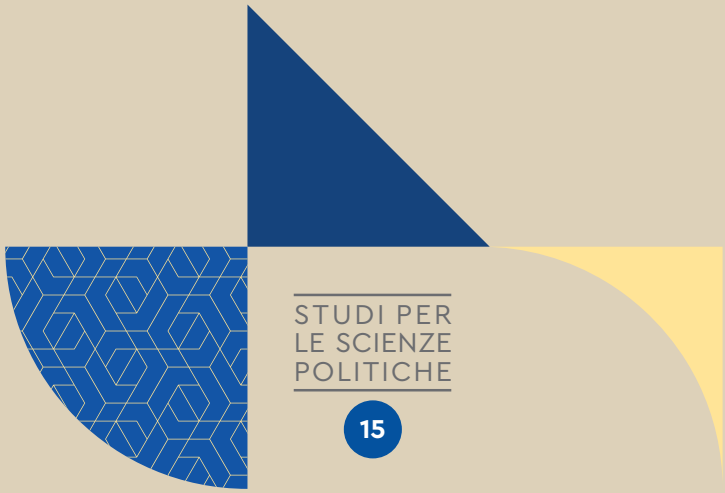

STUDI PER
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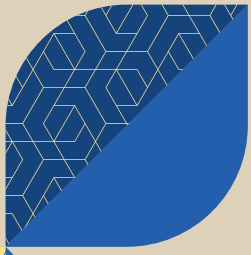
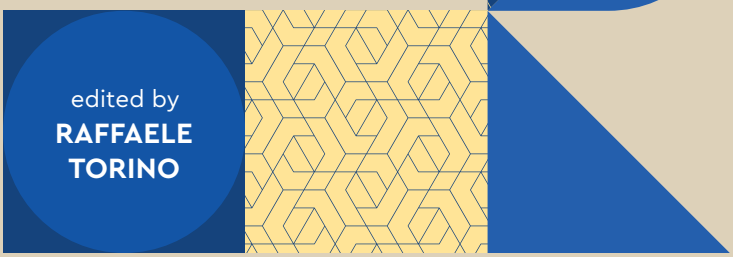
15

DIGITAL CITIZENSHIP IN THE EUROPEAN UNION FRAMEWORK

POLITICAL, ECONOMIC, SOCIOLOGICAL, AND LEGAL ISSUES





edited by
RAFFAELE TORINO

Roma TrE-Press
2024

Università degli Studi Roma Tre
Dipartimento di Scienze Politiche

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La Collana editoriale "Studi per le Scienze Politiche" ('Collana Discipol') è stata istituita con lo scopo di valorizzare le attività di studio e ricerca che caratterizzano le aree scientifiche afferenti al Dipartimento di Scienze Politiche. Con questa Collana si intende, inoltre, condividere e sostenere scientificamente il progetto di Roma Tr*E-Press*, che si propone di promuovere la cultura incentivando la ricerca e diffondendo la conoscenza mediante l'uso del formato digitale in *open access*.

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Part III – Legal Issues

Foreword

This book

The essays collected in this volume are the original result of research and teaching experience that has coalesced around the Jean Monnet Module 'Digital Citizenship for the European Union.' The module was mainly taught in English over the academic sessions 2020/2021 through 2022/2023 at the Department of Political Science of Roma Tre University

In 2019, it seemed appropriate and useful for the students enrolled in the Master's degree program in 'International Relations' at the Department of Political Science to analyse the topic of digital citizenship in the framework of the European integration process, not only from a legal perspective but also in its political, economic, and sociological aspects. The methodological choice to study the subject according to a plurality of epistemological approaches seemed to me the natural consequence of the attitude of Political Science students to build their knowledge in a multidisciplinary manner. Having gathered the support of some colleagues from our Department, I then submitted a funding request to the European Commission, which favourably evaluated our teaching and research project.

The funding we received allowed us, with the help of younger scholars, to offer the students of the Department of Political Science (despite the outbreak of the Covid-19 pandemic) particularly intense and focused teaching activities, supplemented by conferences, keynote lectures, seminars, and workshops dedicated to the topic of digital citizenship.

Particularly significant was the lively and enjoyable exchange on the topics of the Jean Monnet Module between legal scholars, political scientists, sociologists, economists, both academic and non-academic, public officials, and representatives of the civil society. A special thanks for their contribution to the creation of this small research and teaching community goes to the irreplaceable colleagues Cristiana Carletti and Luca Germano, as well as to the always available and effective Claudio Di Maio, Claudia Mariotti, and Ilaria Ricci. The pragmatic support from Apice, especially from Alessandra Coppola and Debora Barletta, has been invaluable.

Three years have passed quickly, challenging, yet replete with satisfaction, primarily due to the relationship with the students (but not only), many of whom were Erasmus students. The connections established with the many researchers interested in the subject of digital citizenship have always proven fruitful, enriching our conferences, seminars, lectures, and workshops.

In addition to the content available online via the social media channels of the Jean Monnet Module, this volume aims to showcase the outcomes of the research and teaching activities carried out, exploring multiple facets of digital citizenship and the impact of digitalization on citizenship relations, broadly understood, in an ever-evolving, though no longer entirely new, reality of legal, economic, and social relations in which the (European) individual becomes a citizen of a digital world.

The volume is divided into three main parts, addressing – in the context of the European multilevel legal system – political, economic, sociological, and legal issues related to the digitalisation of relations between government, public administration, and private individuals, as well as between public and private powers and even between private individuals themselves.

In 'Part I – Political Issues', the authors analyse how the digital sphere influences civil society and democracy in an era of global political turbulence (Ceccarini, Newell, and Turano). The paradigm shifts introduced by new technologies for citizens and public administrations (Musella, Cacciatore) are examined, as well as the challenges and hopes tied to innovative aspects of e-democracy (Bonsignore and Carro, Sgueo) and digital communication (Mariotti). The impacts of digitalization on the European Green Deal policy (Ciot) and on the evolution of lobbying (Bitonti, Di Mario, and Germano) complete the picture.

'Part II – Economic and Sociological Issues' focuses on the transformation of the citizen-worker into a citizen-consumer (Simone), gender inequalities in digital labour markets (Sorgner), and practices to contrast hate speech as a virtuous form of digital citizenship (Barletta and Coppola).

Finally, 'Part III – Legal Issues' discusses the balance between personal data protection and data governance (Iannuzzi and Trozzi), the legal protection of the European digital consumer (Torino, Ricci), and the evolution of digital citizenship through artificial intelligence (Stradella). Moreover, it addresses the regulation of Generative AI in the context of human rights (Carletti), the challenges and benefits of digital infrastructures (Cotura), and the use of technology in managing migration flows (Di Maio, Zecca).

We all, myself foremost, hope that the work gathered in this volume may offer a broad and in-depth multidisciplinary analysis of

the digital dynamics shaping our present and future, providing tools for understanding and reflection to better comprehend the offline and online world we live in.

The Module Jean Monnet 'Digital Citizenship for EU'

The Module *Jean Monnet 'Digital Citizenship for EU'* was implemented following the planned activities financed by the European Union.

Each year, the Module began with an open kick-off lecture, followed by lectures (64 hours) grouped into three subsections: 'Digital Rights,' coordinated by Raffaele Torino; 'Online Protection of Fundamental Rights,' coordinated by Cristiana Carletti; and 'Digital Political Participation,' coordinated by Luca Germano. It concluded with a final conference open to the wider public.

Between the three subsections of lectures delivered by Roma Tre University professors, two annual workshops were included, conducted online by APICE experts using non-formal education methods (utilizing various digital tools, such as Mentimeter, Zoom, and Google Jamboard). The workshops were open to a registered audience but were not live-streamed due to the methods employed (including parallel breakout rooms, discussion groups, etc.). The topics of the workshops served as bridges between the subsections of lectures.

To ensure the continuity of the learning process, three webinars were held each year from June to December, coordinated by Roma Tre University professors responsible for the different subsections and connected to the content taught during the respective lectures. The webinars featured esteemed national and international guest speakers to enrich the discussions and provide an ongoing dialogue regarding digital citizenship within the European Union over the three-year period.

The Jean Monnet Module concluded with a final Dissemination Conference held in person in Rome and live-streamed, aimed to share the results of the three-year project and provide access to all the resources created through the Digital Citizenship for the European Union initiative.

In addition to the planned lectures for the three subsections, the Jean Monnet Module offered the following during the Academic Year 2020/2021:

- a Kick off lecture on 'The Digital citizenship for EU' (speaker: Luigi Ceccarini, Urbino University)

- three webinars:
  - 'Cybersicurezza, nuove tecnologie e diritti umani' with Gianludovico De Martino, Presidente del Comitato per i Diritti e le Libertà Civili, Triantafillos Loukarelis, Direttore dell'Ufficio Nazionale Anti-Discriminazioni razziali, UNAR, Riccardo Villa, Unità per le politiche e la sicurezza dello spazio cibernetico, MAECI
  - 'I consumatori digitali' with Prof. Anna Simone, Roma Tre University, Massimiliano Dona, Consumatori.it
  - 'Lobbying digitale e cittadinanza europea' with Giusi Gallotto, Reti, Alberto Bitonti, Università della Svizzera italiana)
- two workshops:
  - 'Digital Citizenship for contrasting hate speech' with Menno Ettema, Council of Europe Inclusion and Anti-Discrimination Unit
  - 'How the internet works and digital participation', with Alessia Sposini, YouthIGF Italy.
- the Final conference 'Cittadinanza digitale: diritti e principi europei' (speakers: Giovanni Calabrò, Italian Competition Authority, Emanuela Girardi, POP Ai, Guido Scorza, Italian Data Protection Authority, Elettra Stradella, Pisa University)

In the Academic Year 2021/2022, the planned ordinary lectures were enriched by:

- a Kick off lecture on 'European digital citizenship and inclusion' (speaker: Sofia Ranchordas, University of Groningen, Luiss Guido Carli)
- three webinars:
  - 'Cittadinanza digitale e giovani generazioni. Ruolo e partecipazione attiva' with Lucia Abbinante, Agenzia Nazionale per i Giovani Director, Alessia Cecchini, Erasmus+ Youth Coordinator, Adele Agenzia Nazionale per i Giovani
  - 'Il principe digitale' with Fortunato Musella, University of Naples "Federico II"
  - 'Cittadinanza digitale e pubblica amministrazione' with Ernesto Belisario, E-Lex, Federica Cacciatore, LUMSA University
- two workshops:
  - 'Digital citizenship contrasting hate speech in face of current challenges' with Debora Barletta, APICE, and Ilaria Ricci, Roma Tre University
  - 'Internet Governance and citizenship: what role can we play?' with Debora Barletta, APICE, and Simone Cotura, Roma Tre University

- the Final conference 'La Repubblica degli influencer. Il discorso politico online tra diritto e democrazia' (speakers: Giovanni De Gregorio, Oxford University, Luigi Di Gregorio, Tuscia University)

In the final Academic Year 2022/2023, the extracurricular activities consisted of:

- a Kick off lecture on 'Digital Constitutionalism from a transatlantic perspective. Reframing European Citizenship in the Algorithmic Society' (speaker, Prof. Oreste Pollicino, Bocconi University)
- three webinars:
  - 'L'uguaglianza di genere e le sfide del mondo digitale' with Cordialina Coppola, Dipartimento per le pari opportunità, Presidency of the Italian Council of Ministers, Mariella Pagliuca, Roma Tre University, Caterina Flick, AgiD, Andrea Marra, University of Torino, No Hate Speech Movement
  - 'La Digitalizzazione dei servizi al cittadino. Il fascicolo sanitario-elettronico' with Federica Cacciatore, Presidency of the Italian Council of Ministers – LUMSA
  - 'La predizione algoritmica dei flussi migratori. Criticità e ricadute sulle politiche degli Stati membri' with Graziella Romeo, Bocconi University)
- two Workshops:
  - 'Once online forever online' with Balint Josa, Director of United for Intercultural Action
  - 'Digital platforms. Tools or threats to democracies' Claudia Mariotti, Roma Tre University
- the Final conference 'La partecipazione politica del cittadino europeo' (Tommaso Andria, MAECI, Adrea De Petris, UNINT/CEP, Edoardo Novelli, Roma Tre University, Fabio Raspadori, University of Perugia).

The Jean Monnet Module was concluded by the final Dissemination Conference with the keynote speech of Alina Sorgner (John Cabot University) on 'L'impatto dell'intelligenza artificiale sui mercati del lavoro e sull'imprenditoria'.

Roma, October 20th, 2024

Raffaele Torino

Part I

Political Issues

Luigi Ceccarini, James L. Newell, Fabio Turato

The Digital Sphere, Civil Society and Democracy in an Age of Global Political Turmoil

Abstract: This article examines the evolving landscape of liberal democracies and their recent transformations, highlighting the rise of concepts like illiberal democracy and electoral authoritarianism, which prioritise leaders' claims to popular legitimacy over traditional democratic values. While core principles of liberal democracy persist, interactions between democratic actors have significantly shifted due to global and geopolitical changes, disrupting traditional affiliations and identities. Key phenomena shaping modern democratic processes include the digital revolution, unmediated 'immediate politics', executive democracy, (neo)populism, anti-political sentiments, and the prevalence of voting 'against' rather than 'for'. These trends are closely tied to changes in political communication, particularly the rise of digital platforms, which have redefined concepts like the nation-state, territorial sovereignty, civil society, and public opinion. The article also examines the implications for civil society, which has adapted and gained a transnational profile influenced by globalization and the digital age. Civil society now plays a critical role in shaping public discourse and engaging with global issues through NGOs, think tanks, and advocacy groups. Additionally, the interconnectedness between civil society and the state is explored, emphasizing civil society organizations as mediators between the state and individuals.

Keywords: Digital politics – liberal democracy – political change – civil society – globalization.

1. *Introduction: The Digital Sphere in Politics*

Liberal democracies are often regarded as undergoing profound changes and transformations. Moreover, new regime types, such as illiberal democracy and electoral authoritarianism, have emerged, characterized by significant restrictions on civil and political liberties. While voting

remains a key feature, these regimes prioritize leaders' claims of popular legitimacy over preserving liberal democratic values.

In late modernity, within an increasingly globalized world, democracy has arguably taken on different forms. However, it is crucial to note that liberal or representative democracy itself has not fundamentally changed. Instead, the interactions between democratic actors, particularly political parties and citizens, have undergone significant shifts. The digital and related transformations have played a crucial and ever-increasing role.

A focal point in democratic representation lies with the primary actors: political parties. Evolving continually, particularly in organizational terms, they have prompted scholars in political science to delineate the concept of the digital party model (Gerbaudo, 2018). This delineation stems from the organizational changes accentuated during the latest phase of societal digitization. These parties are characterized by the central role that digital platforms play in bridging the gap between hyper-leadership and grassroots membership. While all parties have embraced digitization to varying degrees, the emergence of new digital parties owes much to the widespread utilization of internet platforms. This has facilitated both an innovative party model and a distinct form of grassroots structuring.

These changes have been stimulated by global and geopolitical transformations and accompanied by shifts in citizens' political culture. These cultural changes have not only affected new and digital native generations but have also permeated other age groups, disrupting traditional political affiliations and identities. As a result, citizens have lost their previous political reference points rooted in traditional affiliations and identities, leading to a greater 'freedom' in terms of their politically relevant choices.

Embedded within these ongoing transformations is the so-called digital revolution. Within this new media landscape, the dynamic interplay between society and politics is undergoing redefinition. Indeed, the digital sphere introduces novel modes of political communication, fostering interaction between leaders and supporters while empowering citizens to voice their concerns. In this regard, the digital realm can be viewed as an extension of the public sphere. However, concurrently, amidst the information overload, the digital landscape is reshaping public discourse, amplifying minority perspectives and interests. It also provides a platform for uncivil and politically incorrect language, including hate speech and political incivility, which has morphed into a strategic communication tactic (Bentivegna and Rega, 2024). Furthermore, the proliferation of disinformation, misinformation, and malinformation,

coupled with algorithmic processes giving rise to contentious phenomena like echo chambers and filter bubbles, undermines the democratic tenet of open debate and the confrontation of diverse viewpoints.

In this context, the public sphere(s) of civil society have become increasingly diverse, transient, and, in a way, notably flexible. The emergence of digital populism is deeply intertwined with shifts in politics, democracy and the transformative capacity of digital technology. Initially perceived as a democratic and empowering tool for civil society and pro-democracy groups, digital resources have also been wielded as potent instruments by leaders of illiberal regimes, and even autocrats in authoritarian political structures, to manage and stifle dissent. Consequently, the digital realm represents a double-edged sword; the Internet, therefore, assumes a highly ambivalent role in various respects.

However, it is essential to avoid exaggerating the extent of this change. Despite claims that voters have no ties and make choices without regard to their previous decisions, the reality remains more complex. Voters, or at least most of them, still orient themselves politically using terms like 'left' and 'right', and switching from one side to the other is still relatively rare, although electoral volatility has become a feature of modern democracies in an era of political turmoil. Nevertheless, observers from various disciplines argue for profound changes, emphasizing the impact of digitization on politics and democratic processes, potentially redefining the concept of political freedom and giving rise to a 'post-truth' society.

This chapter explores the phenomenon of 'immediate politics', intended as politics without mediation (Diamanti 2014), the rise of executive democracy centred around powerful individuals, the spread of (neo and web-based) populism, the proliferation of anti-political sentiments, and the prevalence of voting 'against' rather than 'for'. These phenomena are closely tied to changes in political communication, particularly the emergence of digital communication platforms. Consequently, concepts like the 'nation-state', 'territorial sovereignty', 'civil society' and 'public opinion' have taken on new perspectives and implications.

Within the context of modern representative democracies, these changes significantly impact civil society, which faces recurring global crises. The traditional order and the bipolarity of national party systems have become outdated, giving way to new formations and transformations within them. The emergence of parties critical of ruling elites has gained momentum in European democracies, reflecting a growing wave of anti-establishment sentiments. Similar political actors have emerged in the

United States and other countries, challenging the existing political order. The disquiet among the middle classes, economic uncertainties, and concerns over issues like terrorism, migration, and ineffective political leadership have fuelled the rise of such actors.

In light of these developments, civil society has undergone inevitable transformations and adaptations. It has acquired a transnational profile, shaped by globalization and the digital age, while traditional national dimensions have weakened. Civil society encompasses various aspects, including associative life, the public sphere for deliberative discussions, and the media ecosystem. NGOs, think-tanks, and political advocacy groups now play crucial roles in shaping civil society and engaging in global issues. The idea of global civil society, although debated, has been associated with NGOs' efforts to bring citizens' voices into international discussions, particularly related to global justice movements. What is certain is that the advocacy campaigns promoted by these political actors nowadays have a particularly effective resource available to them in the digital sphere where they find tools with which to mobilise citizens globally and circulate the meanings behind specific political actions and events for or against a particular stake, target, regime and the like.

This chapter considers a vibrant civil society, its multifaceted nature, and its connections with the state. It explores the interactions and overlaps between civil society and the state, highlighting the critical role of civil-society organisations as mediators between the state and individuals. In order to work on the issues mentioned above, the chapter is divided into five sections to which final comments are added. The first of these sections focuses on liberal democracy and political change, and the second (The age of resentment in the global disorder) introduces the theme of resentment voters feel in the context of a globalised world. The third section (The relevance of a vibrant civil society) emphasises the importance of an active civil society in the context of the current socio-political environment, while the following section (Toward a transnational civil society) discusses the idea of a global civil society. Finally, in the last part before the concluding remarks, the reasoning goes so far as to connect the idea of civil society to the ideas of globalisation and global governance. Each of these sections refers to the digital dimension as a tool and an environment of contemporary political processes.

2. *Liberal Democracy and Political Change*

It is often claimed that liberal democracies have changed profoundly and are undergoing a process of great transformation. Scholars have developed a large number of new concepts to describe the extent of this supposed change. They include audience democracy, post-democracy, monitoring democracy, surveillance democracy, hybrid democracy, immediate democracy, live-broadcasting representative democracy, disfigured democracy and continuous democracy, to name just a few.

Other concepts, such as illiberal democracy and electoral authoritarianism, draw our attention to the fact that there have evolved, from liberal democracies, new regime types characterised by significant limitations on civil and political liberties. In such regimes, voting remains a key feature of political rituals, but its main function is to enable leaders to claim popular legitimacy and to assert that though illiberal, their regimes are democratic nonetheless.

So, in late modernity, in an increasingly globalized world, democracy has arguably taken on different forms. In actual fact, it is probably more accurate to suggest that, even if recent years have seen the emergence of illiberal democracies, liberal or representative democracy as such has not changed. Rather, what has happened is that there have been significant changes in the way democratic actors, especially political parties and citizens, interact with one another. These changes have been stimulated by global and geopolitical changes, and accompanied by changes in the political culture of citizens. Cultural change has affected not just the new generations, as was the case during the youth and student mobilisations of the 1960s and 1970s, but extends far beyond them.

As a consequence, citizens have lost their former political points of reference rooted in traditional affiliations and senses of identity. This has created a climate of greater 'freedom' in terms of the politically relevant choices made by citizens – but again, it is important not to exaggerate the extent of the change. Thus, notwithstanding suggestions that voters have no ties at all, that the electoral market place is completely fluid if not 'gaseous' and that voters make their choices without any regard to their earlier choices as if they were buying products in a supermarket, the reality is more complex. Still, various observers from a range of disciplinary perspectives including that of philosophy, have continued to sustain the thesis of profound change. For example, they point with alarm to the way in which digitization has significantly affected politics

and democratic processes, arguing that this has redefined the very concept of political freedom and led to a 'post-truth' society. According to such interpretations, democracies themselves are sliding toward infocracy (Byung-Chul Han 2023).

'Immediate politics'; forms of executive democracy (centred on a single powerful individual); (neo)populism; the spread of anti-political sentiments; voting 'against' rather than 'for': these phenomena are closely related to changes in political communication and especially to the emergence of digital communication. The consequences of these changes have been felt globally and have led to the emergence of new perspectives on such concepts as the 'nation state', 'territorial sovereignty', 'civil society' and 'public opinion'.

If this is the context in which political life impacts on civil society in modern representative democracies, then it also constitutes a challenge for civil society, which is subjected to the recurring crises of global society.

3. *The Age of Resentment in the Global Disorder*

The traditional order, along with the international bipolarity reflected by the internal dividing lines of national party systems, appears to be substantially outdated. Over time, the social and cultural foundations of politics globally – and therefore also the foundations of individual democracies – have changed profoundly. This has been a consequence not only of social and generational change of a gradual nature; but rather, it has been affected by various events of profound historical significance, especially the fall of the Berlin Wall in 1989. Since then, we have witnessed the development of a series of phenomena which, despite their differences, all have their roots in globalisation.

The expansion of neo-liberal policies, the weakening (if not the crisis) of the nation-state and the great economic-financial bubble that burst in 2007-2008, have all strongly influenced the stratification of society globally. To these should be added the climate crisis and mass-migration and its related crises. Most recently, the COVID-19 pandemic and the Russian invasion of Ukraine have contributed to making the global context more uncertain from a number of points of view, with a range of economic and other consequences.

Taken together, these events have led to a redefinition of the public space as well as influencing citizens' more or less organized orientations to

participation and their attitudes toward parties and the ruling class.

Over the years, the progressively more visible effect has been the deinstitutionalisation of party systems, along with the emergence of new formations or the transformation of existing ones. In this case, the digital, at least for some of these actors, has assumed an essential centrality to the point of going beyond the organizational structure, giving shape to the very conception of (immediate) democracy conceived by these parties. Critical orientations toward the caste, such as those that have been manifested in European democracies in recent years, have grown strongly. In this regard it is sufficient to recall the emergence of formations such as Podemos in Spain, En Marche! and the Front National in France, UKIP in Britain, Golden Dawn and the Syriza coalition in Greece. The League, the Five-star Movement and Fratelli d'Italia in the Italian context are further examples of parties whose emergence reflects the growing trend towards criticism of political elites. The parties in question are, in terms of their traditions, organisation, messages and leadership, as well as the form of relationship with the base of members and activists, very different in many respects. However, they appear to be united by an explicit critique of the ruling class, and they have championed a growing wave of 'anti-establishment' political sentiments. But they appear to be united by an explicit critique of the ruling class and they have championed a growing wave of 'anti-establishment' political sentiments.

The list could be continued by including the case of the US and Donald Trump – to which should be added the electoral success of various formations sharing this vision in various countries such as Austria, Switzerland and the countries of Northern Europe and Scandinavia. However, political actors of this kind can also be found in the new democracies of Eastern and Central Europe, such as Poland and Hungary, but also Bulgaria.

Over the years, therefore, a kind of sovereigntist international has taken shape. The development of neo-populist rhetoric, the electoral success of 'anti-establishment' parties, and the crisis of liberal and representative democracy are phenomena that are part of this process of change and increasing democratic fragility.

All this has taken place against the background of middle-class disquiet over economic impoverishment and a loss of the economic prospects that once offered certainty for broad strata of the population but that have since been replaced in citizens' outlooks by a profound sense of insecurity. Other issues can be added, such as a fear of international terrorism, distrust of migrants, hostility to a political class deemed ineffective in

the face of national issues and global crises that are making themselves increasingly felt in citizens' everyday lives.

Against this background, civil society, which is not a static entity, has undergone inevitable transformations. Being caught up in a process of evolutionary change and constant redefinition, it reflects the changes that have occurred in its basic components. It has taken on different profiles not only over time, but also in space, in the various socio-political systems of the international context.

Globalisation and the advent of the digital age have strongly influenced the configuration and horizons of civil society (as well as those of the nation state). The development of liberal and representative democracies, with their associated institutions and constitutional guarantees, has taken place, historically, in parallel with the formation of the nation state. However, while maintaining its prerogatives, the state has seen its national dimension weakened in substance, having been challenged by the increasing weight assumed by supranational elements and by global reality.

Civil society and the state are thus interrelated but distinct; in fact, each is defined with respect to the other. Postmodernity has had a major impact on both of these important institutional entities of politics:

- civil society has taken on a transnational profile;
- the state has been increasingly challenged by post-nationalism, or the phenomenon whereby nation states and national identities lose their importance relative to cross-national and self-organised or global and supranational as well as local entities.

4. *The Relevance of a Vibrant Civil Society*

First, it should be said that civil society has several facets. It can be understood as the arena in which the associative life of a given community is carried on. The term can be used as a metaphor for the good society, with its normative bearing, providing a context for the activities of the good citizen. It can be considered as a public sphere, that is, a space for deliberative discussion and argumentation between those espousing different positions. Civil society thus sustains the public sphere of a community, in the sense given to this dialogical space by Jürgen Habermas. It therefore provides an arena for the operation of the media eco-system and of public discourse where public opinions are freely, critically and rationally developed.

Civil society, unlike the state (with which it is usually contrasted), is a vague notion. It is, in fact, closely linked to the realm of individual freedoms, competition and confrontation between different interests present in a society. Its emergence appears inextricably linked to the development and consolidation of the capitalist world, bourgeois society and liberal democracy.

The state, on the other hand, tends to be defined as a specific institutional reality with respect to civil society. With its institutions and laws, it acts as a safeguard for civil society and its components, which have political relevance despite not having political authority, unlike the institutions of the state. It should also be said that notwithstanding the analytical distinction between 'civil society' and the 'state', there are significant areas of overlap between them. Underlying this there is a logic of mutual influence between state institutions and the components of civil society. A kind of interstitial space thus comes into being between the private, individual, sphere on the one hand, and the public dimension of the state on the other.

Civil society is a broad and differentiated social sphere. In it, individuals pursue their private interests (which are not necessarily economic in nature) autonomously, without state interference. Democracies protect activities and initiatives in a range of areas including religion, the family, interpersonal relations and cultural education – but also including the spaces of activism such as associationism, civic volunteering, or leisure and leisure activities and so on.

Traditionally, the organized elements that constitute civil society are parental and family structures; religious, educational and training institutions; the media system, and institutionalised relations between parties. However, they also include social and economic organisations, interest groups, social parties and movements, and, as mentioned above, voluntary, philanthropic or third-sector associations. Today, then, NGOs, think-tanks, and political advocacy groups are among the main civil-society actors in the global world, and they have a major role in action from the bottom-up. Digital resources, communication and devices are now directly and deeply connected with the activities of such organisations.

These organisations take the form of 'entities' that mediate between the state on the one hand and individual spheres on the other, within the framework of an expanded public space, also thanks to the digital technologies. In addition to structuring the fabric of civil society, they help shape the culture and public ethics of a given political community. However, civil society is also shaped by the political culture by which it

is affected, and which it affects, in a continuous process of interaction. The idea of 'sociability', or the togetherness of the parts of a social and political community, is pivotal in this dynamic involving the state and its regulatory prerogatives.

Civil society bodies also provide opportunities for citizen participation and spaces for inclusion in the organised political life of the community. The various mobilisation initiatives and participatory practices directly touch on the issue of interests, their representation and mediation mechanisms. These bodies thus affect the processes of the redistribution of resources and values in the community.

Collective action is rooted in the dynamism of society, and is a driving force in changing long-standing equilibria in the social sphere. It takes place in a global and globalised context – along with the consequences of the planetary connection of the spheres of human activity: communication, culture, finance, production, consumption, migration, politics – in a setting where the so-called 'butterfly effect' makes the world much smaller and more immediate in its dynamics.

5. *Toward a Transnational Civil Society*

With respect to civil society, it must be said that the growing significance of politics at the global level has led political actors operating in this sphere to assume an increasingly transnational character. In this regard, issues that are by their nature transnational, requiring transnational mobilisation and responses, have led some authors to posit the emergence of a global civil society.

Global civil society theorists also point out that global power and decisions will enjoy greater legitimacy and be more effective if the related decision-making process is based on the democratic principles of participatory inclusion and accountability (Edwards 2014, 103).

Thus, there has been the worldwide development of social movements, organised groups, opinion campaigns, think-tanks, NGOs. The World Social Forum (Wsf) is recognized as a significant expression of global civil society. These organisations give depth to involvement and activism oriented to global issues arising from the consequences of globalisation and the neoliberalism that characterises the predominant economic and financial model of the current era.

However, the idea of 'global civil society' has also attracted criticism.

In addition to being based on the assumption that growing transnational issues require global answers and solutions, it presupposes the presence of a global state and government, and therefore of accountability at this level. However, this is not anticipated by many, and is probably not even feasible. Indeed, there exists no global election assigning global governing responsibilities and, thus, the corresponding electoral accountability. Instead, there is a network of institutions making possible cooperation between different actors, specialising in various areas and proposing measures for action in specific sectors.

Global civil society relies first and foremost on the role of NGOs, which help bring citizens' voices into the international public debate by proposing goals, ensuring representation, and taking civic lobbying and political advocacy initiatives. However, they are not the recipients of citizens' votes. They do, however, attract support, in terms of recognition and legitimacy, from segments of society that are affected by the issues of interest to, and the action of, particular NGOs.

It should also be remembered that many of these organisations are associated with the global justice movement. The 1999 Seattle World Trade Organization (WTO) protest, sometimes referred to as the Battle of Seattle, was the first major global mobilization initiative organized via the Internet, even though it took place in the era of Web 1.0, with the spread of social media yet to come. Then, the World Social Forum (WSF) in Porto Alegre followed, and gradually, through the Occupy phenomenon, from Zuccotti Park, located near Wall Street in New York, protest against the consequences of globalization spread throughout the world.

The belief that 'Another world is possible!' has stimulated and accompanied mobilisation in favour of democratic principles, human rights, pacifism and environmentalism, and against the growing inequality in the distribution of wealth. More specifically, they engage in the areas of fair trade, gender issues and the exploitation of labour in the Global South.

From this perspective, the critique of neoliberalism, accused of producing global crises and increasing inequality in the world, is explicit. From this perspective, democratic participation is identified as the essential tool for addressing global problems in opposition to the power of global economic elites. This is a vast and diverse area in terms of the political cultures present, ones that reflect different perspectives on, and ideas about, globalisation.

In the transnational political setting, in which various and diverse actors assume positions of centrality, the state – understood in its sense as the nation-state – certainly fails to establish itself as the reference body for

the regulatory process. Instead, increasing coordination among the various actors in global governance makes visible the variety of interests and issues that enter the circuit of the public sphere and political discourse, thus in the game of political agenda building. New norms and values spread by stimulating mobilisation and protest, and by influencing the process of international rule-making, agreements and treaties.

In this framework, technology has assumed an important role. The Internet, thus the development of the Web 2.0, and, therefore, the dissemination of content and meanings by digital means, firstly through social media, offer citizens opportunities, however ephemeral, for information and discussion they have never had before. These opportunities, within an ever-growing info-sphere, come with the risk of information overload so that what ends up being transmitted is noise rather than information: global society is in fact living through a revolutionary age of communicative abundance. Such a context makes available a functional stimulus base for global engagement initiatives, e.g., transnational advocacy campaigns.

Digital resources are thus an important tool available to civil-society organisations as they attempt to organize mobilisation and to develop new forms of the practice of democratic and digital citizenship (Ceccarini 2021).

6. *Civil Society between Globalisation and Global Governance*

It should be emphasised that the process of globalisation and the resulting global governance have shifted significant political prerogatives from the politics of the nation-state, such as models of representation, participation, and accountability, to other decision-making spaces that have been defined as supranational.

It should also be considered that this challenge to the classic model of the state and government corresponds to the opening of windows of opportunity for democratic practice. The development of a transnational civil society fits into the dynamics that have made democracy a continuously evolving construction site for innovation and adjustment throughout the centuries. The adaptation of the democratic model to the transformations of the context highlights its resilient character.

Specifically, NGOs are an institutionalised expression of this mechanism. They convey the sensitivities and demands that arise from the global

society, sometimes becoming actors in political protest and contestation of decisions made within IGOs in the dynamics of global power. Digital tools have become vital to organising these activities, entering the global public debate, and connecting with world public opinion. Movements like Occupy (in its various forms like Wall Street, Cork, Central, etc.), Indignados, and the Arab Spring have been interpreted as (transnational) reactions of civil society within the democratic space of dissent. These mobilisations are against policies considered neoliberal and austerity-driven, fuelled by the global economic and financial crisis, with the aim of achieving a different distribution of wealth or promoting pro-democracy actions for the opening of democratic spaces in regimes marked by a deficit of institutionalised civil liberties and political guarantees.

The development of digital technology and its applications in markets and the production process has redefined work and the economy with real repercussions on society and families in general, affecting the so-called 'middle class' in economic and identity terms. One prominent example is provided by the Amazon model or, in general, e-commerce, which has significantly influenced the traditional structure of the distribution of goods and services. Global competition and production have also promoted processes such as offshoring in local production systems. This has had severe consequences for the territorial dimension of development and the realities of work in individual states when companies have been unable to internationalise or have been prevented from so doing.

These are the consequences of the impact of the global on the local dimension. Civil society reactions have intertwined local issues with global trends. The inequalities condemned by NGOs such as Oxfam and the transnational protests of the Occupy movement – effectively communicated through the slogan «We are the 99%!» – have helped give visibility to the feelings of disquiet experienced by large numbers of citizens. Widespread global uncertainty has fostered the strengthening of 'anti-establishment' orientations among the electorates of modern liberal democracies.

In the run-up to the annual World Economic Forum in Davos, which regularly brings together the world's financial elite, Oxfam produces research reports and highlights the persistence of significant and growing inequality between the world's rich and poor. The distribution of wealth, this NGO reports, remains highly unequal: the richest 1 percent of the world's wealthiest own resources equal to those of 99 percent of the rest of the population. Hence the slogan adopted in the mobilisation initiatives related to this issue.

In developed countries, circumstances are somewhat different because citizens enjoy guarantees provided by welfare-related social protection mechanisms; but here too inequality remains significant. Consequently, formations have emerged that have built their political profiles on this issue, developing coherent narratives and defined electoral messages during the permanent campaign, which fit into the fractures that agitate living in a community.

7. *Conclusion: Global Politics in the Hybrid Reality of the 'Onlife'*

In conclusion, in the context of an increasingly globalized world and the challenges faced by liberal democracies, civil society has also undergone transformations. It encompasses various facets, including associative life, the public sphere for deliberation and argumentation, and the space for media, public discourse, and the development of public opinion. Civil society has adapted to the digital age and plays a vital role in citizen participation, inclusion and activism. Non-governmental organizations (NGOs), think-tanks, and advocacy groups are key actors in contemporary civil society, engaging in transnational issues and mobilizing global responses.

The concept of global civil society has gained traction, highlighting the need for democratic principles, participatory inclusion, and accountability at the global level. However, it faces challenges due to the absence of a global state and government, making it reliant on institutions and networks of cooperation between different actors. NGOs play a crucial role in bringing citizens' voices into the international public debate and advocating for specific causes, but obviously they do not replace the electoral accountability found in traditional democratic systems.

In summary, liberal democracies have experienced changes in their political landscape, driven by global influences, digitization, and shifts in political culture. While the core principles of liberal democracy remain intact, the way democratic actors interact and engage with one another has evolved. Civil society has adapted to these changes and has become increasingly transnational in its scope, playing a vital role in fostering citizen participation and activism. However, the concept of global civil society faces challenges in terms of accountability and democratic decision-making at the global level. Overall, the evolution of liberal democracies and civil society reflects the complex dynamics of our

contemporary world.

Within this framework, participation assumes the role of a dynamic process essential to the polity and influenced by various factors, including cultural and technological dynamics. The evolution of technology and communication is not a novel occurrence and has historically shaped the political landscape, transitioning from oral tradition to written script, printing press, mass media, and now to digitization and the Internet. The Internet, with its intricate nature and as a mediating variable, operates across multiple levels, eliciting diverse outcomes that may align or diverge from the democratic ideal.

Whether embraced or not, reverting to a pre-Internet era by disconnecting the modem (now an obsolete concept) is no longer feasible. Democratic politics and web technologies must coexist and evolve in tandem. The digital realm is not just a tool; it is an environmental force that impacts grassroots movements and institutional politics alike. The offline and online spheres represent two facets of the same reality. Thus, rather than being distinct, the virtual and real worlds are increasingly intertwined, leading to a synthesis evident in what can be termed the 'Onlife' scenario (Floridi, 2015): an era where democratic institutions and civil society intersect.

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Fortunato Musella

The Paradigm Shift of New Technologies for Citizens and Public Administration

Abstract: The acceleration of digital technologies, particularly artificial intelligence like ChatGPT, has sparked public debate about their consequences, highlighting benefits in automation and predictive analysis, but also existential risks for citizens and democracy. The article starts from the shift from individual connection to machine-driven connectivity, emphasizing how reputation and the value of individuals and products are increasingly tied to quantitative measures of digital dissemination. Then it examines, from the one hand, the power of data and the role of large multinational corporations in managing and assigning value to information and, on the other hand, addresses the data imperative in public administration, highlighting both the advantages and dangers of algorithm use. Finally, the article stresses the importance of regulating new technologies to safeguard citizens' rights, acknowledging the need to protect democracy in the digital context. The construction of digital citizenship is just beginning, and the old democracy can no longer be replicated, but must be reinvented.

Keywords: Digital transformation – digital citizenship – artificial intelligence – public administration – democracy.

1. *Introduction*

We are only at the beginning of the digital transformations that will affect our individual and collective lives. For the time being, we can focus on the radical processes disrupting the basic mechanisms of our coexistence at an unprecedented speed and intuit some lines of development. Similar to Gutenberg's revolution, which ushered in modernity with the printing press, new technologies are heralding a new era. The difference is that, as Historian Niall Ferguson points out, the spread of the printing press was initially slowed by a lack of sufficient paper, whereas digital technology is spreading rapidly in both quantity and intensity across the five continents.

More recently, we have seen the rapid acceleration of artificial intelligence. In particular, the spread of ChatGPT, which reached 1.7 billion users in a year, demonstrated the power of a complex system capable of learning and replicating human language and interaction. While it symbolises a paradigm shift in new technologies, surpassing previous achievements in the field, it has also triggered a major public debate about the consequences of a massive application of artificial intelligence, with clear benefits in terms of automation and predictive analysis in many fields, but also serious concerns about possible 'existential risks' of unpredictable outcomes for humanity. Some experts also fear the future development of a superintelligence that could act in ways that are harmful if not aligned with human values or goals. Moreover, new systems could be disruptive to many areas of social activity, leading to unemployment, widening inequalities, destabilisation of global markets, social unrest and conflict. It is no coincidence that an open letter published in March 2023 by the Future for Life Institute was signed by thirty scientists calling for a six-month pause for all laboratories developing artificial intelligences with power greater than GPT-4, a time to better understand their developments and try to put appropriate limits on them.

Even without questioning the ultimate, for some apocalyptic, consequences of the transformations underway, it is clear that we are facing a paradigm shift that requires us to adopt new lenses through which to observe reality. In recent years, we have moved beyond the early perspectives on the development of digital technology, which, from the 1990s onwards, seemed aimed at a cautious modernisation of democratic States. On the one hand, public administration would have become more efficient through the intensive use of the IT medium, a line that promised to revise its structures and practices based on the imperative of reinventing government. On the other hand, the mechanisms of democratic representation could have been enriched by the possibilities of participation offered by the Web, in a context where citizens' dissatisfaction was spreading and the first winds of anti-politics were blowing. However, as we have already analysed in *Il Principe Digitale* (The Digital Prince with Mauro Calise, 2019), the nature and pace of change have brought more than a few marginal changes. We are witnessing a founding moment that has raised the question of how citizens can maintain democratic control over digital-related transformations. At the heart of this process is the immense availability of data and information, the amount of which in recent years has been estimated to be equal to that produced in the entire history of mankind. The latest developments in artificial intelligence are a

further quantum leap in ongoing processes that will impact contemporary politics, that amaze for the speed its global diffusion and upgrades. Already we can glimpse, then, how the conceptual baggage with which we have measured the world in recent years needs a quick update, starting with the newly minted concept of *digicracy* (Calise and Musella 2024), which poses the question of how power relations will change as the digital universe rapidly advances. In this short essay, I will focus on some of the basic elements of the new digital ecosystem – relations, instruments, rules – that needed to be investigated in the face of the recent wave of technological change.

2. *Relations. The Emergence of Connectivity*

In order to understand the radical nature of the processes underway, let us begin with the basic elements of our social life. At the origin of modern society, the fundamental problem to which the great sociology sought an answer was how order was possible after the disintegration of the communitarian world that had been reproduced for centuries. A world that bound individuals together by similarity, by the sharing of territories, traditions, religious beliefs. In modern society, organic solidarity gave way to mechanical solidarity. Social integration was based on the difference between individuals, united by the mutual exchange of common interests. The individual positioned himself and at the same time created a social network in a mixture of *status* and *contractus*.

A trend so clear that it can be expressed in dichotomous terms, the community-society pair from the best known pages of the social sciences has held sway in our representation of the world. It is useful to identify a historical trend rather than to signal the complete affirmation of society over community, as tested by empirical analysis. Even in the most industrialised contexts, as anticipated by Gunther Roth in his essay on personal power, the survival of logics hastily relegated to the past could indeed be observed, with the centrality of the personal element in world powers such as China, the Soviet Union and the United States (*Personal Power and Clientelism*, Turin, Einaudi, 1990).

In studying the web, the same distinction between community and society has often been used. Communities seemed to be the first groups to form online, using the digital medium to overcome physical distances and

meet around common interests and commonalities: blogs, for example, were important examples of digital community building. When it came to defining the developments of the Web, these were instead defined as social, with an emphasis on the possibility of global navigation and potential contact with a very large number of users. Think for instance to social media. Thus, the pair community-society reveals an insufficiency when applied to the digital world.

The proliferation of digital platforms is in fact forcing the transition to a new type of social relationality, in which mostly individualistic ties are managed within and according to the rules of the Web. There is a shift from *connectedness*, the result of relationships that each of us weaves of our own free will, to *connectivity*, the cybernetic fabric that machines weave over us, in our minds and bodies. The passage from the actor that makes the network to the networks that make the actors. Reputation of individuals and products is linked to the quantitative measures of their circulation on the web, in an environment that was expected to be free, but is instead manned and regulated by the large digital corporations through their digital platforms. The success of individuals and companies increasingly depends on the spread of digital data.

Indeed, one of the most obvious consequences of this transformation is that the value of people and products is linked to quantitative indices of digital diffusion: number of contacts, downloads, views. With the massive diffusion of artificial intelligence chats, the process of attributing value is at the most astonishing level of defining reality and its contextualisation. One of the most important changes is the role of huge multinational companies in managing the circulation of information on a global scale and, at the same time, attributing value to it.

