

Citizens' Right to Information and the Principle of Good Administration: What's new in the AI Act?

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Abstract: The EU Artificial Intelligence (AI) Act has sparked debates about establishing new or expanded information rights for citizens affected by AI-based administrative decision-making (AADM). While some argue that new or expanded information rights to citizens are reasonable and ethically recommendable, others caution that such rights may inhibit innovation. However, as with any public debate, arguments should be grounded in a clear understanding of existing rights enshrined in current regulations. This article conducts a legal dogmatic analysis of the right to good administration in the EU Charter of Fundamental Rights (EU Charter) and its constituent information rights, namely the right to consultation, the right to access, and the right to an explanation, to provide a foundation for future debates on new or expanded information rights for citizens affected by AADM. Moreover, this article explores how the transparency provision in Article 13 of the AI Act interacts with these information rights and discusses whether these regulations collectively form a robust legal framework for citizens affected by AADM. Our approach to selecting and examining legal sources mirrors that of the Court of Justice of the European Union, as the Court holds the interpretation privilege of the examined provisions (dogmatic method within legal realism).

Keywords: AI, Decision, Support, Public administration, Information, Human rights

1. Introduction

Artificial intelligence (AI) is increasingly being integrated into various public administration domains across Europe. For example, public administrations progressively deploy AI in their decision-making processes to aid caseworkers in making decisions that impact a single person or a clearly defined group of natural or legal persons (collectively referred to as citizens). This growing use of AI has sparked debates regarding the extent to which citizens should be granted rights to information about the use of AI (Jakubowska, 2024; Smuha et al, 2021).

Central to these debates is the EU AI Act, which has prompted discussions about whether new or expanded information rights regarding AI usage for citizens are necessary. While some argue that new or expanded rights are reasonable and ethically recommendable given the challenges inherent in AI-based administrative decision-making (AADM), such as algorithmic opacity, potential biases, and discrimination, others caution that such rights may stifle innovation. However, as with any public debate, arguments should be rooted in a clear understanding of rights already enshrined in existing regulations.

This article analyses the information rights deriving from the overarching right to good administration in Article 41(1) of the EU Charter of Fundamental Rights (EU Charter), which broadly apply to all areas of public administration unless derogation is to be found in regulations applying to a specific area of administration, such as taxes, social welfare, and health care, in conjunction with the transparency provision in Article 13 of the AI Act. To this end, the aim of this article is twofold. Firstly, it aims to provide a legal dogmatic analysis of the information rights deriving from the right to good administration in the EU Charter, setting the stage for future discussions on new or expanded information rights about AI utilisation in public administration. Secondly, it aims to elucidate how Article 13 of the AI Act interacts with the existing information rights in the EU Charter, highlighting to what extent these regulations collectively form a robust framework for new or expanded information rights for citizens affected by AADM.

The article proceeds as follows: Section 2 explores the multifaceted applications of AI in public administration and introduces our underlying distinction between 1) the use of AI to generate a factual basis for subsequent rule application and 2) the use of AI to identify, clarify, and apply legal frameworks to a factual basis. Section 3 analyses the information rights arising from the overarching right to good administration enshrined in Article 41(1) of the EU Charter, namely the right to consultation, the right to access, and the right to an explanation, and evaluates what kind of information these rights may warrant to citizens affected by AADM. In this context, our approach to selecting and examining legal sources mirrors that of the Court of Justice of the European Union (CJEU). The reason for adhering to the approach of the CJEU is that the Court holds the ultimate

authority to interpret these legal provisions. Thus, aligning with the Court's approach ensures that our analysis and the conclusions drawn are consistent with the interpretive methods applied by the Court. In continuation, section 4 examines the transparency provision laid down in Article 13 of the AI Act, focusing on how this provision interacts with the information rights deriving from the right to good administration, and whether these regulations collectively form a robust framework for new or expanded information rights for citizens affected by AADM. Finally, section 5 summarises our main findings and conclusions.

2. AI Applications in Public Administration

Article 3(1) of the AI Act defines an AI system as a:

“machine-based system that is designed to operate within varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit and implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments.”

Article 3(1) of the AI Act delineates AI as a technology capable of versatile application. According to Article 3(1), AI applications in public administration domains across Europe thus encompass a spectrum of functionalities. For example, AI, when synergised with traditional coded software, can support caseworkers by generating a factual basis for subsequent rule application through the collection, analysis, and organisation of case-related information. Additionally, AI may contribute to generating professional assessments or furnishing legal information to support decision-making processes, such as identifying precedents relevant to specific cases. Moreover, AI may be utilised to suggest interpretations or even subsumptions of applicable regulatory frameworks to factual scenarios.

