G. Avanzini, *Decisioni amministrative e algoritmi informatici* (2018), 44.

following). In the event of a positive verification, the One-Stop Shop 'automatically' issues the receipt and transmits it to the competent Administrations (Article 5(4) Presidential Decree no. 160/2010)[16].

Regarding the domains of mobility and management of civil servants, along with the selection processes for public competitions, the case of the mobility algorithm used to select teachers' workplaces in State schools is well known[17]. The Regional Administrative Court of Lazio argued that the use of computer mechanisms and systems for managing an administrative procedure was incompatible with the legal framework and the protection of the rights of the administrators. The Council of State, however, intervened in 2019 in another case also concerning teacher assignment procedures, correcting the orientation of the Lazio court.

The automated tool is also used in the selection of public employees, so the use of pre-selection tools that automatically exclude or admit candidates is legitimate. Conversely, the Administrative Courts have stated that the automated correction of answer sheets, which "excludes any margin of evaluative discretion", making this activity "radically different from the comparative evaluation of the original papers carried out by the competition commission" (Council of State section IV, 15 October 2019, no. 7005), is in itself and a priori valid as a guarantee of protection of the principle of anonymity in the competition procedure.

The use of algorithms is increasingly widespread in the automatic creation of rankings for selecting the recipients of public subsidies or grants. The subsequent actions of the authorities become predictable. An example of this is the management of funds for the performing arts, where the Ministry (MIBACT), through its own decrees, has established particularly complex algorithmic formulas that analyse various data to determine distribution (Ministerial Decree of 27 July 2017 concerning the criteria and modalities for the disbursement of contributions from the Fund). Courts have, however, considered the full legitimacy of the method, observing that the algorithm and the resulting computerised procedure, as an exercise of technical discretionary activity, can be reviewed in a limited manner by courts (Council of State, 30 November 2016, no. 5035).

Algorithms have also been used to adjust tariffs based on various factors (most recently in determining the all-inclusive fixed tariff by the

[16] On the subject, G. Avanzini, cit. at 12, 46.
[17] TAR Lazio, Rome, Judgments nos. 9924/2018, 6606/2019, 10964/2019 and Cons. St. Judgment. no. 2270/2019.

GSE, using algorithms, TAR Lazio no. 3402/2024). Since 2013, the Energy authority has established a resolution for the water service that defines, through algorithms, the cost items to consider in determining tariffs in accordance with the principle of full cost recovery (Article 154(1), D.lgs. 152/2006) (regarding the formulas for the remodulation of incentive tariffs based on TAR Roma, ordinance no. 14 January 2016. 347), along with the adjustments to the fees for the remuneration of the production capacity of electricity companies (TAR Milan 1 January 2018 no. 49).

IV. What legal requirements – e.g. in terms of privacy, cybersecurity, quality of the datasets, impact assessments, transparency obligations, access to codes, the right to explanations, compulsory human involvement, and the right to obtain a review or remedy – apply to the use of algorithmic automation or AI by public authorities? Are there sector-specific regulations on Automated Administrative Decisions (e.g., public procurement, taxation etc.)?

The CAD (Digital Administration Code, Legislative Decree 82/2005), which serves as the framework legislation for digital administration, does not generally regulate decisions that are automated or produced entirely or partially through AI (see the answers to questions number 1 and 2). As already highlighted, however, the recent Law 132/2025 introduced the possibility for public administrations to use new AI technologies both in general terms (Article 14) and in certain specific sectors (Articles 6, 7, 15)[18]. In both contexts, the legislator has laid down certain "rules of engagement" and principles to be respected.