The question has recently been raised again at the very top of the institutions of the world's largest democracy. It is difficult to overestimate the role that social media played in building Donald Trump's consensus. Computational tools for analysing digital traces have become so sophisticated that they challenge the voter's autonomy of judgement. Associated to the widespread use of fake news – not coincidentally a term that has been in the spotlight in recent years – this is capable of arousing false consciences, but also, more simply, of spreading misinformation about voting patterns in order to discourage groups perceived to be in opposition. Once in the White House, the president has continued to distinguish himself from his predecessors through the systematic use of new technologies. In the last presidential election, the outgoing president honed new digital weapons with significant advances over the

previous round: *geo-fencing*, for example, was the new frontier of digital campaigning, allowing vast amounts of information about users to be collected and cross-referenced with data on their geolocation.

However, as the wind changed for Trump, his relationship with digital platforms also came to an abrupt halt. Indeed, following his challenge of the election results and the storming of Capitol Hill by his supporters, the outgoing president's Twitter profile was blacked out, leaving a major digital platform to assess and restrict the freedom of expression of one of the most monocratic offices on the international scene. Even if the election was justified with noble reasons in defence of democracy, the fact remains that economic and political power has accumulated in the hands of a few private individuals. The event sparked a lively international debate: is it permissible for platforms to restrict freedom of expression, even in the case of eminent political leaders? inthe case of Capital Hill assault, many analysts turned a blind eye; the restriction seemed to be in defence of democracy, albeit by denying one of its fundamental principles. The European Union, on the other hand, has expressed great concern about censorship in private hands: its commissioner for the internal market pointed out that «Just as 9/11 marked a paradigm shift for the United States, if not the world, there will be, when it comes to digital platforms in our democracy, a before and an after on 8 January 2021» (Thierry Breton, Capitol Hill – the 9/11 moment of social media, in Politico.eu, 10 January 2021).

The weight of the decisions of digital companies in determining the trajectory of political regimes has becoming more and more apparent. Yet their platforms can be both a bulwark and a challenge.

3. *Instruments. The Power of Data*

The instruments offered by digital data collection and processing offer important competitive advantages. This is the second lesson of the technological revolution in which we are immersed: computational power is the most coveted, and effective, resource in the new digital ecosystem. Its experimentation took place in the private sector, only to find subsequent application in the electoral arena. The Web offers an enormous amount of information on the behaviour, and opinions, of users, with the possibility of algorithmic reactions to what is detected. In what Herbert Simon called half a century ago the economy of attention, it provides important means

to fight the battle of online persuasion. Commercial companies arrived at very precise measure of customer preferences and expectations, with data that is more widely available than traditional market research. This immediately translates into possibilities for customer interaction, with messages that can be easily, and instantly, adapted to key trends. Based on a completely unprecedented amount of data, which is opening the door to new methodologies of analysis, and applied research.

In the political field, *microtargeting* and the extensive use of digital data analysis are becoming the levers of the leader's interpersonal relationship with citizens, in response to an increasingly atomized and volatile electorate that moves in apparent autonomy but is actually bound to the forms and spaces that the algorithm allows. In Italy, for example, Matteo Salvini used persuasive techniques by means of a computer device that adapted his political communication to the trends of public opinion. Yet he is not an isolate case on the inetrenational scenario, where we can observe the rise of platform leaders – to borrow the category developed by Federica Nunziata in a recent essay – that are party leaders who manage to win grassroots consensus thanks to the continuous use of digital platforms. According to a dynamic that, despite significant differences in the institutional context, occurred in different geographical areas, bringing together Jair Bolsonaro in Brazil, Narendra Modi in India, and Donald Trump in the United States. As a result, several concerns have been raised about the influential role in the election of the dissemination of viral content and disinformation messages.

As far as public administration is concerning, the idea is emerging that digitalisation creates a 'data imperative', with a strong push for management to benefit from and adapt to the increased circulation of data and artificial intelligence tools, and to change its own organisational mindset (see on this point the analysis by Henri Schildt, *The Data Imperative. How Digitisation is Reshaping Management, Organising, and Work*, Oxford, Oxford University Press, 2020). The implications of the use of algorithms in the public administration sector are far-reaching (see the article *Administration 5.0*, in *Review of Digital Politics*, 1, 2021), as shown by the first plans for the development of hyper-technological smart cities, especially in the Japanese context, or by several experiments realised in important sectors of the Western public sector. In Italy the path of algorithmic administration has already shown significant implementations in the field of public procurement, the execution and management of public works, the management of state property and the organisation of schools. This has given rise to a lively doctrinal debate,

which has converged on the observation that robotized administrative decision-making is following a path that can be reasonably followed in many areas of everyday life.

There is no doubt that the provision of new digital tools can bring about important changes, both in terms of efficiency and responsiveness to citizens' demands. New technologies are proving to be a decisive factor in the performance of public administrations in the various areas in which they operate. Alongside these advantages, however, we see some important dangers for the public sector. First of all, the non-identifiability of political power, which opens the way to the private definition of algorithmic rules: the digital code contains instructions defined by those responsible for its application, but difficult for the citizen to read. At this inaugural moment of rapid evolution, one can also ask what the space of politics is, and whether it is public decision-making that is being eroded in its very mechanisms of action. Frank Pasquale, in a successful book, calls it the black-box society, referring to the development of algorithms guarded by private companies but inaccessible to the public and researchers.

Behind the image of a super-powerful administration lies that of an administration that is losing its power: as algorithms take the place of political decision-makers, there is a sharp decline in the transparency of administrative processes, with a corresponding decline in the control that can be exercised over them. The result is a transfer of decision-making power from public to private hands, towards a new dominus capable of replacing the code of law with the code of algorithms.

4. *Rules. Could we Regulate the New World?*

The objective of establishing principles and instruments for the regulation of new technologies, which was neglected during the first decades of their development, is now back at the centre of the agenda at national and supranational level. The initial approach of governments, clearly expressed by the White House, was to leave ICTs to advance with no interference. However, the technological leap of recent years towards the development of algorithmic applications and artificial intelligence is stimulating a more effective response from government. Consequently, a series of expressions such as 'a turn to regulation' or 'policy turn' and 'regulatory turn' or even 'procedural turn' have returned in the literature in the search for new sovereign states that abandon the lasseiz-faire regime.

Regulating new technologies has been often transformed into defending the democratic citadel against a feared destructive attack. Indeed, with the spread of new technologies, and especially with the spread of algorithmic tools as a vehicle for decision-making and process automation, it seemed increasingly clear that control over digital infrastructures was a crucial issue for the sovereignty of states.

On the one hand, therefore, there is an effort on the part of numerous political actors to define the regulatory framework of digital technologies. For instance, the European Union regulatory stance has been viewed as defensive, primarily focused on mitigating risks rather than fostering innovation. The EU has enacted significant legislation, such as the Data Act and the Digital Markets Act, with a particular emphasis on protecting individuals' rights and promoting safe and human-centric AI use. Despite these efforts, doubts persist regarding the effectiveness of top-down regulation in managing the digital transformation effectively.

On the other hand, it is the new technologies that are the vehicle of regulation. To dwell on the Italian case, let us recall some experiences, however controversial: the public education reform launched by the Renzi government in 2015, called Buona Scuola, which used algorithms to assign teachers to schools; the emergence of 'predictive justice', with the development of an integrated management system for civil and criminal proceedings and the use of an automated system to better identify the relationship between victim and offender and resolve legal proceedings quickly and efficiently, which has received attention as a mode of criminal justice, but which seems to contradict numerous provisions of a civil law system such as the Italian one; or to tax policy, with the use of advanced AI-based techniques to combat tax evasion that may involve extensive use of individual citizens' data and risks of excessive scrutiny and violation of privacy. Or think of digital twin programs applied to city management, where a virtual representation of a physical system (and its associated environment and processes) is updated through the exchange of information between the physical and virtual systems.

But as the scope and extension of this type of regulation grows, it also becomes increasingly difficult to contain such initiatives under the single umbrella of public regulation. On the contrary, the algorithmic drive poses the risk of the slippage of areas of competence traditionally entrusted to public authorities that can produce and implement algorithmic devices, with corporations generally playing a leading role.

5. *Building the Digital Citizenship*

Rights are the great absentee in the debate on new technologies. Given the radicality and globality of digital-related processes, it is difficult for the traditional defenders of citizens' rights – parliaments, parties, leaders – to continue the democratic struggle. On the contrary, at every step, the need to safeguard old rights has been joined by the need to define and recognise new rights linked precisely to the emergence of the digital space, including the right to privacy, freedom of expression and access to information. The public debate focuses on how to address the complex legal, ethical and social challenges posed by the increasing integration of technology into all aspects of society, and how to provide a framework for promoting a fair, open and inclusive digital environment that respects human rights and fosters trust and confidence among users. And there is no doubt that the European Union is one of the most active global players in regulating new technologies, striking a balance between fostering innovation and protecting societal interests. However, if the EU's regulatory efforts are to be appreciated, they must be accompanied by an effective capacity to design and implement algorithms for public administration, as well as structural investments in this field. Or plans to educate citizens and re-skill the workforce, equipping them with the tools to understand and operate in the new digital environment and, above all, to become protagonists of digital transformation processes.

We are only at the beginning of the construction of digital citizenship. The only certainty is that most of the mechanisms of twentieth-century democracy do not work well in the new context: for example, the processes of representation at the heart of democratic regimes are in crisis. The same is true of all the major collective actors, which are failing to win the support of citizens who are increasingly attracted to more direct forms of participation. Meanwhile, it is the scope of the political that is shrinking, losing pieces of public regulation that are now destined to be sorted by the intelligence of algorithms. The fear of an uncertain future is countered by the prospect of social revitalization, of a citizenry that can grow through increasingly sophisticated systems of information and analysis available to the popular masses. The old democracy can no longer be replicated, only reinvented.

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Federica Cacciatore

Digital Citizens as Public Service Takers: Simplification and Digitalization Policies in Italy[*]

Abstract: Digitalization of public service delivery in Italy is an overdue major reform, started long ago but still partially implemented. Among the reasons behind such delays, is the fact that it has long run in parallel with other public administration reforms, such as procedural simplification. It was only in recent times, and also thanks to the emergency measures undertaken to face the pandemic, that more integration between simplification and digitalization of public services was pursued, thus paving the way to a more effective innovation reform and to a more 'citizen-centric' e-government.

Keywords: Public service delivery – digitalization – administrative simplification – red tape – single digital gateways – NRRP – digital first – citizen-centric government.

1. *Introduction*

Being a digital citizen has many implications. Besides having the opportunity to participate in political and institutional life through the tools offered by digital technology, it also affects the ways in which individuals deal with the public apparatus, as services and goods takers. Public service delivery implies a two-way relationship where both actors, citizens on the one side and public administration (p.a.) on the other, are empowered to contribute to its success. While citizens as users provide for inputs while expecting outputs, p.a. delivers outputs provided it received the correct information and assessed applicant's requisites. Over time, such relationship has been increasingly criticized for being overburdened by excessive red tape and by the rule of *bureaucracy*, here meant negatively. The quest for better public responses and a more user-friendly p.a. led most governments to adopt *ad hoc* simplification policies (among other), which were further accelerated by both endogenous and exogenous events.

[*] The views expressed in the present contribution are personal and do not represent the administration where the author serves as expert.

The Covid-19 pandemic, as we will see, played a key role therein. In view of improving such relationship as an integral part of the digital citizenship experience, the overwhelming digitalization wave could not but play a major role, helping to further simplify processes and connections, and to reduce time and burdens.

The most recent reforms adopted almost worldwide seem to confirm that administrative simplification and digitalization mutually reinforce themselves, and Italy makes no exception, although with some peculiarities.

Before delving into our analysis, a couple introductory definitions are needed to better outline our scope.

Starting with p.a. digitalization, we should distinguish between the actions taken to digitalize internal processes, aimed at speeding them up and increasing internal efficiency, and those more directly user-oriented, aimed at digitalizing the front-end experience (both in terms of contacts and goods/services) for citizens and businesses when dealing with the p.a. Here, we will synthetically focus on the latter.

As largely argued by scholars worldwide, digital transformation affects almost all governments and through similar paths. However, it is equally well-known that digital transformation is a complex blend of factors (structures, functions, actors) often linked to a specific context, which is why MacKenzie and Wajcman (1985), talked about the «social shaping of technology». Not all service delivery digitalization policies, therefore, might prove equally successful or 'mature', even if they share the same objectives. From a theoretical perspective, we can thus move from an early stage where public services or products are interconnected, but there is no data sharing between government organizations, to their integration so as to create a one-stop shop first at the organizational level, then nationwide. The ultimate stages being inter-organizational integration, and eventually demand-driven, joined-up government, where it is the government's portal that will proactively search for relevant public services and propose them to the eligible citizens, as Klievink and Janssen (2009) put forward. This is also at the core of 'citizen-centric' governments, as the Organization for economic cooperation and development (OECD) put it in their dedicated report (OECD, 2009), according to which governments need to balance the distinct interests and needs of different groups of citizens (no one-size-fits-all solutions) within the broader framework of the public interest.

When it comes to simplification, it must be distinguished into normative and administrative. The former targets public *responses*, as it refers to the efforts to reduce or simplify the existing norms (or improve the quality of the upcoming ones), while the latter aims to improve the

quality of administrative *processes*, based on the relationship between the p.a. and citizens or businesses. The present contribution will address the administrative one.

Procedural simplification interventions can be theoretically encompassed within the larger so-called 'Better regulation' (BR) policies, aimed at introducing a set of actions to ensure «policy effectiveness and economic efficiency under conditions of democratic accountability», (OECD, 1995). Originated as a legacy of the neoliberal governments in the 1980s, cost-benefit analyses gradually changed their main aim, from a tool to reduce regulation to one able to improve its quality. Over time, market and social globalization, and demands for government responsiveness to ever-growing complex societies, further fuelled by the global financial crisis, made BR a permanent policy among most governments, and everyone embraced the BR creed: international organizations, the EU, stakeholders, policy experts, scholars. Overall, it now comprises both tools to improve policy outcomes (*ex ante* and *ex post* regulatory impact assessments, consultations, legislative drafting, normative reduction) and to improve and simplify administrative processes (whose main tools will be explored in the next section).

The two policies eventually met and integrated each other in most countries, also thanks to the external pressure by international organizations and, in Europe, by the European Commission, although, as advanced, it occurred at different paces and with different outcomes across the countries. Again, the pandemic bound even the most hesitating governments to undertake measures about digital transition and to simplify procedures for financial relief and service allocation.

The Italian case makes no exception. However, despite the common framework, we might identify some hallmarks in the development of digitalization policies for service delivery, like their long-lasting separation and its governance, up to the many delays in achieving p.a. digital transformation. The present contribution aims at briefly illustrating this process, and its peculiarities. The remainder proceeds as follows. Section 2 provides for an overview of the parallel historical development of simplification and digitalization policies in Italy, up to their policy integration eventually operated by the National Recovery and Resilience Programme (NRRP). Section 3 discusses the main findings and concludes.

2. *Digitalizing to Simplify, and Vice Versa. The Italian Path*

In Italy, the first simplification interventions and digitalization provisions are both rooted in the Nineties of the last century. However, up to very recent times they had little in common, being set on separate paths. They were governed by different actors having different objectives: simplifying administrative procedures was more about reducing their terms, costs and redundant phases, while digitalization of paper documents and their online storage by the owner administrations was among the first digitalization goals. First references to national digital grids and online gateways to provide for information or services started to make their way in the early years of the XXI century, but time was not ripe to implement them, and there was no real political endorsement to it. Therefore, despite catchphrases by the succeeding governments, actual digital transition of service delivery was launched quite recently and intermittently, until the quest for quick economic recovery from the Covid-19 crisis led the EU to invest large funds on *ad hoc* national reforms. These were meant to restore a level-playing field across countries, thus representing a unique opportunity for Italy to bridge some of its gaps and catch up with the other countries, also by taking stock of the lessons drawn during the emergency management of 'fast-track' online service delivery, in 2020-21. Nonetheless, as the next subsections will clarify, digitalization of service delivery still shows a patchy pattern throughout the policy sectors, with some services at more advanced levels and others more basically conceived.

2.1 *Procedural Simplification Before Digitalization: a Quick Overview*

The relationship between citizens requesting benefits and services, and administrations titled to deliver them is traditionally considered a troubled one, full of unnecessary burdens and loopholes, and the waiting line towards a front-office is the most symbolic depiction thereof. As a response to the urge to make p.a. more user-friendly and competitive, prompted by the EU and its new BR agenda, in the early Nineties the Italian governments introduced the first tools to simplify the processes and reduce or eliminate administrative burdens linked to them. The first simplifications were mainly pursued through laws and legislative decrees, according to a long-standing Italian tradition, and aimed at cutting phases, actors and reducing times for specific procedures, deemed particularly burdensome for the enterprises. For long, indeed, private citizens were left

outside the scope of simplification policies, which were mostly addressed to enterprises, as a reflection of the EU's Small Business Act introducing burden measurement, in terms of financial costs, and reduction models. Moreover, detecting the most burdensome procedures was the task of panels and surveys involving the main national stakeholders representing businesses. Later, entire economic sectors were liberalized through removal of any administrative requirement to start specific activities, unless necessary to protect third interests or constitutional principles.

Another step towards the integration with digitalization policies was the introduction of Single Digital Gateways (SDGs) for businesses (and for building procedures) at the municipal level, intended to provide for a single front-office administration and avoid multiple contacts per procedure. Innovation here stands in the reversed logic of who is burdened to circulate the information among administrations: while previously it was the private, the 'once only' principle claims now it is the p.a. to search for the needed info. However, the innovation remained on paper until the first half of the Tens, when the so-called Madia reform, named after the Minister for p.a. (Law no. 124/2015 and implementing norms), took implementation back at the core of administrative reforms and gave digitalization a central role. The tight requirements by the EU to make SDGs operational, also in view of a European SDG, based on the (well-functioning) national ones, added up to it.

Moreover, besides other tools meanwhile introduced for burden reduction, that we are not going to analyse hereby, the simplification, standardization, and digitalization of forms to fulfil to start or modify activities is worth special consideration, because it represented one of the first cases of simplification being successful thanks to the crucial push provided by digitalization and dematerialization of data. Introduced in the early Tens in the building sector, and spreading to business activities after the Madia reform, simplified and digitalized forms for businesses were among the most impactful actions to reduce red tape in business activities, also because they managed to create a level-playing field throughout the country and to reduce unequal requirements depending on the region. However, it was again addressed to businesses, whereas private citizens were still left almost aside, thus far.

Regarding the policy tools for simplification, as advanced, most provisions were laid down by laws and decrees, as were the ones on the obligation for municipalities to adopt SDGs and to use digital standardised forms for business activities. Despite such rigidity, although, their actual implementation only occurred provided digital infrastructures

were available and, noteworthy, digital transformation governance was actively involved in the process. Forms were in fact concretely translated into interoperable digital data by the governmental Agency for Digital Italy (AgID), without whose support prescriptions would have remained on paper, as happened for about a decade with the SDGs. Furthermore, the introduction of soft tools to manage multilevel simplification, where representatives from all involved territorial administrations and private stakeholders could have their say, marked another profitable change in simplification policies.

Notably, the launch of a national Agenda for simplification for 2015-2017 (and updated versions thereof), agreed upon by all the concerned public and private actors, paved the way for more implementation-oriented interventions, being based on a roadmap of actions in various policy fields, and on their steady monitoring. In its previous version, the Agenda contained sections devoted to simplifying citizen-related procedures alongside those more directly addressed to businesses: welfare and health, taxation, and digital citizenship itself, whose main goal was to «ensure online delivery of a growing number of services and access to noteworthy information by citizens (and businesses) directly via the internet, through a tablet or smartphone». The planned actions therein were the creation of a Public system for digital identity (SPID) – about to be dismantled at the time of writing –, the accomplishment of the National Resident Population Register (ANPR), the digitalization of civil, criminal, and administrative trials, the diffusion of e-payments and publication of average payment times by the p.a., the implementation of the digital revenue stamp, and of the 'how to' (*Come fare per*) section on institutional websites. Most notably, the actions planned in the welfare sector were only to a little extent based on service digitalization, as they were still pursuing time and burden reduction (e.g., to obtain disability benefits). The Agenda was committed to ensuring multi-channel access to healthcare service bookings and online access to medical reports by 2017, which was only partially achieved.

However, when it came to extend its duration beyond 2020, the Agenda became a tool for speedy recovery through fast-track procedures on the verge of the adoption of the NRRP, and the focus was moved back to businesses, whereas other administrations, like the National institute for social security (INPS) or the Revenue agency had autonomously digitalized most citizen-oriented procedures under their control, and made those launched in the wake of the pandemic digital by default.

2.2 *Digitalization of Service Delivery*

Running in parallel with simplification, digitalization policies in Italy were launched since the early Nineties, albeit quite late compared to the European average. They were mainly characterized by an unstable and at times too isolated governance. On the one hand, since the beginning a wealth of *ad hoc* bodies were created to manage digital transformation, either overlapping or succeeding one another; on the other, they acted separately from the governance in charge of managing 'traditional' administrative reforms, thus keeping digital innovation in p.a. as an occasional solution. This caused a huge delay in the integration of both policies and in the achievement of actual results in service delivery, which are still below EU average, according to the *Report on the state of the Digital Decade 2023*, published by the European Commission. The Report, however, acknowledges that increased efforts are being made lately.

It would be only in recent years that digitalization started to be considered as an integral part of p.a. reforms and of simplification. Indeed, digitalization is always more seen as both a tool (*cause*) and an outcome (*effect*) of administrative simplification, in an unavoidable interplay that gained patent recognition only in the wake of the NRRP.

Moreover, the first investments were oriented to sustaining employment in the IT sector, and to diffuse basic ICT across the p.a. Most efforts, therefore, were directed towards internal processes and infrastructure to allow data diffusion between administrations. Digitalization of service delivery only came at a later stage, thanks to exogenous factors like the EU pressure and the global digital revolution at large. In 2000, in fact, the first comprehensive Action Plan for e-Government was launched by the government led by Giuliano Amato, with the then Minister for p.a., Franco Bassanini, at the forefront for a major administrative reform. The Action Plan aimed, among other, at ensuring citizens «integrated services, no longer fragmented according to the competences of the single government units», and «telematic access to information and services delivered by the p.a.».

Despite the context, it proved a far-sighted instrument, as it was able to address at once the key issues of digital transition: the creation of a network able to interconnect local and state IT and eventually the implementation of online public service delivery (e.g., the electronic identity card, digital signature), also through the SDG, which, as we already know, would only be implemented way later.

Digitalization of public service delivery, overall, went at different

speeds depending on the sub-sectors concerned, often by responding to needs of the hour or taking advantage of *ad hoc* fundings, rather than resting on a common framework. In the following, four major service delivery sectors that are outside of the scope of simplification policies for businesses (civil registry, healthcare, social security, tax) will be considered, to provide for a comparative overview of the different outcomes achieved by digitalization. For each of them, five conditions will be briefly analyzed, related to: a) the existence of an *ad hoc* internal organization to manage digital innovation; b) the adoption of the principle 'digital first', whereby data and documents are directly created in digital format; c) the service delivery model, that can either be a *self* model, when citizens and businesses operate directly without intermediaries, *mediated*, when officers are needed to complete the procedure, or *mixed*, when both previous models coexist; d) the approach to service delivery, which can be *reactive*, when the p.a. only responds to private requests, *proactive*, when it advances private requests by proposing and even delivering services to the eligible ones (as in the ultimate stage of digital maturity), or *mixed*, when both approaches coexist; e) the adoption of a digital transition multiannual strategy, through plans, roadmaps, etc.

Civil registry

The project to create a single ANPR is long overdue. It is among those that have suffered the greatest delays in implementation and that only the recent push from the NRRP seems to be revitalizing. Nonetheless, over the past few years the SPID had an acceleration, whereby the 61% of the population had activated their SPID in the late 2023 (according to data provided by the Polytechnic University of Milan). Likewise, the electronic ID card (CIE) still coexists with paper versions, whereas its full digital potential is still being implemented by the p.a.

The 'digital first' approach is at the basis of current innovations, yet it is still far from being the main one. Moreover, the services directly offered by the p.a. following users profiling are still very few, as the concerned p.a. offices mainly respond to requests and specific inputs. Another feature of civil registry services is that, although they fall under the competence of the Ministry of interior, their digitalization is being managed by the Department of p.a. within the Presidency of the council of ministers together with the Department for digital transition and the AgID. Therefore, their digitalization strategy is put forward by the Government as a whole, also given its strategic importance for digital citizenship, but no specific plan is carried out by the Ministry of interior.

Healthcare

The digitalization of healthcare services has long been debated and advocated; however, it is still far from accomplished, to the extent that it is among the core missions of the NRRP. It currently pursues two main objectives: the Electronic Health Record (EHR), a digital tool through which citizens can trace and collect their medical data and share them with healthcare professionals, and telemedicine, based on the use of ICT to provide and support healthcare at a distance. However, their full implementation is not close, yet. Recently, steps ahead were made with the diffusion of the e-prescription, also thanks to the pandemic which made it necessary in times of social distancing.

Given the above, digitalization of healthcare services has long been delayed due to the opposition – or the lack of support – by many concerned parties (like doctors and patients, still preferring in most cases to resort to traditional medicine tools), but also to the multilevel system of competences attributing most decisional and executive powers to the regions (which often fall short of resources to carry out such major reforms on their own). Although the Ministry of health has a DG devoted to Digitalization, information system and statistics, it is now working in conjunction with the government to achieve said objectives, thanks to the driver represented by the NRRP (as in the civil registry). In most other cases, therefore, the 'digital first' principle still has not found concrete applications, whereas most documents are still produced in paper format. Moreover, given the delayed implementation of the EHR, the delivery model is still mostly mediated by the medical staff (like doctors, pharmacists, etc.) or by the administrative officers managing healthcare service booking (which coexists with non-mediated procedures for those patients able to access them via their digital identity). Likewise, except for the lucky situations where widespread screening programmes are available and operating, the approach is mostly reactive. Proactive healthcare, in fact, is among the future targets, as clearly foreseen by the Health Ministerial decree no. 77/2022. However, to be implemented proactive healthcare must rely on a functioning system of population layering, according to the degree of intensity of each one's needs.

Social security

The INPS is among the administrations who most pointed to digitalization of service delivery, even before the pandemic. It is endowed with a structure for Technologic Innovation and digital transformation, and in 2020 it adopted a two-year strategic Plan for innovation and

digital transformation, which has already been updated once for the current period. Among the INPS' core objectives is putting citizens at the centre and being proactive in proposing solutions and services ahead of their requests, through an integrated *data-driven* approach. In the last version of the Plan, the INPS foresees the delivery of «services conveyed to users based on their characteristics (e.g. impact simulators for those requesting information on specific institutions), or notification services on benefits potentially due according to certain events in their life» as a close achievement.

In the wake of the pandemic, the INPS was charged with managing the first emergency services (bonus, vouchers, etc.), and, besides some technical difficulties met in handling the 'click-days', it got to cope with an unprecedented data flow and to offer a wholly digital assistance in most cases. Moreover, for most procedures the INPS is now able to release and receive digital born documents and files without having to ask for paperwork.

Tax

The Italian Revenue Agency, as well, is recently pointing to its full service delivery digitalization and to go 'digital first' for its main procedures (e.g., the e-invoicing, considered an international best practice). Moreover, through the introduction of the pre-compiled tax form for a growing number of taxpayers, it also enhanced its proactive approach, which coexists with the traditional reactive one for procedures activated by the users. Another proactive initiative is related, for example, to the automatic delivery of the health card at birth.

The Agency adopted its first three-year digital strategy in 2017, updated ever since, where service delivery digitalization played a central role. Being so prone to innovation, the Agency has a dedicated Central direction for technology and innovation, where such policies are elaborated and carried out. Like in INPS, the Agency has already put in place procedures that can be activated and completed by users, without intermediation (e.g., the self-consultation of the Tax Box).

The above quick overview allows us to identify differing patterns of service digitalization, even in the same context, although it only considers some of the main possible aspects featuring digitalization policies. Table 1 synthesizes it quite simply.

Table 1: Patterns of digitalization of service delivery in four policy sectors

	Ad hoc structure	Digitalization strategy	Digital first principle	Delivery model	Approach
Civil registry	No	No*	Yes	Mediated	Reactive
Healthcare	Yes	No*	No	Mediated	Reactive**
Social security	Yes	Yes	Yes	Mixed	Mixed
Tax	Yes	Yes	Yes	Mixed	Mixed

* Civil registry and healthcare are included in a government strategy for digitalization, which has now flown into the NRRP.
** Although some efforts are being made to introduce proactive mechanisms.

Unsurprisingly, the two sectors where digitalization is most delayed, civil registry and healthcare, were targeted by the NRRP with a view to speed up implementation of the main interventions launched (or just advocated) so far. Noteworthy, they are both sectors impacting on large portions of the population, often unable to self-advocate for simplification or innovation, to the detriment of the overall country wellbeing and general performance.

2.3 *The Pandemic, and the NRRP as a Driver for Policy Integration*

With the outspread of the pandemic, both simplification and digitalization policies received a significant boost, and eventually partially integrated as regards public service delivery in the NRRP.

As for simplification, the positive experience of the Agenda and the further need to design fast-track procedures to deliver the first urgent recovery services during the lockdown (while ensuring continuity in the ongoing services, although at a slowed-down rate) represented the base for the interventions included in the Plan. Such fast-track procedures had to be born digital as people could not freely move to go to physical offices, therefore digitalization too became an unavoidable tool to achieve procedural speed-up and simplification; in turn, it was only achievable through process simplification and decluttering, in order to provide the concerned institutions (notably, central p.a. and the regions) with fair and equal conditions to operate. The once-in-a-lifetime chance provided by the NRRP could not be missed, so that, on the one hand, digitalization became one of its six Missions, and the resources thereof cover a 27% of the total funding, while administrative reform (within which simplification plays a key role) is one of the two horizontal reforms supporting the whole programme. Noteworthy, not all funds for digitalization are allocated on public service, since infrastructures and digital competences are also other

crucial targets: public services digitalization cuts across many areas of interventions, among which are public data migration to the cloud, open data, database interoperability, securing strategic data, and digital skills.

In the section remainder, the focus will be on the interplay of administrative simplification and digitalization of service delivery in the NRRP interventions, which represents a remarkable part of the efforts put on p.a. innovation.

First, it is worth underlining that the NRRP builds around the idea that unaccomplished reforms should be properly implemented before enacting further interventions. Consequently, the p.a. reform rests on a set of principles, named ABCD due to their initials (A standing for Access, B for Good administration (*Buona amministrazione*), C for Competences, D for Digitalization), that hugely draw from past experiences and explicitly recall the previous Agenda for simplification. The B principle, Good administration, is in turn distinguished into: a) time reduction for administrative procedures; b), liberalization, simplification and reengineering of administrative procedures; c) digitalization of administrative procedures dealing with buildings and businesses, and further implementation of the dedicated SDGs; d) policy monitoring.

Translated into specific targets, the NRRP includes the following activities: a) mapping of the existing procedures and of their administrative regimes, to reach at least 600 of them; b) the elimination of authorizations that are not justified by overriding reasons in the general interest, the elimination of requirements that are unnecessary or are not based on new technologies; c) full simplification and digital redesign of at least 200 critical procedures, selected following consultation with the stakeholders. About the last point, digital redesign of administrative procedures for service delivery (basically intended for businesses, and to a smaller extent – private building projects – to citizens) mainly translates into the digitalization of forms to fulfil, which should now be digital by default and no longer require intermediation by officers to be filled and handed over the competent administration. Moreover, in so doing all possible differences across the regions should be zeroed. This is only possible if information and declarations therein are conceived as digital data that can be equally processed and uniformly translated by all involved administrations, in the form of interoperable open data.

In terms of governance this implies multidimensional integration. First, as the regions have legislative and normative competence in the sectors involved (trade, craftsmanship, tourism, etc.) it requires vertical cooperation between the Ministry of p.a. and the Conference of regions.

Second, a strict horizontal cooperation between the Ministry of p.a., competent for administrative reform and coordination of simplification activities, and the structures in charge of digitalization, like the AgID, is necessary: they must work in conjunction to translate simplified information required to users into interoperable data. Without such cooperation, indeed, (any) policy integration could not take place.

Digitalization of forms for business activities is not the only way to reach the digitalization target within the NRRP, albeit it covers a large part thereof. Among the 200 procedures, we also have those that are wholly handled online by other administrations; in this respect, we have already pointed to the role of such administrations as the INPS and the Revenue agency, both contributing to the achievement of the objective.

Another cornerstone for full fruition of digital services for businesses and building activities, as advanced, is the implementation of the two dedicated SDGs, institutionally located at the municipal level. The project aims to create a Digital Ecosystem of the SDGs, that ensures machine-to-machine communication between the ICT systems of the administrations involved, to streamline the implementation of procedures, ensuring their compliance with the new national technical specifications (approved in September 2023). Concretely, after defining common standards and procedures, the project means to safeguard the existing assets (provided they fit with said standards) and to supply the other administrations with a subsidiary solution, when needed.

Alongside the abovementioned overview of the interventions aimed at pursuing simplification through digitalization and vice versa, the NRRP devotes remarkable fundings to other forms of digitalization of public service delivery, mostly in the four sectors addressed previously. Actually, very few lines of intervention are about brand new policies, since (as stressed by the above discussion) many are more intended to give effectiveness to longstanding projects which never made it to their implementation.

3. *Discussion and Conclusions*

The previous sections briefly outlined how service delivery simplification and digitalization in Italy long remained two almost parallel policies, managed by differing governances and barely interconnected. They also pointed to how their integration started relatively late and, as

with most countries, it gained momentum after the pandemic crisis, with the huge opportunity offered by the EU Recovery fund not to be missed.

Looking more closely at digitalization of public service delivery in Italy, we have identified some peculiar aspects that likely contributed to shape the current context and to its backlogs.

To start with, its separation from the major p.a. reforms, including simplification ones, did not help to properly integrate innovation principles into the daily administrative culture and the new procedures set out meanwhile.

This also led to a patchy pattern in the development of digital services, with some sectors more advanced than others (as Table 1 shortly illustrated). Among the variables considered was, indeed, the reactive vs. proactive approach to service delivery, which marks the actual distance from a citizen-centric government as understood by the OECD, the EU and its many advocates. Moreover, whenever own digital strategies were in place ahead of the NRRP, possibly in conjunction with *ad hoc* structures, proactive services proved closer to full implementation. While this seems to be the case with tax and social security, simplification and digitalization of service delivery for businesses and building activities still revolves around a traditional reactive approach, alongside the health and civil registry sectors.

This demonstrates that the full development of digital services in the Italian administration has still a long way to go, if we consider it along a *continuum* from a basic model where online assets are available, to one where the p.a. is able to suggest services and goods according to its citizens' needs and features.

Nevertheless, it would be unfair to not acknowledge the huge steps ahead made in recent times in procedural redesign and digitalization, and, more generally, in the innovation of p.a., also in terms of governance (which is now more stable than before). The present contribution has also contributed to highlight the merits of the NRRP in bridging the gaps between, on the one hand, the larger p.a. reforms and its digitalization policies and, on the other, the degree of digitalization of the sectors involved.

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Gianluca Sgueo

Technology, Entertainment and Design

Abstract: This chapter explores the convergence of technology, entertainment, and design and how it has profoundly reshaped society, particularly in the context of digital democracy. The discussion highlights both the positive and negative effects of this convergence on democratic systems. While technology has enhanced citizen engagement and access to public administration, it has also led to dissatisfaction due to unmet expectations in digital democracy. The chapter critiques the mimicking of consumer technology in public digital services, arguing that this approach leads to what is termed the 'digital undemocratic' paradox. It calls for a reimagining of digital democratic spaces, emphasizing the need to embrace complexity, prioritize interaction over outcomes, and incorporate creative elements like game-design to enhance civic engagement. Despite these challenges, the chapter claims that the future of digital democracy is still unfolding.

Keywords: Digital – design – democracy – aesthetics – user interaction – complexity – civic engagement – experimentalism – innovation – technology.

1. *Introduction*

Pick up the smartphone in your pocket and take a look at it. There is a good chance that you have done this multiple times today. The one billion users of Android mobile systems receive an average of eleven billion notifications per day. Those using Google's email service receive notifications of incoming messages by default at the upper right corner of the screen, the visual angle that is most likely to catch our attention. As a result, on any given day, the average smartphone user spends three hours and fifteen minutes on their devices, averaging around fifty-eight different 'checks'. Divided per waking time, this is roughly one interaction every four minutes. In 2012, the average time spent on digital screens was around seventy-four seconds before switching. From 2016 to 2021, it fell to forty-seven seconds. By 2025, it is estimated that a mere eighteen

seconds will elapse between one interaction and the next.

But it is not just the quantity of time using our smartphones that has changed – the quality of time spent on our devices has also undergone a profound transformation. These days, the making 'voice to voice' telephone calls on a smartphone seems old fashioned when compared to the plethora of newer ways a device can be used to communicate and share information. Smartphones are used primarily to exchange messages with friends, colleagues, and family members, via instant messaging applications. Arguably the most well-known – WhatsApp – conveys forty-one million messages per minute globally. In 2022, it was the fourth app with the most downloads worldwide.

Have you ever wondered what makes our smartphones – and more generally our digital screens – so attractive? Ease of use is a starting point. For the most part, devices are fast and relatively easy to use. Moreover, despite often being prohibitively expensive, they host plenty of personalized services, many of which are offered free of charge – or so we would like to think, anyway.

In reality, our repetitive interactions with digital screens have quantifiable costs that – according to a study published in the Harvard Business Review in 2022 – adds up to almost one tenth of our productive time every year. In this study, the authors measured the frequency with which 'Knowledge workers' (who work primarily with computers) toggled between different mobile applications over the course of a working day. They quantified an average of one thousand and two hundreds switches per day between apps and websites. The time workers needed to spend acclimating to the semantic context and purpose of new applications after each switch was given the label 'toggling tax'; it was calculated to account for about nine percentage points of the annual productive time of digital workers.

Aside from productivity, pervasive digital technology bears social, environmental, and political costs – most of which have not yet been fully identified. So, as it stands right now, we can state that an extraordinary combination of advanced technology, enticing entertainment and captivating design has evolved to the point of locking many of us into a morbid relationship with our smartphones (but the same applies to other technological products and services). The consequences are significant and touch on multiple aspect of our lives: how we relate to others, what we expect from our elected representatives, or whether we choose to engage in civic activities like voting, signing a petition or participating in protests (both online and offline) – and the list goes on.

This will be addressed in the coming pages. But to begin, we need to

clarify another point: when exactly did technology, entertainment and design become so intertwined?

2. *The Intersection of Technology, Entertainment, and Design*

To answer this question, we need to take a step back in time to 1984. That year, Richard Saul Wurman and Harry Marks co-funded an event that would, a decade later, become a globally acknowledged and widely celebrated format for public speeches: TED Conferences. Wurman and Marks envisioned an event that would capture and celebrate what they believed was a nascent and promising trend. Their intuition was simple but brilliant. They had realized that technological innovation, entertainment, and design – until then, three distinct areas – were not just becoming more similar; they were actually converging. As this occurred, these fields amplified the magnitude of their impact on societies, economies, politics and institutions globally. The compact disc, the e-book, and 3D graphics were all showcased during the first TED conference. These innovations would eventually be hailed as successes and are now taught in business schools all over the world.

While time proved Wurman and Marks correct, the two graphic designers were certainly not responsible for starting the process that led to what are now called 'mass consumption electronics', that is: both highly sophisticated and carefully designed to entertain, serve and – most importantly than ever – gratify us.

Smartphones, tablets, smartwatches and the majority of digital services and applications we use every day (multiple times a day, as we have just seen) are the result of a transformation spanning two centuries and involving cultural, political, economic and societal factors. Commodity economy, urbanization, and colonialism are caught up in this process. Futurism, amateur photography and language have also played a key role in this transformation.

Point taken for now. We will come back to it later.

This transformative process, fueled by converging and overlapping patterns of design, tech and entertainment, is still ongoing. Its destination (if ever there was one) remains uncertain and subject to debate. The actual effects for democratic systems, however, are already plain to see.

These are in part positive and in part negative.

Technology, for a start, has dramatically changed the 'infrastructure' of democratic systems – that is, both the number and quality of connections between citizens and public administrations, the physiognomy of the public space, and access to information. With technological progress, social interaction costs have lowered radically, and citizens have gained improved access to public structures through digital communication channels. This also explains why innovative, tech-based approaches to inclusive and participated policy-making have become the subject of a growing debate between academics and politicians.

Let us be clear though: utopias of tech-savvy, self-organized societies made their first appearance around forty years ago, with the surge of cybernetics and the attempt to automate public processes for a more efficient state. In 1970, the socialist government of Salvador Allende in Chile tested a primitive form of 'algorithmic regulatio' aimed at controlling state-owned industries. The Cybersyn Project worked on the creation of the so-called 'liberty machine'. This machine would operate in close to real time and facilitate instant decision-making, through a distributed network of shared information.

The Cybersyn Project was fascinating and ahead of its time. However, it has only been in the last twenty years that the number of projects and discussions on the possible advantages and disadvantages of using technology in interactions between individuals and public bodies has exploded. Every day new conversations are being had as to the benefits (and potential threats) of technical advancements associated to democratic institutions by academics, legislators, civic advocates and public officials. Here is a striking example: no less than thirty-one officially recognized methods are being used in social sciences for theorizing, measuring, and applying deliberative democracy. Most of these methods are directly related to technological aspects, either as a tool for research (survey methods, indexes, and process tracings, for instance) or as the main area of analysis (as with the cases of online deliberative matrixes, social networks and big data analyses).

Another beneficial consequence influenced by technology, design and entertainment into democratic processes consists of the prominence gained by design-thinking applied to problem-solving in public policy. Design-thinking broadened the very idea of 'design', moving it beyond the construction of physical products and spaces, into politics and policy, and elevating designers to a kind of medium capable of reinventing systems to better meet the desires of the people within them. After all, our age is quintessentially (and perhaps more than in any other moment

in history) the age of design. This makes the quest for 'good' digital design a contemporary challenge, in spite of very little agreement among academics and policy-makers on how policy and design relate and interact with each other.

This is accompanied by the progressive expansion of the role played by governmental entities in fostering innovation. From being primarily addressed to tackle market failures, innovation in government today is expected to simultaneously address societal, environmental and economic challenges, while creating new market opportunities.

Democratic participation provides a good example in this regard. Efforts in modernizing participatory channels through digital technology have evolved from redressing criticism on democratic deficits through fostering digital interactions with stakeholders to current attempts at designing policy-making in a friendly, captivating and participative manner. Improving user interaction, for instance, has allowed policy-makers to draw on a wider and more dispersed range of expertise, thus helping identify and co-create new approaches to so-called 'wicked' problems. Citizens' feedback to these efforts is very positive. Seventy-two percent of Europeans declare they would like to be able to vote in elections through their smartphone (while only seventeen percent would oppose it). There is even an alarming fifty-one percent of Europeans who would be excited at the idea of reducing the number of national parliamentarians and give those seats to an algorithm.

To give another example, policymakers have widened disparities in technical abilities, cultural diversity, and linguistic capabilities among societal classes by using design techniques focused on inclusivity. Following Graham Smith's groundbreaking research in the area, academics interested in this subject have started to look into and discuss how 'democratic innovations' are thought up and put into practice.

To complete the list of positive consequences stemming from overlapping trends in technology, design and entertainment, we should credit the latter for slowly but steadily making its appearance in public governance. Experimental approaches based on nudging and game-design have helped public regulators worldwide to overcome cultural hurdles by opening decision-making to citizens. We know that such approaches differ in many ways. At the same time, we also know that they are all premised on the assumption that entertainment holds great potential in capturing citizens' attention and stimulating their interest. Therefore, the complementary and holistic use of these various approaches, accompanied by ad hoc strategies to ensure participation by the widest possible

selection of stakeholders and interest groups (including outreach efforts, education- and awareness- building) and a design approach that is focused on inclusiveness, is being acknowledged by many scholars for its capacity to foster citizens' willingness to engage meaningfully in civic and political spaces in fun and rewarding manners.

Unfortunately, the impact of the increased use of technology in democratic processes is not limited to the positive aspects.

3. *The Contradiction of Digital Democracy*

Stronger ties between technology, entertainment and design have also transformed our relationship with (and expectations of) democratic decision-making. The widening gap between our expectations of everything related to digitalization, including government, and the actual rendering of digitalized public decision-making has resulted in perverse and troubling outcomes. One for all: the higher our expectations in technology, the lower our satisfaction in digitally based forms of democratic decision-making. It seems as if the metrics that almost magically push our satisfaction to the extra mile when using digital tools have limited impact or no effect whatsoever when they are reproduced in digital public spaces.

Understanding this point is crucial. Online, human behaviour unfolds in a market where attention is the main commodity. What citizens in digital societies desire is strongly influenced by what they perceive as valuable and rewarding. When we are online or when we use digital products, we have a tendency to overestimate certain factors like speed of service and user-friendliness, and to underestimate the costs – both for ourselves and others.

