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*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 the National Recovery and Resilience Plan**

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ABSTRACT After considering the steps needed to reach the goal of digitalizing public administration, the paper aims to verify whether and to what extent a public administration that makes use of ICT is (or could be) a better public administration in the sense of better responding to that right to a good administration referred to in art. 41 of the Charter of Fundamental Rights of the European Union and what role the National Recovery and Resilience Plan could play in this perspective.

1. *Introductory remarks*

In order to be able to address the question of what challenges are imposed on public administration today by the so-called digital transition, it is first necessary to have a clear idea of what "digital transition" means and what steps it actually entails for our public administrations.

Summing up here what I have discussed in greater detail elsewhere, digital transition implies the use of Information and Communication Technologies (ICT) within public administrations, with the aim of providing services that meet the needs expressed by citizens in a society that has changed profoundly especially thanks to the use of such technologies.[1]

As it was already explicitly stated in the 2003 EU Commission Communication on the role of eGovernment for Europe's future "Information and communication technologies (ICT) can help public administrations to cope with the many challenges. However, the focus should not be on ICT itself. Instead it should be on the use of ICT combined with organisational change and new skills in order to improve public services, democratic processes and public policies. This is what eGovernment is about".[2]

This means that the digital transition is not (and should not be conceived) as an end in itself, to be achieved "whatever it takes". ICT are to be seen as a useful means to an end, which clearly needs to be identified in advance.

The introduction of ICT in the context of administrative procedures must serve, first of all, the objective of making public administrations more efficient, improving on the one hand the quality of public services provided to citizens and, on the other hand, reducing the related costs for the community, at least in a medium to long term perspective.[3] With this in mind, the reference model is that of *e-commerce,* whose essential value is, precisely, its efficiency.[4]

The introduction of ICT is therefore seen as being closely related to the objective of modernising public administration: ensuring greater efficiency, but also transparency and

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[1] See D.U. Galetta, *Information and Communication Technology and Public Administration: through the Looking-Glass*, in D.U. Galetta, J. Ziller (eds.), *Information and Communication Technologies Challenging Public Law, beyond Data Protection*, Baden-Baden, Nomos Verlagsgesellschaft, 2018, 119.

[2] See Commission Communication of 26 September 2003, The role of eGovernment for Europe's Future, Doc. COM(2003) 567 final, at *https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2003:0567:FIN:EN:PDF*, 4.

[3] See W. Sheridan, T.B. Riley, *Comparing e-Government vs. e-Governance*, in *Geospatial World*, 2010, 1.

[4] Among others: C. Zotta, R. Amit and J. Donlevya, *Strategies for value creation in e-commerce: best practice in Europe*, in *European Management Journal*, vol. 5, 2000, 463.

simplification of its activities and, consequently, improving the quality of relations with citizens, as well as the service provided to them.[5]

In the perspective of this paper, however, the aim identified as an objective would be that of guaranteeing a better satisfaction/realisation of that right to good administration whose reference parameter is Article 41 of the Charter of Fundamental Rights of the European Union. With this in mind, it is necessary to verify whether and to what extent a public administration that makes use of ICT is (or can be) a better public administration in the sense of being more compliant with the canons of good administration codified therein.

In order to do this, it is obviously necessary to examine - also on the basis of concrete examples - the various and numerous problems and critical issues linked to the so-called digital transition of public administration.

2. *The digital transition of public administration: the necessary steps and related issues*

2.1. *The dematerialisation of documents held by public administrations*

In order to be able to identify the potentialities and problematic issues related to the use of ICT in the context of public administration, it is first of all necessary to clarify - albeit quickly - the fundamental steps to be taken in order to achieve the so-called "digital transition".

The very concept of transition (from the Latin *transire*, i.e. "to pass") identifies "a change or shift from one state, subject, place, etc. to another".[6] Therefore, once this transition has been completed, one should, in theory, find oneself before a new and different (better?) public administration than the one from which one started.

The first step of this transition, however, already implies an enormous amount of work, which consists in transforming traditional paper documents and archives into electronic documents and archives;[7] and in abandoning, for the future, the production of "paper native" documents and opting instead for "digital native"[8] documents.

Dematerialisation is, in fact, a *conditio sine qua non* to be able to improve efficiency and control of documents, easy sharing of documents and data, storage and security of information, allowing (at least in perspective) savings in time and resources.

Digital files are considered better than traditional paper documents (or those anchored to a physical medium) insofar as they do not take up "physical" space in offices, can be easily retrieved and copied, and individual contents can be extracted much more efficiently than from paper documents.

However, this is only true in principle. As the complex story of the creation of the National Register of Resident Population (*Anagrafe Nazionale della Popolazione Residente* - ANPR) in Italy clearly shows: the national database into which all the 7,903 municipal registers have gradually converged since 21 October 2016.[9]

Even more so, as to the creation of the Electronic Health Record (*Fascicolo Sanitario Elettronico* - FSE).[10] According to Article 12, para 1 of Decree-Law 179/2012, the EHR is "the set of data and digital documents of a health and social-health nature generated by present and past clinical events concerning the patient, also referring to services provided outside the National Health Service".[11]

Apart from the specific problems related to the content of the EHR and its concrete implementation,[12] (*infra,* par. 4.2.), if one

[5] On this point see D.U. Galetta, *Public Administration in the Era of Database and Information Exchange Networks: Empowering Administrative Power or Just Better Serving the Citizens?*, in *European Public Law*, vol. 25, issue 2, 2019, 171.

[6] See at www.merriam-webster.com/dictionary/transition.

[7] See S. Armenia, D. Canini and N. Casalino, *A system dynamics approach to the Paper Dematerialization Process in the Italian Public Administration*, in D'Atri et al. (eds.) *Interdisciplinary Aspects of Information Systems Studies*, Heidelberg, Physica-Verlag, 2008, 399.

[8] That is, obtained using word processing software and transformed directly into PDF (and not by scanning a paper document).

[9] At 31 December 2021, only the municipality of San Teodoro, in the province of Messina, was still missing. See *infra*, para 4.2.

[10] See M. Moruzzi, *La sanità dematerializzata e il fascicolo sanitario elettronico. Il nuovo welfare a "bassa burocrazia"*, Rome, Il Pensiero Scientifico, 2014.

[11] Decree-Law 179/2012, converted with amendments by Law no. 221 of 17 December 2012 (in Official Gazette no. 208 of 18 December 2012, no. 294). All translations from Italian (or other languages) into English contained in this paper are mine and therefore solely my responsibility.

[12] See R. Ducato and P. Guarda, *From electronic health records to personal health records: emerging legal*

considers the way in which most of the information contained in citizens Electronic Health Records was initially transferred from a paper file to an electronic one, one finds out that this is in itself an obstacle in achieving the objective of immediate availability of relevant patient information. Dematerialisation has in fact mostly been achieved, at least in the first phase, through the mere scanning of paper documents, which are then converted into non-indexable[13] pdf files. Whereas, in order to allow a real usability of the information contained in the EHF, the indexing of the files certainly represents an essential step.

2.2. *The creation and necessary maintenance of digital documents and archives*

Even if, with a burst of optimism, one would disregard the problems linked to the dematerialisation of documents mentioned above and imagine a public administration that - having successfully completed the transition to a full and complete dematerialisation of the documents in its possession - has happily moved from paper to digital documents, the problems would still not be over.

If public administrations were capable of producing only truly digital documents (i.e. not merely scanning paper documents), one could eliminate paper archives and mitigate the problems related to the managing of "physical space" in public offices.[14]

However, computer archivists[15] warn us that digital archives also have their own specific (and relevant) problems. The continually ongoing process of technological change threatens management and maintenance of digital records.

The resulting problems are obviously many and not insignificant. They concern both the accessibility over time of the contents of the digital document and the integrity of the documents themselves,[16] which are in fact much more vulnerable than classic paper documents.[17]

To mention just a few of the critical situations that may arise:[18] the software that originally could read the file format may no longer exist; the medium on which the file was stored may be lost or destroyed. This explains the meaning of the discussion about the need for public administrations[19] to "move to the cloud": a move that is, however, neither simple nor risk-free.[20]

In addition to this, an enormous problem is that the data contained in electronic documents are not physically "attached" to their media (as ink is to paper documents).

