iUS PUBLICUM NETWORK REVIEW
www.ius-publicum.com

ARTIFICIAL INTELLIGENCE: PERSONAL IDENTITY, DATA OPERATORS OBLIGATIONS AND PUBLIC ADMINISTRATION

Roberto CAVALLO PERIN[1]

INDEX

[1] Full Professor of Administrative Law, Department of Law, University of Torino.

1. THE MEANS AND PURPOSE OF PUBLIC ACTION

The Italian Recovery and Resilience Plan (PNRR) is essentially intended to empower the public administration to spend money "expeditiously and effectively". In such case the procedure appears to be reversed with respect to the ordinary. This ultimate purpose makes action legitimate.

The issue is common for public administrations, not only in emergency situations. In cases of emergency legal certainty based on compliance with regulatory standards established by law or regulation and dictated by *ex ante* legitimacy is lost, while the substantive law of contingent or necessary choices comes to the fore. All this is governed by the choices of the public administration (*i.e.* in Italian "*merito amministrativo*") within the limits set by the principles of the legal order and the rationale of the choices made, which are inevitably provided *ex post* by the jurisdiction (case-law)[2].

It is a course of action that exposes the administration to the risk of having their decisions overturned by a judicial review, which is exercised after the events have fully unfolded, and comes from an institutional third party, not required to be familiar with the culture that is peculiar to the public administration.

This gap results from the consideration that judicial review is exercised over choices that the administration had to make *in real time* and, as already mentioned, without being able to plead the protection of laws or regulations, which are the expression of the political, legislative or administrative policy in the legal orders of the EU Member States and to a certain extent apply to define the boundaries of the institutional scope of action left by the system to the administration or the jurisdiction.

[2] G. MORBIDELLI, *Delle ordinanze libere a natura normativa*, in *Dir. Amm.,* 1, 2016, 33 et seq. See also R. CAVALLO PERIN, *La cura dell'interesse pubblico come dovere istituzionale che esclude l'annullamento per violazione di legge,* in *Dir. Amm.,* 1, 2022, spec. 126.

The loss of the legal certainty provided by the general and abstract rules and regulations, leaves the public administration alone in dealing with the jurisdiction, which provides for the exercise of judicial oversight not only on the effectiveness of the deeds issued by it, but also on the criminal, civil and administrative liability that follows those actions performed by public employees and officials (Art. 28, Italian Const.), with a spread and resulting positions that have often encouraged a sub-culture of defensive administration[3].

Without considering the legislative definition of the powers that ground the voidability of administrative actions (in Italy, Art. 21-*septies*, Law no. 241 of 7 August 1990), and merely concentrating on the standards that regulate their validation whose breach grounds the voidability of those administrative actions (in Italy, Art. 21-*octies*, Law no. 241 of 7 August 1990), it is certain that urgency and situations of need can override procedures, strings and ties, more precisely those standards of action designed for the routine. The immediate fulfilment of the public interest has to be achieved, with the administrative pursuit of objective, and needed "output" in the management definition.

More than 80 years ago, we had already been warned that in the unsolvable conflict between the duty to pursue the public interest and the duty to comply with the rules, the latter must surrender, since it is constitutionally unacceptable for a public institution to fail to fulfil its founding ground[4]. The public interests entrusted to the institution are indeed their founding ground, so that any failure to fulfil such interests results in the failure of its survival as an institution.

[3] S. BATTINI-F. DE CAROLIS, *Indagine sull'amministrazione difensiva*, in *Rivista italiana di Public Management*, 2, 2020, 343 et seq.

[4] G. MIELE, *Le situazioni di necessità dello Stato*, in *Arch. dir. pubbl*., 1936, spec. 425-426, on which reference may also be made to R. CAVALLO PERIN, *La cura dell'interesse pubblico come dovere istituzionale che esclude l'annullamento per violazione di legge*, cit., 122 et seq.

This is an extreme resort to be avoided, or which one must escape from whenever possible, by trying to find solutions that should attempt to avoid the conflict between duties as well as situations of need by the State, by resorting, to all the institutional and technological instruments available.

Algorithms and artificial intelligence can help us, for they enable the public administration to reach hitherto levels of knowledge still to be achieved and that we should make use of, by understanding their in-depth rationale behind the administrative practices, taking advantage of the benefits and pointing out both the old and new the legal limits that are essential to protect us from bad experiences.

2. ALGORITHMS AND PUBLIC ADMINISTRATION: ACHIEVING AN UNDERSTANDING, DISCUSSING AND MAKING A DECISION

Technology and specifically artificial intelligence both permit to know exactly what data is available to the public administration to help them taking decisions and to fully acknowledge the institutional information revealed through their decisions[5].

If a public entity can be identified by its decisions and actions over time, that is by its "performance" (Art. 97, para. 2, Italian Const.), then the systematised study of the public administration and its connected institutions by means of artificial intelligence appears to be indeed required.

[5] H. ZECH, *A Legal Framework for a Data Economy in the European Digital Single Market: Rights to Use Data*, in *Journal of Intellectual Property Law & Practice*, n. 11, 2016, 460. Recently, M. MICHELI, S. THABIT GONZALEZ, S. SIGNORELLI, E. FARRELL, A. KOTSEV, *Data sovereignty for local governments. Considerations and enablers*, European Commission, Ispra, 2024.

Public administration is made by entities that are important not only because they are constituent organisations of the Italian constitutional order (Art. 114, Italian Const.), but also because they have been able to define themselves over time as institutions, with countless measures and different types of administrative procedures. Decisions were based on the daily provision of public services, permits, prohibitions and licences or simply the access to databases through the filing of deeds from the various branches of public administration. This is the most extraordinary opportunity to gain knowledge, and thus to critically revisit and define the worthiness of public bodies and offices, as proven *ex post* by years of exercising functions or providing public services, a track record that is useful to qualify for entitlement to own functions (Art. 118, Italian Const.) no matter whether as single entities or united in conventions or consortia.

Democracy is first and foremost established as an appropriate distribution of functions among the constituent bodies and entities of the Italian Republic and of the European Union. The appropriate distribution that is defined "adeguacy" (*i.e.* in Italian "*adeguatezza"*) can be proven by virtue of a reasonable knowhow, which must be substantiated with reasonable grounds, but which becomes a definition of the ability (potential) of bodies and entities that can therefore legitimately claim other functions for each of them[6], considered either separately or in cooperation (Art. 197, TFEU). This is rather similar to the way economic operators are required to prove their qualification grounds, either technical or financial[7].

[6] For the use of algorithmic knowledge as a tool for defining the adequacy of public administration, refer to R. CAVALLO PERIN, *Dalle riforme astratte dell'amministrazione pubblica alla necessità di amministrare le riforme*, in *Dir. pubb*, 1, 2021, 73 et seq.; on adequacy as a principle not only of attribution of functions but also of connotation of territorial entities: E. CARLONI, *Differenziazione e centralismo nel nuovo ordinamento delle autonomie locali: note a margine della sentenza n. 50/2015*, in *Dir. pubb*., 1, 2015, spec. 151 et seq.; F. MERLONI, *La leale collaborazione nella Repubblica delle autonomie*, in *Dir. pubb*., 3, 2002, 827 et seq.