In a nutshell: our expectations in digital products and services are dazzling. This poses a crucial challenge to digitalised policy-making, in both national and supranational venues. Public regulators are seeing the poorest results ever recorded in terms of interest, engagement and retention despite using the most cutting edge and advanced technologies. Public authorities are not meeting citizens' demands for tangible, fast and gratifying returns. This dramatic – and still unresolved – clash of values is hampering trust and eroding confidence in politics and policies.

Many questions arise from this observation. First and foremost, what leverage should we place on the digital design of institutions, rules and spaces of democratic interaction? What weight must we give to aesthetics

in digital democratic governance?

Please note that this is simultaneously a methodological and a theoretical question. On the one hand, it leads us to wonder how digital government, and specifically digital democratic spaces, should be designed to widen the gap between expectations in and outcomes of democratic decision-making. In addition to procedural aspects, it forces us to consider whether aesthetic approaches to digital democratic decision-making are functional in handling efficaciously existing issues of civic engagement.

Building on these considerations, a first dilemma to solve: what makes electronics for general use, also referred to as 'consumer tech', so widespread and ubiquitous? Four reasons are prevalent in this respect. The first couple relates to usage and time. Most consumer technology is offered to us with simplified interfaces designed to quickly meet users' demands. The two additional features complementing hyper-velocity and over-simplification are singularity and gratuity, respectively. Combined, these four characteristics are primarily intended to gratify users, almost in real time. However, as we have just said, they come at a cost. Consumer tech's products and services are, on average, qualitatively lower in comparison to their analogical – or professional – counterparts. The images we share on social media, the songs we listen through streaming services, or the news we read via RSS feeds, online newspapers, blogs, and podcasts are all qualitatively rounded down.

Hence, understanding and accepting what can be described in terms of the 'Lo-fi nature' of digital services and products, is the first step to defining and assessing an aesthetic dimension of digital democratic spaces capable of matching the capacities of democratic structures and procedures with the expectations of citizens.

There are, however, existing fundamental design differences between consumer technology and digital democratic spaces. Democratic decision-making is antithetical to consumer technology on five grounds. First, digital democratic spaces must necessarily stay inclusive. Consumer tech instead can be – and often is – exclusive. Second, public regulation is designed after durability, while consumer tech plans its obsolescence. Third, with occasional exceptions, norms are designed to serve the interest of large and undifferentiated communities rather than targeting individual stakeholders. Intuitively, this implies that the principle of singularity permeating commercial technology is not applicable to digitalized public services. Fourth, virtual democratic spaces differ from consumer tech in terms of reliability. Consumers may always opt out and adopt cheaper alternatives – citizens do not enjoy the same degree of freedom. Fifth

and finally, public regulators and market operators differ with regard to competitive gains. The former, unlike the latter, operate outside of market conditions. For this reason, they have fewer incentives to innovate at scale.

Despite these distinctions, we nonetheless notice that the majority of digitalized public services in Western democracies are still predominantly modeled after consumer technology. Democratic interactions between citizens and public authorities are imagined and implemented by the latter following the standard criteria used by consumer tech.

This approach, I claim, is profoundly wrong, as it encourages a paradoxical outcome: the average citizen is less (not more) gratified and willing to interact with governments. I provocatively termed this paradox 'the digital undemocratic'. We may in fact accept our role of consumers with regard to the standardized Lo-fi technology largely available on the market. We actually adapt relatively well to the trade-off between rapid gratification and suboptimal performance. This compromise, however, becomes unacceptable when we think of ourselves as citizens interacting with public entities via online platforms or other digital means. With the overlap of the consumer's and the citizen's persona, the latter sets on expectations that digital public services are unable to fulfil. The idea that digital decision-makers are always capable of delivering rapid, simplified and effective responses to complex issues is misleading.

Democratic participation is a case in point. Many of us quietly accept complexity, duration, and even limited accessibility when it comes to analogue, offline, democratic decision-making. Nobody protests if, before voting at the polling station, they have to stand in line and wait their turn. Many of us are used to the inconvenience of having to travel to the town hall to discuss proposed changes to municipal planning with neighbours, knowing it will take time (and possibly be pointless). However, our acceptance quickly turns into frustration when we relate to, and engage with, digital spaces for public participation. It is as if we expect our digital democratic institutions to always be easy to interact with, capable of responding both immediately and effectively to our demands, and keep us entertained.

Why does this happen? This can be explained by recurring to the paradox of the 'digital undemocratic'. There are three arguments to explain why most democratic governments choose 'cookie-cutter' replicas of consumer tech design in the formulation of digital engagement mechanisms.

The first is a structural argument: archaic and inefficient public administrations are unprepared to meet challenges imposed by disruptive

events. However, unfortunately, the majority of public policies, indicators and standards aimed at engaging users in service design and delivery, involving them in testing and evaluating digital projects and initiatives, or monitoring satisfaction with digital governmental services, are focussed on delivering with impact and at scale. To put it simply, the problem is not digital democracy, but rather how we judge and measure it. The second argument I use to explain the digital undemocratic is procedural: increasingly complex regulatory issues, I claim, require coordinated solutions across a range of actors, sectors, and skills – something that is often lacking in the public sector. Interestingly, while traditional, top-down, regulatory approaches are ineffective at coping with the digital undemocratic, co-operative and networked approaches are not safe either, especially when confronted with issues of time- and resources- scarcity. The third argument is cultural. Public regulators have limited incentives to change because of existing safeguards from market competition and innovation. The quest for designing a more inclusive, transparent and gratifying digital democracy is primarily a cultural challenge.

4. *Conclusion: The Future of Digital Democracy*

Moving beyond the issue of the digital undemocratic and examines the possible futures of digital democracy, from an aesthetical point of view: I am aware of the fact that this is a contentious topic. In the view of some, technology dominates humanity, not the opposite. According to this theory (which I will call for simplification 'the fatalist argument') designing technology in accordance to people's expectation and in line with public institutions' capacities makes no sense. The fatalist argument is quite successful in media and public debate. However, upon closer scrutiny, it proves fallacious and is, for this very reason, unacceptable. With obvious differences, the fatalist argument can be likened Albert Speer's self-defence at the Nuremberg trials. Speer pleaded guilty. But he claimed he was not responsible for the crimes perpetrated by the Nazi regime. He was a technician, he argued.

Instead, I defend the validity of the aesthetic approach to digital democratic governance and civic engagement. I suggest that the former could (and should) be reconceptualized in order to boost the latter. Hence, the notion of digital participatory rights as fast and easy to enjoy should be abandoned. We should also downplay the suggestion that digital demo-

cratic decision-making can only be effective when it delivers rapid and successful responses to the issues of the day, regardless of its complexity.

How can we reach this goal? I explore three approaches with the aim of re-designing the aesthetics of digital democratic spaces and interactions, keeping a focus on complexity.

The first is related to storytelling. I propose public decision-makers should elaborate a storytelling approach to digital democratic venues that shifts the focus from immediacy to complexity. The latter, I argue, is key to frame a sustainable approach to narrating and encouraging citizens' roles in co-creating and co-designing digital public services. The idea of complexity, which consumer tech drives us to neglect, or even to escape, is fundamental to build a collective imagination of digital democratic systems.

Governing, after all, remains a complex action. It results from the contribution of different skills, operating on multiple levels: local, national and supranational. Those who govern are constantly challenged by uncertainty. In deciding, democratic powers have to weight in and out diverging interests. They need time to take in, evaluate and smooth out the differences between all interests at stake, in order to adequately protect all stakeholders. This is how digitalised democratic decision-making should be narrated. Undoubtedly, defending complexity is unpopular today. Yet it is necessary.

To define a storytelling of digital democracy that retrieves the importance of complexity is not enough. The second action I recommend to boost civic engagement via digital tools relates to the design of public spaces with a focus on the interactions, not the outcomes. Digital omni-channel experiences, for instance, should be optimised for the needs of different user groups, but have similar outcomes across all channels. Or, to make another example, citizens engaged in online participatory projects should be informed about the structures and procedures that are in the backdrop of the decisions they are called to co-create. To enhance interactions over outcomes is key for democratic decision-makers interested at nurturing healthy, sympathetic and long-term sustainable bonds with their constituencies.

Third, and finally, I suggest that digital civic engagement be encouraged through creative approaches – namely via game-design incentives. A growing body of scholarship, supported by empirical evidence, suggests that behavioural incentives applied to digital public spaces may encourage a more robust and longer-lasting engagement from participants compared with similar initiatives that make no use of such incentives.

My claim is that game-design applied to democratic governance may offer a chance for public regulators to gain the trust of citizens, and thus be perceived as legitimate; it adapts policy-making to budgetary and regulatory challenges; and most importantly, it may help to set up digital democratic offer in line with citizens' demanding needs. Indeed, as with any innovation in policy, game-design is not without concerns. Gamified democratic governance embodies a number of weaknesses, both practical and theoretical in nature. It is data-intrusive, for starters. Moreover, game dynamics are designed and modelled to meet the needs and please the expectations of certain categories of users. They may end up fostering exclusion rather than inclusion. Hence, in promoting game-design as a solution to the paradox of the digital undemocratic, I also take into account and discuss its most controversial and problematic facets – namely: resource-consumption, privacy-intrusion, and long-term sustainability.

Will democratic public powers 'save' themselves from the market? How will they make digital spaces more attractive – but also effective – at engaging citizens? This is the story I would like to tell. It is a tale made of enormous and diverse obstacles – structural, social and cultural – that widespread digital technologies present to democracies that are losing ground, and how these challenges could be overcome. Let us be clear upfront: it is primarily a story of delays, unfinished journeys, loneliness and bewilderment – all stemming from our unmet, dazzling expectations for digital democracy. But there is a positive aspect to all of this: the story is still on-going and the final chapter, positive or not so positive, is yet to be written.

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E-Democracy: Challenges and Hopes on the Path Towards a 'Digital Agora'

Abstract: The swift development of digital technologies has profoundly transformed several aspects of our lives, including our roles within the public and institutional spheres. When analysing this phenomenon, one must acknowledge that modern democracies are experiencing a crisis, which is distancing citizens from public participation and weakening the representative functions of political institutions. In light of this troubling context, enhancing public participation within democratic life appears to be a necessary solution. Proponents argue that E-democracy, through the use of ICT technologies, can create new dialogue spaces between citizens and political representatives, potentially transforming traditional forms of participation. Nevertheless, although technology can enhance political and civic participation, it is not a panacea for increasing the quality of engagement. Traditional barriers, including time constraints, lack of willingness, and an overall declining trust in political institutions, remain extremely relevant. Moreover, when looking at concrete cases where the use of technology was applied to democratic processes, issues such as digital divide, user engagement, tech complexity and transparency have often arisen. Through a critical examination of both scholarly literature and practical case studies, the article wants to contribute to the ongoing debate around this double-faced phenomenon, emphasizing the need to balance technological progress with the protection of democratic stability, inclusivity, and transparency.

Keywords: E-democracy – civic participation – digital platforms – technological governance – democratic innovation.

If one is to look to new forms of direct participation, he must consider the technological transformations that have changed everyone's social and political lives. Indeed, one cannot help but wonder if the future of

democracy depends on its ability to adapt to the evolving times.

In the contemporary era, the advent of digital technologies has radically transformed the landscape of democratic participation and public discourse. This transformation is most vividly seen in the rise of e-democracy, where digital platforms are increasingly utilized to enhance citizen engagement and public decision-making processes. The integration of these technologies into the democratic fabric undoubtedly offers opportunities for enhancing transparency, inclusivity, and participation. However, this integration also raises significant challenges and concerns regarding privacy, misinformation, and the potential erosion of public trust as well as the risk of a hyper democratization that could potentially engulf decision-making processes.

Nevertheless, digital platforms, encompassing social media networks, online forums, and e-voting systems, are becoming increasingly popular: this 'democratization of information' has the potential to level the playing field, allowing more voices to be heard and fostering a more inclusive public sphere. Of course, the same characteristics that facilitate openness and accessibility also introduce vulnerabilities.

While digital platforms can theoretically enhance participation across diverse demographic groups, the digital divide - marked by disparities in access to technology based on socioeconomic status, age, and geography - continues to pose a formidable barrier. This questions the extent to which e-democracy can truly be representative of the entire population.

This article seeks to explore the intricate dynamics of e-democracy within the context of digital platforms, examining the multifaceted roles these technologies play in the institutional space as well as analyzing the philosophical debate that surrounds the integration of ICT technologies within the public sphere.

Through a critical examination of both scholarly literature and practical case studies, the article aims at contributing to the ongoing debate on the integration of new technologies in the democratic life while recognizing the need to find balance between the promise of technological advancement and the need to preserve democratic stability.

1. *The Debate: Technology as a Stimulus for Representative Democracies*

There is a wide consensus around the thought that modern democracies are experiencing a period of crisis.

Many identify political inequality, the decline of traditional forms of political participation, and the rising influence of non-majoritarian institutions as the most pressing concerns. They emphasize that in a democratic government, citizens should have the ability to influence the political agenda. To achieve this, a greater number of participatory spaces in various forms, such as referenda and group deliberations, can be essential tools. Most critics also argue that civic engagement and political action are crucial for the achievement of a true democratic citizenship. Overall, when looking at the decline of western democratic systems, scholars suggest that the crisis of representative democracy might be addressed by enhancing citizen inclusion, granting them more direct power.

Naturally, in this complicated and challenging context, the debate on the role that technology could play in democratic processes has become predominant. Indeed, the attempt to address the deficit of participatory democracy through the use of innovative technological tools falls within the following widespread belief: the crisis of modern democracies must be tackled by placing the individual citizen at the center of decisions, whether directly involved or represented by decision-makers.

Today, there is speculation about the form and value that democratic systems will take in the coming decades. This trend and this reflection cannot ignore how technological development will impact the institutional life of future democracies.

2. *The Concept of E-Democracy*

Being aware of their crisis, democracies are already adapting to the increasingly crucial need for civic participation, recognizing the potential benefits that could arise from the successful integration between politics and technology. For example, the Italian Digital Administration Code states that the Italian State must promote the use of new technologies to «Encourage greater citizen participation... in the democratic process and facilitate the exercise of both individual and collective political and civil rights».

The introduction of the internet - and everything that has resulted

from it - has pervasively changed almost all aspects of our social interactions. The advent of platforms, social media, and the increasing accessibility to technological tools have forcefully raised the issue of e-democracy, a historical form of democracy in which «Citizen participation in the activities of local public administrations and their decision-making processes» is guaranteed and stimulated «through the use of new communication technologies».

At its core is the use of ICT technologies to open new dialogue spaces between citizens and political representatives, thereby strengthening or, in specific and more extreme cases replacing, more traditional forms of participation.

The debate on the role of technology within the democratic process has been ongoing for decades, and e-democracy experiments are numerous, varied and include the use of a wide range of technologies, including emerging ones. Consider, for example, the still unexplored potential of , which some believe could promote greater transparency and civic participation in the institutional and political life of modern democracies. The discussion is open, but the perspective that new forms of 'technologically integrated democracies' are the future path for reviving faltering democratic mechanisms has been widely established, well beyond the – still ongoing – theoretical-philosophical debate.

3. *Digitalisation Is not a One-Size-Fit-All Solution for Democracy*

Although the goal of e-democracy, whether participatory or direct, is to strengthen democratic principles, the increasing use of technology in decision-making processes is not without criticism and concerns.

Indeed, despite the premises outlined so far and the partial success of some cases listed below, it is crucial to understand that digital tools are not a panacea for increasing participation and enhancing the quality of citizen engagement. These tools will not necessarily address some of the common hurdles to participation and may even add layers of complexity. The two following paragraphs will briefly discuss these challenges.

Traditional hurdles to participation include the available time, lack of willingness to participate, declining trust in political institutions, and reluctance to keep up with news. Firstly, since the benefits of participation may not be apparent, citizens may be reluctant to spend their time engaging in politics. Secondly and more broadly, incentives to participation are

often scarce. Thirdly, figures report a trend of declining trust in political institutions at the European level, which negatively affects participation. Ultimately, 'news avoidance' describes the increasing number of citizens who do not actively engage with news, especially when they are about politics. All in all, these factors are neither necessarily exacerbated or reduced by technology, making it unrealistic to view technology as the sole solution.

Moreover, technology may introduce additional complexities for citizen engagement. In the context of the EU's Digital Decade, significant disparities exist in areas such as digital skills, access to technology, and the digitalization of services. Citizens do not possess the same level of knowledge, resources, and literacy to effectively engage with digital technology. Therefore, digitizing processes do not automatically facilitate and enhance participation.

Acknowledging such factors does not dismiss the potential of technology for e-partecipation. It is, however, key to substantiate our analysis and consider all the dynamics that may hinder digital democracy: while technology could play a critical role, it is never a standalone solution.

4. *The Danger of Hyper-Democratization*

In the previous paragraph, we considered the challenges related to participation, emphasizing that civic engagement cannot be solely stimulated by the introduction of new technologies into democratic life; rather, it should be promoted by institutions in a broader way, with the ultimate goal of rebuilding a relationship of trust between politics and citizenship. In this respect, technology has a supporting role, not a leading one. Alongside this perspective, it is also interesting to analyze a second viewpoint. A school of thought posits that technology inherently stimulates participation. However, these scholars highlight a different risk, associated with the possibility that an excessive public involvement in the institutional life, could lead to a so called hyper-democratization.

Indeed, other critics, when considering the problems tied to the concept of e-democracy, underline the possibility that an excessive use of ICT technologies in legislative processes would lead to the polarization of positions without the possibility of compromise, effectively stifling dialogue and blocking decision-making processes. Others see technology's use as '' marking the beginning of a 'plebiscitary drift' that would hinder

the proper functioning of institutions. As philosopher explained, history does not provide any examples of an entire population exercising sovereignty. A potential manifestation of this problem concerns the minimum threshold of signatures required to activate the abrogative referendum in Italy. The currently required 500,000 would, according to some, be proportionate only for 'analog' collection. If transposed into the digital dimension, it would represent a small number of adherents, easily achievable, as happened with . This could lead to a multiplication of referendum requests, favoring a 'hyper-democratization' and exacerbating a legislative inefficiency that many already critic when talking about contemporary democratic systems.

The main consequence of this critical reasoning is that, if managed inappropriately, technological development and its integration with democratic systems could lead to a sort of dominance by the '*demos*', ultimately incapable of making considered and compromising decisions, both in the context of direct democracy, where the risk would be greater, and in that of participatory democracy.

Rodotà, as early as 2009, in his famous «Tecnopolitica», lucidly illustrated the potential effects of technological development on public management. The jurist observed how information and communication technologies had the potential to give new forms to politics, but to also generate new risks. The challenge, therefore, is to ensure that the use of technology in the democratic process is not an end in itself but a means to achieve a more participatory and inclusive democracy. However, once the potential of integrating ICT into democratic processes was established, focus should be on the effects induced by the phenomenon of electronic democracy and on a possible dual outcome: on one hand, integration equates to more participation, but on the other, massive recourse to new digital tools could lead to the establishment of a «Separate political sphere, which would assume mainly representative functions that traditional institutions would have lost, thus depriving them of strong legitimacy and emptying them of their historical role».

The dichotomy is always lurking, and this specific issue remains unresolved. The opportunity to revive participatory democracy and the risk of citizens turning to new spaces for deliberation and new means of democratic organization, which isn't necessarily a positive development, are the two sides of a double-edged phenomenon.

On the other hand, despite doubts and criticisms, it's undeniable that a measured use of technology within democratic mechanisms could stimulate political and civic participation.

In order to have a better understanding of the practical benefits and problems that the integration between democracy and technology can bring to the table, it is necessary to look at real cases, that can give a better understanding of the concrete consequences that have arisen, going beyond the philosophical debate.

5. *Application of E-Democracy: A Recent History*

The intersection of technology and democratic engagement has given rise to several noteworthy experiments that demonstrate the potential for enhancing civic participation and governance through digital means. This section of the article will focus on case studies where the integration of technology in democratic life has been executed with some success.

The analysis will explore various global examples, ranging from e-voting systems that increase accessibility, to online platforms that facilitate direct citizen input in legislative processes.

It is indeed essential, in order to gain an understanding of how technology can serve as a catalyst for democratic renewal, to look at the best practices we have gathered so far.

5.1 *Estonia: Pioneering Digital Governance*

Estonia exemplifies the profound impact of digital transformation in governance, emerging as a preeminent digitized state on a global scale. This Country has leveraged the potential of digital technologies to forge innovative democratic solutions since its independence. Recognized internationally as a pioneer in digital services, Estonia has established itself as possessing one of the most sophisticated digital societies in the world.

Currently, most of the Estonian Government services are accessible online, spanning multiple sectors from commerce to healthcare. Yet, the Country's major achievement lies in the realm of digital governance.

In 2000, Estonia overcame its paper-based bureaucratic systems in favor of a fully integrated digital e-government platform. This shift markedly enhanced administrative efficiency.

In 2005 the Country implemented its I-voting platform, marking Estonia as the inaugural nation to adopt electronic voting at a national level. This system allows citizens to participate in local, national, and European

elections via an online platform. The I-voting significantly diminished the logistical costs associated with traditional voting methods and was rapidly adopted by the electorate for its convenience and reliability.

Estonia's digital strategy also includes the facilitation of citizen engagement in governance through electronic petitions and other participatory platforms. The government has developed secure applications that employ digital signatures and sophisticated authentication methods to prevent electoral fraud, utilizing technologies that verify identities based on IP addresses and emails.

Moreover, the national e-governance portal consolidates a variety of administrative functions, enabling citizens to manage everything from healthcare prescriptions and pension schemes to vehicle documentation through a single digital interface.

Possible Problems and Dangers

When talking about the concrete application of e-democracy, several criticisms and issues arise. Concerning Estonia's e-democracy system experts have for example highlighted issues related to the Country's digital divide and the need to protect voters' privacy.

Despite its success, some argue that the system may exacerbate inequalities between those with varying levels of digital literacy or access. Even in this highly digitized Country, there remain disparities in digital access and literacy that can prevent equitable participation in digital democratic processes. These gaps can disproportionately affect older populations and those in rural areas, where access to technology and high-speed internet may be limited.

Furthermore, concerns persist regarding the security and privacy of online voting systems, including potential vulnerabilities to cyber-attacks and the difficulty in ensuring voters' anonymity and vote integrity

5.2 *Digital Integration within Municipalities: the Cases of Barcelona and Madrid*

The digitalization of the public sphere has not only been experimented within nations. Several municipalities have tried to integrate the use of digital platforms to reinforce democratic participation. Some of the most noteworthy cases concern two cities in Spain: Barcelona and Madrid.

These two cities have engaged in transformative implementations of e-democracy, showcasing pioneering efforts to integrate digital participation into the fabric of their municipal governance.

Barcelona

Barcelona has taken significant strides in implementing e-democracy, particularly through its Decidim platform, which represents a comprehensive approach to digital civic engagement. Introduced in 2016, Decidim has facilitated an array of democratic processes, such as participatory budgeting, collaborative policy development, and public consultations.

The platform supports various participatory formats, including processes for active policy-making, assemblies for organizational collaboration, consultations for direct voting on specific issues, and initiatives where citizens can launch and promote proposals independently. Decidim offers in particular four different types of 'participatory spheres': Processes, Assemblies, Petitions and Conferences. Process spaces are designed for short-term initiatives involving multiple participatory stages (i.e. budget allocation); Assemblies are tailored for specific community groups such as local association networks; Petition spaces enable users to create, sign, and share petitions online, and lastly, Conference spaces are used to provide digital support for large participatory events, both in-person and online.

Madrid

The implementation of e-democracy initiatives in Madrid, particularly through the digital platform Decide Madrid, has been a pioneering effort in integrating digital tools into the democratic governance of the city. Launched as part of an effort to enhance citizen engagement and participatory decision-making, Decide Madrid has been both praised for its innovative approach and critiqued for its practical challenges.

A significant positive aspect of e-democracy in Madrid is its facilitation of a direct communication channel between citizens and the local government. The platform allows residents to propose, debate, and vote on municipal projects, thereby potentially increasing transparency and accountability in governance.

Possible Problems and Dangers

The implementation of digital tools within the democratic process has shown potential issues and challenges also within municipalities.

Firstly, the engagement issue is critical. Although the platforms are usually designed to be inclusive, the actual user engagement has shown significant variability. Indeed, participation is often concentrated among those who are already highly motivated and politically active, which may not substantially widen the civic engagement base. This results in a participation gap where the voices of the less politically active or

technologically adept are underrepresented, thus questioning the efficacy of these platforms in fostering truly broad-based democratic participation.

Secondly, the complexity of the platform's interface and functionality can deter widespread use. For examples, users have reported difficulties in navigating the platforms, with their multiple functionalities and engagement mechanisms posing a barrier to those less familiar with digital tools. This usability issue is a significant hurdle, as it can discourage participation from a broader demographic, thereby limiting the diversity of input received.

Moreover, issues of transparency and accountability in the process management have also surfaced. Critics argue that while these instruments allow for considerable citizen input, the mechanisms for how these inputs are processed and influence policy decisions are not always clear. The lack of transparent pathways for how contributions translate into tangible outcomes can lead to disillusionment and skepticism about the real impact of citizen participation.

Lastly, the maintenance and moderation of the platforms present ongoing challenges. Ensuring that the dialogue remains constructive and that the contributions are productive requires constant moderation to mitigate the risks of misinformation and disruptive behavior. The resource intensity of this moderation, coupled with the need for continual technical updates and security measures, places a strain on the operational capacities of municipal authorities.

6. *The Better Regulation System of the European Commission*

The European Commission has long utilized stakeholder consultations and dialogues to enhance the Union's political service quality. Initially, these consultations began informally but have since evolved into a structured process, exemplified by the comprehensive White Paper consultation that significantly influenced the European regulatory framework since 2001. The engagement process has been continuously refined, especially with the implementation of the Better Regulation guidelines in 2012 and further enhancements in 2015.

This framework of dialogue with stakeholders is aimed at fostering a more open and transparent decision-making system. Various initiatives introduced by the Commission allow for active contributions from individuals and organizations, with outcomes and inputs being traceable

through an online portal. This portal offers a comprehensive view of all engagement opportunities during and after the consultation process. It includes functionalities for submitting questionnaires, commenting on discussions, and monitoring policy positions through submitted documents, with interactive opportunities for engagement at every stage of the policy cycle. The consultations are formally structured around standard questionnaires, but the system also embraces a broader and more fundamental openness during the initial stages of the Commission's processes. Recent initiatives aim to involve the public throughout the policy cycle, enhancing the impact of stakeholder contributions on decision-making.

Although it is recognized that consultations may influence decisions that are often largely predetermined, the new approach under the Better Regulation framework seeks to significantly shape the policymaking process by valuing stakeholder input at all stages of their involvement. This includes general strategic interventions, evaluations of existing standards and rules, as well as the formulation and testing of legislative proposals.

7. *Italy: How is the Country Dealing with the Digitalization of Public Debate*

Institutions are questioning the 'e-democracy' topic also in Italy. As shown by numerous , the Country has made significant strides in developing digital infrastructure over the past decade. However, data published by the European Commission reveals a gap in the spread of skills: less than half of European citizens possess basic digital skills. While Italian small and medium-sized enterprises (SMEs) show progress in adopting basic technologies, there is a lack in the adoption of advanced digital solutions. More importantly, the digitalization of public services in Italy remains below the European average.

A prominent example of the reluctance of Italian institutions to increase the digitalization of decision-making processes concerns the delay carried in the implementation of a platform for popular referendums. In the past year, there have been numerous parliamentary inquiries in both the Chamber and Senate, requesting clarifications from the Government on the ongoing delay in establishing a platform for collecting digital signatures for referendums and popular initiatives.

The platform's journey and its implementation reflect a certain

institutional distrust in using technology for public management. This is a crucial path to equip Italy with e-democracy tools that, when used appropriately, can strengthen mechanisms for public consultation.

The International Covenant on Civil and Political Rights of the United Nations guarantees citizens the right to participate directly, through referendums and popular initiative laws, in the democratic and legislative process. In 2020, the UN Human Rights Committee condemned Italy for the 'unreasonable restrictions' that the regulatory framework on the referendum procedure, approved over 50 years ago (law 352/1970), places on the right to participate inherent in every democratic State.

With their decision, the United Nations acknowledged Italy's delay in implementing digital strategies and the persistent obstacles to establishing an effective referendum system. These obstacles include inefficient bureaucratic practices, high costs for initiative promoters and an outdated system for signature authentication. These are all factors that hinder the modern utilization of popular referendums and partially undermine their effectiveness. Following the UN's decision the Italian Parliament has adopted new regulations for the referendum system. The goal is to make it more transparent, swift, and efficient by creating a digital platform for signature collection.

This political and regulatory path aligns with the need to boost active civic participation and bridge the gap between citizens and decision-makers, strengthening democratic processes. The introduction of the new digital tool was intended by legislators to bring a needed renewal to the state and bridge the gap between Italy and more advanced countries. , the platform aims at providing «paths for referendum initiative promoters to authenticate signatures, collect signatures in spaces where citizens can be reached, and ensure that the population is adequately informed» about constitutional participation processes and rights/duties. Nevertheless, despite the urgency to innovate an outdated legislative framework, the platform is not yet operational.

8. *Participation and Representation: Two Sides of the Same Coin*

The space created by the internet, defined by Rodotà as «The largest public space humanity has ever known», has triggered the involvement of peripheral or marginalized realities from public life, and political

movements born in the internet era have strengthened the position of citizens vis-à-vis decision-makers.

If viewed from a , technology can improve modern democracies. The decision to establish a digital platform for managing a part of public debate goes in this direction, giving back to an increasingly silent majority the possibility to intervene in the political life, opening new dialogue spaces.

Of course, as demonstrated throughout this brief research several problems arise. The academic world is still in the middle of a profound debate, trying to understand pros and cons of integrating digital tools within democratic processes. Many are studying the complex interplay between technological innovation and democracy, emphasizing the contradictions and paradoxes inherent in the transition from 'analog' to digital systems.

As the debate unfolds and digital technologies evolve and progress, with the rise of artificial intelligence that poses new and difficult challenges, the evident global weakening of modern democracies and the growing divide that exists between institutions and citizens are elements that necessitate a critical revaluation on the future course of action.

Enhancing public participation in the democratic process is fundamental in order to strengthen democracies. Various approaches and tools can be employed to achieve this goal, with the use of technology being a possible key component.

Just as happened with the , introduced into the Italian legal system with reference to major infrastructure works, it is now the duty of the state apparatus to respond to the increasing participatory needs that are emerging. Inspired by the French Débat Public model, the tool, as the name suggests, promotes a real public debate, made up of information and discussion meetings, to gather the positions of civil society in the context of the realization of particularly impactful infrastructure works. Therefore, the principle that to a greater accessibility to decision-making processes correspond stronger democracies has already been embraced by modern legal frameworks and today, the second act of this debate cannot ignore the new possibilities offered by technological development.

Within the current debate, the starting premise must be that active public participation in political processes is the foundational element of any democratic system. Only from this perspective, activating online platforms with the goal of increasing public participation could be considered as a shared goal to be achieved by both political institutions and civic society. Of course, this process must be supported by initiatives aimed at enhancing digital literacy, accessibility and inclusivity, with institutions playing a leading role. Digital advancement, particularly

concerning democratic participation, can yield positive outcomes only if appropriately guided.

It is incumbent upon institutions to align societal needs with technological progress, thereby ensuring that technological developments serve the interests of the community, not the opposite. If seen from this perspective, integrating technologies within the public sphere can become an aim that reflects the common public interest.

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Claudia Mariotti

Beyond the Divide: Digital Communication and Polarization

Abstract: Digitalization has significantly changed how we communicate, consume information, and engage politically. This chapter examines the relationship between digital communication, especially through social media, and political polarization. It focuses on how social media platforms have altered political discourse, enabling both democratic engagement and societal division. By analyzing the academic debate on political polarization, this chapter highlights the role of political elites and their use of digital communication to create and exploit societal fractures. It aims to explore how digital communication can influences, in different directions, political polarization. In the conclusions, it emphasizes the need for more research on depolarization and a broader geographical focus to better understand the global impact of digital communication on politics.

Keywords: Digital communication – ideological – affective and pernicious polarization – social media – élite rhetoric – depolarization.

1. *Introduction*

The 21st century has been shaped by the pervasive influence of digitalization. Information and communication technology (ICT) advancements have fundamentally reshaped how we interact, consume information, and navigate the political scenario.

The term 'digitalization' encompasses the integration of digital technologies into all aspects of human activity. From the rise of the internet and web browsers to the proliferation of mobile devices and high-speed connectivity, this process has facilitated the creation, storage, and dissemination of information at an unprecedented scale. It has empowered individuals with access to a vast knowledge base, fostering a potentially more informed and globally connected citizenry. Within this digital world, social media platforms have emerged as spaces for interaction

and engagement. Platforms like Facebook, Twitter, and Instagram have redefined communication channels, enabling real-time exchange of information, ideas, and experiences across geographical borders.

Social media has fundamentally altered the field of political communication and engagement. It has not only facilitated the creation of online communities based on shared political interests, fostering a sense of belonging and connection beyond physical proximity, but it has also changed how citizens access and process political information. Additionally, digital communication has become a ground for self-expression and the formation of online political identities. However, the most significant impact of social media lies in its ability to revolutionize activism and political mobilization. The ability to organize and mobilize large numbers of people through online platforms has been instrumental in driving social change movements. Yet, this same power can be misused to spread misinformation, manipulate public opinion, and sow discord within societies. False or misleading content disguised as legitimate news can travel rapidly, eroding trust in political institutions and potentially influencing critical decisions like elections or public health measures. Furthermore, social media algorithms often personalize content based on user preferences and past interactions. This can create echo chambers where users are primarily exposed to information that confirms their existing beliefs, further polarizing viewpoints and hindering constructive political discussions.

The initial hopes surrounding social media as a democratizing source, fostering globally informed citizens, have evolved into a more nuanced understanding. Today, we grapple with the complex interplay between digital communication, particularly social media, and the dynamics of political polarization. This phenomenon is a topic of significant concern in democratic societies. While numerous factors contribute to political polarization, the rise of digital communication has emerged as a central area of investigation. This chapter explores the relationship between digital communication, especially social media, and political polarization, with a specific focus on the evolving nature of these studies.

The digital communication developments fundamentally transformed the interaction between voters and political elites. Social media, a double-edged sword in this context, seems to empower both democratic engagement and societal division. This chapter aims to face the phenomenon of political polarization, fueled in large part by the strategic use of social media by political elites, focusing on the development of studies on political polarization, and linking it to the rise of social

media. It will examine how the academic debate is shifting its attention, initially analyzing the causes and effects of polarization in a traditional media environment, moving to the key role of social media's emergence, and exploring how digital communication could be exploited for both polarizing and depolarizing purposes.

2. *Divided We Click: The Role of Political Elites and Social Media in Shaping Polarization*

The study of political polarization has long been a cornerstone of political science research. While Giovanni Sartori's work laid the foundation, the recent prominence of the debate on polarization has been primarily focused on the United States. However, limiting the concept solely to U.S. literature can be misleading for two key reasons. Firstly, a substantial and growing body of research on political polarization exists in Europe.

Comparative studies frequently incorporate European countries, highlighting the need for a broader geographical scope. Secondly, the American two-party system is somewhat exceptional. Unlike most large Western democracies, it is the only one that can be considered a real two-party system. This variable shapes the concept of polarization differently than in multi-party systems, requiring a complex understanding when analyzing research across political democracies.

In more recent times, the debate on political polarization essentially evolved around two main concepts, ideological and policy polarization, understood as the ideological distance first measured on the classic right-left axis and later moved to particular issues considered divisive; and affective polarization, based on negative emotions (bordering on hatred) against the other, who is increasingly considered as an enemy rather than an adversary. The studies on political polarization have been enriched by the emergence of a third analytical perspective. This approach, gaining traction in recent years, defines polarization as a process of convergence of previously distinct societal differences, such as economic class, religion, or urban-rural divides, increasingly coalesce along a single dominant dimension. This simplification leads individuals to perceive and describe politics and society increasingly through a stark 'Us vs. Them' lens. Furthermore, this perspective extends beyond the realm of political polarization, encompassing societal polarization as a

whole. Scholars employing this framework emphasize the potentially pernicious consequences of this phenomenon for democracy. By reducing complex social realities to a binary narrative, the 'Us vs. Them' mentality fosters distrust, weakens social cohesion, and ultimately undermines the foundations of a healthy democracy.

Before the emergence of the aforementioned debate, Sartori presciently dissected the concept of ideology into two distinct categories. The first, ideological distance, refers to the positioning of parties on the traditional left-right spectrum and specific policy issues (ideological and policy polarization). The second category, ideological intensity, captures the level of emotional attachment individuals hold towards a particular ideology (affective polarization).

The academic discourse on ideological and policy polarization initially witnessed a division between maximalist and minimalist perspectives. Maximalists contended that ideological and policy polarization permeated both elites and the electorate. Conversely, minimalists acknowledged the undeniable polarization amongst elites but contested its presence within the electorate. Their research suggested an electorate with minimal interest in policy specifics, exhibiting a more centrist and moderate disposition compared to their political leaders. The internal debate has witnessed the preeminence of the maximalist perspective. Their position, emphasizing widespread polarization across both elites and the electorate, has gained traction within the academic community.

Since 2012, the study of affective polarization (Iyengar et al., 2012) has emerged as a distinct, yet complementary, perspective within the field of political polarization research. This approach emphasizes the growing intensity of negative emotions directed towards opposing politicians and groups, encompassing both elites and the electorate.

The emergence of the affective polarization framework has ignited a vibrant academic debate regarding its underlying causes. Initially, the proponents of the identity approach were positioned in opposition to the established school of ideological and policy polarization. This fervent debate quickly spread to Europe, where studies on ideological and policy polarization had focused primarily on how party system variables, such as the electoral system, the number of parties, and coalition dynamics, influenced polarization. However, the scholarly focus has recently expanded to encompass affective polarization and the emerging concept of pernicious polarization, which investigates the detrimental effects of polarization on both political systems and society at large.

In contrast to the ideological and policy approach, the identity

perspective on polarization emerges from research on collective identity. Social psychology experiments suggest that group membership activates two emotions: positive in-group evaluation and negative out-group evaluation. Building on this basis, the identity perspective highlights the role of partisanship, understood as a powerful social identity, potentially even more influential than race or gender – even if recent studies debate the primacy of party identity in voting choices, suggesting competition from other social identities. Party identification appears to guide many life choices, including different salary standards for those from opposing parties (being available to pay less, for the same job, people only because they support the opposing party), preferences for neighborhoods, workplaces, and even romantic partners. Affective polarization, according to this approach, is caused by socially identifying with a party, an identification that generates positive feelings towards those belonging to one's own party (in-group favoritism) and consequently feelings of hostility towards those who are not part of it (out-group group animus). This school of thought argues that policy polarization stems from this underlying affective divide.

Conversely, the school of ideological and policy polarization locates the primary driver of affective polarization in the growing ideological distance on policy issues, both actual and perceived, between elites and the electorate. These scholars contend that it is this fundamental divergence in thinking on a multitude of issues, rather than primarily party identification, that fuels negative feelings towards opponents and hinders communication between elites.

A recent study by West and Iyengar (2020) contributes to the ongoing debate on the identity approach to affective polarization. While the research confirms the significance of party identity, it fails to establish a definitive causal link between party identification, conceptualized as a social identity, and negative emotions directed towards opposing groups. The authors acknowledge this limitation in their concluding remarks, suggesting that other factors (beyond partisanship) may play a more prominent role in driving affective polarization, such as ideological polarization on policies, the role of social media in providing user-friendly information and the communicative rhetoric that can become violent and uncivil implemented by political elites in 'negative' electoral campaigns.

Obviously, a single inconclusive study can only cast doubt on the previously assumed causal relationship between partisanship and affective polarization. This underscores the need for further research to definitively elucidate the complex dynamics at play.

A recent strand of research on the pernicious nature of political and

societal polarization has emerged. This approach adopts a comparative perspective, escaping the limitations of US-centrism while still including the United States. It's different from the two previously mentioned schools of thought but maintains a dialogue with them.

In contrast to the focus on ideological and policy polarization, this line of inquiry focuses on the pre-existing societal fractures that underlie political polarization. These fractures encompass classic divisions like right-left, center-periphery, and religious divides, alongside newer cleavages such as cosmopolitan-nationalist. The ground idea is that the pernicious nature of polarization for democracy does not primarily stem from the inherent existence of these societal fractures, whether old or new. Rather, it arises from the way political elites exploit these existing divisions and flatten them into a single, artificial 'Us vs. Them' fracture through the use of polarizing strategies. What makes this form of polarization particularly dangerous is the clouding of normal differences within the macro-fracture. This process creates artificial political identities that function like social identities, fostering a sense of 'us' versus 'them' among the population.

This research strand aligns with the identity approach in its focus on the role of social identities in fostering affective polarization. However, it diverges in identifying the key driver. Here, the focus lies on the potent influence of the artificial political identity, which exceeds the left-right spectrum and partisanship alone. Political identification more than party identification fuel support and loyalty towards a leader and a perceived homogenous group. Within this group, differences are considered unacceptable, and the group itself is seen as inherently good, reflecting a Manichaean view of politics and society. This positive image stands in stark contrast to a demonized and homogenous enemy group. While acknowledging that polarization can play a constructive role in politics, this research perspective highlights its potential to become pernicious when exploited by 'skilled political entrepreneurs' who employ polarizing communication strategies. These strategies often rely on populist rhetoric and blaming politicians, rather than addressing substantive issues, to exacerbate the 'Us vs. Them' divide (McCoy and Somer, 2018: 18).

Within the scholarly discourse on political polarization, a central theme has pertained to its relationship with democratic systems. Seminal works by Dahl (1971), Sartori (1976), and Linz and Stepan (1978) identified the potential hazards of heightened polarization, particularly when cleavages solidify around antagonistic groups, for the efficacy of democratic processes. However, these concerns did not always find universal resonance in the prevailing academic climate.

The contemporary literature reflects a more consolidated perspective. There is now a significant convergence amongst scholars on the notion that pronounced levels of political polarization, irrespective of their specific kind, constitute a challenge to the stability and functionality of representative democracies, potentially jeopardizing their very foundations.

In particular, Iyengar et al. in a 2018 article reflected in their conclusions that the strengthening of party identity at the level of the electorate sends clear signals to political elites that not only must they avoid cooperating with the opposition (seen as appeasement), but they must also take every opportunity to reinforce the fears and prejudices of their supporters. The prevalence of negative digital communication in political campaigns and the propensity of politicians to 'taunt one another' provide stark testimony to the emotional responsiveness of leaders to their electoral base. Consequently, this spiral of negativity from the elites and the masses can only lead to political gridlock and dysfunction.

Along the same lines is the school of pernicious polarization of politics and society. According to this trend, it is precisely the choice of the elites to exploit political polarization and to use polarizing rhetoric (often populist, based on pre-existing fractures) to divide society even further in two, which makes polarization pernicious for democracy, causing the electorate to lose faith in the institutions and values of democracy itself. This research perspective admits that political polarization can be potentially positive and reinforcing for democracy, helping citizens to distinguish between different political options, mobilizing political participation, and strengthening parties, however, the virtuous effects for democracy become irrelevant when polarization becomes 'pernicious'.

A substantial body of research has explored the multifaceted relationship between democracy and ideological polarization. This line of inquiry suggests that a proportional electoral system may mitigate the intensity of polarization. Other variables, such as the number of competing political parties and the possibility of forming post-election coalition governments, are also considered but deemed more challenging to manipulate. This research perspective identifies policy differences as the primary driver of affective polarization. Given the current political climate characterized by entrenched partisan divides over policy issues, the possibility of depolarization seems remote for these scholars. The stark reality of these divisions makes reconciliation and cooperation between opposing camps increasingly improbable.

Across various academic approaches to political polarization, polarizing digital communication emerges as a central driver. All these

perspectives highlight the use of divisive and inflammatory rhetoric by political elites as a primary cause of heightened polarization. This rhetoric, often oriented towards attack and focused on divisive policies, is disseminated through digital communication platforms. For example, the identity approach emphasizes how leaders and elites leverage digital communication strategies to reinforce a strong social identification with the party, thereby amplifying affective polarization. This is achieved by constructing a clear 'Us vs. Them' narrative through digital media. On the other side, the school of ideological and policy polarization focuses on how elites strategically choose and amplify specific divisive policies through polarizing digital communication. This creates a sense of distance from these policies by the electorate, potentially fueling anxiety and fear surrounding the possibility of the opposition enacting them.