For analogical "documentary sources" the passing of time determines, at least in principle, that they remain largely unaltered, so that it is possible to ensure the conditions for verifying authenticity (e.g. by analysing the support, the writing materials, the structure of the document, the type of annotations

issues in the Italian regulation of e-health, in *International Review of Law, Computers & Technology*, vol. 9, 2016, 271.

13 An "image" PDF whose text will not be "searchable" unless OCR software is used to scan it (to detect text within a digital image), resulting in an optical character recognition process.

14 To give just one example of such problems: for Italy Ministerial Decree 9/3/2007 sets a number of limits on the total amount of paper that can be stored per unit of space in order not to incur a high fire risk. See the document at the link: *www.vigilfuoco.it/allegati/PI/DisposizioniGeneraliPI/COORD_DM_09_03_2007-DM_16_02_2007_RESISTENZA_AL_FUOCO.pdf*

15 See in particular M. Guercio, *Archivistica informatica. I documenti in ambiente digitale*, Rome, Carocci, 2002.

16 M. Guercio, *Archivi digitali. Principi, metodi e criticità organizzative*, in *Treccani*, *www.treccani.it/enciclopedia/archivi-digitali_%28XXI-Secolo%29*.

17 See D. Bearman, *Reality and Chimeras in the Preservation of Electronic Records*, *D-Lib Magazine*, 1999, vol. 5, no. 4; Dwivedi, *Archive - where it started and the problems of perpetuity*, in *Proceedings of the Eighteen IEEE Symposium on mass storage systems and technologies*, 2001, at http://storageconference.us/2001/papers/p10dwive.pdf, 353, which well underlines how "The new era has instigated a major change for archivists from a world of "human-readable" data to one of "computer-ciphered" data, introducing a completely new set of issues and processes" (354).

18 In addition to those already quoted see I. Boydens, *La conservation numérique des données de gestion (Numéro spécial "Archivage et perennisation")*, vol. 8, no. 2, Paris, Hermès Sciences, 2004, 13.

19 In this regard, the Three-year Plan for IT in public administration 2021-2023 published by AGID in October 2021 explicitly refers, among the guiding principles, to the "cloud first" principle: public administrations, when defining a new project and developing new services, adopt the cloud paradigm first, taking into account the need to prevent the risk of lock-in (para 5). See also the relevant information at *https://cloud.italia.it/*.

20 See the 2012 AGID document, Raccomandazioni e proposte sull'utilizzo del Cloud Computing nella Pubblica Amministrazione (Recommendations and proposals on the use of cloud computing in public administration), *www.agid.gov.it/sites/default/files/repository_files/documenti_indirizzo/raccomandazioni_cloud_e_pa_-_2.0_0.pdf.*

etc.).[21] On the contrary, this is not at all true for electronic documents, which can easily be modified. More attention needs therefore to be paid to the issue of their integrity, authenticity and reliability.[22]

Together with the problem of the inevitable (and rapid) obsolescence of hardware and software, this means that the "once-for-all principle" that applied to the archiving of paper documents no longer applies to the archiving of electronic data.[23] Thus, one must rather speak of an "all-the-time principle" with regard to digital archiving,[24] which implies an endless commitment, also and above all financially. Adequate financial resources have to be constantly made available in order to meet the (ordinary) costs of system administration, updating of technologies, adaptation of human resources etc. With the important consequence that, at the end of the day, digital archiving is much more vulnerable to reductions in the budgets available to public administrations for current expenditure; and it is completely incompatible with the very idea of zero "maintenance" costs.

So, it is evidently necessary to start asking already now what might happen in a post National Recovery and Resilience Plan[25] scenario. Given that the recent trend in Italy has been what I have elsewhere described as "zero-cost reforms": that is, reforms that come to life accompanied by that notorious "financial invariance clause" according to which no new or greater burdens on public finances should result from their implementation.[26]

2.3. *New "social needs" and the temptation of outsourcing (the different choice of the National Recovery and Resilience Plan - NRRP)*

Studies by sociologists studying the public administration also alert us to the fact that the use of ICT and e-governance is developing in a social environment populated by increasingly demanding "clients" (citizens, professionals and private sector companies).[27] This, in turn, implies having more financial resources to meet and satisfy these "social needs" and, therefore, greater budgets to offer services related to these new "social needs".[28] The paradox, however, is that while they are increasingly demanding as citizens in terms of the facilities and services expected from the public administration, at the same time they appear, as taxpayers, less and less willing to pay for these services.

In order to overcome the dilemma that this inevitably creates for public administrations that are constantly underfunded and increasingly overloaded with tasks and burdens, there is a strong temptation for them to turn to the private sector and outsource these "services".[29] This is particularly true in the UK and United States context; but in reality, it is a widespread phenomenon in our national administrations too, partly because of the enthusiasm about resorting to the private sector (outsourcing) that has characterised the

[21] M. Guercio, *Archivi digitali* cit.

[22] The literature on this point is as complex as it is extensive. Among the many authors see K. Stranacher, V. Krnjic, B. Zwattendorfer and T. Zefferer, *Evaluation and Assessment of Editable Signatures for Trusted and Reliable Public Sector Data*, in *Electronic Journal of e-Government*, vol. 11, no. 2, 2013, 360; M. Runardotter, C. Mörtberg and A. Mirijamdotter, *The Changing Nature of Archives: Whose Responsibility?*, in *Electronic Journal of e-Government*, vol. 9, no. 1, 2011, 68; F. Buccafurri, G. Caminiti and G. Lax, *Threats to Legal Electronic Storage: Analysis and Countermeasures*, in: K. Normann Andersen et al. (Eds.), *Electronic Government and the Information Systems Perspective* (Proceedings of the Second International Conference, EGOVIS 2011, Toulouse, France), Berlin, Heidelberg, 2011, 68.

[23] See M. Dečman, *Long-term Digital Archiving - Outsourcing or Doing it*, *The Electronic Journal of e-Government*, vol. 5, no. 2, 2007, 136.

[24] M. Dečman, *Long-term Digital Archiving - Outsourcing or Doing it.*

[25] The Italian Recovery and Resilience Plan (NextGenerationItaly), can be read at *https://www.governo.it/sites/governo.it/files/PNRR.pdf.*

[26] See on this point in D.U. Galetta, *Trasparenza e contrasto della corruzione nella pubblica amministrazione: verso un moderno panottico di Bentham?*, in *Diritto e Società*, no. 1, 2017, 43, par. 6 s. But see also in D.U. Galetta, *La trasparenza, per un nuovo rapporto tra cittadino e pubblica amministrazione: un'analisi storico-evolutiva in una prospettiva di diritto comparato ed europeo*, in *Rivista italiana di diritto pubblico comunitario*, no. 5, 2016, par 5.8., 1054.

[27] See S. Ho Ha and M. Jung Lee, *E-Government Services Using Customer Index Knowledge*, in K. Norman Andersen et al. (eds.), *Electronic Government and the Information System Perspective* (First International Conference, EGOVIS 2010, Bilbao, Spain, August 31 - September 2, 2010, Proceedings), Berlin, Heidelberg, 2010, 174.

[28] See H. Chesbrough, *Toward a science of services*, in *Harvard Business Review*, vol. 83, 2005, 16.

[29] See on this point M. C. Lacity and R. Hirschheim, *Information systems outsourcing; Myths, Metaphors and Reliabilities*, John Wiley & Sons Ltd, England, 1993; E. S. Savas, *Privatizing the public sector: How to shrink government*, London, Chatham House, 1982.

Italian "institutional scene"[30] for a long time, now.

