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*The Principle of Transparency in Automated Decision-Making Systems – French Legal Framework**

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ABSTRACT This paper examines the emerging legal framework governing algorithmic transparency in French public Administration. It focuses on three key dimensions of transparency: the right of access to public algorithms, the right of individuals to be informed when algorithmic systems are involved in administrative decision-making, and the requirement of explainability. While these rights are increasingly recognized in both French and European law, their effective implementation remains uncertain. The paper highlights the legal, technical, and organizational challenges that limit their practical effectiveness and argues that the main difficulty lies not in the recognition of transparency obligations, but in their enforcement and day-to-day application by public authorities.

KEYWORDS: Algorithmic transparency - Automated decision-making - Public algorithms - Right to explanation - French public administration

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1. *Introduction*

Artificial intelligence (AI), which increasingly influences our opinions, preferences, and choices online, is also having a growing impact on public decision-making. Although it is difficult, if not impossible, to provide a complete picture of this phenomenon – particularly since French Administrations have not yet compiled an inventory of the AI systems they use[1] – the expansion of AI in the public sector is a global trend. Without exaggerating its potential, AI can be understood as a powerful tool transforming how governments operate and make decisions.[2] While the use of quantitative data to guide public policy is not new, the digital age has made it essential[3] and has led to such complexity that it raises concerns about whether humans can still effectively 'keep control' over these systems.[4]

The use of algorithms – defined as 'finite and unambiguous sequences of instructions enabling a result to be obtained from input data'[5] – has indeed become indispensable for processing the vast quantities of data characteristic of Big Data.[6] Algorithms constitute the mathematical formulas underpinning what are now referred to as artificial intelligence (AI) systems. Given that the very notion of AI remains highly contested, it is difficult to provide a consensual definition of AI systems. Accordingly, the definition adopted here is that provided by the European AI Regulation,

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[1] This is despite a legal obligation under the Digital Republic Act of 7 October 2016 (Loi pour une République numérique, codified in Art. L. 321-1-2 of the Code des relations entre le public et l'Administration CRPA).

[2] See Conseil d'État, *Intelligence artificielle et action publique : construire la confiance, servir la performance*, Paris, Conseil d'État, 2022.

[3] A. Supiot, *La Gouvernance par les nombres*, Cours au Collège de France (2012-2014), Paris, Fayard, 2015, 119 ff.

[4] Commission nationale de l'informatique et des libertés (CNIL), *Comment permettre à l'homme de garder la main ? Les enjeux éthiques des algorithmes et de l'intelligence artificielle*, Paris, CNIL, 2017.

[5] CNIL, *Comment permettre à l'homme de garder la main ?*, cit., 5.

[6] The volume, velocity, and variety of data constitute the three classic defining criteria of Big Data; to these may also be added veracity, value, and data visualisation.

according to which an AI system (AIS) is 'any machine-based system that is designed to operate with varying levels of autonomy and that may, for explicit or implicit objectives, generate outputs such as predictions, recommendations or decisions that influence physical or virtual environments (Art. 3(1))'.[7]

The use of classical AI systems – or deterministic AI systems – by public Administrations is extremely widespread, and the use of machine learning-based systems is beginning to expand. Both types are employed for a wide variety of purposes,[8] including identification (Digital Identity Guarantee Service[9]), the determination of access to rights or public services (the CAF Cristal system,[10] Affelnet, Parcoursup[11]), the targeting of fraudsters (the CFVR algorithm used by the tax Administration[12]), risk identification (security risks[13] and health risks[14]), communication with users,[15] and the management of public services and territories.[16]

A dual objective of effectiveness (where a measure achieves its intended aim) and efficiency (where it does so using resources as optimally as possible) explains this increased use. Recourse to AI systems is intended to promote the adoption of decisions that are better adapted to specific situations, insofar as they are based on the processing of large volumes of data; more equitable, insofar as the algorithm is presumed to be neutral; and faster. Moreover, it enables the optimisation of resource allocation, allowing resources to be redeployed towards tasks that algorithms are unable to perform.[17] In this respect, AI is intended to 'serve performance' in public action, as emphasised by the Conseil d'État in the title of its report. However, it also underlines that 'building trust' is a necessary precondition for its development.

However, the use of AI inherently raises an issue of trust, insofar as reliance upon it necessarily entails a loss of human control over decision-making. This is clearly the case where decisions are based on machine learning systems, often described as 'black boxes' whose functioning is inaccessible to human understanding, but it is also true of more traditional systems, which are specifically programmed to predetermine outcomes that human actors frequently follow without question. This implies that trust is placed more in technology than in human judgment. In the context of the use of AI by public authorities, the issue of trust arises with particular acuity, given that the administrative acts they adopt – whether regulatory or individual – are binding upon their addressees

[7] Regulation (EU) No. 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No. 300/2008, (EU) No. 167/2013, (EU) No. 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act).

