

OPEN DATA AND COMPOSITE PROCEDURES: STRENGTHEN THE QUALITY AND THE EFFECTIVENESS OF ADMINISTRATIVE ACTIVITY¹

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Abstract: Open data allows new experiments in administration, both in terms of activities and organisation. In terms of composite procedures, open data can serve many public interests in new ways, leading to faster and more accurate decision-making (already at the preparatory level), while it remains difficult to ensure effective judicial protection for individuals in shared administration between the EU and the Member States. In this context, procedural guarantees at the decision-making stage should not be neglected, even more if we consider the EU public administration as a platform, offering data as services, exchanging information and data, cooperating, and competing with public and private actors. Relying on the power of data, however, requires resilient rules, based on EU principles as to assure the rule of law, and able to cope with the challenges of the digital transition, as to ensure the “effectiveness” of administrative activities implementing EU law in each Member State.

Keywords: open data; composite procedures; shared administration; EU law implementation; platforms; artificial intelligence; effectiveness

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1. INTRODUCTION: THE QUALITY OF DATA

Today, administrative activity is being revolutionised by data as a “*reinterpretable representation of information*”,² affecting both decision-making and performance, and the organisational dimension, as it enables many activities to be sped up and dematerialised. It follows that data is not simply a commodity but also takes on a social dimension,³ even more with regard to open data. Although the administrative implementation of EU law is a duty of MS, the EU Treaties and secondary legislation also give the EU Commission, and increasingly the EU agencies,⁴ the power to adopt

¹ This article was written under the umbrella of the project “Regulatory Sandboxes: Mirage and Reality in Public Law”, supported by Charles University’s 4EU+ Mini-grants Programme.

² CARULLO, G. Dati, banche dati, blockchain e interoperabilità dei sistemi informatici nel settore pubblico. In: GALETTA, D.-U. – CAVALLO PERIN, R. (eds.). *Il Diritto dell’amministrazione Pubblica Digitale*. Torino: Giappichelli, 2020, p. 192.

³ On this purpose, the Digital Governance Act (Regulation (EU) 2022/868 of the European Parliament and of the Council of 30 May 2022 on European data governance and amending Regulation (EU) 2018/1724), at Chapter IV, insists on data altruism and on the share of data in the general interest, regulating the duties of recognised data altruism organisations (Articles 19–21).

⁴ HOFMANN, H. – TÜRK, A. The development of integrated administration in the EU and its consequences. *European Law Journal*. 2007, Vol. 13, No. 2, pp. 253–271; MENDES, J. The EU Administrative Institutions, Their Law, and Legal Scholarship. In: CANE, P. (ed.). *The Oxford Handbook of Comparative Administrative Law*. Oxford: Oxford Academic, 2020, pp. 526–550; CHAMON, M. EU Agencies: Shifting

administrative decision. Moreover, “the EU has developed a unique approach to cooperative federalism linking Member State and EU levels in a multitude of procedural forms of cooperation, often through joint data collections and procedures of the use and re-use of such data”.⁵ Therefore, to improve administrative activity, it is believed that quality data should be used, both in case of rulemaking (non-legislative acts with general scope) and in case of single-decision with binding effects on an addressee. The analysis of digital datasets can be used also by public administrations (or by private companies working for them) to understand the most widespread problems, set their goals accordingly, or personalize public services as well as strengthen law enforcement, following “the data value chain” which describes the steps needed to generate value and useful insights from data till its final use.⁶

Hence, the use of open data must enable decision-making, which is effectively more complex in the case of composite procedure. Procedural guarantees should not be neglected, already in the preparatory phase of the final proceedings, so the procedure must always pass the proportionality test. In many areas the exchange of information, the complexity of the procedure makes the administration running as a platform, offering services, and exchanging information and data, cooperating, and competing with public and private actors, as direct consequence of a shared administration. Consequently, new rules are invoked as to setting the legal framework,⁷ for new experiments *in fieri*, as regulatory sandboxes.⁸

Besides, the debate is still open as to the legal order of the digital world, indeed EU administrative principles have to steer the direction of administrative activity, dealing with the challenges of the digital transition, as to ensure the “effectiveness” of administrative action in the enforcement and in the implementation of the EU law. Administrative activity is often perceived as delayed, poorly motivated, challenged, and even weak because it is not properly understood.⁹ Effective administrative action presupposes that the decision is adequate, and there is an appropriate means to the end. Effectiveness, as far as administrative law is concerned, is a further development of the

Paradigms of EU Administration. In: *EU Law Live: The Agencies of the European Union: Legal Issues and Challenges* [online]. 2023, pp. 4–8 [cit. 2024-03-04]. Available at: <https://eulawlive.com/symposia/the-agencies-of-the-european-union-legal-issues-and-challenges/>.

⁵ HOFMANN, H. – MIR, O. – SCHNEIDER, J. P. The ReNEUAL Model Rules on EU Administrative Procedure Revisited. In: FROMAGE, D. (ed.). *Jacques Ziller: a European Scholar*. Fiesole: EUI, 2022, p. 78.

⁶ CURRY, E. The Big Data Value Chain: Definitions, Concepts, and Theoretical Approaches. In: CAVANILLAS, J. M. – CURRY, E. – WAHLSTER, W. (eds.). *New Horizons for a Data-Driven Economy a Roadmap for Usage and Exploitation of Big Data in Europe*. Cham: Springer, 2016, p. 31.

⁷ FROSINI, T. E. L'ordine giuridico del digitale. *Rivista Ceridap*. 2023, No. 2, pp. 36–65.

⁸ “[R]egulatory sandboxes generally refer to regulatory tools allowing businesses to test and experiment with new and innovative products, services or businesses under supervision of a regulator for a limited period of time.” (European Parliament. Briefing: Artificial intelligence act and regulatory sandboxes [online]. European Union, 2022 [cit. 2024-03-04]. Available at: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733544/EPRS_BRI\(2022\)733544_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733544/EPRS_BRI(2022)733544_EN.pdf)).

⁹ “In short, the lack of effectiveness is the current stumbling stone of administrative law.” (CORSO, G. – DE BENEDETTOM, M. – RANGONE, N. *Diritto Amministrativo Effettivo: una Introduzione*. Bologna: Il Mulino, 2022, p. 19). Utmost reading of this book has inspired the reflection of this article. See also MOUSMOUTI, M. *Designing Effective Legislation*. Cheltenham: Edward Elgar, 2019.

principle of proportionality:¹⁰ the administration has several options to choose from when exercising its power (in the event) with the aim of having meaningful effects on reality. Therefore, the rule (and the consequent decision) has to affect legal positions to be effective.

Consequently, this paper will attempt to highlight how the quality of open data is functional to the effectiveness of administrative activity in composite proceedings. The methodology used is the classical methodology used by lawyers: relevant literature of legal scholarship and official texts; there is no relevant case law of courts that is useful for the purpose of this article. The paper is structured as follows: after a brief examination of the role of open data within the Data Strategy (§ 2), the role of digitisation in supporting data sharing between administrations required to instruct and conclude composite proceedings, will be analysed, in order to clarify whether open data can really act upon the effectiveness of administrative activity (§ 3). Finally, considering EU administration as a platform acting in the data driven society (§ 4), some conclusions will be drawn on the role of useful and quality data also in administrative activity (§ 5).

2. OPEN DATA STRATEGY: A RECOGNITION

Open data is generally data in an open format that can be freely used, re-used, and shared by anyone for any purpose.¹¹ In other words, open data is a data that the administration already has at its disposal after the collection, the possession, and the consumption of large data-sets which represents (including personal data), “*an immanent feature of the powers entrusted to public authorities*”.¹² Specifically, in composite procedures, open data is used and shared by public administrations, between public administrations for administrative purposes.