However, the "outsourcing solution"[31] raises a number of critical issues, not least for the fact that it does not actually reduce public spending, while it throws "smoke and mirrors" at citizens with the idea that "shrinking" the administrative apparatus is the solution to the "costs problem".[32]

The only sure outcome, in my eyes, is that the public administration takes a step backwards from its fundamental task of guardian of the public interest. With all the related consequences.

This is true in general, but even more so where outsourcing refers to services of dematerialisation and digital archiving of public documents, with the well-known (and very important) problems of security and protection of the personal data of all those involved.

In this sense, I very much welcome the strategy outlined in the Italian Recovery and Resilience Plan,[33] which I see moving in a different direction. In fact, there are huge resources invested by the Plan for public administrations, with the aim of creating the internal "resources" - in terms of civil servants, "cutting-edge and 4.0 technologies" and training in their use - capable of allowing Italian public administrations to proceed along the path of "digital transition".

However, an important question remains in the background: what will (or could) happen about all this in a post-NRRP scenario, in which the available financial resources will necessarily be scarcer?

3. *The right to good administration and its link with the digital transition*

3.1. *The origins of the right to good administration*

In this regard, the starting premise is so obvious that, perhaps, it would not even be necessary to recall it here. As is now well known, since the adoption of the Charter of Fundamental Rights, in the context of the European Union the so-called "good administration" is characterised not only as a duty of the public administration[34] but as a new fundamental right of the individual[35]: the right to good administration, as written and detailed in Article 41 of the EU Charter.[36]

Its legal notion coincides with the philosophical idea best expressed by the Iberian philosopher *Rodríguez-Arana* who underlines that "A good public administration is one that objectively serves the citizenry (...), that carries out its work rationally, justifying its actions and that is continuously oriented towards the general interest. A general interest which, in the social and democratic State governed by the rule of law, lies in the permanent and integral improvement of people's living conditions".[37]

I believe that this approach can be shared by all, whatever the concept of "improving living conditions" may be and regardless of one's political/ideological orientation.

In other words, I believe that there can be a "common understanding" among public administration scholars on this basic idea.

As to the concrete content of the provision of the EU Charter, according to Article 41(2), the right to good administration includes in particular:

1. the right of every individual to be heard before an individual measure adversely affecting him or her is taken;
2. the right of access to his/her file;
3. the obligation of the administration to

[30] As for Italy, paradigmatic in this respect is the 2013 document to be found on the website of the Presidency of the Council of Ministers, Department of the Civil Service, at *http://qualitapa.gov.it/sitoarcheologico/relazioni-con-i-cittadini/utilizzare-gli-strumenti/outsourcing/index.html*.

[31] Outsourcing is the contraction for "outside resourcing".

[32] See J. A. O'Looney, *Outsourcing State and Local Government Services: Decision-Making Strategies and Management Methods*, Quorum Books, London, 1998, 22.

[33] See at *www.governo.it/sites/governo.it/files/PNRR.pdf.*

[34] G. Falzone, *Il dovere di buona amministrazione*, Milan, Giuffrè, 1953.

[35] The first to have clearly identified it as a new fundamental right (and no longer as a mere "guiding principle" of administrative action) is A. Zito, *Il "diritto ad una buona amministrazione" nella Carta dei diritti fondamentali dell'Unione europea e nell'ordinamento interno*, in *Rivista italiana di diritto pubblico comunitario*, vol. 5, 2002, 433. See also C. Marzuoli, *Carta europea dei diritti fondamentali, "amministrazione" e soggetti di diritto: dai principi sul potere ai diritti dei soggetti*, in G. Vettori (eds.), *Carta europea e diritti dei privati,* Padua, Cedam, 2002, 255. (265).

[36] See for all: D.U. Galetta, *Il diritto ad una buona amministrazione europea come fonte di essenziali garanzie procedimentali nei confronti della pubblica amministrazione*, in *Rivista italiana di diritto pubblico comunitario*, vol. 3, 2005, 819-857.

[37] J. Rodríguez-Arana, *La buena administración como principio y como derecho fundamental in Europa*, in *Derecho y Ciencias Sociales,* vol. 6, 2013, 23, especially 26.

give reasons for its decisions.

However, this list should not be considered as exhaustive of everything that may be included in the right to good administration. The most general notion is to be found in Article 41(1) of the Charter: it is the right of every person “to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union”.

The EU Court of Justice has now clearly and explicitly stated that “the right to good administration, enshrined in Article 41 of the Charter, reflects a general principle of EU law, which is applicable to Member States when they are implementing that law”.[38] Moreover, for Italian law scholars Article 41 of the Charter expresses the same idea of Article 97 of the Italian Constitution, with respect to the need for impartiality and good performance of the public administration.[39]

In fact, the two provisions complement each other: an administration whose public offices are organised in such a way as to ensure good performance and impartiality is also the only one capable of guaranteeing fair and impartial treatment of matters affecting the people it administers, as required by Article 41 of the EU Charter. Similarly, an administration whose public offices are organised in such a way as to ensure good performance appears to be the only one capable of guaranteeing compliance with the “reasonable time” (for handling an affair/taking a decision) referred to in Article 41 of the EU Charter.[40] In other words, the principle of good performance certainly also encompasses a need for efficiency in public administration.[41]

3.2. *The link between the digital transition and the right to good administration and the central role of the “public officer in charge of the procedure” (responsible officer[42]).*

Turning to the specific issue at hand, the question is whether and how the use of modern Information and Communication Technologies (ICT), including algorithms[43] and Artificial Intelligence,[44] can (or cannot) contribute to the goal of “good administration”.

In order to be able to provide an adequate answer to this crucial question it is necessary to bear in mind that, in Italian law, the best translation of the good administration’s canons is Law 241 of 1990 on administrative procedure.[45] This law is in line with the idea expressed at the time by our best doctrine regarding the need to connect to a specific “procedure” (*proceduralizzare)* impartiality

[38] See most recently Court of Justice, judgment of 10 February 2022, in Case C-219/20, *LM*, ECLI:EU:C:2022:89, paragraph 37. See also CJEU, judgment of 24 November 2020, in joined cases C-225/19 and C-226/19, Minister of State for Foreign Affairs and Security. C-225/19 and C-226/19, Minister van Buitenlandse Zaken, ECLI:EU:C:2020:951, paragraph 34 and case-law cited therein. For further discussion on this issue see D.U. Galetta, *Il diritto ad una buona amministrazione nei procedimenti amministrativi oggi (anche alla luce delle discussioni sull’ambito di applicazione dell’art 41 della Carta dei diritti UE)*, in *Rivista italiana di diritto pubblico comunitario*, vol. 2, 2019, 165.

[39] See, among many others: P. Calandra, *Efficienza e buon andamento della pubblica amministrazione*, in *Enciclopedia Giuridica Treccani,* vol. XVIII, Rome, Istituto Enciclopedia Italiana, 2009; A. Andreani, *Il principio costituzionale di buon andamento dell’amministrazione pubblica*, Padua, Cedam, 1979.

[40] See more extensively on this point D.U. Galetta, *Digitalizzazione e diritto ad una buona amministrazione (Il procedimento amministrativo, fra diritto UE e tecnologie TIC)*, in R. Cavallo Perin and D.U. Galetta (eds.), *Il Diritto dell’Amministrazione Pubblica digitale*, Turin, Giappichelli, 2020, 85.

[41] On this subject, see most recently S. Pignataro, *Il principio costituzionale del “buon andamento” e la riforma della pubblica amministrazione*, Bari, Cacucci editore, 2012, *passim.* See also L. Iannuccilli and A. de Tura, *Il principio di buon andamento dell’amministrazione nella giurisprudenza della corte costituzionale*, in *www.cortecostituzionale.it/documenti/convegni_seminari/STU_212.pdf*, which contains a very useful selection of fundamental rulings of the Constitutional Court in this regard.

[42] This is the expression used in the ReNEUAL Model rules. See at h*ttp://reneual.eu/projects-and-publications/reneual-1-0*. It is referred to as “responsible member of staff” in the European Parliament resolution of 9 June 2016 for an open, efficient and independent European Union administration (2016/2610(RSP)), at *www.europarl.europa.eu/doceo/document/TA-8-2016-0279_EN.pdf?redirect*.