[8] See the aforementioned report of the Conseil d'État for an overview of these AI systems and L. Cluzel-Métayer and N. Lasbleiz, *AI Systems in French Public Administration: Implementation, Legal Safeguards, and Organizational Evolution in the Context of EU Regulation*, in F. Decarolis *et al.* (eds.)*, The EU Digital Regulation and its Impact on Member States*, Cham, Springer, 2026, 103-124.

[9] Decree no. 2022-676 of 26 April 2022 authorising the creation of an electronic identification system known as the 'Digital Identity Guarantee Service' (SGIN), repealing Decree no. 2019-452 of 13 May 2019 establishing 'Certified Online Mobile Authentication' (ALICEM).

[10] Cristal (Integrated Relational Design of the Benefits Processing System) has been used by family allowance funds since 1995. It enables the provision of family benefits, individual benefits, housing assistance, and social action, as well as the verification of entitlements and the identification of potential beneficiaries. Regulatory act relating to the national model for processing benefits 'Cristal', 26 April 2017.

[11] The widely publicised Parcoursup system is used to allocate students to higher education institutions. Affelnet is used to assign pupils to secondary schools in certain regions.

[12] The 'Fraud Targeting and Request Valuation' (CFVR) algorithm has been used since 2013 to improve the targeting of fraud and enhance tax control. The Finance Act for 2020 authorised the use of data mining techniques, including the analysis of social networks, to detect fraud. See C. Lequesne-Roth, *La lutte contre la fraude à l'ère digitale*, in *Revue de droit fiscal*, no. 5, 4 February 2021; L. Cluzel-Métayer and C. Prébissy-Schnall, *La mutation du contrôle fiscal par le numérique*, in L. Belli and G. Guglielmi (eds.), *L'Etat Digital*, Boulogne-Billancourt, Berger-Levrault, 2022.

[13] L. Cluzel-Métayer, *Safe Cities: The French Experience*, in A. Brunon-Ernst, J. Gligorijevic, D. Manderson and C. Wrobel (eds.), *Law, Surveillance and the Humanities*, Edinburgh, Edinburgh University Press, 2023, 169-189.

[14] M. Lanna, *Les données personnelles de santé, nouvelle composante de la prévention sanitaire ?*, in *Revue Droit administratif*, no. 6, June 2020, 15.

[15] A. Beaux and J. Arrighi de Casanova, *Les chatbots – quand l'algorithme remplace l'agent public*, in L. Cluzel-Métayer, C. Prébissy-Schnall and A. Sée (eds.), *La transformation numérique du service public, une nouvelle crise ?*, Paris, Mare et Martin, 2022, 317.

[16] J.B. Auby, *Smart Cities: Enjeux juridiques de la ville intelligente*, Paris, LexisNexis, 2025, 111.

[17] Conseil d'État, *Intelligence artificielle et action publique*, cit., 7.

irrespective of their consent. Being directly enforceable, such decisions often have a considerable impact on individuals' lives and may condition the exercise of certain fundamental freedoms.

Administrative acts are therefore subject to specific transparency obligations: since the late 1970s, they must be communicated, and the vast majority of individual administrative decisions must, in addition, be explicitly reasoned.[18] The requirement of transparency now appears to permeate all areas of public action.[19] Given that algorithms now contribute to the making of public decisions, it is unsurprising that specific transparency obligations have been imposed upon them. In several States, including France, positive law has thus enshrined this requirement in the second half of the 2010s. Today, the proposed European AI Regulation, by promoting a risk-based approach, forms part of this same dynamic of strengthening transparency in AI.

French law engaged indeed at an early stage with the regulation of such algorithmic systems, introducing specific provisions governing their use within the public sector. Notably, before the entry into force of both the General Data Protection Regulation[20] and the Artificial Intelligence Act,[21] the *Loi pour une République numérique* of 7 October 2016 established a legal frame applicable to algorithms employed by administrative authorities, focused on transparency. These provisions are codified within the *Code des relations entre le public et l'Administration* (CRPA) and must be interpreted in light of existing case law. To date, however, judicial engagement with issues relating to public algorithms remains limited, and no ruling has directly addressed the *Bosco* case.[22] It is precisely for this reason that the latter decision appears to be of particular doctrinal interest.

The legal framework established by the 2016 Act, which has since been complemented by the AI Act, rests upon three fundamental requirements: the right to access public algorithms (*communication*), the right of a person to be informed that their case has been processed by an algorithm that can be called 'the right to know' (le droit de savoir) and the explainability (*explicabilité*) of public algorithms, which are conceived as essential to the broader objective of administrative transparency. The following analysis examines the implementation of these three principles within the French legal order.