There are two facts related to the use of data in administrative activity: on the one hand, it is also an expression of the data-driven society and on the other hand, its use leads one to also have to reflect on the axe of public power. The Information and communication technology (ICT) development becomes both an intrinsic feature of public power, and a phenomenon whose regulation is central to economic and social relations as a whole. The “Digital State”¹³ is the new asset of public power: public activity is being transformed, in terms of ways and means, through the application of new

¹⁰ For the proportionality principle as defined in the EU Treaties (art. 5, c. 4 TEU), the action of the Union “*shall not exceed what is necessary to achieve the objectives of the Treaties*”. See also, EMILIOU, N. *The Principle of Proportionality in European Law*. The Hague: Kluwer Law International, 2000, pp. 115–170; CRAIG, P. *EU Administrative Law*. 2nd ed. Oxford: Oxford University Press, 2012, pp. 590–615; TRIDIMAS, T. *The General Principles of EC Law*. 2nd ed. Oxford: Oxford University Press, 2006, pp. 136–174.

¹¹ Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information (recast), Recital 16; GOBBATO, S. Il mercato degli Open Data nella nuova Direttiva PSI. In: *Medialaws.it* [online]. 14. 5. 2019 [cit. 2024-04-03]. Available at: <https://www.medialaws.eu/il-mercato-degli-open-data-nella-nuova-direttiva-psi/>.

¹² CARULLO, G. – ERNST, C. Data Storage by Public Administration. *European Public Law*. 2020, Vol. 26, No. 3, p. 545.

¹³ This expression is quoted by the book of TORCHIA, L. *Lo Stato Digitale: Una Introduzione*. Bologna: Il Mulino, 2022.

technologies. Hence, ICT redesign and reorganise public functions and the rules for exercising power and the ways how it is controlled. At the same time, technological development overwhelms economic and social relations, requiring new rules to govern new phenomena such as digital services or the use of artificial intelligence. Not least because digital power also has a significant capacity to affect other constitutionally relevant interests such as, in particular, privacy and the protection of personal data.¹⁴

As far as Open Data is concerned, it is the key tool to translate the Open Government concept into a real sustainable model, where citizens can evaluate and be part of the decisions taken by public administration, as to also test rules (design of public policies). The open data movement has arisen within a broader trajectory of digitising government services (e-government) moving forward to more “*transparency, accountability and participation*”.¹⁵ The openness determines also governmental, social cultural and environmental, economic benefits: “*openness extends beyond the simple matter of whether or not resources and information are available freely for those who might want to use them*”.¹⁶ Strengthen the openness facilitates a shift of paradigm from the need to move beyond the concept of e-government (focused on digitalization as a lever for process efficiency) and the need for a digital transformation steering a “full digital administration” which can create public value. The goal of digital government relies on “*ecosystem comprised of government actors, non-governmental organisations, businesses, citizens’ associations and individuals which supports the production of and access to data, services and content through interactions with the government*”.¹⁷

First of all, access to open data held by public administrations involves the debate on issues as transparency,¹⁸ participation, and privacy; or better, with reference to its exploitation, it deals with the use of data (even for commercial purposes) beyond the purposes for which the data is collected.¹⁹ These facts mirror a real change in the relationships between administrations and citizens: the idea of openness is strictly related with a liberty right, rather than the mere interest of good administrative behaviour.²⁰ The starting assumption is that the use of new technologies is a source of new areas of interaction between the administration and citizens aiming to increase public value;²¹

¹⁴ POLLICINO, O. Di cosa parliamo quando parliamo di costituzionalismo digitale? *Quaderni costituzionali: rivista italiana di diritto costituzionale*. 2023, No. 3, pp. 569–594.

¹⁵ OECD. *Open Government: the Global Context and the Way Forward* [online]. Paris: OECD Publishing, 2016, p. 24 [cit. 2024-03-04]. Available at: <https://www.oecd.org/publications/open-government-9789264268104-en.htm>. See also, GALETTA, D.-U. Open Government, Open data e azione amministrativa. *Istituzioni del Federalismo*. 2019, No. 3, p. 667.

¹⁶ JETHANI, S. – LEORKE, D. *Openness in Practice: Understanding Attitudes to Open Government Data*. Singapore: Palgrave Macmillan, 2021, p. 17.

¹⁷ OECD. Recommendation of the Council on Digital Government Strategies Digital Government Policy Framework. In: *OECD* [online]. 2014, p. 6 [cit. 2024-03-04]. Available at: <https://www.oecd.org/gov/digital-government/recommendation-on-digital-government-strategies.htm>.

¹⁸ OROFINO, G. Openness of Public Data and Transparency of Administrative Action. *European Review of Digital Administration & Law – Erdal*. 2022, Vol. 3, No. 2, p. 51.

¹⁹ ORSONI, G. – D’ORLANDO, E. Nuove prospettive dell’amministrazione digitale: open data e algoritmi. *Istituzioni del Federalismo*. 2019, Vol. XL, No. 3, p. 595.

²⁰ *Ibid.*, p. 597.

²¹ Public value refers to various benefits for society that may vary according to the perspective or the actors, including the following: 1) goods or services that satisfy the desires of citizens and clients; 2) production choices that meet citizen expectations of justice, fairness, efficiency and effectiveness; 3) properly ordered

it renews also the ways in which administrative binding action is legitimized as well as the use and implementation of discretionary power.²²

Assuming that digitalization reinforces certain dimensions of good administration as openness, transparency, efficiency, and accountability, this is possible only thanks to the information which is “*the result of the reinterpretation of what is represented by the data*”.²³ Therefore data itself and the operations that can be processed (by humans or by automatic means)²⁴ over such data really matters. EU and national administration are not yet fully replaced by modern information and communication technologies, anyway “*core parts of the traditional administrative state have been automated with a significant impact on both institutions and their accountability*”.²⁵

But, why public administration’s push to open data? A quick response is the attempt to reply to the evolution towards a data-based society, considering that an action at Union level was necessary as to address the remaining and emerging barriers to a wide re-use of public sector and publicly funded information across the Union. The cross-border dimension first affects the administrative activity inherent in composite proceedings. Therefore, as to bring the legislative framework up to date with the advances in digital technologies and to further stimulate digital innovation, especially with regard to artificial intelligence, the Directive on Open Data 2013/37/EU was revised in 2019. As declared in Recitals 8 and 9: “*Providing [...] information, which includes dynamic data, in a commonly used electronic format allows citizens and legal entities to find new ways to use them and create new, innovative products and services.*” Again, “*public sector information represents an extraordinary source of data that can contribute to improving the internal market and to the development of new applications for consumers and legal entities*”. The substantive changes introduced in the revised text testifies the path towards a data driven law.²⁶

Referring to data, the legal backdrop is not only made by the Open Data Directive, rather it is the Strategy on Data as a whole to be considered along with the GDPR. The latter represent the leading regulation for trust in the digital data driven society,

and productive public institutions that reflect citizens’ desires and preferences; 4) fairness and efficiency of distribution; 5) legitimate use of resource to accomplish public purposes; and 6) innovation and adaptability to changing preferences and demands. (OECD, *Recommendation of the Council on Digital Government Strategies Digital Government Policy Framework*, p. 6).

²² CHEVALIER, E. – MENÉNDEZ SEBASTIÁN, E. Digitalisation and Good Administration Principles. *European Review of Digital Administration & Law*. 2022, Vol. 3, No. 1, p. 5.

²³ CARULLO – ERNST, *c. d.*, p. 548.

