

CHAPTER 22

ADMINISTRATIVE DECISIONS AFFECTING INDIVIDUALS: PROCEDURAL SAFEGUARDS VS. MACHINE REJECTIONS IN AUTOMATED ADJUDICATION

*Martina Conticelli**

Abstract

This chapter examines how automated adjudication affects the procedural safeguards traditionally afforded to individuals in administrative decision-making. Through a comparative analysis of two hypotheticals—one involving fully automated welfare adjudication and the other a semi-automated licensing procedure—it highlights how algorithmic processes may erode the rights to be heard, to receive adequate reasons, and to obtain meaningful human oversight. The chapter shows that, although jurisdictions increasingly accept the use of AI to enhance administrative efficiency, they also converge on the need to preserve fundamental guarantees of good administration. Particular attention is devoted to transparency obligations, access to algorithmic logic or source code, and the availability of judicial or administrative remedies. Divergences persist, however, especially in balancing transparency with intellectual property protections when private actors develop the relevant algorithms. Overall, the chapter demonstrates that while automated decision-making offers significant benefits, it simultaneously intensifies longstanding tensions between efficiency and individual rights, requiring renewed commitments to procedural fairness and accountability in the digital administrative state.

* Full Professor of Administrative Law, Tor Vergata University of Rome, Italy.

TABLE OF CONTENTS

1. Object and scope of the analysis.....	378
2. Automated adjudication in context: a critical examination of two hypotheticals.....	380
3. Ratatouille ingredients: issues, challenges, and approaches.....	382
4. Tramp unveiled: issues, challenges, and approaches.....	390
5. Participatory requirements and basic procedural rights meet a machine: commonalities and divergencies.....	393

1. Object and scope of the analysis

All recent literature on the use of AI in administrative decision making (hereinafter ADM) proceeds on the assumption that administrative action may prove particularly adverse to individuals, as it can be the output of either an automated process or one carried out through the intermediation of a machine¹.

The debate takes two different directions, depending on the tasks entrusted to AI or, from a different perspective, the role left to human beings within the ADM process (one thinks of the so-called ‘human in the loop’ procedure).

The overall condition of those affected by a final administrative decision, i.e., in relation to what is generally accepted as the common standard of good administration, as well as that of other interested parties involved in administrative processes, may be worse than the currently recognised procedural rights when the procedure is conducted entirely by a civil servant acting as a human decision-maker. It is now widely accepted in scholarship and primary case law that the involvement of artificial intelligence affects adjudicatory proceedings by limiting or diminishing the safeguards afforded to the parties directly and individually affected by the final decision.

In other words, not only can automated administrative actions undermine the expectations of the addressees regarding their

¹ C. Coglianese and D. Lehr, *Regulating by robot: administrative decision making in the machine-learning era*, 105 *Georgetown Law Journal* 1147 (2017); D. Freeman Engstrom, D.E. Hot, *Algorithmic Accountability in the Administrative State*, in 37 *Yale Journal on Regulation* 800 (2020), p. 800 ff., U. Roehl, J. Cromptvoets, *Inside algorithmic bureaucracy: Disentangling automated decision-making and good administration*, 40 *Public Policy and Administration, Special Issue: Artificial Intelligence and Public Administration: Actors, Governance, and Policies* 322 (2025).

substantive rights², but they may also increase their vulnerability vis-à-vis administrative choices once infringements that may not only affect final outcomes occur in the course of the administrative procedure. Such violations may potentially interfere with the procedural position of the interested parties once the main interlocutor – if not the *only* one – is an AI.

What we might refer to as a ‘procedural concern’ is of particular interest for the main research questions raised in this book, as well as in the overall research project, and will therefore be the focus of our discussion.

The issue concerns not only the role of machines in administrative procedures but also the way common standards of good administration might currently be safeguarded, especially when the process involves automated stages of different kinds and at different levels³.

Furthermore, if it is now commonly accepted that automation in administrative processes and administrative adjudication, alongside the replacement of human intervention by artificial intelligence, can jeopardise procedural conditions and challenge substantive rights, it is also acknowledged that these technologies bring significant benefits by increasing the efficiency of administrative activities and improving the performance of public bodies.

In the Italian experience, for instance, administrative courts have clearly emphasised the legitimacy of automated decision-making by public authorities, noting how the use of algorithms contributes to administrative efficiency. Thus, they argue that it should be regarded as consistent with the constitutional principle of sound administration.

