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Essays and Articles

New Perspectives of Digital Administration: Open Data and Algorithms (p. 593)

Giorgio Orsoni, Elena D'Orlando

The essay develops introductory reflections concerning two features of the digital challenges engaging public administrations and involving administrative law to an increasing extent: open data and algorithms. Although they are characterized by a different degree of development on the regulatory, jurisprudential and doctrinal levels, these issues nevertheless both represent increasingly relevant phenomena from the point of view of the relationship between citizens and public administrations.

The administrative law in front of the challenges of digital transformation (p. 619)

Jean-Bernard Auby

This text aims to gather some exploratory ideas on the implications of digital technology for administrative law. Without claiming exhaustiveness, the paper will provide some insights for the analysis of a phenomenon still difficult to grasp. It will start with some general remarks regarding the realities of digitalisation of public authorities' activities. After it will try to summarise the already perceptible consequences that this phenomenon has in administrative law. Finally, it will make some assumptions about various sensitive issues that are being or may be raised.

Automation, Artificial Intelligence and Public Administration: Old Conceptual Categories for Solving New Problems? (p. 643)

Isaac Martín Delgado

Legal literature has been slow to explore the changes that information and communication technologies (ICT) may entail for public

administrations from a theoretical perspective. Artificial intelligence offers new possibilities and raises new questions and problems that need to be addressed. Digital administration uses ICTs as instruments; smart administration is based on non-human intelligence that could totally replace human action in some areas of the decision-making process. In light of this important difference, it is necessary to reflect about three main aspects: changes in traditional concepts of administrative law (administrative decisions, legal personality theory, administrative discretion...); changes in traditional principles related to processes and organizations (objectivity, transparency, good administration...); changes in traditional guarantees for citizens (invalidity of administrative decisions, right to explanation, control bodies...). The main aim of this article is to initiate a debate about artificial intelligence's role in public administration (a prediction or decision-making tool?) and whether the concepts, principles, and standards developed for administrative legality and administrative control can continue to be used or, on the contrary, new ones need to be created.

Open Government, Open Data, and Administrative Action (p. 663)

Diana-Urania Galetta

The concept of open government refers to a new model of administration, based on greater openness and readiness of "governments" towards citizens. This is rendered possible by a process of technical-organizational innovation of the public sector, is supported by the new information and communication technologies, and is functional to achieving so-called "Opengov" objectives. In this specific context, the digitalization of the public sector has led to a renewed conception of the administrative function, in particular as regards cooperation between public administrations and administration-citizen relationships. Against this background there arises the complex problem of "big data", which has spread from the private to the public sector where it takes on even greater importance precisely due to its connection to the topic of open data.

Open Data and Democratic Participation (p. 685)*Gherardo Carullo*

This article deals with the ways in which a new form of participation in the execution of administrative functions can be achieved thanks to information and communication technologies. In this perspective, the text assesses the normative scope of “electronic democratic participation”, referred to in art. 9 of Italy’s Digital Administration Code, in relation to the regulation of open data and in light of the relevance that data have assumed in the context of administrative procedures. As regards participation per Law No. 241/1990, the author suggests that “electronic democratic participation” can be a tool for the co-creation and enrichment of public administrations’ wealth of data.

General Data Protection Regulation and Open Data: Challenges and Perspectives (p. 701)*Maximilien Lanna*

This article attempts to determine how the new General Data Protection Regulation will impact open data and whether it will restrict or contribute to its implementation. This new set of rules will not only force public administrations to adopt new policies when they collect personal data, but will also impact the way they distribute data prior to their reuse by public or private agents. Rather than adopting a negative approach, this paper examines the new opportunities that this renovated legal framework will bring to the development of open data.

Automated Decision-making, Personal Data and Public Administration in Europe: towards a “Social Credit System”? (p. 715)*Federico Costantini, Gabriele Franco*

2020 will be the year of the Chinese Social Credit System, the largest technological system of profiling, surveillance and nudging ever designed, the introduction of which draws criticisms from international observers, especially in Europe. This article introduces the problem of compatibility between this instrument of social control and the continental legal tradition, in light of the recent General Data Protection Re-

gulation, and observes that its deployment is not completely unthinkable in our legal system.

Building Information Modelling for Integrity, Efficiency, and Innovation in Public Contracts (p. 739)

Gabriella M. Racca

Digital technologies and methodologies are changing the definition of public demand and the subsequent phases of public works planning, execution and management that are entrusted to increasingly integrated and collaborative teams. One of the most promising perspectives from a legal, economic and technical point of view is digital modelling (or Building Information Modelling). Information modelling is a strategic tool for developing cooperation among private suppliers and with public administrations, with the sole aim of promoting prompt execution and efficient management of public contracts and works. Through the adoption of smart contracts, the opportunistic behaviour of economic operators may be overcome by providing, via transparency and traceability of all the planned activities, appropriate incentives for collaboration in the public interest.

The Maritime Areas Information System: An E-Government Tool and Its Practical and Participatory Issues (p. 767)

Pier Marco Rosa Salva

The use of digital solutions has become the preferred method for improving administrative action and making it more efficient. One of the testing grounds for this process is the management of maritime state-owned areas via the maritime areas information system (SID), a database and digital system established in 1993 and supporting administrations dealing with various problems involving the use of coastal, port and maritime assets (opening to competition, collection of state fees, protection of environment and landscapes, land use and maritime space planning). However, many issues still continue to affect the system (poor updating of data, uncertain legal status of extracted data, participatory guarantees) and have determined its limited development. In light of recent regulatory and judicial interventions, these issues require greater reflection, especially as regards the introduction of participatory gua-

rantees, in order to ensure that SID could become a new, effective and efficient tool for the integrated governance of maritime state-owned areas.

Cybersecurity: Knowledge and Awareness as Prerequisites for Digital Public Administration (p. 783)

Pier Luca Montessoro

The problem of cybersecurity is complex, and high skills are needed to understand the details of the technical aspects. An effective cyber-risk protection strategy is based more on knowledge-driven and awareness-based prevention than on technology. This article describes the fundamental aspects of the problem, highlighting how all stakeholders, from the public administration that designs and delivers services to their end users, play a role and have responsibilities.

Notes and Comments

Public Administration Inertia on Civic Access Requests: A New Procedure for Inaction-Noncompliance? (p. 801)

Federica Lombardi

This article addresses the legal procedure that is applicable when public administrations react to civic access requests with inaction. Jurisprudence has expressed differing opinions on this issue. After examining the pertinent legislation and jurisprudence, the author – in developing a proposal that could settle the procedural uncertainties connected to obscure regulation – highlights the fact that the extent and the limits of the protection of inaction depend not so much on the procedure chosen but rather on the nature (discretionary or binding) of public administrations' assessment activity as regards civic access requests.

Unfair Competition Offenses as Grounds for Exclusion from Public Tender Procedures in the Italian Legal System (p. 821)

Mario Tocci

The inclusion of illicit behavior, including unfair competition, among the grounds for exclusion tender procedures in the Italian legal system

poses problems that have no easy solution. The main issues entailed by this situation and that need to be discussed are: doubts about the binding nature of the National Anti-Corruption Authority Guidelines no. 6/2016; the inconsistency between the contents of these guidelines and the provisions of article 80 of the Code on Public Works, Service, and Supply Contracts; the market and the duration of the exclusion inflicted upon offending economic agents.