With regard to the first field, an introductory provision (Article 3) stipulates that artificial intelligence systems and models "for general purposes" must be developed and applied "with respect for human autonomy and decision-making power, damage prevention, knowability, transparency and explainability, ensuring human oversight and intervention" (paragraph 3, Article 3 of Law 132/2025). Secondly, "the use of artificial intelligence systems must not undermine the democratic functioning of institutional and political life and the exercise of the powers and functions of local institutions on the basis of the

[18] On general issues related to the use of artificial intelligence in administration, see D. U. Galetta, *Decidere con l'IA: un problema comune a tutte le aree della scienza*, 2 CERIDAP 374 (2024); D. -U. Galetta, *La Pubblica Amministrazione oggi, fra intelligenza artificiale e intelligenza umana*, in J.B. Auby, G. De Minico, G. Orsoni (eds.), *L'amministrazione digitale: quotidiana efficienza e intelligenza delle scelte. Atti del Convegno 9-10 maggio 2022, Federico II, Napoli* (2023).

principles of autonomy and subsidiarity, nor must it affect the freedom of democratic debate from unlawful interference by anyone, protecting the interests of state sovereignty and the fundamental rights of every citizen recognised by national and European law" (paragraph 4, Art. 3 of the aforementioned law). Furthermore, according to the more specific provision contained in Article 14 of the new law, entitled "Use of artificial intelligence in public administration", the use of artificial intelligence must be "instrumental and supportive of administrative activities, respecting the autonomy and decision-making power of the person who remains solely responsible for the measures and procedures in which artificial intelligence has been used" (paragraph 2 of the aforementioned article). In this case, the provision codifies the principle of "non-exclusivity" of algorithmic decision-making, as already established, as will be explained below, by case law. To ensure the correct use of new AI technologies, Article 14 requires public administrations to adopt technical, organisational and training measures aimed at ensuring the responsible use of artificial intelligence and developing the cross-cutting skills of users (paragraph 3 of the aforementioned article).

With regard to the second area, i.e. the special area, Law 132/2025 intervened by referring to the same principles and laying down some more specific requirements. In cases where artificial intelligence systems are used in judicial activities, the legislator has meaningfully envisaged that any decision on the interpretation and application of the law, the assessment of facts and evidence, and the adoption of measures "shall always be reserved to the judge" (Article 15(1) of Law 132/2025). This provision implements the aforementioned principle of non-exclusivity of decision-making through AI.

In the field of national security and defence, referring to the principles set out in Article 3, the legislator has also provided that "the processing of personal data using artificial intelligence systems is subject to Article 58 of the provisions of the code on the protection of personal data, referred to in Legislative Decree No. 196 of 30 June 2003". However, the provision referred to merely refers to an implementing regulation that is yet to be adopted.

Finally, in the healthcare context, according to Article 7, the use of AI systems must be carried out in compliance with the rights, freedoms and interests of the individual, including in relation to the protection of personal data. Furthermore, any use of intelligent systems "may not select and condition access to healthcare services according to discriminatory criteria" (Article 7(2) of Law 132/2025). The law gives the

interested party the right to "be informed about the use of artificial intelligence technologies" (paragraph 3).

The principle of non-exclusivity is confirmed also in this area, in the sense that "artificial intelligence systems in healthcare constitute a support in the processes of prevention, diagnosis, treatment and therapeutic choice, without prejudice to the decision, which is always left to medical professionals" (Art. 7, para. 5). Finally, the legislator expressly provides that artificial intelligence systems used in healthcare and the related data employed must be "reliable, periodically verified and updated in order to minimise the risk of errors and improve patients' safety" (Article 7(6)). Therefore, within the framework of the new law on artificial intelligence, it is clear that the legislator's main focus in terms of limits and requirements is on the healthcare sector.

However, it should be noted that, before the 2025 legislative intervention, some of the requirements and rules currently included in the new law that authorities —those that, as explained above, practically use these decision-making systems— must comply with, could be derived from certain provisions of sectoral laws, directives, and guidelines set forth by independent authorities (AgID, the Agenzia per l'Italia Digitale), and, above all, from the principles established by administrative courts.

In reference to the soft-law system established by the authorities in Italy, the AgID outlined certain 'rules' in its Three-Year Plan (2024-2026), drafted in December 2023 (Chapter 5 and Part Three Tool 5), which administrations must adhere to in order to ensure the protection of confidentiality regarding personal data, transparency, cybersecurity, data quality, human oversight, and the right to defence and review in proceedings involving AI tools. To use the algorithms, AgID requires public authorities to concentrate resources on strategic actions, including risk analysis, employee training, standardisation, sustainability, and foundation models.