From a legal perspective, it is crucial to distinguish between 1) AI systems that generate a factual basis for subsequent rule application and 2) AI systems that identify, clarify, and apply legal frameworks to a factual basis, as these AI applications fall under different categories within administrative law. This article focuses on AI systems that generate a factual basis for subsequent rule application to caseworkers in public administrations. In this context, we argue that AI's role in producing this factual basis can be divided into various sub-categories.

The first sub-category pertains to the use of AI for generating *verifiable information*, which caseworkers later utilise in their decision-making process. A pertinent example is the Danish Environmental Protection Agency's administration of permits for mining sand at the sea. The Agency is developing an AI system that identifies the sailing patterns of ships mining at sea based on Automatic Identification System (AIS) data. The identified patterns will help to determine if a vessel is mining sand and, if so, estimate the quantity of sand mined from the seabed. The digitally generated output will, among others, be used to monitor permit compliance and issue invoices for associated fees.

The second sub-category involves the use of AI to generate *professional assessments*. An illustrative example is the Danish Environmental Protection Agency's AI system that can recognise different types of habitats from the air and categorise these automatically using data from satellites, drone pictures, and videos. The digital categorisation of various types of habitats (output) serves as a basis for applying different terms, etc., in farming or industrial permits and for reassessments, monitoring, and issuing injunctions or prohibitions based on relevant regulations.

From such professional assessments, there is a gradual movement towards a third sub-category: *expert estimates*. Expert estimates are common in the welfare sector. For example, there have been numerous experiments with AI decision support in unemployment services, where AI assesses citizens' risk of long-term unemployment and suggests specific initiatives or job matches (The Danish Data Protection Agency, 2022). Hybrids of professional assessments and expert estimates include evidence assessments, such as fraud detection in the tax, welfare, and business administration. The most common use of AI in fraud detection is as decision support for initiating investigations. However, some European administrations have experimented with AI generating a preliminary assessment of evidence, providing caseworkers with risk assessments on a predefined scale.

As highlighted above, AI can be used in various contexts. However, it should also be noted that the AI Act explicitly prohibits certain AI practices. According to Article 5, these AI practices include 1) manipulative AI systems, 2) AI systems that exploit vulnerable groups, 3) AI systems used for social scoring, 4) AI systems that predict criminal offences, 5) AI systems for creating or expanding facial recognition databases, 6) emotion

recognition AI systems in sensitive areas, 7) biometric categorisation AI systems, and 8) real-time remote biometric identification AI systems in public spaces. These prohibitions likely reflect EU's approach to balancing the innovation potential of AI with the protection of citizens' fundamental rights, ensuring that AI use in public administration, among others, does not undermine citizen trust or legal safeguards.

The following sections continue by examining the fundamental right to good administration and its associated information rights, focusing on what kind of information these rights may warrant in administrative decision-making where AI is used to generate the factual basis for a decision.

3. The Right to Good Administration

Citizens' right to good administration is well-anchored in EU law. Firstly, the right to good administration is a fundamental, non-statutory principle that the CJEU has developed in its case law (Case 222/86; Case 374/87; Case C-269/90; Case T-450/93; Case T-167/94). Secondly, the right to good administration is codified in Article 41(1) of the EU Charter, making it binding, primary EU law.

While Article 41(1) is expressly addressed only to EU institutions, bodies, offices, and agencies, the CJEU has established that the right to good administration reflects a general principle of EU law. In this context, the Court has clarified that the right to good administration, therefore, extends beyond interactions between citizens and EU entities to also encompass interactions between citizens and national administrative authorities in Member States when they are applying EU law (Cases 225/19 and 226/19; Case-230/18). Consequently, the right to good administration is also applicable in proceedings before national administrations (Kristjánsdóttir, 2013).

At its core, the right to good administration comprises an “umbrella right” for citizens to have their affairs handled impartially, fairly, and within a reasonable time, as well as more specific information rights, namely the right to consultation, the right to access, and the right to an explanation. These rights are to be interpreted in light of broader principles, such as proportionality, fairness, and transparency (Sanchez-Graells, 2024; Roehl 2023).

