



Artificial Intelligence & OS AI and transparency in PA

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What's at stake here?

Are AI system «Weapons of mass destruction»? (cit. O'Neil)

Italian Data Protection Officer (22.11.2024): no to algorithm undisputable by workers



«[...] the company also carries out other **automated processing of rider data, e.g. , through the c.d. system of excellence (score that allows to book with priority the shift work) and the system of assignment of orders within the shift. All this without having adopted the measures provided for by the GDPR for the use of automated systems, in particular **the right of riders to obtain human intervention, to express their opinion and contest the decision taken through the system [...]**»**

11.11.2024 -
DIR 2831 on
improving
working
conditions in
platform
work

Penalty of 5 million euros to Foodinho,
Until August 2023
geolocated riders also outside working hours

(<https://www.garanteprivacy.it/home/docweb/-/docweb-display/docweb/10074840>)

An automatic treatment of Human Rights?

All the IA system *should* follow some principles



[White Paper on AI
COM(2019) 168]

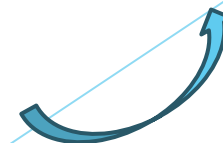


- ▶ Human agency and oversight,
- ▶ Technical robustness and safety,
- ▶ Privacy and data governance,
- ▶ **Transparency,**
- ▶ Diversity, non-discrimination and fairness,
- ▶ Societal and environmental wellbeing, and

▶ **Accountability**

..in two years many of these principles will become mandatory at least for high risk systems...

...but for PA,
it is «shall»
and not
«should»,
already



PA & IA: why a «special» partnership

Why for the public administration "the end cannot justify the means" (because the means influence the end)



Governments and PA take care of the common good: it means a certain responsibility towards technology – they must use it – BUT they must use it in a certain way.

it is not a choice!

But it's all about HOWto do it

"The full eligibility of these instruments corresponds to the canons of efficiency and economy of administrative action (art. 1 l. 241/90), which, according to the constitutional principle of good administrative action (art. 97 Cost.), impose on the administration to achieve its goals with the least expenditure of means and resources and through the streamlining and acceleration of the procedural process» (Cons. Stato 8472/2019)

PA & AI: next level, same principles

Use of IA system requires more attention, just because use of SW requires attention already



Aware or not, IT &sw is no more just a tool, especially for PA

It deals with

Right
treatment for
citizen

autonomy
and
sovereignty

Reliability and
trustworthynes
s

Resilience
and security

..and of cours,
transparency!

PA & IA: Right treatment for citizen?

An emblematic case:

[State of Wisconsin v. Eric L. Loomis](#)



Probation denied based on COMPAS - an AI predictive system



COMPAS calculations showed a high level of risk in all three areas of recidivism



The district court assessed several factors including Compas

Loomis was identified as high risk for the community»
(unfortunately, he was poor and from Mexico)



Supreme Court: Right to a fair trial violated?



- ▶ Misuse of gender data
- ▶ Right to be sentenced on the basis of accurate information (not knowable because under copyright)
- ▶ Right to an individualised penalty?

The use of legitimate IA sw together with other elements, but not to determine the severity of the sentence or incarceration



A special relationship, because «*public*» means «*US*»

What principles is a PA called to respect? (without claiming to be exhaustive, but for sure)