[43] An algorithm can be defined as a precise set of instructions or rules, or a methodical series of steps that can be used to make calculations, solve problems and make decisions. See R. Benítez, G. Escudero, S. Kanaan and D. Masip Rodó, *Inteligencia artificial avanzada*, Barcelona, Editorial UOC, 2013, 14.

[44] Artificial intelligence systems use computers, algorithms and various techniques to process information and solve problems or make decisions. In this regard, it is interesting to read a recent judgment of the Italian Council of State, sec. III, 4 November 2021, no. 7891, which discusses the distinction between algorithm and Artificial Intelligence, drawing a whole series of consequences in terms of legal reasoning.

[45] For a non-official translation into English see at *www.legislationline.org/download/id/5393/file/Italy_Law_Administrative-procedure_1990_am2010_en.pdf*.

and good performance.[46] This idea has also been taken up and emphasised by our Constitutional Court[47] which, although it has never recognised the "constitutional status" to the principle of "due process" in the context of administrative procedure,[48] has however progressively overcome the negative attitude linked to concerns of reduced "functionality" of an administration tied to "excessively detailed rules of conduct".[49] And it has ended up favouring the thesis of those who linked administrative procedure to the objectives of transparency, publicity, participation and timeliness of administrative action, understood as essential values in a democratic system.[50]

At least since the beginning of the Nineties, the principles of impartiality and good performance have also been linked to the need to modernise the "administrative machinery" and to carry out an adequate reorganisation of it.[51] It is precisely in this perspective that the fundamental role that ICT can play in the context of public administration has been strongly highlighted. It is, in fact, no coincidence that the version of Article 3-bis of Law 241 on administrative procedure - as innovated by the "Simplification Decree" No. 76/2020 - provides that "In order to achieve greater efficiency in their activities, public administrations shall act by means of computer and telematic tools, in their internal relations, between the different administrations and between these and private parties".[52]

The provision - which in its current version seems to me to imply a real obligation for public administration to act "by means of computer and telematic tools"[53]- does not, however, specify in any way how and with what resources (economic and instrumental) each and every public administration would be required to implement it. Therefore, it has been identified in the doctrine as a largely useless provision, with merely programmatic content.

In addition to what I will explain later *(infra*, par. 4.) - regarding the positive impact that the NRRP may have in this context, net of the risks linked to the temporally limited duration of such resources - it appears evident to me that the provision of art. 3-bis of Law 241/90 is addressed, in the first place, to the responsible officer: in the specific perspective of his/her task of ensuring "the proper and prompt conduct" of the investigation phase of the administrative procedure; a task expressly assigned to him/her by art. 6 letter b) of the Italian Law (241/90) on administrative procedure.

I would even go so far as to say that Article 3-bis of Law 241/90, in its 2020 amended version, gives rise to a real obligation for the responsible officer to act by means of computer and telematic tools "in order to achieve greater efficiency". In particular, with a view to being able to carry out an adequate and prompt preliminary investigation in the context of the administrative procedure.

The provision of Art. 3-bis is in fact directly linked to Art. 12 of the Italian Digital Administration Code[54]: which links the use of information and communication technologies by the public administration with the aim of "autonomously organising its own activity", in order to achieve "the objectives of efficiency, effectiveness, cost-effectiveness, impartiality,

[46] See for all G. Berti, *La pubblica amministrazione come organizzazione*, Padova, Cedam, 1968, *passim.*

[47] See in particular Judgments nos. 40 and 135 of 1998.

[48] Initially denied in various judgments. See, for example, Constitutional Court, judgment no. 23 of 1978: "It should be recalled, first of all, that the so-called principle of due process (in view of which private individuals should be able to present their reasons, before measures limiting their rights are adopted) cannot be considered as constitutionalised".

[49] The Italian Constitutional Court observed in judgement no. 234 of 1985 that "with excessively detailed rules of conduct imposed on the public administration, far from always obtaining an effective guarantee, there could, on the contrary, be disadvantages, even serious ones, of stagnation".

[50] More precisely, the Constitutional Court's judgment no. 262 of 1997 states that "By means of the above-mentioned system (see Law no. 241 of 1990 and subsequent additions and, as regards the Veneto Region, see Regional Law no. 1, Chapter IV of 10 January 1996) the legislator wished to give general application to rules - largely already set out in case law and doctrine - which are the implementation, albeit not exhaustive, of the constitutional principle of good administration (art. 97 of the Constitution) in the objectives of transparency, publicity, participation and timeliness of administrative action, as essential values in a democratic system". See also Constitutional Court judgment no. 104 of 2006.

[51] See (well before that) the fundamental remarks of M. Nigro, *Studi sulla funzione organizzatrice della pubblica amministrazione*, Milan, Giuffrè, 1966, *passim*.

[52] Decree-Law no. 76 of 16 July 2020, Urgent measures for simplification and digital innovation.

[53] See already in D.U. Galetta, D.U. Galetta, *Digitalizzazione e diritto ad una buona amministrazione (Il procedimento amministrativo, fra diritto UE e tecnologie TIC)*, 93.

[54] The Italian Digital Administration Code can be read at *www.normattiva.it/urires/N2Ls?urn:nir:stato:decreto.legislativo:2005-03-07;82*.

transparency, simplification and participation". Whereas, of course, Art. 3-bis of Law 241/1990 has a field of application that clearly goes far beyond the mere scope of the internal organisation of administrative activities.

In this sense, the link with the right to good administration enshrined in the EU Charter is very clear. In the case-law it has in fact been made clear how Art. 41 of the EU Charter means in particular, that "all factual and legal information available" must be taken into consideration in such a way as "to apply due diligence in the decision-making process and to adopt its decision on the basis of all information which might have a bearing on the result".[55] This fully coincides with the need to carry out an adequate investigation in the administrative procedure, which Article 6 letter b) of Italian Law 241/90 expressly attributes as his/her task to the responsible officer. This implies, in turn, in a scenario characterised by the availability of sophisticated IC technologies, the necessity of using (also) all instruments allowing, today, the public administrations, to easily acquire not only documents, but also all that information which can be acquired through sensors and monitoring instruments of various types, which are now widely available to them.[56]

In essence, it is about "giving back" to the figure of the responsible officer the central role that it deserves, also with a view to fully exploiting its potential in this renewed scenario of digitalized administration.[57] In fact, beyond the task already attributed to him/her by art. 41 para 2 of the Italian Digital Administration Code, of preparing the so-called "electronic file",[58] there is room for the responsible officer to play a much more crucial role.

In the context of a truly digitalized public administration (the so-called public administration 4.0[59]) the responsible officer should in other words be the guarantor, first and foremost, of respect for those principles of fairness and impartiality in the investigation phase of the administrative procedure to which both Article 41 of the EU Charter and Article 97 of the Italian Constitution refer.[60]

From a practical point of view this implies that, within the framework described, he/she also takes on the task of adopting concrete organisational solutions. With the aim of avoiding discrimination between citizens on the basis of their different levels of "computer literacy" and their different availability of IT tools (and access to the network), i.e. taking on the negative consequences linked to the so-called *digital gap/digital divide.*[61]

In addition to this, it seems clear to me that, in the context of the obligation to manage administrative procedures "using information and communication technologies" established by art. 41 of the Italian Digital Administration Code, it is up to the responsible officer to break the veil of the so-called "algorithmic neutrality".[62] It is up to him/her to assess whether the possible use of Artificial Intelligence algorithms in the investigation phase of the administrative procedure, rather than favouring the objective of good administration (a fairer and more impartial decision, as well as a faster one), may instead lead to the result of discriminating - which becomes systematic, if inserted in an

[55] Judgment of the Court of First Instance (First Chamber) of 19 March 1997. Estabelecimentos Isidoro M. Oliveira SA v Commission of the European Communities, Case T-73/95, ECLI:EU:T:1997:39, point 32.