3.1 The Right to Consultation

The right to consultation is a fundamental component of the right to good administration, enshrined in Article 41(2)(a) of the EU Charter. This right only applies to administrative proceedings where an individual measure may adversely affect a citizen, i.e. in scenarios with a risk of potentially harmful and erroneous measures, which could erode trust in the public sector (Case 55/69; Cases 56 and 58/64; Case T-7/89; Case 76/99). This limitation likely stems from a risk-based approach, as the consultation process is time and resource-consuming.

Before a decision is made, Article 41(2)(a) of the Charter lays down an obligation for the EU entity or national authority acting within the scope of EU law to perform a hearing of the affected citizen, thereby granting the citizen a right to be heard. In this context, the CJEU has clarified that the right to consultation pursues a dual objective:

“First, to enable the case to be examined and the facts to be established in as precise and correct manner as possible; and secondly, to ensure that the person concerned is in fact protected. The right to be heard is intended, inter alia, to guarantee that any decision adversely affecting a person is adopted in full knowledge of the facts, and its purpose is, in particular, to enable the competent authority to correct an error or to enable the person concerned to submit such information relating to his or her personal circumstances as will argue in favour of the adoption or non-adoption of the decision (...).” (Case T-402/20; Case 187-19 P).

The CJEU has further emphasised that to ensure the case is examined and the facts are established as precisely and correctly as possible, the citizen concerned must be informed in a timely, effective, and personal manner of all the information that might be useful for his or her defense (Case 55/69; Cases 56 and 58/64; Case T-7/89; Case 76/99). In this context, the citizen concerned must be allowed to correct or supplement the information presented.

We argue that the dual purpose - enabling citizens to provide relevant supplementary information and allowing public bodies to correct errors - should ensure that citizens have access to the input and output data examined in this article. Given the CJEU's strong focus on fulfilling regulatory requirements, we find it highly likely that the CJEU will rule accordingly. From a legal dogmatic standpoint, it does not matter whether the

verifiable data and the professional or expert assessments are AI-generated, as long as the input and output form part of the factual basis for a decision affecting a citizen.

Nonetheless, the right to be informed of the factual basis as a part of consultation has never been – and, in our opinion, will never be – without exceptions. For example, if access to some information is restricted, the competent public body cannot provide this information during the consultation procedure. Thus, the right to consultation and the right to access are closely interconnected (Case 204/00).

3.2 The Right to Access

The right to access, enshrined in Article 41(2)(b) of the EU Charter, ensures transparency for citizens by facilitating an understanding of the evidentiary and factual basis on which decisions are to be made. The right to access also serves as a foundation for other rights. For example, with access to information, citizens are better positioned to defend their rights and interests when exercising the right to consultation. Furthermore, Article 8(2) of the Charter, which grants citizens the right to access “data which has been collected concerning him or her, and the right to have it rectified,” supplements Article 41(2)(b).

The early jurisprudence on the right to access emerged in competition proceedings. Initially, in *VBVB and VBBB*, the CJEU ruled that the Commission was not obligated to disclose the complete file, only the documents forming the basis of its decisions (Case 43, 63/82). The boundaries of the right to access were later clarified in *Aalborg Portland*, which involved a long-running Commission investigation into agreements and concerted practices among European cement producers (Cases 204-205/00). Due to the extensive documentation involved, the Commission provided a selected set of documents to each addressee and refused to grant access to the entire investigation file. In *Aalborg Portland*, the CJEU reiterated the right to access, stating that the Commission must allow the concerned parties to examine all documents that may be relevant to their defense, including both incriminating and exculpatory evidence (Cases 204-205/00; Case T-210/01; Case T-161/05; Case T-58/01; Case T-66/01). However, the CJEU has also clarified that the right to access is subject to several limitations, including business secrets and confidential information or documentation that is irrelevant and bears no relation to the allegations of facts or law (Cases 204-205/00; Case T-161/05).

The CJEU has not yet interpreted the right to good administration, including the right to access, in the context of AADM. However, in *Ligue des droits humains*, which concerned AI usage for the processing of flight passengers’ data, the Court specified that “the persons concerned themselves must have had an opportunity to examine both all the grounds and the evidence on the basis of which the decision was taken” (Case 817/19). Although *Ligue des droits humains* primarily concerns Articles 7, 8, 21, and 52(1) of the EU Charter, the CJEU tends to interpret the Charter and underlying principles in context, seeking harmony. The interpretation provided by the Court in *Ligue des droits humains* is therefore likely to have wider implications for the interpretation of the right to good administration, including the right to access.

