

CHAPTER 6

FRANCE

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

There is no current national act containing a definition of automated administrative decisions in France. Nevertheless, several legal texts do refer to this process, such as the *loi n° 78-17 du 6 janvier 1978 sur l'informatique et les libertés (JO 7 janv. 1978)* and the *loi n° 78-753 du 17 juillet 1978 sur l'accès aux documents administratifs (JO 18 juill. 1978)* which both refer to automated processing. Moreover, both the *Conseil National du numérique* and the *Conseil d'Etat* define an automated administrative decision as a series of computer operations, calculations and instructions performed on several data items, with the aim of obtaining a result.

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

There is currently no general legal basis for the use of algorithmic automation in France. There are, however, several texts that mention its use by public authorities, thus creating an outline for a legal regime, authorising and providing a framework for the use of algorithms by public bodies. The relevant provisions are set out in the *loi n° 78-17 du 6 janvier 1978 sur l'informatique et les libertés (JO 7 janv. 1978)* and the *loi n° 78-753 du 17 juillet 1978 sur l'accès aux documents administratifs (JO 18 juill. 1978)*. Other legal provisions regarding the use of algorithms are set out in the *décret n° 2017-330 du 14 mars 2017 relatif aux droits des personnes*

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faisant l'objet de décisions individuelles prises sur le fondement d'un traitement algorithmique (JO n° 64 du 16 mars 2017) and the loi du 20 juin 2018 relative à la protection des données personnelles (JO n° 141 du 21 juin 2018). In addition to this general framework, there are also sectoral provisions allowing the use of public algorithms, such as Article L. 851-3 of the Code de la *sécurité intérieure* regarding the use of algorithmic automation to ensure national security. Last but not least, the recently adopted AI Act will now provide a legal basis framing the use of AI by public administrations.

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

The French authorities do indeed rely on algorithmic automation. Several examples can be mentioned, such as: algorithms used to calculate family allowances (CAF); the use of AI to determine the eligibility of unemployed people for benefit as well as its amount and duration (France Travail); automated decision-making based on facial recognition to make border crossing faster at several airports (Parafe); algorithmic automation to allocate students to universities after they graduate (Parcoursup).

While the financial authorities were the pioneers, using algorithms to combat tax fraud, many areas are now affected by this automation, whether it is for tax management, labour or education. Although there is no overall coherence in their deployment, the use of algorithms by the public administration will probably see strong growth in the field of police and security, as shown during the 2024 Paris Olympic Games. Video surveillance devices with associated algorithmic processing, implemented by software enabling automatic, real-time, and continuous analysis of images were indeed used for the first time during the games.

IV. What legal requirements - e.g. in terms of privacy, cybersecurity, quality of the datasets, impact assessments, transparency obligations, access to codes, the right to explanations, compulsory human involvement, and the right to obtain a review or remedy - apply to the use of algorithmic automation or AI by public

authorities? Are there sector-specific regulations on Automated Administrative Decisions (e.g., public procurement, taxation etc.)?

The first standards applicable to public algorithms were laid down in the French Data Protection Act of January 1978 (*Loi Informatique et Libertés de 1978*). Article 39 of the Data Protection Act provides that any person has the right to question the controller of a personal data processing operation to obtain information when an automated processing has taken place. Although they were previously forbidden, the General Data Protection Regulation (GDPR) has opened up the possibility for national legislators to authorise fully automated decisions under three conditions: processing must be fully explained; they may not involve “sensitive” data; the data controller must ensure that he or she has full control over algorithmic processing and is able to explain in detail and in an intelligible form to the data subject how the processing has been carried out.

To meet transparency requirements, Law 2016-1321 of 7 October 2016 (*Loi pour une République numérique*) introduced obligations specific to public algorithms. Indeed, it establishes the principle that algorithms must be considered administrative documents (Article L. 300-2 of the Code of Relations between the Public and the Administration), which implies that the rules defining the processing, as well as the main characteristics of its implementation, can be made available to any person requesting them and published online if the algorithm used is the basis for an individual decision. It contains several obligations concerning the disclosure of algorithmic processing by public bodies. The law thus completed the legal framework relating to access to administrative documents by amending the *Code des relations entre le public et l'administration* (CRPA). It enshrined the right of citizens and legal entities to be informed when an administration uses an algorithm to make a decision that affects them.

The administration now has four obligations: to provide general information (Article L.312-1-3 CRPA), to provide an explicit mention regarding the purposes of processing (articles L.311-3-1 and R.311-3-1-1 CRPA), to provide information at the request of the interested party concerned by an individual decision taken based on an algorithm (articles L.311-1-3 and R.311-3-1-2 CRPA), and to disclose the source code of the algorithm (articles L.300-2 et L.300-3 CRPA).

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

Algorithmic technologies used by public authorities are mostly designed in-house by the administration itself. Calculation of Family Allowances (*Caisses des allocations familiales*), housing tax (Public finances), Income Tax (Public finances), Parcoursup (Ministry of Higher Education and Research), unemployment benefits (employment centre) are all directly designed by the public authorities themselves. On the other hand, several algorithms are designed by companies following procurement contracts. This generally happens when algorithms are used in the field of security or by the police. For instance, the algorithmic video surveillance systems used during the 2024 Paris Olympic Games were designed by four different companies (Wintics, Videtics, Orange Business, Chapsvision) chosen by the Ministry of the Interior.

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

The essence of French data protection regulation is to avoid any overlapping between different data sets by the public authorities, which led the legislator to pass a law to protect personal data in the late 1970's. Those principles still apply to this day, hence the lack of a centralised infrastructure for data management between different administrative bodies.

However, despite the lack of interoperability between data used to implement algorithmic processes, there is currently a willingness to simplify administrative processes by reinforcing data-sharing between public administrations. This has led to the implementation of organised systems for exchanging information between administrative authorities, both to process users' requests and to simplify administrative procedures (Article L. 114-8 CRPA).

In a wide range of fields, there are mechanisms set out for the exchange of information between public authorities, to ensure the effectiveness of public action. For instance, in the immigration sector, there are regular exchanges of information between the department responsible for managing asylum applications and the one providing

material assistance to asylum seekers (*Article L.744-6 du Code de l'entrée et du séjour des étrangers et du droit d'asile*).