This article aims to examine both the opportunities and the limitations offered by the developing legal framework governing algorithmic transparency. The practical effectiveness of the relevant legal regime depends on the extent to which public authorities and citizens are able to invoke and rely upon its provisions, as well as on the willingness of administrative judges to enforce them. A first challenge lies in the interaction between legal rules enacted in France in the late 1970s and the more recent European regulatory framework. In addition to these legal difficulties, technical obstacles and organizational constraints compel public Administrations to reconsider their governance models. Consequently, the effective realization of the three fundamental components of the right to algorithmic transparency – the right to access public algorithms, the right to be informed when an algorithm is involved in the processing of one's case, and the right to an explanation – remains uncertain.

2. *The Right of Access to Public Algorithms*

The right of access to the algorithms underpinning administrative decisions is now

[18] Between 1978 and 1979, four legislative instruments established new rights for individuals: rights of control over personal data (access, rectification, deletion, objection) under the Data Protection Act (loi Informatique et Libertés, 6 January 1978); a right of access to administrative documents (Loi CADA, 17 July 1978) and public archives (Loi 3 June 1979); and a right to reasons for adverse individual decisions (Loi 11 July 1979).

[19] This requirement permeates public service law (Loi du 20 avril 2016 relative à la déontologie et aux droits et obligations des fonctionnaires), public procurement law (since the 2006 Code), and political life (Loi sur la transparence de la vie publique, 11 October 2013).

[20] Regulation (EU) No. 2016/679 of the European Parliament and of the Council of 27 April 2016 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) (Text with EEA relevance).

[21] Regulation (EU) No. 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No. 300/2008, (EU) No. 167/2013, (EU) No. 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act).

[22] Tribunal Supremo, Judgment no. 1119/2025. N. Lasbleiz, *L'affaire BOSCO en Espagne : après sept années de procédure, une victoire pour la transparence algorithmique*, in *Revue Lamy droit de l'immatériel*, no. 234, 2026, 36-39.

firmly established, whether through legislative provisions or judicial developments. However, this recognition is accompanied by a range of exceptions that significantly circumscribe the practical effectiveness of the principle.

2.1. *Legal Recognition*

In pursuit of enhanced administrative transparency,[23] the 2016 Loi pour une République numérique classified source code as a communicable administrative document within the meaning of Article L. 300-2 CRPA. Accordingly, such code must, upon request, be disclosed and made available online to individuals (CRPA, art. L. 311-1 and L. 311-9-4). The largest administrative authorities[24] are also required to publish online, on their own initiative, data and databases,[25] as well as the rules defining the main algorithmic processes underlying individual decisions.

The constitutional dimension of this right of access was affirmed by the Conseil constitutionnel in the context of litigation concerning the disclosure of the *Parcoursup* algorithm, which governs university admissions in France. In its decision of 3 April 2020,[26] the Constitutional Suprem Court held that a legislative provision precluding any third-party access to such an algorithm would contravene Article 15 of the 1789 Declaration of the Rights of Man and of the Citizen, pursuant to which 'society has the right to hold any public agent accountable for his Administration'.

Thus, with regard to the Parcoursup algorithm, while the Conseil d'État considered that disclosure of institutions' algorithms could indeed be limited,[27] the Conseil constitutionnel, ruling on a priority constitutional question, held that 'the contested provisions cannot, without infringing the right of access to administrative documents, be interpreted as exempting each institution from publishing, at the end of the national pre-registration procedure and with due regard for applicants' privacy, where appropriate in the form of a report, the criteria according to which applications were examined, specifying, where applicable, the extent to which algorithmic processing was used for this examination'.[28]

Through the AI Act, European law reinforces these obligations. The article 13 of AI Act sets out specific requirements for 'transparency and provision of information to users' for high-risk AI systems. The design and development of these systems 'shall be such that their operation is sufficiently transparent to enable users to interpret the system's output and use it appropriately.' The information, listed in Article 13(3),[29] must be 'concise, complete, accurate, clear, relevant, accessible and understandable.' Article 13 of the AI Act addresses interpretability only for deployers, that is, in our case, administrative authorities using high-risk AI systems developed by external providers. But combined with the obligations laid down by the *Loi pour une République numérique*, these requirements will form a robust framework that public AI systems must comply with.

2.2. *Legal Limits*

Nonetheless, the principle of administrative transparency is not without limits. The right of access to algorithmic systems cannot be construed as absolute. The law may, provided that the resulting restrictions are proportionate to the objective pursued, introduce limitations justified either by constitutional requirements or by considerations of general interest.

Thus, the protection of certain legally recognised secrets, as well as the safeguarding

[23] L. Cluzel-Métayer, *La transparence du service public à l'ère du numérique. Lumière, ombre et aveuglement*, in L. Cluzel-Métayer, C. Prébissy-Schnall and A. Sée (eds.), *La transformation numérique du service public : une nouvelle crise ?,* Paris, Mare et Martin, 205.