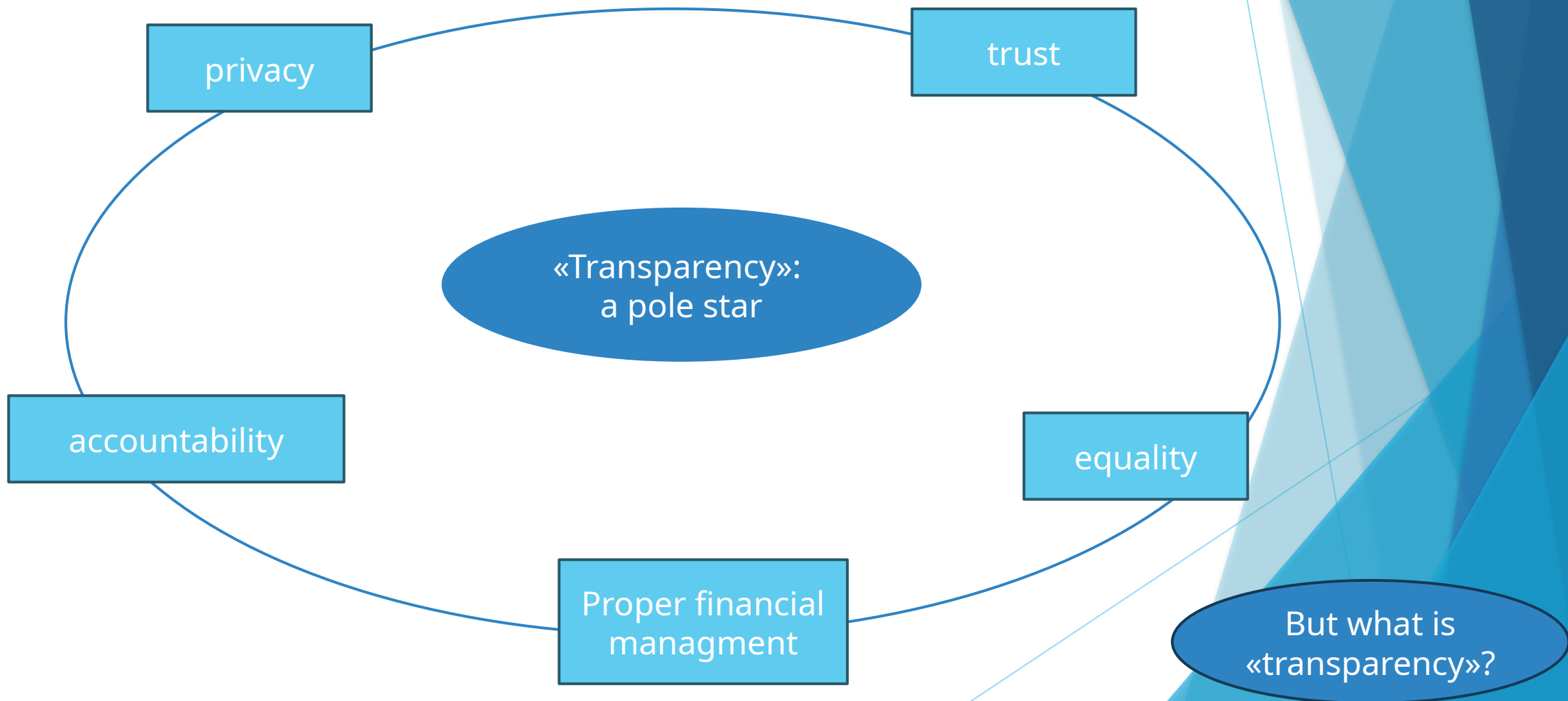
- ▶ Equality and respect of constitutional rights (the same that push it to use technology, e.g., health)
- ▶ Transparency
- ▶ Diligence of the good administrator (PA “work” on and with our things)



operating at its best with **justice** and **equality**, managing well and **always being able to explain what needs to be explained, controlling** only to the necessary extent and **remaining sovereign** to the necessary extent

This means that not all AI can be used for anything

So? How to do the «good choice»?



So? How to do the «good choice»?

All official documents call for transparency.. ... in different declensions

*“The traceability of AI systems should be ensured; it is important to **log and document** both the decisions made by the systems, as well as the entire process [...] that yielded the decisions. Linked to this, **explainability** of the algorithmic decision-making process, adapted to the persons involved, should be provided **to the extent possible.**” [White book on IA]*

*“(72)**To address concerns related to opacity and complexity** of certain AI systems and help deployers to fulfil their obligations under this Regulation, transparency should be required for high-risk AI systems [...]. High-risk AI systems should be designed in a manner to **enable deployers to understand** how the AI system works, **evaluate** its functionality, and **comprehend its strengths and limitations.** [Whereas (72) AI Act]*

*«[...] implementation of Citizen services that encourage participation and involvement, ensuring privacy and the **transparency of processes** will be a priority objective to be pursued with large-scale pilot projects [...]” [Italian Ai Strategy]*

Transparency or transparencies?

- ▶ Can have **different** extension of **meaning** (the source? of the process? of the functioning? and in that sense?)
- ▶ Can **cover different aspects** / phase of a system (training data? Weight models? Code? Purpose?)
- ▶ May have **different purposes** (information, control, explanation, risk management, etc)

Understanding how it works does not mean that I can understand why it says something

Transparency of algorithm is enough?