The Italian Data Protection Authority places limits on the use of AI systems by public authorities with regard to the protection of confidentiality[19].

Reference is made, for example, to the opinions issued on the so-called *Redditometro*[20], the experiments of cross-referencing tax databases

[19] See, G. Cerrina Ferroni, *Intelligenza artificiale e ruolo della protezione dei dati personali*, 14.02.2023, available at *https://www.garanteprivacy.it/home/docweb/-/docweb-display/docweb/9855742.*

[20] In 2013, the Data Protection Authority addressed the issue of the so-called 'Redditometro', a control tool based on the automated processing of personal data in

for anti-avoidance purposes, and the penalty imposed for the INPS's use of data mining software in order to attribute a credibility score to the medical certificate presented by the worker[21]. The legal requirements put in place by the Data Protection Authority for the use of AI systems in the context of tax fraud are, for instance, related to the need to: (a) implement security measures, including of an organisational nature, above all with the aim of minimising the risks of unauthorised access to the data used for the aforementioned selection, with specific regard to the data contained in the file of financial reports; (b) carry out controls on the quality of the data used and on the logical processing carried out; (c) carefully assess the overall consistency of the position of each selected taxpayer by qualified operators prior to convening the taxpayer; and (d) adequately inform for the taxpayer convened in cross-examination, with particular reference to the nature of the data to be provided in such a forum and to the consequences of any failure or refusal to respond.

The Data Protection Authority has drawn up a decalogue for implementing national health services using AI systems systems aimed at supporting health services in preventive and proactive medical practices[22]. Lastly, the authority's stance on AI systems used in universities for remote examinations is of particular importance[23]. The legal requirement established by the Data Protection Authority for using the Respondus AI system mandates that the data controller limit the retention period of personal data used for remote examinations. In practice, it is essential to minimise the risk of profiling the behaviour of data subjects and prevent the retention of biometric data beyond the original processing purpose.

Administrative case law establishes a complex set of requirements and rules that algorithmic decisions must comply with in order to ensure

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the tax registry. The Authority expressed a favourable opinion on the Revenue Agency's request while defining the necessary guarantees for the respect of the rights of those concerned. Also in the tax field, it is worth mentioning experiments with procedures for identifying evasion profiles through the analysis of finalised data. On that occasion, the authority identified the appropriate security and organisational measures to ensure that control by means of an algorithm complied with personal data protection but was at the same time effective.

[21] Provv. 14 March 2019, No. 58, web doc. no. 9106329 and, previously, Provv. 20 July 2017, No. 321, web doc. no. 6843736).

[22] *https://www.garanteprivacy.it/documents/10160/0/Decalogo+for+the+realisation+of+national+health+services+through+systems+of+Artificial+Intelligence.pdf/a5c4a24d-4823-e014-93bf-1543f1331670?version=2.0.*

[23] Injunction Order against Università Commerciale "Luigi Bocconi" of Milan - 16 September 2021 No. 317 (Proctoring Bocconi).

citizen welfare. At first, case law rejected automated decisions, asserting that an algorithm, albeit pre-set, can never guarantee the protections of due process envisaged by the General Law on Procedures (L. 241/1990) (TAR Lazio, section III bis, 10-13 September 2019, no. 10964). The case concerned the adoption of an extraordinary recruitment plan in the school context under Law no. 107/2015 (the so-called "Buona Scuola" act), referring to an algorithm managing transfers and assignments).

A second, more recent, orientation clearly acknowledges the use of purely automatic decisions, which can be automated insofar as they are 'non-discretionary'. The lack of human intervention in the mere automatic classification of numerous instances according to predetermined rules (which have been developed by humans) and the delegation of this task to an efficient computer appear to be legitimate interpretations of Article 97 of the Constitution (Council of State, section VI, 8 April 2019, no. 2270). In this instance, we refer to "serial or standardised procedures, characterised by the acquisition of certain and objectively verifiable data and the absence of any discretionary appreciation" (Council of State, section VI, 8 April 2019, no. 2270).