[7] Art. 24, Italian Public Contracts Code, regulating the Virtual Company Dossier. See, G.M. RACCA, *Digital Transformation for an Effective E-Procurement*, in C. RISVIG HAMER, M. ANDHOV, E. BERTELLSEN, R. CARANTA

The use of artificial intelligence, machine learning and neural networks, greatly enhances the ability of public organisations to acquire understanding, discuss and deliberate[8]. Actually, we can more accurately purport that artificial intelligence frees up resources for to enhance insight by individuals and enabling meaningful innovations in the decision-making capacity of public organisations[9].

This is fully compliant with the Constitution as regards efficiency, effectiveness and also cost wise. A good performance of the administration (Art. 97, Italian Const.) entails a better level of knowledge and greater strength than at present. Therefore, a greater precision and care for the facts as well as in the way they are perceived and experienced by individuals and the social environment in which they live.

The level of complexity of the choices that have to be made today no longer allows for reliable decisions to be taken without the ability to know, discuss and decide also based on what artificial intelligence tools offer. The choices made and the decisions taken by the public administration must be based upon reasonable grounds. This means with the help of 'artificial intelligence tools' capable of processing a huge mass of data, reviewing choices made in many previous years, distinguishing and selecting case histories with a high level of precision. All this, in order not to be held liable of insufficient instructional or participatory data.

(eds.), *Into the Northern Light. In memory of Steen Treumer*, Ex Tuto Publishing, Copenaghen, 2022, 218 et seq.; I. DA ROSA, *Digital Transformation of Public Procurement*, in *Ius Publicum Network Review*, 1/2023.

[8] L. EINAUDI, *Prediche inutili*, (Useless Sermons) Torino, 1959, 5: *Learn, discuss and then decide*.

[9] The need to access and know data has become drastically high during the Covid-19 pandemic. See, KAI KUPFERSCHMIDT, *A completely new culture of doing research. Coronavirus outbreak changes how scientists communicate*, in *Science*, 2020, 1. For a deeper examination C. CASTALDO, *Big Data, Power, and Knowledge. Regulatory Aspects of Access to Big Data and the Digital Services Act Package*, in *Ius Publicum Network Review*, 1/2022.

This is an asset quite different from human intelligence, in other words, there is nothing like the ability of direct '*intelligere'*. Yet, AI is an artifice in the sense that it benefits from the ability to process previous decisions organised into a system, for predictive purposes, or reach decisions with varying degrees of precision[10].

It has been said that the Italian Recovery and Resilience Plan envisages the digitisation of all data belonging to national public administration entities[11] starting with the migration of all public data to the cloud, thus setting up national platforms that must overcome the so-called *silos* of the databases of individual Ministries, since databases are now in breach of the interconnection obligation set forth in the European Union regulations (digital and interoperability by default)[12].

3. LEGAL BASIS OF DIGITAL ADMINISTRATIVE ACTS

The legal basis for the digital administrative acts can be found in different rules of the Italian legal system, starting from the general legal framework established by law regarding administrative procedure. It sets forth that public administration actions and acts

[10] See *amplius* R. CAVALLO PERIN, *Ragionando come se la digitalizzazione fosse data*, in *Dir. Amm*., 2, 2020, 305 et seq.

[11] For an analysis of the measures taken and to be taken with the PNRR and, in particular, for the digitisation of the public administration: *Il PNRR come motore del cambiamento dell'amministrazione,* fascicolo monografico, *Istituzioni del federalismo,* 2, 2022.

[12] M. DEMICHELIS, *Il coordinamento delle informazioni geografiche e territoriali per la transizione digitale del governo del territorio*, in *Dir. Amm*., 2, 2023, 407 et seq.; for the establishment of the national digital data platform as an expression of statistical information coordination, I. ALBERTI, *La creazione di un sistema informativo unitario pubblico con la Piattaforma digitale nazionale dati*, in *Istituzioni del federalismo*, 2, 2022, 473 et seq. See the recent EU Regulation 2024/903 of the European Parliament and of the Council of 13 March 2024 laying down measures for a high level of public sector interoperability across the Union (Interoperable Europe Act).

be carried out by means of computerised and digital tools, both in terms of their mutual procedures and processes as well as by and between all entities and private parties (Art. 3-*bis*, Law no. 241/1990)[13], in order to achieve greater efficiency in their activities (Art. 97, Italian Const.).

Moreover, all the constituent bodies and entities of the Italian Republic (Art. 114, Italian Const.), from the State to the Regions and local autonomous entities, must guarantee digital access to public data (availability, management, access, transmission, preservation and usability[14]), with the obligation of organising information and communication technologies in an appropriate and adequate manner to meet users' interests (Art. 2(1), Legislative Decree no. 82/2005[15]).

[13] On the relationship between the use of new technologies and good performance of public administration D.U. GALETTA, *Digitalizzazione e diritto ad una buona amministrazione. Il procedimento amministrativo, fra diritto UE e tecnologie ICT*, in *Diritto dell'amministrazione pubblica digitale* (R. CAVALLO PERIN-D.U. GALETTA eds.), Torino, 2020, spec. 85 et seq.; also ID., *Il diritto ad una buona amministrazione nei procedimenti amministrativi oggi (anche alla luce delle discussioni sull'ambito di applicazione dell'art. 41 della Carta dei diritti UE)*, in *Riv. It. Dir. Pubbl. Com*., 2019, 165 et seq.; for the legal basis for the issuance of algorithmic administrative acts, let us refer to R. CAVALLO PERIN-I. ALBERTI, *Atti e procedimenti amministrativi digitali*, in *Diritto dell'amministrazione pubblica digitale*, cit., 147 et seq. See D.U. GALETTA, *Public Administration in the Era of Database and Information Exchange Networks: Empowering Administrative Power or Just Better Serving the Citizens*, in *European Public Law*, 2, 2019, 171 et seq.

[14] G. CARULLO, *Gestione, fruizione e diffusione dei dati dell'amministrazione digitale e funzione amministrativa*, Torino, 2018. EU law has focused on opening up data held by national administrations since the the EU Directive of 7 June 1990 on the freedom of access to environmental information, in particular Directive 2003/98/EC1, recently amended by Directive 2019/1024/EU on the openingup of data and the re-use of data and the re-use of public sector information.

[15] For a reflection on the relationship between the use of new technologies to ensure the adequacy of the administration in the exercise of its functions: E. D'ORLANDO, *Algoritmi e organizzazione dell'amministrazione locale: come declinare il principio di adeguatezza affrontando la complessità. L'evoluzione di un'idea* (G.F. FERRARI ed.), Milano-Udine, 2020, also in *L'amministrazione pubblica con i big data: da Torino un dibattito*

Anyone has the right to use the tools of the digital administration in an accessible and effective manner, also for the exercise of the rights of access (to know) and participation (to discuss) to the administrative procedures (Art. 3, para. 1, Legislative Decree no. 82/2005[16]). Further, the right for anyone to use public administrations and public services in digital form and in an integrated manner[17] is added and exercised through the electronic tools provided by public administrations (Art. 7, para. 1, Legislative Decree no. 82/2005)[18].

sull'intelligenza artificiale (R. CAVALLO PERIN ed.), Quaderni del Dipartimento di Giurisprudenza dell'Università di Torino, 2021.