If i say a IA system is generative and can be wrong, I've been «transparent», but the system remains a black box

But for PA transparency is a *specific* duty and an obligation

The principle of transparency

Legislative Decree 33/2013 Art. 1 – General principle of transparency

- ▶ 1. Transparency is understood as the **full accessibility of data and documents** held by public administrations, with a view to protecting citizens' rights, Promote the participation of those concerned in administrative activity and **encourage widespread forms of control** over the pursuit of institutional functions **and the use of public resources**.
- ▶ 2 Transparency [...] contributes to the **implementation of the democratic principle** and the constitutional principles of **equality, impartiality, good conduct, Accountability, effectiveness and efficiency** in the use of public resources, **integrity and loyalty in service to the nation**. It is a condition for guaranteeing individual and collective freedoms, as well as civil, political and social rights; it complements the right to good administration and contributes to the establishment of an open administration serving the citizen.

The principle of transparency/1

L. 241/1990 - New rules on administrative procedure and right of access to administrative documents

- art. 1. - General principles of administrative activity - 1. The administrative activity ... shall be governed by criteria of economy, efficiency, impartiality, publicity and transparency in accordance with the procedures laid down in this Law and the other provisions governing individual proceedings, as well as the principles of Community law.
- art. 22 [...] 2. Access to administrative documents, in view of its relevant public interest purposes, is a general principle of administrative activity with the aim of encouraging participation and ensuring impartiality and transparency.

▶ Article 111 - [...] Each trial shall be conducted in the adversarial procedure between the parties, under equal conditions, before a third and impartial judge. The law ensures that it is of reasonable duration. [...] All judicial measures must be reasoned [cf. art. 13 c.2 , 14 c.2 , 15 c.2 , 21 c.3].

▶ Art. 24 cost [...] The defence is inviolable right in every state and degree of the

The principle of transparency/2

(71) *The data subject should have the right not to be subject to a decision, which may include a measure, evaluating personal aspects relating to him or her which is based solely on automated processing and which produces legal effects concerning him or her [...] In any case, such processing should be subject to suitable safeguards, which should include specific information to the data subject and the right to obtain human intervention, to express his or her point of view, to obtain an explanation of the decision reached after such assessment and to challenge the decision. Such measure should not concern a child*



...for a PA, to be able to use wisely IA is NOT a option

IA and transparency: first cases

Council of State- 2270/2019

[Mobility procedure initiated by the MIUR which arranged transfers of teachers placed in position - distant assignments and without consideration of preferences]

the algorithm, or software, must be considered as a "computer administrative act"

*«the mechanism through which the robotised decision is made (that is, the algorithm) must be "**knowable**", according to a reinforced declination of the principle of transparency, which also implies that a rule expressed in a language other than legal is fully knowable.» (NB in all its aspects) .. «... must not only be knowable in itself, but also subject to the **full knowledge and full review of the***

The algorithmic rule *«has a full legal and administrative value, even if it is expressed in mathematical form, and as such... , must comply with the general principles of administrative activity, such as those of publicity and transparency (art. 1 l.241/90), reasonableness, proportionality, etc"»*

Cannot leave any discretionary application space (to be traced at the time of processing the tool)

It requires that the administration should play an ex ante role of mediation and composition of interests, including through constant tests, updates and ways to improve the algorithm

...and it was
«just» an
algorithm!

IA and transparency: first cases/1

**Council of State –
sentence 8472/2019**

«the "multidisciplinary characterization" of the algorithm (construction which certainly does not require only legal skills, but technical, computer, statistical, administrative) does not exempt from the need that the "technical formula", which in fact represents the algorithm, be accompanied by explanations that translate it into the underlying "legal rule" [...]»

«knowability»

non-exclusivity of
algorithmic decision

non-
discrimination
of algorithmic

Principles
of

«The final decision must be made to the authority and body competent under the law by which power is conferred.»

IA and transparency: first cases/2

Cassation Court order of 25 May 2021 n. 14381: "*[...] in the case of a web platform (with attached computer archive) for the purpose of **producing reputational profiles** of individual natural or legal persons, based on a calculation system based on an algorithm to establish reliability scores, **the awareness requirement cannot be considered as fulfilled if the implementation scheme of the algorithm and its components remain unknown or not known by the parties concerned***"

4 February 2020 n. 881 State Council - "*In order to **allow full knowledge of the module used and the criteria applied** with the algorithm, it is necessary to ensure a wide transparency, which must invest **every aspect of training and use of the medium**, in order to ensure the knowledge of the identity of its authors, the process used for its elaboration, the decision-making mechanism and the imputability of responsibilities arising from the adoption of the automatic measure*".

That means...

A PA shall not adopt a IA system as part of a process for which I must be

explainable?

With open weights?

Interpretable?