The latent conflict between the enhanced administrative efficiency brought about by the use of artificial intelligence and the protection of individual legal guarantees has become increasingly evident almost worldwide over the past few decades. The legal and institutional implications of this tension are gradually emerging within the framework of administrative law discourse.

Yet, the implications of this conflict are gradually coming to light. Therefore, the need to address the tension mentioned above falls within the research’s initial assumptions and was one of the driving ideas behind the drafting of the various hypotheticals for the questionnaire proposed in this volume.

² See J. Cobbe, *Administrative law and the machines of government: judicial review of automated public-sector decision making*, 39 *Legal Studies* 636 (2019).

³ D.U. Galetta, *Artificial Intelligence and Public Administration* (2025).

In fact, the two hypothetical cases we focus on in this chapter provide good examples of the nature and extent of the challenges to private parties' rights posed by the use of a technological device to increase administrative efficiency. Specifically, these cases involve administrative activities directed at individuals in the form of adjudication, where the intermediation of a machine can boost administrative performance.

After discussing the significance of the two scenarios, particularly the tasks performed by AI in each administrative decision-making process, the paragraphs that follow analyse each of the two distinct situations, highlighting, first, the shortcomings regarding compliance with the right to be heard and the obligation to give reasons.

Then, we examine the responses provided by the national reports in relation to the legal characterisation of the status of the affected parties within each jurisdiction, as well as the remedies available when individual rights have been restricted. Responses will be discussed in terms of their meaningfulness with regard to the purposes of our analysis. Comparative assessments will be addressed in the final section of this chapter.

2. Automated adjudication in context: a critical examination of two hypotheticals

While it does not fall within the scope of this chapter to compare the given cases with others in the questionnaire, reference to adjudication is essential for shaping, delimiting, and defining the ambit and ambition of our discussion.

Even if we may occasionally need to mention other cases, our focus is on analysing the answers provided by the national rapporteurs to the first two cases in the questionnaire. From this standpoint, we discuss the conditions of those affected by individual decisions made during an ADM process, both when using artificial intelligence and when consulting a 'machine'.

While the party involved in the first case, Mrs Ratatouille, is denied government largesse in the form of a bonus intended to alleviate economic losses arising from the COVID pandemic, the negative response received by Ms Tramp concerns the issuance of a licence⁴.

Although administrative automated adjudication is carried out in both circumstances, additional factual and legal aspects further

⁴ On similar issues, see: D. Hogan-Doran, *Computer says "no": automation, algorithms and artificial intelligence in Government decision-making*, in 13 *The Judicial Review* 345 (2017).

distinguish the procedures and the conditions of the concerned parties in the different situations.

First of all, one may wonder whether the external or contextual conditions are comparable, since the former arises in extraordinary circumstances, whereas the latter concerns routine administrative activity, such as authorising the sale of newspapers and maps at a kiosk. Although this distinction cannot be denied, it is neither central to the discussion nor relevant to how the cases are presented.

If the circumstances in which Mrs Ratatouille and Ms Tramp find themselves – their applications having been rejected – prove crucial for the premises of our examination, the role of administrative authorities emerges as a pivotal issue in both cases, particularly with regard to the nature of the powers vested in them within their respective areas of competence.

On the one hand, one might wonder what kind of power Mrs Ratatouille is subjected to. In this regard, the content and nature of the tasks carried out by the competent administrative bodies in awarding restaurant owners a financial bonus do not appear to involve a large margin of discretion. Eligibility criteria are probably defined by a prior rule-making determination by the administrative body that established the platform. This would probably require further information about the previous procedure, including the rule-making phase and especially the interaction between humans and machines, which we cannot address in this chapter. And yet, the release of governments' largesse in the form of a bonus recalls the need to consider that overall activity might be determined – if not driven – by the availability of public financing, thus falling within the category of what we might call a concessionary power⁵.

Aside from the fact that the authorisation for the opening of newspaper kiosks takes the form – or rather, the name – of a licence, the power vested in the administrative body is intended to be broader, as the proposed case expressly states that the local administrative body is interested in considering a predetermined set of variables. These pertain both to the context, namely the characteristics and needs of the area where the kiosk will be located, and the conditions more related to the

⁵ With specific regard to concerns in 'digital welfare states', see M. Bouwmeester, *Checks and balances under pressure in the welfare state: Disentangling the rule of law risks of automation and welfare conditionality*, in 27 *European Journal of Social Security* 98 (2025); T. Carney Ao, S. Then, C. Bigby, I. Wiesel, J. Douglas, *National Disability Insurance Scheme Plan Decision-Making: or When Tailormade Case Planning Met Taylorism & the Algorithms?*, 42 *Melbourne University Law Review* 780 (2019).

applicant, such as meeting professional standards and other objective requirements.