²⁴ The Online Browsing Platform (OBP) in ISO vocabulary on information technology defines data as “*re-interpretable representation of information in a formalized manner suitable for communication, interpretation, or processing*” and specifies that “*Data can be processed by humans or by automatic means*” (Information technology – Vocabulary – Part 1: Fundamental terms. In: *Online Browsing Platform* [online]. [cit. 2024-03-04]. Available at: <https://www.iso.org/obp/ui/#iso:std:iso-iec:2382:-1:ed-3:v1:en>).

²⁵ CATANZARITI, M. – CURTIN, D. Beyond Originator Control of Personal Data in EU Interoperable Information Systems: Towards Data Originalism. In: CATANZARITI, M. – CURTIN, D. (eds.). *Data at the Boundaries of European (Law)*. Oxford: Oxford University Press, 2023, p. 134.

²⁶ See, DE SIMONE, C. Dal riuso delle fonti pubbliche alla European Strategy of Data. *Rivista Giuridica Ambiente Diritto.it*. 2021, Vol. XXI, No. 1, pp. 1–23; BROOMFIELD, H. Where Is Open Data in the Open Data Directive? *Information polity*. 2023, No. 2, pp. 175–188; JAATINEN, T. The Relationship between Open Data Initiatives, Privacy, and Government Transparency: a Love Triangle? *International data privacy law*. 2016, Vol. 6, No. 1, pp. 28–38.

moreover in theory, “it is hard to identify any kind of data as truly and permanently non-personal”.²⁷ Along with these features, data is susceptible to an economic evaluation of its value: the exchange value is generated by considering the possibility of the data being placed on the secondary market.²⁸ The exchange of data is inspired by the FAIR principle²⁹ helming all the acts related with the data economy and data sharing as the Digital Governance Act (DGA),³⁰ the Digital Markets Act (DMA)³¹ and the Digital Services Act (DSA).³² The Digital Governance Act which entered into force on last 24th September 2023, is a Regulation with direct effect creating the processes and structures to facilitate data sharing by companies, individuals, and the public sector, whereas the Directive on Open Data aims to reach common goals among Member States. Furthermore, the Data Act Regulation³³ aims to clarify who can create value from data and under which conditions.

At first glance, a joint reading of the Directive on Open Data and the Digital Governance Act, together with the Data ACT, not only points out the strategic role for economic growth, innovation, and the internal market, arising from the re-use of public sector data, but also, in parallel, aims to drive the development of technologies for analysing, exploiting, and processing data, such as machine learning, Artificial Intelligence Systems and the Internet of Things. All these technologies and tools are used every day to support administrative decisions. In other words, we can think of open data as something that is always embedded in governance and decision-making activity.³⁴ As a part of the ICT, open data is a tool to allow the EU to achieve its objectives in its areas of competence (even if only of coordination and support), as there is no specific legal basis for the EU action in the digital world.

Against this backdrop, something has to be clarified about big data and its correlation with open data, as not to blur different issues. It goes without saying that big data is something different from open data. Indeed, big data represents large volumes of data which is heterogeneous in terms of type, origin, and format. At the same time, big data can be generated from data produced by public administrations and increasingly shared

²⁷ ROSSI DAL POZZO, F. – ZOBOLI, L. To protect or (not) to protect: definitional complexities concerning personal (and non-personal) data within the EU. *Rivista Eurojus*. 2021, No. 1, p. 322. See Regulation (EU) 2018/1807 of the European Parliament and of the Council of 14 November 2018 on a framework for the free flow of non-personal data in the European Union.

²⁸ GALIANO, A. – LEOGRANDE, A. – MASSARI, S. – MASSARO, A. I dati non personali: la natura e il valore. *Rivista italiana di informatica e diritto*. 2020, Vol. 2, No. 1, pp. 61–77. According to the authors, the essential element as to understand the value of data is the ability of data to increase its value through elements such as: circulation, interpretation and functionalisation of data itself. (Ibid., p. 66).

²⁹ They are: findability, accessibility, interoperability, and reusability.

³⁰ Regulation (EU) 2022/868.

³¹ Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act).

³² Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act).

³³ Regulation (EU) 2023/2854 of the European Parliament 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).

³⁴ KITCHIN, R. *The Data Revolution: Big Data, Open Data, Data Infrastructures and Their Consequences*. California: Sage, 2014, pp. 54–60.

as open data, as well as from data generated from the digital traces left by individual users/citizens' activities on the web. Therefore, open data is also to be handled with care: a risk based approach, inspired by the General Data Protection Regulation (GDPR),³⁵ is needed: public bodies have to react promptly, being able to explain the source of the data, and to update or modify it, were it only because the creation of large databases of information are challenging the legal framework and order.³⁶ This is the path followed in the Proposal of the AI ACT Law which attempts to regulate the risk embedded in AI use and tools,³⁷ which are also at the basis of the ADM systems.³⁸ As already said, public administration's use of data is the basis for an interpretation of the data's representation, as to mine the information that allows the decision-making activity – even more fuelled by big data – as a clear example of the functionalism of data exploitation. Indeed, the persuasive power of algorithms and the technique to use them as machine learning aim at predicting social behaviours that are expected to be repeated over time³⁹ but which could generate discrimination issues in data-supported decision-making.⁴⁰ That is the reason why “public” open data should be “quality data”.⁴¹ This is the aspect that impinges on the decision-making power and the binding nature of the administrative activity itself, as called for in the Directive (Recital 14).⁴² For example, with the Data Act, the EU Commission aims to remove any remaining uncertainty that the *sui generis* right does not apply to machine-generated databases,⁴³ thus clearing the field

³⁵ Regulation on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

³⁶ OLIVEIRA PAIS, S. Big data and big databases between privacy and competition. In: CANNATAI, J. – FALCE, V. – POLLICINO, O. (eds.). *Legal Challenges of Big Data*. Cheltenham: Edward Elgar, 2020, p. 15.

³⁷ Proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain union legislative acts. COM (2021) 206 final, in the last version already at first reading by the EU Parliament on last 13rd of March 2024 (Available online at: https://www.europarl.europa.eu/doceo/document/TA-9-2024-03-13-TOC_EN.html).

³⁸ “AI is being used not only to develop translation within EU services, but also to improve communication with individuals via input platforms and participatory communication tools”, as well as to assess risk profiles in asylum and immigration matters or to monitor the external borders situations from Frontex. See, HOFMANN, C. H. – GALETTA, D.-U. Evolving AI-based Automation: the Continuing Relevance of Good Administration. *European Law Review*. 2023, No. 48, p. 618.

³⁹ CATANZARITI, M. Algorithmic Law: Law Production by Data or Data Production by Law? In: MICKLITZ, H. W. – POLLICINO, O. – REICHMAN, A. – SIMONCINI, A. – SARTOR, G. – DE GREGORIO, G. (eds.). *Constitutional Challenges in the Algorithmic Society*. Cambridge: Cambridge University Press, 2022, p. 78.

⁴⁰ European Union Agency for Fundamental Rights (FRS). BigData: Discrimination in data-supported decision making. In: *FRS: European Union Agency for Fundamental Rights* [online]. 30. 5. 2018 [cit. 2024-03-04]. Available at: <https://fra.europa.eu/en/publication/2018/bigdata-discrimination-data-supported-decision-making>; MENÉNDEZ SEBASTIÁN, E. – MATTOS CASTAÑEDA, B. Better Decision Making, Algorithmic Discrimination and Gender Biases: a New Challenge for the Administration of the 21st Century. *European Review of Digital Administration & Law*. Vol. 3, No. 1, pp. 45–56.

