

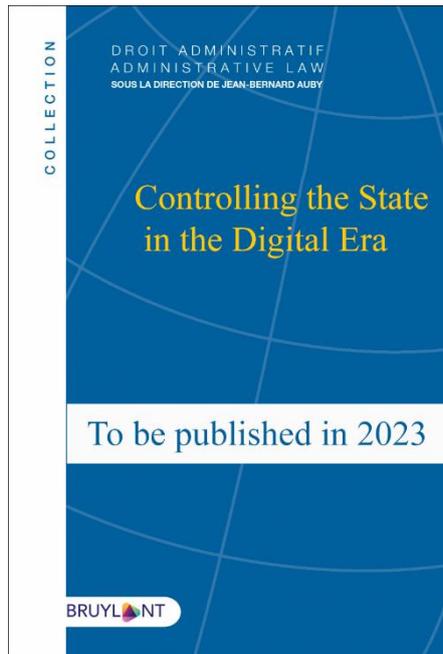
Controlling the State in the Digital Era

(Collective work preceded by a seminar)

Edited by Philippe Cossalter et Pierre Tifine

<https://controlling-the-state.eu>

Scientific Committee: Jean-Bernard Auby, Nadja Braun Binder, Dominique Custos, Giovanna de Minico, Isaac Martin Delgado, Diana-Urania Galetta, Nikolaus Marsch, Elena d'Orlando, Angelo Giuseppe Orofino, Gabriella Racca, Hicham Rassafi-Guibal, Aleksandr Stepanov.



The book entitled "Controlling the State in the Digital Era" will be published at Bruylant (collection „Administrative Law“) in 2023.

Two days of seminars are planned for 23 and 24 June 2022 at the University of Lorraine (Metz), as part of the 3rd Printemps Droit et Numérique.

These days will allow for the discussion of the articles submitted for publication, in English and French. The articles will have been submitted before the event for collective reading.

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The aim of the project is to raise the question of control over the State in its relationship with the digital world. It is a matter of questioning the control of what the State does with digital tools, but also the use of digital tools to control the State.

Controlling the State's use of digital tools

With regard to the State's use of digital tools, the dematerialisation of the means and objects of public action raises the question of the methods of control, while the traditional means of judicial control have changed little. The two standard tools of judicial review, legality and liability, are configured to apprehend realities that do not include the particular element of complexity resulting from dematerialisation. The administrative laws of the Member States of the European Union and beyond are gradually adapting to the new methods of State intervention imposed and made possible

by contemporary tools: incentives and recommendations, nudge management, good practice guides. However, reflection on the mechanisms, and not simply the forms or results of this action, is still in its infancy.

This observation is true for the control of the legality of administrative acts, even if the level of understanding of this issue varies greatly from one country to another. It is even more so with regard to administrative responsibility. Doctrine has already reflected in depth on the liability linked to software creation and autonomous systems. But it has not yet fully addressed the liability of the administration. One of the questions that may be asked is whether administrative liability is specific or whether the principles of liability applicable to the private sector may also apply to the administration. For the time being, the answer seems to be quite clear-cut as far as French law is concerned, which is based on jurisdictional dualism. It will probably be more nuanced in legal systems that do not have an administrative liability regime.

The protection of privacy and the protection of personal data is part of the issue of judicial review of the administration, but it can be treated independently. The protection of privacy obviously refers to the question of "security interceptions" which the security services can use with regard to the electronic communications of individuals, but it now extends to video surveillance, facial recognition and all forms of collective and individual surveillance of the population. In democratic systems, judicial and citizen control over these intrusions is not always optimal.

Digital tools as a mean of control over the State

The demand for transparency in public action has increased with dematerialisation. Web 1.0 has strengthened the demand for accessibility and transparency of public action.

Even beyond this one-way dissemination of final information, the black box of administrative action has opened up thanks to the materialisation of certain decision-making processes by digital tools. Paradoxically, digitalisation has given substance to previously imperceptible processes: it has materialised administrative action. This is particularly striking in the case of procedures such as the "parcours sup", which have brought to light procedures that were previously subject to the discretionary power of the administration.

The use of digital technology also opens up new possibilities for "internal control", particularly in the field of public finance and the use of public funds. The fight against corruption is thus renewed.

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PROGRAMME

* The names followed by an asterisk are those of authors who will be able to attend the conference on line.

** The names followed by an asterisk are those of authors who will not be able to attend the conference but will contribute to the book.

Cristina Fraenkel-Haerberle will participate as a discussant

Thursday 23 June 2022, 10:00 - 12:00

Introduction

Philippe Cossalter and Pierre Tifine

I. Digital tools for administrative action

Case studies

Diana Urania-Galetta** : Italy

Isaac Martin-Delgado* : Spain

Hélène Bégon Tavera : France

Hichamn Rassafi-Guibal : Luxembourg

Felix Schubert : Germany

Lunch break 12:00 – 14:00

Thursday 23 June 2022, 14:00 – 17:00

Nadja Braun Binder**, The fully automated administrative act: myth or reality?

Christoph Gröpl and David Karhan*, Tax administrations and digital technology: Germany.

II. The dispute of the algorithmic administrative act

Aleksandr Stepanov : On the notion of algorithmic administrative act

Gilles J. Guglielmi* : Litigation of the algorithmic administrative act in French law ¹

Angelo G. Orofino : Litigation of the algorithmic administrative act in Italian law

III. Non-judicial control of digital administration

Giorgio Mancosu : Italian case study

Giovanna de Minico : Independent Authorities and Artificial Intelligence: an unreliable marriage

17:00 : End of the day's work

Friday 24 June 2022, 9:30- 12:30

IV. Liability of the digital administration

Georg Borges, Liability for autonomous systems

Gherardo Carullo*, Accountability and motivation of algorithmic decisions

V. The protection of personal data vis-à-vis the administration

Pierre Tifine, Public data, private data, personal data: reminder of the concepts

Nikolaus Marsch, The circulation of personal data within the administration

Pier Marco Rosa Salva*, Data and public contracts

Cristina Fraenkel-Haeberle**, The use of personal data by the administration

Conclusion : Jean-Bernard Auby

¹ Due to scheduling constraints, the intervention will take place on the morning of June 24, at a distance.