[24] Those employing more than 50 employees (CRPA, art. D. 312-1-1-1).

[25] CRPA, art. L. 312-1-1.

[26] Cons. const., 3 April 2020, no. 2020-834 QPC*, Union nationale des étudiants de France.*

[27] TA Guadeloupe, 5 February 2019, req. no. 1801094, UNEF, comm. T. Douville, *Parcoursup à l'épreuve de la transparence des algorithmes*, Dalloz IP/IT 2019, 390; H. Pauliat, *Communication à un tiers des procédés algorithmiques utilisés par Parcoursup : pas d'atteinte au secret des délibérations pédagogiques*, in *La Semaine Juridique – Administrations et collectivités territoriales,* no. 7, 18 February 2019, 4-5 and CE, 12 June 2019, Université des Antilles, req. no. 427916 and 427919, Université des Antilles. Concl. P. Fressoz, F. Dieu, *Traitements algorithmiques utilisés par les universités dans le cadre de "Parcoursup" : un droit d'accès limité et réservé aux seuls candidats*, in *La Semaine Juridique – Administrations et collectivités territoriales*, no. 30, 29 July 2019, 43-49.

[28] Cons. const., 3 April 2020, no. 2020-834 QPC.

[29] They relate to the identity and contact details of the provider or its representative, to the characteristics, capabilities and performance limitations of the system, to any modifications made to the system, to the human oversight measures implemented, to the expected lifetime of the system, and to the maintenance measures necessary to ensure its proper functioning.

of individual privacy, justifies excluding specific systems from disclosure obligations. Administrative documents shall be communicated solely to the person concerned where their disclosure would be detrimental to privacy, medical confidentiality, or business confidentiality, including trade secrets, economic and financial information, and commercial or industrial strategies.[30] Likewise administrative documents shall not be disclosed where their consultation or disclosure would undermine the confidentiality of Government deliberations, national defence secrecy, diplomatic relations, State security, public security, the safety of individuals, the security of administrative information systems, currency and public credit, or the investigation and prevention of offences.[31] For instance, considerations relating to national security, or the investigation of criminal offences explain why algorithms used to detect tax fraud are not subject to disclosure. Similarly, the *Conseil constitutionnel* has upheld statutory limits on the disclosure of the local components of the *Parcoursup* algorithm to preserve the confidentiality of academic deliberations. While reaffirming the constitutional status of the right of access to information, the Council considered that such restrictions pursued a legitimate aim and were not disproportionate considering the safeguards provided.

From the perspective opened by the *Bosco* decision, particular attention must be paid to issues relating to intellectual property rights and the security of administrative information systems.

Concerning intellectual property, French courts have not yet been called upon to adjudicate directly on these questions. Nevertheless, two observations may be advanced. First, since the adoption of the 2016 Act, administrative authorities may no longer invoke intellectual property rights over databases as a ground for refusing disclosure. It is therefore arguable that a similar limitation should apply to source code. Secondly, pursuant to Article L. 321-2 CRPA, where proprietary rights are held by third parties, the Administration is precluded from disclosing the relevant source code. Accordingly, where the development of such code has been outsourced to a private entity, the Administration, lacking ownership, cannot lawfully make it publicly available.

In addition, as highlighted in the *Bosco* context, the disclosure of source code may raise concerns regarding the security of administrative information systems. The Administrative Court of Paris addressed this issue in litigation concerning the *Parcoursup* system, holding that the publication of the complete source code would reveal vulnerabilities liable to compromise the security of the Administration's information systems.[32]

Whereas the disclosure of source code, thereby enabling user feedback, is regarded as the most appropriate means of better identifying vulnerabilities in information systems and strengthening their security, the approach adopted is instead to maintain confidentiality on account of the system's weaknesses. Such reasoning is problematic, as it may allow administrative authorities to invoke the very weaknesses of their systems to justify resisting transparency obligations. It is hoped that future case law, potentially shaped by the Bosco decision, will reconsider this approach.

Beyond the right of access to source code – already subject to significant limitations – individuals also enjoy the right to be informed where their situation is subject to algorithmic processing.

3. *The Right of a Person to Be Informed That They Have Been Processed by an Algorithm*

Individuals subject to an individual administrative decision based on an algorithm must, moreover, be duly informed thereof[33] and must be provided with 'the rules defining such processing as well as the main characteristics of its implementation' upon request.[34]

This requirement differs from the right of access to source code. In this context, the right to be informed of the use of an algorithm relates to a specific individual administrative decision and constitutes a necessary precondition for the understanding of that decision, as will be discussed below, as well as for the effective exercise of the right to

[30] CRPA, art. L. 311-6.
[31] CRPA, art. L. 311-5 2°.
[32] TA Paris, 2 November 2023, no. 2120895, *Association Ouvre-boîte*.
[33] CRPA, art. L. 311-3-1.
[34] CRPA, art. R. 311-3-1-2.

challenge it. The obligation to disclose the use of an algorithm in the notification of an individual administrative decision may be understood as an extension of the duty to state reasons for adverse administrative decisions (Article L. 211-5 of the French Code of Relations between the Public and the Administration) and must be read in conjunction with the right to explainability (see Part III).