⁴¹ ROSENBERG, D. – GITELMAN, L. (eds.). *Raw Data Is an Oxymoron*. Cambridge: Mit Press, 2013, pp. 15–40.

⁴² Artificial Intelligence Act, COM (2021) 206, Recital 14. Allowing the re-use of documents held by a public sector body adds value for the benefit of re-users, end users and society in general and in many cases for the benefit of the public sector body itself, by promoting transparency and accountability and by providing feedback from re-users and end users, which allows the public sector body concerned to improve the quality of the information collected and the performance of its tasks.

⁴³ On the *sui generis* rights refers to Article 7 of the Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, whereas the Proposal on Data Act clarifies

for the sharing of this data from the risk of infringing on intellectual property rights and pushing the open data potential.

Data mining and data re-use have both a close correlation with composite procedures too. Therefore, ensuring interoperability⁴⁴ is very important because it allows different datasets to be merged in order to build even more complex datasets by revealing new knowledge. Again, despite the intellectual property rights and licenses, when it comes to open data there are no restrictions. From our perspective, along with socio-economic, cultural, and statistical data, it is important to make open public data for policy improvement and characterised by the potential for commercial reuse such as economic data, transport data, and spatial data. However, data is not always seen as a product, but can also be a service.⁴⁵ Data can be a service, exchanged against remuneration, which, in fact, connects the provider and the recipient. In this sense, therefore, it becomes important that the data is oriented to meet the needs and expectations of the final user. Thereby, “public” open data must be “quality data” inspired by the accuracy principle which is strictly linked with the minimisation principle (Article 5(d) GDPR).⁴⁶ The accuracy requires to take all reasonable steps to erase or rectify inaccurate data without delay, moreover in case of ADM where data governance “*is the very oxygen of automation*”.⁴⁷ Doing so it is possible to improve the quality of data towards better decisions. Clearly, this aspect impinges directly on the decision-making power and the binding nature of the administrative activity, without neglecting discretionary activity as well. Consequently, transparency as explainability⁴⁸ as a first step, allows more certainty regarding decisions and more effective judicial protection, owing to the more important the data and information taken into account become.⁴⁹

that this right shall not be exercised by public sector bodies in order to prevent the re-use of data or to restrict re-use on data generated by a connected product or related service from being accessed. (Article 5, c. 7).

⁴⁴ In the EU Decision 2015/2240, interoperability is defined as: “the ability of disparate and diverse organisations to interact towards mutually beneficial and agreed common goals, involving the sharing of information and knowledge between the organisations, through the business processes they support, by means of the exchange of data between their respective ICT systems”. There is not a horizontal definition of interoperability, but it is rather defined in each sectorial legislative act. See, for example, Regulation (EU) 2019/818 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations (EU) 2018/1726, (EU) 2018/1862 and (EU) 2019. See also, CANNATACI – FALCE – POLLICINO, *c. d.*, p. 204.

⁴⁵ GURSTEIN, M. Should “Open Government Data” be a product or a service (and why does it matter)? In: *WordPress.com: Gurstein’s Community Informatics* [online]. 3. 2. 2013 [cit. 2024-03-04]. Available at: <https://gurstein.wordpress.com/2013/02/03/is-open-government-data-a-product-or-a-service-and-why-does-it-matter/>.

⁴⁶ Furthermore, as Article 22 of the GDPR argues, the principle of “minimisation” is fundamental in automated processes and in cases of profiling.

⁴⁷ HOFMANN – GALETTA, *c. d.*, p. 620.

⁴⁸ CATANZARITI, M. – CURTIN, D. Data at the Boundaries of European (Law): a First Cut. In: CATANZARITI, M. – CURTIN, D. (eds.). *Data at the Boundaries of European (Law)*. Oxford: Oxford University Press, 2023, p. 27.

⁴⁹ HOFMANN – GALETTA, *c. d.*, p. 632.

3. COMPOSITE PROCEDURES ISSUES AND OPEN DATA FOR THE EFFECTIVENESS OF ADMINISTRATIVE ACTIVITY

The EU administrative activity (both the rulemaking and the decision-making) is increasingly dominated by a range of composite procedures; as well as the attention of legal scholars is often focused on a subjective protection of individuals from procedural guarantees or effective judicial protection.⁵⁰ But for public administration, there is also an “objective” purpose, namely, to ensure the legality of administrative action as an answer to a collective need (in a never-ending shift from restrictive acts to service provision activity).⁵¹ If we assume that composite procedures are multi-step procedures, we all recognize that they generate and share information, forming the backbone of an integrated administrative cooperation⁵² based on Article 41 of EU Charter of Fundamental rights and on some sectorial legal acts.

On this backdrop, considering the existence of unknown problems for a purely national procedure, which can affect the enforcement of the EU law, it would rather shift the focus to the effectiveness of rules, which can strengthen procedural guarantees in the decision-making, at least. Therefore, in terms of composite procedures, open data can serve many public interests in new ways, leading to faster and more accurate decision-making (already at the preparatory level), while it remains difficult to ensure effective judicial protection for individuals in shared administration between the EU and the Member States. Thus, the EU law entrusts the responsibility to uphold the legal protection of its citizens to the MS and national courts complying with the principle of effectiveness and equivalence which practically affects the institutional and procedural autonomy of Member States themselves.⁵³ Referring briefly to Kelsen’s doctrine, a rule is effective if it is “observed and applied”.⁵⁴ In EU law, the principle of effectiveness entails an obligation on institutions and administrations not to make it practically impossible or excessively difficult to exercise the rights conferred by the EU legal order; it has been developed by the Court of Justice to ensure full implementation by Member States of EU legal acts without direct effect (Article 10 TCE).⁵⁵ Effectiveness, in the context of composite procedures, thus refers to the adequacy of the administrative choice, the

⁵⁰ *Inter alia*, JAN, B. Safeguarding the Right to an Effective Remedy in Algorithmic Multi-Governance Systems: an Inquiry in Artificial Intelligence-Powered Informational Cooperation in the EU Administrative Space. *Review of European Administrative Law*. 2023, Vol. 16, No. 2, pp. 9–36; PALMIOTTO, F. The Role of Courts Before and After the AI Act. In: *Verfassungsblog: On Matters Constitutional* [online]. 5. 1. 2023 [cit. 2024-03-04]. Available at: <https://verfassungsblog.de/procedural-fairness-ai/>.

⁵¹ BRITO BASTOS, F. Derivative Illegality in European Composite Administrative Procedures. *Common Market Law Review*. 2018, Vol. 55, No. 1, pp. 101–134.

⁵² HOFMANN, H. Multi-Jurisdictional Composite Procedures – the Backbone to the EU’s Single Regulatory Space. University of Luxembourg Law Working Paper Series, No. 033–2019. In: *SSRN* [online]. 2019 [cit. 2024-03-04]. Available at: <https://papers.ssrn.com/abstract=3399042>.

⁵³ GALETTA, D.-U. *Procedural Autonomy of EU Member States: Paradise Lost?* Berlin, Heidelberg: Springer, 2010.

⁵⁴ The principle of effectiveness is articulated in the duality of validity and effectiveness. Validity is given by the *Grundnorm*; effectiveness is the ability of the norm to have an impact on legal positions. See KELSEN, H. *The Pure Theory of Law*. California: University of California Press, 1967.

