## INDEX

## CHAPTER I – General Introduction

| 1. Law and ICT: About the Origins and the Scope of this Book               | 1  |
|--|----|
| 2. ICT and the Public Administration                                       | 7  |
| 3. AI and its Definition: The Perspective of a Legal Scholar               | 8  |
| 4. AI and Public Administration: the Challenges and Issues to address      | 13 |
| 5. Divinatory Aspects of Algorithmic Prediction? Predicting the Past       |    |
| rather than envisioning the Future   | 16 |
| 6. AI, Public Administration and the Human Brain: Conclusions to           |    |
| Date and Future Challenges   | 18 |
|  |    |
|  |    |
| CHAPTER II – Public Administration in the era of Database and In-          |    |
| formation Exchange Networks  |    |
| 1. Data Collection, Data Management and "the Masters of Data"              | 31 |
| 2. Public Administrations' decisions and the role of (digitalised) Data    | 34 |
| 3. The Network-Systems of Public Administrations: Data Collection and      |    |
| Data Exchange at the national (Italian) and supranational (EU) levels      | 36 |
| 4. The EU Information-Exchange-Networks and the IMI model                  | 41 |
| $5.\ Databases, Information\ Exchange\ Networks, and\ Public\ Administra-$ |    |
| tion: Towards a Public Administration that is more effective in serv-      |    |
| ing the Citizens? Concluding remarks                                       | 46 |
|  |    |
|  |    |
| CHAPTER III – ICT and the Right to Good Administration (an                 |    |
| Italian perspective)   |    |
| 1. Introductory remarks  | 51 |
| 1. Introductory remarks  | ノエ |

VIII Index

| 2. The Right to Good Administration and the "Public Officer in           |    |
|--|----|
| Charge of the Procedure" in an ICT-focused environment                   | 57 |
| 3. The notice of initiation of an administrative procedure and the       |    |
| digital transition   | 64 |
| 4. Impartial and fair decision-making: existing requirements and         |    |
| emerging possibilities and threat  | 66 |
| 5. The use of ICT and AI systems in the perspective of single-case       |    |
| decision-making within a reasonable time                                 | 68 |
| 6. Next. One-stop shop and online application: the Italian SUAP          | 71 |
| 7. Next. The European Union and the "single digital gateway": clear      |    |
| path towards the future  | 74 |
| 8. Digital transition and the right of every person to be heard          | 75 |
| 9. Digital transition and the right of every person to access their file | 79 |
| 10. Digital transition and the Public Administration's duty to give      |    |
| reasons  | 81 |
| 11. Concluding remarks   | 84 |
|  |    |
|  |    |
| CHAPTER IV- Digital Transition, Good Administration: and the             |    |
| National Recovery and Resilience Plan <sup>1</sup>                       |    |
|  |    |
| 1. Introductory remarks  | 88 |
| 2. The digital transition of Public Administration: the necessary steps  |    |
| and related issues   | 90 |
| 2.1. The dematerialisation of documents held by Public                   |    |
| Administrations  | 90 |
| 2.2. The creation and necessary maintenance of digital documents         |    |
| and archives   | 92 |
| 2.3. New "social needs" and the temptation of outsourcing (the           |    |
| different choice of the National Recovery and Resilience Plan)           | 95 |

Index

3. The Right to Good Administration and its link with the Digital

| Transition  | 97       |
|---|----------|
| 3.1. The origins of the Right to Good Administration  | 97       |
| 3.2. The link between the digital transition and the Right to   | )        |
| Good Administration and the central role of the "Public Office.   | r        |
| in Charge of the Procedure" (Responsible Officer).  | 100      |
| 4. Prospects opened by the National Recovery and Resilience Plan  | 108      |
| 4.1. Public Administration reform and Digital Transition  | 108      |
| 4.2. The problem of interoperability and the necessary creation   | ı        |
| of "Databases of National Interest"   | 110      |
| 4.3. Digitalisation of the administrative procedure and the   | e        |
| "Once-Only" principle, between National and Supranationa  | 1        |
| level   | 115      |
| 5. Once-Only or Once-Again? Concluding remarks on how to "no  | t        |
| Digitalise the complication"  | 118      |
| CHAPTER V – ICT and the Digital Transition, during and after the COVID-19 pandemic. The Italian case and hypothesis on the post-Recovery and Resilience Plan scenario |          |
| 1. Introductory remarks: the COVID-19 pandemic, its implications  | s        |
| and ICT   | 124      |
| 2. The Digitalisation of Public Administration in Italy: a firs assessment of the situation   | t<br>127 |
| 3. Digitalising Public Administration as a non-stop job and very  | y        |
| expensive activity (and the consequences of this)   | 129      |
| 4. The Technological Transition in response to COVID and the  | e        |
| Post-Recovery and Resilience Plan scenario: concluding remarks  | 134      |