[16] On the relationship between technologies and democracy: P. COSTANZO, *La «democrazia digitale» (precauzioni per l'uso)*, in *Dir. pubb*., 1, 2019, 71 et seq.

[17] A. MASUCCI, *Digitalizzazione dell'amministrazione e servizi pubblici on line. Lineamenti del disegno normativo*, in *Dir. pubb*., 1, 2019, 117 et seq.; see also ID., *Erogazione on line dei servizi pubblici e teleprocedure amministrative. Disciplina giuridica e riflessi sull'azione amministrativa*, in *Dir. pubb*., 3, 2003, 991 et seq.; for the relationship between online public services and the guarantee of rights: P. PIRAS, *Il tortuoso cammino verso un'amministrazione nativa digitale*, in *Dir. dell'informazione e dell'informatica*, 1, 2020, spec. 46-47; public services that are increasingly provided through platforms, recently G. CARULLO, *L'amministrazione quale piattaforma di servizi digitali*, Napoli, 2022.

[18] These entities provide for the reorganisation and updating of the services rendered, on the basis of a prior analysis of the real needs of users, and make their services available online in compliance with the provisions of this Code and with the standards and levels of quality identified and periodically updated by AgID with its own Guidelines, also taking into account technological evolution (Article 7, Legislative Decree No. 82 of 2005). On access to online public services of the public administration and its relationship with access to fundamental rights, also with the configuration of a so-called digital citizenship: E.N. FRAGALE, *La cittadinanza amministrativa al tempo della digitalizzazione*, in *Dir. Amm.*, 2, 2022, spec. 471 et seq.; M. CONSITO, *La cittadinanza e le sue forme*, Napoli, 2021, spec. 149 et seq.; G. PASCUZZI, *La cittadinanza digitale*, Bologna, 2021; on the issue of Internet access: T.E. FROSINI, *Liberté, egalité, Internet*, Napoli, 2015; T.E. FROSINI-O. POLLICINO-E. APA-M. BASSINI, *Diritti e libertà in Internet*, Firenze, 2017; T.E. FROSINI, *Il Diritto costituzionale di accesso a internet*, in *Rivista AIC*, 1, 2011; ID, *Il costituzionalismo nella società tecnologica*, in *Dir. dell'informazione e dell'informatica*, 3, 2020, spec. 465 et seq.

The preparatory phase of the administrative procedure is collected (art. 12, Legislative Decree no. 82/2005) in a virtual dossier (art. 41, Legislative Decree no. 82/2005) that must be accessible electronically, and it must be possible to monitor both the progress of the procedure and the availability of the information it contains (art. 50, Legislative Decree no. 82/2005[19]).

Therefore, both individuals and legal entities must have a digital identity[20], a digital domicile (Art. 3-*bis*, Legislative Decree no. 82/2005) and communications by and between public administration entities and third parties must be exchanged digitally (Articles 5 and 6-*bis* et seq, Legislative Decree no. 82/2005)[21]. This paves the way to ruling out a new generation of constitutional social rights to assistance (Articles 9, 33, 38, Italian Const.), which are held by those individuals who are unable to 'become familiar with the digital' for the most diverse reasons, and need help from third parties[22].

[19] For the emergence of a non-documentary inquiry possible with new technologies: R. CAVALLO PERIN-I. ALBERTI, *Atti e procedimenti amministrativi digitali*, in *Diritto dell'amministrazione pubblica digitale*, cit., 130 et seq.

[20] On digital identity as an explication of the person, of which the data is a component, G. ALPA, *Proprietà privata, funzione sociale, poteri pubblici di «conformazione»*, in *Riv. trim. dir. pubb*., 3, 2022, 627 et seq; ID., *L'identità digitale e la tutela della persona. Spunti di riflessione*, in *Contr. impr*., 2017, 34 et seq.; G. DE MINICO, *Big Data e la debole resistenza delle categorie giuridiche. Privacy e lex mercatoria*, in *Dir. pubb.*, 1, 2019, spec. 90-91; G. RESTA, *Identità personale e identità digitale*, in *Diritto dell'informazione e dell'informatica*, 2007, 511 et seq. See, recently, Regulation (EU) 2024/1183 of the European Parliament and of the Council of 11 April 2024 amending Regulation (EU) No 910/2014 as regards establishing the European Digital Identity Framework.

[21] On the so-called digital rights see, recently, Sui "diritti di cittadinanza digitale". M. PIETRANGELO, *Note a margine di un opaco percorso normativo*, in *federalismi.it*, 8, 2024, 130 et seq.; S. D'ANCONA-P. PROVENZANO, *Gli strumenti della carta della cittadinanza digitale*, in *Diritto dell'amministrazione pubblica digitale*, cit., 223 et seq.; F. CARDARELLI, *Amministrazione digitale, trasparenza e principio di legalità*, in *Dir. dell'informazione e dell'informatica*, 2, 2015, 256 et seq.

[22] As an expression of initiatives in favour of digital literacy (Art. 8, Legislative Decree 82/2005, cit.) and as an expression of the duty of solidarity (Art. 2, Const.), a national strategy has been implemented by the Department for

It is widely acknowledged that the European regulatory framework, based on a clearcut general prohibition to resort to purely automated decisions[23] - i.e., with no human intervention -, raise exceptions that are not easy to interpret[24].

The right to challenge an automated decision is however guaranteed by the Italian legal system with administrative claims (Presidential Decree no. 1199/1971) and judicial review, always guaranteed when it comes to actions by Public Administration entities (Articles 113 and 24, Italian Const.).

In Italy, asserting one's own arguments is a valid statement since the advent of the administrative unification laws (Art. 3, Law no. 2248/1865, annex E), as well as the rules on participation in administrative procedures (Art. 7 et seq, Law no. 241/1990), granting access

Digital Transformation, known as the Digital Republic and, recently, with the PNRR, funding is allocated to the Digital Civil Service and Digital Facilitation Centres with the intention of overcoming the existing gap between those who have the knowledge and tools to use the new technologies in their relations with the public administration and those who do not.

[23] On the limits of fully automated administrative decisions: S. CIVITARESE MATTEUCCI, *«Umano troppo umano». Decisioni amministrative automatizzate e principio di legalità*, in *Dir. pubb.*, 1, 2019, 5 et seq.; E. CARLONI, *Algoritmi su carta. Politiche di digitalizzazione e trasformazione digitale delle amministrazioni*, in *Dir. pubb*., 2, 2019, 363 et seq.