⁵⁵ Art. 10 TEC was repealed in the Lisbon Treaty. The obligation for national bodies to ensure the full effectiveness of EU law is laid down in Article 4(3) TEU.

congruence and reasonableness of the means to the end. It is therefore a further declination of the principle of proportionality since it also presupposes the point of view of the administered. Effectiveness, in the case of an administrative decision, is modulated according to the degree of discretion available to the administration and which has consequences for citizens. In the case of constrained activity, the discourse is simpler, therefore it's closely linked to the exercise or non-exercise of the administrative activity. In the case of discretionary activity, the problem of effectiveness already arises in the preliminary activity leading to the final decision. According to composite procedures, difficulties related with a real effectiveness are higher, due to the lack of real judicial protection for the addressee of a final decision in shared administration.

Mention has already been made of the Digital State, of the new questions that the use of technologies brings for governance activities both at the institutional level and according to the relations with and between private individuals and public actors. The basic problem is how to regulate a new world, and how to ensure that administrative activity relies on new rules that, however, guarantee the protection of citizens and the pursuit of the public interest. For its part, the Data Strategy envisages that, in a data-driven society, public actors operate in an environment of trust, (where they are given an operational function to convince public and private organisations and individuals to be trusting in allowing their data to be shared in data spaces). It is no longer *“a question of Member States trusting each other’s regulatory, administrative and judicial capacity, but of public and private actors within the EU and outside the EU trusting EU governance as such. EU digital governance is seen as an independent entity, trustworthy on its own merits and future potential scenario”*.⁵⁶ Moreover, considering the nine more sectoral data spaces to be created,⁵⁷ and the consequent shift of power over both public and private data. Once again, the ICT revolution is forcing administration to be timely and up to date. In fact, this means that decisions must also be based on real-time data. Therefore, the EU administrative activity is not detached from it.

It follows that any new rules must be built on existing and functioning administrative principles, such as transparency, openness, participation, and proportionality. The idea is that the data used by the administration must not only be open, but that, once open, it must be of a quality as to allow the effectiveness of administrative action. Making administration truly effective is the real dilemma of today’s administration, moreover because the AI challenges the effectiveness of rules and their implementation by administration,⁵⁸ as well as personal rights of citizens. Effectiveness looks at the result and its consequences, it is based on the relationship of trust established with citizens. This is not just a formal aspect, but the effectiveness of an administrative rule (or decision) that provides rights depends on the actual exploitability of the information or enforceability

⁵⁶ REICHEL, J. The European Strategy for Data and Trust in EU Governance: the Case of Access to Publicly Held Data. *Rivista Ceridap*. 2023, No. 4, p. 134.

⁵⁷ They are: Industrial data space, Green Deal data space, Mobility data space, Health data space, Financial data space, Energy data space, Agriculture data space, Data spaces for Public Administrations, Skills data space. See European Strategy for Data. In: *Real-time Linked Dataspaces: Common European Data Spaces* [online]. [cit. 2024-03-04]. Available at: <https://dataspaces.info/common-european-data-spaces/#page-content>.

⁵⁸ RANGONE, N. Artificial intelligence challenging core State functions: a focus on law-making and rule-making. *Revista de Derecho Público: Teoría y método*. 2023, Vol. 8, p. 99.

of the protection.⁵⁹ Not only a decision must be proportional but also perceived as such as to reach its effectiveness. When it comes to open data, in the view of the author, there are two important first issues to consider: interoperability and participation.

On the first hand, data (its reuse) and the interoperability feed the cycle of rules, improving them. As an example, the interoperable sharing of data from national authorities for “*purposes other than those underlying the contexts in which the data are shared (in the respective legal instruments relating to the databases concerned) may inevitably affect the rights of individuals concerning the use of the data and the extent to which they are instrumental in making decisions on visas, asylum applications or residence permits*”.⁶⁰

This example well reflects the conundrum of data usage after the data is already in the hands of the public administration, raising problems for the data originator.⁶¹ even if it is open and not personal data. The interoperability, dealing with cumbersome technological architecture, which can make it difficult to distinguish the different stages of the information-sharing process, are related with law issues and not only infrastructural ones. On the second hand, participation in processes for the adoption of specific measures is not only a way to make administrative activity open, but also to enable its improvement, moreover in the case of AI tools, by generating data (and information) that is not only knowable but also exploitable. “*The lack of transparency in the use of technology and a lack of accountability could be perceived as potentially harmful to consumers*”⁶² jeopardising efforts to make decisions motivated or knowable in the various steps, already in the case of preparatory acts with some binding nature.⁶³ This is the case of the technical assessment activity carried out, for instance, by some EU agencies which the final decision activity of the EU Commission is based on, as in case of medicines authorization, food, and chemical products.⁶⁴ In these areas, the contribution to the proceedings made directly by EU bodies such as agencies is crucial.

Consequently, an administrative option is enriched if it is supported by open data justifying the final choice as it allows one to read the entire path leading to the substantive legitimacy of the decision itself and not only the power under which it was adopted. It’s not only a transparency matter, rather, it is a matter in terms of participation in the decision-making process. Investing on the open data and its quality means making

⁵⁹ SIMONCINI, A. – LONGO, E. Fundamental Rights and the Rule of Law in the Algorithmic Society. In: MICKLITZ, H. W. – POLLICINO, O. – REICHMAN, A. – SIMONCINI, A. – SARTOR, G. – DE GREGORIO, G. (eds.). *Constitutional Challenges in the Algorithmic Society*. Cambridge: Cambridge University Press, 2022, p. 27.

⁶⁰ CATANZARITI – CURTIN, *Beyond Originator Control of Personal Data in EU Interoperable Information Systems...*, p. 137.

⁶¹ “*With the term ‘originalism’, we aim to shed light on the interplay between the original legal status of shared personal data and the effects of data sharing over time in the interoperability context.*” (Ibid., p. 138).

⁶² GIJRATH, S. Consumer Law as a Tool to Regulate Artificial Intelligence. In: MICKLITZ, H. W. – POLLICINO, O. – REICHMAN, A. – SIMONCINI, A. – SARTOR, G. – DE GREGORIO, G. (eds.). *Constitutional Challenges in the Algorithmic Society*. Cambridge: Cambridge University Press, 2022, p. 289.

⁶³ For a definition of preparatory acts with binding or no-binding nature, see, CJEU (Grand Chamber), Judgment of 19 December 2018, C-219/17, *Berlusconi e Fininvest*, ECLI:EU:C:2018:1023, paras 37 and 38.

⁶⁴ On this issue: MONICA, A. *Il “Terzo” Nei Procedimenti Amministrativi Europei*. Torino: Giappichelli, 2020.

administrative activity really adaptable to changes and accountable. In other word, the incremental approach following the need for the adaptability of the law to changes in the society such as the digital revolution is the key also in the everyday exploitation of data by public administrations.⁶⁵ In this way, data shall be “*as open as possible, as closed as necessary*”⁶⁶ so as to comply with the duty to state reason in case of binding decision and personal rights as well. But not only. The quality of data and its being up to date, grow the real participation in administrative activity. The type of data changes, but not the paradigm of its management, especially in composite proceedings the protection requirements are manifold and, paradoxically, are more complicated. The administrative officer must always justify to the individual how it has exercised a given power.⁶⁷ Therefore, even open data can become opaque if not used correctly, or it can generate false and apparent correlations constituting misleading information for administrative activity (both in rulemaking and planning, and in decision-making affecting individual position and liberties),⁶⁸ making the purposes of interoperability useless. Again, data is collected by the administration and used for further purposes or as a basis for building AI-based predictive models.⁶⁹ However, as the legal doctrine is trying to highlight, the real investment that the administration must carry out is to use open data, AI systems also in an explanatory sense, without forgetting that when decisions are proportionate and stakeholders have participated in the decision-making process, it is more likely that the resulting decisions are, on balance, accurate.⁷⁰

Following this reasoning, it's worthwhile considering that the Open Data Directive deals with specific categories of data, such as “*dynamic data*”.⁷¹ It can be defined as information that changes continually, that is updated with a high frequency and that, if

⁶⁵ DALY, P. Artificial Administration: Administrative Law in the Age of Machines. Ottawa Faculty of Law Working Paper, No. 2020-03. In: *SSRN* [online]. 25. 11. 2019 [cit. 2024-03-04]. Available at: <https://ssrn.com/abstract=3493381> or <http://dx.doi.org/10.2139/ssrn.3493381>.