As a second point of interest, we must consider when and how automated tools are used during the described procedures, and for what purposes they are deemed necessary.

Furthermore, it is important to note that the level of artificial intelligence involvement varies across the different stages of the procedure, which affects the final outcome in different ways.

The first procedure is largely automated, particularly during the examination phase and the subsequent decision-making. The denial of financial assistance to the restaurant owner is handled in a fully automated manner and seems to be the outcome of a process governed by a rule-based algorithm that strictly applies established rules, leaving little room, if any, for human interpretation or deviation. Nevertheless, the case conceals a potentially tricky detail: limited financial resources often determine constraints in the adjudication process.

The second case, on the other hand, involves a semi-automated system of enforcement; that is, a local authority carries out the procedure through an AI-driven programme that delivers a mere – and probably preliminary or complementary – opinion. At the same time, the decision regarding the release of the licence appears, at first glance and based on the elements provided in the case description, to be a more discretionary decision than the determination regarding the bonus. However, in this second case, the use of artificial intelligence is theoretically capable of becoming more significant or less detrimental, depending on its potential impact on the final decision; in other words, it may ultimately influence the final decision. We will attempt to ascertain whether these differences are adequately reflected in alternative forms of safeguards and whether these are shaped accordingly.

3. Ratatouille ingredients: issues, challenges, and approaches

The first case concerns a public financing programme launched by the government to support certain economic sectors through bonuses.

When considering the reasons for framing this hypothetical situation and aiming to address whether such a scenario could commonly arise across jurisdictions, we must acknowledge that the opportunity to include it on the list followed the plenary debate during the meeting for the questionnaire discussion held in Rome in 2024, in the presence of the research group and the national rapporteurs. The proposal emerged from the examination of a case presented by the Dutch

rapporteur, based on concrete experience, the main events of which are reproduced in the hypothetical case drafted for the final questionnaire.

Incentives were to be granted to selected economic activities, such as restaurants, that experienced significant losses during the COVID pandemic. The hypothetical refers to the main criteria and requirements established in advance by the competent body, and to the fact that a platform has been set up to receive applications, examine their content, and respond to those submitting claims.

Filling in all the fields on the platform apparently allows applicants to qualify for the bonus when they meet the pre-determined criteria and conditions. However, potential deficiencies in the submission or in the requirements themselves can block the submission process, leading to a page displaying an ineligibility message. Once the application process reaches that step, the platform does not allow any updates, cancellations and modifications to the application itself, or any form of integration, changes, or resubmissions on the part of the applicant.

The case raises at least one fundamental point of law: once the application procedure ends, with a page stating the applicant does not qualify for the programme, the first legal question is whether the notice appearing on the final page constitutes a decision. Assuming that the page contains or expresses the decision, a further issue is whether this can be treated as the adverse act against which an applicant bring a claim for breach before a court.

A second relevant topic concerns whether the notice reflects a final or a preliminary decision, which must be followed by, or even preceded by, a hearing of the interested parties.

A third question, related to the former, is whether the notice/decision must be accompanied by a statement, i.e., a note or a message, expressing the factual and legal reasons for the rejection, as currently required for other administrative decisions.

As for the first question, we are told that when Mrs Ratatouille sought clarification from the relevant office, she was informed that the platform's response to her application constituted a formal denial of the bonus. We also know, regarding the second point, that she was not heard before or after the 'decision'; and third, that the notice on the page did not indicate any reason informing the restaurant owner why she had been refused financial aid.

Thus, it suffices to say that we will never know whether a clerical mistake by the applicant was the reason she was denied the bonus, nor will we know whether she could have integrated her initial submission while still

complying with the requirements. Although we might speculate that there were significant reasons to deny her financial assistance, the presentation of the case leads us to focus on its procedural failings.

As a matter of fact, we can establish a common ground of knowledge that any rejection delivered without a formal statement of reasons and with no opportunity to be heard is likely to be subject to administrative revision or judicial review once the existing standing requirements are met⁶.

If one moves from these preliminary abstract remarks to the concrete case of a platform executing the procedure, one might consider which treatment would be deemed compliant with the principle of good administration in analogous circumstances during an administrative procedure typically carried out by humans⁷.

Before that, establishing Mrs Ratatouille's condition requires us to consider whether the algorithm's shield might work against judicial safeguards, and, if not, whether a court would review the lawfulness of both the substance and the procedure.