[24] Automated decisions are legitimised by special rules to safeguard public interests: defence, national or public security, the prevention of criminal offences or the enforcement of sanctions, for control and inspection connected with the exercise of official authority (Art. 23(1), Regulation 2016/679/EU). These are special rules of the European Union or of the Member State to which the data controller is subject (Art. 22(2)(b), EU Reg. 2016/679/EU). Legitimations must not undermine the protection of "the rights, freedoms and legitimate interests of the data subject" (Art. 22(2)(b), EU Reg. 2016/679/EU). The data subject's consent - either explicitly or for the conclusion of contracts or the performance thereof (Art. 22(2)(a) and (c), EU Reg. 2016/679/EU) - does not amount to acquiescence to the exclusively automated decision, as the data subject can always request human intervention (Art. 22(3), EU Reg. 2016/679/EU).

to the documentation to the party, the right[25] to file *memoranda* and documents (Art. 10, Law no. 241/1990), and for some procedures to file commentaries to the notice of intention to reject the required measure (Art. 10-bis, Law no. 241/1990).

The European rules on data processing grant a supranational status to the right to partecipate to the administrative procedure. This concept must be reasonably understood, which means that having benefited from the wealth of knowledge from the Public Administration, this becomes an *ex lege* contribution to achieving knowledge by the parties[26]. The parties must be understood as the only subjects having the knowledge of how to interpret and represent their own interests, once they have been put in a position to have access to the investigation power vested with the digital administration and the outcomes of previous decisions that are revealed through algorithms with their interpretative standards or through previous legitimate and preferable discretionary decisions.

Sharing the outcome of the algorithm, on which the adversarial administrative process among the parties, forces the administration to human interaction when requested by the parties involved. The outcome may result in a reasonable choice in a substantiated derogation, or in an adjustment of the algorithm standard, or on the opposite situation whereby a ground for non-acceptance of the outcome of the adversarial discussion is provided, thus accepting the opposing grounds as a confirmation of what produced by the

[25] G. GHETTI, *Il contraddittorio amministrativo*, Padua, 1971, 64; F.G. SCOCA, *L'interesse legittimo. Storia e teoria*, Torino, 1917, 255; C.E. GALLO, *La partecipazione al procedimento*, in AA. VV., *Lezioni sul procedimento amministrativo*, Torino, 1992, 83; V. CERULLI IRELLI, *Lineamenti del diritto amministrativo*, Torino, 2019, 345; most recently, also A. CAUDURO, *Gli obblighi dell'amministrazione pubblica per la partecipazione procedimentale*, Napoli, 2023, 41 et seq.

[26] Art. 10 of l. no. 241 of 7 August 1990 (New rules on administrative procedure and the right of access to administrative documents); Italian State Council, sec. VI, 11 April 2006, no. 2007.

algorithm, and providing a solution that expresses the human intervention requested by the parties.

The algorithm-based procedure and the following digital administrative act find a legal basis and a general legitimacy in an interpretation of the national standards on the communication of administrative acts (Articles 7, 8, 10-bis, Law no. 241/1990) joined with the general standards of the European Union on the right of the parties to always obtain human interaction (Art. 22(3), Reg. 2016/679/EU), unless - as mentioned above - special European or national standards allow for an exclusively algorithm-based decision on the grounds of public interest provided for therein, Art. 22(2)(b), Reg. 2016/679/EU; cf. Art. 3-*bis*, Law no. 241/1990, as amended by Law no. 120/2020, Art. 12, co. 1, lett. b))[27].

This new development is given by a system-based approach to reinterpret the decisions issued over time by the public administration that the algorithm-based procedures and the digital administrative acts impose on the public administration decision-makers, who must now provide all this normally. The well-established concept of "non-contradictory acts from different proceedings" must therefore be complied with the monitoring of the standards of interpretation, thus causing to redefine general procedures or regulatory acts in case of an actual difference between them, or their ineffectiveness, due to general non-compliance[28].

These digital administrative acts, because of their ability to monitor standards, can shape the future exercise of administrative power, by redefining compliance to the parameters the administration is subject when it comes to future choices, thus removing elements of

[27] D.U. GALETTA, G. PINOTTI, *Automation and Algorithmic Decision-Making Systems in the Italian Public Administration*, in *CERIDAP*, 1, 2023.

[28] For the redetermination of standards by the activity of algorithms, *amplius*: R. CAVALLO PERIN-I. ALBERTI, *Atti e procedimenti amministrativi digitali*, in *Diritto dell'amministrazione pubblica digitale*, cit., 149-151.

uncertainty or focusing on outcomes that have proven to be discriminatory and disproportionate over time.

Machine learning and neural networks enable the digital administration, to acquire knowledge of the public administration's possibilities, through the knowledge of its decisions, public services, the use of its databases, that is, with the development of a system to rate its performance as an institution (Art. 97, para. 2, Italian Const.). This is one of the grounds whereby public offices enjoy a constitutional acknowledgment and allocation of capacity based on the principle of adequacy (Art. 118, para. 1, Italian Const.) that each organization and entity of the Italian Republic must comply with.

4. DATABASES AND PERSONAL IDENTITY

Regulations on databases are essential both in the sense of legitimising everyone to file a claim (active side of the relationship), and in the sense that those who manage databases are obliged to behave correctly by offering services to everyone (passive side of the relationship), which can only improperly be said to be in exchange for the provision of data[29]. More precisely, these are obligations that define the effective and legitimate management of databases, which are both in the general interest and in the interest of those parties managing such obligations. To a certain extent, the managing parties have thus have a public service obligation and have to "serve" data owners rather than have a simple exchange with them[30].

[29] As sometimes argued by AGCM, 11 May 2017, provv. no. CV154, and by the subsequent ruling TAR Lazio, sec. sec. I, 10th January 2020, no. 261, on which G. RESTA-V. ZENO-ZENCOVICH, *Volontà e consenso nella fruizione dei servizi in rete*, in *Riv. trim. dir. proc. civ*, 2, 2018, spec. 416; G. D'IPPOLITO, *Diritto dell'informazione e dell'informatica*, 3, 2020, 634 et seq.

[30] D.C. NORTH, I*stituzioni, cambiamento istituzionale, evoluzione dell'economia*, Bologna, 1997, 23 et seq.

There are many detailed provisions and principles setting forth such obligations by the databases management operators. Firstly, the well-known right to data access, correction and portability into other platforms and to deal with such data as filed in a given database, in a readable manner from other information systems accessible to all (Articles 15, 16, 20, Reg. 2016/679/EU[31]).

When it comes to outsourcing, the concessionaire shall make available to the granting administration and, as a consequence, to any other public entity, all the data acquired and generated in the provision of a given service to users and those data being used for a specific service, as open data (Art. 50-quater, Legislative Decree no. 82/2005).