⁶⁶ GOBBATO, S. Open Science and the reuse of publicly funded research data in the new Directive (EU) 2019/1024. *Journal of Ethics and Legal Technologies*. 2020, Vol. 2, No. 2, p. 147.

⁶⁷ DALY, c. d., p. 23.

⁶⁸ MENÉNDEZ SEBASTIÁN, E. L'intelligenza artificiale nel settore pubblico: sulla perenne ricerca di un equilibrio tra efficienza e garanzie. *Rivista Ceridap*. 2023, No. 2, pp. 66–84; WEERTS, H. – XENIDIS, R. – TARISSAN, F. – PALMER OLSEN, H. – PECHENIZKIY, M. Algorithmic Unfairness through the Lens of EU Non-Discrimination Law. In: *Proceedings of the 2023 ACM Conference on Fairness, Accountability, and Transparency* [online]. New York: Association for Computing Machinery, 2023, pp. 805–816 [cit. 2024-03-04]. Available at: <https://dl.acm.org/doi/10.1145/3593013.3594044>.

Again, to refer to the specific Italian context, see, *inter alia*, LAVIOLA, F. Algoritmico, troppo algoritmico: decisioni amministrative automatizzate, protezione dei dati personali e tutela delle libertà dei cittadini alla luce della più recente giurisprudenza amministrativa. *Biolaw Journal*. 2020, No. 3, pp. 389–440.

⁶⁹ MAYER-SCHÖNBERGER, V. – CUKIER, K. *Big Data: a Revolution That Will Transform How We Live, Work, and Think*. Boston: Houghton Mifflin Harcourt, 2013, p. 71; BOULTON, G. – BABINI, D. – WYATT, S. *Open Data in a Big Data World: an International Accord*. Paris, ICSU-IAP-ISSC-TWAS, 2015; WESSELS, B. – FINN, R. – SVEINSDOTTIR, T. – WADHWA, K. Visions of Open Data. In: WESSELS, B. – FINN, R. L. – WADHWA, K. – SVEINSDOTTIR, T. – BIGAGLI, L. – NATIVI, S. – NOORMAN, M. (eds.). *Open Data and the Knowledge Society*. Amsterdam: Amsterdam University Press, 2017, pp. 45–64.

⁷⁰ DALY, c. d., p. 23.

⁷¹ “*Dynamic data*” means documents in a digital form, subject to frequent or real-time updates, in particular because of their volatility or rapid obsolescence; data generated by sensors are typically considered to be dynamic data. art. 2, c. 8 Directive (EU) 2019/1024.

no periodic backups are provided at the architectural level, cannot be recalculated or reconstructed in the event of information loss. The goal is to exploit the economic value of *dynamic data* (including environmental, traffic, satellite, meteorological, and sensor generated data), which depends on the immediate availability of the information and of regular updates.⁷² It can also embed *high value* data, as specified in the Commission Implementing Regulation (EU) 2023/138⁷³ laying down a list of specific high-value datasets and the arrangements for their publication and re-use. The Open Data Directive obliges the Eu Commission to adopt a list of high-value datasets that should be made available free of charge, in machine-readable formats, via Application Programming Interface (APIs)⁷⁴ and, where necessary, as bulk downloads.

As a result, this kind of data, whose re-use is associated with significant socio-economic benefits, should be made available under particularly favourable re-use conditions, because of the adoption of the same technical standards and interoperability profiles. Along with the concrete availability of high-data value strictly linked with public interest, as in the case of weather predictive models, the infrastructure issue is of seminal importance also for the exploitation of data itself.⁷⁵ Again the potential of *dynamic data* is very high and closely linked to the principle of accuracy and to design that is the hallmark of personal data governance in the Brussels effect,⁷⁶ which rather can also be transferred to open data pushing the effectiveness of administrative activity.

In other words, the importance of accuracy comes to the surface when the question arises as to whether the information is correct, and this aspect is not secondary either at the preparatory level of a proceeding or in the case of appeal against an act with binding effects.⁷⁷ The problem, in fact, is to be able to check the accuracy of the information so as to assess the fairness of the interpretation made of it for the purposes of decision-making, whether it is more or less constrained, beyond the problem of effective judicial protection. An anchor is the principle of EU administrative law, such as proportionality, which provides that “*the individual shall not be restricted in his freedom of action beyond what is necessary in the public interest, must allow for the effectiveness of action, which not only concerns the aim of the objective, but also its result*”.⁷⁸ The Covid experience, for example, has well illustrated how EU and Member State administrations need to collect and rely on essential data⁷⁹ in order to take

⁷² Ibid., Recital 31.

⁷³ Commission Implementing Regulation (EU) 2023/138 of 21 December 2022 laying down a list of specific high-value datasets and the arrangements for their publication and re-use.

⁷⁴ “*An API is a set of functions, procedures, definitions and protocols for machine-to-machine communication and the seamless exchange of data.*” (Recital 32 of Directive (EU) 2019/1024).

⁷⁵ Recital 16 of Directive (EU) 2019/1024.

⁷⁶ Scholars generally agree on the EU’s transnational influence on data privacy regulation, therefore the GDPR is being accepted as a standard of data protection applicable to all domestic and cross-border transfers of personally identifiable data. See, RUSTAD, M. L. – KOENIG, T. H. Towards a Global Data Privacy Standard. *Florida Law Review*. 2019, Vol. 71, No. 2, pp. 365–455.

⁷⁷ VAN DIJCK, J. *The Platform Society: Public Values in a Connective World*. New York: Oxford University Press, 2018, p. 140.

⁷⁸ CJEU, Judgment of 17 December 1970, Case 11/70, *Internationale Handelsgesellschaft*, ECLI:EU:C:1970:114.

⁷⁹ RAGONE, G. Imparare dalla pandemia: saperi scientifici e processi di decisione politica. *Quaderni costituzionali*. 2022, No. 1, pp. 73–103.

decisions and implement them effectively, if they are to be truly in the public interest of the community.⁸⁰ In this sense, making data available is not just about transparency. It is also about the functional value of the cognitive power of the administration and its balance for effective and timely action in an interoperable space.

4. EU ADMINISTRATIONS AS A PLATFORM: IMPLICATION FOR ADMINISTRATIVE PROCEDURES

As to recap, the discourse on data strategy is linked to composite processes insofar as these same administrative processes are based on data, is re-use, and is exchange, always respecting the principles of justification, transparency, and intelligibility. However, another piece of the puzzle must be added. The data is open, but it is not just a product or a good. It can also be considered a service, or a component thereof. Here then, the conception of the administration as a platform fits well into this framework. The government-as-a-platform model⁸¹ constitutes a transposition of the so-called platform model derived from the platform society or platform economy to the level of institutional governance and administration⁸² and it is inspired by the participatory government envisioned by Founding Fathers in the US and rediscovered by Barack Obama in the 2016 presidential election. The platform determines the structures and the economic-social relations with which users interact, setting themselves up as architectures with their own typeable characteristics, distinguishable from other network makers. Through the platform it becomes possible to set up virtual learning environments, e-learning training systems, work, management, research, and monitoring environments, as well as experiences and services organised on several levels of access, according to the type of user.⁸³

Thanks to digital technologies, platforms give rise to complex ecosystems.⁸⁴ Institutions and administrations make use of platforms to interact with companies, individuals, or with other institutions and administrations and with each other. The DSA defines the “online platform” as “*a hosting service that, at the request of a recipient of the service, stores and disseminates information to the public, unless that activity is a minor and*

⁸⁰ DELLA PIA, R. – ELIANTONIO, M. The Contribution of EU Agencies to Managing the COVID-19 Pandemic: a Polycentric approach to Public Health. In: *EU Law Live: The Agencies of the European Union: Legal Issues and Challenges* [online]. 2023, pp. 27–30 [cit. 2024-03-04]. Available at: <https://eulawlive.com/op-ed-the-contribution-of-eu-agencies-to-managing-the-covid-19-pandemic-a-polycentric-approach-to-public-health-by-ruben-della-pia-and-mariolina-eliantonio/>.