Courts have established the limits and legal requirements for using these systems in several rulings.

In Judgment no. 8472/2019, the Sixth Section of the Council of State outlines an initial 'decalogue' on algorithmic lawfulness. An important component in the construction of this decalogue is the European Privacy Regulation. The conditions for the possibility of using AI systems are transparency, non-exclusivity (or required human involvement), and non-discrimination.

The first principle allows citizens access to the algorithm pursuant to Law 241/90 Article 22 ff. There is, according to the court, a duty for administrations to provide not only all the instructions concerning how the algorithm works, ensuring the comprehensibility of the functioning of the software on the part of ordinary citizens, but also the source computer language (the source code) used to build the algorithmic system[24]. The right of access to the algorithm is understood as the right to "decipher its logic" (Council of State 8472/2019). The citizen has, in

[24] This is not easy because, as observed, "decision-making processes are characterised by not being visible from the outside, especially from the subjects directly involved in the decision, and sometimes even from the inside, one thinks of the cases in which the mathematical process detects correlations and patterns that are completely unexpected for data scientists" A. Moretti, *Algoritmi e diritti fondamentali della persona. Il contributo del regolamento (UE) 2016/679*, 4-5 Il diritto dell'informazione e dell'informatica 802 (2018).

other words, the right to know "the logical process on the basis of which the act itself [was] issued by means of automated procedures as to its dispositive content" (Council of State, 8472/2019). This transparency and knowability requirement is traceable in essential terms "to the principle of motivation and/or justification of the decision" referred to in Article 3 of the general law on administrative procedure L. 241/1990[25].

As clarified in legal scholarship, citizens must always be sure of being able to understand the rule that underlines the decision, even when it is expressed "in a language other than legal language", and its traceability must be ensured[26]. It is evident that so-called rule-based algorithms pose quite different problems from machine learning algorithms[27].

The Italian court refers to the GDPR (European Privacy Regulation), which requires the data controller (in this case public authorities) to provide meaningful information about the logic used, taking into account "the importance and the expected consequences of such processing for the data subject" (Council of State, section VI, 13.12.2019 no. 8472., see Article 14(2), letter g) of the GDPR). Following the further guidance of Article 15 of the European Privacy Regulation, we emphasise the right to be informed of the existence of any automated decision-making processes.

A second aspect is the principle of non-exclusivity, regarding which courts have stated that the recipient of the legal effects of an automated decision has the right not to have that decision based solely on an automated process, so the public official is responsible for "checking, and thus validating or, on the contrary, refuting the automated decision". As a consequence, a decision adopted using an algorithm always requires the authority in question to perform an ex-ante selection and verification, also through the constant testing, updating, and refinement of the algorithm. Moreover "in such cases, the possibility must be contemplated that it is the judge who must carry out, for the first time on a 'human' level, evaluations and assessments made directly by automatic means", such that an automated decision "requires

[25] We refer for further comments to A. Simoncini, *L'algoritmo incostituzionale: intelligenza artificiale e il futuro delle libertà*, 1 Biolaw Journal 73 (2019).

[26] D.-U. Galetta, J.G. Corvalán, *Intelligenza Artificiale per una Pubblica Amministrazione 4.0? Potenzialità, rischi e sfide della rivoluzione tecnologica in atto*, in 3 *Federalismi.it* (2019); F. Patroni Griffi, *La decisione robotica e il giudice amministrativo*, in *https://www.giustizia-amministrativa.it*, 28 August 2019.

[27] G. Fasano, *Gestione dell'algoritmo in ambito pubblico: le smart cities quale crocevia di diritti fondamentali,* 29 *Federalismi.it* (2022).

the court to assess the correctness of the automated process in all its components" (Council of State, section VI, 8 April 2019, no. 2270) (TAR Campania, Naples, section III, 14 November 2022, no. 7003).