The new European Data Governance Act define as general interests data on health care, climate change, mobility and official statistics as well as public services, and such data being subject to restrictions in terms of transfer of data to operators and at the same time

[31] See, in particular, in addition to what is set out below in footnote 32: F. DI CIOMMO, *Diritto alla cancellazione, diritto di limitazione del trattamento e diritto all'oblio* (esp. 358 and 373) and G.M. RICCIO, F. PEZZA, *Portabilità dei dati personali e interoperabilità* (397 et seq.), both in *I dati personali nel diritto europeo* (V. CUFFARO-R. D'ORAZIO-V. RICCIUTO eds.), Giappichelli, 2019; R. PARDOLESI, *L'ombra del tempo (e il diritto all'oblio)*, in *Quest. giust*, 2017, 76; F. PIZZETTI, *Privacy e il diritto europeo alla protezione dei dati. Il regolamento europeo 2016/679*, II, Torino, 2016, spec. 76; E. PELINO, *Diritti di controllo,* in *Il nuovo regolamento privacy europeo. Commentario alla nuova disciplina sulla protezione dei dati personali* (L. BOLOGNINI-E. PELINO-C. BISTOLFI eds.), Milano, 2016, 246. In case law, early rulings include: Cass. civ., 9 April 1998, no. 3679, in Foro it., 1, 1998, 1834; Cass. civ., 18 October 1084, no. 5259, in *Giur. it*, 1985, 762. Most recently, at EU level: European Court of Justice - ECJ, 23 March 2010, C-236/08 and C-238/08, Google France and Google Inc. v. Louis Vuitton Malletier SA and others; European Court of Justice - ECJ, 24 November 2011, C-70/10, Scarlet Extended SA v Société belge des auteurs, compositeurs ed éditeurs SCRL; C. Justicia, 13 May 2014, C-131/12, Google Spain SL and Google Inc. v Agencia Española de Protección de Datos (AEPD) and Mario Costeja González. For an overview on data for public good, see Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *A European Strategy for Data*, COM/2020/66 final.

legitimate the use of so-called data altruism organisations (Reg. no. 2022/868/EU, Art. 15 et seq.[32]).

The public administration always has the option of analysing its own data in combination with those of other public entities, public service providers or in-house companies (Art. 50, para. 2-bis, Legislative Decree no. 82/2005), which cannot be discussed in detail here.

As a matter of principle, both the definition of general economic interest by the European Union legal order (Art. 106, TFEU), the provisions on personal identity and the provisions on "la scienza è libera" ("science is free" or "scientific freedom") contained in the Italian Constitution (Articles 2, 3, 9, 22, 33, Italian Const.) complement the aforementioned detailed provisions[33].

[32] A recent discipline, but already the subject of extensive study, on which, among many: P. MANZINI, *Equità e contendibilità nei mercati digitali: la proposta di Digital Market Act*, in *I Post di Aisdue*, 3, 2021, 30 et seq.; L. ZOBOLI, *Fueling the European Digital Economy: A Regulatory Assessment of B2B Data Sharing*, in *European Business Law Review*, 4, 2020, 663 et seq.; H. RICHTER, *Exposing the Public Interest Dimension of the Digital Single Market: Public Undertakings as a Model for Regulating Data Sharing*, in *Max Planck Institute for Innovation & Competition*, Research Paper n. 20, 2003; G. CAGGIANO, *La proposta di Digital Service Act per la regolazione dei servizi e delle piattaforme online nel diritto dell'Unione europea*, in *I post di Aisdue*, 3, 2021, 1 et seq.; P. AKMAN, *Regulating Competition in Digital Platform Markets: A Critical Assessment of the Framework and Approach of the EU Digital Markets Act*, in *European Law Review*, 2022, 85 et seq.; A. SIMONCINI, *La co-regolazione delle piattaforme digitali*, in *Riv. trim. dir. pubbl.*, 3, 2022, 1031 et seq.; G. RESTA, *La regolazione digitale nell'unione europea: pubblico, privato, collettivo nel sistema europeo di governo dei dati*, in *Riv. trim. dir. pubbl.*, 4, 2022, 971 et seq. See also F. DUCCI, *Natural Monopolies in Digital Platform Markets, Cambridge University Press*, Cambridge, 2020, 10.

[33] R. CAVALLO PERIN, *Il contributo italiano alla libertà di scienza nel sistema delle libertà costituzionali*, in *Dir. Amm*, 3, 2021, 587 et seq.

The general economic interest[34] has long since been extended to assets[35], can therefore be referred to any third parties' data system[36], with its rationale in the European

[34] European Court of Justice – ECJ, 24 July 2003, C-280/00, Altmark Trans and Regieriungpraesigium Magdeburg, the orientation has been consolidated in many other pronouncements, the most recent of which are worth mentioning: European Court of Justice – ECJ, 3 March 2021, C-434/19 and C-435/19, Poste Italiane and Agenzia delle Entrate - Riscossione; European Court of Justice – ECJ, 10 December 2020, C-160/19P, Comune di Milano v. European Commission; European Court of Justice – ECJ, 24 November 2020, C-445/19, Viasat Broadcasting UK Ltd; European Court of Justice – ECJ, 29 July 2019, C-659/17, Azienda Napoletana Mobilità; CJ, 15 May 2019, C-706/17, Achema and Others; European Court of Justice – ECJ, 8 March 2017, C-660/15, Viasat Broadcasting UK v. Commission. See both the Commission's Green Paper of 21 May 2003 on Services of General Interest (COM(2003) 270 final - Official Journal C 76, 25.03.2004); and the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, White Paper on Services of General Interest, 12 May 2004, COM(2004) 374 final. F. MERUSI, *Lo schema della regolazione dei servizi di interesse economico generale*, in *Dir. Amm.*, 2, 2010, 313 et seq.; G. PITRUZZELLA, *I servizi pubblici economici tra mercato e regolazione*, in *Servizi pubblici, diritti fondamentali, costituzionalismo europeo* (E. CASTORINA ed.), Napoli, 2016, 451 et seq.; M. TRIMARCHI, *I servizi di interesse economico generale nel prisma della concorrenza*, in *Riv. it. dir. pubbl*. com, 1, 2020, 53 et seq.; P. LAZZARA, *Responsabilità pubbliche e private nel sistema dei servizi di interesse economico generale,* in *Dir. Amm*., 3, 2020, 531 et seq.; F. TRIMARCHI BANFI, *Lezioni di diritto pubblico dell'economia*, VI ed, Torino, 2019, 111 et seq.; L. R. PERFETTI, *Servizi di interesse economico generale e pubblici servizi*, in *Riv. it. dir. pubbl. com.*, 3-4, 2001, 479 et seq.; L. BERTONAZZI-R. VILLATA (eds.), *Servizi di interesse economico generale*, in *Trattato di diritto amministrativo europeo,* II ed, tome IV (M.P. Chiti-G. Greco dir.), Milano, 2007, 1791 et seq.; G.F. CARTEI, *I servizi di interesse economico generale tra riflusso dogmatico e regole di mercato*, in *Riv. it. dir. pubbl. com.*, 5, 2005, 1219 et seq.; G.C. SALERNO, *Servizi di interesse generale e sussidiarietà orizzontale fra ordinamento costituzionale e ordinamento dell'Unione europea*, Torino, 2010; F. COSTAMAGNA, *I servizi socio- sanitari nel mercato interno europeo. L'applicazione delle norme dell'Unione Europea in materia di concorrenza, aiuti di stato e libera circolazione*, Quaderni Giurisprudenza Torino, 2011, spec. 58 et seq.; P. BAUBY, *From Rome to Lisbon, SGIs in Primary Law*, in *Developments in Service of General Interest* (E. ZSYSZCZAK-J. DAVIES-M. ANDENAES-T. BEKKEDAL eds.), *The Hague*, 2011, 19 et seq.; M. BOCCACCIO, *Compensazione degli obblighi di servizio pubblico e aiuti di stato: un'analisi economica*, in *Riv. Dir. Fin.*, 4, 2012, 459 et seq.