An administrative decision based solely on the automated processing of personal data is void if such information has not been provided.[35]

The information provided must specify, inter alia, the purpose of the algorithmic processing, the existence of a right of access to the governing rules and principal characteristics of the system, and the modalities for exercising such rights, including, where appropriate, recourse before the Commission for Access to Administrative Documents.[36]

The Administration shall communicate to the person subject to an individual decision based on algorithmic processing, upon request and in an intelligible form, the following information: 1° The extent and manner in which the algorithmic processing contributed to the decision-making; 2° The data processed and their sources; 3° The processing parameters and, where applicable, their weighting, as applied to the data subject's situation; 4° The operations carried out by the processing.[37]

The right for individuals to know whether an administrative decision concerning them was based on an algorithm is not subject to specific provisions under the AI Act. However, this requirement must be considered alongside the transparency obligations for providers and deployers of certain AI systems set out in Article 50 of the AI Act, concerning chatbots and deepfakes. Article 8 of the Council of Europe Framework Convention on AI, on 'Transparency and Oversight', is likewise part of this same approach. It involves adopting measures to identify AI-generated content 'in order to avoid the risk of deception and enable distinction between authentic, human-generated content and AI-generated content as it becomes increasingly hard for people to identify' (Recital 59).

Significantly, this requirement was incorporated into Principle 13 ('Form and Notification of Administrative Decisions') of the Council of Europe handbook The Administration and You during its December 2024 revision, which sought to address the implications of the growing use of artificial intelligence by the public Administrations of Member States.[38] During the discussions surrounding the revision of the handbook among representatives of the 46 Member States, the inclusion of this provision met with unanimous support. This broad consensus can likely be explained by the fact that the requirement is relatively easy to implement and constitutes a sine qua non condition for enabling individuals to challenge the grounds on which a decision is based, a cornerstone of the rule of law.

The requirement of explainability raises far more significant challenges.

4. *The Requirement of Explainability*

Administrative transparency entails not only the disclosure of algorithmic systems but also their explainability.[39] To use a definition given by the Commission Nationale Informatique et Libertés,[40] 'explainability is the ability to relate and render intelligible the elements taken into account by an AI system in producing an output. These may include, for example, input variables and their impact on the prediction of a score, and thus on the decision'.[41] This requirement operates on two distinct levels. On the one hand, administrative authorities must be capable of demonstrating effective control over their systems, which presupposes that they themselves understand their functioning – this is commonly referred to as interpretability. On the other hand, they must be able to provide end users, namely citizens, with a comprehensible explanation of the system's operation, enabling them to understand the reasoning underlying the decision and, where appropriate, to challenge it.

[35] Art. 47, law no. 78-17 6 January 1978 (Loi informatique et libertés).
[36] CRPA, art. R. 311-3-1-1.
[37] CRPA, art. R. 311-3-1-2.

[38] Council of Europe, *The Administration and You, Principles of administrative law concerning relations between individuals and public authorities,* 2024.
[39] L. Cluzel-Métayer and S. Hammoudi, *Le contrôle de l'Administration sur l'intelligence artificielle*, in *Revue Française de Droit Administratif*, March-April 2025, 201-210.
[40] CNIL, the French personal data protection authority.
[41] www.cnil.fr/fr/definition/explicabilite-ia.

This requirement has gradually become a key principle in both ethics and law. Despite the widespread agreement on this principle, putting it into practice is far from straightforward.

4.1. *The Regulatory and Judicial Framework*

4.1.1. *The Law First Requires AI Systems to Be Interpretable*

In practice, this means that public authorities must understand how these systems operate and evolve so that humans can effectively intervene – by modifying or stopping the system, but also by correcting decisions whenever the algorithmic solution is not appropriate to the specific situation. The idea is therefore to 'make the internal functioning, logic, and decision-making processes of AI systems understandable and accessible to human users' and to 'ensure that the model is interpretable across all data, rather than only for a particular person or situation (Conseil d'Etat, 2022)'.[42]

At EU level, the interpretability requirement is set out in Article 13 of the AI Act. It is directed at deployers, meaning here the public Administrations that use high-risk AI systems designed by external providers. Providers are required to supply instructions for use containing 'concise, complete, correct and clear information that is relevant, accessible and comprehensible to deployers'. Such documentation includes, for example, the technical capabilities and characteristics of the system, as well as all relevant information necessary to explain its outputs. It also covers input data specifications and information relating to the validation and testing methods used in the case of machine-learning systems. The communication of this information is intended to enable the administrative services concerned to understand and act upon the high-risk AI systems they use. In addition, Administrations are required to take 'measures to ensure, to the best of their ability, a sufficient level of AI literacy among their staff'.