In addition to these first research questions, a further essential issue needs to be addressed: whether the output would be the same, or different, if the 'decision' were made by a learning machine rather than a deterministic one.

Before addressing our core subject – the role of AI in administrative procedure – some preliminary observations are in order. It should be mentioned that the EU Artificial Intelligence Act was about to be published during the course of the research⁸. What is more, the type of machine used by the platform may be subject to difficulties due to the scope of the EU regulation⁹. As correctly highlighted in the introduction to this collective work, this cannot significantly impede the reasoning underlying automated administrative decisions, especially from a perspective that is not particularly relevant given the current state of the art and the ongoing development of the upcoming piece of legislation.

⁶ For the general comparative framework regarding the Common Core of Administrative Laws (CoCEAL) research: G. della Cananea, M. Bussani, *Judicial Review of Administration in Europe* (2021); G. della Cananea, J.-B. Auby, *General Principles and Sector-Specific Rules in European Administrative Laws* (2024).

⁷ For a general overview on the issue, and for a theoretical framework: Civitarese Matteucci S., «Umano troppo umano». *Decisioni amministrative automatizzate e principio di legalità*, 1 Dir. pubblico 5 (2019).

⁸ See B. Marchetti, *Artificial Intelligence and Public Authorities: Does the European AI Act Protect Public Values?*, 36 *European Review of Public Law* 67 (2024).

⁹ See art. 6(2) Annex III, n. 5(a) AI Act.

Broadly speaking, as a second point, in almost all jurisdictions within the European Union, a fully automated procedure would be problematic under GDPR rules. In relation to EU Institutions, as clearly stated in the EU report, Article 24 of Regulation (EU) No 1725/2018 on the processing of personal data by Union institutions, bodies, offices, and agencies (substantially reproducing Article 22 of the GDPR), the “right not to be subject to a decision based solely on automated processing” is referred to in order to highlight the constraints and limits to automated processing, which must be authorised by Union law and receive explicit individual consent to the use of data.

The Spanish experience, based on legislation issued by some *Comunidades Autónomas* such as Catalonia and Andalusia, suggests that only regulated decisions not involving any discretionary power may be the object of a fully automated administrative procedure. Determinations other than those involving only the application of formulas to check whether predetermined requirements are met, or purely mechanical processes that are developed, need to remain under human control.

Indeed, in most countries, such as Estonia, for example, although e-governance and digital applications for services have been increasingly employed for some time, machines have been handling less important tasks¹⁰, and even when involved in more crucial ones, their operations do not include the use of discretionary powers¹¹.

Also in the US, most platforms were utilised during the COVID pandemic and in relation to analogous issues such as benefits distribution processes. However, even in this case, automation served more limited purposes. In fact, machines assisted the competent administrative body during the examination process to detect fraudulent applications or to support the decision-making process.

As a third preliminary topic, the qualification of the rejection via display deserves to be addressed. Reactions on this point vary. The fact that many responses originated from the idea that the platform page could itself constitute a decision does not merely reflect an acceptance of the role played by artificial intelligence in this case. Many authors assumed that the form of this act was not the central point of discussion,

¹⁰ For analogous shortcomings, see A. Ferrari Zumbini, M. Conticelli, *The Algorithmic State in Central and Eastern Europe: Comparative Remarks*, in M. Bussani, A. Ferrari Zumbini, M Infantino (eds), 17 *Italian Journal of Public Law* 849 (2025), special issue on *The Law of the Algorithmic State in Central and Eastern Europe*.

¹¹ See, for example, the case concerning authorisations for forest clearing in the Estonian reconstruction of hypothetical cases n. 1 and 2 in Part III.

especially in comparison with a substantial reading focused on the legal consequences a screenshot can produce for the applicant.

This is an important argument for addressing further issues and questions, since most legal systems require a formal final decision to allow a judicial review; simply by way of example, this requirement is established by Section 704 of the US APA.

Since the devil is in the details, an insight into the answers provided by some authors reveals that qualifications vary depending on legal environments. In accordance with Austrian administrative law, for example, the act of blocking may be considered an official notification rejecting the request for a bonus payment, which currently qualifies as a formal decision that is subject to challenge by lodging a claim before the competent administrative court.

In other contexts, administrative bodies and courts may also refuse to treat a platform-delivered response page as a final act, leaving claimants without sufficient protection. This incident occurred in Amsterdam regarding the denial of COVID support issued via a digital form, which was initially rejected as a qualified decision by the competent authority following the applicant's objection. It was up to the District Court of Amsterdam to accept it as a decision subject to both administrative revision and appeal.