[35] EU Tribunal, Sec. VIII, 15 November 2018, No. 202.

[36] See for databases Directive 96/9/EC of the *European Parliament and of the Council of 11 March 1996 on the legal protection of databases,* Art. 1(2). More recently, see: EU Regulation 2023/2854 of the European Parliament

Union's Treaty on the Functioning of public service obligations or charges[37] by the data manager. As it is well-known, data managers may be defined to be either public entities and/or individuals are in charge of managing the database deemed to be of general interest (Reg. no. 2022/868/EU, Art. 15 et seq.). Such limits that are coessential to the database management.

The European provisions are reflected in those of the Italian Constitution that can be deemed to deal with the freedom of the individual, since they focus on the personal identity of each individual and on one's self-knowledge or consciousness (Art. 22, 33, para. 1, Italian Const.). This freedom is considered not only in isolation, but also in its relationship with other[38]. Such constitutional provisions that give ground to the right to one's own identity, in terms of relations, rating, and context.

Indeed, the right of all to freedom of knowledge has long been established[39], first as an individual's right of great importance involving the self, which means each person's

and of the Council of 13 December 2023 on harmonised rules on fair access to and use of data and amending Regulation (EU) 2017/2394 and Directive (EU) 2020/1828 (Data Act), entered into force on the 11 January 2024.

[37] In general, on constraints and obligations of general interest activities, in addition to the doctrine cited in footnote 13: W. CESARINI SFORZA, *Il concetto di obbligo nella teoria generale del diritto*, in *Temi rom.*, vol. I, 1964, 497 et seq.; G. GAVAZZI, *L'onere. Tra la libertà e l'obbligo*, Torino, 1970, 13 et seq.; O.T. SCOZZAFAVA, *voce Onere*, in *Enc. dir.*, vol. XXX, Milano, 1980, 99 et seq.; F. TRIMARCHI BANFI, *Lezioni di diritto pubblico dell'economia*, cit., spec. 73 et seq. and 123 et seq.

[38] G. ALPA, *Il diritto di essere sé stessi*, Milano, 2021.

[39] The theoretical terms of a right of all to receive free science can be found in: A. ORSI BATTAGLINI, *Libertà scientifica, libertà accademica e valori costituzionali*, in *Nuove dimensioni nei diritti di libertà. Scritti in onore di Paolo Barile*, Padua, 1990, 95-98; as an incidens already S. SPAVENTA, *L'autonomia universitaria*, 1884, now in *Giustizia nell'amministrazione e altri scritti*, Napoli, 2006, 85-87 and 96-97: "Teaching autonomy, it has been said, includes freedom to teach for teachers and freedom to learn for disciples (...) (Sennonché) to confuse these two freedoms with the right of teaching autonomy granted to the university body (...) would be a very serious loss for the independence and free movement of culture (...)"; V. ZANGARA, *Libertà d'insegnamento e scuola di stato*, in

personal identity[40] (Articles 2, 13, 22, Italian Const.), whether based on the individual and/or on the unavoidable social relationships with others (Articles 2, 3, Italian Const.), whether on a mandatory and/or voluntary basis. This is needed to exercise one's citizenship fully sharing access to all the entities belonging to the Italian Republic (Articles 1, 3 and 114, Italian Const.), and now further extended through the institutions of the European Union (Articles 11 and 117, para. 1, Italian Const.). Such voluntary relation vested with the institutions also allows for the participations by individuals to other social organisations (Articles 2, 18, 19, 20, 38, 39, 49, etc., Italian Const.)[41].

A fundamental right is essential to guarantee personal freedom (Art. 13, Italian Const.) and basic protection of each individual, since without protecting one's identity, its contemporary meaning included, no individual, capacity, and name can be legally defined (Art. 22, Italian Const.).

As it has been emphasised, this is confirmed by the wording of the Constitution where scientific activities are protected as such, by whoever it is carried out[42] and it might

Riv. giur. della scuola, 1971, 540 et seq., indicates (§ 15) a right to learn based on the right to education and the right to free participation in the cultural life of the community (UN Declaration: Art. 26 and 27); most recently: Parliamentary Assembly of the Council of Europe, 22 June 2021, Report on Freedom of the Media, Public Trust and the Citizen's Right to Knowledge, https://pace.coe.int/en/files/29346#tra c e-5 URL consulted on 08/31/24.

[40] On the right to identity recently: G. ALPA, *Il diritto di essere sé stessi*, cit., 23, 24.

[41] On the relationship between Articles 18, 19, 39 and 49 of the Constitution, for all: P. BARILE, *Associazione (diritto di),* in *Enc. dir*., III, Milano, 1958, 842. The Author observes that Article 18 of the Constitution refers to a genus of social formations, while Articles 19, 39 and 49 refer to species.

[42] G. CORSO-M. MAZZAMUTO, *La libertà della scienza*, in *Il Consiglio Nazionale delle Ricerche - CNR Struttura e funzioni*, Bologna, 1994, 212-217 and 219-222; A. MATTIONI, *Insegnamento (libertà di),* in *Dig. disc. pubbl*, VIII, Torino, 1993, 413; M. CROCE, *Le libertà garantite dall'art. 33 cost. nella dialettica irrisolta (e irrisolvibile?) individualismo-comunitarismo*, in *Dir. pubb.*, 3, 2009, 899-902 and 925-926 if "one looks at the needs of students, it is precisely free teaching that is also the guarantee of their freedom"; for a specific status of students: G. PALMA, *L'autonomia dell'ordinamento universitario tra le ordinate della libertà della scienza (e della ricerca) e della libertà*

also be added, by whoever benefits from it. This validates a everyone's fundamental right, because it is coessential to human beings, independently from being a right vested with the individual to develop, teach, or receive "free science" and therefore achieve one's knowledge first and foremost.

As such, the right to a free science takes on a highly topical constitutional value that, now more than ever, is in actual fact (Art. 3, para. 2, Italian Const.) strongly influenced and limited by the way corporate businesses and public entities and/or private sectors perform their actions. All these players through data collection and profiling actions, that is by means of human identity, may have access and manage information that appear to be essential to plan their future actions, including their business[43].