French law additionally requires Administrations to explain AI systems to users, namely the individuals subject to the final decision. Under Article L. 311-3-1 of the CRPA, the Administration must communicate, upon request, the rules governing the processing and the main features of its implementation. Article R. 311-3-1-2 further requires that this information be provided in an intelligible form and include the role played by the algorithm in the decision-making process, the data and sources used, the relevant processing parameters and weightings, and the operations carried out by the system.

This requirement underpins the prohibition, in French law, of fully automated administrative decisions where the Administration lacks effective control over the underlying system. As confirmed by the *Conseil constitutionnel* (Decision No. 2018-765 DC, 12 June 2018), such decisions are permissible only where the Administration is able to master both the functioning and the evolution of the algorithm. Consequently, fully automated administrative decisions cannot, at present, be based on machine learning systems characterised by opacity – so-called 'black box' models. However, the absence of a clear legal definition of what constitutes a 'fully automated administrative decision' remains a significant unresolved issue.

4.1.2. *Individuals Also Have the Right to Receive Explanations Regarding Algorithmic Decisions Made About Them*

In this context, explainability can be understood as an extension of the right to a statement of reasons (Art. L. 211-5 of the CRPA). It is set out in Article 47(2) of the Loi Informatique et Libertés, which provides that the controller must 'be able to explain, in detail and in an intelligible form, to the data subject how the processing has been implemented in relation to them'. The explanation must be individualized, specifying how the system was applied in the specific case and, in particular, which key variables determined the outcome. The explanation must be detailed, requiring more precise information than the 'main characteristics of the processing' and intelligible, that is, adapted to the recipient's level of understanding. Explainability must therefore enable the individual to understand how the AI system was configured and/or trained to reach the proposed result, as well as to challenge the decision.

In its judgment of 27 February 2025, the Court of Justice of the European Union

[42] Conseil d'État, *Intelligence artificielle et action publique*, 123.

emphasised the centrality of this requirement. It held that the right of individuals subject to automated decision-making, including profiling, to receive 'meaningful information about the logic involved' must be interpreted as encompassing a right to an explanation of the procedures and principles concretely applied in the individual case. The Court indeed held that 'it is apparent from the examination of the purposes of the GDPR and, in particular, those of Article 15(1)(h) thereof that the right to obtain 'meaningful information about the logic involved' in automated decision-making, within the meaning of that provision, must be understood as a right to an explanation of the procedure and principles actually applied in order to use, by automated means, the personal data of the data subject with a view to obtaining a specific result, such as a credit profile. To enable the data subject effectively to exercise the rights conferred on him or her by the GDPR and, in particular, Article 22(3) thereof, that explanation must be provided by means of relevant information and in a concise, transparent, intelligible and easily accessible form.

Those requirements cannot be satisfied either by the mere communication of a complex mathematical formula, such as an algorithm, or by the detailed description of all the steps in automated decision-making since none of those would constitute a sufficiently concise and intelligible explanation'.[43]

Explainability is, moreover, taken up by the AI Act which, in Article 86 concerning the 'Right to explanation of individual decision-making', provides that 'any affected person subject to a decision which is taken by the deployer on the basis of the output from a high-risk AI system listed in Annex III, with the exception of systems listed under point 2 thereof, and which produces legal effects or similarly significantly affects that person in a way that they consider to have an adverse impact on their health, safety or fundamental rights shall have the right to obtain from the deployer clear and meaningful explanations of the role of the AI system in the decision-making procedure and the main elements of the decision taken'.

The scope of this provision is both broader, as it concerns decisions involving or not involving personal data, and narrower, as it applies only to high-risk AI systems. Yet the broad ethical and legal consensus on the need to retain control over these tools should not overshadow the practical difficulties involved in implementing such a requirement.

4.2. *The Practical Challenges and Limits of Legal Implementation*

In practice, the implementation of explainability encounters significant legal, technical and organizational challenges. There are in fact two distinct issues: one concerning access to algorithms, and another relating more specifically to the understanding of the system and its influence on the decision-making process. The challenges differ depending on the parties involved.