Finally, the pernicious polarization perspective emphasizes the role of political elites who utilize polarizing communication to artificially create a single 'Us vs. them' macro-fracture. Through digital media, this constructed fracture is then transferred to the political and social spheres to generate consensus within a particular group. This approach aligns with research on the relationship between populism, digital communication, and polarization. Empirical studies, such as Enyedi's work (2016) on Hungary, illustrate how populist rhetoric disseminated through digital platforms contributes to 'populist polarization'. This concept is understood as a dominant electoral strategy that exploits the perceived ethical divide between the 'upright people' and the corrupt, often foreign-minded, elites. It also taps into a general public distrust of institutions.

The field of political communication is a dynamic space characterized by a triangular relationship between politicians, media, and citizens. Within this framework, research on political polarization has witnessed exponential growth, particularly in the last decade. This surge in interest is geographically concentrated in Western countries.

The interest in the topic is also highlighted by the number of significant systematic reviews published recently. Already in 2013, an extensive review examined the role of digital communication in the context of polarization. However, this review had limitations, primarily its focus solely on the U.S. context. Subsequent reviews aimed to address these gaps by incorporating a broader global perspective and differentiating between affective and ideological polarization. Furthermore, these studies predominantly focused on the influence of social media, neglecting the role of traditional media. More recent reviews have sought to bridge this gap by acknowledging the influence of both traditional and digital media

on political polarization.

The key findings from these reviews can be categorized into three main areas: the impact of elite-driven media content on polarization, the influence of selective media exposure, and the polarizing effects of traditional and social media.

The first area of inquiry examines how media content disseminated by political elites influences societal polarization. A consensus emerges from these studies – politicians who employ polarizing content tend to benefit in terms of visibility and garnering support. This finding applies to both social media research (though primarily concentrated on specific platforms) and studies on traditional media. Additionally, a temporal trend analysis reveals a concerning increase in the polarization of content across both traditional and social media channels in recent years.

The second area of investigation focuses on how selective media exposure, where individuals prioritize content that aligns with their existing beliefs, affects polarization. All studies concur that selective exposure to like-minded media contributes to increased polarization. However, the impact of exposure to opposing viewpoints remains a topic of debate. While some research suggests that encountering contrasting ideas can mitigate polarization, others argue that it can further exacerbate it.

Finally, the third area of focus explores how traditional and social media directly influence polarization. Numerous studies have employed experimental designs to investigate this relationship. Concerning social media, the research consistently demonstrates its tendency to exacerbate both ideological and affective polarization. For instance, exposure to negative tweets about candidates, uncivil comments on Facebook, and counter-attitudinal posts on Twitter have been found to increase ideological polarization. Similarly, studies have shown that YouTube's algorithmic recommendations and exposure to denigrating social media comments about political opponents contribute to increased affective polarization. Moreover, a growing body of research employing temporal trend analysis reveals a concerning trend: the content of both traditional and social media has become increasingly polarized in recent years.

Traditional media appears to follow a similar trend, with most research indicating its potential to amplify both ideological and affective polarization. For example, exposure to content like partisan talk shows can contribute to ideological polarization. Affective polarization may be heightened by exposure to conditions such as reading articles about internal party scandals, engaging with like-minded media outlets, and encountering uncivil communication within media sources outside one's

preferred ideological circle. While the research on factors contributing to polarization is extensive, studies on depolarization remain scarce. However, some promising insights have emerged. In the realm of traditional media, exposure to fact-checking programs with counter-attitudinal content appears to reduce ideological polarization. Additionally, promoting positive contact between opposing groups and parties, as well as fostering civil discourse within one's own ideological circle (despite potential discomfort), may mitigate affective polarization.

Social media's potential to reduce polarization, or even remain neutral in its effects, remains largely unexplored by research. One study, however, suggests a potential mitigating effect: individuals who deactivated their Facebook accounts before the 2018 U.S. midterm elections exhibited a decrease in affective polarization. Further research is needed to understand how social media platforms can be designed or utilized to minimize negative polarization effects.

The burgeoning body of research on the topic underscores the increasingly influential role of digital political communication in triggering both ideological and affective polarization. This growing field also witnesses the emergence of new research perspectives that focus on the interaction between populist digital communication, political elites who exploit it for electoral gain, and the resulting societal consequences. The school of ideological and policy polarization stresses how digital communication amplifies the perceived distance between elite policy positions and voter perceptions, contributing to affective polarization. Initially, this school posited that policy-based polarization was primarily confined to elites. However, it became evident that digital communication facilitated the transmission of these divisions to the electorate, who adopted them as their own.

The school of affective polarization also highlights the crucial role of digital communication and elite media strategies in transforming party affiliation into a social identity. This social identity then becomes a central societal fracture that fuels affective polarization.

The pernicious polarization perspective offers the most comprehensive framework for understanding the role of digital political communication. It incorporates populism, particularly the use of populist rhetoric, into the analysis of polarization. However, its core focus lies on political communication, often of a digital kind, and the manipulative role of political elites. This perspective posits that elite-driven communication strategically creates a single, overarching 'Us vs. Them' macro-fracture, which includes all the different traditional societal cleavages. This artificial fracture is then

disseminated to the public through digital communication platforms.

Given its focus on the manipulative aspects of digital communication by political elites, the pernicious polarization approach appears to be a particularly fruitful lens for guiding future research in this domain.

3. *Final Remarks*

The complex debate on political polarization has captivated scholars for decades, and the reviewed research offers a wealth of insights while simultaneously highlighting crucial gaps. A spectrum of theoretical perspectives, not confined to a singular school of thought, has emerged over time. Initially, the focus heavily leaned on the United States and Europe, providing a strong foundation for understanding the phenomenon. However, this geographic concentration created a blind spot – a predominantly U.S.-centric and Western-centric bias. This limitation is increasingly being addressed. The burgeoning body of research incorporating broader global contexts suggests a promising shift towards a more comprehensive understanding of polarization in the years to come.

One of the most pressing limitations lies in the lack of research on depolarization strategies. The academic field is heavily biased toward understanding the root causes of this societal fracturing, often leaving the question of mitigation underexplored. This gap represents a missed opportunity. In an age of deepening divides, identifying effective strategies to bridge societal gaps and foster productive dialogue is vital for the very health of our democracies. Future research that places digital political communication at the center of the analysis is particularly crucial. Given its well-documented role in exacerbating polarization, a deeper understanding of how digital platforms and communication strategies can be employed for depolarization efforts could be the key to a more civil and engaged public sphere.

The European studies regarding polarization present distinct characteristics. While ideological and policy divides remain relevant, a focus on party system variables offers valuable insights. Early research explored how factors like electoral systems, the number of competing parties, and coalition expectations influence ideological polarization. More recent studies have shifted their focus to the rise of affective polarization in Europe, highlighting the concerning trend of intensifying negative emotions within the political sphere. This heightened emotional response

exceeds mere ideological differences and exploits into society. It tends to create a single, dominant 'Us vs. Them' narrative that weakens democratic institutions and erodes the very foundations of social cohesion.

The challenge for future research and democratic actors alike lies in fostering constructive dialogue and bridging divides. Political elites should move beyond the 'Us vs. Them' narrative and cultivate a more inclusive dialogue on the relational nature of political differences. By harnessing the power of diverse perspectives, fostering critical thinking, and promoting responsible digital communication, it's possible to reinforce democracy, ensuring that the roots of our societies can be strengthened, not fragmented, by discussing societal legitimate political differences.

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Digital Policies and their Impact on European Green Deal

Abstract: The paper explores the intersection of digital policies and European Green Deal, analyzing how European policies and the technological advancements could support the efforts to reach climate neutrality by 2050, especially at local levels. By integrating digital strategies, such as artificial intelligence, big data analytics, the Green Deal can enhace clean mobility, energy efficiency or urban planning, reduce emissions and promote sustainable practices across various sectors. The study examines the case of three Romanian cities included in 100 smart and climate neutral initiative. The findings reveal that a synergistic approach, which combine digital transformation and Green Deal policies and objectives, will accelerate EU's transition to a sustainable future. This comprehensive analysis provides policymakers, stakeholders and researchers with critical insights into the potential of digital policies to drive the European Green Deal.

Keywords: Digital transformation – sustainable future – European Green Deal – technological advancement – climate neutrality.

1. *Introduction*

The most ambitious objective of the European Union – first climate neutral continent by 2050 –, and the integrate strategy elaborated for achieve it – European Green Deal, are cornerstones in the evolution of European Union toward its transformation. The digital and green revolutions that are characterizing our continent, have brought a lot of pressure on the policy makers, academics, think thanks groups, and decidents. The implementaton of this complex strategy requires a vision, adapted national policies on different domains, competences and flexibility from our decidents.

The last mandate of European Commission generated the European Green Deal strategy, and, as other strategies or treaties, requires improvements. The national governments, toghether with market structures, non-governmental organizations, academia, should had to elaborate a common plan of actions and national policies, which had taken into consideration the economic capabilities of each Member States, as well as the effects of regional and international interdependencies that are exerting.

One of the initiatives of the European Commission launched for the implementation of European Green Deal was 100 smart cities initiative. It is a bold and forward-thinking, aiming to transform urban centers across European Union into models of implementation of digital policies by local authorities, supporting in this way sustainability, efficiency and technological innovation – characteristics of digital transformation. The present chapter will present a former study, realized on the Romanian smart cities included in that initiative.

2. *The European Initiative of 100 Climate and Smart Cities*

The European Commission's 100 Smart and Climate-Neutral Cities initiative represents a transformative vision for the future of urban living in Europe. This ambitious program aims to select and support 100 cities across the EU in becoming smart, climate-neutral hubs by 2030.

On April 28, the European Commission announced the selection of 100 climate-neutral and smart cities to achieve their goals by 2030. These cities must develop Climate City Contracts, detailing their plans for climate neutrality across all sectors. These contracts will be co-created with local stakeholders and citizens, and supported by a Mission Platform that will provide technical, regulatory, and financial assistance.

The initiative focuses on harnessing digital technologies and innovative practices to address critical urban challenges such as energy efficiency, sustainable mobility, and effective waste management. By integrating advancements on the Internet of Things (IoT), artificial intelligence (AI), and data analytics, these cities will develop and implement solutions that enhance the quality of life for residents while significantly reducing carbon footprints. The selected cities will act as living laboratories, testing and refining new approaches to urban planning and infrastructure that can be replicated across the continent.

Collaboration is at the heart of the 100 Smart and Climate-Neutral Cities initiative. It encourages partnerships between local governments, businesses, academia, and citizens to foster a holistic approach to urban sustainability. This collaborative effort aims to drive systemic change, making cities more resilient, inclusive, and adaptable to the impacts of climate change. It aligns with the European Green Deal's objectives, promoting a green transition that is both economically viable and socially equitable. The cities will receive tailored support, including financial assistance, technical expertise, and opportunities for knowledge exchange, to accelerate their journey towards climate neutrality.

From Romania, Bucharest, Cluj-Napoca, and Suceava were chosen. These cities will be analyzed, based on models of circular and green economy, focusing on clean mobility, energy efficiency, and urban planning capabilities.

2.1 *Clean Mobility*

Bucharest, the capital of Romania, boasts the highest urbanization rate in the country at 90%, housing nearly 14% of the national population. The city is divided into six sectors, each with its own local authorities, councils, mayors, budgets, and heritage, operating with exclusive, shared, and delegated competencies in relation to the Bucharest City Hall. The Bucharest-Ilfov region, the most developed in Romania, has a GDP at 160% of the EU average, an employment rate of 89.4%, and an unemployment rate of just 1.1%. Despite this, the region faces challenges in technological advancement, innovation capital utilization, public services, and quality of life, ranking 151st out of 268 EU regions. Within Bucharest, the employment rate is notably higher at 97.7%.

The Bucharest-Ilfov region (where the capital city, Bucharest is placed) elaborated a sustainable strategy for 2021-2027, which aims to address these challenges by focusing on several key areas: strengthening research, development, and innovation (RDI) capacities; enhancing the digitalization of the economy and public administration; adopting smart city concepts; improving and diversifying smart specialization competencies; increasing energy efficiency in buildings; reducing earthquake risks; expanding and improving the quality of green spaces and infrastructure; enhancing mobility and the attractiveness of clean, unmotorized public transport; improving connectivity and accessibility to the Trans-European Transport Network (TEN-T); and protecting and promoting cultural heritage.

There is a low level of integration of digital technologies into the activities of citizens, businesses, and public administration in the Bucharest-Ilfov region. Digitalization and interoperability of public services remain dysfunctional, with only 28% of the population interacting online with public authorities, compared to the European average of 58%. The primary digitalized service is local tax payments, with around 70% adoption, while document management is still predominantly paper-based.

The concept of a smart city is underpromoted and under implemented in Bucharest, which lacks a dedicated strategy and ranks 104th out of 174 cities from 80 countries in the smart city matrix. The city has only five specific smart city applications, and only one sector (Sector 4) has smart city-type projects. At the regional level, there are no clear initiatives to promote the smart city concept.

This reality demonstrates that digitalization has been a secondary objective, with a focus more on asset acquisition than on practical digitalization applications. The push for digitalization has primarily come from the business community, but misconceptions about the complexity and duration of project implementation have limited the effective use of available funding sources.

Regarding clean mobility, Bucharest faces significant challenges with greenhouse gas emissions from public transport, air pollution, noise, congestion, and heightened insecurity. The city has the highest congestion rate in the EU, with traffic congestion reaching 50%. Public transport infrastructure is outdated, unsafe, undigitized, and insufficient for the daily commuter load of approximately 1.3 million passengers. The public transport fleet is largely antiquated, with 488 trams (as of 2021), 265 trolleys, and 1530 buses that are mostly old and non-ecological. Almost the entire tram fleet is technically outdated, impacting travel speed and passenger safety.

The implementation of IT systems and applications in urban areas is fragmented, leading to inefficient system performance and low interoperability. Additionally, the city suffers from underdeveloped infrastructure for cyclists, with limited bicycle tracks and low bicycle trip numbers, reducing overall accessibility. Connectivity with the Trans-European Transport Network (TEN-T) is also problematic due to high traffic volumes, pollution, and inadequate and unsafe infrastructure, resulting in dysfunctional intra- and interregional connectivity. The regional transport infrastructure is misaligned with the demands and opportunities of a more developed region, being poorly adapted to support fast, safe, and climate-neutral mobility.

The Strategy for digital transformation in Cluj-Napoca, launched in 2021, represents the city's ambitious vision to achieve climate neutrality through digital innovation. At its core, this strategy aims to generate positive effects by facilitating the city's transition into a digital society and economy, fostering connectivity among all relevant stakeholders within an innovative ecosystem. The new institutional platform model places citizens at its center, uniting diverse actors with shared goals and enabling open innovation for public products and services. The primary objective is to enhance the quality of life and local prosperity within the community.

Embedded within a broader vision for city development focused on quality of life, innovation, university collaboration, and citizen participation, this strategy serves as a tool—rather than an end goal—to concentrate efforts and projects within a smart community platform. It emphasizes ongoing consultation and communication with society, while also prioritizing the development of institutional capacities and resilience through adaptive and transformational approaches leveraging digital technologies.

The strategy aligns with the European Commission's digitalization priorities for 2019-2024 and the objectives outlined in Romania's National Recovery and Resilience Plan (NRRP). It underscores the absence of a national e-governance strategy, highlighting challenges such as political consensus on development directions, the need for national registers consolidating public institution data, interoperability systems, electronic identity standards, and a coordinating central authority.

Consequently, cities have been compelled by evolving circumstances and private sector pressures to develop their own solutions. However, without a national interoperability framework, common standards, and clear rules for interconnectivity, local administration solutions face obstacles in data exchange, leading to duplication and difficulties integrating with a national e-governance system. While initiatives from the central level, like those by Romania's Authority for Digitalization focusing on electronic signatures and database connectivity, are noteworthy, comprehensive reforms and adequate resources are crucial for developing a unified national e-governance infrastructure.

The projects for the digital transformation of the city: Digiacademia (ensuring standardization of datasets used in interactions with other institutions), DigitalCity (digitizing and standardizing GIS databases for urban planning documentation), *MoveIT!* (creating a digital platform to integrate data, applications, and stakeholders within the urban mobility ecosystem.), ClujOpendata (establishing a portal for urban/metropolitan geospatial GIS data), ConnectCity (a platform to interconnect existing

mobility applications or those related to administration), Cluj Future of Work-Work 4.0 (partial automation of tasks including front-office, administrative roles, and software testing), culturaincluj.ro (digitizing the cultural agenda of the city and region, improving access to cultural offerings), Extension of GIS platform (regarding matters such as Single Opinion, waste management, and residential parking).

The city has established its own network to support foreign investments through various technological parks such as Tetarom I, TRC Park Transilvania, Parc Industrial Favorit, Cluj Innovation Park, Parc Industrial Nevia, CT Parck Cluj II, Liberty Technology Park, and Tetapolis. These parks, situated in or near the metropolitan area, provide locations for foreign investors to establish their businesses, thereby creating job opportunities for the local workforce.

Cluj-Napoca stands out as one of Romania's largest Research, Development, and Innovation (RDI) centers, boasting robust infrastructure and a skilled workforce engaged in specialized activities. The city hosts 15 public and private universities, 6 research institutes or branches, and over 900 enterprises involved in RDI activities. Despite these strengths, a significant challenge remains the limited cooperation among various stakeholders within the regional innovation system, hindering effective knowledge transfer between research centers in the city and companies across the broader Northwest region.

The city's most active clusters are concentrated in smart specializations such as IT, advanced production technologies, new materials, and food products. Efforts are needed to expand these cluster networks beyond the city's borders, fostering regional and national collaboration. Business incubators play a crucial role in supporting the IT and creative industries within Cluj-Napoca.

Urban regeneration and green development planning, particularly the enhancement of green infrastructure, remains a top priority for the city. The Sustainable Urban Mobility Plan for 2021-2027 was introduced in January 2022. This strategy outlines various smart mobility solutions for each mode of transportation: pedestrian and bicycling (in pilot testing, Wheeley Go offers incentives to encourage users to choose bicycles or walking, promoting registration of metrics like kilometers traveled, CO2 savings, and calories burned); public transport (Tranzy provides real-time updates on local public transport, while the Cluj Bike system facilitates bike-sharing services in the city.); and parking (Ye Parking is Romania's pioneering park-sharing initiative; Cluj Parking allows users to find and view the availability of parking spaces in real-time; City Parking

Cluj enables users to locate and view real-time availability of parking spaces throughout the municipality's streets; Parking Pay allows for card payments at parking places; TPark facilitates SMS payments for parking spaces; 2Park.io enables the management and monetization of private parking sites).

In terms of vehicle charging infrastructure, the city currently boasts 40 stations across both the municipality and metropolitan area, ranking fourth in the country behind Bucharest (200 charging stations), Timișoara, and Constanța. The local administration has taken significant strides towards promoting smart mobility, issuing 31 authorizations for electric taxis starting in 2020.

In addition to the electric taxi initiative, the city has already introduced electric buses into its public transport fleet. By 2028, the goal is to achieve a fully electric fleet, with an investment of €100 million earmarked for this transition. Cluj-Napoca has also embarked on research projects in collaboration with the Technical University of Cluj-Napoca, including the Pilot Project Line 0 for autonomous public transport and a pilot project for hydrogen buses. Among the major investment projects underway is the Metropolitan Belt, which includes plans for a metropolitan train and subway system.

For Suceava, the third city included in the European initiative, the *Sustainable Mobility Plan*, formulated in 2017, is now outdated, considering the latest European strategies such as the Green Deal and other targets set by the European Commission for 2019-2024. An analysis of this strategy would therefore be obsolete.

2.2 *Energy Efficiency*

Energy efficiency in Bucharest is notably low, with both residential and public buildings contributing to unsustainable energy consumption. The city's residential buildings account for 12% of the national total and are often old, offering low comfort and energy efficiency by modern standards. Out of approximately 10,000 blocks of flats needing rehabilitation, around 31% had been renovated by 2019, with this number gradually increasing.

The most recent publicly available Energy Strategy for Bucharest dates to 2007 and is fragmented into four separate files on the City Hall's website. High energy prices and low incomes among various resident groups contribute to a significant number of vulnerable consumers—

approximately 10% of the Romanian population struggles to adequately heat their homes. In Bucharest, 33% of the total public building area is owned or occupied by central authorities.

Several factors exacerbate the city's energy challenges, including rising energy prices, the substantial share of energy costs in household incomes, income inequality, energy-inefficient housing and public buildings, and the lack of new public buildings serving as demonstrative models. Additionally, homeowner associations often face limited banking credibility and high levels of debt, hindering their ability to secure financing for energy efficiency measures. These challenges make it difficult to support investments in fiscal schemes for thermal rehabilitation. European funds, through cohesion and regional policy, could potentially support these much-needed investments.

For Cluj-Napoca, energy efficiency programs are pivotal in ensuring compliance with EU objectives through targeted initiatives. The city's inaugural energy efficiency strategy, developed in 2017 through collaboration between City Hall and the Technical University of Cluj-Napoca, was aligned with the Sustainable Development Mobility Plan and integrated the smart city concept. Key solutions aimed at enhancing energy efficiency included enhancing professional competencies among urban community personnel, appointing an energy manager, implementing improved energy management procedures and tools, defining energy performance indicators with environmental impact, and executing direct actions such as promoting local renewable energy solutions and fostering energy efficiency contracts for public sector needs. Collaboration with energy providers was also emphasized to ensure smart metering projects meet local beneficiary needs and expectations.

Cluj-Napoca is actively expanding its portfolio of A-class buildings to enhance energy efficiency. Challenges persist, however, including insufficient data on consumption and losses in distribution networks for drinking water supply, limited use of smart technologies in network extensions, and reactive rather than proactive approaches to repairs and upgrades. There is also a notable lack of environmental data monitoring equipment, hindering efficient assessment of environmental factors. In waste management and recycling, the city faces the challenge of strategizing without a comprehensive database, impacting administrative planning and decision-making processes.

For Suceava, there is a Plan for Sustainable Energy and Climate Actions for 2021-2030, aligning closely with the 10 priorities and 17 objectives of the UN's Agenda 2030 for Sustainable Development. This strategic

document aims to garner political support from local administration to successfully implement projects and measures aimed at improving energy efficiency and achieving the EU's target of a 55% reduction in greenhouse gas emissions. It also outlines local policies for the short and medium term, detailing directions, actions, and measures in the fields of energy and environmental protection.

The strategy is structured into three phases: the first phase focuses on data gathering, referencing the baseline year of 2015 and developing an inventory of greenhouse gas emissions. The second phase involves setting objectives and defining measures, while the third phase focuses on implementing these measures to achieve the established objectives. The document targets several areas for intervention, including buildings and building utilities, centralized heat supply systems, urban planning, local energy production, transport, waste management, public procurement of products and services, and communication.

Each intervention area specifies objectives and measures aligned with European and national programs, particularly leveraging European instruments available. The strategic document emphasizes clean mobility as a criterion for increasing energy efficiency in transport, with nine measures proposed for implementation. These measures encompass initiatives such as upgrading the local bus fleet, acquiring new buses (electric, hybrid, GPL, CNG, etc.), implementing an e-ticketing system, modernizing bus stations and garages, deploying intelligent traffic management systems, and promoting alternative mobility systems like bicycles or park-and-ride systems.

While the proposed measures are aligned with the smart city concept, the document does not explicitly mention the concept itself, and the timing for implementing these measures appears to be outdated. The proposals were more suitable for the 2014-2020 period, indicating potential delays in achieving the objective of becoming a climate-neutral city, a concept not explicitly addressed in the strategic document.

2.3 *Urban Planning*

Bucharest's urban development strategy, known as the Integrated Urban Development Strategy of Bucharest Municipality 2021 – 2030, was developed by the World Bank Group in collaboration with Bucharest City Hall. This strategy outlines a forward-looking vision for the city up to 2050, envisioning Bucharest as a global metropolis and a prominent

European capital within a functional metropolitan area characterized by distinct neighborhoods with strong identities.

The strategy aims for Bucharest to become interconnected, innovative, sustainable, inclusive, and compact. The overarching vision is for the city to emerge as a competitive European capital with a robust international reputation, serving as a pivotal economic and financial hub in the region. It aspires to position Bucharest as the most attractive bridge-city between the West and East, promoting diversity and dynamism within a clean environment free from greenhouse gas emissions.

The city of Cluj-Napoca prioritizes urban planning with a strong emphasis on integrating green elements into its climate-neutral strategy. This approach is grounded in principles of urban regeneration that encompass ecological systems, local communities, and economic viability. The city's urban development strategy, formulated in 2020 with a horizon set for 2030, builds upon performance evaluations from 2014-2020, identifies constraints for the 2021-2027 period, and aims to enhance the quality of life for residents.

A key proposal under this strategy involves expanding green spaces by over 200 hectares. The Walkable City Programme, supported by an investment of €100 million, focuses on enhancing pedestrian areas to foster the city's green development and improve residents' quality of life. Noteworthy in this context is Romania's first ECO neighborhood, featuring green corridors, wildlife habitats, water bodies, tree-lined streets, a community park, a wildlife overpass, East Park, and a historical orchard.

Cluj-Napoca pioneered online participatory budgeting in Romania, launching the initiative in 2017 and developing 126 projects as a result. Additionally, it was the first Romanian city to implement an e-governance solution, further advancing its commitment to innovative governance practices.

For Suceava, the urban planning component is a subchapter within the Plan of Action for Sustainable Energy and Climate 2021-2030, aimed at identifying the city's challenges and available resources. It outlines four objectives: urban rehabilitation and regeneration, development and enhancement of public utility services, modernization of environmental infrastructure, and improvement of public lighting. However, the measures proposed to achieve these objectives remain general ideas without specific steps for implementation.

The Integrated Strategy for Sustainable Development does not mention concepts like smart city, digital transformation, or climate neutrality. Instead, it focuses on fostering economic development at both regional

and city levels, ensuring sustainable development, social inclusion, and enhancing quality of life while reducing developmental disparities within and across regions. However, none of the strategic documents provide a clear vision or concrete projects aimed at achieving the climate-neutral objective for Suceava. The goal of e-governance appears to be distant.

To prepare for the ambitious objective of becoming a climate-neutral city, the City Hall Suceava website needs adaptation in terms of content and interactivity. This transformation is essential to facilitate digital readiness and enhance engagement with stakeholders in pursuing sustainable urban development goals.

3. *Enhancing National Digital Policies to Better Implement the European Green Deal (EGD) in Romania*

The cities under analysis demonstrate varying degrees of familiarity with developmental policies and the European Green Deal (EGD). The original framework of the EGD posed challenges for Member States (MS) from the Central and Eastern Europe (CEE) region. According to Eurostat data, none of these MSs are adequately prepared across environmental, economic, and infrastructural dimensions to support EGD implementation.

In Romania, EGD has mainly been addressed at the sectoral level by national authorities, primarily the Ministry of Environment, focusing on the 'green' aspects of environmental policy. However, there has been a lack of integrated national approaches. Similarly, digital transformation has not been comprehensively addressed in national policy, with the Ministry of Research, Innovation, and Digitalization being responsible at the national level. Developing a National Strategy for Digitalization is crucial to integrate digital policies across various sectors, particularly those involved in EGD.

Therefore, the primary policy recommendation is to formulate a comprehensive national strategy for digitalization that aligns with the current international context and Romania's specific characteristics. Additionally, a national strategy for EGD is essential, especially given the ongoing reorientation of environmental policies. Establishing an intergovernmental committee under the Prime Minister's authority to oversee the national implementation of EGD could elevate its importance

and align decisions with strategic autonomy objectives.

Secondly, expanding international cooperation, especially with CEE MS partners sharing similar regional characteristics, would facilitate the development of an adapted implementation model.

Lastly, there is a critical need for specialized training programs to enhance personnel qualifications and deepen understanding of the integrated vision of EGD. These programs should be provided by the European Commission to sectoral ministries and European Affairs departments to foster a cross-cutting understanding of EGD principles and guide the formulation of future national policies focusing on green and digital transformation pathways.

4. *Roadmap to Climate Neutrality and Digitalization: Guidance for Romanian Municipalities*

For the local authorities in Romania, particularly those in the analyzed cities, a highly recommended policy is to initiate twinning programs with similar local authorities in EU member states. European and regional cooperation can facilitate the discovery of more effective solutions to local challenges. Smart cities represent a crucial stage in the transformation towards climate neutrality. This transformation requires a fundamental change in how citizens perceive their relationship with local authorities, their participation, and their responsibilities. Achieving a climate-neutral city implies greater responsibility for citizens, aligning with the European digital society model.

The first recommendation for local authorities is to establish partnerships with universities, NGOs, and business communities to raise public awareness. Capacity building should begin with training local authority personnel to better formulate integrated local policies for implementing the European Green Deal (EGD) and adapting to emerging sectoral trends.

City administrations must prioritize transparency in decision-making and communicate effectively about EGD implementation. Except for Cluj-Napoca, the websites of the other two city halls do not provide updated information on EGD initiatives. Public consultations involving universities, NGOs, and the business community can help structure a concrete EGD implementation strategy, fostering shared responsibility. Cities must embrace their roles as actors in the internal market, collaborating with European institutions and bodies like the Committee of

the Regions. They should devise specific solutions that could be financed through the National Recovery and Resilience Plan. The Association of Romanian Municipalities can initiate discussions with European and regional partners to secure concrete solutions and financial instruments to achieve climate neutrality.

At the national level, the three cities could form a Climate-Neutral Alliance to raise awareness and promote strategic autonomy targets. A platform could be established to showcase collaborative models for implementing their initiatives, potentially serving as models of best practice for other local communities across Europe and nationally. National financial instruments can support these initiatives. Research and innovation projects conducted with universities and business research centers will foster new, original, and sustainable long-term solutions. Digitalization will profoundly impact all dimensions of urban sustainable development, enabling transformative changes. However, these digital solutions must be developed in an environmentally sustainable, inclusive, and equitable manner.

Therefore, the primary policy recommendation is to formulate a comprehensive national strategy for digitalization that aligns with the current international context and Romania's specific characteristics. Additionally, a national strategy for EGD is essential, especially given the ongoing reorientation of environmental policies. Establishing an intergovernmental committee under the Prime Minister's authority to oversee the national implementation of EGD could elevate its importance and align decisions with strategic autonomy objectives.

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5. *Conclusions*

Cities play a crucial role in achieving climate neutrality by 2050, a key objective of the European Green Deal. Despite covering just 4% of the EU's land area, they accommodate 75% of its population. Moreover, cities consume over 65% of the world's energy and are responsible for more than 70% of global CO2 emissions. Given that effective climate action hinges significantly on urban initiatives, it is imperative to bolster cities in accelerating their environmental and technological advancements. Specifically, European cities have the potential to significantly contribute to the Green Deal's ambitious target of reducing emissions by 55% by 2030. This effort translates practically into providing cleaner air, safer transportation, and reducing congestion and noise levels for their residents.

Based on the analysis of Bucharest, Cluj-Napoca, and Suceava regarding the implementation of digital policies in Romania, several conclusions can be drawn. The varying levels of digital maturity - Cluj-Napoca stands out as the city demonstrating the capacity, understanding, and strategic foresight required to achieve climate neutrality. Digital transformation is not only adopted within the administration but also embraced by the residents, who actively utilize digital tools for interacting with public services. Local administrative solutions are already being proposed and promoted, highlighting their dedication to implementation. On the other hand, Bucharest's sustainable development strategy lacks explicit references to climate neutrality. There is no mention of smart city concepts, public engagement, or a supportive infrastructure. However, the city's business community has the potential to push local authorities towards practical solutions for implementing the European Green Deal (EGD), which could open new development opportunities. Improving the City Hall website and swiftly developing e-governance solutions are also crucial steps forward. Suceava is challenged with the ambitious goal of becoming climate-neutral, yet it currently lacks a strategic approach or any mention of smart or digital strategies for transforming the city. Without a proactive integrated strategy that aligns with recent international events and the latest European policies, Suceava finds it difficult to identify appropriate solutions and tools to achieve its climate-neutral objectives and to effectively plan for its future.

Another conclusion is the need for a National Digitalization Strategy. All three cities lack a cohesive national strategy for digitalization. While Bucharest has made progress due to its resources and status, Cluj-Napoca

and Suceava would benefit from a unified approach that sets clear objectives and allocates resources for digital transformation across all sectors.

The importance of partnerships and collaboration is another conclusion - successful digital policies in Bucharest and Cluj-Napoca highlight the importance of partnerships with universities, businesses, and NGOs. These collaborations enhance capacity building, foster innovation, and improve public service delivery. Suceava could benefit significantly from similar partnerships to accelerate its digitalization efforts.

The digital policies implementation at national and local level requires a citizen-centric approach - Bucharest and Cluj-Napoca emphasize citizen engagement and transparency in their digital initiatives. Platforms for public consultation, interactive websites, and e-governance solutions enhance citizen participation and satisfaction. Suceava should prioritize enhancing its digital platforms to improve communication and engagement with its residents.

The common challenges for implementation across all three cities include funding constraints, technical infrastructure limitations, and the need for skilled personnel. Addressing these challenges requires strategic planning, leveraging EU funding opportunities, and investing in digital skills training for municipal staff.

Lastly, the potential for regional and European cooperation is important - all cities can benefit from enhanced regional and European cooperation to share best practices, access funding, and collaborate on cross-border digital projects. Participation in networks like the European Innovation Partnership on Smart Cities and Communities can facilitate knowledge exchange and project implementation.

In the end, a national digitalization strategy, coupled with enhanced collaboration and citizen engagement, is essential for advancing digital policies across Romania's municipalities and achieving broader socio-economic benefits.

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Alberto Bitonti, Claudio Di Mario, Luca Germano

The Evolution of Lobbying in the Digital Age

Abstract: This paper argues that digitalness, as the defining attribute of our era, provides an unprecedented opportunity to better understand our world and develop improved strategies for managing institutional relations. In this context, the innovative method of Digital Lobbying is introduced as a means to accurately decode a complex, intricate, and volatile society. Digital Lobbying is ultimately characterized as a positive-sum game, capitalizing on the myriad possibilities offered by technological innovation. It employs an innovative approach that integrates these possibilities into a coherent framework, aiming to create greater value for professionals, organizations, their stakeholders, and public decision-makers. This method may contribute to enhancing democracy and the quality of its processes by fostering more transparent, efficient, and effective interactions within the public sphere.

Keywords: Digital lobbying – public affairs – institutional relations – smart data.

1. *An Ever-Changing and Digitalised Era*

Uncertainty is escalating at an unprecedented pace in contemporary times. This trend primarily impacts predictions about future scenarios and is significantly influenced by the features of our interconnected global system. The present 'Polycrisis' marked by disruptive technological changes, climate shifts, pandemics, and economic and political upheavals, is reshaping our world with unforeseeable consequences.

These deep transformations are affecting the political and institutional systems. The increasing distrust of political agents and institutions, the growing electoral volatility and abstention, the widespread populist instances and the

post-truth society are all elements that are challenging our democracies.

Moreover, it is crucial to consider the institutional complexity of a multi-level governance system (international, supranational, national, regional, and local) and the segmentation of decision-making processes even within the same level. For example, the European Union's governance has complex dynamics among its institutions, while national governments have to cope with the decentralisation of decisions among agencies, ministries, and independent authorities.

In order to understand this fluid and ever-evolving reality, it becomes decisive for those who work in the public affairs sector to innovate their methods and tools. Indeed, to make accurate decisions on time, gather data and information, and identify upcoming threats and opportunities, it is crucial to decode what may be called 'weak signals' to make forecasts. Furthermore, within this challenging context, one must also consider the crucial dimension of the production of knowledge which needs to be examined to create and implement a successful strategy, essential for achieving goals as effectively and efficiently as possible.

This paper claims that digitality or digitalness, interpreted as the essential attribute of our age, represents an unprecedented opportunity to understand our world better and implement better strategies for managing institutional relations. Within this picture, the innovative method of Digital Lobbying is presented as one way to decode a complex, intricate and volatile society correctly. The following paragraphs have been designed to describe Digital Lobbying as a method and a set of tools. It is aimed at all those who work in this field or are interested in better understanding its potential innovations.

2. *Digital Lobbying: a Definition*

In the digital age, to succeed or even to compete at the highest level, one must embrace a model of Digital Lobbying, innovating traditional lobbying methods and public affairs activities. This strategic innovation must be adopted by businesses, advocacy, and democratic institutions to cope with the modern dynamics.

The concept of 'Digital Lobbying' refers to the innovative method by which professionals and organisations manage their lobbying and public affairs activities using digital tools. This definition has been published for the first time in the *2020 Palgrave Encyclopedia of Interest Groups, Lobbying*

and Public Affairs (Carro and Di Mario 2020). The description of Digital Lobbying highlights the two key elements that must guide the actions of lobbyists and professionals of public affairs in the digital age: a) an innovative method; b) tools used by that method.

It is important to highlight the importance of the first point. Even though a simplistic view could represent Digital Lobbying as the exclusive use of social networks or specific online tools, the idea of a structured model of lobbying that takes advantage of the possibilities offered by digital technologies is the correct meaning of this definition (Carro and Di Mario 2021; Bitonti 2024).

3. *Key Elements of Digital Lobbying*

Knowledge management platforms, open data, artificial intelligence, cloud computing, and many other recent innovations represent valuable technological opportunities. These technologies are indispensable for redefining the necessary elements of knowledge management in the different phases of lobbying actions, from monitoring sources to evaluating the results achieved. Rather than concentrating on single instruments, it is vital to understand how digital technology facilitates innovation in lobbying methods.

The Greek etymology of 'method' (path, road) is helpful here, as it indicates the choices that need to be made before reaching a destination (or goal). Whether it involves convincing legislators to make or refrain from a particular decision or managing an organisation's reputation, traditional lobbying and public affairs activities can be methodologically redesigned to fully leverage the opportunities of the digital age.

Although the borders between Lobbying and Public Affairs are nuanced, it is broadly recognised that lobbying activities aim to influence public decisions in favour of a particular interest group. In contrast, public affairs activities aim to manage an organisation's reputation and stakeholder interactions. However, those expressions are often interchangeable in practice.

The digital lobbying method modernises traditional lobbying and public affairs methods by using different ICT (Information and Communication Technologies) instruments. These instruments allow the strategic management of knowledge, for example, by integrating open data analytics and artificial intelligence functions.

4. *Knowledge, Assets and Mistakes to Avoid*

Another critical component of this innovation process is the collection and management of knowledge within an organisation (Carro and Di Mario 2021). Typically, lobbying activities are associated with legislative monitoring or stakeholder management, but it is essential to remember the importance of internal information. The knowledge and actions within an organisation are valuable assets; if adequately collected, they can be safeguarded and effectively utilised. This aspect is a significant advantage of digital lobbying and knowledge management platforms: the strategic and intelligent handling of both internal and external information enhances the efficiency, effectiveness, transparency, and measurability of lobbying initiatives.

On the other hand, the measurability of performance is an additional puzzling topic for many lobbying and public affairs professionals, who often struggle to clearly explain their actions' return on investment (ROI). This is due to the complexity of the concept of influence from both a theoretical and cost-benefit perspective. Nonetheless, Digital Lobbying provides the opportunity to overcome many challenges through a scientific and data-driven approach to managing one's work. It also allows for precise reporting of both, the results achieved and the actions taken. Integrated knowledge management platforms represent the most suitable and complete tools for Digital Lobbying. An example is KMIND (*www.kmind.it*), an on-premises platform developed by ADL Consulting (Carro, Di Mario, Grimaldi and Murgia 2017).

Moreover, two possible interpretation mistakes must be avoided in this reasoning. On the one hand, it is wrong to imagine Digital Lobbying as simple actions that take place online, perhaps on social media. In contrast, lobbying and public affairs activities will always occur in the physical world and involve in-person meetings, parliamentary hearings, and press conferences. Digital Lobbying involves adopting a method that combines both analog and digital tools and integrates them to support the work of lobbyists and public affairs professionals in various settings, both online and offline (Bitonti 2024).

Secondly, it must be noted that digital lobbying software will not replace or reduce humans' role in the foreseeable future. Digital knowledge management platforms and AI systems used in Digital Lobbying are not designed to be a 'replacement' or an 'artificial' substitute for humans. Instead, they are formidable assistants to integrate, support, and aid professionals in decision-making and analog thinking. This simple principle is extended to many other fields that are based on essential

human interactions. The final decisions of action are a responsibility and prerogative of humans, even when supported by the most powerful tools of the digital revolution.

Furthermore, a substantial body of scientific studies and reports from prominent organisations and consulting firms consistently demonstrate, with concrete data, that companies embracing advanced technologies and reinventing their workflows generate significantly more value than those that do not (Carro and Di Mario 2021). The digital revolution offers numerous advantages, including creating innovative products and services, streamlining relationships with clients and suppliers, reducing costs, enhancing work flexibility, and increasing productivity. It also provides better opportunities to expand into new markets and sectors and obtain real-time information and insights.

5. *The Advantages of Digital Lobbying*

After having outlined the definition and correct interpretation of Digital Lobbying, it is now important to examine how digital transformation brings numerous benefits and how the associated costs (such as infrastructure and staff training) will be fully offset by economic gains and increased internal and external satisfaction.

The first specific advantage of digital transformation, and thus of Digital Lobbying, is the opportunity to better leverage an intangible relational capital, usually limited to the oral tradition rather than completely valorised. Indeed, interactions and relationships with stakeholders and decision-makers, together with meetings and exchange of information, often remain the prerogative of professionals and their memory, associated with significant risks of information leakage. Digital Lobbying removes these risks by implementing a method based on a digital infrastructure specifically designed to organise, store, and share information.

A second distinct advantage of Digital Lobbying over traditional lobbying is that the structured management of information on activities, held meetings, and exchanged communications facilitates transparent reporting of one's work. This is advantageous from various perspectives in public affairs. Indeed, transparent reporting on the activities of lobbying or public affairs organisations is instrumental in promoting the value of accountability and transparency in one's work, especially in the face of potential suspicions related to corruption or illicit influence, which are

phenomena entirely unrelated to legitimate lobbying practices.

Over and above that, following open government principles, transparency and accountability help to remove any suspects or misinterpretations of one's work from public opinion or external agents, safeguarding the organisation's reputation. Moreover, these latter aspects, related to the advantage of simple and transparent reporting of activities, are closely intertwined with the issue of Corporate Social Responsibility (CSR). This concept entails that an organisation accounts for its activities within its social context, especially among stakeholders, not only on the financial level but also on social, political, and environmental levels.

Finally, the third and most crucial advantage of Digital Lobbying is its own method. Thanks to a data-driven (or data-informed) approach, collecting, sharing, and leveraging information and data leads to more effective strategy formulations and decisions. Indeed, one of the fundamental concepts of Digital Lobbying is that we can make better decisions when we rely on better knowledge of reality.

The same reasoning is valuable for the decision-maker or political actors: in the public sector, but it can be extended to the private, evidence-based policy-making refers to the attitude of proposing specific policies based on studies or experiments, thereby making those policies more substantiated and credible. Whether it concerns public policies (policy-making) or other decisions (for example, a business strategy in any field), basing decisions on data and empirical evidence allows for better decision-making.

6. *The Importance of Data Management*

Data in itself says nothing. It becomes useful and starts to tell a story only when interpreted by an intelligence, whether human or artificial, that provides context and meaning. This process of interpretation transforms data into knowledge. Indeed, data production is driven by the fundamental need for comprehension and expertise, which determine which data are valuable. Moreover, collecting and processing specific data serves a higher purpose: understanding reality. This understanding is crucial for making better decisions. Thus, the ultimate goal of data production and interpretation is to facilitate informed decision-making.

In this sense, data helps specialists make better decisions. In the digital revolution, the datafication process offers endless possibilities for whoever needs to make decisions: Big data, detailed information, and

data processing software are transforming the world and our way of life, work, and thought. Lobbyists need an adequate information collection, management, and strategic analysis model to understand reality and people. This ability to 'interpret' ultimately translates into the capacity to decide on the best strategies and most effective action plans, measure their impact, and, if necessary, modify them in progress to achieve their goals.

When data is described as the 'new oil' or the 'new gold' of the global system, it refers to the new reality of using data to better understand people, which are electors, consumers, and stakeholders. However, the added value is not the data in themselves but the ability to use them—the capacity to interpret them to obtain a better understanding of reality in order to make more accurate decisions.

This fundamental principle is a little secret of the smartest CEOs, candidates, decision-makers, and lobbyists, who understand that the effectiveness of their actions depends on the level of preparation and constant updates. A more intelligent management of data and information allows a better comprehension of reality and a precise screening of people, phenomena, and situations.

Even if, in the past, understanding of social, economic, and political realms was based on pools and statistics, in a digitalised world like the one today, it is possible to embed a microscopic and sophisticated vision that allows considering micro-interactions among decision-makers, journalists, firms, stakeholders, and societal individuals. Understanding patterns among these interactions significantly adds value to public affairs and lobbying specialists. Indeed, discovering micro-details within these schemes may be crucial in order to reach certain conclusions.