This makes it possible for entities to set up and run a business, perform political, trade union or welfare actions, or practice a religious belief, but also to engage in criminal activity, with previously unheard of opportunities and outcomes so far dealt with in various ways by the legal order, with specific reference to the high concentration of powers that the new technologies allow to achieve[44].

di insegnamento, in *Il sistema universitario in trasformazione* (E. CARLONI-P. FORTE-C. MARZUOLI-G. VESPERINI eds.), Napoli, 2011, 14-19; R. CAVALLO PERIN, *Il contributo italiano alla libertà di scienza nel sistema delle libertà costituzionali*, cit., 587 et seq.

[43] In the context of which some identify a 'right to process data': F. BRAVO, *Il diritto a trattare i dati personali nello svolgimento dell'attività economica*, Milano, 2018, spec. 137, 188 et seq.

[44] On the algorithmic risks to freedoms, in addition to the Proposal for a Regulation of the European Parliament and of the Council (COM(2021) 206 final) of 21 April 2021, the European Parliament Resolution, 20 October 2020, with recommendations to the Commission regarding the framework on the ethical aspects of artificial intelligence, robotics and related technologies (2020/2012(INL), 'Framework for the ethical aspects of artificial intelligence, robotics and related technologies'); Guidelines for Trustworthy Artificial Intelligence proposed by the High-level Expert group on AI on 8 April 2019. European Ethical Charter on the Use of Artificial Intelligence in Justice Systems and Related Areas (CEPEJ (2018)14) adopted in Strasbourg by the European Commission for the Efficiency of

5. DATA OPERATORS OBLIGATIONS

This is a form of knowledge that the legal order cannot protect under the only definition of privacy[45]. It involves the subjective right of all to have knowledge on organised data (databases[46]) and have the outcomes of 'scientific' analyses about them free from any other public or private power and not overridden by other forms of constitutional freedom.

This method of getting organized and resorting to a technology that classifies people's behaviour and profiles their identity, albeit in relation to a specific service or good, selects individuals according to clusters of behaviour (segmentation), and this can in itself

Justice (CEPEJ) at its 31ª Plenary Meeting on 3-4 December 2018. In doctrine most recently: E. CHITI, B. MARCHETTI, *Divergenti? Le strategie di Unione europea e Stati Uniti in materia di intelligenza artificiale*, in *Rivista della Regolazione dei mercati*, 1, 2020, 29 et seq.; *Stato di diritto – Emergenza – Tecnologia*, in *Consulta OnLine* (G. DE MINICO, M. VILLONE eds.), e-book format, Milano, 2020; A. SIMONCINI, *Profili costituzionali dell'amministrazione algoritmica*, in *Riv. trim. dir. pubb.*, 4, 2019; G. DE MINICO, *Big Data e la debole resistenza delle categorie giuridiche. Privacy e lex mercatoria*, cit., 89-115.

[45] A right of public and private organisations to the acquisition of data, which everyone goes to sign up for them on a daily basis, without this being valid as a lawful denial of a subjective right to a free science: not to deal with anything else because the right to identity is a very personal faculty (Articles 22, 33, Italian Const.).

[46] The acquisition of personal data by the administration authorises the private individual to exercise the rights of access (Art. 15, EU Reg., 679/2016), rectification (Art. 16, EU Reg., 679/2016), deletion (Art. 17, EU Reg., 679/2016) and portability of the same (Art. 20, EU Reg., 679/2016), so that digital citizenship rights are configured, which are asserted as potestative rights to the conformation of the public organisation, by virtue of the certification value that those data assume erga omnes. Recently: M. FLORIO, *La privatizzazione della conoscenza*, Bari, 2021, 178 et seq.; R. CAVALLO PERIN, *Pubblica amministrazione e data analysis*, in *L'amministrazione pubblica con i big data: da Torino un dibattito sull'intelligenza artificiale*, cit., 11-18. See also J.B. AUBY, *Administrative Law Facing Digital Challenges*, in *European Review of Digital Administration & Law – Erdal*, 1, 2020, 7 et seq.: J.J. ZYGMUNTOWSKI, L. ZOBOLI, P.F. NEMITZ, *Embedding European values in data governance: a case for public data commons*, in *Internet Policy Review*, 10(3), 2021.

violate the freedom of each individual to achieve self-understanding, precisely on the basis of the meaning that such organisations have attributed to themselves and, above all, in relation to those pertaining to others, albeit as aggregated data that cannot be traced back to individuals[47].

Of course, everyone is free to exercise its rights without qualifying their outcomes as scientific, but this may be in conflict with a statement of faith: free to circulate, to exchange information, or organise their homes or meetings without the limits of a free science. Also, to gather or express their thoughts, without being subject to the limits that constitutionalism and the Constitution have imposed on science. Science must be free for those who are involved in it, for those who teach it, and for those who receive it.

Indeed, everyone is free - within the limits provided by the legal order for each freedom - to pursue and/or finance research in the exercise of a freedom of enterprise (Art. 41, Italian Const.), private property (Art. 42, Italian Const.), freedom of religion (Art. 19, Italian Const.), freedom of movement (Art. 16, Italian Const.), freedom of correspondence or domicile (Articles 14 and 15, Italian Const.), freedom of assembly (Art. 17, Italian Const.), freedom of association (Art. 18, Italian Const.), and last but not least freedom of thought (Art. 21, Italian Const.), without going so far as to violate the primary freedom of every individual, of every public or private organisation, the freedom to one's personal identity (Articles 33, 22, Italian Const.) to self-knowledge and concurrently to that of others.

[47] Freedom of science is in this limitation of the freedom of organisations of public or private databases, starting with the possibility of access not only to data concerning each individual, but also to aggregated data useful to know the relative identity that each individual has acquired in a given service or good. It remains the freedom of each organisation to accompany such databases, or profiling, with a biased or free-science analysis. Otherwise, the risk is to leave it to the power that such public or private organisations have in fact to severely limit knowledge of personal identity (Art. 22, 33, Italian Const.) and thus of the full development of the human person (Art. 3, Italian Const.).

What has been purported so far makes it possible to select a number of principles that can be said to be specific to the European Union and the Member States that are part of it. Such principles characterise our social organisation, the way in which we, Europeans understand society, citizenship[48] of individuals as well as the companies willing to cooperate with them. A culture based on rights that in Europe are constitutional guidelines and within limitations based on ideology, where individual and collective rights define the European market, also as a legitimate barrier to items produced without complying to such rights, that is an indirect protection to those who intend to invest to do business in Europe.