The Court’s interpretation in *Ligue des droits humains*, in conjunction with the previously discussed case law, may suggest that citizens adversely affected by AADM should have access to comprehensive information, including all documents, grounds, and evidence that might be useful for their understanding and potential defense. In this context, scholars like Coglianese and Lehr (2017) argue that citizens must be able to understand the design and functioning of algorithms, including the underlying data used. Moreover, they posit that citizens should be provided with information about how the importance of various variables is interpreted and the consequences those interpretations have on the effects of possible erroneous variable measurements, stating that this information should ideally come from an expert with statistical knowledge. Finally, they argue that citizens should be able to access information about the level of human involvement and the measures taken to mitigate the risks associated with AI usage. However, a significant limitation of these recommendations is that they lack grounding in the legal sources commonly applied by the CJEU.

From a legal dogmatic starting point and building on existing CJEU case law, we argue that it is highly likely that the CJEU may, when presented with a question about the right to good administration in the context of AADM, rule that citizens, if no factors such as the rights of others and public interests suggest restrictions, at least should be granted access to information about the types of personal data processed (input) and the generated output, which will form the basis of the later decision.

Secondary regulation, such as Articles 13, 14, and 22 of the General Protection Data Regulation (GDPR), might also grant citizens some transparency regarding AI modules. It is, however, uncertain whether the CJEU will establish – for some actors controversial, far-reaching, and resource-demanding – transparency requirements at a treaty level. On the one hand, access to detailed information about AI modules and their use is important

for ensuring that citizens can understand – or hire expert expertise to examine - the decision-making process and potentially challenge the reliability of AI applications. On the other hand, a similar right to a description of the procedures of gathering and generating facts has not been a part of the right to access in the analog administration. This has, however, to some extent, been a part of the right to an explanation.

3.3 The Right to Explanation

The right to an explanation is enshrined in Article 41(2)(c) of the EU Charter. This right requires the EU entity or national authority that applies EU law to justify their decisions based on both law and facts (Karaïskou, 2023). In its case law, the CJEU has further emphasised that the right to an explanation is crucial for ensuring transparency and accountability in administrative decision-making (Case 817/19; Cases 225/19 and 226/19; Case 367/95; Case 277/11).

According to the CJEU's case law, the right to an explanation requires a statement of reasons that discloses the factual and legal basis of a decision in an unequivocal manner (Case 367/95). This involves detailing the facts, the most decisive legal considerations, and addressing relevant counterarguments. The CJEU has further established that the reasons provided must be appropriate to the content of the decision, meaning that a decision with significant negative consequences for a citizen requires more specific and concrete explanations (Case 230/18). Notably, in *R.N.N.S and K.A.*, the Court stated that generalised justifications based on pre-determined lists of grounds did not meet the required level of specificity and concreteness (Cases 225/19 and 226/19).

Additionally, in *Ligue des droits humains*, the Court stated that administrative authorities are required to ensure that the affected citizen can understand how the AI system and the assessment criteria function, emphasising that this understanding is necessary for the citizen to “decide with full knowledge of the relevant facts whether or not to exercise his or her right to (...) judicial redress” (Case 817/19). While *Ligue des droits humains* does not explicitly address the right to an explanation under Article 41(2)(c) of the EU Charter, it is, as mentioned in section 3.2, likely to have broader implications for Article 41(1) of the Charter and its constituent rights in the context of AADM.

Based on the CJEU's reasoning in developing the right to an explanation, the interpretation in *Ligue des droits humains*, and the previously discussed case law, we argue that the CJEU may, when presented with a question about the right to good administration in the context of AADM, rule that an explanation should, as a minimum, contain information about the types of personal data processed (input), the generated output, which will form the basis of the later decision, the functioning of the AI system, the assessment criteria, the most decisive legal considerations, potential counterarguments, and the remedies available to the affected citizen. Nonetheless, complex AI systems and legal reasoning may still be challenging for citizens to understand. Administrative bodies should, therefore, ensure that explanations about AI processes and legal justifications are particularly clear and accessible, for example, by using simplified language, visual aids, or expert inputs (Case 367/95).

4. Integrating AI Act Transparency with the Right to Good Administration

The preceding sections have examined the right to good administration and its associated information rights. This section examines how Article 13 of the AI Act may interact with these information rights and evaluates whether these regulations collectively form a robust legal framework for new or expanded information rights for citizens affected AADM.