Other systems (Austria, for instance) would assume that the algorithmic message qualifies as an official notification and meets most of the criteria to be considered a formal act, such as issuance by a public authority, individual applicability, and external legal effect, but would assign a decisive role to whether the statement constitutes a binding determination of rights.

After resolving the pivotal question of whether the notice could qualify as a formal denial, almost all jurisdictions recognise Mrs Ratatouille's right to be informed that an adverse action is to be taken, as well as the reasons for it.

Albeit with due caution – as many of the hypothetical's circumstances do not permit a real parallel – the European report shows that the ECJ has addressed some of the points raised by Mrs Ratatouille in other cases¹².

In addition to the aforementioned disclaimers, Article 41(2) of the Charter of Nice in the EU would be violated due to a breach of the right to be heard and the failure to provide reasons, both of which are essential components of good administration and mandatory under the TFEU.

¹² See case C 511/18, *La Quadrature du Net*.

In the US reading of the facts, the hypothetical would not be taken literally; however, it must be considered in relation to the main issues raised, bringing to light an analysis of a denial stemming from AI intermediation within an agency process related to welfare benefits. From this perspective, someone in Mrs Ratatouille's position could rely on due process as a form of protection. According to this view, she could claim that the grounds for denial were not disclosed. At the same time, courts would probably not differentiate between a decision made by a deterministic machine and one made by a machine learning algorithm.

An analogous question, albeit in broader terms, has been addressed in the Italian legal system, where, in the recent emerging jurisprudence, the courts have emphatically reaffirmed that decisions rendered through automated processes must comply rigorously with the fundamental principles governing administrative action.

Publicity and transparency requirements are considered essential to ensuring accountability and legitimacy in administrative decision-making. As a result, by invoking these normative standards, the judiciary determined that affected parties must be given the right to access the underlying algorithmic mechanisms. Therefore, transparency should include access to the algorithm's structural design, operational logic, and the criteria used during its elaboration and implementation.

Accordingly, by grounding their reasoning in these established general principles, Italian courts have adjudicated in favour of granting stakeholders and affected individuals access to the algorithmic systems employed in automated decisions.

This access facilitates full transparency regarding the algorithm's structural architecture, operational parameters, and the criteria underlying its development and functional deployment. Such judicial pronouncements emphasise the need to ensure that technological advancements in administrative procedures do not undermine the principles of fairness, due process, and the protection of fundamental rights enshrined in administrative law. As mentioned earlier, this judicial approach highlights the need to balance technological innovation with procedural fairness and individual rights in the administrative context.

In the Chinese system too, Mrs Ratatouille could contest that the algorithmic decision was made in breach of the principles of legality, transparency, and procedural fairness. She would be able to challenge the denial of the bonus under the Administrative Reconsideration Law and the Administrative Litigation Law, which allow individuals to contest welfare decisions before the superior administrative body or in court.

A German court would emphasise the absence of human intervention in decisions that require a certain margin of discretion, a circumstance that, per se, would render the denial unlawful. Given the lack of explanation for the algorithmic rejection and Mrs Ratatouille's legitimate interest in understanding the basis for the decision, the court would probably find the refusal procedurally flawed due to the absence of stated reasons.

Transparency requirements are also obligatory in France, where the Law for a Digital Republic (2016) ensures accessibility and sets conditions for administrative decisions based solely on algorithms, ensuring that citizens receive adequate information and have the right to appeal.

In the Netherlands, Mrs Ratatouille may file an objection and subsequently challenge the rejection before the competent administrative courts on the grounds of insufficient reasoning. The obligation to provide transparency and explanatory information regarding the functioning of automated decision-making systems is now firmly established as part of administrative procedural duties in this jurisdiction as well. This principle has been affirmed through case law that draws on the jurisprudence of the European Court of Human Rights (ECHR) in interpreting the Dutch General Administrative Law Act. Notably, these principles and rules – originally designed for human decision-making – have been adapted to govern decisions made through automated procedures.

In the United Kingdom, mere reliance on algorithmic outputs would not shield administrative decisions from judicial oversight. This foundational principle persists even when administrative decisions are made through algorithmic processes. In this jurisdiction, the case decision would first benefit from recalling the principle of *Wednesbury* unreasonableness. In that case, the rejection of Mrs Ratatouille's application rejection would be judged as arbitrary. Additional common law concerns arise from the denial of reasons, which is not the object of any absolute duty in the UK, where it may respond to a more general demand for fairness. To comply with such a standard, the reasons must be clear and adequate to ensure transparency, enabling the individual to protect themselves against possible unlawful conduct.