First, it must be pointed out that the sole owner of data concerning an individual is the individual. Since this is "un diritto personalissimo" (a very personal right), data concerning the identity of individuals cannot be included into the scope of a contract (Art. 1325, Italian Civil Code). It seems safer and more in line with the principles to state instead that any form of consent granted to the processing of data means legitimising the use of such data in an organised form[49], with the obligation by the operator of providing a public service,

[48] The European Union respects, in all its activities, the principle of equality of citizens, who benefit from equal attention by its institutions, bodies, offices and agencies. A citizen or a national of the Union is anyone who holds the nationality of a Member State. Citizenship of the Union is additional to national citizenship and does not replace it. B. NASCIMBENE, voce *Cittadinanza dell'Unione europea*, in *Dig. Pubb*., 2012, agg. V, 122 et seq.; C. PINELLI, *voce Cittadinanza europea*, in *Enc. dir*., Annali I, Milano, 2007, 181 et seq.; F. DINELLI, *Le appartenenze territoriali, Contributo allo studio della cittadinanza, della residenza, e della cittadinanza europea,* Napoli, 2011, 151 et seq.; S. GIUBBONI, *La solidarietà come "scudo". Il tramonto della cittadinanza sociale trasnazionale nella crisi europea*, in *Quad. cost*., 2018, 591 et seq.; Id., *Solidarietà*, in *Pol. dir*., 2012, 525 et seq.; M. BENVENUTI, *voce Diritti sociali*, in *Dig. pubb.*, Milano, 2012, 219 et seq.; G. PECES BARBA MARTINEZ, *voce Diritti e doveri fondamentali*, in *Dig. Pubb.,* Milano, 1990, 139 et seq. L. FERRAJOLI, *Dai diritti del cittadino ai diritti della persona*, in AA.VV., in *La cittadinanza: appartenenza, identità, diritti* (D. ZOLO ed.), Bari, 1994; G. AZZARITI, *La cittadinanza. Appartenenza, partecipazione e diritti delle persone*, in *Dir. pubb*., 2, 2011, 426 et seq. To this we can add M. CONSITO, *La cittadinanza e le sue forme*, cit., 35 et seq.

[49] As stated in relation to personal data (Art. 4(1), Reg. No. 2016/679/EU): D. MESSINETTI, *Circolazione dei dati personali e dispositivi di regolazione dei poteri individuali*, in *Riv. crit. dir. priv*, 1998, 339 et seq.; F. BRAVO, *Il consenso e le altre condizioni di liceità del trattamento di dati personali*, in *Il nuovo Regolamento europeo sulla*

i.e. the holder of the data being processed, to allow, in addition to access, rectification, portability, etc., the consultation of the database that is being processed. This is useful for the individual data owner in order to understand his ranking (rating) and the relational dynamics that being included in the database entails.

Incidentally, databases have the status of goods of general interest. Therefore, database operators, including public service operators, are to undertake to inform, at least by means of agent simulation models, on the changes that such services cause to their recipients,

privacy e sulla protezione dei dati personali, Bologna, 2017, 101 et seq.; B. LUNDQVIST, *Big Data, Open Data, Privacy Regulations, Intellectual Property and Competition Law in an Internet of Things World. The Issue of Access*, in *Stockholm Faculty of Law Research Paper*, 1, 2017; S. SICA, *Il consenso al trattamento dei dati personali: metodi e modelli di qualificazione giuridica*, in *Riv. dir. civ.*, 6, 2001, 621 et seq. Although not in the absence of contrary voices: F. CAGGIA, *Libertà ed espressione del consenso* and V. RICCIUTO, *La patrimonializzazione dei dati personali. Contratto e mercato nella ricostruzione del fenomeno*, both in *I dati personali nel diritto europeo*, cit., 23 and 249 et seq. respectively; A. MANTELERO, *Diritti assoluti della personalità alla salute e alla privacy*, in *I diritti sociali come diritti della personalità* (R. CAVALLO PERIN-L. LENTI-G.M. RACCA-A. ROSSI eds.), Napoli, 2010, 115 et seq.; A. ORESTANO, *La circolazione dei dati personali, in Diritto alla riservatezza e circolazione dei dati personali*, vol. II (R. PARDOLESI ed.), Milano, 2003, 119 et seq. And similarly to what is stated in relation to other forms of consent concerning the same rights, albeit having a different object, and in particular with reference to acts of disposition of the body: P. ZATTI, *Princìpi e forme del 'governo del corpo'*, in *Il governo del corpo*, vol. I (S. CANESTRARI-G. FERRANDO-C.M. MAZZONI-S. RODOTÀ-P. ZATTI eds.), Milano, 2011, 99 et seq.; P. D' ADDINO SERRAVALLE, *Atti di disposizione del corpo e tutela della persona umana*, Napoli, 1983, 222; G. GIACOBBE, *voce Trapianti*, in *Enc. dir.*, XLIV, Milano, 1992, 892 et seq. and most recently G. DI ROSA, *La persona oltre il mercato. La destinazione del corpo post mortem, in Europa e diritto privato*, 4, 2020, 1179 et seq.; G. GIAIMO, *Natura e caratteristiche del consenso al prelievo di organi e tessuti da cadavere. Un raffronto tra Italia ed Inghilterra*, in *Europa e diritto privato*, 1, 2018, 215 et seq. Nonché ai trattamenti sanitari: M. GRAZIADEI, *Il consenso informato e i suoi limiti*, in *I diritti in medicina, Trattato di Biodiritto* (L. LENTI-E. PALERMO-FABRIS-P. ZATTI-S. RODOTÀ-P. ZATTI eds.), Milano, 2011, 205; C.F. GROSSO, *voce Consenso dell'avente diritto*, in *Enc. giur*, VIII, Rome, 1988, 7 et seq.; C. PEDRAZZI, *voce Consenso dell' avente diritto*, in *Enc. dir*., IX, Milano, 1961, 146 et seq.; A. SCALISI, *Il consenso del paziente al trattamento medico*, in *Dir. fam. pers.*, 1993, 463 et seq.; C. CASTRONOVO, *Profili della responsabilità medica*, in *Studi in onore di Pietro Rescigno*, Milano, 1998, 117 et seq.; A. PIOGGIA, *Consenso informato ai trattamenti medici*, in *Dir. fam. pers.*; A. PIOGGIA, *Consenso informato ai trattamenti sanitari e amministrazione della salute*, in *Riv. trim. dir. pubbl*., 1, 2011, 127 et seq.

although such changes may be induced by changes in the behaviour of the agents themselves - i.e. as their status and number may change - whether the latter are users, customers, or decision-makers of such services.

Compliance with public service obligations, characterised by continuity, affordability, quality of service and user protection, should be considered as a universal service under all respects.

Indeed, those in charge of filing third parties' data have the right to fair compensation for such services, in return for a *quid pluris* of information by virtue of the processing of the data as well as the organisation and management of the databases. The right to obtain the consideration for the performance of the public service obligation only has to be affordable to the extent it involves users. It is now accepted that the remuneration from database ownership comes from information and data transfers to third parties who are interested to have them for several reasons.

Abstract. *This article examines the integration of artificial intelligence (AI) to enhance decision-making processes, providing deeper insights and increased efficiency. The mandatory digitalization of public data, as required by European and national regulations, promotes transparency, accessibility, and informed governance. Effective database management balances privacy with data accessibility, thereby empowering individual rights to get back the outcome the data analysis as a constitutional right. The legal frameworks supporting these advancements ensure high standards of public services while protecting user rights and data privacy, aligning with constitutional principles of efficiency and effectiveness.*