Article 13 of the AI Act focuses on ensuring transparency in the deployment and operation of AI systems. It stipulates that “high-risk AI systems shall be designed and developed in such a way to ensure that their operation is sufficiently transparent to enable deployers to interpret a system's output and use it appropriately.” Furthermore, Article 13 imposes an obligation on providers of high-risk AI systems to offer detailed instructions covering the characteristics, capabilities, and performance limitations of these systems. These instructions must include, among others, the intended purpose of the AI system and information on its accuracy, robustness, and cybersecurity. Additionally, instructions must specify the system's performance concerning the specific persons or groups of persons on which it is intended to be used, and, when appropriate, provide details on the input data and other relevant information concerning the training, validation, and testing datasets used.

Importantly, these requirements do not establish a right to an explanation but rather impose an obligation on AI system providers to ensure explainability. This distinction highlights a significant limitation of the AI Act: it does not confer individual rights to citizens. However, the AI Act allows that a citizen “may make a complaint

to the relevant market surveillance authority concerning non-compliance with the AI Act and may expect that such a complaint will be handled in line with the dedicated procedures of that authority” (Council of the EU, 2023). Nonetheless, it remains unclear at what stage citizens can realistically file such complaints. Even with enhanced transparency for high-risk AI systems, citizens may lack the information needed to identify problematic AI decisions, except in relation to formal aspects of the AI Act’s obligations (Liga, 2023).

While Article 13 of the AI Act thus functions as a compliance provision by imposing transparency obligations on AI high-risk system providers, it does not introduce new or expanded information rights for citizens comparable to those arising from the right to good administration in Article 41(1) of the EU Charter. However, CJEU case law has shown that combining existing regulations can lead to the recognition of new rights. For example, in *Google Spain SL*, the CJEU addressed privacy and data protection issues by combining rights and principles from various legal domains to establish a more comprehensive framework for protecting individuals in the digital age (Case C-131/12). This case thus illustrates how traditional rights can be adapted and expanded to meet new challenges posed by technological advancements.

By interacting with the existing information rights arising from the overarching right to good administration enshrined in the EU Charter, Article 13 of the AI Act may thus potentially support the realisation of the suggested minimum information rights for citizens affected by AADM (sections 3.2 and 3.3). For example, by requiring AI system providers to ensure transparency regarding the technical aspects of AI systems, Article 13 may complement the information rights in the EU Charter, providing a stronger basis for ensuring that citizens are informed and empowered to understand and challenge AI-driven decisions affecting them. However, a significant counterargument is that the AI Act only focuses on transparency for high-risk AI systems, raising questions about the CJEU’s possibility of requiring equivalent transparency for AI systems that the legislator has chosen not to cover. Given that the CJEU is not a legislative body, it cannot act as a legislator in the absence of a genuine gap in the law.

Therefore, while the AI Act aims to enhance transparency for high-risk AI systems, its narrow scope might limit broader transparency and the realisation of expanded information rights for citizens affected by AADM involving lower-risk AI systems.

5. Conclusion

Our legal dogmatic analysis of the right to good administration and its constituent rights, namely the right to consultation, the right to access, and the right to an explanation, deeply embedded in the EU Charter and shaped by the jurisprudence of the CJEU, indicates that these rights may provide a foundation for expanded information rights for citizens affected by AADM.

We argue that the CJEU, when faced with a question about the right to good administration in the context of AADM, may rule that citizens should, as a minimum, be informed about the types of personal data processed (input), the AI system’s generated output, the functioning of the AI system, the assessment criteria, key legal considerations and counterarguments, as well as the remedies available to affected citizens.

By establishing detailed transparency requirements for AI system providers regarding the technical aspects of high-risk AI systems, Article 13 of the EU AI Act may potentially support the realisation of the suggested minimum information rights. However, the provision’s exclusive focus on transparency for high-risk AI systems raises questions about whether the CJEU can require equivalent transparency for other AI systems not covered by the legislator. Since the CJEU is not a legislative body, it cannot act in a legislative capacity in the absence of a genuine gap in the law. Thus, while the AI Act aims to enhance transparency for high-risk AI systems, its narrow scope may limit broader transparency and the realisation of expanded information rights for citizens affected by administrative decision-making involving lower-risk AI systems.

In conclusion, we argue that the information rights arising from the overarching right to good administration in the EU Charter in conjunction with Article 13 of the AI Act may provide a strong basis for expanded information rights for citizens affected by AADM involving high-risk AI systems. Yet, the limitation inherent in Article 13’s focus on high-risk systems may necessitate further legislative or judicial efforts to ensure expanded information rights for citizens affected by AADM regardless of risk level.

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