⁸¹ O'REILLY, T. Government as a Platform. *Innovations*. 2011, Vol. 6, No. 1, pp. 13–40. The author explains the transition from traditional government to government as a platform where “*all of the outcomes aren't specified beforehand, but instead evolve through interactions between government and its citizens, as a service provider enabling its user community*” (p. 15).

⁸² BOSCHETTI, B. La transizione della pubblica amministrazione verso il modello Government as a platform. In: LALLI, A. (ed.). *L'amministrazione Pubblica Nell'era Digitale*. Torino: Giappichelli, 2022, p. 7.

⁸³ *Interoperabilità*. In: *Enciclopedia Treccani della Scienza e della tecnica* [online]. [cit. 2024-03-04]. Available at: <https://www.treccani.it/enciclopedia/ricerca/Interoperabilit%C3%A0/?search=Interoperabilit%C3%A0>.

⁸⁴ VAN DIJCK, J. – POELL, T. – DE WAAL, M. *The Platform Society*. New York: Oxford University Press, 2018, online available in: *Oxford Academic* [online]. 18. 10. 2018 [cit. 2024-03-04]. Available at: <https://doi.org/10.1093/oso/9780190889760.001.0001>.

purely ancillary feature of another service or a minor functionality of the principal service [...]”,⁸⁵ as the dissemination of specific content to the public constitutes a minor and ancillary feature or functionality of such services. Here, the administration must not only equip itself with technological infrastructures to manage the digitisation processes, but as a platform, it is an infrastructure itself, as a necessary condition to enable full interoperability not only with other public administrations but also with the various actors of the digital era.⁸⁶

Since “*administration as a platform*” has become primarily service-oriented (of various kinds) and the platform offers services on the basis of data that generates information, relationships, big data and, thus, new services; meanwhile open data “*also enables innovation, as developers build applications that reuse government data in unexpected ways*”,⁸⁷ that allow citizens to actually replace functions of government as in a self-service market. Therefore, Open data is no longer only the paradigm needed to enhance public information assets or to support e-government activities that offer services to citizens, but open data is itself the pivot service through which the administration as a platform operates as utmost citizen/user-supporter. Only in this way can the public administration, as the holder of a huge and valuable data asset, truly compete as an information holder with the various private digital platforms and be able to make better, and thus more effective, decisions.⁸⁸

Referring to the EU integration process and direct administration, it’s worthwhile to recognise that it originally had a streamlined and essential administrative structure⁸⁹ and for the implementation of the EU policies, indirect implementation or executive federalism was chosen, which assign the implementation of EU law to national administrations with the emphasis on the obligation of cooperation by national administrations. As a result, the EU administration has progressively extended its tasks, especially coordination and liaison tasks by implementing acts (*ex* Article 291 TFUE), following the expansion of the Union’s fields of action,⁹⁰ and national administrations have been increasingly involved in co-administration. In such cases, investment in ICT has been essential to simplify and make administrative action effective. For example, the eHealth network, which is provided in Article 14 of Directive on cross border health assistance, facilitates on a voluntary basis the cooperation and the exchange of information among MS since 2011. Hence, the exchange of information (and data) is a seminal tool of

⁸⁵ Article 3, lett. I, Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act); in particular, Recital 13.

⁸⁶ SANDULLI, A. Pubblico e privato nelle infrastrutture digitali nazionali strategiche. *Rivista Trimestrale Di Diritto Pubblico*. 2021, No. 2, p. 517.

⁸⁷ O’REILLY, *c. d.*, p. 26.

⁸⁸ TORREGIANI, S. Il Dato non personale alla luce del Regolamento (UE) 2018/1807: tra anonimizzazione, ownership e Data by design. *Federalismi.it*. 2020, No. 18, p. 328.

⁸⁹ CHITI, E. L’evoluzione del sistema amministrativo europeo. *Giornale di diritto amministrativo*. 2019, No. 6, pp. 681–684.

⁹⁰ SALTARI, L. Le amministrazioni europee: i piani d’azione e il regime dell’attività. In: DE LUCIA, L. – MARCHETTI, B. (eds.). *L’amministrazione Europea e le Sue Regole*. Bologna: Il Mulino, 2015, p. 120.

the shared administration, being grounded on the principle of cooperation and collaboration.⁹¹ From voluntary networks to binding legislative acts directly binding on the Member States, the path has not been smooth, or rather it has required several transversal interventions for the change towards an increasingly digitised and interconnected administration.

One tool of this integration based on ICT, is Regulation 2018/1724, establishing a Single digital gateway to access information, procedures and assistance and problem-solving services. Article 6 of this Regulation requires Member States to make procedures fully available online, steered by the once only principle. This fact implies the effectiveness of administrative activities complying also with the right of good administration of Article 41 of the EU Charter of Fundamental Rights, impacting on procedural autonomy of administrative activities, as well as the idea of space and physical site which is no more relevant. This is a principle of central importance and its effective application results not only in simplification for citizens and businesses who have to deal with public administrations between Member States, but also in essential time savings for the administrations themselves in carrying out their own information and preparatory activities.⁹² Here, knowledge is closely linked to the exchange of up-to-date and accurate data, even more so in a dematerialised and cross-border dimension. Already before the digital Gateway, there was SOLVIT a Commission non-binding complaints handling service launched in 2001,⁹³ which is a database operating as a dispute resolution mechanism that relied on cooperation between national administrations and the EU Commission, established to improve enforcement of internal market regulation via information-sharing and the promotion of common practice.⁹⁴ Therefore, I argue that shared administration has already unwittingly been inspired in many activities by the platform model, moving towards a regulatory intelligence that can really lead to an ecosystemic administration that redesigns not only the administrative space, but also the relationship with and within the administrations,⁹⁵ bearing in mind the potential liability of the platform for “non-performance according to law” and the behavioural change in the market structure.⁹⁶

On this backdrop, the EU shared administration has almost anticipated the digital revolution that affected the administrative function of the Member States, inevitably also dragging the organisational function towards administration 3.0 which envisages the migration of certain administrative functions to websites, portals and social media.

⁹¹ GALETTA, D.-U. – HOFMANN, H. – SCHNEIDER, J. P. Information Exchange in the European Administrative Union: an Introduction. *European Public Law*. 2014, No. 1, pp. 65–69.

⁹² GALETTA, D.-U. Digitalizzazione, Intelligenza artificiale e Pubbliche Amministrazioni: il nuovo codice dei contratti pubblici e le sfide che ci attendono. *Federalismi.it*. 2023, No. 12.

⁹³ HARLOW, H. – RAWLINGS, R. *Process and Procedure in EU Administration*. Oxford: Oxford University Press, 2014, p. 85.