A third aspect is the issue of data security, with regard to which the Council of State stated that recital no. 71 of the GDPR requires a "further fundamental principle, of algorithmic non-discrimination, according to which it is appropriate for the data controller to use suitable mathematical or statistical profiling procedures, putting in place appropriate technical and organisational measures in order to ensure, in particular, that factors leading to inaccuracies in the data are rectified and the risk of errors is minimised, and in order to ensure the security of personal data, in a manner which takes into account the potential risks to the interests and rights of the data subject and which prevents, inter alia, discriminatory effects against natural persons on grounds of racial or ethnic origin, political opinions, religion or beliefs, trade union membership, genetic status, health or sexual orientation, or measures having such effects" (Council of State, section VI, Judgment no. 8472 of 2019).

A recent special legislative provision has laid down principles and legal requirements for algorithms. However, scholars have argued that the contents of this special legislation could be broadly applied to protect citizens affected by automated administrative actions and/or the use of AI systems[28].

This is the case of Article 30 of Legislative Decree 36/2023 (the Public Contracts Code) concerning the use of automated procedures throughout the life cycle of public contracts.

The rule established that public administrations may use AI systems for public contracts in compliance with the following principles.

The first principle is transparency, which is the right of every economic operator to be informed about the existence of automated decision-making processes that affect them—a principle derived from case law related to the GDPR. Thus, "public administrations shall publish on their institutional website in the transparent administration section, the list of the technological solutions referred to in paragraph 1 used for the purposes of carrying out their activities" (Article 30(5) Legislative Decree 36/2023).

Another aspect of the principle of transparency is the right of the interested party (the economic operator) to understand the logic of the algorithm, which belongs solely to them. Article 30 states that

[28] E. Carloni, cit. at 7, 73.

individuals have the right not only to know about the algorithm but also to its 'comprehensibility', namely they are entitled to meaningful information regarding the logic employed. Therefore, the right to access the source code and documentation pertaining to the operating logic is granted.

The second principle of algorithmic legality is the non-exclusivity of the algorithmic decision, which mandates that the decision-making process must have a "human contribution capable of controlling, validating or refuting the automated decision" (Article 30(3) letter b of Legislative Decree 36/2023). The principle can also be interpreted to mean that an authority must have an internal algorithm manager, i.e. a physical person to provide explanations to competing operators and demonstrate that the administration is not subordinate to machines. If the official is able to explain, he or she can reasonably confirm or deny the automated decision.

The third principle is algorithmic non-discrimination: in this sense, the holder "shall implement appropriate technical and organisational measures to prevent discriminatory effects against economic operators" (Article 30(3) letter c). Connected to this provision is Article 30(4), which requires contracting authorities to "take all appropriate technical and organisational measures to ensure that factors leading to inaccurate data are rectified and the risk of errors is minimised, as well as to prevent discriminatory effects against natural persons on the basis of nationality, ethnic origin, political opinions, religion, beliefs, trade union membership, somatic features, genetic status, health status, gender or sexual orientation".

Lastly, on the subject of public selective procedures (competitions or public tenders) in which the admissibility of the participant's application is left to an automated response system, case law has codified another rule. It is the responsibility of persons intending to take part in the competition to act promptly to prevent any last-minute issues that could prevent them from submitting their application on time. This principle emphasises user self-responsibility. Other case law has established the opposing principle regarding the platform operator's liability for malfunctions (TAR Lecce, 9 May 2018 no. 793, Council of State, section III, 3 July 2017 no. 3245).

V. Who builds the algorithmic technologies used by public authorities? Are these developed by public entities, private companies, or a hybrid body?

When addressing algorithmic technologies and their acquisition by public administrations, one must consider the general methods established for acquiring ICT tools. In this context, one can refer to the survey conducted by AgID regarding the 2024-2026 Guidelines.