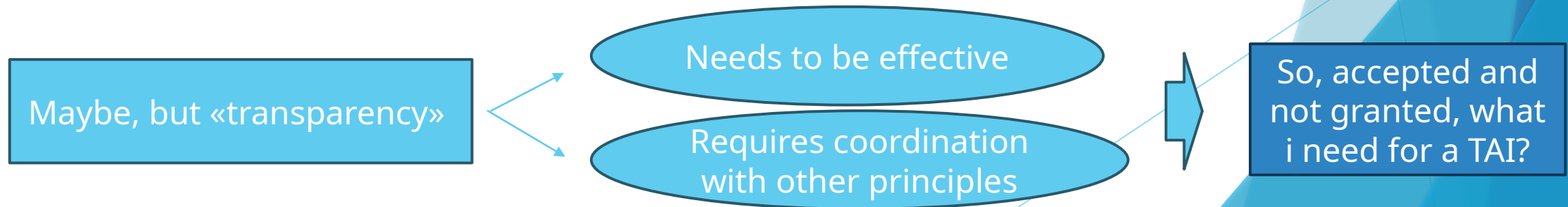
Ancillary?

With open data?

All of them?

Is «transparent» AI the solution?

- ▶ **Explainable AI (XAI)** is the ability of an AI system to provide a **human-understandable explanation of its decision-making process**; the system can provide a **rational justification** for why it made a particular decision
- ▶ **Interpretable AI (IAI)** is the ability of an AI system to provide a human-understandable **representation of its internal workings**. This means that the system can provide information about how it processes data and makes decisions
- ▶ **Transparent AI (TAI)** is the ability of an AI system to provide information about its decision-making process in a way that **allows for independent verification and accountability**. This means that the system can provide sufficient information **about its decisions and how they were made**, in a way that allows for external auditing and evaluation



A responsible IA: more than code

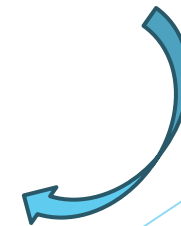
"Applied to the administrative choice, in fact, the algorithm always leads to an impartial result, without any subjective element being able to intervene to alter the outcome. A virtue is therefore constituted by the invariability of the result: the "terms" of the algorithm, combined in the way taken by it, always invariably lead to the same result"
(TAR Lazio, 7003/2022)



With IA and generative IA, it is not true any more



Data affects results



Consciously and responsibly



Being able to choose the right system for the right services, means for a PA also to be able to select and manage the correct dataset

Transparent IA is a Responsible IA

- ▶ true transparency is not only measured in potential, it must be operational, close: and this leads not only to explainable AI ex-post, but to responsible AI ex-ante
 - ▶ being responsible and good administrators also leads to standards, models, the ability to share something that thus becomes better known
 - ▶ Reuse for standard: Models, weights, data! And to reuse, it is essential to have the rights to what is granted (recalling the broad concept of sovereignty) and to be aware of it.

*«...a programme will be set up to define the a register of datasets and models, which are built according to the principles of transparency and fairness, which are Ethically reliable by design and re-usable for Accelerating solutions for Italian companies [...]»
[Italian IA Strategy]*

Italian IA Strategy & reuse

mission A.1 | NATIONAL KNOWLEDGE
HERITAGE:
DATASET AND MODE

three macro directions

Methodology

to define a protocol for the national to ensure that datasets are trustwor-thy-by-design and trustworthy-by-default are legally both engineering and Risk assessment

Implementation

in order to implement and make provide a platform integrating modern MLops and data preparation approaches;

Application

where the platform will be verticalised on specific areas of application of national interest

"All projects funded under the national strategy or otherwise receiving public funding will be required to report the datasets used and models produced in the register, according to guidelines that will define levels of access and reuse"

...but maybe it would be enough to apply existing laws!

Ai and Open Data: a opportunity for PA

Open Data Act



Data Government Act

→ data owned by PA shall be reusable, legally (license or nothing) and technically (quality, metadata, etc)

- even data which cannot be released as open data, should be put in reuse, under specific guarantee
- it s improved the so called «data altruism»
- new subject such as «data intermediaries» and «data cooperative»

A great challenge, but also a great tool to think IA system in another way

It will work only if can be combined with a bigger strategy, as a key for a «public oriented» (and controlled) IA

Then? can't you do anything? can you do everything?

Neither is true

IA system cannot be ignored, but – more than that – can do really a great job

The use of AI systems is recognised as a valuable tool for good governance



A PA shall acquire competences needed to understand the context and identify principles that cannot be waived, and then

act



Asking for full information

Governing data

Preserving accountability

Thanks!

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