Recent jurisprudential developments in the Italian legal framework have led the judiciary to unequivocally reinforce the view that automated decision-making processes must conform to the comprehensive array of foundational tenets governing administrative activities. Among these, the principles of publicity and transparency are

paramount, serving as essential safeguards to uphold procedural legitimacy, accountability, and public trust in administrative operations.

If that is a standpoint, which, as we will see, is fairly common to all jurisdictions, even fewer concerns appear to be raised in the individual reports and consequently in the systems under review, with respect to whether distinct safeguards might be needed depending on whether the action is carried out by an artificial intelligence system employing machine learning techniques or by a rule-based (deterministic) system.

While, not surprisingly, all jurisdictions consider a fully automatic procedure unlawful (with the same exceptions), in almost no legal system do concerns arise from the nature of the algorithm itself, but from the full automation involved in carrying out the overall benefit programme.

The algorithm's deterministic feature is not a decisive factor in the US, where it is likely that courts would adopt a position in which no substantive distinction is made between decisions rendered by deterministic algorithms and those generated by machine learning-based systems, emphasising the legal principles of transparency, accountability, and fairness applicable to automated decision-making, irrespective of the underlying technology. In this context, in addition to the APA, other acts, such as the ECRA, have been applied so far, even to simpler mechanical tools than the one we are examining, like those used to underwrite credit decisions. Several additional standards have been discussed, specifically regarding agencies' use of AI. A stronger set of standards has been required for determinative AI systems, which implies that agencies must understand the models and explain their decisions in depth. The lack of sufficient human oversight was raised during the application of the CARES Act throughout the pandemic, particularly in cases of inaccuracies related to the functioning of the algorithm.

In the UK, courts continue to consider judicial review a fundamental mechanism for upholding the rule of law, regardless of the type of automation in the decision-making process or the technological tools employed. A similar conclusion must be reached for the Chinese system. Even in Austria, the general principle of reviewability remains applicable in the sense that an algorithmically determined refusal to grant a bonus payment would not be exempt from legal scrutiny, irrespective of the computational methodology adopted – whether it involves a rule-based (deterministic) system or a model grounded in machine learning.

4. Tramp unveiled: issues, challenges, and approaches

The negative response to the application Ms Tramp submitted to the competent local authority to sell newspapers and maps at a kiosk creates a situation that distinguishes it from the one discussed in the previous paragraph, particularly concerning the condition of the interested parties, even though it is somewhat similar in terms of the main assumptions relating to safeguards against automated administrative adjudication.

The hypothetical suggests that in such procedures, authorities use AI-driven systems designed to evaluate various factors. The AI provides an opinion after elaborating on population density, traffic, socio-economic conditions, and the applicants' personal, economic, and professional circumstances.

In Ms Tramp's case, the decision resulting from the ADM process takes the form and content of a rejection issued by the local authority based on the machine-produced outcome.

Notwithstanding the complexity of the interests involved and the mechanical assessment of what happened during the AI's elaboration, the competent authority delivers a statement of reasons solely based on the AI's recommendation, generally asserting that the issuance of the licence would be contrary to the public interest. There is no detailed explanation of the machine's factual and legal shortcomings in the examination, nor is there any additional explanation from the local authority.

Moreover, once Ms Tramp requests disclosure of the AI program to better understand its logic and rationale, she receives a negative response. As a second step, she subsequently contests both the denial of the licence and the refusal of access before the appropriate judicial body.

A complete understanding of this case requires focusing on a series of questions that disclose to the interpreter the many challenges of an automated decision-making process and the related concerns. Access to information essential for evaluating the result produced by an AI programme (source code, the factors and date of building the AI, or a general explanation of how the code functions) may be difficult to provide, for any number of reasons. It cannot be readily assumed that a court would order such disclosure, nor is it clear whether it could furnish this information without affecting its ability to declare the rejection as void and unlawful.

As anticipated in the first pages of this chapter regarding the first case, the added complexity here also arises from the intermediation of an AI in the decision-making adjudicatory procedure. However, the

machine plays a different role here, as it is involved in the examination phase of a procedure whose completion results in a final act that consists of issuing an opinion. At the same time, as the hypothetical case suggests, we might assume – while most national report authors seem to confirm this interpretation – that the competent body is conferred discretionary powers with respect to the final decision. Yet, the machine's opinion must be so detrimental to the decision that no alternative remains, nor is there any positive pursuit of administrative activity in the direction of a favourable outcome for Ms Tramp.