The Authority emphasised that since 2000, our country has implemented a programme to rationalise purchases, which is based on strategies for aggregating and centralising public procurement across all sectors, including ICT, digitalisation, and digital transformation. AgID notes that, during the three-year period from 2024 to 2026, purchases of innovation will primarily focus on experimenting with commercialisation models, acquiring AI systems, and enhancing industrial capabilities in the sector. The observations in the report are supported by several regulatory actions taken in recent years. In particular, the Decree of the Ministry of Economic Development of 31 January 2019 on the Allocation of resources of the Sustainable Growth Fund for the implementation of public calls for intelligent public demand, with which the State has financed the calling of tenders aimed at the conclusion of contracts (Article 2 of the Ministerial Decree).

Italy has therefore chosen to pursue a strategy of outsourcing technological goods and services, adhering to the model and regulations of innovation and/or pre-commercial procurement, thereby deviating from the Public Contracts Code, except for the principles outlined in Articles 1, 2, and 3 of the Code itself. The procedure is governed by the Communication of the Commission 14.12.2007 on Pre-commercial public procurement (see in this regard recital no. 47 of EU Directive No. 24/2014 and the Communication of the European Commission, 1.4.2020 where it is foreseen that public purchasers may also collaborate more closely with innovation ecosystems or networks of entrepreneurs that could propose solutions).

In the definition of "smart demand calls" in Article 2, the Decree of the Ministry of Economic Development states that financial resources are utilised to support economic operators, in collaboration with organisations and/or research centres, to conduct activities related to the development, prototyping, and testing of new solutions that address the country's 'smart needs' identified by individual public administrations. According to Article 2(1) of the Ministerial decree, these activities leverage significant technological advancement to "improve the quality of life of citizens and/or the business environment of companies in the national territory and/or generate a significant impact on the efficiency of the operation of the public administration".

Article 2(3) of the Ministerial Decree provides that the Ministry of Economic Development must implement the interventions by means of one or more calls for tenders, issued "in accordance with the model and relevant discipline of innovation and/or pre-commercial procurement", currently laid down in Article 135(2) of Legislative Decree 36/2023.

In these cases, the procedure aims to encourage operators and companies to develop new solutions, often based on emerging technologies (Article 2 of the Ministerial Decree of 31 January 2019). Smart requirements are also identified centrally by the State. In fact, Article 2(2) establishes that it is the Ministry of Economic Development that is responsible for surveying and selecting the 'smart needs' as expressed by the country, also in cooperation with other public authorities.

Thus, demand planning is centralised; tenders are called by the State through the AgID, which, according to Article 14-*bis* CAD (*Codice dell'Amministrazione Digitale*, Legislative Decree 82/2005), is the implementing body for all interventions promoting the country's digital strategy.

Companies, start-ups, universities, research centres, third sector organisations and freelancers can take part in tenders and propose innovative projects designed to meet the needs indicated by the administrations participating in the programme.

In the execution phase of agreements with private operators, the Ministry of Economic Development may make use, on the basis of a specific agreement, of the Agency for Digital Italy (Article 2(6) DM, Article 19 Decree-Law no. 83/2012, Article 19 Decree-Law no. 179/2012).

As things currently stand, Smarter Italy is the main innovation procurement experiment programme promoted by the government and implemented by AgID with the participation of Local Authorities, which has allocated substantial financial resources in order to acquire technological systems, including AI[29]. In 2021, agreements were signed with all the parties involved, including ministries and local authorities. The budget for implementing Smarter Italy exceeds EUR 90 million. The municipalities and other administrative bodies selected to participate in the programme, which identify needs to be met through innovative services, will serve as laboratories for experimenting with emerging technologies.

[29] *https://smarteritaly.agid.gov.it/index.php/il-programma/cose-smarter-italy/.*

In October 2021, the parties approved the Executive Plan, which includes the timetable of activities, the strategy for publishing calls for tenders, and the allocation of professional and financial resources.

The thematic areas defined in the programme are: 1) smart mobility; 2) the enhancement of cultural heritage; 3) social and personal well-being; and 4) the environment.

Tender procedures (referred to as 'challenges') are launched for each requirement. The government has set up a platform (www.appaltinnovativi.gov.it) for the procurement of innovation for public administration implemented by AgID, which will also take care of the operational phase. Through the platform, interested companies will be able to join calls for tenders and submit proposals to meet the needs of administrative bodies that have joined each challenge.