1. For the individual concerned, intelligibility presupposes that the Administration has first provided access to the algorithm. This is the sine qua non condition for understanding the algorithmic decision. Yet, despite being a legal requirement, this disclosure is not effectively implemented in practice. Under Article L. 312-1-3 of the French CRPA, public Administrations with more than 50 employees are required to publish online the rules governing the algorithmic systems used in individual administrative decision-making. However, virtually no Administration complies with this requirement. To the best of our knowledge, only the Department of Ille-et-Vilaine has complied with it. Even where citizens are given access to such information, the information provided must still be practically understandable. However, some of it is at times partially withheld on the grounds of legally protected confidentiality, which further complicates understanding of the document. In addition, the information is often highly technical and therefore inaccessible to most citizens.

About the redaction of disclosed source code, the example of the source code used by the French National Family Allowance Fund (CNAF) is particularly instructive. Since 2012, the CNAF has implemented a data-mining system designed to improve the detection of social welfare fraud. The system identifies beneficiary files considered to be the most 'at risk' to prioritize them for inspection. The association La Quadrature du Net (LQDN) requested access to the input variables and to the weighting assigned to

[43] CJUE C-203/22 *Dun & Bradstreet Austria*, § 58-59.

each variable. While the CNAF did disclose the source code, it removed the names of all the variables used, making it impossible to understand the algorithm. The Administration justified these redactions by claiming that disclosure of such information would allow individuals to circumvent the fraud-detection mechanism. This position was endorsed by the French Commission on Access to Administrative Documents on 15 December 2022.

2. With respect to explainability for public authorities using AI systems, this responsibility lies with the providers, who must provide documentation containing clear and comprehensible information (art. 13 AI Act). This requirement also applies to the public authorities deploying the system, which must ensure that the AI system remains intelligible throughout its lifecycle. In the case of symbolic algorithms, the Administration may reasonably appropriate the logic of the system and provide the individual concerned with an intelligible explanation regarding the criteria considered, their weighting, and their application to the specific case. In this context, explainability remains a manageable constraint. For instance, a student allocation decision under the Parcoursup system can be explained by reference to the criteria used and their weighting as applied to the individual case. In this scenario, explainability remains a manageable constraint, although its effectiveness also depends on the quality of the technical documentation provided by the designer and on the Administration's ability to translate it into accessible terms. The challenge becomes far more significant when public authorities use connectionist algorithms.[44] Public officials are therefore confronted with a real 'black box', whose internal reasoning cannot be reconstructed in a clear and linear way. This makes interpretability extremely difficult – and sometimes even impossible when highly complex models such as deep learning systems are involved.

Yet if the Administration itself cannot properly understand how the system reaches its decisions, explainability towards citizens becomes largely theoretical. After all, how can a decision be explained if the authorities themselves do not fully understand the underlying reasoning behind it? In this context, there is a strong temptation to rely on simplified or standardized explanations that no longer truly reflect the algorithm's actual logic, but merely serve to satisfy transparency requirements. This type of formal explanation, largely disconnected from the reality of how the AI system operates, leads to a 'facade' explainability, undermining both the individual's rights (in particular the right to an effective remedy) and trust in public action.[45]

This problem is further compounded by an organizational issue within public Administrations themselves: the officials responsible for explaining decisions to users are not necessarily the ones who understand the underlying technology. As a result, they are placed in the difficult position of having to explain, in simple and intelligible terms, a process that largely escapes their own understanding. This inevitably widens the gap between the transparency that is formally presented and the Administration's actual control over the tool.

4.3. *Potential Avenues for Addressing These Challenges*

The rise of artificial intelligence techniques, particularly connectionist models, has led to the emergence of a whole field of research known as 'algorithmic explainability', or 'XAI' (explainable AI). This dynamic and promising field has resulted in the development of interpretable AI models designed to 'simulate' algorithmic decisions after the fact by extracting a limited set of key factors.[46] However, these methods remain underdeveloped and tend to oversimplify the complexity of algorithmic reasoning, thereby risking the obscuring of biases or systemic errors that may affect the final outcome.

An alternative approach involves reverse engineering, which aims to reconstruct, after the fact, how an algorithm operates by analysing its outputs in order to identify the implicit rules underlying its decisions. In other words, it consists in empirically rebuilding the algorithm's decision-making logic by isolating the factors that have a decisive impact on

[44] D. Bourcier and P. de Filippi. *Les algorithmes sont-ils devenus le langage ordinaire de l'Administration ?,* in G. Koubi, L. Cluzel-Métayer and W. Tamzini (eds.). *Lectures critiques du Code des relations public et Administration*, Paris, LGDJ, 2018, 193-210.

[45] L. Cluzel-Métayer and S. Hammoudi, *Le contrôle de l'Administration sur l'intelligence artificielle*, cit., 201.