Therefore, what we need to discuss is to what extent more details could be disclosed about the examination, in comparison with a statement of reasons that has been limited to a generic reference to public interest needs, and whether, in this way, the administrative body failed to comply with its primary duty to provide an adequate explanation.

Due to its role in the procedure, understanding the machine's reasoning may be essential to fully understand the applicant's situation. As with administrative actions in general, transparency and customised information in administrative decision-making procedures serve to make sufficiently accurate and consistent factual and legal backgrounds available to interested parties. This raises awareness of the alternative strategies available to concerned parties, providing them with the tools essential to make an informed choice between filing an objection or exercising the right to challenge the final determination.

If transparency is one of the overarching principles of good administration, significant concerns arise from the use of artificial intelligence tools, especially when the machine is the product of a private company, particularly if we consider that an AI-driven system can be conceived as a black box.

Broadly speaking, while we acknowledge the need for AI-driven machines as tools for making administrative activities more efficient, what cannot be accepted is that the use of algorithms ends up causing, albeit as a spill-over effect, the rendering of administrative actions obscure, thus translating into an obstacle for compliance with one of the most overarching and constituent principles of good administration.

At the same time, one of the main introductory issues raised in the general part of the questionnaire concerns the alternative regimes arising from the AI system's private or public origin. Specifically, it addresses whether administrative bodies are using machines created in house or those that are produced by private parties, which are thus covered by special intellectual property rights.

In fact, many reports on the various systems highlight the distinction between government-created algorithms and those developed by third-party private-sector firms. Even if not specifically moving from this distinction, other responses bring into the discussion the issue of balancing public interest and intellectual property rights, which is relevant to any instance of disclosure when an AI-driven programme is involved, particularly when created by a private company. Solutions differ by jurisdiction, and express reference is made here to the US and Chinese systems.

In the US, the private interests of the creators of algorithms used by governmental agencies generally prevail over arguments for transparency and due process, although the national report leaves some room for disclosure by citing a few narrow exceptions from recent cases. While greater success would support a claim of government-driven AI disclosure, exceptions in the opposite direction are likely to be accepted.

In the Chinese context, difficulties may arise in disclosing both private and public algorithms. Should the disclosure of the source code of a public machine raise issues related to State secrets, the competent authority may be called upon to decide the matter by balancing the public interests involved. On the other hand, in the case of a machine developed by a private entity that involves a company's trade secret, the court should decide whether the public interest in disclosing the source code to enhance government transparency and accountability outweighs the private interest in trade secrets. Should the balancing operation yield a positive outcome, the court could even compel the local authority to disclose the source code.

The Austrian report observes that administrative bodies have to provide adequate reasons, which means that Ms Tramp must have a clear understanding of the factors leading to the rejection of her application for a licence or access by decision, and, on the other hand, that adequate knowledge of the source code might not be required for such a purpose.

Other jurisdictions appear more lenient or simply more favourable to source code access. The Estonian report, for instance, indicates that platforms such as the one under discussion in Ms Tramp's case would probably fall within the scope of an open-source AI project through dedicated repositories in e-government initiatives.

In Italian case law, administrative algorithmic decision-making must adhere to the principle of transparency: claims of commercial confidentiality must be considered secondary.

According to the Italian report, software source code used by public authorities may qualify as administrative documents, access to which

must be granted when individuals have a direct and concrete legal interest. Should access to the source code be too difficult to obtain, nothing prevents any administrative body from finding reasonable alternatives to comply with transparency requirements. Competent bodies can – and must – provide clear explanations of algorithmic processes and post-hoc justifications, such as explanatory notes. This is clearly a task that can be conceived as remaining in the hands of competent bodies and can be performed with the intervention of the civil servant (here playing the role of the so-called ‘human in the loop’).

5. Participatory requirements and basic procedural rights meet a machine: commonalities and divergencies

Within the broader research plan presented in this book, this chapter addresses the treatment of administrative adjudication in the context of algorithmic legality. Even if more limited in scope than the one pursued by the project, our analysis of the first two cases in the questionnaire allows us to make some preliminary comparative remarks, which are equally relevant at this stage and to highlight them for an overall comparative assessment in the conclusions of the entire work¹³.

The investigation across the jurisdictions considered in this study provides a sufficiently clear picture of algorithmic decision-making, which shows important similarities and significant divergences.

First of all, the findings of the comparative analysis suggest that controversial issues related to automated decision-making in adjudication procedures are no longer exceptional or sporadic. All legal systems have faced problems that are, in varying degrees, relevant but analogous, even though they may have reacted differently or raised different concerns.