[56] In this regard, reference should be made, for example, to the document of the Italian Ministry of Public Works, General Inspectorate for Circulation and Road Safety, on the Traffic Monitoring System and in particular its appendix B, Systems and technologies for road traffic monitoring, which can be read at *https://webcache.googleusercontent.com/search?q=cache:i7TV8OuULKYJ:https://trafficlab.eu/bfd_download/linee-guida-del-monitoraggio-del-traffico/+&cd=1&hl=en&ct=clnk&gl=en&client=firefox-b-d.*

[57] See *amplius* in D.U. Galetta, *Digitalizzazione e diritto ad una buona amministrazione (Il procedimento amministrativo, fra diritto UE e tecnologie TIC)*, 88.

[58] On which see S. D'Ancona, *Il documento informatico e il protocollo informatico*, in R. Cavallo Perin and D.U. Galetta (eds.), *Il diritto dell'amministrazione pubblica* digitale, 159, especially 187 ff.

[59] See D.U. Galetta and J.G. Corvalán, *Intelligenza Artificiale per una Pubblica Amministrazione 4.0? Potenzialità, rischi e sfide della rivoluzione tecnologica in atto*, in *Federalismi.it*, vol. 3, 2019, 1.

[60] See also D.U. Galetta, *Public Administration in the Era of Database and Information Exchange Networks: Empowering Administrative Power or Just Better Serving the Citizens?*, 171.

[61] On the "digital divide", see S. D'Ancona and P. Provenzano, *Gli strumenti della Carta della cittadinanza digitale*, in R. Cavallo Perin and D. U. Galetta (eds.), *Il diritto della amministrazione pubblica digitale*, 226. See also D. Donati, *Digital divide e promozione della diffusione delle TIC*, in F. Merloni (ed.), *Introduzione all'eGovernment: pubbliche amministrazioni e società dell'informazione,* Turin, Giappichelli, 2005, 209.

[62] On which see, among many others, M. Airoldi and D. Gambetta, *On the myth of algorithmic neutrality*, in *The Lab's Quarterly*, vol. 4, 2018, 25.

algorithm![63] - between different categories of citizens.

On this last point, it should be pointed out in conclusion that, if in the context of their "power of self-organisation" it is appropriate to allow public administrations to make use of all the tools made available by ICT today, the use of such tools is conditional, first of all, on the circumstance that their use actually allows "improving the quality of services rendered to citizens and users".[64] So, if it is true - as Jean Bernard Auby recently put it - that algorithms are a way of managing complexity,[65] then it is certainly necessary for the public administration to make use of them! At the same time, however, one must be careful not to be lulled into the illusion that algorithms are the tool through which it is possible to correct the imperfections inherent in the cognitive processes and choices adopted by human beings/public officials (bias, preferences, partiality, etc.).[66] It is therefore necessary that the use of these tools brings with it a *guarantee* (and not just a vague promise!) of a more complete preliminary investigation in the administrative procedure, one which is more in keeping with the principles of impartiality and good performance; and that all this also takes place in a context of compliance with the principle of transparency.

In fact, even with regard to the so-called "robotized administrative procedures", the Italian administrative courts have not *per se* excluded the possibility of resorting to them;[67] however, what is certainly excluded is the possibility of accepting "the non-intelligibility of the operations carried out"[68] on the basis of the use of such algorithms.[69]

The principle of transparency - compliance with which the public officer responsible for the procedure must guarantee in his relationship with the addressee of the measure adopted - implies full knowledge of the existence of any automated decision-making processes and of the algorithms used[70] for that purpose.

In this framework, one must certainly move in the direction of models of *by-design* transparency and *by-default* transparency: in the logic of a digitalized administrative procedure, but which is at the same time respectful of all those principles that must govern administrative action as specified in Article 1 of Italian Law 241/90.[71] And also the right to the protection of personal data of private subjects involved in the administrative procedure plays here a very important role; therefore, one could certainly imagine to go in the direction of those principles of privacy *by design* and privacy *by default* contained in the GDPR.[72]

To conclude on this point, in the perspective of the transition towards the so-called Administration 4.0,[73] the figure of the responsible officer, far from being obsolete, seems to me to represent the essential pivotal-point in the relationship between the digitalisation of public administration and good administration. In fact, it is only thanks

[63] On this point see, among others: D. Freeman Engstrom and D. E. Ho, *Algorithmic Accountability in the Administrative State*, in *Yale Journal on Regulation*, vol. 37, no. 3, 2020, also available at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3551544*; L. Ayre and J. Craner, *Algorithms: avoiding the implementation of institutional biases*, in *Public Library Quarterly*, vol. 37, no. 3, 2018, 341; K. M. Altenburger and D. E. Ho, *When Algorithms Import Private Bias into Public Enforcement: The Promise and Limitations of Statistical Debiasing Solutions*, in *Journal of Institutional and Theoretical Economics,* vol. 175, no. 1, 2018, 98; S. B. Starr, *Evidence-Based Sentencing and the Scientific Rationalization of Discrimination*, in *Stanford Law Review*, vol. 66, no. 4, 2014, 803.

[64] Thus Cons. Stato, judgment 5 December 2019, no. 8472, point 8.1.

[65] As stated by J-B. Auby, *Il diritto amministrativo di fronte alle sfide digitali*, in *Istituzioni del Federalismo*, vol. 3, 2019 619.

[66] On cognitive biases and their consequences on choices made by public administrations see most recently S. D'Ancona, *Contributo allo studio della progettazione in materia di appalti e concessioni. Una prospettiva dalle scienze comportamentali e cognitive*, Torino, Giappichelli, 2021.

[67] See in particular Cons. Stato, judgment of 5 December 2019, no. 8472 cit.

[68] Cons. Stato, sec. VI, judgment 21 January 2021, no. 799, in *https://www.giustizia-amministrativa.it*.

[69] See on this point the remarks of C. Coglianese and D. Lehr, *Transparency and Algorithmic Governance*, in *Administrative Law Review,* vol. 71, no. 1, 2019.

[70] See in particular Cons. Stato, sec. VI, judgment 8 April 2019, no. 2270, in *https://www.giustizia-amministrativa.it*.

[71] See D.U. Galetta, *Algoritmi, procedimento amministrativo e garanzie: brevi riflessioni, anche alla luce degli ultimi arresti giurisprudenziali in materia*, in *Rivista italiana di diritto pubblico comunitario*, vol. 3, 2020, 501

[72] The well-known "*General Data Protection Regulation*", EU Regulation 2016/679, *at https://gdpr.eu/tag/gdpr/*.

[73] D.U. Galetta and J.G. Corvalán, *Intelligenza Artificiale per una Pubblica Amministrazione 4.0? Potenzialità, rischi e sfide della rivoluzione tecnologica in atto*.

to an appropriate "enhancement" of this figure that the use of ICT, from a tool in the investigation phase of the administrative procedure aimed at a mere "efficiency" of the administrative activity, can become an instrument of greater guarantee and, therefore, of general improvement of the relationship between public administration and citizens. Indeed, it is certainly not by chance that this "figure" has also attracted the attention of the European Parliament, which expressly mentions it in the context of its Resolution of 9 June 2016 on a regulation for an open, efficient and independent European Union administration.[74] Nor is it a coincidence that the NRRP has so emphatically highlighted the need to invest in the selection, training and career development's paths of civil servants.[75]

4. *Prospects opened by the National Recovery and Resilience Plan*

4.1. *Public administration reform and digital transition*

In the National Recovery and Resilience Plan (NRRP) sent by the Italian Government to the EU Commission at the end of April 2021 - and definitively approved, by means of an Implementing Decision of the Council, on 13 July (2021) - it is underlined that the "weak administrative capacity" of the Italian public sector has been an obstacle to the improvement of services offered and to public investment in recent years. And it is stated that "the NRRP addresses this rigidity and promotes an ambitious reform agenda for the public administration".[76]

The NRRP also highlights how, faced with growing numerical, demographic and training constraints[77] the Italian public administration finds itself managing a set of extremely articulated and complex rules and procedures that have been progressively stratified over time in an uncoordinated and often conflicting manner at different administrative levels (national, regional and local).[78]

In this respect, there is an interesting reference to those Country Specific Recommendations that are formulated every year by the European Council - and subsequently adopted by the Council of the European Union (obviously on a proposal from the Commission) in the form of a Recommendation addressed to the different Member States.