Detecting the nuances or shifts in potential political stances, identifying 'weak signals', and understanding the opportunities and risks associated with emerging political or legislative developments—and even predicting them—allows those involved in institutional relations to proactively mitigate risks and capitalise on opportunities. This data-driven capability is akin to a paradigm shift, which can be strategically leveraged to outmanoeuvre competitors and achieve their objectives. These ideas are precisely the promise offered by the method of Ddigital Lobbying (Carro and Di Mario 2020; 2021).

7. *Data Science and Emotional Intelligence*

To gain a comprehensive understanding of Digital Lobbying, it is important to delve deeper into two fundamental concepts: data sciences and emotional intelligence. These two areas are critical because they form the backbone of effective digital lobbying strategies.

Data science is the study of data and its production, elaboration, and interpretation. Recently, it has been referred to as the development of algorithms and analysis techniques that allow us to make sense of big data through statistical software and artificial intelligence. In this context, big firms have embedded the role of data scientists in public affairs. Its role is to make sense of information from outside (political insights, legislative processes, social media communications, press articles, etc.) and inside the organisation (industrial plan, business processes, the external relations of the various units, communication activities, etc.) by integrating them into a unique vision and elaboration.

The second concept is emotional intelligence, the capacity to recognise and decode emotions. Emerged in neuroscience studies, emotional intelligence finds many valuable applications in the context of public affairs, from formulating suitable communication campaigns or messages for specific stakeholders to decoding reality itself and the orientations of various stakeholders appropriately. Although sentiment analysis through AI software is becoming increasingly important, the ability to gather details and nuances is a crucial prerogative that puts the human being back in the centre, for example, in the interpretation of feelings during a meeting. Emotional intelligence allows lobbyists to collect behaviours and 'vibrations' associated with particular issues by the stakeholder, thus providing valuable insights regarding the most appropriate strategies to adopt.

Digital Lobbying and knowledge management allow the integration and valorisation of these approaches in the analysis.

8. *Strategic Vision of Digital Lobbying*

The innovation represented by Digital Lobbying leads us to a final set of considerations regarding the strategic aspect of lobbying and public affairs activities.

The concept of strategy, usually associated with war or competition,

can be generally used in every case in which rational actions are undertaken to reach specific goals. More specifically, Alfred D. Chandler defines 'strategy' as «The determination of long-term goals of a firm, the adoption of codes of conduct and the allocation of resources needed to achieve those goals» (Chandler 1962: 13).

Beyond mere competition, our reasoning shifts the focus to how any organisation can improve its performance within a strategic framework that includes its goals, decision-making processes, and resource allocation strategies. Based on this, digital lobbying proves to be an effective method on at least two levels:

Firstly, Digital Lobbying allows lobbying and public affairs professionals to gather better information, use resources more efficiently, and make better decisions to reach specific goals. Secondly, lobbying and public affairs activities offer to individuals in charge of organisational management (president of a public enterprise, the CEO of a private enterprise, the Board of Directors of any nonprofit organisation, etc.) a broader set of information and competencies useful not only for deciding on courses of action but also for defining the very objectives that the organisation can set about its socio-political and regulatory environment.

Moreover, the added value of Digital Lobbying lies in its data analysis and emotional intelligence features, along with its AI models, which are dedicated to detecting patterns and identifying emerging risks and opportunities. Its ability to generate insights (deep insights or detailed information) is precious for leaders of complex organisations, especially in today's environment characterised by turbulence, unpredictability, and mutability.

Managing an organisation's external and institutional relations is an enormous competitive factor of differentiation, which appears essential to deploying a more effective strategy. Not measuring and managing relations between an organisation and external stakeholders means turning down a big asset and being exposed to risks, threats, or crisis situations. On the contrary, adopting the strategic perspective typical of Digital Lobbying enables one to better respond to risks and opportunities, pursue long-term goals with clarity, and overcome challenges.

When you are strategic, you don't limit yourself to activating public affairs channels only when crises or looming threats arise. Conversely, it means adopting a proactive mode, in which public affairs specialists can implement measurable and effective strategic actions by acting in advance on planning, goals definition, context analysis, and many other aspects. Similarly, setting goals prior to the implementation of a policy is a crucial

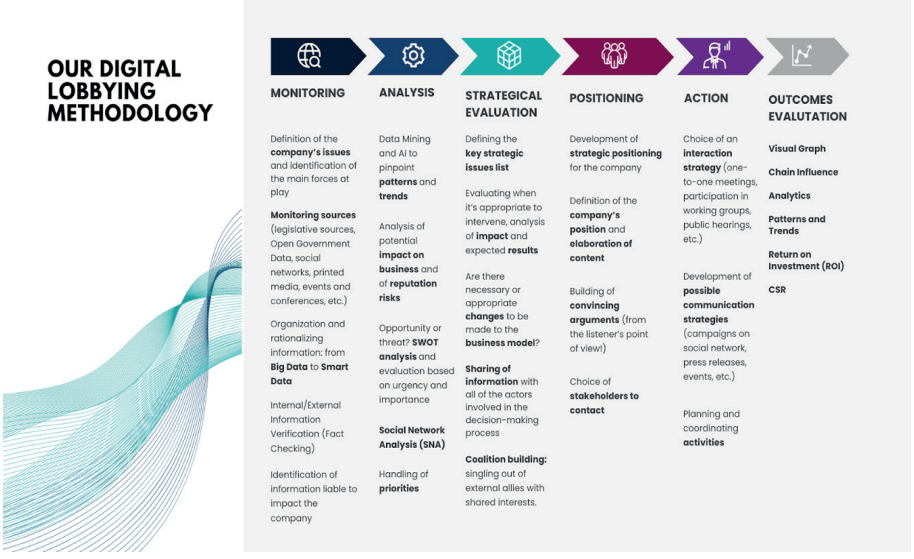
element for assessing its success in policy evaluation studies.

Finally, it is essential to also grasp the strategic essence of Digital Lobbying: structured public affairs activities based on innovative methods and the use of digital tools and platforms are not a cost centre but rather an investment to pursue proper risk management and enable better decision-making by balancing external and internal information, threats and opportunities, costs and objectives. A solid reputation, fluent relations with stakeholders, and the adoption of scientific methods for reading reality and making decisions are the only ways to respond to the complexity of the present from a strategic standpoint.

9. *The Digital Lobbying Process*

As explained in the previous paragraphs, digital transformation affects all phases of the public affairs process, from information research to results evaluation. Carro and Di Mario (2021) formalised a digital lobbying model that is developed in six steps. The following points outline them: 1) Monitoring; 2) Analysis; 3) Strategic Evaluation; Positioning; 4) Action; 5) Outcomes Evaluation (Fig. 1).

Fig. 1: The Digital lobbying model



This process involves enhancing knowledge acquisition by combining digital technologies with the expertise of public affairs professionals. These six phases could be associated with the policy cycle, a milestone of public policy studies, and should be viewed as a continuous process rather than isolated steps. To better understand this six-step process, it is essential to review some key points.

First of all, a relevant point concerns that this model is not to be understood as an unchangeable recipe or prescription. Instead, it should be seen as a philosophy that is, first and foremost, a method. Therefore, due to its adaptability and modularity, the Digital Lobbying process may be adapted and modified depending on organisation's specificities. As a matter of fact, it is crucial to consider specific needs related to contexts and individual organisations.

For these purposes, ADL Consulting developed the aforementioned knowledge management platform, KMIND, to implement the digital lobbying method. Its structure and design are adaptable and based on the six-step process. In addition, since it is on-premises software, the organisation using it may retain sole ownership of its data.

Furthermore, it is equally important to emphasise the organisational coherence of the digital lobbying process. Studies on enterprise architecture (EA) consistently indicate that adopting a coherent and well-structured model is essential for creating value and optimally achieving goals.

Finally, competencies, resources, and assets should be associated with a coherent and strategic organisational design. In this way, a firm's professionals and departments can align with corporate means and objectives. Digital Lobbying is inherently aligned with strategic coherence, as it facilitates inter-relationships and the sharing of information and objectives among those responsible for different stages of the public affairs process. It also promotes collaboration among various units and structures within an organisation.

10. *Collaborative Nature and Organisational Benefits*

The latter considerations on enterprise architecture allow us to focus on another crucial aspect, which is both a prerequisite and an outcome of our digital lobbying model: its inherently collaborative nature.

As previously mentioned, digital lobbying platforms significantly

improve the sharing of information and objectives, a key element emphasised by modern collaborative governance approaches. They enable an organisation to operate within a well-ordered system where competencies, knowledge, and relationships are seamlessly integrated with information about both internal and external stakeholders.

This inherent collaboration is efficiently organised and coordinated within a unified system architecture. The sources of data, information, assessments, and responsibilities for actions and decisions are transparent and secure, which is another advantage facilitated by digital technologies. This ensures that all efforts are focused on leveraging each actor's knowledge, skills, and potential—whether implicit or explicit, emotional intelligence or more rational—thereby enhancing the overall co-produced value.

Furthermore, because the public affairs sector relies heavily on effective time management and operates under strict time constraints, the ability to quickly and easily retrieve information can make the difference between timely success and missed opportunities. Therefore, the organisational structure and user-experience perspective in knowledge management are crucial: information must be easy to gather without wasting time, duplication of work should be avoided, and potential strategy adjustments should be analysed in real time.

Having clarified this aspect of process design, we can also dedicate ourselves to the aesthetic elements of User interface (UI) and User experience (UX) to make the experience of professionals using a platform as gratifying (and even enjoyable) as possible. Once again, technological innovation proves to be an essential component in shaping the organisation's success.

11. *Relational Capital, Reputation and Final Considerations*

Following the presentation of the process, the analysis of relational capital and reputation are the last concepts to be considered to implement any successful strategy in public affairs. The relational capital consists of relationships, exchanges and experiences shared with stakeholders outside the organisation. Even if the relational capital is typically safeguarded by the organisation's high-ranked members, an efficient model of digital Lobbying allows the sharing of much more than just single relationships. Indeed, if an individual lobbyist is unavailable or even leaves the organisation, the relational capital he holds remains partly accessible and tied to the firm that invested economic and organisational resources in

constructing and implementing the activities carried out by its lobbyists.

This reasoning is possible only through a knowledge management system that embeds stakeholders' profiles, reports on activities, lists of meetings and interviews, and much other information. This approach not only enhances the oversight of institutional tables, parliamentary committees, or specific dossiers, reducing costs and generally increasing return on investment, but also valorises a dense network of intangible assets consisting of relationships, exchanges, and trust—essentially, relational capital. In the medium to long term, those who have patiently dedicated energies and resources to this endeavour get substantial advantages.

The development of relational capital goes hand in hand with the management of reputation. This latter element is crucial for public affairs specialists, and it is seen as an intangible but essential good to preserve and enhance. By adopting the digital lobbying method, reputation can be managed in a systematic and scientific manner in several contexts: internal operability, performance evaluation, and compliance, which is seen as the adequacy of external ethical and regulatory standards.

For what concerns internal operability, the decisive advantage of the digital lobbying method is the assets' sharing (information, competencies, relationship), made accessible and systematic by the digital infrastructure that supports the organisational structure. Within the performance evaluation realm, indicators and measurements are enhanced by a larger amount of data and information. In this way, an organisation can assess its reputation and how it changes over time, thanks also to the innovative use of big data and artificial intelligence. Finally, a digital knowledge management platform can improve compliance with ethical and normative standards. Indeed, it simplifies organisational efforts as it enables transparent and straightforward reporting, sometimes even automatic, of one's activities, thus helping to uphold specific standards and enhance the awareness and trust of professionals and external stakeholders. This applies not only to performance but also to Corporate Social Responsibility (CSR).

In conclusion, let's again specify the essence of Digital Lobbying. It's a positive-sum game that benefits from the countless possibilities technological innovation offers. Importantly, it leverages an innovative approach that integrates these possibilities into a coherent framework, aiming to create greater value for professionals, organisations, their stakeholders, and public decision-makers as critical stakeholders. Ultimately, it contributes to enhancing democracy and the quality of its processes overall. In this sense, we can foster more transparent, efficient,

and effective interactions within the public sphere, paving the way for a more informed and engaged society.

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Part II

Economic and Sociological Issues

Anna Simone

From the Working Citizen to the Consumer Citizen Neoliberalisation and Performance Society

Abstract: Citizenship has evolved over time due to various specific and macro-contextual factors. One of the major influences on this evolution has been the process of neoliberalization, which has reshaped the role of the state and institutions in society. This transformation has led to a society that values consumption and performance over other aspects of citizenship. The transition from citizen-worker to citizen-client and consumer reflects the broader societal shift towards a performance-oriented culture that values consumption and economic activity above all else.

Keywords: Neoliberalization – performance society – citizen-worker – citizen-client – consumer.

1. *Neo-liberalisation Processes and Social Transformations*

This article will traverse the progressive transformation of the 'citizen-worker' into 'citizen-client and consumer' within a social, political, economic, and legal framework that has seen a radical change in the twentieth-century structure of the State and its institutions. If, in the 'short century', the idea of citizenship was strongly linked to the legal status of a worker in the 'wage society' as well as to the legal condition determined by belonging to a Nation-State with limited sovereignty, since the 1990s (but the process had already begun in the 1960s) the latter has become de-territorialized and de-sovereignized on the one hand to participate in the process of the birth and construction of the European Union on the other to respond to a new model of economic development centered mainly on the relationship between growth and consumption that we might conventionally define as the 'neo-liberalization process'. By this expression, we mean, simultaneously, both the crisis of the neo-

liberal project coined by the Austrian School of von Mises (1949; 1933) and von Hayeck, whose sole protagonist should have been the market and the process of 'marketization' of the State and its institutions. But let us proceed step by step to understand better what we are talking about.

The authors mentioned above of the Austrian School, and in particular von Hayek, in his famous volume entitled *Law, Legislation, and Liberty* (1993), identified the State, society, and the social bond, as well as 'social exchange value' as impediments to the full development of the free market. The objectives, partly achieved in Pinochet's Chile, Reagan's USA, and Thatcher's England, were and are pretty straightforward: the progressive elimination of welfare and public expenditure used for the bestowal of social rights, the privatization of all essential services including health, schooling and universities; the relativization of constitutional 'ties' and public law versus a strengthening of the role played by private law while conveying an idea of a highly competitive and individualized society, as well as one based on the growth/consumption model. A development model that, in parallel with its revival in the European scientific context, has been contested from many sides. An internationally renowned jurist such as Alain Supiot, for example, as early as the first decade of the 2000s, questioned the neo-liberal ideology guilty, from his point of view, of having generated a new order based on the financialization of globalization processes, to the end of developing a sort of new 'naturalization' of human experience, a kind of new Leviathan model taken for granted and accepted, without much resistance, by legal and political systems. To see the concrete and material reverse of the neo-liberal development model, Supiot, not by chance, proposes to rethink the notion of 'social justice' at its roots, also and above all in the light of the actual devices of asymmetrical wealth distribution on a global scale with its tangible social effects: growing pauperism, new exclusions, increasing inequalities, but also and above all an irreversible crisis of the welfare State and the policies of redistribution and allocation of resources through social rights. In his memorable inaugural lecture of the academic year at the Collège de France on 29 November 2012, the jurist in question expressed himself as follows: «An old metaphor represented justice as the mother of all laws. (...) Today, more and more economic science is increasingly legitimized as the mother of all laws». Even Gunther Teubner (2011), a well-known pupil of the systems and differentiation theorist Niklas Luhmann, noted a significant imbalance between the individual legal and social systems, progressively determined by the economic system, to the point of generating actual 'compulsive social behavior' that exploded especially during the pre-

pandemic economic crisis of 2007, as well as the need to address this imbalance through a general rethinking of constitutionalism and business ethics.

In more recent years, however, it has mainly been the French theorists Pierre Dardot and Christian Laval (2009), as well as the work of Antoine Garapon (2012), who has led us towards a fairly accomplished thought on the anthropophagy of the neo-liberal economic system and the impact it has on the institutional forms of organization of the State and society, as well as on the lives of individual citizens. According to Pierre Dardot and Christian Laval, neo-liberalism is not only an economic ideology. Still, it is also, above all, an anthropological and cultural system, a new reason that determines the behavior of social actors, the structure of law and rights, politics, and society itself by economically enhancing any dimension of the human through processes of individualization, commodification, induction to extreme competitiveness, performativity, performance, permanent selectivity.

Antoine Garapon, on the other hand, director of the Institut des Hautes Études sur la Justice in Paris, in his critical study on the 'Minimal State' and the relationship between neo-liberalism and justice, working on the metamorphosis of the latter in France also from his professional experience as a judge, argued that neo-liberalism, even before being an economic doctrine, should be considered as a model that aims to transform human behavior radically. Moreover, it should no longer be understood as a project that seeks to extinguish the state through the market, as was initially thought, but as a process that has taken over all public institutions to 'marketize' them, 'corporatize' them through management and the development of efficiency standards, indicators and devices imposed by the market. A process that, historically, as Giulio Moini's research well demonstrates, starts from the Austrian School and its think tanks – the Mont Pèlerin Society and other Foundations – but paradoxically ends its first cycle of de-stabilization and privatization by shaping from within the very idea of the State «So that it can adequately perform the function of extending exchange between private individuals of supplementing the market order» becoming, again to quote Moini «A connective tissue of contemporary capitalism» (Moini 2020). A turn that, according to the author in question, will then be mitigated, without generating any discontinuity, through the progressive wave of the 1990s ridden by Giddens' reflexivity and 'third way' and embodied, as well as practiced, by political figures such as Bill Clinton in the US and Tony Blair in the UK. In other words, a 'tempered neo-liberalism' based on

new privatizations and policies of public spending cuts to cede substantial shares of political decision-making to corporations and the new processes of commodification. This process has also shaped Western societies, as well as the behavior of citizens within a framework that we have elsewhere referred to as the 'performance society'.

2. *The Performance Society*

The use of the lemma 'performance society' has already appeared in the works of Herbert Marcuse (1955) and Ulrich Beck's studies on the 'risk society' (1986). For Marcuse, for example, the consumerism on which the so-called 'welfare societies' of the 1960s were based, if unregulated, would have led us into the 'performance society'. For Beck, on the other hand, the risk society would have become a 'performance society' if adequate regulatory instruments had not been devised to contain the excesses of the markets, especially about the de-regulation of forms of work and the advent of new forms of economic value extraction, such as cognitive, immaterial and reputational capitalism. The crisis of the twentieth-century social model based on industrialization, Fordism, the welfare state, the social classes, and the capital/labor nexus have then contributed to delineating an even more complex picture, fundamentally based on competitive individualism and strongly determined by the market, to the point of being able to speak with the aforementioned Dardot and Laval of a new neo-liberal rationality capable of shaping the behavior of citizens, starting from the psyche. Beck wrote: «A new immediacy is born, paradoxically enough, in the relationship between the individual and society, the immediacy of crisis and illness, in the sense that social crises manifest themselves as individual crises, and are no longer perceived, or only in a very mediated form, in their social dimension. This is one of the explanations for the current wave of interest in psychotherapy. To the same extent, the idea of individual work performance gains in importance, so it can be said that the performance society, with its possibilities of (apparent) legitimization of social inequalities, will only develop in all its problematic in the future». (1986).

Individualization for Beck means disengagement from historically pre-established social forms: «It is the person who becomes the unit of reproduction of the social in the life-world» (Ivi); «Individualisation means dependence on the market in all dimensions of life» (Ivi). Within

this general framework that will codify social change in the 1990s, the shift towards the 'performance society' will be formulated (Chicchi-Simone, 2017).

As already mentioned, it is based on three determining elements: the reorganization of institutions on a corporatist basis, competitive individualism, and the promotion of success-oriented performative action within a practical and discursive regime that aims solely and exclusively at profit by placing an economic value on any human aptitude. Moreover, what was once entrusted to the social bond and the old forms of work organization, is now entrusted to the techniques and knowledge of management (Ivi).

It is mainly from the 1990s onwards – as already mentioned above – that, as the studies of Boltanski and Chiapello teach us, the managerial spirit becomes all-pervasive, positioning itself as the only effective organizational form to be translated even in the institutional sphere. Indeed, we could say that through the processes of privatization of welfare and of the large utilities and services companies that were once nationalized, through the new graft between public and private, the 'management' model aimed at transforming every public body into a company. It is no coincidence, for example, that managerial literature has undergone impressive development since those years, structuring itself on at least two critical bare strands: corporate management with its complex plethora of methods and the so-called management of the self.

Unlike corporate management, which aims to make more profit out of the human resources employed, fostering capillary group efficiency through various techniques and methods, self-management aims, first of all, to shape the individual by considering them as a 'profit-body' and a brand, a sort of 'I-company' that can even capitalize and sell itself on social networks. As Le Texier's studies teach us, the management of the self began to timidly take hold in the United States around the 1980s through the use of models used by behaviorist psychology. It has already been tested by the groups 'alcoholics anonymous' (Chicchi, Simone, 2017). We could also say that from the concept of *habitus* identified by Pierre Bourdieu to indicate the 'cultural capital' of each social actor, we move directly to the internalization of a self-constructed according to the standards of market productivity and business for business. The project aims to align the body, spirit, emotions, consciousness and senses with marketing and consumption models, considering relationships and interaction as social gestures for business. In summary, we could say that the 'performance society' is based on certain principles that aim to

transform the behavior of social actors radically and thus of citizens: 1) crisis of the social bond, individualization and dependence on the market; 3) commodification and branding of the self; 4) an always performative and always success-oriented action; 5) a widespread capitalization of every human attitude; 6) internalization of the principles of competition and competition; 7) a continuous solicitation to 'have-to-be' instead of being oneself; 8) a progressive shift from the subject producing goods to the 'subject-commodity'; 9) a progressive shift from the productive subject to the 'performing subject' (Ivi). In this societal context, the change from the 'working citizen' to the 'citizen/client and consumer' is also determined by the neo-liberal development model.

3. *From the Citizen-Worker to the Citizen-Client and Consumer*

In a 2016 film entitled *I, Daniel Blake*, Ken Loach tells us in detail what can happen to citizens when they undergo institutional changes due to neo-liberalization processes. Daniel Blake is a 60-year-old, no-digitalized British factory worker. Due to a cardiac arrest, he is forced to apply to the British social security system for a sickness benefit that will never be granted to him because his condition does not conform to the new standards of assessment tests developed by the neoliberalism social security system itself. Daniel spends hours and hours nailed to an automated call center that does not know how to answer his case, days waiting to speak to someone in the cold offices of the Newcastle Social Security office with rigid employees who are incapable of providing answers. Daniel tries to defend his condition with all means, which clashes against the new digitized procedures and against the logic of permanent evaluation that grips even an institution that was once only in charge of recognizing social rights, of recognizing work as such, as well as the status of citizen related to it. The film's protagonist, amidst a thousand difficulties, will only succeed in making his case visible by engaging in a solitary and obstinate struggle. Still, in the end, he would die of a new heart attack on the very day when, after months and months, he had managed to have a meeting to reconsider the denial of his request for sickness benefits. We mention this film and this story because it has a metaphorical breath. The protagonist believes in the state and institutions but simultaneously realizes that his condition and the non-recognition of his case by the evaluative standards of neo-liberalized welfare have transformed him from a 'citizen/worker'

into a 'citizen/client and consumer'. The central key to the film will be his angry shout against the employees of the neo-liberalized welfare state: «I, Daniel Blake, am a citizen, not a customer, listen to me!» and he writes his name and surname on the wall of the institution to remind them of his rights as a working citizen.

Citizenship, in its sociological dimension linked to the wage and labor society, has been radically transformed, moving away from the idea of social citizenship conceived by Marshall (1950). In other words, it is no longer a concept linked to a worker's status and, therefore, to the possibility or otherwise of demanding certain fundamental rights, including social rights. What has citizenship become in neo-liberalized contexts and what we have called the 'performance society'? Jean Claude Bourdin, for example, argues this thesis: «By now we can only speak of citizen-consumers, taking into account how this expression shows us all the contradictions of the consumer in the regime of neo-liberalization» (2014). The author in question, in short, tells us that consumption, instead of work, has become a process internalized by citizens in the free market regime. The citizen-client and consumer buys and sells anything: utilities (electricity, gas, telephony), but also himself through social networks. Of course, the citizen-worker was and is also a consumer protected by 'consumerism' by the legal protection aimed at defending the interest of citizens understood as users of material goods and services. Still, purchasable goods did not go through the process of commodification of self in the network.

In contrast, goods and services did not respond to the regime of free competition as happens in the contemporary neo-liberal development model in which, precisely, everything is a commodity. On the other hand, to support this thesis, it suffices to recall how, in the 19th century, most of the population devoted their resources almost exclusively to buying necessities. It was only from the birth of the so-called 'welfare society' that marked the rise of industrial capitalism in the 20th century that the figure of the citizen-worker who is 'also' a consumer asserted itself, thus favoring the proliferation of material goods produced on a large scale that reached the market through intermediary figures extraneous to production, the so-called 'merchants'.

For example, the United States was the first to have a legal consumer defense in this context. As early as 1899, the National Consumers League was born, while at the beginning of the 20th century, when a scandal broke out over the sale of rotten meat, following protests from the weaker sections of society, the federal government was forced to pass laws imposing

controls on the industries. In 1914, the Federal Trade Commission was also founded to combat illegal economic activities. In 1928, the Consumer Union was also established, an association that informed its members about new goods and services available on the market through a periodical newsletter. At the same time, John F. Kennedy enunciated in the Bill of Rights the five fundamental rights of the consumer: the right to health, the right to safety, the right to economic defense, and the right to legal defense, and representation. However, despite US pioneering, the first forms of protection for working citizens and consumers in the European geographical context only arrived around the 1950s, first in the United Kingdom and Denmark, then also in Sweden, France, and Germany. It was only thanks to the first directives issued by the European Community in 1973, when the European Consumer Protection Charter was approved that essential concepts such as the liability of companies in the sale of goods that may cause damage to consumers, misleading advertising, consumer protection about the prices of goods or services, and safety guarantees became established. Subsequently, the Maastricht Treaty, which came into force in 1993, also devoted a section to consumer protection. At the same time, the first consumer associations were founded in Italy, and the CNCU (National Council of Consumers and Users) was established at the Ministry for Economic Development. As the development model has become neo-liberalized, moving more and more in the direction of the free market, many accredited associations for mediation and arbitration have also sprung up, as has the network of lawyers in defense of consumers and the use of the instrument of class actions.

It is precisely from the 1990s onwards that legal disputes began to shift from the state/citizen-worker conflict to the market/citizen-customer conflict. This radical transformative process, which, as we have seen in the previous two paragraphs, starts from economic neo-liberalization outlining what we have called the 'society of performance', has also transformed the idea of citizenship from within. The shift, in fact, from citizen-worker to citizen-client-consumer has now taken place.

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Alina Sorgner

Gender Inequalities in Digital Labor Markets

Abstract: The digital transformation of labor markets accelerated significantly during and in the aftermath of the Covid-19 pandemic. This contribution provides an overview of key trends in the digitalization of labor markets, including both the destructive and transformative impacts of digital technologies on jobs, telework, and the rise of the gig economy. It examines how these trends are related to gender inequalities within digitized labor markets. While digitalization can be a powerful tool for advancing gender equality, many gender inequalities that exist in the offline economy carry over into the digital economy, leading to the emergence of digital gender divides. The chapter concludes with some practical recommendations for achieving greater gender equality in digital labor markets.

Keywords: Digital gender divides – transformative digitalization – destructive digitalization – telework – gig economy – Covid-19 pandemic.

1. *Introduction*

Current developments in the field of new digital technologies, including artificial intelligence, machine learning algorithms, cloud computing and dexterous robotics, among others, have a strong potential to substantially change labor markets as we know them today (Brynjolfsson and McAfee, 2014; Frey and Osborne, 2017). These impacts may be destructive when a digital technology replaces human labor. The effects of digitalization may also be transformative, for instance, when a digital technology complements human labor without necessarily replacing it. Transformative digital technologies are likely to generate positive spillovers and create new employment opportunities in both paid employment and self-employment (Fossen and Sorgner, 2021). At the same time, they pose major challenges to workers in occupations affected by transformative

digitalization, as these workers must adapt to these changes in order to take advantage of the opportunities the new digital technologies offer.

Digitalization is frequently considered as an opportunity to empower women and achieve greater levels of gender equality, for instance, by promoting women's labor market participation and facilitating their financial- and digital inclusion, therefore, leading to more economic welfare (European Commission, 2018; EIGE, 2018; OECD, 2017, 2018). At the same time, digital technologies may impact on men's and women's jobs differently, which may further exacerbate existing gender gaps on labor markets.

The main objective of this contribution is to highlight some of the opportunities and challenges that digitalization of labor markets – a trend that has significantly accelerated during the Covid-19 pandemic – creates for gender equality. To this aim, it will proceed as follows. Section 2 provides a brief overview about digital technologies and the future of work. Section 3 discusses the role of the Covid-19 pandemic in accelerating digital transformation of labor markets and its effects on gender equality. Section 4 presents evidence on various digital gender divides. Section 5 discusses gender equality in telework and in the gig economy. Finally, Section 6 concludes.

2. *Digital Technologies and the Future of Work: an Overview*

To understand how digital technologies impact on labor markets, studies commonly employ the task-based approach proposed by Autor et al. (2003). According to the task-based approach, jobs consist of two broad sets of tasks. On the one hand, abstract tasks require problem-solving capabilities, creativity and persuasion. On the other hand, manual tasks require situational adaptability, visual and language recognition, among others. Each of these two broad sets of tasks can be further divided into routine and non-routine tasks. In the past decades, computers and robots could replace humans in job tasks that could be easily codified, such as routine manual tasks (e.g., repetitive movements in structured environments) and routine cognitive tasks (e.g., arithmetic calculations). By contrast, non-routine cognitive tasks (e.g., abstract and interpersonal tasks) and non-routine manual tasks (e.g., manual dexterity) that are usually performed in unstructured environments were more difficult to automate. Thus, machines could not replace human workers in

these areas, but rather supplemented them. Consequently, demand for workers in jobs that strongly rely on tasks that constitute bottlenecks to automation increased, while demand for workers in jobs associated with tasks that could easily be performed by machines declined. Empirical evidence supports this argumentation by suggesting that labor markets increasingly reward social skills (Deming, 2017) and ICT skills (De La Rica and Gortazar, 2017). In addition, the task-based approach explains the growing polarization of labor markets in many developed countries, which is evident by the increasing shares of low-skilled and high-skilled employment in jobs involving less automatable tasks (Goos et al., 2014; Autor, 2015).

The most recent advances in digital technologies, including machine learning algorithms and cloud computing, have improved the performance of machines in fields that traditionally employed human workers. Machines have increasingly become able to substitute human workers in jobs that rely on many non-routine cognitive tasks, such as image, video and speech recognition, natural language processing, generating computer programs and emotions identification, among others. Additionally, advances in robotics have increased the level of dexterity of robots, thus, allowing machines to perform more non-routine manual tasks that are widespread in the manufacturing sector (Brynjolfsson and McAfee, 2014; Graetz and Michaels, 2018; Frey and Osborne, 2017).

The study by Frey and Osborne (2017) was among the first to measure the computerization risk of occupations due to new digital technologies. The authors estimated that 47 per cent of the U.S. labor force was facing a high risk (more than 70 per cent) of computerization in the near future. This study has been replicated for many developed and developing countries, including a selected sample of European countries (Berger and Frey, 2016), OECD countries (Arntz et al., 2016), ASEAN countries (Chang and Huynh, 2016), and selected G20 countries (Sorgner et al., 2017), among others. These studies found out that the average risk of computerization varies considerably within and between occupations and across countries. The variation within occupations is attributable to strong variations of job-specific tasks (Arntz et al., 2017), while the variation across countries is at least partly attributable to country-specific differences in the occupational structure of local labor markets.

More recent studies highlight the importance of distinguishing between destructive AI, which has the potential to displace workers in their jobs, and transformative AI, which is designed to make workers more productive in their jobs. Depending on how much occupations are affected

by transformative or destructive AI, occupations can be classified into four categories: 'rising star' occupations are affected by transformative, but not destructive AI, potentially leading to new opportunities and increased earnings; 'machine' terrain occupations are affected by both destructive and transformative AI, making it crucial for workers to keep up with the changes at work through training; 'human terrain' occupations are not affected by either type of AI; and 'collapsing' occupations are becoming obsolete due to complete automation through destructive AI (Fossen and Sorgner, 2019). Empirical evidence suggests that workers in occupations that are more exposed to transformative digital technologies have a stronger individual wage growth as well as a lower probability of entry into non-employment. In contrast, workers in occupations that are exposed to transformative digitalization experience a slower wage growth and a higher probability of becoming unemployed or entrepreneurs out of necessity (Fossen and Sorgner, 2021; Fossen et al., 2022).

3. *The Covid-19 Pandemic as an Accelerator of Digital Transformation of Labor Markets and its Effects of Gender Equality*

The Covid-19 pandemic has powerfully accelerated digital transformation globally, as evidenced by the development and expansion of digital infrastructures, adoption of digital technologies, the shift to digital ways of delivering services in firms and organizations, for instance, in education, healthcare, and retail, and the increasing implementation of digital technologies in manufacturing. Although the pandemic had negative effects on many businesses, it has revealed multiple new opportunities for entrepreneurship (Sorgner, 2023). For established businesses, the need to invest in talent for digitalization has become a high priority, which is further supported by the fact that adoption of some digital technologies, for instance, in digital performance management using industrial internet of things or operator assistance through augmented reality, can be realized without major technology investments irrespective of existing technology infrastructure.

The Covid-19 pandemic recession is often referred to as a 'shecession' as it had an unusually large economic impact on women in most countries. In addition, it affected different women differently, revealing previously overlooked gender biases, such as the gender-racial-gap. Starting with health risks, Black women in the U.S. have been more vulnerable to the risk

of death from Covid-19 than Black men and White women. This can be attributed to the higher exposure of Black women to the risk of contagion in low-paid jobs in essential services, such as health care sector and the transportation and warehousing sector, where they are overrepresented, and their inability to work remotely (Bertocchi and Dimico, 2021). In terms of employment outcomes, mothers experienced substantially larger employment declines than fathers and women without children (Alon et al., 2021). Moreover, self-employed women reduced working hours and therefore earnings to a greater extent than self-employed men during the pandemic. This greater adverse impact on self-employed women's working hours and earnings is despite family responsibilities and home-schooling, industrial gender segregation and women's greater propensity to run a non-employing business and to work part-time (Reuschke et al., 2021).

It is of particular concern that the Covid-19 crisis has not just affected the short-term allocation of household tasks, but also reversed the positive trend toward more egalitarian gender roles, which might leave women with less time for productive remunerated work and hamper female empowerment in the post-pandemic period (Danzer et al., 2021).

4. *Digital Gender Divides*

The Covid-19 pandemic has clearly demonstrated the importance of digital inclusion for economic resilience during the crisis, as many educational and work activities could only be performed from remote. In 2019, shortly before the outbreak of the pandemic, the percentage of the EU population that had at least basic digital skills reached 58% (European Commission, 2020). The situation in less developed countries is further complicated by lack of access to digital devices, often due to a high acquisition cost, and the lack of digital infrastructure (Sorgner et al., 2017). Women are worldwide less likely to use the Internet compared to men, and this gap is much larger in the least developed countries, due to cultural, financial and skills-related barriers (Mariscal et al., 2019). In developing countries, where mobile technology is the main access point to the Internet, there are pronounced gender gaps of about 15% on average in both mobile phone ownership and the use of mobile internet (GSMA, 2021). These gaps are even larger in South Asia, Sub-Saharan Africa and Middle East and North Africa.

The situation is even more dramatic when it comes to gender gaps in

advanced digital skills. According to a study of the LinkedIn platform, there are generally twice as many men as women employed in IT sectors in most of the Americas, Europe, Asia and Oceania, while there are only few women in IT in Africa (ITU, 2020). A few exceptions represent, for instance, Myanmar, and Latvia where there are more women than men in IT industries on LinkedIn. Within the IT sector, women work more often in the subsector Internet and Telecommunications and they are less likely to work in Computer Hardware and Computer Networking. This digital gender divide could become a critical bottleneck to achieving greater gender equality in manufacturing, particularly in developing countries, and it might further exacerbate the skilled-trades gap that manufacturers already face, which could slow down the digital transformation of the sector.

Another digital gender divide emerges with regard to the susceptibility of the male and female workforce to digitalization of their jobs. Sorgner et al. (2017) study the effects of digitalization on gender equality in labor market participation in selected G20 countries. The study reports that the computerization risk is not distributed evenly among women's and men's jobs. In fact, the computerization risk decreases with an increasing level of formal education for both genders, but low-skilled women face lower risk of computerization, on average, compared to low-skilled men. This result is likely attributable to the fact that many jobs typically held by low-skilled women require high levels of non-routine manual skills that still represent bottlenecks to automation, while low-skilled men are more likely to hold routine task-intensive jobs that can be easily automated. Moreover, Brussevich et al. (2018) analyze the susceptibility of female workers to digitalization using PIAAC data, which mostly includes developed OECD countries. Despite the strong variation of results between countries, they generally find that women in these countries are more likely than men to perform routine tasks that can be substituted by machines, but they are also less likely to perform analytical and abstract tasks that can be complemented by machines. This is in line with the results reported in Sorgner (2019, 2021) suggesting that women in developing and transition economies are significantly less likely than men to have skills that protect them from the destructive digitalization, namely analytical, non-routine manual, interpersonal, advanced ICT and socio-emotional skills. This result is robust across sectors, but gender differences are more pronounced in the manufacturing sector than in services, a sector that is further characterized by de-feminization trends. At the same time, women are also less likely to benefit from labor-reinstating effects of digital technologies.

5. *Telework and the Rise of the Gig Economy*

During the lockdown and with social distancing measures in place, telework was the only option for non-essential workers to carry out their work, which is evident in an increase in the share of tasks that were done from home during the pandemic. The ability to do telework was a strong predictor of job loss during the pandemic, and it has become a more widespread employment option in the aftermath of the pandemic. Telework opportunities vary greatly across occupations, industries and types of workers. A study for the U.S. and U.K. shows, for instance, that the share of tasks that can be done from home is industry-specific and varies between about 18 percent in Accommodation and Food Service Activities and 70 percent in Information and Communication, whereas only about 45 percent of tasks in Manufacturing that can be done remotely (Adams-Prassl et al., 2022). In the EU countries, telework is possible only in about 20 percent of manufacturing jobs (Sostero et al., 2020). The ability to do telework varies a lot within the manufacturing sector. For instance, workers in some STEM occupations of the manufacturing sector, such as Computer and Mathematics, Architecture and Engineering and Life, Physical, and Social Science report to have either very high or well-balanced share of job tasks that can be done from home, while in low-skill occupations of the manufacturing sector with high prevalence of manual tasks, such as Construction and Extraction or Building and Grounds Cleaning and Maintenance telework is not an option for most workers (Adams-Prassl et al., 2022).

Even within occupations and industries, women can do fewer tasks from remote than men, and they were found to end up unemployed more frequently during the pandemic (Adams-Prassl et al., 2022). The ability to do telework might therefore explain some of the gender gap in labor force participation rates. A study for the EU countries shows that technological potentials for realizing telework in jobs held by women are relatively high, and that a large share of jobs of female workers can be organized in a way that allows for more flexibility (Sostero et al., 2020). At the same time, these substantial technological potentials for telework in women's jobs cannot always be realized due to workers' and firms' low digital capabilities as well as organization culture that might not be very supportive of personal autonomy. Given a growing trend to carry out job tasks remotely, various bottlenecks to realization of technological potentials for telework need to be removed to prevent the

widening of this gap. At the same time, the rise of the gig economy raises a concern that online labor platforms that allow firms and organizations to outsource certain job tasks to a world-wide pool of workers might create less favorable working conditions compared to more traditional forms of employment, for instance, in terms of promoting informal work and poor social protection.

Regarding gender differences in the gig economy, a study by Aleksynska et al. (2019) reports that men earn over two times more than women online, a gap that is considerably higher than in the offline economy and which can largely be explained by occupational segregation and differences in the workers' choice to serve local vs. international markets. The gender earnings gap exists also in non-remote jobs in the 'gig' economy. A study of Uber drivers in the U.S. documents a 7% gender earnings gap amongst drivers. This gap can be explained by experience on the digital platform and risk preferences regarding, for instance, the preference for driving in safer neighborhoods and with the lower driving speed (Cook et al., 2018). In manufacturing, non-remote gig economy workers on a project-by-project basis may become a new trend, if the issue of the skilled-trades gap will persist in the future. The number of gig economy workers in manufacturing is currently quite low, with only about 9 percent of all gig economy workers in the U.S. having worked in this sector before the pandemic (Statista, 2018). It can be expected that this share will grow in the future, for instance, due to the difficulty to find skilled workers to fill full-time jobs in manufacturing. In this situation, manufacturers may become more willing to rely on gig economy workers on a project-by-project basis. In addition, current trends in the Industry 4.0, such as cloud manufacturing, might lead to an increase in the demand for experts in the fields of IT and cybersecurity, who can be recruited via digital labor platforms.

Gig economy and telework provide employment flexibility that has often been considered as a way to benefit working women, as it is supposed that remote work helps women carry out job tasks and perform their childcare responsibilities, thereby achieving a better work-family balance. In fact, the pandemic has revealed that gender gaps in the labor market were relatively mild among telecommuting workers compared to workers who were unable to work remotely. At the same time, telecommuting women spent more work time also doing childcare and experienced greater productivity reductions than telecommuting men (Alon et al., 2021). There is an additional risk that telework might lead to rearranging of job tasks, such that women in remote jobs might be

assigned or prefer less 'valuable' work assignments, which could lead to widening of the gender earnings gap. Finally, teleworking might adversely affect women's mental health, weaken social ties with peers and diminish promotion opportunities. These concerns represent important questions for future research.

6. *Conclusions*

Digital transformation of labor markets has accelerated during and in the aftermath of the Covid-19 pandemic. Adoption of new digital technologies by firms may represent a threat to workers whose jobs they are designed to replace. At the same time, digital technologies may empower workers in their occupations by making them more productive and help them pursue new opportunities. This contribution's objective was to highlight some of the opportunities and challenges that digital transformation of labor markets provides for gender equality. The insights can be summarized as follows.

First, it appears important to address the digital gender divides. Digitally excluded people had to struggle more during the Covid-19 crisis, and they have fewer attractive job opportunities in the post-pandemic period. While digital inclusion is far from being achieved for the entire population even in the most developed countries, significant digital gender gaps exist that are particularly sizeable in the least developed countries. It needs to be ensured that women in those countries have equal access to the Internet, can afford digital technologies, and that gender equality is achieved at least in basic digital skills. Moreover, promoting women's participation in occupations that are less susceptible to destructive digitalization and that benefit from transformation digitalization may help reduce the gender pay gap and improve female employment rates.

Second, telework seems to positively impact women's access to labor markets, and it has enabled many women and men to continue carrying out their job tasks during the pandemic. While the existing technology enables a large share of women to work from remote, opportunities for telework in manufacturing are rather limited. In addition, the organization culture as well as firms' and workers' low digital capabilities are still a barrier to the full realization of technological potentials for telework.

Third, digital work offers flexibility, and flexible work arrangements are important for women's better inclusion on labor markets. At the

same time, the burden for remotely working women increases, as well, as the household and childcare responsibilities are not equally distributed within the family. Thus, promoting flexible work arrangements, such as telework, is important, but it is by no means the only measure to be taken to empower women.

Fourth, some of the gender divides that exist in offline economy translate to the gig economy, where certain gender gaps, for instance, in earnings, might become even wider. While some of these gaps can be explained by women's preferences, others are clearly driven by the lack of experience with digital platforms and, therefore, can be addressed with appropriate training programs.

In conclusion, it will be a crucial task for future research to carefully distinguish between different types of digital technologies and to develop careful measures of impacts of digital technologies on labor markets, to be able to precisely assess the digital gender divides.

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Debora Barletta, Alessandra Coppola

Contrasting Hate Speech as a Practice of Digital Citizenship

Abstract: This paper connects APICE's practice developed in contrasting hate speech with the No Hate Speech Movement Campaign and its work with Digital Citizenship, detailing the application of non-formal and human rights-based education principles. Such exploration gives the opportunity to reflect on the different areas of intervention and action of contrasting hate speech and it offers activism and participation as a successful and viable solution to better apply what a proper digital education could be. The paper analyzes the DICIT4EU project and its success as a case study in putting into reality a multistakeholder and multidisciplinary approach, which is advocated for contrasting hate speech as well as for providing a quality digital education, as proved from the relevant literature illustrated and that comes from the Council of Europe and UN experience on the matter. The paper is ultimately based on the idea that Digital Citizenship must be communicated and understood as an exercise made possible by equipping people not only with technical tools and skills but, most and foremost, with a set of competencies (intended as the union between knowledge, skills and attitudes) that could enable them to become active subjects when exercising their rights and duties.