X Index

| CHAPTER VI – Evolving AI- | Based auton | nation, continuin | g Relevance |
|---------------------------|-------------|-------------------|-------------|
| of Good Administration    | 2           |                   |             |

| 1. Introduction   | 139      |
|---|----------|
| 2. ADM in Public Law based on AI system                           | 141      |
| 2.1. Use-cases of AI in public ADM and their characteristics      | 141      |
| 2.2. ADM systems and technology: qualitative and quantitative     | <u>.</u> |
| effects   | 143      |
| 2.3. Automation by AI and decision-making phases: from zero       | ,        |
| automation, to full automation?                                   | 146      |
| 2.4. The trompe-l'oeil effect of semi-automated decision making   | 5        |
| and the tricky issue of discretion                                | 150      |
| 3. Distinguishing Rulemaking and Programming of AI from Single    | <u>,</u> |
| Case ADM Assisted Decision Making                                 | 154      |
| 3.1. Pre-determination of ADM systems by law                      | 154      |
| 3.2. Pre-determination and accountability                         | 156      |
| 4. ADM and the Right to Good Administration                       | 161      |
| 4.1. Transparency and the obligation of the administration to     | )        |
| give reasons  | 163      |
| 4.2. ADM and the reasoning of decisions to the standards of the   | <u>,</u> |
| duty of care  | 168      |
| 4.3. ADM, access to a file and the right to be heard              | 174      |
| 5. The AI Revolution Comes, but Public Law Does Not Go Away       | :        |
| Summary, Conclusions and Outlook                                  | 176      |
| CHAPTER VII – Algorithmic Decision-Making Systems used by Pub-    | -        |
| lic Administration in Italy <sup>3</sup>                          |          |
| 1. The national legal framework                                   | 179      |
| 2. Experiences in the use of automation and algorithms in public- |          |
| decision-making in the Italian Public Administration              | 181      |
| 2.1 Preliminary remarks   | 181      |

Index XI

| 2.2. Automation when initiating the procedure (submission of  |     |
|---|-----|
| applications etc.)  | 183 |
| 2.3. Automation in the preliminary investigation phase  | 184 |
| 2.3.1. As to document acquisition   | 184 |
| 2.3.2. As to data processing  | 185 |
| 2.4. Decision-making automation and the teacher-placement-  |     |
| algorithm's case-law  | 187 |
| 3. Decision-making and automation: which, when, where and why   |     |
| not? Final remarks  | 189 |
| CHAPTER VIII AI Consumer on one of the EII Doculation on Antificial   |     |
| CHAPTER VIII – AI Governance and the EU Regulation on Artificial Intelligence (AI-Act)                                      |     |
| 1. Introductory remarks   | 193 |
| 2. The goal(s) of the AI-Act and the implications of using article 114  |     |
| TFUE as the (primary) legal basis for its adoption  | 196 |
| 3. The AI-Act as a tool to protect fundamental rights and the   |     |
| subsidiarity and proportionality issues   | 200 |
| 4. The AI-Act, the renvoi to the technical standards and the  |     |
| protection of fundamental rights: a complex coordination with   |     |
| uncertain outcomes  | 205 |
| 5. The exceptions to the ban on the use of AI Systems for unacceptable risk activities: national Public Administrations and |     |
| the institutional autonomy of EU Member States  | 212 |
| 6. Next. Non-prohibited high-risk AI Systems, transparency and  |     |
| information obligations on the part of (national) Public  |     |
| Administrations: a paper tiger?   | 217 |
| 7. Concluding remarks   | 222 |

XII Index

## CHAPTER IX - Open Issues, Outlook, and Final Remarks

| 1. Robots and AI: what is it all about?                                  | 225 |
|--|-----|
| 2. The design and development of AI algorithms and the "quality of       |     |
| data" question: a problem common to all areas of science                 | 228 |
| 3. AI and Large Language Models: what one should be aware of and why     | 230 |
| 4. Hallucinations or bullshit? The consequence of (not) choosing the     |     |
| right word   | 232 |
| 5. Next. AI and UFO: fears and enthusiasm, behind a veil of igno-        |     |
| rance?   | 235 |
| 6. Between transhumanism and utopia, how and why Public Admin-           |     |
| istrations run the "human-stupidity-in-the-loop" risk                    | 236 |
| 7. To sum up, on the potential and risks of Artificial Intelligence for  |     |
| Public Administration and the fundamental role of the Europe-            |     |
| an Union   | 241 |
| 8. On the centrality of law as a science in this complex scenario: brief |     |
| conclusions  | 244 |

## BIBLIOGRAPHICAL REFERENCES

249

<sup>&</sup>lt;sup>1</sup> Already published as: D.U. Galetta, Digital Transition of Public Administration in Italy and the Right to a Good Administration: Problems and Prospects also in the Perspective of the Implementation of Italy's Recovery and Resilience Plan, in European Review of Digital Administration & Law (ERDAL), 2022/1, pp. 57-72.

<sup>&</sup>lt;sup>2</sup> Already published as: D.U. Galetta, H.C.H. Hofmann, *Evolving AI-based Automation – The Continuing Relevance of Good Administration*, in *European Law Review*, 2023/6, pp. 617-635.

<sup>&</sup>lt;sup>3</sup> Already published as: D.U. Galetta, G. Pinotti, *Algorithmic Decision-Making Systems used by Public Administration in Italy*, in *CERIDAP*, 2023/1, https://ceridap.eu (9 gennaio 2023), pp. 13-23.