The Recommendation of the Council of the European Union for 2020-2021, addressed to Italy,[79] recommends to "improve (…) the effectiveness of public administration" (recommendation no. 4), stating that "An effective public administration is crucial to ensure that the measures adopted to address the emergency and support economic recovery are not slowed down in their implementation", while, as far as Italy is concerned, "Weaknesses include lengthy procedures (…), the low level of digitalisation and weak administrative capacity".[80] It also points out that "Digitalisation across public administrations was uneven prior to the crisis" and that "Online interaction between authorities and the general public was low" with a "share of administrative procedures managed by regions and municipalities that can be started and completed entirely digitally" which remains low.[81]

The NRRP therefore makes available substantial economic resources for the "digital transition",[82] with the aim of "profoundly transforming the public administration through a strategy centred on digitalisation", which is seen as "a transversal necessity".[83]

4.2. *The problem of interoperability and the necessary creation of "databases of national interest"*

The Council of the European Union's Recommendation 2020-2021 for Italy also stresses - quite significantly - how in our country the crisis "has also exposed the lack of interoperability of public digital services".[84]

[74] See European Parliament Resolution of 9 June 2016 on a regulation for an open, efficient and independent European Union administration.
[75] See. NRRP, 4, but especially 44.
[76] NRRP, 44.
[77] In this regard, the NRRP expressly refers to blocking turnover and cutting education and training expenditure for civil servants (an average of EUR 48 per employee).
[78] NRRP, 45.
[79] EU Commission, Recommendation for a Council Recommendation on Italy's 2020 National Reform Programme and delivering a Council opinion on Italy's 2020 Stability Programme, 20 May 2021, Doc. COM/2020/512 final, at *https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0512*.
[80] Point 24 of the Council Recommendation on Italy's 2020 National Reform Programme.
[81] Point 24 of the Council Recommendation on Italy's 2020 National Reform Programme.
[82] As much as 27% of the NRRP resources are dedicated to digital transition, as explicitly stated on 16 of the NRRP.
[83] Mission 1, Component 1of the NRRP.
[84] Point 24 of the Council Recommendation on Italy's

According to the definition provided by international dictionaries, interoperability is the "the ability of a system or component to function effectively with other systems or components".[85]

To this regard the problem is that, as a starting point, the technological infrastructure of the (Italian) public administration was the least suited to guaranteeing interoperability, since it had been developed and organised over the years in a haphazard manner, leaving decisions to the initiative of each individual administration and without an overall vision, coordination and planning.

The result was that a jungle of thousands of small autonomous data processing centres (DPCs) had been created[86]: so that, already within the Three-Year Plan for Information Technology in public administration 2017-2019[87] launched by the Agency for Digital Italy (*Agenzia per l'Italia digitale* - AGID), a specific path dedicated to digital infrastructures had been launched, as part of a more general process of digital transformation of the country.

The aim was to rationalise the system.

On the subject of interoperability, AGID had stressed that the use of the so-called "Application Cooperation"[88] between public administrations is a key element: because it is a technical solution that makes it possible to automatically exchange information between information systems and allows services[89] to be shared.

In order to identify a common solution on interoperability based on homogeneous and shared standards, AGID had already issued a couple of "technical documents" in the past few years, setting out the design and functioning of an application-cooperation-infrastructure between public administrations.

The idea is that interchange should be aimed at providing services to citizens and businesses, so as to simplify the interaction between them and the public administration.

More recently, the move is being made from the "Application Cooperation" model to a new system of interoperability in which the IT systems of the public administration must be connected to each other and, to put it simply, "speak the same language", making information available immediately where it is needed.[90]

From a technical point of view, in October 2021 AGID adopted the "Guidelines on the technical interoperability of public administrations" and the "Guidelines on technologies and standards for the security of interoperability through APIs of information systems".[91] The aim is to ensure that all public administrations comply with such guidelines, so as to guarantee the interoperability of their own systems with those of other subjects and to favour the overall implementation of the Public-Administration-Information-System (PAIS).[92]

This new interoperability model is a cornerstone of the Three-Year Plan for IT in public administration 2020-2022,[93] and is also the basis for the strategies and objectives included in the 2021-2023 update of the plan.[94]

A concrete example of interoperability is the already mentioned "National Register of Resident Population" (*supra*, par. 2.1.), which is part of the six "Databases of national interest" pursuant to art. 60, para 3-bis of the Italian Digital Administration Code, which in para 1 defines as databases of national interest "the set of information collected and managed digitally by public administrations, homogeneous in type and content and whose

2020 National Reform Programme cit.

[85] Webster's New World College Dictionary, IV Edition, 2010.

[86] This description of the "state of the art" was made a few years ago by AGID itself, the Agency for Digital Italy (see at *https://www.agid.gov.it/it*).

[87] Which can be read at *https://docs.italia.it/italia/piano-triennale-TIC/pianotriennale-TIC-doc/it/2017-2019/index.html.*

[88] "Cooperazione applicativa", which is a specific technical solution adopted in order to enhance interoperability.

[89] See par. 10 of the Three-year Plan for Information Technology in Public Administration 2017-2019.

[90] See in this regard Determination no. 406/2020 of 9 September 2020 - Adoption of the Circular containing the guideline on technical interoperability and AGID Circular no. 1 of 9 September 2020 - Guideline on technical interoperability, both at *https://trasparenza.agid.gov.it*.

[91] Determination no. 547 of 1 October 2021 Adoption of the "Guidelines on Technologies and Standards for the Security of Interoperability through APIs of Information Systems" and the "Guidelines on Technical Interoperability of Public Administrations", in *www.agid.gov.it/sites/default/files/repository_files/547_dt_dg_n_547_1_ott_2021_adozione_lg_interoperabilit_tecnica_e_sicurezza.pdf.*

[92] See at *www.agid.gov.it/it/infrastrutture/sistema-pubblico-connettivita/il-nuovo-modello-interoperabilita.*

[93] See at *www.agid.gov.it/sites/default/files/repository_files/piano_triennale_per_linformatica_nella_pa_2020_2022.pdf.*

[94] See at *www.agid.gov.it/sites/default/files/repository_files/piano_triennale_per_linformatica_nella_pubblica_amministrazione_2021-2023.pdf.*

knowledge is relevant to the performance of the institutional functions of other public administrations (...)".

AGID specifies further that the databases of national interest are "reliable databases, homogeneous in type and content" and that they "constitute the backbone of the public information heritage" that has to be made available to all public administrations, in order to facilitate the exchange of data and avoid asking citizens or businesses for the same information several times.[95]

Unlike some of the other "Databases of national interest" mentioned in Article 60 of the Italian Digital Administration Code, the "National Register of Resident Population" already exists. While until a few years ago the personal data of citizens were scattered among almost eight thousand different municipal registers (7,903, to be precise!), as of 17 January 2022 all Italian municipalities have in fact become part of the National Register of Resident Population.[96] This will enable the Italian public administrations to communicate efficiently with each other, having a single and certain source for citizens" data; and in the near future citizens will not have to communicate their personal data or change of residence again and again to every public administration office they reach out to.[97]

It will therefore finally be possible (at least in theory) to go beyond the "self-certification model", shortening and automating all the procedures relating to personal data.[98]

In the same vein, it will be essential to work towards the complete digitalisation of health services, in particular through the "Electronic Health Record". The goal is, as the NRRP expressly states, "the creation of a homogeneous electronic health record at national level, which will become the single point of access for citizens and residents to their clinical history and to the services offered by the National Health System"[99] (*supra*, par. 2.1.).