Keywords: Hate speech – activist practice – digital citizenship – non-formal education – human rights education – multistakeholder – multidisciplinary.

1. *What Does Contrasting Hate Speech Mean?*

Contrasting Hate Speech is now an established and renowned practice, especially in Europe where it started being defined in 1997 by the Council of Europe's Committee of Ministers issued Recommendation No. R (97) 20, focusing on combating hate speech while preserving freedom of expression. This implies that in these following 27 years (not considering what's been happening in the US and other continents for instance), there has been the possibility to dwell quite deeply in some of its main characteristics and developments.

Although it may appear urgent only in the last 15 years following the explosion of social media platforms, hate speech has actually had time to establish itself as a societal phenomenon. It spans various areas of life and knowledge, including education, justice, internet governance, civil society, politics, media, and academic research.

Addressing this multifaceted issue requires a collaborative, multi-stakeholder approach. Experts, institutions, and actors must cooperate and coordinate, each contributing to their respective areas of intervention. While mastering all these topics simultaneously is objectively impossible, this system ultimately benefits everyone by raising common awareness and providing a comprehensive working framework that can be shared and enriched by such diversity.

For this reason, it's important to clarify that in the context of this essay, we will focus on APICE's experience in non-formal education and the civil society sector. Our perspective draws from competencies developed through European-wide and national activism, which brought us to the participation and contribution in the DICIT4EU project.

Our specific competence on the topic includes our participation in the No Hate Speech Movement Campaign (*https://www.coe.int/en/web/no-hate-campaign*) led by the Council of Europe from 2013 to 2017, led by the Council of Europe from 2013 to 2017 at international level and that we joined in 2014, becoming Coordinators of the Italian National Support Group and later of the Group of Online Activists, whose practice would be further explained in the second section of this paper.

1.1 *Hate Speech Definition*

To understand how contrasting hate speech is approached in such a context, it's important to start with some definitions.While there is no universally agreed-upon definition, we have chosen to adopt those provided by the Council of Europe. Specifically, the Committee of Ministers' Recommendation No. R (97) 20 and the ECRI General Policy Recommendation N°15 of 2015 (recently updated in the CM/Rec (2022)16) on Combating Hate Speech adopted by the Committee of Ministers on 20 May 2022 (*https://rm.coe.int/prems-083822-gbr-2018-recommendation-on-combating-hate-speech-memorand/1680a710c9)*, which recites as follows:

> «Hate speech is understood as all types of expression that incite,

> promote, spread or justify violence, hatred or discrimination against a person or group of persons, or that denigrates them, by reason of their real or attributed personal characteristics or status such as ‹race›, colour, language, religion, nationality, national or ethnic origin, age, disability, sex, gender identity and sexual orientation».

Among the definitions we chose to adopt, it's also worth mentioning the one made by United Nations in its Strategy and Plan of Action on Hate Speech, which defines hate speech as: «Any kind of communication in speech, writing or behaviour, that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are, in other words, based on their religion, ethnicity, nationality, race, colour, descent, gender or other identity factor».

Even though in the same document UN clearly says how there is no universal definition, it's important to refer to documents that are also made and conceived outside of EU borders and takes more into account the universality of the phenomena.

The Council of Europe, as a pan-European institution dedicated to upholding human rights, democracy, and the rule of law, plays a crucial role in addressing the delicate balance between respecting freedom of expression and countering hate speech. It emphasizes that hate speech cannot be categorized as free speech because it is specifically designed to attack and harm individuals, thereby undermining the interdependence between rights.

However, the right to freedom of expression is often misused as a 'shield' to engage in hate speech, taking advantage of the general lack of awareness about human rights, their principles, and their applications. To address this, the CM/Rec (2022) 16 preamble reaffirms the principles outlined in Article 10 of the European Convention on Human Rights (ECHR). While freedom of expression is a cornerstone of democratic societies, it also carries responsibilities for both individuals and governments, more specifically: Article 10.2 of the Convention recognises that the exercise of the freedoms enshrined in Article 10.1 «May be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society» in order for specific interests to be safeguarded (national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary). Bearing in mind the scope of Article 10.2 and taking

into due consideration the principle of proportionality, member States may need to resort to civil and administrative law provisions for the protection of victims of hate speech (Perinçek v. Switzerland, cited above, § 273). Such administrative and civil law provisions as with criminal sanctions also contribute to the protection of victims from discrimination under Article 14 of the Convention (CM/Rec (2022)16 Paragraph 3/25)

These passages are therefore necessary to stress the unfair matching of contrasting hate speech with suppressing freedom of expression, actually highlighting how hate speech is not only a violation of other people rights that prevent people to participate into public spaces, but also how it cannot be considered free speech in the measure in which derives from unwittingly reproducing structural inequalities and negative stereotyping, while suspending critical thinking.

In this regard the mention of the causes behind the construction and spreading of hate speech are very relevant. By clearly stating that «Member States should prepare and implement effective strategies to explore and address the root causes of hate speech, which include disinformation, negative stereotyping and stigmatisation of individuals and groups», the Recommendation reminds how hate speech is a complex societal phenomenon and cannot be considered as an 'accident' or something connected with sporadic and particular incidents, but rather as a structural issue that develops over time.

This is the reason why contrasting hate speech is then intended as a multilateral and multidisciplinary effort that must always and ultimately be human rights oriented.

This view on the matter is also behind our previously mentioned connection with the Council of Europe and the choice to adopt its framework as a fundamental part of our practice. In the CM/Rec (2022)16 on combating hate speech is in fact clearly mentioned and highlighted the role of youth work, non-formal education providers and civil society organisations, recognizing their value as an asset for both prevention and contrasting.

More specifically they are considered relevant stakeholders and key actors when it comes to raising awareness, education, but also to inform internet intermediaries and media, encouraging members states to support them and to take their work into great account when it comes to policy drafting and legislation and especially for advocating and improving active participation of citizens and young people in particular.

Such definition of hate speech is therefore directly linked with some of the key aspects of citizenship intended not only as a status, but as a set

of rights and obligations of the individuals towards the community/ies where they belong.

1.2 *Contrasting Hate Speech: Areas of Intervention*

Considering the framework provided and the fundamental role given to a human rights-based approach, it's also important to point out the concrete ways in which it's possible to understand how contrasting hate speech works.

The aforementioned No Hate Speech Movement Campaign helped developing most of the expertise now carried by the Council of Europe, working on four main areas of intervention:

1. human rights education;
2. youth participation;
3. media and information literacy;
4. counter and alternative narratives.

The first two areas have traditionally been at the forefront of their work, while the other two required an upscale in competences within the Council and among the activists, youth workers and professionals involved, especially when it came to the understanding and development of Counter and Alternative Narratives.

The work on Narratives, culminated in the publication of the WeCAN! (*https://www.coe.int/en/web/no-hate-campaign/we-can-alternatives1*) manual in 2016, put together all the studies and experiences matured during the campaign, which contributed to the creation of something new; not only a response to hate speech, but a changemaking effort to shape human rights oriented societies, online and offline.

Following the end of the international coordinated activist effort coordinated by the Council of Europe which happened in 2017 (currently carried out by the No Hate Speech Network [*https://nohatespeech.network/*]), the No Hate Speech and Co-operation Unit of the Inclusion and Anti-Discrimination Division Department continued the work on hate speech, initiating a series of projects, such as WeCAN 4 Human Rights Speech (*https://www.coe.int/en/web/inclusion-and-antidiscrimination/wecan4hrshttps://www.coe.int/en/web/inclusion-and-antidiscrimination/wecan4hrs*), coordinated by the Unit and co-funded with the European Union's Rights, Equality and Citizenship Programme (2014-2020).

The project aimed to:

- help organisations and young activists fighting hate speech to become more efficient by providing them user friendly tools and with trainings;
- consolidate the cooperation among these organisations and activists at the European level and help them in developing new partnerships with social media companies, other networks of NGOs and national authorities.

APICE was a project partner bringing precisely the CSO (Civil Society Organisation)'s perspective and the expertise in youth work and non-formal

education contrasting hate speech working with young people at grassroot level.

This is a testimony of the recognition that Council of Europe has always given to civil society and youth work, as well as a declaration of intent in keeping the efforts of giving concrete answers and alternatives to hate speech; advocating for policies and lawmaking but not only waiting patiently for them to manifest; disseminating human rights education and media and information literacy to prevent hate speech from happening and spreading, but also providing immediate support to victims and giving opportunities for action instead of only reporting.

With the spreading and normalisation of hate speech is in fact common to witness several counter actions in the form of witty campaigns and more or less successful initiatives, nonetheless many of them tend to adopt the same narrative frameworks and tools, thus never really providing an effective and long-standing change that can truly influence society.

With the now acquired awareness of some of the most common causes behind the spreading of hate speech, such as power inequalities and marginalisation of people, it became clear that a remedy for these structural causes was needed, and the establishment of a human rights culture aimed precisely at tackling them.

Considering that a true culture of human rights needs time and popularity to be established, counter and alternative narratives became a tool to help the mainstreaming of certain concepts, attitudes and practices that could contribute to the necessary change. It's from this understanding that the focus on human rights-based narratives was started.

Such perspective has been then furtherly consolidated in the drafting of the CM/Rec (2022)16, which is a tool that gives guidelines and directions to member states and that explores several dimensions and areas of intervention, identifying key actors in society and providing tailored suggestions to each, towards a fully comprehensive approach.

These latest developments have also been influenced by the UN Strategy and Plan of Action on Hate Speech of 2019 (*https://www.un.org/en/genocideprevention/documents/advising-and-mobilizing/Action_plan_on_hate_speech_EN.pdf*), that stands on very similar grounds and that gives great attention also to actions dedicated to Monitoring and Analysing hate speech, considered as the first necessary step to take, firstly to assess the gravity of the occurrence and, subsequently, to design the best countering strategy. In the CM/Rec (2022)16 the Council of Europe openly quotes the plan when listing the main elements to be taken into account when assessing the severity of hate speech, while also using the work of the European Court of Human Rights and its deliberations on the topic.

In the Recommendation such elements are indicated as:

- the content of the speech;
- the political and social context at the time the speech was made;
- the intention of the speaker;
- the speaker's role and status in society;
- the form of its dissemination;
- the manner in which the statements are made, and their capacity – directly or indirectly – to lead to harmful consequences, including imminence
- the nature and size of the audience;
- the characteristics of the targeted group, for instance its size, its degree of homogeneity, its particular vulnerability or history of stigmatisation, and its position vis-à-vis society as a whole.

This list quotes the model developed by the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence by the UN, which starts precisely from the acknowledgment of the importance of freedom of expression, thus moving its steps from the clarification of the high threshold for defining its restrictions, creating a dedicated test to assess the different cases. The test is based on the following six criteria:

1. contexts;
2. speaker;
3. intent;
4. content and form;
5. extent of the speech act;
6. likelihood, including imminence.

It's clear how the two lists are basically the same and it's no coincidence considering the will of the Council of Europe to provide the most

comprehensive possible approach in contrasting hate speech through the development of counter and alternative narratives that put human rights at their core.

In order to be able to craft such narratives, the WeCAN 4 Human Rights Speech Toolkit (*https://pjp-eu.coe.int/en/web/human-rights-speech/home*), provides a guide to allow different kinds of professionals with the necessary instruments to acquire a method deriving from the application of human rights principles and for this reason puts the Analysis Tool (designed following the Rabat Plan of Action) as the first necessary step before developing efficient counter and alternative narratives that are human rights based.

Deciding to put counter and alternatives narratives as the 'active' tool against hate speech comes after the years of work that can be seen in the manuals, in the Recommendation, in the Toolkit and, in our case, in the training of young people, equipped to become agents of change thanks to their acquired competences as digital activists.

2. *Defining the No Hate Speech Movement Practice*

Having set the scene behind APICE's work, specifically as coordinator of the No Hate Speech Movement Italy, it's important to understand how its exercise in coordinating, training and supporting young activists following the Council of Europe principles has then developed in a new and specific form of practice that proved to be very successful and inspiring.

The campaign was born in 2013 precisely with the idea of providing young users, youth workers, people and organisations that work with young people in educational activities, with tools and methodologies that would serve to counter the most serious effects of hate speech on one hand and, on the other, to build a viable alternative based on the principles of human rights, as promoted over the years by the Council of Europe itself. To pursue such objectives,l the work was structured using the four main pillars introduced before: Human Rights Education, Youth Participation, Media and Information Literacy and Counter and Alternative Narratives

2.1 *How did it work?*

The operational structure of the campaign was composed by several elements:

- central coordination by Council of Europe Youth Department;
- national campaign coordinators representing the 44 countries involved in the campaign during the years. For the countries whose governments decided to embrace the campaign, they were represented by government officials or institutions, otherwise by support groups originating from the alliance between different national CSOs or by individuals;
- The International Group of Online Activists.

The last was always at the core of the No Hate Speech Movement, acting as the initiator and promoter of the actions through which the campaign entered public spaces and discourses. This group met periodically during in-person campaign coordination meetings but, for practical reasons, worked mainly online, planning Action Days, initiatives, statements, filling the campaign blog with content, managing social media channels and also taking care of the monitoring tool of the campaign, the No Hate Speech Watch.

To summarise, it can be said that this group was the main truly transnational and independent cell of the campaign, connected but not necessarily dependent from the national campaign coordinators, administered and managed by a dedicated figure, the Online Coordinator, who acted as a bridge between the group and the various souls of the No Hate Speech Movement, bringing the Council of Europe's direction but ultimately leaving independence to the activists.

2.2 *The Campaign in Italy*

When the campaign was first introduced in Italy and all its structures had to be adapted to the Italian scene, like for all the other national campaigns, the activist group was not introduced among the possible structures to be adopted, as it echoed what was produced and transmitted at international level and through the official CoE channels.

When the coordination of the Italian campaign was abandoned by the Department for Youth Policies and National Civil Service and was taken over by a national support group coordinated by APICE in

2017, a closer transposition of the international model was adopted, configuring the same kind of structures, especially for the organisation of the Action Days, which later became also Counter and Alternative Narratives Days, (*Giornate d'Azione and Giornate di ContronarrAzione e NarrAzione Alternativa in italian*) with the management led by the national coordination reporting to the International Campaign and then branching out into regional and local coordination points

Within this structure there was an 'Activist cell', but this was composed of people appointed or identified by the organisations part of the Support group and, therefore, somehow linked to them.

In early 2020, however, with the beginning of a new coordination mandate and considering the greater maturity acquired by the campaign and its parts, there was the feeling that an innovation in the national structure could be beneficial and it was decided to introduce a National Activist Group, recruited through a dedicated call.

This meant coming into terms with the Italian scenario when it comes to contrasting hate speech, with people who were certainly enthusiastic and sensitive but whose training was fundamentally immature, especially where they had not been able to benefit from international or at least European studies and experiences. This was reflected especially on the young population who, although very competent in areas close and/or connected with countering hate, lacked specific tools and awareness, since they had usually dealt with the issue in university, school or formal settings in general, or in relation to other types of activism or as victims/witnesses, but with a no comprehensive approach.

For this reason one of the fundamental and main actions that shaped and shapes the Activist Group, it is the common and continuous learning path within the group, facilitated precisely by the non-formal setting and methodologies, which benefited from the guidelines and the manuals coming from the Council of Europe but also drawing on other experiences, such as those of some international networks such as UNITED for Intercultural Action, INACH, Amnesty International Italy or the I am not here group.

To clarify what we intend for non-formal education instead, a topic that would need a specific study by itself, we once again go back to the definition made by the Council of Europe and in its manual Compass: Manual for Human Rights Education with Young People (*https://rm.coe.int/compass-2023-eng-final-web/1680af992c*), which recites in its I Chapter:

> «Non-formal education refers to planned, structured programmes and processes of personal and social education for young people designed to improve a range of skills and competences, outside the formal educational curriculum[...] Non-formal education should also be:
> • voluntary;
> • accessible to everyone (ideally);
> • an organised process with educational objectives;
> • participatory;
> • learner-centred;
> • about learning life skills and preparing for active citizenship;
> • based on involving both individual and group learning with a collective approach;
> • holistic and process-oriented;
> • based on experience and action;
> • organised on the basis of the needs of the participants».

Following these principles and considering that most of the learning happened online and taking advantage of digital tools following the 4 pillars of the campaign, it clearly appeared how the newly formed group was human rights oriented from its foundation, thus representing in its own foundation its first collective success.

With time the Group has in fact established its own practice, characterised by the development of the model represented by the International No Hate Speech Movement Campaign and adapted to the italian scenario and to the evolution of hate speech as a phenomenon.

This practice is directly derived from the Checklist for Human Rights of the *WeCAN! Manual* (then perfectioned with the WeCAN 4 Human Rights Project), which asks activists and professional to express themselves and to be present in conversations by creating contents that are:

- humanising;
- promoting solidarity;
- encouraging dialogue;
- empowering;
- encouraging participation;
- spreading the principles of human rights.

Following this attitude provoked a natural reflection on people's role in engaging in common spaces and in interacting with others, while also understanding duties and rights. For this reason, it came with no surprise the following focus on the issues that are mostly connected with the status and value of citizenship, online and offline.

3. *Contrasting Hate Speech and Digital Citizenship. What's the Matter?*

Citizenship is generally considered a status and, especially in Italy, it is also connected with a certain privilege considering that is quite difficult to obtain unless you're born with it. When discussing Digital Citizenship, debates often arise because it isn't closely tied to national borders. Instead, it pertains to spaces that multiple people simultaneously enjoy through the use of digital tools. While we won't go deeper into the various implications, it's generally agreed that Digital Citizenship primarily concerns people's online behaviour, their choices during interactions, and their commitment to self-care, the well-being of others, and the digital environment.

In 2016 Italy approved a Charter on Digital Citizenship (*Carta della Cittadinanza Digitale*), which indicates four main aspects:

1. online services: access to online payments, document consultation, digital domicile;
2. literacy: technical, cognitive, metacognitive, emotional, social, legal skills;
3. data usage: collection, preservation, accessibility, and reuse of public administration data;
4. participation: active, continuous, responsible involvement in social and civic activities.

By looking at them it's possible to see the obvious connection with the principles we have listed when talking about the Practice of the No Hate Speech Movement Italy, especially when it comes to Literacy and participation. Data usage and Online Services are more specifically related with practical tools connected with the digital world, nonetheless, the kind of literacy connected with the activist practice helps raise awareness on an healthy use of them, therefore enhancing safety and security when it comes to data sharing and privacy but also giving out good practices that improve accessibility for all.

This is certainly caused by the human rights-based approach but it's been also notably enhanced by the conditions in which the Activist Group was born during the COVID19 Pandemic, helping the people who belong to the group to build a positive and proactive relationship with online tools, making them a true and meaningful asset for their civic participation.

In addition to that it's also worth mentioning how their training and learning was happening online, therefore improving their literacy

competence while working on the ones most directly related with contrasting hate speech.

With the growing strength and awareness of the Group it was also beautiful to assist in their mutual recognition as full activists, a process that made them feel empowered enough to consider themselves equally valuable as activists as the ones that decide to take action only offline.

This particular development has represented one of the biggest added values for the group, which managed to proactively cause change by incorporating the competences acquired, intended as the combination of knowledges, skills and attitudes, in all the aspects of their lives, therefore becoming multiplier of change with all the people they entered in touch with.

Such dynamic has been even stronger with those within the group who belong to the educational work, such as teachers or trainers, but also for those who (thanks to the campaign), are starting to move their first steps as non-formal education facilitators.

This particular journey was then the ultimate proof for APICE of the accomplishment it gained in the field of Digital Youth Work and contrasting hate speech, treasuring not only the years of work with the No Hate Speech Movement and the Council of Europe, but also the participatory processes connected with some of the major fora of Internet Governance, such as EuroDIG (*https://www.eurodig.org/*) and the IGF (*https://intgovforum.org/en*), that further equipped the organisation with the necessary tools for providing young people with what they need to fully enjoy their lives and their spaces, exploring their potential.

It is no coincidence then, that during this journey our path was crossed by the project DICIT4EU, which has become another fundamental resource in our development.

3.1 *DICIT4EU: Bringing Activism and Non-Formal Education at the Uni*

In designing and implementing our contributions within the Jean Monnet Module DICIT4EU by Roma3 University, we had a clear vision of the topics we wanted to cover and, most importantly, of the way in which we wanted to conduct the 6 workshops that were part of our responsibility within each learning module.

Being aware of the different setting in which we would operate though, we decided to organise the first one in 2021 by not only taking advantage of our usual facilitation techniques (use of Mentimeter and

participatory activities), but also inviting two different figures that in our opinion could efficiently represent our approach: Menno Ettema, Head of Hate Speech, Hate Crime and Artificial Intelligence Unit of the Council of Europe and previous Coordinator of the International No Hate Speech Movement Campaign; and Nelli Gyshian, the then Chair of the No Hate Speech Network, the current international activist group carrying out the methodologies and the materials of the NHSM. From our point of view this gave us the institutional and activist perspective, framing our non-formal education practice in a well-recognised and authoritative light.

Also choosing to start with a workshop titled Digital Citizenship for Contrasting Hate Speech, we clearly wanted to create the connection between these two fields while also engaging in a fruitful exchange between different stakeholders who got distinct perspectives but common objectives on the topic andt, mostly and foremostly, making sure to provide students and all young people involved with a meaningful and participatory experience, that would therefore represent a first practical step in a raising awareness journey dedicated to become well prepared Digital Citizens.

The presence of Menno Ettema, in particular, reinforced Council of Europe support of these methodologies, underlining once again its choice to clearly mention non-formal education and Civil Society Organisations as central actors in the efforts for contrasting hate speech but also to promote human rights and democratic citizenship values, welcoming any meaningful multi stakeholder cooperation born for this reason . He has in fact stated:

> «To advance the understanding and enjoyment of human rights in Europe, non-legal measures, such as education, must go hand in hand with legal safeguards. For example, the Council of Europe Recommendation CM/Rec(2022)16 on combating hate speech gives guidance for a comprehensive and multi-stakeholder approach to prevent and combat hate speech. Its dedicated chapters on 'Awareness-raising, Education, Training and counter speech' and 'Key-stakeholders' are an acknowledgement of the important work done by civil society organisations and academia on non-formal education, human rights and media-literacy education and youth work, among others. In fact, the No Hate Speech Movement youth campaign, initiated by CSOs in 2012, mobilised communities across Europe for human rights online through human rights education and was at the basis of the Recommendation on combating hate speech adopted by all Council of Europe member states in 2022».

To further prove this stand, the workshop produced many nice results coming from the students and opened up not only for the second one, dedicated to Internet Governance and Digital Participation, but also to all the following, creating a consolidated format within the Module.

We were perfectly aware that from the Roma Tre University point of view it wasn't so straightforward thinking about contrasting hate speech as one of the first aspects to explore when trying to practically engage young people and students with Digital Citizenship related issues, but we insisted and we bet on our experience, because for us it has been the first necessary step to promote the values and the competences we believe must be transmitted when talking about this subject.

Also the first workshop of the second year of the course, Digital Citizenship Contrasting Hate Speech in the face of Current challenges, run with the support of two professors of the course, Raffaele Torino and Ilaria Ricci, was yet another occasion to prove the great synergy that could come from applying the principles of contrasting hate speech to the competence developed within a formal scenario under the guide of stimulating professors. The rest of the workshops were inbuilt around other topics connected with the curricula, such as privacy, media platforms, governance, but nonetheless they all benefitted of the same non-formal practice, helping the course to actually substantiate the relevance of Digital Citizenship from a practical point of view, having the students reflecting and acting in first person and immediately developing those tools that would help them to grasp even better the key concepts connected with the course.

The success was even more enjoyable because certain topics often seem distant from daily life or intoxicated by mystifications. Through this approach instead, students could enhance their academic journey by engaging in practical and stimulating activities. This did not only help them shape their own perceptions and opinions but also fostered the development of valuable soft skills, including those related with critical thinking and communication.

4. *Conclusions*

Ultimately, we believe that the chance offered by the DICIT4EU project proved on the field the efficacy of a true comprehensive, multistake-

holder, multidisciplinary and participatory process in the development of the competences that must be connected with Digital Citizenship.

Such conclusion can be substantiated when reading an article written by Marco Giacomazzi of the University in Bologna and appearing in 2023 in *Agenda Digitale, Alfabetismo, competenze, partecipazione: elementi per una democrazia digitale* (Literacy, skills, participation: elements for a digital democracy) (*https://www.agendadigitale.eu/cultura-digitale/alfabetismo-competenze-partecipazione-elementi-per-una-democrazia-digitale/*), in which he refers to media literacy by saying:

> «It is true, young people need to know how digital technology works; but they also need to understand how digital media work as an industry and as a cultural form of representation. If they are to become active users of technology, they need to learn more than mere technical skills: they need social, political, economic and cultural understanding».

There is a true urgence in keeping the focus not only on the individual responsibility, but on the structural system in which we move, its rules and dynamics, equipping people to not only being a part of it, but to be 'active', as we like to say, to be subjects, not subjected, to exercise true agency over the tools they want to use.

This is the meaning of an 'active participation' in all aspects of life, which manifests as a pressing matter in the current scenario. We cannot in fact agree more with prof. Giacomazzi when he criticises the Italian system, quoting David Buckingham, Media Education scholar and author of *A Manifesto for Media Education* (2019):

> «Institutions often refer to Media Education as the solution to every problem, a kind of panacea that, in the best case scenario, is likely to result in some form of technical learning in the use of technologies or, in the worst case, in the reduction of related risks, in an empty, rhetorical formula that shifts the responsibility of media systems and policy makers onto individual users (translated by the author)».

Thats why we believe that DICIT4EU created a space within a formal institution of education (Roma Tre University), with a multidisciplinary and multistakeholder approach, connecting competences with activist practice and non-formal education principles, thus providing a best practice.

The merging of all these elements could in fact ideally be taken on by

other Italian educational realities, configuring proactive models that equip people with what they need to be active citizens, also from a political point of view, representing an Educational model that is very closely following the expert advice for Italy, that we quote:

> «Buckingham's main critique is to make Media Education a systemic practice, and thus not to think solely in terms of competences to be cultivated, but to include teachings that educate on the political role and symbolic power of media».

For this reason we hope that there will be more chances to join and support similar initiatives in the future, informing what an ideal Media Education and Literacy is with a human rights based method.

5. *Readings*

Recommendation CM/Rec (2022) 16 of the Committee of Ministers of the Council of Europe of 20 May 2022 on Combating Hate Speech

Giacomazzi M., *Alfabetismo, competenze, partecipazione: elementi per una democrazia digitale,* Agenda Digitale, May 22, 2023

Brander P., De Witte L., Ghanea N., Gomes R., Keen E., Nikitina A., Pinkeviciute J., *Compass: Manual for Human Rights Education with Young People*, 2023

Latour A. de, Perger N., Salaj R., Tocchi C., Viejo Otero P., *We CAN! Taking action against hate speech through counter and alternative narratives,* 2017

Vuorikari Riina R.; Kluzer S.; Punie Y., *DigComp 2.2: The Digital Competence Framework for Citizens – With new examples of knowledge, skills and attitudes*, 2022

Part III

Legal Issues

Antonio Iannuzzi, Simonetta Trozzi

Seeking a reasonable balance between data protection and data governance

Abstract: Although the General Data Protection Regulation recognizes the importance of the free movement of data, the European Union has adopted additional regulations, such as the Data Governance Act (DGA) and the Data Act, in order to implement the European Data Strategy, with the aim of promoting data sharing through the creation of common European data spaces. This contribution aims to discuss the European Union's normative attempt to strike a balance between the needs of data protection, which have so far prevailed, and those of data circulation, in terms of both the regulatory techniques and its substantive content. To this end, innovative aspects are examined, such as the DGA's introduction of a novel definition of data and the emphasis on the needs of equality and solidarity underpinning the institutions and actors that establish data altruism and sharing, along with the balancing of these needs with data monetization. The analysis will also focus on elements of continuity emerging from the early implementation of the Strategy, such as the reaffirmation of para-constitutional principles that guide various sectors affected by digital transformation, without overlooking, however, critical issues arising from the coordination between the DGA's institutions and the regulations establishing sectoral data spaces. The text eventually addresses the challenges inherent in the national implementation of data governance, the use of synthetic data to safeguard data during their circulation, and the forms of coordination to be established among Independent Administrative Authorities and Governmental Agencies designated for implementation.

Keywords: Data Governance Act – digital sovereignty – European data spaces – EHDS – data reuse – data monetization – administrative authorities – government agencies.

1. *The Regulatory Challenges of Algorithmic Society between Data Protection and Data Free Movement. The European Strategy for Data in its Early Implementation*

The necessity to identify principles that can offer cross-sectoral guidance in the fields of data, platforms, cybersecurity, and Artificial Intelligence (AI) raises a fundamental question: is it possible to find a reasonable balance between data protection and data governance that provides adequate protection of personal data without prejudice to its circulation?

The reasons in favor of data circulation were already acknowledged by Regulation (EU) 2016/679 (GDPR), which mentions them in several recitals (Recitals 10, 13, 19 GDPR), as well as in the third paragraph of Art. 1. Nevertheless, despite the GDPR already considering the free movement of personal data (as reflected in the title of the GDPR itself: «On the protection of natural persons with regard to the processing of personal data and on the free movement of such data»), the EU deemed necessary to adopt further regulations, notably Regulation (EU) 2022/868, the Data Governance Act (DGA or Regulation), and Regulation (EU) 2023/2854 (Data Act), specifically designed to address and meet this purpose.

Indeed, it became evident that in the subsequent application of the GDPR, the needs of data protection have prevailed over the reasons in favor of the free movement of data. Therefore, the EU has sought to find a new balance to facilitate and promote the flow of data sharing whenever this falls within the legal framework provided by the rules ensuring the protection of personal data.

Tackling the issues arising from the present forms and contents of data regulation, therefore, this paper aims to shed light on the opportunities and critical aspects inherent in the regulation of data circulation, as established by the complex framework of acts underpinning the European data governance. The study will be conducted with reference to both the regulation of reuse and the requirements and functions provided for data intermediation service providers and data altruism organizations, both new legal entities. The perspective adopted will eventually lead us to a parallel investigation into the value of data, as determined by the principles and instruments governing their processing and reuse. Finally, our concluding remarks will address futures perspectives emerging from the present-day state of the implementation process, as well as scrutinize

the national law harmonization measures with the DGA, which are still under discussion.

The regulatory drive is particularly necessary at the present stage, due to the introduction and development of AI technologies, which are inherently 'data-hungry'. The pervasive advent of AI technologies has also impacted public policies, including healthcare and scientific research. This has highlighted, in the context of the debate on European digital sovereignty, that administrative action is often hindered by barriers that inhibit information exchange and digital cooperation between administrations, resulting in significant burdens on interoperability.

On the other hand, the implementation of the *European strategy for data* presented by the European Commission in its Communication of 19 February 2020 (*Strategy*) has revealed a set of critical issues emerging from key regulatory strategies featured in the European data governance policy. While reviving the academic debate on the nature of data as economic resources as well as attributes of the individual, normative reforms have also deeply impacted the legal and constitutional framework of member States. In the case of Italy, for instance, the recent delayed designation of the Agency for Digital Italy (AgID) as the authority responsible for implementing the DGA, which came into force on 23 June 2023 and became fully applicable starting September 24th, or the persistent absence of registrations in the European Commission's registries of data intermediation service providers and Italian data altruism organizations, despite the activity of data brokers in the market.

It is within such framework, concerning the European regulation of the digital society, that law and society eventually manifest themselves as two intertwined dimensions whose synergic action, echoing the classical brocardo *ubi societas ibi ius* (where there is society, there is law), is actively contributing to fashioning an evermore data-driven society while safeguarding European digital sovereignty from the proprietary logic of non-European markets. However, the 'datafication' of individuals, as a consequence of the 'reification' of data, entails both advantages and risks, urging to provide independent authorities and government entities, both supranational and national (for the latter, for example, in the DGA in Articles 13, 23, 26) with new regulatory, technical, and sanctioning powers. Interacting upon one another, the latter are poised to affect, both horizontally and vertically, the structure of relationships inherent in the institutional framework, thus reinforcing the traditional advisory and technical powers already available to such institutions.

It is well known that the strategies accompanying digitalization, which initially impacted the economy and now society, have progressively reflected on the nature of the control of personal data as an extension of privacy. The push towards regulated monetization, driven by the DGA primarily through the development of the legal notion of data in Art. 1, point 1 of the DGA, and through the legal delimitation of re-use, has prompted a reflection on how, in terms of protection profiles, the relationship between the protection of a person's right to their data and the free movement of such data, as established in the balance of rights within the GDPR, has been implemented so far. This is the basis on which the individual's informational self-determination is founded.

2. *On the Regulatory Techniques. From the GDPR to the DGA. Personal Data Protection: Balancing Rights and Limits*

The *European strategy for data* presented by the European Commission represents the fundamental document outlining objectives and action lines to implement policy measures and investments to support the data economy until 2025. Its purpose is «To capture the benefits of better use of data, including greater productivity and competitive markets, but also improvements in health and well-being, environment, transparent governance and convenient public services». To this end, as is well known, the *Strategy* entails, as its first pillar, the establishment of data governance and, as its second pillar, the creation of a single data market inspired by the principle of data monetization, thus recognizing the equation data as equal to economic value.

Following this regulatory push, the EU adopted the DGA, a cross-sectoral regulation (*lex generalis*) that establishes a network for sharing public and private data, setting the rules for their circulation in European data spaces. In parallel with the DGA, the Data Act – approved on 27 November 2023 and set to apply from 12 September 2025 – aims to establish harmonized rules on fair access to and the use of data in the smart device sector (the so-called Internet of Things – IoT) and related services. Furthermore, in addition to the Regulation establishing the European Health Data Space the European Commission announced that it had initiated the process leading to the creation of a common European data space for tourism through a specific normative intervention, in order to complement the cross-sectoral regulation of the DGA. Additionally, on

11 April 2024, the Interoperable Europe Act came into force.

Having outlined the regulatory framework introduced by the European Commission's *Strategy*, it is now easier to clarify the relationship between the GDPR and the DGA. The legislative purpose behind the regulation that establishes and promotes a network for the sharing of public and private data reveals elements of continuity, but also discontinuity, compared to the framework of the GDPR. While the GDPR's nature is that of a general regulatory instrument of a para-constitutional level, the cornerstone of the discipline related to the protection and circulation of personal data, the DGA, in line with the digital transformation brought forward by data sharing, seeks to balance aspects whose relevance pertain to public as much as private law. In this regard, it does not only lay the foundations to regulate the take-off of the AI market, but also synthesizes the reference models of cross-sectoral data ecosystems.

As highlighted in the *Strategy*, a significant portion of the data collected by public administrations is neither circulated nor processed for the purpose they were collected for. This triggers a vicious circle that, far from generating value through the use and reuse of data, devalues the data themselves by undermining the efficiency of core normative framework enshrined in the GDPR, such as the principles of purpose limitation and data minimization, which underpin the regulation of data protection and governance.

As per the first of the three pillars of the *Strategy*, the DGA conforms to the FAIR principles (findability, accessibility, interoperability, and reusability) developed for the management and reuse of research data, in order to promote the circulation of certain categories of data, regulated under special regimes and stored in public databases. This task is achieved through techniques such as anonymisation, aggregation, differential privacy, generalisation, suppression and randomisation, the use of synthetic data or similar methods etc., preserving third party rights and interests (Recital 7). However, these categories of data are often not made available even for research or innovation purposes falling within the definition of public interest, despite their availability being possible in accordance with the applicable Union law (Recital 6 DGA). To address such critical issues, the DGA draws inspiration from data sharing practices promoted during the COVID-19 pandemic to complement Directive (EU) 2019/1024 of the European Parliament and Council, of 20 June 2019, on open data and the reuse of public sector information (Open Data Directive) (Recital 10 DGA), without intervening on other existing regulations, such as the GDPR.

The second pillar on the governance model introduces data intermediation service providers (Article 2, paragraph 1, number 11; Recital 27 DGA) as new entities characterized by neutrality. Such norms are intended to boost the creation of a single European market for data and digital technologies in compliance with the GDPR (Recital 15 DGA), thus enhancing the competitiveness of European small and medium-sized enterprises (SMEs).

Finally, the DGA introduces collective bodies named «data altruism organisations». Defined as «not-for-profit organisations» (in general Article 2, paragraph 1, number 16 DGA; specifically Recital 46 and Article 18 DGA), they share the innovative goal pursued by the DGA as the core pillar of a third data governance model: promoting data altruism, i.e., the possibility of using data generated and voluntarily made available by legal or natural persons for public interest purposes (Article 2, point 16 DGA).

A first element of discontinuity here strikes out, compared to the logic of exclusive personal data protection associated with the primacy of personal rights that has been guiding the application of the GDPR. Indeed, as argued, the need to promote data circulation is not merely taken into consideration by the GDPR (Recitals 10, 13, 19 GDPR), but actually enshrined, along with the protection of the individual, as a guiding principle in its Article 1, which identifies the object and purposes of the regulation itself. In this sense, it is possible to interpret the intent underlying the ambiguous formulation of paragraph 3 of Article 1 GDPR in a different way. Rather than asserting the primacy of the protection of one aspect over the other, the EU legislator appears to encourage a concrete balance between data protection and free data circulation, whose actual content is each time contingent upon the specific interests under scrutiny, and yet with the ultimate aim to ensure the protection of the individual.

By adhering to this renewed perspective, particularly concerning the second aspect of the GDPR's guarantee for data circulation, it is possible to sketch the potential value of the right to personal data protection as well as its limits. In fact, such right does not enjoy an absolute validity, and its application must always take other fundamental rights (Recital 4 GDPR), including the freedom of enterprise often protected by national constitutions – into account. These aspects cannot be overlooked, given the extent to which they affect the balance between data protection and circulation. For instance, should a conflict between the DGA and EU data protection law or national law adopted in accordance with EU law arise, the relevant EU or national data protection law would prevail (Recital 4 DGA), because

of the fact that the GDPR already envisages a minimum level of balance between the protection of data circulation and of personal data.

Before moving on, it is worth focusing on a significant element of continuity between the GDPR and the DGA: the reaffirmation of several cross-cutting data regulation principles, also developed in the context of AI regulation, including, for example, the risk-based approach, the principle of technological neutrality, the principle of purpose limitation, and the right to data portability. Such red thread, which links the two acts, sheds light on the purposes underlying the EU's regulatory activity: to embrace the whole of digital society from a holistic perspective, which is that of a shared political sovereignty. This compels the legislator to adopt a comprehensive point of view, based on the quasi-constitutional regulatory framework offered by GDPR and suitably tailored to meet the needs arising from data circulation.

3. *Between Solidarity and Altruism: Regulating and Enhancing Data Reuse and Intermediation*

It is by no means a coincidence, therefore, that it is that DGA that introduces for the first time, with regard to the regulation of data protection and circulation, a legal definition of data (Article 2, point 1 DGA) as «Any digital representation of acts, facts or information and any compilation of such acts, facts or information, including in the form of sound, visual or audiovisual recording». The 'jurisprudence' of Data Protection Authorities had already sketched a definition, though exclusively concerning personal data.

While retaining the notions of personal data (Article 4, point 1 GDPR), the Regulation (EU) 2018/1807 on the free flow of non-personal data introduced that of non-personal data (Article 3, point 1) defined – in a comparable manner in the DGA (Article 2, point 4) – in the strictly negative and privative terms of what exceeds the domain of personal data («other than personal data»).

The notion of data introduced by the DGA is poised to have a cross-cutting effect on the entire European and national regulations of the digital society, not only for functional reasons, as it is already referenced in the regulation of the emerging data spaces, particularly the EHDS. It also reflects the evolution that has paved the way for the further usability of data (the re-use as stated in Article 2, point 2 DGA) and the altruistic

dimension of data processing, as enshrined in the DGA. Ultimately, it testifies of the completed transition from protection accorded to the knowledge potential that data can release, no longer only in relation to the individual but also to society.

Moving on to examine the peculiarities of the three pillars of the DGA, it is essential to highlight the strong impact of the two pivotal principles of solidarity and altruism in the valorization of data. In fact, the need to govern the inevitable development of data-driven digital economies through a renewed legal structure cannot be carried out without a parallel and just as necessary implementation of the constitutional values of equality and solidarity within a multi-level framework of individual right's protection common to the legal traditions of the Member States. That is all the more urgent given the fact that enhancing public data assets do constitute a precondition for any AI regulation. However, the traits peculiar to the European data governance are not exempt from many a potential challenge stemming directly from its actual implementation.

Firstly, concerning reuse, ensuring that data generated by or derived from public databases benefit society as a whole is indeed a commendable goal. Data, whether personal or non-personal, are endowed with an informational power (*potere informativo*) and perform a cognitive function, which is primarily determined by its ability to circulate.

The Legislative Decree no. 82/2005, known as *Codice dell'Amministrazione Digitale* (CAD, Code of Digital Administration), reflects such goal, promoting interoperability and data exchange between public entities (Article 50 CAD), calling for the enhancement (Article 50-ter CAD) of the *Piattaforma Digitale Nazionale Dati* (PDND, National Digital Data Platform) as well as affirming the open data by default principle (Article 52 CAD). However, in the Italian case, ongoing delays in the digitalization of public administration and the consequent lack of available data to support an effective development of AI technologies will most likely make it necessary to further assess the practical implications of this European governance model. It should also be noted that the DGA does not impose an obligation to allow the reuse of data held by public entities (Recital 11 DGA), leaving the initiative to Member States, which are likely to fully conform at different paces.

As argued in the previous paragraph, alongside reuse there are the other two regulatory models forming the framework of data governance.

Regarding the second pillar of the DGA, which addresses aspects of the governance mostly pertaining to private law, the European legislator has sought to combine the principle of solidarity with the respect of those

common values of the European Union concerning data protection and circulation, as already affirmed in the GDPR.

Data intermediation service providers (Article 2, point 11 DGA) act as intermediaries, establishing commercial relationships for data sharing among an indefinite number of data subjects and controllers on the one hand, and data users on the other, including for the exercise of data subjects' rights concerning personal data. These entities must operate in a neutral manner: as stated by Recital 33, Article 12, letter a) DGA, they «Shall not use the data for which it provides data intermediation services for purposes other than to put them at the disposal of data users and shall provide data intermediation services through a separate legal person». Data intermediation services can also be provided by data cooperatives (Article 2, point 15 DGA), which must however meet the detailed conditions of Article 12 DGA in order to qualify as data sharing service providers. Finally, all providers are obliged to notify the competent national authority responsible to verify and habilitate data intermediation services (Article 11 DGA) and must obtain a prior confirmation of compliance in order for them to be effectively included in the public register of data intermediation service providers of the European Union.

In this regard, specifically concerning the emerging health data space, Recital 40 of the compromise text of the EHDS Regulation states that health data intermediaries perform tasks different from the data intermediation services outlined in the DGA. Given the effects of such provision, the implementation process of the DGA appears to come to a critical halt. The DGA is intended to serve as the foundational regulatory structure for sectoral data-sharing spaces, with a general and horizontal (cross-sectoral) purpose. However, its first application in a specific sector, namely the health data space, introduces a major derogatory measure in comparison to the DGA's provisions on the classification of entities responsible for data intermediation. As remarked in the academic community, this derogation cannot but raise alarms about the DGA's concrete applicability and fuel concerns about its potential failure.

As far as the core of the DGA's altruistic dimension is concerned, it is worth noting that certain data altruism organizations cannot pursue profit-making objective and are only granted a reimburse of the costs that they incur where they make their data available for objectives of general interest as provided for in national law, where applicable (Article 2, point 16 DGA). These organizations must maintain independence from any profit-oriented entities and in relation to their own activities (Article 18 DGA), as well as adhere to transparency obligations (Article 20 DGA)

through the maintenance of records and the submission of annual reports to the authority responsible for registering data altruism organizations. Additionally, for registration purposes (Article 18 DGA), they must comply with the rulebook (Article 22 DGA). The Commission shall adopt delegated acts supplementing the DGA by establishing the rulebook. It will be drafted in close collaboration with data altruism organizations to more fully define their activities. Furthermore, a European Data Innovation Board (Article 29 DGA), a group of experts composed of representatives from Member States, the European Commission, other specific sectors, including one representative appointed by the European Data Protection Board (EDPB), is established in order to ensure the protection and validity of data protection rights.