[46] L. Vuarin and V. Steyer, *Le principe d'explicabilité de l'IA et son application dans les organisations*, in *Réseaux,* no. 240, issue 4, 2023, 179-210.

outcomes. This is precisely the method used by certain civil society and anti-discrimination organisations to uncover the functioning of administrative algorithms, notably the one employed by the CNAF to detect potential welfare fraud. By analysing numerous real-life cases, comparing outcomes, and identifying recurring correlations between certain profiles and decisions, these organisations have been able to reveal the existence of systemic biases or discriminatory factors that were not explicitly programmed by the Administration but instead emerged from the algorithm's operation.[47]

Accordingly, the documentation requirement laid down by the AI Act (article 11) is of great importance. It should not be understood as an additional administrative formality, but as an essential component of the right to understanding, ensuring that individuals are able to effectively challenge decisions taken against them.

Even when highly detailed, such documentation is insufficient in the case of AI systems based on complex machine learning models, whose internal logic remains largely opaque. This is why, beyond procedural safeguards, the issue of technological choices must also be considered. Some connectionist machine learning systems display outstanding predictive performance but are inherently difficult to interpret. In this context, for individual administrative decisions affecting rights, it may be preferable, wherever possible, to rely on systems that are explainable by design. These algorithms, based on explicit rules, decision trees, or linear models, have the advantage of being readily understandable, both for the officials who use them and for the individuals who challenge them. While this may entail sacrificing some degree of predictive optimisation, it constitutes an important safeguard for legal certainty, which is essential in administrative action.

To support these developments, public officials must be trained not only in the use of algorithmic tools, but also in the practice of explanation. As it now appears unrealistic to dispense with AI, it is essential to train both public officials and citizens, so that the risks associated with its use receive as much attention and recognition as its potential benefits.

5. *Conclusion*

In conclusion, the principal difficulty in the French context lies less in the formal recognition of transparency obligations than in their effective implementation. Citizens remain insufficiently informed about the use of algorithmic processing by public authorities. Although the 2016 Loi pour une République numérique required Administrations to publish an inventory of such systems, this obligation has long remained unfulfilled.

Recent developments suggest that progress is being made, albeit not at the initiative of public authorities themselves. Rather, it is through civil society initiatives – most notably those led by social science researchers, particularly legal scholars – that such an inventory is gradually emerging. The *Public Algorithms Observatory* (Observatoire des algorithms publics[48]) constitutes a notable example of this trend. While still incomplete, it represents a promising step towards greater transparency in the governance of algorithmic systems.

Furthermore, the deployment of artificial intelligence within the French public Administration raises significant governance and organizational challenges that extend well beyond the adoption of new technologies. While France has developed an ambitious public AI strategy,[49] its implementation remains fragmented due to the multiplicity of actors involved in its governance, including the Interministerial Directorate for Digital Affairs (DINUM), the Interministerial Directorate for Public Transformation (DITP), and the National Coordinator for AI. The absence of a clearly centralized governance structure may hinder policy coherence, accountability, and the effective coordination of AI initiatives across the public sector.

At the operational level, AI implementation is characterized by considerable institutional diversity. Ministries and public bodies have adopted different organizational models,

[47] A. Sénécat, *Algorithme de ciblage antifraude dans les CAF : des associations saisissent le Conseil d'État*, in *Le Monde*, 16 October 2024.

[48] https://odap.fr.

[49] DINUM, *Plan systémique pour l'intelligence artificielle dans l'État, Intelligence artificielle : une IA utile, humaine et souveraine pour les services publics*, 16 June 2026, www.numerique.gouv.fr/sinformer/espace-presse/intelligence-artificielle-ia-utile-humaine-souveraine-services-publics.

ranging from dedicated innovation laboratories to specialized agencies, reflecting their specific needs and priorities. Although this flexibility may foster experimentation and innovation, it also creates disparities in the deployment and oversight of AI systems.

The regulatory landscape is likewise evolving. The AI Act is likely to strengthen the role of the French Data Protection Authority (CNIL), whose responsibilities may expand beyond data protection to encompass broader supervision of AI systems. This evolution would require significant institutional adaptation, including the development of new technical expertise and supervisory capacities.

Perhaps the most pressing challenge concerns human resources and administrative capacity. Despite longstanding recommendations from the Conseil d'État[50] and recent initiatives aimed at strengthening digital skills within the civil service, AI literacy remains insufficient among many public officials. The effective implementation of AI systems requires not only the recruitment of specialized experts but also the development of a broader culture of digital and algorithmic competence throughout the Administration. In this respect, the requirements introduced by the AI Act concerning AI literacy and human oversight underline the strategic importance of training and capacity-building. Ultimately, the success of AI deployment within the French public sector will depend not only on legal and technical frameworks but also on the Administration's ability to develop the institutional, organizational, and human capacities necessary to govern these technologies effectively and in accordance with the principles of the rule of law.

[50] Conseil d'État, *Puissance publique et plateformes numériques : accompagner l'"ubérisation",* 2017, proposition no. 16, from 134.