The "Electronic Health Record" (EHR) was initially regulated by Decree 2015/178;[100] while the Ministerial Decree of 4 August 2017, amended by the Decree of 25 October 2018, regulated the national interoperability between regional health records.[101] Finally, following the changes introduced by Decree Law 34/2020 (the so-called "Decreto Rilancio"), the EHR is now activated by law and automatically fed with data.[102]

However, in order to guarantee maximum interoperability, it will be necessary to complete the creation of the "National Register of Patients" (*Anagrafe Nazionale degli Assistiti* – ANA), which is also a database of national interest pursuant to Article 60, para 3-bis of the Italian Digital Administration Code.[103] The verification of the personal data of the patient who is to receive a health service from a "regional domain" (*dominio regionale*) is in fact the necessary precondition for the proper implementation of interoperability processes.[104]

[95] *www.agid.gov.it/it/dati/basi-dati-interesse-nazionale.*

[96] On 17 January 2022, with the addition of the Sicilian municipality of San Teodoro, the process of bringing all Italian municipalities into the National Register of Resident Population was completed. See at *www.anagrafenazionale.interno.it/tutti-i-comuni-italiani-sono-in-anpr.*

[97] See at *www.anagrafenazionale.interno.it/il-progetto/i-vantaggi.*

[98] The access to the National Register of Resident Population takes place after the signing of a "User Agreement" with the Ministry and the identification and selection of the "use cases" among those provided for and corresponding to the regulatory framework applicable to the body/public administration concerned. C. Saggini, *Accesso ai dati anagrafici con Anpr: stato dell'arte, sviluppi e risvolti pratici*, at */www.agendadigitale.eu/cittadinanza-digitale/anagrafe-unica/accesso-ai-dati-anagrafici-con-anpr-stato-dellarte-sviluppi-e-risvolti-pratici.*

[99] NRRP cit., 31.

[100] Decree of the President of the Council of Ministers of 29 September 2015, no. 178, Regulation on the electronic health record.

[101] Ministerial Decree of 4 August 2017, as amended by the Decree of 25 October 2018, Amendment of the Ministerial Decree of 4 August 2017, concerning the technical modalities and telematic services made available by the national infrastructure for the interoperability of the Electronic Health Record (ESF), at *ww.gazzettaufficiale.it/eli/id/2018/11/06/18A07058/sg.*

[102] Decree Law no. 34 of 19 May 2020, Urgent measures on health, support for work and the economy, and social policies related to the epidemiological emergency from COVID-19, at *www.gazzettaufficiale.it/eli/id/2020/05/19/20G00052/s.*

[103] This database of national interest, which was established by Article 62-ter of the Italian Code of Digital Administration and is aimed at managing the administrative data of NHS patients, is owned jointly by the Ministry of Economy and Finance and the Ministry of Health. See in this regard at *https://docs.italia.it/italia/daf/pianotri-schede-bdin/it/stabile/ana.html.*

[104] In this regard, it is clearly underlined in the pages of the AGID website dedicated to the Electronic Health Record that, pending the establishment of the ANA, the national reference registry is represented by the TS System and that it is therefore required that regional and business registries correctly use the services provided by the TS/ANA System. See at

In conclusion, it must be emphasised that the interoperability of databases and systems implies a strong unitary direction at the level of the central government. Nor is it conceivable that single local administrations can alone bear the enormous costs associated with the management and technical design of the necessary technological infrastructures.

4.3. *Digitalisation of the administrative procedure and the "once-only" principle, between national and supranational level*

As regards the digitalisation of administrative procedures, the operational tool offered by AGID in this respect is the platform called "Management System of Administrative Procedures" (*Sistema di Gestione dei Procedimenti Amministrativi* - SGPA).[105]

The SGPA platform deals with document management in the context of administrative procedures, with the aim of guaranteeing proper management of documents "from production to preservation".[106]

The connection with the second aspect of the digital transition - the one that the NRRP places alongside the topic of interoperability – emerges clearly: namely, the need to introduce the principle (and objective/standard of the EU) of the "once-only", i.e. the idea that citizens and businesses have to provide their information to public administrations only once.[107]

There is no doubt that the "once-only" principle (or objective) necessarily presupposes the digitalisation of administrative procedures. In fact, the idea of the single-access-point involves two key concepts in digital-public-administration-law: the concept of electronic document[108] and the concept of document flows and IT protocol.[109]

In this regard, there are three necessary steps to be taken:

1) The registration of incoming and outgoing documents in the protocol and their assignment to the organisational units (and the issue of administrative organisation and of the necessary changes in this regard is therefore certainly a crucial one, as well[110]).

2) The dematerialisation of the processing of document flows, both incoming and outgoing (but total dematerialisation, as the "blended mode" certainly does not work).

3) The definition of the process of preservation of electronic documents, electronic files and archives as well as copies.[111]

This all involves dealing also with the very sensitive topic of the tools available to citizens to enable their identification. There is in fact a close correlation between digital identity, online services (art. 64 of the Italian Digital Administration Code) and digital procedures (art. 65 of the Italian Digital Administration Code).[112] And it is clear that a real digital transition should also imply investing in this and putting as many citizens as possible in a position to have a digital identity and to be able to benefit from the advantages it brings.

A final clarification: the "National Administrative Procedures Management System" is implemented through the definition, by AGID, of the rules for the interoperability of document flows that public administrations implement in order to join the system.[113] But what about the management of procedures at the level of "non-national" administrations? How and to what extent is it possible to guarantee the same level of digitalisation and compliance with the same standards?

The investment envisaged in this regard by the NRRP implies, first and foremost, the

www.fascicolosanitario.gov.it/it/4.1.Identificazione-Assistito.

[105] See at *www.agid.gov.it/it/piattaforme/sistema-gestione-procedimenti-amministrativi*.

[106] See document quoted in the previous note.

[107] See NRRP, 17.

[108] Article 1 of the Italian Digital Administration Code defines the electronic document as the "computerised representation of legally relevant acts, facts or data" (art. 1, letter p) as opposed to the analogue document which is the "non-computerised representation of legally relevant acts, facts or data" (art. 1, letter p-bis).

[109] See S. D'Ancona, *Il documento informatico e il protocollo informatico e il protocollo informatico*, 159.

[110] On this point see J. Burn and G. Robin, *Moving towards e-government: a case study of organizational change processes*, in *Logistics Information Management*, vol. 16, no. 1, 2003, 25; R. Gil-Garcia, *Enacting e-Government Success: An Integrative Study of Government-wide Website, Organizational Capabilities and Institutions*, Berlin, Heidelberg, 2012; N. Nurdin, R. Stockdale and H. Scheepers, *Organizational Adaptation to Sustain Information Technology: The Case of E-Government in Developing Countries*, in *Electronic Journal of e-Government*, 2012, 70.

[111] Steps 2 and 3 (and the related issues) have already been discussed in section 2, *supra*.

[112] For more details on the subject see S. D'Ancona and P. Provenzano, *Gli strumenti della Carta della cittadinanza digitale*, 234.

[113] See at *www.agid.gov.it/it/piattaforme/sistema-gestione-procedimenti-amministrativi*.

development of the "National Digital Data Platform" (*Piattaforma Digitale Nazionale Dati* – PDND, provided for by Art. 50-ter of the Italian Digital Administration Code), in order to enable (all) administrations to make their information available through digital APIs (Application Programming Interfaces).

There is also a second project that takes especially into account the supranational perspective: it is the "single digital gateway" (provided for in Regulation (EU) 2018/1724[114]) and which aims to enable harmonisation between Member States and the digitalisation of procedures and services in the EU market.