From an overview of these procedures, it emerges that the platform collects both pre-commercial procedures (PCPs) and procedures falling under the Public Contract Code among the so-called elastic procedures, i.e. competitive dialogue and innovation partnership.

From an overview of these procedures, it emerges that the platform collects both pre-commercial procedures (PCP) and procedures falling under the discipline of the Public Contracts Code among the so-called elastic procedures, i.e. competitive dialogue and innovation partnership [30].

The tender procedures currently in progress are centrally managed by the State and also involve services characterised by the use of AI systems. These include 'HSMonitor', a procedure to design and procure ICT-based decision support systems in healthcare able to improve the diagnosis, treatment, and care of people suffering from hypertension and other diseases, such as diabetes.

There are other tenders associated with the first action of the Smarter Italy programme, which involves defining one or more innovative tenders for the development of solutions to improve the mobility and logistics of Italian cities according to the 'Smart City' paradigm. The action involves the municipalities involved in the 5G network experiment, namely Bari, Cagliari, Catania, Genova, L'Aquila, Matera, Modena, Prato, Rome, Turin and the "Borghi del Futuro" (Alghero, Bardonecchia, Campobasso, Carbonia, Cetraro, Concorezzo, Ginosa, Grottammare, Otranto, Pantelleria, Pietrelcina, and Sestri

[30] For an overview on the regulation and prerequisites for calling elastic procedures, see S. D'Ancona, *Elementi nuovi di flessibilità nelle procedure di scelta del contraente,* in M. Cafagno, C. Leone, M. Barbera, M. Fazio (eds), *La nuova stagione dei contratti pubblici tra incertezze e responsabilità* (2019).

Levante). These cities have articulated their needs for innovation regarding traffic, pollution, the well-being of historical centres, and the usability of industrial districts. These needs can be scaled up across the country. On the basis of the needs that have emerged, a public consultation has been launched with market operators, including companies, start-ups, universities, and research centres. If necessary, a call for tenders will be made at a later date. The winning solutions are tested in the territories of the proposing municipalities, tranforming them into advanced laboratories for the intelligent mobility of people and goods.

VI. Is there a centralised infrastructure for digital data management, or are there several infrastructures? If the latter is true, is interoperability guaranteed, and to what extent? Are there any rules or procedures governing the exchange of information between different administrative bodies?

The topic of data is a fundamental issue reflected in the Italian Constitution, which in Article 117(2)(r) states that the statistical and computerised coordination of data among the State, regional, and local administrations is a matter to be regulated solely by the laws of the State. Efficient management and easy access to information enable public institutions to make informed, evidence-based decisions, thereby improving the quality and effectiveness of administrative actions[31]. Recently, AgID's 2024-2026 Three-Year Plan acknowledged that the vast amount of data produced by public authorities, if of high quality, could also form the basis for a wide variety of applications, including those related to AI (Chapter 5 - Data and Artificial Intelligence, p. 77).

The authority emphasised the necessity for each public authority to evolve into a "digital administrative ecosystem" and to implement "collective digital processes" using e-services, such as API interfaces for automated and interoperable data and information exchange. This could facilitate the implementation of the once-only principle by transitioning from the concept of a "Platform for Government", with a deeper vision of the paradigm—specifically, "Government as a Platform". This idea is also expressed in the EU Communication (2021)118 on the Digital Compass 2030, which states that the ecosystem is not an external entity

[31] G. Carullo, *Piattaforme digitali e interconnessione informativa nel nuovo Codice dei Contratti Pubblici*, 19 *Federalismi.it* (2023).

but rather something supported by the public entity to enhance service delivery (Chapter 1, p. 17).

Public data are essential for both the exchange between public authorities in carrying out their activities and for private entities that provide services by leveraging the economic potential of public data. To ensure these purposes, the Italian legislator has established specific rules, as will be explained.

The AgID Three-Year Plan, therefore, highlighted that in Europe, data that are important for the above-mentioned reasons also include high-value data identified with the Implementing Regulation (EU) 2023/138 on the basis of the six thematic categories established with the Open Data Directive.