⁹⁴ LOTTINI, M. The SOLVIT Network and the Effective Enforcement of EU Law. What is New? In: DRAKE, S. – SMITH, M. (eds.). *New Directions in the Effective Enforcement of Eu Law and Policy*. Cheltenham: Edward Elgar, 2016, pp. 130–151; This on-line free of charge service is born as a Project Pilot of the EU Commission and there is not a binding act for in order to give it a legal basis.

⁹⁵ BOSCHETTI, c. d., p. 16.

⁹⁶ BAGNOLI, V. Platform Role and intermediary responsibility. In: CANNATACI, J. – FALCE, V. – POLLICINO, O. (eds.). *Legal Challenges of Big Data*. Cheltenham: Edward Elgar, 2020, p. 125.

It has looked ahead directly to administration 4.0, which is based on a transformed way of processing data and information through the automated performance of tasks that, before, could only be carried out by human intelligence.⁹⁷ The interoperability has become a key principle of digital administrative law,⁹⁸ facilitating data flows.⁹⁹ On this purpose, the recent Regulation 2024/903 defines ‘cross-border interoperability’ and not interoperability in a general sense, since the aim of the act is to create an ecosystem of shared solutions for EU administrations, in particular through the creation of spaces for regulatory experimentation under the responsibility of the EU actors or public bodies participating in this project.¹⁰⁰ Besides, attention must be paid... Attention must be paid also to data itself and its features. The social value *dynamic data* embodies has already been mentioned. It stems that this data has to be at the service of the “administration as a platform”, as to be exchanged and reused and be really attractive for private actors, as well as for other platforms in the digital landscape.

5. CONCLUDING REMARKS

To conclude, it’s worthwhile to recall the link which has steered the reasoning since the introduction: there is the need to make public data increasingly open and make the administrative activity truly effective in the sense of thinking of the result of the action as meeting the needs of the administered.¹⁰¹ Again, there is the assumption of seeing public data as a service in the EU market and the EU administration as a platform. From this perspective, it’s also easier to observe cross-border administrative activity, which by its very nature needs to use ICT to overcome barriers and territorial boundaries, in order to be effective and reach citizens between and across Member States in a multi-level governance. Consequently, many of the experiments of EU co-administration, as Single Digital Gateway (and the information exchange it allows), are possible by open data and its improvement.

Open data, however, should not only be open by default for cognitive reasons related to the principle of transparency. Rather, the real principle that must be taken into

⁹⁷ GALETTA, D.-U. – CORVALÁN, J. G. *Intelligenza Artificiale per una Pubblica Amministrazione 4.0? Federalismi.it*. 2019, No. 3, p. 3. In this paper the process of digitisation of public administration is considered through 4 types of paradigms: Administration 1.0 of the 19th century, using paper and pencil; Administration 2.0, also using faxes, printers and IT tools; Administration 3.0, migrating administrative functions to the digital world; Administration 4.0, processing data and information also in an automated way (both for preparatory and decision-making activities).

⁹⁸ BOSCHETTI, c. d., p. 21; CAMPMAS, A. – IACOB, N. – SIMONELLI, F. How can interoperability stimulate the use of digital public services? An analysis of national interoperability frameworks and e-Government in the European Union. *Data & Policy*. 2022, No. 4.

⁹⁹ Interoperability is expected to play a key role in several connected EU initiatives such as the roll out of Common European Data Spaces in specific sectors, including a data space for public administrations. European Commission, *Communication on Shaping Europe’s digital future*. COM/2020/67 Final.

¹⁰⁰ Regulation (EU) 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).

¹⁰¹ In other words, we need positive legislation that is pro-business and pro-society: see BALDWIN, R. – CAVE, M. *Taming the Corporation: How to Regulate for Success*. New York: Oxford University Press, 2021.

account is that of proportionality: data must be exploitable and interoperable as functional services for various activities that the administration carries out and services that it in turn offers. The proportionality principle, which permeates the whole of the EU legal systems,¹⁰² allows to choose the right medium in every administrative decision; therefore, in the digital society increasingly oriented towards developing AI systems, data must be inspired by the principle of accuracy derived, in turn, from the GDPR. Accuracy means verifying the pursuit of the objective, in a proportional way since “*no other measure available which is less restrictive of freedom*”.¹⁰³ Hence, accuracy of data is a pillar of the effectiveness of shared EU administrative action.

Effectiveness is then necessary to avoid possible distortions resulting from the difficulties of effective judicial protection in many EU composite proceedings. Therefore, making decisions on the basis of quality data (in as much as it is accurate, up-to-date and real) also makes it possible to guarantee the right to good administration to citizens, fostering, *de facto*, the role of shared administration. There are many examples (as well as literature) on asylum and immigration that reveal that information cooperation, fuelled by data sharing and pushing the interoperability mechanism, breaks new ground in EU governance. The plurality of public actors using data (open, personal, and algorithmic) at an operational level (e.g., border and immigration control officials, EU technical agencies involved in authorization schemes of medicines, foods, chemical substances, with the EU Commission and MS) profoundly shapes the nature of information sharing¹⁰⁴ and overcome the data silos storing.¹⁰⁵ “*It confuses automation and discretion*”¹⁰⁶ or at least makes them blurred. Indeed, it affects the effectiveness of administrative action and the protection of legal positions.

Besides, investment in *dynamic data* and *high value data*, as the Commission’s Implementing Regulation 2023/138 makes clear, is necessary but not easy. The technological investment is, in fact, accompanied by a large infrastructural investment (and the consequent problem of regulating the ownership and management of the infrastructure itself),¹⁰⁷ which is necessary for data mining activities, the development of cybersecurity,¹⁰⁸ as well as the emerging field of space law research. Again, as far as all research and technological development and space are concerned, EU competence to harmonize national legislation is lacking with the consequence that the EU only can adopt

¹⁰² TRIDIMAS, *c. d.*, p. 137.

¹⁰³ HARLOW – RAWLINGS, *c. d.*, p. 69.

¹⁰⁴ CATANZARITI – CURTIN, *Beyond Originator Control of Personal Data in EU Interoperable Information Systems...*, p. 142.

¹⁰⁵ DE GREGORIO, G. – RANCHORDAS, S. Breaking down information silos with big data. In: CAN-NATACI, J. – FALCE, V. – POLLICINO, O. (eds.). *Legal Challenges of Big Data*. Cheltenham: Edward Elgar, 2020, p. 206.

¹⁰⁶ CATANZARITI – CURTIN, *Beyond Originator Control of Personal Data in EU Interoperable Information Systems...*, p. 142. Effectiveness of data sharing pushes the problem of data quality from the perspective of the protection of data originator. Briefly, the authors wish a data originalism framework “*according to which data originators are entitled to, in essence, protective rights of information that they process as first or that they share as first (after processing)*” (p. 173).

¹⁰⁷ SANDULLI, *c. d.*, p. 519.

¹⁰⁸ On this purpose, see the recent Regulation (EU, Euratom) 2023/2841 of the European Parliament and of the Council of 13 December 2023 laying down measures for a high common level of cybersecurity at the institutions, bodies, offices, and agencies of the Union.

a framework programme, which shall be adapted or supplemented as the situation changes (Article 182[2] TFEU). While the effectiveness of administrative activity is fuelled by the functionality of data when fully exploited, it must also be accompanied by the support of the technology infrastructure.

I argue that this ongoing issue will be the real litmus test for the unfolding of the potential of public knowledge assets and their competitiveness in the data society. Again, new experiments that digital administration will have to cope with in the future will not only be related to the use of open data in decision-making processes but will increasingly be linked to the joint governance of data infrastructure and its control, in an attempt to handle the (embedded) risk of its misuse.

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