A central aspect of the DGA is the need to preserve trust in the purpose limitation of data usage, i.e. the pursuit of public interest objectives (Recital 45 DGA). Data sharing is, in fact, contingent upon the consent of data subjects – in the case of personal data – or the authorization of the data controller, in the case of non-personal data. These organizations must therefore adhere to specific requirements to safeguard the rights and interests of data subjects and holders with regard to their data (Article 21 DGA). However, due to the change in terminology regarding data processing introduced by the DGA, this provision conceals a certain degree of ambiguity, which will hopefully clarified through the practical implementation measures of the Regulation to be introduced by Member States. Nevertheless, the provision, together with the requirement of consent, appears to echo principles of the GDPR such as the obligations of information and purpose limitation, which must be respected by data altruism organizations whenever making use of collected data.

Concerning personal data protection guarantees, scholars have identified certain critical issues inherent in data valorization, specifically in the case of personal data. It is unclear how will be effectively implemented the DGA's aim of creating a European single data space that supports SMEs and protects them from big tech companies. The structural separation required to avoid conflicts of interest for intermediation bodies, as well as the prohibition against using exchanged data by these entities, as currently formulated, may prove to be less than sufficient to prevent the risk of solidarity objective becoming a vehicle for pursuing purely commercial interests to the detriment of individuals. This ambiguity seems further confirmed by the wording of Article 2, point 11 DGA regarding the definition of data intermediation services, which focuses on the establishment of commercial relationships between data subjects and data

users, expressly «Including for the purpose of exercising the rights of data subjects in relation to personal data». As it has been critically underlined, the ambiguous choice of words ends up creating uncertainty about the actual extent of the intermediaries' legitimate powers, in particular that to replace data subjects in the exercise of the rights spelled out in Articles 15 and following of the GDPR.

4. *The Regulatory Perspective on Synthetic Data. The Coordination among Independent Administrative Authorities and Government Agencies to Enforce Data Governance*

As it has been discussed in the previous pages, the pathway to a complete execution of the provisions of the DGA has not been an easy one. Several critical issues emerging from it have eventually come to the legislators' as much as the scholars' attention. As per the scope of this paper, we wish to contribute to this debate with some concluding remarks on three primary aspects concerning the Regulation's provisions.

The first observation concerns Recital 7 of the DGA, which mentions «The use of synthetic data or similar methods and other state-of-the-art privacy-preserving methods» among the techniques, such as anonymization, differential privacy, randomization, etc., that contribute to a more privacy-friendly data processing and treatment by intermediary and data altruism organizations as much as public entities. In this regard, the same Recital lays down that Member States must support public bodies in order to enhance the use of these techniques so to render as much data as possible available for sharing, as well as to ensure the safe reuse of confidential commercial data for statistical, research, and innovation purposes.

Following the judgment of the General Court of the EU concerning qualified forms of anonymization and pseudonymization, the use of synthetic data appears to be a valuable way to promote technological progress while safeguarding the rights to the protection of personal data.

Secondly, as previously noted (see above § 3), the implementation of the second pillar of the *Strategy*, i.e. the creation of data spaces, is poised to be facing a set of critical issues which might eventually affect the overall success of the data governance framework as outlined in the Regulation. Among these, it is worth noting a major potential failure

lying in the duplication of new bodies established by the DGA within data spaces, as seems to be suggested by the provisions contained in the compromise text of the Regulation establishing the EHDS. This derogatory measure jeopardizes data governance as an integrated strategy involving both public and private aspects, and whose implementation is essentially entrusted to public institutions. Moreover, concerning the European Health Data Space, while the path taken both at the European and national levels – cf. the recent reform of Article 110, paragraph 1 of the Privacy Code (Legislative Decree No. 196/2003) – aims to promote the widest possible use secondary use of data for scientific research purposes, there is still uncertainty as to how access to data for secondary use, which should «Contribute to the general interest of society» (Recital 41 of the compromise text of the EHDS Regulation), can coexist with the individual's right to control their data. The experience with the specific legal regime on the reuse of data for scientific research purposes laid out in the Privacy Code has long shown the centrality of the purpose limitation principle in personal data processing to be the rule rather than the exception, as now seems to be the case with this first attempt to institute data governance. Another issue, conversely, concerns the current lack of sectoral coordination and identification of common infrastructures for other data spaces.

A final observation addresses the provisions contained in the draft of Legislative Decree to enforce adaptation of national legislation to the provisions of the DGA (A.G. 177). In accordance with Articles 13, 23 and 26 DGA, the Decree instates the AgID, non-independent government authority as the national body responsible for the implementation of the Regulation, endowed with technical, monitoring, and oversight (Article 2, paragraphs 4 and 5 A.G. 177), as well as sanctioning powers (Article 4 A.G. 177).

Starting from the assumption that the driving principle inspiring the DGA is to ensure a level of protection no less than that provided by the GDPR, what is worth highlighting here is a potentially different meaning enclosed in the repeated invitation contained in the Regulation to foster cooperation among Authorities, as echoed in the draft of legislative decree. Although AgID's role will mainly deal with the subjective factors of governance implementation, i.e. the new bodies (data intermediation service providers and data altruism organizations), it is undeniable that the success of data governance also, and perhaps most importantly, depends on the «strong» and «close and loyal cooperation» to be established among

the Authorities. Only the concrete implementation of the governance model will reveal the horizontal and vertical mechanisms through which Authorities and Agencies con work synergically. This will make it possible to implement the Strategy in a balanced manner, ensuring both data protection and free data circulation.

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The legal protection of the European Digital Consumer. An Introduction

Abstract: European consumer rights and interest protection policy represents one of the best examples of the added value that European integration brings to the daily lives of European citizens. The digitalization of consumer relations has led the European legislator to adopt numerous regulatory measures that strengthen consumer protection specifically in online consumption, within the broader context of European digital market regulation. This work serves as an introductory illustration of the numerous and innovative regulatory aspects that today protect the European digital consumer.

Keywords: Digital consumer – EU law – digital goods – social platforms – online market – personal data – geoblocking – artificial intelligence.

1. *The Digital Consumer*

Based on the European notion of a consumer as «any natural person who […] is acting for purposes which are outside his trade, business, craft, or profession» (Dir. 2011/83/EU, art. 2), the term 'digital consumer' can be defined and understood in various ways.

Firstly, if we want to adopt a legal approach based on the object of the act of consumption, the digital consumer is primarily someone who acquires a digital good or a digital service to satisfy a non-professional need of their own or of another person. In an interpretation that adopts a perspective related to the tool with which the act of consumption is carried out, a digital consumer can also be considered as someone who

uses digital means of communication (the Internet above all and the many possibilities it offers) to acquire –always as a consumer– non-digital goods or services, such as a book, food, clothing (but also digital goods and services). The first interpretation of 'digital consumer' also includes those who use specific digital services represented by access to (and use of) online platforms (primarily social platforms) and the publication (and enjoyment) of content (text, images, sounds) online.

In all cases, the advent of the phenomenon of digitalization (of goods or services, or the means of communication with consumer's contractual counterpart) necessitates a reconsideration of the protection that the legal system ensures for the interests and rights of the consumer.

Fully aware of this, within the framework of the progressive realization of the internal market provided for by Article 3 of the Treaty on European Union ('TEU') and Article 26 of the Treaty on the Functioning of the European Union ('TFEU') and the consumer protection policy established by Article 169 of the TFEU, the European Union has in recent years adopted a series of legislative acts that – according to the European Commission's plan set by the Communication of April 2018 significantly titled 'A New Deal for Consumers' – have progressively built a framework for the protection of the rights and interests of digital consumers within the context of the multi-level European legal system (resulting from the relationship between European sources, national legal systems, and European and national jurisprudence). This framework has made the aforementioned multi-level European legal system a legal system in this respect, as already happened with the broader consumer protection.

Having briefly outlined the legislative measures adopted by the European Union of specific interest to the digital consumer (section 2), this contribution aims to provide –without any claim to completeness – an introduction to some of the most innovative and/or problematic aspects in the protection of the interests and rights of digital consumers. Such introduction will briefly illustrate the protection framework for consumers of digital goods (section 3), draw attention to the debated issue of personal data of consumers as 'consideration' for digital goods or services (section 4), reconstruct the legal issues arising from the unbalanced relationship between Social Platforms and user-consumers (section 5), outline the new protections granted to consumers in online markets (section 6), summarize developments concerning the circulation of consumers' personal data outside the European Union (section 7) describe the new rules on online searches and reviews conducted by consumers (section 8), present the achievements reached at the European

level regarding the issues of portability and geo-blocking (section 9), list the consumer interest profiles in relation to the European Code of Electronic Communication (section 10), and, finally, highlight the perspectives opening up in relation to liability for damage arising from the use of artificial intelligence systems (section 11).

2. *The European Legal Framework*

The protection of the digital consumer at the European level (and consequently at the national level for the states participating in the European integration process) is rooted in the extensive body of legislation that the European Union (and, before it, the European Community) has progressively built since the mid-1980s.

In this context, central to the digital consumer protection have been, first and foremost, the directives that in recent decades have provided a uniform framework of protection regarding contracts entered into by consumers for the purchase –primarily at a distance– of movable goods (Directive 85/577/EEC, Directive 97/7/EC, Directive 1999/44/EC), the specific issue of unfair terms (Directive 93/13/EEC), electronic commerce (Directive 2001/31/EC), and unfair commercial practices (Directive 2005/29/EC).

Recently, a further set of conspicuous legislative measures have been introduced into this complex and articulated set of provisions (enhanced by the equally important case law of the Court of Justice of the European Union), representing a step ahead with respect to the specific protection of the digital consumer:

a) Directive (EU) 2018/1972 establishing the European Communications Code;
b) Directive (EU) 2019/770 concerning contracts for the supply of digital content and digital services;
c) Directive (EU) 2019/771 concerning contracts for the sale of goods;
d) Directive (EU) 2019/2161 regarding the better enforcement and modernization of Union consumer protection rules;
e) Regulation (EU) 2022/2065 on a Single Market For Digital Services and amending Directive 2000/31/EC ('Digital Services Act' or 'DSA').

To the list of the aforementioned measures, the General Data Protection Regulation (or GDPR) must undoubtedly be added. This regulation is a cornerstone for the protection of the digital consumer's data in a context where competition among companies regarding consumer choices increasingly relies on the data consumers spread in the real and digital world before, during, and after the act of consumption. Companies collect this data massively or acquire it from those who collect it, in a manner that may or may not be lawful, respecting the consumer's rights as the data subject interested in the correct and lawful processing of their personal data.

Furthermore, the rapid evolution of the digital world in which the digital consumer operates has compelled the European legislator to consider the phenomenon of artificial intelligence systems. In this regard, the reference is the Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 ('AI Act') and the proposal of September 2022 for a Directive on non-contractual civil liability rules for artificial intelligence (AI Liability Directive).

For completeness, although not specifically aimed at protecting the rights and interests of consumers, it is also worth mentioning Regulation (EU) 2019/1150, which promotes fairness and transparency for business users of online intermediation services. This primarily refers to services that enable business users to offer goods or services to consumers. Improving the competitive environment among professional economic operators online will represent, albeit indirectly, an undoubted benefit for digital consumers.

Lastly, I believe it is worth noting that, in addition to the mandatory regulatory framework established by the European legislator, digital consumers undoubtedly benefit from the voluntary commitments made by companies. In this regard, I am particularly referring to the 'Consumer Protection Pledge' which sets out voluntary commitments of online platforms operating in the EU. It consists of two parts: the 'Product Safety Pledge' and the 'Digital Consumer Rights Commitments'. As indicated in the EU Commission website, the Product Safety Pledge sets up areas where online intermediaries and other actors voluntarily agree to take specific actions with respect to the safety of non-food consumer products sold online by third parties on their marketplaces. The aim is to

improve the detection of unsafe products marketed in the EU before they are sold to consumers or as soon thereafter as possible, and to improve consumer protection. The Digital Consumer Rights Commitments address some of the key aspects of consumer rights when using online marketplaces. They include commitments regarding the transparency of important information and marketing tools, namely consumer reviews and influencer marketing, as well as leverage the power of marketplaces to facilitate the exercise of certain EU consumer rights, and to offer training and advice to sellers operating on the marketplaces.

3. *The Protection of Consumer of Digital Goods*

The expansion and specification of the notion of 'consumer goods' in the online/digital context are primarily owed to Directive 770/2019 and Directive 771/2019, through the introduction of the new categories of 'digital content', 'digital services', and 'goods with digital elements'.

Beyond digital services («a service that allows the consumer to create, process, store or access data in digital form;» or «a service that allows the sharing of or any other interaction with data in digital form uploaded or created by the consumer or other users of that service»; Dir. 2019/770, art. 2, n. 2), a fundamental distinction is introduced between ‹digital content› and ‹goods with digital elements.›

'Digital content' refers to digital data, which is a res (a thing), although intangible and without physical substance, that (produced or supplied) in digital form satisfies a consumer's need (for instance, operating systems, applications and any other software, as mentioned by Whereas n. 14 of Dir. 2019/771).

'Goods with digital elements' remain traditional tangible movable goods (res corporee and tangible) but require the presence of or connection with digital content or a digital service for satisfactory consumer use. The category of 'goods with digital elements' includes any physically tangible item (movable material good) that has, among its essential elements for performing its functions (elements that must not be missing or compromised, as this would result in the loss of the good's functionality), digital content or a digital service. Thus, it is a movable good characterized by an additional feature represented by the digital content or service. The digital content or service can be an integral part of the good in question (incorporated within it) or, although external, must be interconnected

with the good in some way. Conversely, a material medium that solely serves as a carrier of digital content (such as a pen drive, whose only function is to store and transport data) is not considered a good with digital elements (Dir. 2019/771, art. 3).

In a nutshell, regarding the acquisition through specific contracts of digital content and digital services, by virtue of Directive 2019/770, the European consumer receives a new and specific uniform protection (according to the full targeted harmonization model, which allows Member States to introduce provisions aimed at ensuring greater protection of consumer interests than those provided for by the directive only when expressly provided for by the directive itself) with respect to the supply of digital content and services, the conformity with what is contractually provided for digital content and services, the remedies activable by the consumer himself in case of lack of said conformity and the consequences of possible modifications of digital content and services.

In relation to goods with digital elements, in turn, Directive 2019/771 extends, modernizes and specifies the already consolidated European discipline referred to in Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees, which for about twenty years has constituted a fundamental element of uniform European protection. Thanks to this directive, in fact, the European discipline on the conformity of goods to the contract, remedies in case of lack of conformity, methods of exercising such remedies and commercial guarantees, now finds a clear and specific application to goods with digital elements.

In any case, it is important to emphasize that with the new provisions contained in the two 2019 directives, the European multilevel legal system takes another significant step forward in the realization of the digital single market, increasing and specifying the protection of consumers with respect to digital consumer goods and services (and, therefore, hopefully, their trust in the purchase of digital content and services, as well as goods with digital elements), at the same time increasing the legal certainty of the context in which businesses operating in the European market operate (with a subsequent reduction in transaction costs).

4. *The Consumer's Personal Data as Consideration*

In defining the scope of application of Directive 2019/770, the European legislator appears to be addressing a general topic that has been

widely discussed and debated, in some way central to how consumers manage their personal data in relation to the 'consent or pay' business model (which involves a model that offers consumers-users the option to choose between giving their consent to the use of their personal data for advertising purposes or paying to use services or content without sharing such information), more recently developed by large social platforms (which, it is worth noting, have oriented themselves towards this model after the introduction of European data protection regulations).

In fact, the provision contained in Art. 3, par. 1, of Directive 2019/770 establishes that the consumer protection discipline applicable to contracts for the supply of digital content or services applies not only in cases where the consumer's counter-performance is represented by a price, i.e., in contracts that involve the payment of a sum of money, but it is explicitly provided that the consumer benefits from the protection discipline also in the event that the consumer, without paying anything, simply provides their personal data to the professional economic operator so that it can process them.

It has been asked whether, in this way, the European legislator has implicitly recognized the economic value of the personal data provided – more or less consciously – by the consumer, thereby appearing to be in apparent contradiction with Whereas n. 24 of Directive 2019/770, which states that personal data cannot be considered a commodity.

Regarding this, probably, by avoiding the main theoretical debate about the nature – commodity or non-commodity – of personal data (and thus about its marketability or lack thereof), the directive's provision should be read in relation to the limited but important goal of protecting consumers, namely to ensure that any digital content or service supplies that appear not to be backed by a consumer counter-performance could not be exempted from the mentioned uniform protection.

Regarding the 'consent or pay' business model, in particular developed by large online platforms, the European Data Protection Board (EDPB) has recently adopted an Opinion based on Article 64, paragraph 2, of the General Data Protection Regulation (GDPR) and the case law of the European Court of Justice in case C-252/21, *Bundeskartellamt*.

In particular, the EDPB considers that, in most cases, it will not be possible for online Platforms to comply with the requirements for valid consent provided by the GDPR, if they offer users only a binary choice between (a) consenting to processing of personal data for behavioural advertising purposes and (b) paying a fee.

The EDPB estimates that offering only a paid alternative to services

which involve the processing of personal data for behavioural advertising purposes should not be the default way offered by controllers (i.e., the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data). When developing alternatives, online platforms should consider providing individuals with an 'equivalent alternative' that does not entail the payment of a fee. EDPB points out that any fee charged cannot make individuals feel compelled to consent. Controllers should assess, on a case-by-case basis, both whether a fee is appropriate at all and what amount is appropriate in the given circumstances. Large online platforms should also consider whether the decision not to consent may lead the individual to suffer negative consequences, such as exclusion from a prominent service, lack of access to professional networks, or risk of losing content or connections. The EDPB notes that negative consequences are likely to occur when large online platforms use a 'consent or pay' model to obtain consent for the processing.

5. *Social Platforms Services and User-Consumer Protection*

Among the most appreciated digital services by consumers are undoubtedly the services (apparently free, as long as one does not consider the personal data that social platforms collect in exchange for access to their services) offered by social platforms, namely those online computer services that enable the creation of virtual social networks by allowing users to share textual content, images, videos, and audio and interact with each other, and whose daily use makes our life experience increasingly hybrid between real places and activities and virtual places and activities, so much so that it has been evocatively rebranded 'onlife'.

It is undeniable that Social Platforms are today economic entities with a powerful de facto power, largely dominating the digital world, both with respect to other businesses engaged in economic activity in the digital context (through them or in competition with them) and with respect to the multitude of physical individuals who (for non-professional needs) use Social Platforms (and at the same time making the existence of Social Platforms more successful). Social Platforms have now become an element so important in the daily life of the vast majority of people – not just a recreational or entertainment opportunity, but also a virtual space for projecting one's identity, weaving personal relationships, expressing

and communicating one's thoughts – that these individuals cannot give them up.

Regarding the importance to their life and the pervasiveness of Social Platforms, the user-consumer is subject to at least a triple order of themes with legal relevance:

a) Social Platforms offer people their services according to a 'take it or leave it' business model, with unilateral predisposition of the terms and conditions of access and use of the platform, without any possibility of negotiation and modification of these terms and conditions, as well as with a tendency towards absence of contractual obligations binding on them;
b) user-consumers find themselves acting in a para-legal system that proposes itself as autonomous to some extent from the state legal system (or, at least, that aims to make recourse to state-administered justice superfluous); this 'private' system recognizes rights, identifies prohibitions and regulates the responsibility of users according to what is established by the Social Platform, with the application of its own sanctioning apparatus, more or less preceded by forms of confrontation with users; the 'grip' of the Social Platform on this para-legal system (and its aspiration of autonomy and self-completeness) manifests itself in all its breadth and strength when the Social Platform decides to exclude from the service offered the person who, in its unquestionable judgment, has violated the standards that the Social Platform itself dictates to all its users;
c) in relation to the provision of their online service to people, Social Platforms move within a regulatory system that tends to establish their irresponsibility, even of an extra-contractual nature, with respect to what is unlawful to the detriment of their user-consumers (or other people) that occurs through the service they offer.

Regarding the first topic, it is to be considered that even the user of the services offered by the Social Platform benefits from the protection ensured by European harmonization laws (and the subsequent national implementing regulations) for consumers when they establish contractual relationships with professional economic operators. Specifically, this concerns laws on the following matters:

a) pre-contractual information, formal requirements and right of withdrawal in off-premises and distance contracts (aspects recently updated by Directive 2011/83/EU);
b) prohibition of unfair contract terms and clauses (matter regulated

by Directive 93/13/EEC, whose sanctioning aspects have been specified and made more effective by Directive (EU) 2019/2161);

c) prohibition of unfair commercial practices (Directive 2005/29/EC, whose sanctioning aspects have been specified and made more effective by Directive (EU) 2019/2161).

Therefore, without being able to examine these provisions in detail here, even the online consumer, who becomes a contractual counterparty to the Social Platform, can theoretically resort to the remedies prepared by individual national legislators in the event of abusive clauses or conditions, deceptive or aggressive commercial practices, or lack of contractual information attributable to the Social Platform.

However, it must be considered that even the online consumer suffers from an objective (in the sense that it is objectively impossible for a consumer to negotiate the contractual terms of their legal relationship with the Social Platform in advance) and subjective (in the sense that almost no consumer is interested in knowing in advance the legal terms of their relationship with the Social Platform, eager as they are to access the apparently free services offered by the Social Platform) inability to influence the terms and conditions of their contractual relationship with the Social Platform.

This situation of apparent unchangeability of the legal terms of the relationship imposed by the Social Platform on the consumer is then exacerbated by the circumstance that – and I pass here to consider the second profile mentioned above (the creation by Social Platforms of autonomous and 'closed' para-legal systems) – Social Platforms seek to maintain a stronger possible control over conflicts and disputes (i) between their own users-consumers and (ii) between these and the Social Platform itself, playing both the roles of 'legislator' and 'judge' of the digital world (even if it appears to be without physical territory) composed by the 'people' of the Social Platform users and the digital activities that take place on it or through it.

The legislative role of the Social Platform community is exercised by these platforms through the so-called Community Standards. These Standards are determined autonomously by the Social Platforms and represent the principles and values in which (upon request by the Social Platform, which allows access to its services only after the user accepts these standards) the entire community of users who access the Social Platform must recognize and behave accordingly. In the absence of compliance with the Community Standards, the Social Platforms have on several occasions removed published content that they deemed did not respect the Standards and even excluded (temporarily or definitively) the

user who published it from accessing the Social Platform and its services, thus becoming the judge of the respect of their own Standards.

This conduct of the Social Platforms has led to the activation of various disputes with their own user-consumers, which arise from a different evaluation, by the Social Platform and the user-consumer, of what the user himself published on the platform and what the platform evaluates be respectful of the Community Standards, with a factual limitation by the Social Platforms of the freedom of thought of individuals, which, it is remembered, is a constitutionally guaranteed right in almost all legal systems.

Regarding this, it should be noted that the Community Standards (as mentioned, established autonomously by the Social Platform and configuring the set of ethical, political, and social values that the platform admits and promotes in the relationships between all its users) have a scope of application that claims to be global, extraterritorial with respect to the national legal systems in which the Earth is still divided today. This follows from the circumstance that the virtual world of the platform has no physical territory and can be accessed from various places on Earth, without accounting to any state powers. The Social Platforms thus have an innate tendency to create 'places' devoid of any application of state law, in which the *Grundnorm* can be represented precisely by the Community Standards, the respect of which is ensured by the Social Platform itself and its unequivocal power to moderate and remove user content, applying, as an extreme sanction, the suspension of access (even definitively) to the platform.

As mentioned, the Social Platform proposes itself as the custodian of the Community Standards and judge of their respect, also offering para-jurisdictional systems for resolving disputes between the Social Platform and its own user-consumers.

The most evolved, studied, and epigrammatic example of these para-jurisdictional systems is undoubtedly represented by the Facebook Oversight Board (*https://www.oversightboard.com*), whose decisions are considered binding by Facebook and Instagram. Regarding this phenomenon, high has been the concern of constitutional and public law scholars who have drawn attention to the risks connected to the possible evaporation of state constitutional rights and the overcoming of the delicate balances entrusted to democratic Constitutions, the privatization of digital justice on a global scale, and this further possible manifestation of the crisis of state sovereignty and erosion of the state monopoly on jurisdiction.

On the other hand, it should not be forgotten that this will of the Social Platform to be itself the legislator and judge of the Community Standards and, in a broader sense, of human activities (or not) that take

place on and through the Social Platform, in some cases clashes with the persistent will of users to contest the choices of the Social Platform by turning to state judicial authorities, usually of the state where the user resides (perhaps being a citizen) and which the user instinctively feels as an institution capable of ensuring justice in the confrontation with the Social Platform. In these cases, the conduct of the Social Platform in applying the extraterritorial Community Standards is evaluated based on the law of a national state and/or international treaty law to which that state adheres. About these hypotheses, it should be observed that in the face of the claimed transnationality of the Community Standards, the still existing territoriality of individual national legal systems and their coercive jurisdictional power prevail (while a system of real protection of online service user-consumers worldwide is completely lacking).

Finally, regarding the profiles of responsibility borne by Social Platforms for any potential illegal acts committed by their own user-consumers against other user-consumers (or even non-user-consumers), these platforms enjoy in the European context a tendency towards irresponsibility, which however appears to be currently under review.

At the beginning of this century, the so-called E-commerce Directive (Dir. (UE) 2000/31) formalized the principle (Art. 14 of the E-commerce Directive) that the hosting provider (i.e., the one responsible for storing the information provided by a user) would be exempt from liability as long as it was not actually aware of the illegality of the information or not aware of facts or circumstances that made the illegality of the information manifest; on the other hand, as soon as it became aware of these facts, the hosting provider was required to immediately remove the content. Art. 15 of the E-commerce Directive specified in addition that there was no general obligation of surveillance or search on the part of the Social Platform for illegal activities. In this period, the Court of Justice of the European Union progressively identified the categories of passive hosting provider (which was considered to be able to continue to benefit from the so-called 'safe harbor' i.e., the exemption from liability, as it did not know, nor controlled the stored information; ECJ, September 15, 2016, *McFadden*, C-484/14, § 62) and active hosting provider (ECJ, September 11, 2014, *Papasavvas*, C-291/13, ECJ, *Google France*, C – 236/08, ECJ, *L'Oréal*, C-324/09, § 123, ECJ, August 7, 2018, *Coöperative Vereniging SNB-REACt U.A. c. Deepak Mehta*, C-521/17), which was considered not worthy of benefiting from the safe harbor, as it performed an additional activity beyond the simple and neutral storage of information, somehow actively interfering with the publication of the content by the user (which

was identified based on the presence of one or more of the so-called 'indices of interference', such as, for example, an activity of filtering, selection, indexing, organization, cataloging, aggregation, evaluation, use, modification, extraction, or promotion).

Today, although art. 12 to 15 of the E-commerce Directive have been repealed, the provisions contained in Chapter II of the DSA remain in line with the general approach already acquired with the E-commerce Directive, introducing a series of graded procedural and substantive obligations. These obligations strengthen the principle of accountability of Social Platforms (as well as all Internet Service Providers) and mark the transition from mere liability (in certain conditions) to responsibility with respect to specific duties of diligence (which are substantiated by the execution of a series of risk assessments and prevention and containment activities of risks inherent in the digital environment) in the performance of their business activity.

Firstly, the DSA confirms the framework of the E-commerce Directive and, on the one hand, reiterates (Art. 8) that there is no general obligation to monitor stored or transmitted information, nor to verify the facts indicating the presence of illegal activities; on the other hand, it renews (Art. 6) the rule according to which the Social Platform is not responsible for stored (and transmitted) information on the user's request, provided that a) it is not actually aware of illegal activities or contents and, in the context of claims for damages, is not aware of facts or circumstances that make the illegality of the activity or contents manifest; or b) it becomes aware of such illegal activities or contents or becomes aware of such facts or circumstances, it acts immediately to remove the illegal contents or disable access to them.

On another level, the DSA imposes on Social Platforms to inform without undue delay the authority (judicial or administrative) that has issued an order to counteract one or more specific illegal contents of having followed that order (Art. 9), as well as, having received an order to provide specific information on one or more individual service recipients, to inform without undue delay the authority (judicial or administrative) that issued the order of the receipt of the same and the follow-up they gave it (Art. 10).

As mentioned, the true step forward taken by the DSA lies in the introduction of a series of obligations that detail the duty of diligence (also) of Social Platforms, distinguishing between Social Platforms and very large Social Platforms, for the latter meaning those platforms whose average monthly active service recipients in the Union are equal to or greater than 45 million and which the Commission has designated as

such (with a decision of April 25, 2023, the European Commission has designated 17 Very Large Online Platforms, or VLOPs, based on the data published as of February 17, 2023).

Beyond a series of diligence obligations for a transparent and safe online environment applicable to all intermediate service providers (Social Platforms included), the DSA establishes more rigorous standards of transparency and responsibility for Social Platforms regarding content moderation, advertising, and processes based on the use of algorithms, and also imposes obligations for risk assessment and development of risk management systems.

In particular, the DSA provides for (i) a first series of additional obligations (Articles 16 to 18) applicable to hosting providers and, therefore, also to Social Platforms, (ii) a second series of additional obligations intended only for Social Platforms (Articles 19 to 32) and (iii) a third series of additional obligations (Articles 33 to 43) borne only by Very Large Online Platforms (VLOPs).

6. *Online Markets and Consumer Protection*

The increasing recourse by consumers to online purchases on so-called 'online markets' has made it necessary for the European legislator to intervene to specify the protection of consumer rights and interests in the new market context and with respect to new possible unfair commercial practices.

The Directive (EU) 2019/2161 regarding the better enforcement and modernization of Union consumer protection rules (the so called 'Omnibus Directive') has thus introduced into the Directive 2005/29/EC on unfair commercial practices the definition of 'online market'. An online market is a service (offered by a professional economic operator) that uses software that allows consumers to conclude distance contracts (not necessarily at a cost) with professional economic operators or other consumers. The professional economic operator who offers the online market service can be the same professional economic operator who sells (through the online market) the product to the consumer or a different professional economic operator (who manages only the online market service and is not the seller of the product).

Under the aspect of consumer protection with respect to unfair commercial practices (and particularly of a misleading omission of relevant information) in relation to products offered on online markets,

it must now be specified whether the one (who is not the manager/provider of the online market) who formulates a purchase invitation is a professional economic operator or a third party.

The Omnibus Directive (Art. 6 bis) has also introduced a series of specific information obligations for the online market provider in relation to contracts concluded on online markets.

The online market provider (i.e., the one who makes available the online market tool to conclude B2C or C2C contracts) must communicate to the consumer who accesses the online market to conclude contracts through it a series of specific information in a clear and understandable manner and in a way appropriate to the means of distant communication. These specific information must be provided to the consumer before the moment when the consumer can be bound by a distance contract or before a binding offer is made.

In particular, the online market provider must: (i) make available to the consumer, in a dedicated section of the online interface (such section being directly and easily accessible from the page where the offers are presented to the consumer), general information about the main parameters that determine the classification of the offers presented to the consumer as a result of their search, as well as information about the relative importance of these main parameters compared to other parameters; (ii) clarify whether the third party offering goods, services, or digital content on the online market is a professional economic operator or a subject to whom such status is not attributed; this clarification will be provided based on the declarations made by the aforementioned third party to the online market provider; (iii) if the third party offering goods, services, or digital content is not a professional economic operator, inform consumers accessing the online market that contracts concluded on the online market with such non-professional economic operator do not apply the consumer rights derived from European Union law on consumer protection; (iv) if the contract concluded or to be concluded through the online market provides for the allocation of obligations arising from the contract between the online market provider and the third party offering goods, services, or digital content, provide the consumer with information about the manner of such allocation; the communication of such information leaves unaffected the responsibility that the online market provider or the professional economic operator concluding the contract through the online market may have in relation to the contract under other European or national laws.

Anyway, the provisions on information obligations provided by other European regulations continue to be applicable to online market providers.

7. *The Circulation of Consumer's Personal Data*

As mentioned, the digital consumer is the main provider of personal data (and non-personal data) that enables the data economy underlying the commercial and economic power of most modern technology companies.

As a physical person, the digital consumer benefits first and foremost from the protection ensured by the GDPR regarding the processing of their personal data. This is a comprehensive, articulated protection that must necessarily interact – as recognized by the GDPR itself – with the free circulation of such data within the Digital Single Market and beyond.

A complete analysis of how the GDPR protects the rights of the digital consumer regarding their personal data is not possible here, but it is interesting to briefly address the topic of protecting the personal data of European digital consumers outside of the European territory. Specifically, I refer here to the debated issue of transferring the personal data of European digital consumers to the United States, which has led to various judgments by the Court of Justice and various agreements between the European Union and the United States.

The regulatory framework is currently contained in Chapter V of the GDPR titled «Transfer of personal data to third countries and international organizations» (Articles 44 et seq.).

The general principal for transfers is the following: «Any transfer of personal data which are undergoing processing or are intended for processing after transfer to a third country or to an international organisation shall take place only if, subject to the other provisions of this Regulation, the conditions laid down in this Chapter are complied with by the controller and processor, including for onward transfers of personal data from the third country or an international organisation to another third country or to another international organisation. All provisions in this Chapter shall be applied in order to ensure that the level of protection of natural persons guaranteed by this Regulation is not undermined» (art. 44).

In compliance with the above mentioned principle, the transfer of personal data to third countries can generally occur (i.e., without specific authorizations) only if the European Commission has decided – with an 'adequacy decision' – that the third country ensures an adequate level of data protection (Article 45).

Under the Directive 95/46, with an adequacy decision (Decision 2000/520, known as 'Safe Harbor'), the Commission had declared that the transfer of personal data to the United States was assisted by an

adequate level of protection when it occurred in accordance with the so-called 'Safe Harbor Privacy Principles' established by the same decision and additional guidelines.

However, in 2015 (with the judgment in Case C-362/14, known as 'Schrems I', named after the Austrian activist who initiated the national procedure), the Court of Justice annulled the Commission's adequacy decision, considering that the United States could not be considered a third country with adequate levels of protection for personal data and fundamental rights, especially due to the possibility for American authorities to access the information of European citizens without sufficient safeguards for these individuals.

To enable a legitimate general transfer of personal data of European citizens to the United States (clearly of interest to major American technology companies), the European Commission has, therefore, approved a new adequacy decision (known as 'Privacy Shield') to take into account what the European judges had stated. However, even this adequacy decision fell under the axe of the Court of Justice (Case C-311/81, known as 'Schrems II') in 2020, still due to the lack of adequate guarantees, including the presence of acts and executive orders in the American legal system that were so invasive that they would not have ensured a level of protection substantially equivalent to the GDPR.

Following Schrems II, between the European Commission and the United States, an agreement called 'Trans-Atlantic Data Privacy Framework' was reached in 2022 with the aim of introducing a new regulatory framework for the legitimate transfer of personal data of European citizens from the EU to the United States. After the signature by US President Joe Biden (Enhancing Safeguards for United States Signals Intelligence Activities), which aims to strengthen the protection of privacy and civil liberties applicable to US intelligence activities, the European Commission took another adequacy decision in July 2023 (C(2023) 4745 final).

Even with regard to the new Data Privacy Framework and the subsequent adequacy decision, some concerns have been raised about the substantial equivalence between the US discipline and the requirements demanded by European law. Therefore the issue does not appear to be resolved in a stable manner.

8. *Online Searches and Reviews*

The centrality of digital communication tools for consumers results in the fact that today the consumer performs online many activities that were previously carried out through other (analog and non-digital) means. Now, almost all product searches by consumers are performed online (at least in an initial phase, of first orientation to purchase) and consumers are increasingly inclined to share online their evaluations of products and services (not necessarily digital) they have purchased or used (even without an online purchase or delivery).

The Omnibus Directive (Article 3, which modified Article 7 of Directive 2005/29) has established what information must be provided to the consumer when they proceed through an online interface to conduct a search for possible products of their interest regarding a specific need they may have, possibly offered by professionals or consumers and, in some way, advertised online. As is known, such searches lead to an exposure, in the form of a ranking, of products that the search (carried out based on algorithmic parameters establishing scales of values) considers of interest to the consumer who performed the search based on the generic criteria set by the consumer themselves.

The consumer must be provided with general information about the main parameters that determine the classification of the products presented to the consumer as results of the search and the relative importance (i.e., the relevance in determining the classification) of the individual parameters considered compared to other parameters.

The aforementioned general information on the main parameters used to conduct the online search must be provided independently of the location where the operations (presumably of purchasing the products) will be actually concluded (i.e., also outside and without using online markets). The information must be provided in a dedicated section of the online interface visible and accessible to the consumer. This section must be directly and easily accessible for the consumer from the online page where the search results are presented (presumably through a link easily identifiable by the consumer).

The protection of the consumer with respect to online searches is completed by the provision that any commercial practice consisting of the omission of clear indication, within the exposure of the results of an online search performed by a consumer, that one of the results is a paid advertisement or that a specific classification of a product in the

hierarchical display (to be understood in a broad sense, both as pure ranking and as better or highlighted visualization on the web page) of products contained in the search was determined by a specific payment preordained for that purpose (Omnibus Directive, Art. 3, which modified Annex 1 of Directive 2005/29/EC).

Within the scope of possible omissions, the Omnibus Directive (Art. 3, which modified Art. 7 of Directive 2005/29/EC) has introduced some information obligations regarding the reviews compiled and provided by consumers and which the professional economic operator has collected and decided to make public. The provision clearly refers to the practice now widespread among many professionals of promoting their products by inserting on their commercialization website the reviews (usually only the positive ones) that consumers have given regarding the products.

Regarding the content of the information obligations related to the reviews published for the purpose of configuring a possible omission, the norm indicates that the professional economic operator must inform consumers accessing the reviews whether these reviews come from other consumers who have actually purchased or used the product and how he is able to ensure this circumstance. With respect to this probative aspect, it can be reasonably considered that this obligation is fulfilled if the professional economic operator puts the consumer in a position to verify – upon request by the consumer – the origin of the review and its main data.

9. *Portability and Geoblocking*

The digital consumers are modern consumers who tends to move, often, outside their national and territorial market. When they move physically outside their own country, the digital consumers consider it important to be able to continue to enjoy the digital services and content they used in their national market, and even when they do not move physically and intend to acquire goods and services offered by professional economic operators located in other Member States, they suffer from being subjected to practices that preclude cross-border markets.

Within the framework of the realization of the digital single market, the European legislator has appropriately intended to take charge of these important issues for the digital consumer and consumers in general.

With reference to the first aspect, in June 2017, Regulation (EU)

2017/1128 was adopted (applicable from April 2018). This Regulation introduced the right of EU citizens (who are temporarily in another Member State) to access paid-for online content services in other EU Member States, in the same way as they would in their home country, as part of the EU digital single market. In particular, such guarantees that the content available in other Member States should be: the same content; on the same range and number of devices; for the same number of users; with the same functionality; and with no extra charges. There is no obligation to provide similar quality unless this is agreed on with the subscriber, but the quality must not be deliberately reduced, and the subscriber must be informed about the quality of delivery before the service is provided.

With regard to the second aspect, in February 2018, the European legislator adopted Regulation (EU) 2018/302 (the so called 'Geo-blocking Regulation' applicable since December 2018), which, in summary, prohibits unjustified discrimination of consumers (but also undertakings purchasing as end users) shopping online, purely based on their nationality, place of residence or place of establishment. This prohibition of discrimination includes situations where a customer buying across borders is prevented from finalising the purchase, or is asked to pay with a debit or credit card from a certain country. The goal of the Regulation is to increase opportunities for consumers and businesses to buy across borders.

In November 2020, the Commission published the first evaluation of the impact of the Geo-blocking Regulation and analyzed the possibility of extending its application to specific digital services offering copyright-protected content (such as e-books, music, software and online games), as well as to audiovisual services. Dissatisfied with the current situation and implementation of the Regulation (EU) 2018/302, in December 2023, the European Parliament adopted a resolution in which the need to revise European rules on geo-blocking in light of the acceleration of digital transformation and the increase in online purchases in recent years was underlined. The issue appears to be particularly felt with reference to audiovisual services, still stubbornly offered to consumers in relation to well-compartmentalized national markets.

10. *Electronic Communications and Consumer Protection*

The Directive (EU) 2018/1972, which establishes an European Code of Electronic Communications (replacing Directives 2002/19/CE, 2002/20/CE, and 2002/21/CE), contains an updated set of provisions to regulate electronic communications (telecommunications), telecommunications services, and associated structures and services. This has also led to an increase in the level of consumer protection.

Under this latter aspect, the articulated European directive contains: (i) provisions aimed at making it easier for consumers to switch between service providers and offering better protection; (ii) a mechanism to ensure that consumer rights remain intact and updated when changes occur in business models and consumer behavior; (iii) provisions aimed at guarantying access to adequate and affordable high-speed internet for all consumers, regardless of their location or income.

11. *Product Liability and AI Liability*

If a consumer encounters defective products that have caused harm (even death), they are protected by one of the earliest consumer directives: Council Directive 85/374/EEC regarding liability for damage caused by defective products.

To better consider changes generated by digitalization of products, the European Commission proposed to modify the 1985 directive in September 2022 (COM(2022) 495 final) by expanding the definition of a product to include software updates, artificial intelligence, and digital services. The proposal also specifically considered the compensation for psychological damages (requiring therapy or medical treatment) and the destruction or irreparable damage to data, extending the period of responsibility to 30 years, along with other improvements in the interest of consumers. The proposal was recently adopted through Directive (EU) 2024/2853 of the European Parliament and of the Council of 23 October 2024 on liability for defective products and repealing Council Directive 85/374/EEC.

However, the most significant change in the coming years will likely be the introduction of uniform European rules that, by integrating the review of the 1985 directive, will better address harm caused by illegal

actions of artificial intelligence systems or those committed through such systems.

Regarding this profile, the European Commission presented a proposal in September 2022 (COM(2022) 496 final) for a Directive of the European Parliament and of the Council on adapting non-contractual civil liability rules to artificial intelligence (AI Liability Directive).

The new rules intend to ensure that persons harmed by AI systems enjoy the same level of protection as persons harmed by other technologies in the EU. The AI liability directive would create a rebuttable 'presumption of causality', to ease the burden of proof for victims to establish damage caused by an AI system. It would furthermore give national courts the power to order disclosure of evidence about high-risk AI systems suspected of having caused damage. Stakeholders and academics are questioning, inter alia, the adequacy and effectiveness of the proposed liability regime, its coherence with the AI Act jut adopted, its potential detrimental impact on innovation, and the interplay between EU and national rules.

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- Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce)
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- Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC
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- Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer

protection rules
- Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act)
- Proposal COM(2021) 206 final for a regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (artificial intelligence act) and amending certain union legislative acts
- Proposal COM/2022/496 final for a Directive of the European Parliament and of the Council on adapting non-contractual civil liability rules to artificial intelligence (AI Liability Directive)
- Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828
- Directive (EU) 2024/2853 of the European Parliament and of the Council of 23 October 2024 on liability for defective products and repealing Council Directive 85/374/EEC.

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Franchising Online and Digital Consumer Protection in the European Union Law

Abstract: The initial approach to franchising under European Union law was to consider it as a distinct business model to be regulated from a competition point of view. The Court of Justice case law, the following decisions of the European Commission and the relevant consumers protection rules afterwards reflected the European Union position with respect to online transactions carried out by consumers in the frame of a franchising system. Online sales between a franchisor or franchisee and a consumer are still basically regulated, under European Union law, by the competition provisions and the consumer protection rules concerning many areas of interests, such as unfair online practices, transparency, right of withdrawal, use of personal and non-personal data, digital market, legal obligations and enforcement of consumers rights. Consumers are considered to benefit from the online franchising sales system. By means of online sales consumers have access to a wide range of goods and services, in a large number of sales countries. The homogeneity of the network and the co-operation between the franchisor and the franchisees should improve the quality of the products and services and the fairness of the costs. Online sales should increase consumer welfare since, also in a franchising system, they offer access to new markets and commercial opportunities and allow consumers in the European Union to exploit those benefits, in particular by increasing their choice of goods and services, as well as by contributing to offering competitive pricing online. On the other hand, all the online sales must strictly comply with the relevant rules, since they raise challenges that need to be addressed in order to ensure effective consumers protection.

Keywords: European Union – franchising – consumer protection – online transaction – digital service – competition – electronic commerce – vertical agreement – intermediation services.