The implementation of the single digital gateway is expressly provided for within the "Digitalisation, Innovation, Competitiveness and Culture" mission of the Italian Recovery and Resilience Plan.[115]

5. *Once-only or once-again? Concluding remarks on how to "not digitalise the complication"*

In the chapter of the Italian Recovery and Resilience Plan devoted to the reforms to be undertaken (chapter 2), it is stressed out that "One of the most valuable legacies of the NRRP must be the permanent increase in the efficiency of the public administration and its decision-making capacity"; and "digitalisation of processes and services" are identified as fundamental to this perspective.[116]

However, as the previous president of our Council of State, Franco Frattini, rightly pointed out, in this process of "digital transition" we must avoid the mistake of "digitalising the complication"[117]: i.e. duplicating all the byzantine complexities of analogue/paper administration.[118]

As I have tried to explain in the previous paragraphs, the transition from traditional administration to a truly 4.0 digital administration[119] is certainly not automatic. A favourable regulatory environment and technological adaptation of administrative structures, thanks also to the resources of the NRRP, are not in themselves sufficient. What is also needed is for the rules to be applied and for the technologies to be properly used.

For this to happen, it is necessary to be fully aware of the potential of ICT and to be able to use these innovative technologies to improve the *overall* quality of public administrations.[120]

At the moment, this is certainly not the case.

One of the major problems that has emerged in recent years - and which is likely to greatly limit the potential that the digitalisation of public administrations could have in terms of achieving "good administration" - concerns the very way in which the documents held by public administrations are usually stored and which leads to fragmentation, as well as to a multiplication of "information *silos*".

The same information is repeated several times and stored in an incongruous and/or totally inconsistent way by different administrations.

The possibility of errors due to the use of outdated or even erroneous data is thus multiplied. This, moreover, corresponds to a completely opposite logic to the one already highlighted in the 2017-2019 Three-Year Plan for Information Technology in Italian public administration, which stressed that "Data must be understood as a common good, shared freely between public administrations for institutional purposes", with a view to enhancing the value of public information assets as a strategic objective for the public administration.[121]

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[114] Regulation (EU) 2018/1724 of the European Parliament and of the Council of 2 October 2018 establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services and amending Regulation (EU) No 1024/2012. *See at https://ec.europa.eu/growth/single-market/single-digital-gateway_it.*

[115] NRRP, 83.

[116] NRRP, 44.

[117] This expression was used by the President of the Italian *Consiglio di Stato* Franco Frattini in the context of the conference on "New perspectives for Administrative Law" organised at the TAR Lazio (Rome) on 24 January 2022 and chaired by him.

[118] In this regard, I refer to my remarks in D.U. Galetta, *Technological Transition in response to COVID. Scattered Thoughts on the possibility of a (Technological) transition to a Digitalized Public Administration in Italy, with the help of the Recovery and Resilience Plan*, in *CERIDAP*, vol. 4, 2021, *https://ceridaeu* (16 November 2021), 154.

[119] D.U. Galetta and J.G. Corvalán, *Intelligenza Artificiale per una Pubblica Amministrazione 4.0? Potenzialità, rischi e sfide della rivoluzione tecnologica in atto*.

[120] See M. Bombardelli, *Informatica pubblica, E-Government e sviluppo sostenibile*, in *Rivista italiana di diritto pubblico comunitario*, vol. 5, 2002, 991.

[121] See in the 2017-2019 Three-Year Plan for Information Technology in Public Administration about the objective of "rationalising and enhancing the

In this perspective, the creation of the already mentioned "databases of national interest" provided for in Article 60 of the Italian Digital Administration Code[122] is of utmost importance.

The NRRP itself, in its introductory part (the part on "general objectives and structure of the plan"), states that it is necessary "to speed up full interoperability between public bodies and their information bases, which will make it possible to streamline public procedures thanks to the full realisation of the principle (and EC objective/standard) of 'once-only',[123] an e-government concept whereby citizens and businesses must be able to provide their information to authorities and administrations 'once only'".[124]

This need has also been clearly stated in the Italian 2020-2022 Three-Year Plan for Information Technology in public administration, one of the guiding principles of which is "once-only": i.e. public administrations must avoid asking citizens and businesses for information they have already provided.[125]

However, an objective observation of reality forces one to note that this is exactly the opposite of what currently happens when interacting with almost all Italian public administrations. Interaction with our (semi or poorly digitalised) public administrations consists in fact - essentially and mostly - in a large number of (complicated) forms to be filled in online, with blocked "fields" and thus lacking any possibility of adaptation to the specific case, should the need arise.[126] Such online forms are usually to be accompanied by plenty of documents (to be attached online, of course), most of which contain data and information that the public administrations already possess.[127] In other words, the whole thing looks much more like a "once-again interaction" than a "once-only interaction"! It is no coincidence, in fact, that in the Digital Economy and Society Index (DESI) - the index that summarises the indicators on digital performance and tracks the progress of EU countries - Italy is underperforming in the EU context also in relation to the amount of pre-filled data in the online forms available for access to services.[128]

In conclusion, it seems clear to me that there is an urgent need to address (and hopefully solve) those I have briefly mentioned here, as well as many other problematic issues that the "digital transition" in/of the public administration necessarily entails.[129] In fact, without wishing to indulge in "neo-Luddite" attitudes - which certainly cannot be shared - it seems evident to me that the only way to avoid being "swept away" by the flood of a public administration that has gone (or rather "is going") digital is for us, as administrative law scholars, to deal (albeit with difficulty) also with the essential "technicalities" related to the public administration's digital transition.[130] This is the only way in which administrative law scholars can be able to give a proper contribution in the direction of exploring not just the full potential of "public administration 4.0" in terms of greater efficiency (which is the perspective emphasised also in the Italian NRRP), but also in the perspective of acknowledging the risks that this new kind of public administration certainly entails for the citizen and the need to control such risks and

information assets of the public administration by overcoming the "silos logic"" in order to "exploit the potential of the immense wealth of data collected and managed by public administrations". (par. 4. and 4.1.), *https://docs.italia.it/italia/piano-triennale-TIC/pianotriennale-TIC-doc/it/2017-2019/index.html.*

[122] See paragraph 4.2 *above.*

[123] The origin of the "once-only" principle is in fact to be found in the EU Regulation on the single digital gateway, which aims at simplifying and improving the effectiveness of interactions with public administrations of different Member States for citizens and businesses, also avoiding duplications (total or partial) for the same information. Regulation (EU) 2018/1724 of the European Parliament and of the Council of 2 October 2018 establishing a single digital gateway for access to information, procedures and assistance and problem-solving services and amending Regulation (EU) no. 1024/2012 and, in particular, recitals 12, 40, 55, 63, 72; Art. 14 para 2.

[124] NRRP, 17.

[125] Three-year plan for information technology in public administration 2020-2022, 9.

[126] I am referring to the fact that the forms available to be filled in directly online usually do not allow any flexibility in the input of information and block the filling in of the "next field" in the event that even one of the data required in the "previous field" is missing, even though it may not be relevant in the case at hand.

[127] Copies of personal documents, identity cards, etc.

[128] See at *https://digital-strategy.ec.europa.eu/en/policies/desi*.

[129] On this point, see already G. Duni, *L'amministrazione digitale. Il diritto amministrativo nell'evoluzione telematica*, Milan, Giuffrè, 2008; D.Marongiu, *L'attività amministrativa automatizzata*, Rimini, Maggioli, 2005.

[130] In this regard, it is very useful to read, for example, the two volumes by J-C. Heudin, *Comprendre le deep learning: Une introduction aux réseaux de neurones*, Paris, Auto-Édition 2016 and J-C. Heudin, *Intelligence Artificielle. Manuel de survie*, Science-eBook, 2017.

correct mistakes.

The potential of the digital transition of public administration has in fact to be investigated with full awareness of the technical issues and of their implications; and in the perspective of exploring how much it can deliver also in terms of a better satisfaction/realisation of that right to a good administration provided for by art. 41 of the Charter of Fundamental Rights of the European Union.[131]

[131] This right - as already mentioned above, par. 3.1. – “reflects a general principle of EU law, which is applicable to Member States when they are implementing that law”. So CJEU, judgment of 10 February 2022, in case Case C-219/20, *LM*, ECLI:EU:C:2022:89, point 37.