In particular, the comparative data reveal convergence in concerns and incipient rules, as well as a growing awareness of the need to frame the use of algorithms in public decision-making processes within the main constraints of the rule of law, understood here as the principles governing administrative procedure.

¹³ For a first comparative assessment, limited to the EU and the US: J Mökander *et al*, *The US Algorithmic Accountability Act of 2022 vs. The EU Artificial Intelligence Act: What Can They Learn from Each Other?*, in 32 *Minds and Machines* 751 (2022), E. Kiesow Cortez, N. Maslej, *Adjudication of Artificial Intelligence and Automated Decision-Making Cases in Europe and the USA*, in 14 *European Journal of Risk Regulation* 457 (2023).

Thus, a basic consensus still remains across different jurisdictions on the right to be heard, transparency, the provision of reasons in administrative decision-making, the requirement of human oversight – especially in discretionary contexts – and the need for judicial and administrative remedies. However, there are some distinctions and varying reactions.

The need to safeguard procedural and substantive rights at the core of administrative law, for instance, assumes different forms depending on how the topic is addressed in legislative choices. Generally speaking, the approach to automation does not undermine the imperative to protect individual rights vis-à-vis the exercise of public power. In most cases, even if not in all of them, the validity of an administrative act is determined solely on the basis of its conformity with applicable legal standards, regardless of whether the decision-making process is conducted manually, through rule-based automation, or via algorithmic systems employing artificial intelligence.

In other words, in many countries, the form or medium of the decision does not alter the fundamental requirement of legal accountability. General principles applicable to adjudicatory proceedings and classical values are rearticulated in response to new technological realities, irrespective of the modality through which such power is exercised. This means that, rather than being displaced, principles are being adapted to extend their normative force to govern not only human discretion but also non-human, coded decision processes.

This approach finds a concrete translation into a formal legal act in some countries. The latest (even if not recent) codifications show that attention is gradually shifting to the issues raised in this chapter, promoting legal certainty and facilitating the interpreter's role at various stages of adjudication. This, for instance, is the case of the aforementioned *Code des relations entre le public et l'administration* in France. Also, the proactive approach found in the Spanish report benefited, through various means, from the differentiation offered by regional systems as in the example provide for by some *Comunidades Autónomas* and the broader context, as reflected in the emergence of soft law measures, guidelines, and legislative solutions.

The attitude towards access to 'private' source code reveals a greater divergence than that seen in cybersecurity concerns, as differing views emerge in the effort to balance intellectual property rights with other interests. This highlights a recurring structural tension between the

demand for transparency in public administration and the technical opacity of algorithmic systems.

The so-called black box might represent a challenge for private machines in the glasshouse where public administration is expected to operate. Even in this case, a convergent trend can be found in the solution that follows. Those jurisdictions that limit mere access to source code address find an alternative way by making the logic and rationale of automated decision-making systems accessible. Such a solution implies that meaningful explanations are provided upon request, the administrative body plays an active role through human intervention, and contestation mechanisms are easily accessible.

Additionally, a common understanding exists regarding discretion, a key component of administrative reasoning. Most jurisdictions reserve automation only for non-discretionary matters, leaving room for both automation and human supervision or decision in other cases. This is quite understandable when one considers that in systems where discretion is constitutionally or statutorily embedded, automated processes must either replicate normative criteria or are likely to produce unlawful decisions.

In any case, automation must not replace the human capacity to weigh context-specific factors, especially in terms of proportionality, equality, and fairness, and, from a procedural point of view, cannot constitute a valid justification for failing to uphold the principal procedural safeguards.

On the contrary, what emerges as a shared understanding in the overview of the solutions provided by the examined jurisdictions is a renewed effort to ensure that the exercise of automated public power remains firmly anchored in the rule of law. It is precisely when faced with the multifaceted complexities and the potential opacity of machine intermediation that general principles remain applicable, *mutatis mutandis*, being deemed indispensable for safeguarding the legality, transparency, and accountability of administrative action. In other words, where technological processes risk distancing decision-makers from the underlying rationale of administrative choices, these principles become even more crucial¹⁴.

¹⁴ On this, see M. Oswald, *Algorithm-assisted decision-making in the public sector: framing the issues using administrative law rules governing discretionary power*, in *Philosophical Transactions of the Royal Society* 2128 (2018); R. Williams, *Accountable Algorithms: Adopting the Public Law Toolbox Outside the Realm of Public Law*, 75 *Current Legal Problems* 237 (2022).