Furthermore, AGID has adopted a specific *Operational Guide* on High-Value Data Sets as a guidance document for public administrations to facilitate more effective implementation of European provisions[32]. This operational guide aims to provide administrations holding high-value datasets with operational and detailed guidelines to improve the implementation of the European Regulation and, consequently, support them in the process of opening and reusing this particular type of data.

These initial remarks indicate that Italy currently has a fragmented system of public data management, where each public authority, company, or service manager oversees its own databases relating to its institutional performance.

There are, however, some centralised databases. These are reliable, uniform in type and content and relevant to the performance of institutional functions by public authorities as well as for analytical purposes. They form a crucial backbone of the public information heritage, intended for access by all PAs. The Digital Administration Code mentions, among these, the database of territorial data (Article 59), the National Register of Resident Population (Article 62), the National Database of Public Contracts (Article 62-*bis*), and the Registry of Assisted Persons (Article 62-*ter*), etc.

In addition, as noted, data are maintained by various authorities, each according to its competencies. Consequently, the legislation has established principles that must be adhered to by data-holding authorities, ensuring the exchange of data among various public bodies.

The CAD stipulates that public administration data must be created, collected, stored, made available, and accessible using

[32] See Chapter 5 - Data and Artificial Intelligence, p. 77. The operational guide is available at *https://www.agid.gov.it/sites/default/files/repository_files/guida_operativa_hvd_-_ver._1.0.pdf.*

information and communication technologies that facilitate their use and reuse by other public administrations and private parties. The limits on the knowability of data established by laws and regulations, as well as the rules governing personal data protection and adherence to Community legislation on the reuse of public sector information remain unchanged. Any data held by one administration is made accessible and usable by other administrations when needed for the performance of the requesting administration's institutional tasks, with no charge (Article 50(1)(2) CAD). This is, of course, subject to privacy legislation.

Public authoritites ensure and facilitate the exchange of data among themselves and allow other administrations free access to their databases through "applicative cooperation" (Article 58(2) CAD Data Usability Mode). Applicative cooperation, according to the definition of the same Code, is part of the Public Connectivity System designed for interaction between the IT systems of the participating subjects in order to guarantee the integration of metadata, information, administrative processes and procedures (Article 1(1)(ee)). Through applicative cooperation, several information systems (belonging to public authorities) are interoperable. In Italy, the government has drawn up a national catalogue for the exchange of data and information between public administrations, the standards of which are defined by the type of data used to make the exchange of data between different information systems possible[33].

Furthermore, Italy is moving towards requiring each administration to share its databases on a national platform.

In this regard, Chapter V of the Digital Administration Code (the so-called CAD, i.e. Legislative Decree 82/2005) is dedicated to public administration data, digital identities, and online applications and services. Article 50-*ter*, entitled 'Digital National Data Platform', requires the State to promote the design, development, and implementation of a Digital National Data Platform (PDND) to foster the knowledge and use of the information assets held for institutional purposes by public authorities, as well as sharing data between public and private entities entitled to access them and simplifying administrative requirements for citizens and businesses (the once-only principle). With the Decree of 22 September 2022, the President of the Council of Ministers established the obligations and terms for accreditation to the National Digital Data Platform (PDND) and identified the deadline by which all public authorities and publicly controlled companies must be accredited to the

[33] *https://www.schema.gov.it/.*

platform in order to develop the programming interfaces (APIs) referred to in Art. 50-*ter*, paragraph 2, of the CAD and to make their databases available on the PDND (the deadline is 30.09.2023 for public authorities, 31 March 2024 for public service operators, and 30 September 2024 for Publicly Controlled Companies). Considering that there are approximately 22,000 public authorities and public service operators registered on the PA Index, the adherence of administrations and operators on 9 January 2024 corresponded to 1/5 of the registered authorities.

At the same time, the regulations require public administrations to transfer their databases to the cloud. Article 35 of Decree-Law 76/2020 requires public administrations to migrate their CEDs to cloud environments: part of the PNRR serves to finance precisely this data migration.