1. *Franchising: the European Union Legal Framework*

1.1 *Definition of Franchising*

European Union law does not provide for an official definition of franchising. However, the Court of Justice of European Union recognised the functioning of the distribution franchising with the judgement of 28 January 1986, in the case 161/84 Pronuptia de Paris GmBh and Pronupia de Paris Irmgard Schillgalis (Pronupia Case), which outlined the initial approach to franchising in European Union law. In this judgement the Court described franchising as a self-standing method of contracting, identifying various forms of franchising and pointing out which contractual provisions, although of a restrictive character, are necessary to grant the proper functioning of a franchising contract. According to the Pronupia Case, a franchisor is an undertaking which has established itself as a distributor on a certain market and has developed a specific business granting independent traders, for a fee, the right to establish themselves in the market using its business name and business method which have made it successful. The Court pointed out that, rather than a method of distribution, franchising is a method to derive financial benefit from the expertise of an undertaking (the franchisor), without investing its own capital. The Court also clarified that distribution franchising gives undertakings who do not have specific experience access to methods that they could not have learned without considerable effort, allowing them to benefit from the reputation of the franchisor's business name. According to the Court, such a system allows the franchisor to profit from his success and does not interfere with competition principles. In the Pronupia Case the Court also distinguished among various forms of franchising, such as the service franchising, under which the franchisee offers a service under the business name, symbol or trademark of the franchisor, in accordance with the franchisor's instructions, the production franchising, where the franchisee manufactures products, according to the instructions of the franchisor, selling them under the franchisor's trade mark, or the distribution franchising, under which the franchisee sells specific products in a shop using the franchisor's business name or symbol.

It seems therefore that European Union initial approach was to consider franchising as a distinct business model with the focus on specific features.

The Pronupia Case was followed by various decisions of the European

Commission, based on the principles set by the Court of Justice and expressing the approach of the Court itself, such as the decision 87/14/EEC of 17 December 1986 (Yves Rocher Decision), the decision 87/17/EEC of 17 December 1986 (Pronupia Decision), the decision 87/407 of 13 July 1987 (Computerland Decision), the decision 88/604 of 20 August 1988 (Service Master Decision) and the decision 89/94/EEC of 2 December 1988 (Charles Jourdan Decision).

Although European Union Law seemed to be most interested in distribution franchising, in ServiceMaster Decision the Commission took the position that, despite the existence of specific matters, service franchises show strong similarities to distribution franchises and can therefore be treated in the same way as distribution franchises (already exempted by the Commission).

A definition of franchising is also provided by the European Code of Ethics for Franchising, a practical group of provisions aimed at governing the relations between a franchisor and each of its franchisees, operating together in the framework of the franchise network, drawn up by the European Franchising Federation. The Code is mandatory for its members.

Article 1 of the Code defines franchising as a system of marketing goods and/or services and/or technology, based upon a close and ongoing collaboration between legally and financially separate and independent undertakings (the franchisor and its individual franchisees) whereby the franchisor grants its individual franchisee the right, and imposes the obligation, to conduct the business in accordance with the franchisor's concept. The right entitles and compels the individual franchisee, in exchange for a direct or indirect financial consideration, to use the franchisor's trade name, trade mark, service mark, know-how, business and technical methods, procedural system, and other industrial and /or intellectual property rights, supported by provision of commercial and technical assistance, within the framework and for the term of a written franchise agreement between parties.

Specific national definitions of franchising are provided by different regulation of franchising contracts existing in several national legal systems.

In Italy franchising is governed by Law 129/2004 of 6 May 2004 (*Norme per la disciplina dell'affiliazione commerciale*). According to the Italian franchising law, a franchise contract is any agreement between two legally and financially independent parties, whereby one party grants the other party, in exchange for consideration, the right to use a set of

industrial or intellectual property rights, related to trademarks, trade names, shop signs, utility models, industrial designs, copyright, know how, patents, technical and commercial support and assistance, including the franchisee in a system formed by a group of franchisees distributed on the territory, for the purpose of distributing certain goods and services.

1.2 *European Union Initial Approach on Franchising and its Evolution*

European Union Law initial approach was to regulate franchising from a competition point of view.

To this aim, the principles enshrined in the Pronupia Case and the relevant following European Commission's decisions were included in the block exemption regulation concerning franchising contracts, which was the Commission Regulation (EEC) no 4087/88 of 30 November 1988 (no longer in force) on the application of Article 85(3) of the Treaty establishing the European Economic Community to categories of franchise agreements.

Franchising afterwards concerned different types of distribution contracts in two subsequent block exemption regulations: the Commission Regulation 2790/1999 of 22 December 1999 (no longer in force) on the application of Article 81(3) of the Treaty to categories of vertical restraints and concerted practices and the Commission Regulation 330/2010 of 20 April 2010 (no longer in force), also called Vertical Block Exemption Regulation (VBER), on the application of Article 101(3) of the Treaty on the Functioning of the European Union (TFUE) to categories of vertical agreements and concerted practices, adopted in 2010 by the European Union Commission along with the Guidelines on Vertical Restraints (2010/C 130/01) (Vertical Guidelines).

The competition policy towards vertical restraints, based on Article 101 TFEU (formerly Article 81), applied to vertical agreements that might affect trade between Member States and which had as their object or effect the prevention, restriction or distortion of competition within the internal market.

The Vertical Guidelines underlined that, for most vertical restraints, competition issues could arise only in case of insufficient competition at one or more levels of trade, considering also that vertical restraints are generally less harmful than horizontal restraints and may provide substantial scope for efficiencies.

European Union current regulation on franchising basically still

concerns competition law.

On 1 June 2022 entered into force the Commission Regulation (EU) 2022/720 of 10 May 2022 on the application of Article 101(3) of the TFUE to categories of vertical agreements and concerted practices (new VBER), which replaced the former VBER. The new VBER will expire on 31 May 2034, such as the related new vertical guidelines of 30 June 2022 on vertical restraints (2022/C 248/01), which set out the principles for the assessment of vertical agreements under Article 101 of the TFUE (new Vertical Guidelines).

The new Vertical Guidelines accompanying new VBER specify that franchise agreements contain licences of intellectual property rights (IPRs) relating to trademarks or signs, and know-how for the use and distribution of goods or services. In addition to the licence of IPRs, the franchisor usually provides the franchisee with commercial or technical assistance during the lifetime of the agreement. The franchisor is in general paid a franchise fee by the franchisee for the use of the particular business method and the licence and the assistance are integral components of the business method being franchised. Franchising may enable the franchisor to establish, with limited investments, a uniform network for the distribution of its products. In addition to the provision of the business method, franchise agreements usually contain a combination of various vertical restraints concerning the products being distributed, for instance selective distribution and/or non-compete obligations.

The new Vertical Guidelines point out that franchising (with the exception of industrial franchise agreements) has some specific characteristics, such as the use of a uniform business name, uniform business methods (including the licensing of IPRs) and the payment of royalties in return for the benefits granted. In view of these characteristics, provisions that are strictly necessary for the functioning of franchising systems can be considered as falling outside the scope of Article 101(1) of the Treaty. This concerns, for instance, restrictions that prevent the franchisee from using the know-how and assistance provided by the franchisor for the benefit of the franchisor's competitors and non-compete obligations relating to the goods or services purchased by the franchisee that are necessary to maintain the common identity and reputation of the franchise network.

2. *Franchising Online in the European Union Law*

According to the new VBER and to the new Vertical Guidelines, online sale cannot be prohibited. In general, every distributor must be allowed to use internet to sell products. However, it is permissible to impose certain requirements relating to the manner in which the contract goods or services are to be sold.

The European Union rules on online sales generally also apply to transactions carried out by undertakings acting in the frame of a franchising system (franchisees or franchisors themselves) which proceed to the sales through digital methods and by means of online intermediation services.

According to Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce), in order to remove barriers to the development of cross-border services within the European Union it is necessary that compliance be guaranteed at European Union level with the aim of protecting consumers. In order to ensure legal certainty and consumer confidence, the Directive provides a clear and general framework to cover certain legal aspects of electronic commerce in the internal market, such as the treatment of the contracts (included sales contracts) concluded by electronic means.

A definition of online intermediation services is contained in the Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services. According to such Regulation, online intermediation services mean services which meet all of the following requirements: (i) they constitute information society services within the meaning of point (b) of Article 1(1) of Directive (EU) 2015/1535 of the European Parliament and of the Council, stating that information society service is any service normally provided for remuneration, at a distance (i.e.: without the parties being simultaneously present), by electronic means (i.e.: when the service is sent initially and received at its destination by means of electronic equipment for the processing (including digital compression and storage of data), entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means) and at the individual request of a recipient of services (i.e.: the service is provided through the transmission of data on individual request); (ii) they allow business users to offer goods

or services to consumers, with a view to facilitating the initiating of direct transactions between those business users and consumers, irrespective of where those transactions are ultimately concluded; and (iii) they are provided to business users on the basis of contractual relationships between the provider of those services and business users which offer goods or services to consumers.

Regulation 2019/1150 provides that examples of online intermediation services covered by the same Regulation should consequently include online e-commerce market places, including collaborative ones on which business users are active, online software applications services, such as application stores, and online social media services, irrespective of the technology used to provide such services. In this regard, online intermediation services could also be provided by means of voice assistant technology.

In line with the relevant case-law of the Court of Justice of the European Union and in the light of the fact that the dependent position of business users has been observed principally in respect of online intermediation services that serve as a gateway to consumers in the form of natural persons, the notion of consumer used to delineate the scope of Regulation 2019/1150 should be understood as referring solely to natural persons, where they are acting for purposes which are outside their trade, business, craft or profession.

Regulation 2019/1150 underlines that online intermediation services are key enablers of entrepreneurship and new business models, trade and innovation, which can also improve consumer welfare and which are increasingly used by both the private and public sectors. They offer access to new markets and commercial opportunities and allow consumers in the Union to exploit those benefits, in particular by increasing their choice of goods and services, as well as by contributing to offering competitive pricing online, but they also raise challenges that need to be addressed in order to ensure legal certainty.

The new VBER points out that the online platform economy plays an increasingly important role in the distribution of goods and services. Undertakings active in the online platform economy make it possible to do business in new ways, some of which are not easy to categorise using concepts associated with vertical agreements in the traditional economy. In particular, online intermediation services allow undertakings to offer goods or services to final consumers, with a view to facilitating the initiation of direct transactions between undertakings or between undertakings and final consumers.

It is clear that a competitive, fair and transparent online ecosystem, where companies behave responsibly, is essential for consumers welfare.

Ensuring the transparency of, and trust in, the online platform economy in business-to-business relations could also indirectly help to improve consumer trust in the online platform economy. Direct impacts of the development of the online platform economy on consumers are, however, addressed also by the consumer *acquis*, the collection of common rights and obligations that constitute the body of European Union law and is incorporated into the legal systems of European Union Member States.

3. *A European Union Consumer Protection, Online Transactions and Franchising Business System*

Consumers online sales carried out through a franchising business method are basically regulated, under European Union law, by the competition provisions and the consumer protection rules concerning many areas of interests, including but not limited to unfair online practices, transparency, right of withdrawal, use of personal and non-personal data, digital market, legal obligations and enforcement of consumers rights.

According to the new Vertical Guidelines, any undertaking, such as franchisees and franchisors, must be free to use the internet to sell products as they do in their non online shops.

The new VBER states that its provisions should not exempt vertical agreements containing restrictions which are likely to restrict competition and harm consumers or which are not essential to the attainment of the efficiency-enhancing effects. For instance, online sales restrictions should not benefit from the block exemption established by new VBER where their objective is to significantly diminish the aggregate volume of online sales of the contract goods or services in the relevant market or the possibility for consumers to buy the contract goods or services online.

Some restrictions of the use of the online selling by franchisees in connection to consumers are considered hard-core restrictions of competition. For instance, it is not allowed to impose any obligation requiring the franchisee to prevent customers located in another territory from viewing its website or online store or to reroute customers to the online store of the franchisor or of another seller. To the same aim, it is considered a hard-core restriction to automatically terminate consumers' transactions over the internet if their credit card data reveal an address that

is not within the franchisee's territory.

With reference to protection of consumers buying online, the Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council, covers a broad range of contracts concluded between traders and consumers, such as sales contracts concluded at a distance (i.e.: online). The Directive provides that consumers can withdraw from distance and off-premises contracts within 14 days of the delivery of the goods or the conclusion of the service contract, subject to certain exceptions, without any explanation or cost. The Directive also establishes rules on information to be provided for distance contracts, off-premises contracts and contracts other than distance and off-premises contracts and harmonises certain provisions dealing with the performance and some other aspects of business-to-consumer contract, without prejudice to Regulation (EC) 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I).

In order to strengthening the enforcement of European Union consumer protection rules and updating rules in line with the development of digitalisation, on 27 November 2019 was adopted the Directive (EU) 2019/2161 of the European Parliament and of the Council as regards the better enforcement and modernisation of European Union consumer protection rules. It amended four existing consumer law directives – the Unfair Contract Terms Directive 93/13/EEC, the Price Indication Directive 98/6/EC, the Unfair Commercial Practices Directive 2005/29/EC and the above-mentioned Consumer rights Directive 2011/83/EU. By means of those amendments, the Directive 2019/2161 also applies in the case that the trader supplies or undertakes to supply digital content which is not supplied on a tangible medium or a digital service to the consumer and the consumer provides or undertakes to provide personal data to the trader, with certain exceptions.

The Directive 2019/2161 emphasizes rules on penalties for infringements of the four directives, providing for new European Union right to individual remedies for consumers who are harmed by unfair commercial practices prohibited by the Unfair Commercial Practices Directive, included prohibition of specific unfair online practices regarding consumer reviews, advertising and paid placements in search results.

Furthermore, the Directive 2019/2161 includes new transparency

requirements about the main parameters determining the ranking of online search results, about whether the contract is concluded with a trader or an individual on an online marketplace and about the measures taken to ensure that published consumer reviews originate from consumers who actually used or purchased the product.

In accordance with Article 26(2) TFEU, the internal market is to comprise an area without internal frontiers in which the free movement of goods and services and freedom of establishment are ensured. The harmonisation of certain aspects of consumer distance and off-premises contracts is necessary for the promotion of a real consumer internal market striking the right balance between a high level of consumer protection and the competitiveness of enterprises, while ensuring respect for the principle of subsidiarity. Article 169(1) and point (a) of Article 169(2) TFUE provide that Union is to contribute to the attainment of a high level of consumer protection through the measures adopted pursuant to Article 114 thereof.

Furthermore, to protect consumers buying online, as in other business, franchisors and franchisees must comply with the European Union data protection provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (GDPR), which repealed Directive 95/46/EC. The GDPR protects individuals when their data is being processed by the private sector and most of the public sector. GDPR allows individuals to better control their personal data, by means of a system of unified rules monitored by a completely independent supervisory authorities in charge also of its enforcing.

Both franchisor and franchisee are obliged to meet the GDPR provisions in particular when collecting and handling data related to customers. For instance, it could happen that the data of the customers are transferred within the franchise network, for example for advertising purposes or within the context of loyalty scheme programs, and, also in this frame, data protection rules are to be fulfilled.

On January 11, 2024, the Regulation (EU) 2023/2854 of the European Parliament and of the Council of 13 December 2023 on harmonised rules on fair access to and use of data and amending Regulation (EU) 2017/2394 and Directive (EU) 2020/1828 (Data Act) entered into force. The Data Act introduced a new regulatory framework that applies to the use of personal and non-personal data generated by connected devices and will apply beginning September 12, 2025. The Data Act follows

the Regulation (EU) 2022/868 of the European Parliament and of the Council of 30 May 2022 on European data governance and amending Regulation (EU) 2018/1724 (Data Governance Act), which became applicable in September 2023 and established common European data spaces in an effort to make more data available for use.

The new rules apply to data generated using connected products and related services, as well as to data-processing services (including cloud services). The Data Act set forth rules concerning making data available to a variety of parties. It also makes it easier to change data-processing services, introduces safeguards against unlawful third-party access to non-personal data, and offers interoperability standards for data to be accessed, transferred, and used.

In the frame of the European Union's Digital Single Market Strategy (European Commission, Communication C (2022) 4388 final of 30 June 2022 on European Commission digital strategy: Next generation digital Commission) the European Commission proposed a new set of rules concerning the digital market.

Digital is a European Union priority, focused to build towards a better and more harmonized digital environment.

On 14 September 2022 the Regulation (EU) 2022/1925 of the European Parliament and of the Council on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Market Act or DMA) was adopted.

On 19 October 2022 also the Regulation (EU) 2022/2065 of the European Parliament and of the Council on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act or DSA) was adopted.

While the DSA comprises general rules on the liability of providers of online intermediary services and safeguards their diligence by imposing more extensive obligations on online platforms and large online platforms, the DMA aims at ensuring a contestable and fair digital market, granting a higher degree of competition in European digital markets by preventing large digital platform (gatekeepers) operating in Europe from abusing their market power to the prejudice of other smaller companies and consumers.

According to the DMA, by approximating diverging national laws, it is possible to eliminate obstacles to the freedom to provide and receive services, including retail services, within the internal market. The targeted set of harmonised legal obligations established at European Union level by the DMA aimed therefore to ensure contestable and fair digital markets featuring the presence of gatekeepers within the internal market to the

benefit of the European Union's economy as a whole and ultimately of the European Union's consumers.

The DMA allows consumers to have more and better services to choose from, more opportunities to switch their provider if they wish so, direct access to services, and fairer prices.

The legal basis for the DMA is found in art. 114 TFEU, which enables the adoption of consumer protection measures via the ordinary legislative procedure for the approximation of the provisions laid down by law, regulation or administrative action in Member States.

The DMA is coherent with other European Union instruments: to ensure the effectiveness of the obligations laid down by the DMA, while also making certain that those obligations are limited to what is necessary to ensure contestability and tackling the harmful effects of the unfair practices by gatekeepers, it is important to fully comply also with applicable law, and in particular Regulation (EU) 2016/679 and Directive 2002/58/EC and legislation on consumer protection, cyber security, product safety and accessibility requirements, including Directive (EU) 2019/882, Directive (EU) 2016/2102 and the European Union consumer law *acquis* too.

Consumers should be entitled to enforce their rights in relation to the obligations imposed on gatekeepers under the DMA through representative actions in accordance with the above-mentioned Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers, which repealed Directive 2009/22. The Directive 2020/1828 applies to infringements listed in Annex I to the Directive, but member States may introduce broader regimes than those specified under the Directive, since it aims at minimum harmonisation in order to supplement, not replace, any existing national collective action mechanisms. The main impact of the Directive is to allow individual consumers from a Member State to join proceedings in other Member States on an opt in basis (being however noted that if an injunction order is sought, an opt-in or opt-out mechanism is not required). Member States may decide to provide for an opt-in or opt-out system or a combination of the two for redress claims. Member States must enable qualified entities, designated as such by the Member State in advance or ad hoc, to bring class actions in their national Courts. On the other hand, Courts must be enabled to issue injunction orders (for provisional or definitive relief) as well as redress orders (for example in the form of monetary compensation, contract termination or reimbursements).

DMA provides that Directive 2020/1828 is applicable to the representative actions brought against infringements by gatekeepers of provisions of the DMA that harm or can harm the collective interests of consumers.

4. *Conclusive Remarks: the Effects of Online Franchising for Consumers*

Franchising stimulates economic activity by improving the distribution of goods and the provision of services, as it gives franchisors the chance to establish a uniform network with limited investments and using franchisor know how. It facilitates cross-frontier development and may increase the entry of new competitors in the markets, particularly in the case of small and medium enterprises, making products and services available to a wide range of consumers, notwithstanding national frontiers within the European Union, contributing therefore to the establishment of a unified European market.

Consumers may benefit from the franchising system, considering that franchising generally allows consumers a fair share of the resulting benefits as they combine the advantage of a uniform network with the existence of the traders personal interest in the efficient operation of their business. The homogeneity of the network and the co-operation between the franchisor and the franchisees should improve the quality of the products and services.

Since consumers may obtain services elsewhere in the network, franchisees are forced to pass on to consumers a reasonable part of the benefits of this intra-band competition, since the franchisees can be expected to offer better services and prices.

The homogeneity of the network, the standardisation of trading methods and the direct link between franchisor and franchisee ensure that the consumer benefits in full from the know-how passed on by the franchisor, with a focus on the quality of the products.

Consumers are therefore considered to benefit from the online franchising system.

The results of franchising on inter-brand competition and the fact that consumers may decide to deal with any franchisee in the online marketplace should grant that consumers may take advantages from online franchise.

Franchising constitutes a coherent distribution network offering

uniform product quality and a comprehensive range of articles available in the online market.

By means of the franchising method, consumers may benefit of a larger number of products to buy, a certain quality and characteristics of products to compare and the possibility to reduce costs.

However, to make those benefits effective for consumers, franchisors and franchisees must strictly comply with all the relevant provisions applying to their business, granting full compliance with all the consumers protections rules, given that undertakings' lawful conducts, such as consumers' responsible decisions, are essential to grant an efficient European Union legal system. Provided that, consumers acting in the frame of an online franchising system could be considered to represent the ultimate beneficiaries of a well-functioning European Union market.

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Elettra Stradella

Towards a European Digital Citizenship by Artificial Intelligence

Abstract: The paper investigates whether and how AI can tackle, put at risk or contribute to an European digital citizenship. Moving from the EU Declaration on Digital Rights and Principles, which addresses AI in its Chapter III, and discussing the mere 'label' nature of the very concept of digital citizenship, it examines the role of AI tools in shaping citizenship processes at both national and European levels.

Keywords: Artificial Intelligence – digital citizenship – participatory democracy – political rights.

1. *Premise*

In this paper, we will explore whether and how the development of Artificial Intelligence can contribute to the advancement of European digital citizenship. Starting from the EU Declaration on Digital Rights and Principles, which addresses Interactions with algorithms and artificial intelligence systems in Chapter III, and the debate concerning its political and legal significance, we will examine the role of AI tools in shaping citizenship processes at both national and European levels.

2. *EU Declaration on Digital Rights and Principles: a Framework for Digital Constitutionalism?*

In December 2022, the European Commission, the European Parliament, and the Council of the European Union jointly endorsed the European Declaration on Digital Rights and Principles, aiming to guide the EU's digital agenda based on EU constitutional values and fundamental rights.

This document has been perceived as a step towards digital constitutionalism, and we will seek to understand how this aligns with the development of AI. The Declaration encompasses traditional rights enshrined in the EU Charter of Fundamental Rights alongside digital principles. Some of these principles have gradually underpinned the EU's digital policy framework, while others have been expanded upon or newly formulated within the Declaration.

According to some authors, who draw distinctions between codifying constitutional regimes and transformative constitutionalism (known also from perspectives such as gender constitutionalism and neo-constitutionalism, Rubio Marìn, 2022), the Declaration represents a constitutional effort towards digital constitutionalism (Kuźmicz, 2023).

The adoption of this Declaration in 2022 sparked significant debate regarding its potential to define a global framework for the recognition and protection of digital rights. The clarity of established digital rights as enforceable claims remains a central issue. Additionally, there are questions regarding whether these rights should be treated as principles or norms, whether they impose positive or negative obligations, and their applicability across national states, the EU, or other entities. While some statements assert rights in explicit terms, others are framed as recommendations.

The European Commission's decision to present certain statements as recommendations, using the term «should», suggests an intention for this document to serve more as a reference point than a legally binding instrument (Kuźmicz, 2023). The rights most clearly defined include those concerning privacy, individual data control, and child protection (Chapter V).

Despite its nature as a non-binding document, like many other digital rights declarations, its value lies in guiding binding EU law, national rights, and internationally adopted norms. The principles outlined in the Declaration are intentionally broad, a characteristic common to fundamental rights law, which does not inherently preclude their use as a foundation for legal claims. However, the primary challenge lies in their enforceability (Celeste, 2022).

In recent years, scholars from diverse fields have noted the proliferation of digital rights declarations lacking binding legal force, often referred to as 'Internet bills of rights'. This phenomenon has grown considerably, with nearly two hundred such documents collected over slightly more than two decades (Celeste, 2024; *www.digitalconstitutionalism.org*).

The Declaration aligns with the EU's tradition as a regulator of digital technologies and a protector of digital rights: indeed, the regulation of

digital technologies has been a focus of EU hard and soft law since the 1990s. For instance, the Data Protection Directive served as a cornerstone of data privacy from 1995 until the adoption of the GDPR in 2018 (Directive 95/46/EC; Regulation 2016/679).

Since November 2022, the EU Regulation 2022/2065 of the European Parliament and the Council regarding a single market for digital services and amending Directive 2000/31/EC (Digital Service Act) has been in effect, aiming, among other goals, to effectively safeguard consumers and their fundamental online rights.

From a policy perspective, the first consolidated and comprehensive policy document focusing on digital issues was the 2010 Commission's Digital Agenda. Reinforced by the adoption of the 2015 Digital Single Market strategy, this third decade of EU digital regulation culminated in the adoption of the GDPR in 2018. During this decade, the CJEU also emerged as a decisive actor in shaping EU digital law: we can obviously mention judgments such as *Google Spain*, or *Schrems*, that represented seminal decisions further strengthening digital rights in the EU. A policy strategy focusing on digital issues was later adopted, called the Digital Decade Policy Programme for 2030, which has led to the proposal and adoption of milestones in legislation such as the previously mentioned Digital Services Act, the Digital Markets Act, and, recently, the AI Act.

From the beginning, a high level of attention to individual rights emerged. As many scholars have highlighted, this is well illustrated by the field of data protection, one of the areas on which the EU legislator focused since the 1980s (Fabbrini – Celeste – Quinn, 2021). The EU approach distinguished itself from those of other international organizations working in this area, such as the OECD, by its distinct attention to the dimension of individual rights. In 2000, the Charter of Fundamental Rights of the EU became one of the first international instruments to establish a comprehensive right to data protection, distinct from the right to personal and family life and correspondence, which is more commonly referred to as the right to privacy in the United States.

From a policy perspective, the attention to the individual dimension is apparent: a user/human-centric approach is not only evident in the Commission's policy documents mentioned above but also in the political commitments enshrined in a series of declarations of the European Council on e-government and e-democracy, such as the Tallinn Declaration on E-Government in October 2017, the Berlin Declaration on Digital Society and Value-Based Digital Government in December

2020, and the Lisbon Declaration – Digital Democracy with a Purpose. These commitments are also reflected in multiple resolutions of the EU Parliament, such as the European Parliament resolution of 20 May 2021 on shaping the digital future of Europe: removing barriers to the functioning of the digital single market and improving the use of AI for European consumers.

What seems to emerge from the Declaration, with regards to the European idea of digital constitutionalism, is the role of two main features/principles that can be found in Recitals 6 and 5 of the Preamble: the 'human-centric' approach and the 'value-based' approach. This means that all rights and principles provided by the Declaration are enshrined in the TEU and in the Charter of Fundamental Rights. Recital 6 of the Declaration's Preamble reads: «The EU way for the digital transformation of our societies and economy encompasses in particular digital sovereignty in an open manner, respect for fundamental rights, rule of law and democracy, inclusion, accessibility, equality, sustainability, resilience, security, improving quality of life, the availability of services and respect of everyone's rights and aspirations. It should contribute to a dynamic, resource-efficient, and fair economy and society in the EU». Article 2 TEU reads: «The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity, and equality between women and men prevail». The fundamental values, rule of law, and equality represent the core of constitutionalism and should be reflected in specific norms and provisions that protect fundamental rights due to the 'human-centric' attitude that, as we will discuss, becomes particularly important in the case of AI applications.

Of course, speaking about digital constitutionalism would mean defining digital sovereignty, with both an internal and external dimension. The former is intended as control over digital assets, and the latter as a form of independence from the influence of foreign actors, not only third countries but also trade partners and other international organizations and 'flexible' actors such as the Internet Governance Forum.

The Declaration, similar to many other Internet bills of rights that have emerged in the past few decades, shares these objectives, aiming at addressing the challenges of the digital revolution through a constitutional perspective. From this point of view, the programmatic and cultural role of the Declaration is very important, which in some way compensates

for the fact that it cannot be directly attributed any legal value. On the one hand, it sets objectives that the Union's institutions and the Member States are called to implement. On the other, it represents an educational tool, aimed both at European society and at promoting globally the European model of digital constitutionalism.

3. *Digital Constitutionalism in the AI Era*

To understand whether we can indeed speak today of a (at least) European digital constitutionalism and what characteristics this might have, there is no doubt that Artificial Intelligence (AI) plays a crucial role in the process of constitutionalizing digital rights, or rather, in constructing digital constitutionalism itself. AI can be seen both as a phenomenon challenging constitutionalism and its rights, and as a process transforming the paradigms upon which it is based.

As mentioned, the 2022 Declaration addresses issues related to AI in Chapter III, Freedom of Choice, Interactions with Algorithms and Artificial Intelligence Systems, stating that «Everyone should be empowered to benefit from the advantages of artificial intelligence by making their own, informed choices in the digital environment, while being protected against risks and harm to one's health, safety and fundamental rights». It expresses a commitment to ensuring transparency about the use of algorithms and artificial intelligence, ensuring that people are empowered and informed when interacting with them, ensuring that algorithmic systems are based on suitable datasets to avoid unlawful discrimination, and enabling human supervision of outcomes affecting people. It also provides safeguards to ensure that AI and digital systems are safe and used in full respect of people's fundamental rights.

From a principled standpoint, these aspects provide indications reflected in the choices subsequently made by the AI Act. Specifically, they emphasize the centrality of the transparency principle, ensuring that individuals are informed when interacting with algorithms and artificial intelligence, guaranteeing the use of high-quality datasets free from biases that could generate unlawful discrimination, enabling human supervision of outcomes generated by these systems, and identifying sensitive areas where AI poses particular risks if used in decision-making processes or influencing individual choices, such as health, education, and employment.

According to the AI Act, high-risk AI systems under Article 6(2) encompass various fields, including education and vocational training, employment and management of workers, access to self-employment, migration, administration of justice, democratic processes, and AI systems intended for public authorities or used on their behalf to assess the eligibility of natural persons for essential public assistance benefits and services, including healthcare services, and to grant, reduce, revoke, or reclaim such benefits and services. Therefore, we can identify a common framework that impacts European constitutional engagement in the digital domain.

Issues related to data quality and the presence of biases are increasingly significant, even in technological debates. Hence, it is hopeful that in the coming years, we will be able to design anti-discriminatory systems by default and by design, capable of overcoming the outlined challenges.

AI is currently ubiquitous and, through the process of technological convergence, absorbs various devices, combines with robotics and the Internet of Things (IoT), entering the existential dimensions and daily spaces of an ever-growing number of people. Consider commonplace and pervasive tools like Alexa, Siri, or Google Assistant, or anti-spam filters in email. As widely acknowledged, a pivotal aspect is the shift from 'natural' intelligence to artificial 'intelligence' regarding stereotypes and discriminations, historically perpetuated by the former, where data plays a central role (Stradella, 2020). Bias resides in data as a potential source of vulnerability inherent in AI systems. While in a technological approach, bias represents an evaluation error, a concept (possibly pre-conceived) that risks undermining the accuracy and reliability of analysis results, from a legal perspective, bias represents a stereotype poised to transform into discriminatory action, thus becoming the primary target of non-discrimination principles.

Hence, the questions that arise in this regard are essentially twofold: to what extent AI amplifies discrimination (an issue already highlighted, particularly concerning some AI applications, such as facial recognition – notably, biometric identification applications are prominently mentioned as high-risk under European regulation – a field long recognized as particularly critical in terms of fundamental rights protection, as underscored by the European Union Agency for Fundamental Rights in the Facial Recognition Technology: Fundamental Rights Consideration in the Context of Law report of 2020), and how AI as a science could contribute to supporting decisions with an antidiscriminatory function. The highlighted challenges could potentially translate into opportunities

if the design of AI systems preemptively considers fundamental rights, both in terms of algorithm characteristics and in selecting datasets for predictions and responses.

If this were the case, as mentioned earlier, we could even envision corrective AI addressing the limitations of human decision-making, which is far from objective and rational as sometimes described, but often imbued, explicitly or implicitly, with biases, stereotypes, and references to transient notions like common sentiment.

In the perspective of building a digital citizenship through AI, this corrective function could also operate at the parliamentary (or more broadly, regulatory) decision-making level, according to two possibly complementary perspectives: enhancing democracy and co-regulation, where technology accompanies policy above all in complex technical-scientific decision-making processes.

From this viewpoint, the impact on constructing digital citizenship seems evident.

4. *Towards a European Digital Citizenship by AI?*

The question we must grapple with concerns whether there can be a justification for employing a system inherently undemocratic (such as algorithms) in processes that touch upon the nature of citizenship and thus in processes related to political representation, which derive their legitimacy from it (particularly legislative or policymaking processes).

One possible answer might come from the generation of data forms, called upon to constitute the basis on which AI could develop innovative legal rules characterized by a high degree of participation, capable of defining legitimacy through inputs (Scharpf, 1999) not from traditional democratic processes but rather from 2.0 tools.

However, the idea that political law, whether national or European, can derive legitimacy from outputs deemed technically superior in terms of effectiveness and efficiency due to their AI origins, does not seem sufficient or acceptable on its own. This is because legitimacy through outputs also requires participatory processes 'upstream' capable of infusing decisions with shared content and the knowledge and concerns of rule recipients.

Two subsidiary utilization hypotheses therefore arise to support the legislature: one aims to strengthen parliamentary bodies at the

national level and political institutions in general at the European Union level, especially in making technical decisions (involving scientific and technological areas or requiring knowledge, data, and impact assessments).

Another hypothesis is to include within the democratic circuit opinions and political orientations obtained through innovative participatory tools, translated into data and made available to an AI system capable of generating (proposals for) decisions theoretically endowed with a higher level of democratic legitimacy.

The issue is highly relevant in constructing a European digital citizenship. Could AI act to democratize participatory procedures already known at the European level, such as public consultations?

Currently, thanks to 2.0 technologies, it is possible to facilitate dialogue and integrate disparate information, and process complex data, which would also benefit the improvement of regulatory processes. It should be noted that online political participation is already a reality, not a new goal.

The exponential access to the Internet in developed countries and the spread of interactive technologies facilitate innovative ways for citizens to participate in politics, characterized by the inherent nature of the Internet, which invites users to autonomously produce their own content. This raises strong concerns from various quarters, especially regarding the production of big data resulting from this use of the Web, which constitutes «the basis for political microtargeting activities aimed at influencing specific groups of voters through targeted messages based on preferences and personal characteristics. In this way, numerous results can be achieved, foremost among them shaping the candidate's image in line with the day-to-day expectations of the target electorate» (Papakyriakopoulos – Hegelich – Shahrezaye – Medina Serrano, 2018).

Therefore, if big data tools and their use in the political space are seen as potentially weapons capable of undermining representative democracy, one might ask what would happen if representative democracy, or rather their core institutions, were to utilize them in a subsidiary and complementary manner.

To date, looking at participatory processes at the European level, which are particularly significant in shaping the characteristics and scope of European citizenship, including digital citizenship, it seems crucial that digital technologies play a purely instrumental role, one that does not change the essence of participation or representation but rather integrates into decision-making processes. The reason for this nature is largely attributable to the vertical and selective definition of participatory

processes and the difficulty of involving citizens as such.

The participative experiences and methods discussed thus far seem to aim, without fully achieving it, towards the phenomenon of crowdsourcing legislation, which is currently only used in some legal systems and mostly hypothesized at the European level.

To define crowdsourcing legislation, Aitamurto describes it as «an open call for anybody to participate in a task open online… where 'the crowd' refers to an undefined group of people who participate» (Aitamurto, 2012).

It is a phenomenon essentially aimed at developing and shaping collective intelligence, i.e., the experience based on the assumption that knowledge is formed most accurately and completely when diverse ideas from diverse people are brought together, combined in a process that is not merely additive but reworks and synthesizes them.

Extensive literature highlights how the development of crowdsourcing and the various uses of digital platforms as peer-to-peer processes have transformed the traditional top-down regulatory model and the ways rules are constructed, producing consequences for informational asymmetries in the relationship between rule recipients and producers (Abat i Ninet, 2021). According to some, the virtuality of participation and its transfer from the traditional democratic circuit to digital platforms would enhance the democratic nature of decision-making processes, amidst an increasing technocratic production of political law (Lastovka, 2015). On the other hand, the democratic value of crowdsourcing is emphasized by some examples, albeit still limited, such as those from Finland or Iceland, even in constitutional processes.

However, there are certain criticisms associated with the phenomenon, particularly arising from its practical implementation.

The first, quite obvious, is the so-called digital divide, stemming from economic, social, cultural, and political fractures created between those who do not have Internet access or lack the tools or skills to efficiently use its infrastructure, thereby compromising the democratic foundation of a system, especially concerning the exercise of political and participatory rights (though not directly the right to vote).

Another problematic aspect concerns the legal effects of consultations conducted through crowdsourcing processes.

In addition to the formal and procedural constitutional legitimacy issue, there is also a substantive equality aspect. Since there are still groups of people currently not connected and unable to participate in online initiatives, the opinions of participants may not necessarily represent

majority opinion, potentially undermining the principle/criterion of majority that characterizes fundamental political representation. Moreover, excluded minorities would be excluded (indirectly) precisely because of their belonging to vulnerable groups (consider elderly people, the economically disadvantaged, those geographically located in poorly connected territories, and many others, potentially causing intersectional discrimination).

Furthermore, the development of crowdsourcing and the various uses of digital platforms as peer-to-peer processes, not just as digital devices adopted by holders of political power to intersect input and output legitimacy and recover space for effective democracy, are transforming the traditional regulatory model based on top-down regulation and the construction of rules that are predominantly technical, often generating informational asymmetries in the relationship between rule consumer and producer. In this view, the virtuality of participation and its transfer from the traditional democratic circuit to digital platforms would enhance the democratic nature of decision-making processes, amidst an increasing technocratic production of political law. The relationship among technology, law, and politics would thus assume different facets with the advent of networked and 'extremely' democratic decision-making systems made possible by these technologies. In some way, technological development would serve to reclaim the role of popular participation compared to the technicality of 'specialized' and bureaucratic legislation.

As mentioned, crowdsourcing is a widely debated issue at the European level. The Directorate-General for Communications Networks, Content and Technology of the European Commission (DG Connect) initiated a crowdsourcing initiative in 2012, the Digital Future Foresight project, aimed at reflecting on information and communication technologies up to 2020, 'collecting' stakeholder opinions on challenges and opportunities in decision-making processes looking towards 2050.

Consistent with the evidence-based approach characterizing the European (and beyond) concept of 'better regulation', crowdsourcing, i.e., the 2.0 use of collective intelligence, without replacing the legislative process, neither at national nor European level, appears to represent an integrative and subsidiary tool in a context of general crisis of democracy, political representation, and parties. One may also wonder whether the big data produced by these systems could form the basis for AI systems that are potentially called upon to permanently support political decision-makers. In the perspective of constructing digital citizenship, the central issue remains transparency and the 'explainability' of outcomes from AI-driven

systems. This connects with the central issue of misinformation, a phenomenon capable of impacting digital citizenship, especially during electoral periods, but not exclusively, and of distorting public debate and individual voter choices through the explosive combination of misinformation and artificial intelligence, in light of the informational dynamics characterizing the internet and the digital landscape (Manetti, 2023).

From this perspective, it is relevant and recent the impact of deepfakes, one of the most dangerous manifestations of generative AI in the world of freedom of expression, information, and thus in the processes of democratic digital citizenship: we can refer to the 2023 Argentine presidential elections, but some concerns have also been raised in the context of last European Parliament elections. Social platforms, somewhat representing a form of crowdsourcing and thus a potential reservoir of citizenship (and nonetheless «the principal sources for knowing current events, checking ads for employment, speaking and listening in the modern public square, and otherwise exploring the vast realms of human thought and knowledge», as the Supreme Court of the USA underlined in Packingham v. North Carolina, 582 U.S. (2017), are now being used in some cases to identify political communications that are actually products of algorithmic automation. However, it is evident that self-regulation is insufficient to ensure constitutionally oriented digital citizenship, and indeed the model adopted by the European Union is that of co-regulation, as shown by the 2022 Code of Conduct, the adoption of the Digital Services Act in the same year, and, now, the AI Act (Rugani, 2024).

If we look at current decision-making processes, particularly focusing on the European scenario and the forms of participation characterizing the procedures for shaping EU policies and acts, what seems to emerge is that the shift towards a different 'genetics' of participation through digital technologies is certainly not complete. It is true that they have transformed both lobbying practices, affecting how organized groups of collective and widespread interests voice their concerns to institutions, without diminishing the (still) essential role of direct, horizontal, and vertical relationships. This includes the so-called upward phase in its own sense, with experiences of digital consultation and participation evidently aimed at democratizing the formation of regional and national positions on EU acts through the direct involvement of citizenship and organized interests.

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Cristiana Carletti

Generative AI: Confrontational and Collaborative Tracks among Public and Private Actors for a Sounding Regulating Framework

Abstract: Moving from a tentative definition of Generative Artificial Intelligence, the contribution is focused on the features of the more recent and current international debate over pro and cons about the technical development of knowledge and application of Generative Artificial Intelligence (Gen AI) and potential legal governance to regulate the limits for its profitable implementation both in economic and ethic terms by public and private concerned actors along the lines of the UN Guiding Principles on Business and Human Rights.

Keywords: Digital governance – artificial intelligence – companies – business – human rights.

1. *For a Tentative Definition of Gen AI*

The recent international debate over pro and cons about the technical development of knowledge and application of Generative Artificial Intelligence (Gen AI) and potential legal governance to regulate the limits for its profitable implementation both in economic and ethic terms is at the core of this contribution.

At the outset a preliminary tentative definition of Gen AI will be introduced, to be framed into the broader and quite diffused familiarity with artificial intelligence functioning. Indeed, the rapid evolution of digital capacities, particularly within the private sector which has invested much time and financial resources for study and research over the potentialities of technological tools in the last two decades, has been scarcely captured by international, regional and national legislators for a

preventive and comprehensive regulatory setting and related establishment of dedicated bodies and procedures in charge for a proper governance in this domain.

The lack of political, legal and economic will scourged at the international level to fuel the debate in order to provide for legal binding instruments is a matter of fact, in spite of a reiterated intention to detail over benefits but, above all, hindrances which could impact on individuals and communities in their role of right-holders and digital users, customers and consumers.

Divergently, the unique regional area where this debate has been promoted to deepen the opportunity for a regulation on the matter is the European Union: the process towards the EU AI Act – preliminary agreed by EU legislators in December 2023 and completed in July 2024 – has been based upon the request for an open and constructive dialogue among institutional actors and the private sector to contribute for the compilation of clear norms to govern artificial intelligence along its possible and different applications and their classification according to the risk they pose to users.

The results descending from this practice could prove how the interrelation among public and private actors – as for the former ones, both legislators and the executive powers in charge for the best implementation of regulations at the national level in line with international standards and regional (EU) laws – is the key-approach to encourage both confrontational and collaborative tracks that endorse political, legal, economic, social tensions.

Even if the implementing results of the EU law are not yet fully available, the demand for a new vision and innovative solutions, especially for Gen AI, at the international level has been proposed along some voluntary standards in force as those provided by the United Nations, e.g. the UN Guiding Principles of Business and Human Rights (UNGPs) endorsed by the UN Human Rights Council on 16 June 2011.

An in-depth analysis over the interpretation of potential implementation of the UNGPs to deal with governance gaps and challenges of States and business companies to advance the proper use of Gen AI will be developed in the contribution, moving from the contents of the B-Tech project, promoted by the Office of the UN High Commissioner for Human Rights, until the B-Tech Generative AI project, which aims at raising awareness about the issue at the global level as well as at encouraging interdisciplinary exchange of knowledge and practice to test the implementation of the UNGPs by public and private actors for the best governance of Gen AI.

1. *For a Tentative Definition of Gen AI*

According to a basic definition introduced by those who manage the digital vocabulary online, Gen AI is «a particular artificial intelligence (a computer system that has some of the qualities that a human brain has, such as the ability to interpret language, recognize images, and learn from data supplied to it) that is able to produce text, images, etc.».

Since the '50s of the last century, within the experimental research carried out by Alan Turing on the so called 'modern AI' on machine learning, the development of neural networks for AI functioning has been incentivised: this has led in 2014 for the adoption and use of a type of algorithm (generative adversarial network – GAN) to enable several kinds of AI application starting from images, videos and audios, and including only in very recent times language models.

Indeed, the relationship between AI and Gen AI is hierarchical. The first is grounded on ruled-based machine learning algorithms to generate a single output, traditionally attributed to human intelligence and, for this reason, it could be typified by referring to conventional human tasks such as perception, logical reasoning, decision-making. Passing through the machine learning models, whose algorithms work upon data whenever they have not been programmed to act to this scope, Gen AI operates on datasets in place out of any predetermined programming in the view of reassembling their contents and produce new outputs.

More in detail, Gen AI models handle really complex patterns using datasets via a probability distribution and which do not need human intervention or supervision. The results of the training activity of neural networks are contents similar to original data: they depend upon several factors such as data quality and completeness, structure and functioning of the training model, and – as recently proved – all kind of prompts human users give the model.

If original data are highly qualitative due to their comprehensiveness and diversification, the model catches up easily more patterns and nuances to be replicated in order to produce a quality output. On the contrary, if data are poor, incomplete and biased, the outputs are scarcely relevant and useful. The training model is not perfect: hence, following progressive feedback during the operationalisation of the model itself, it could be adjusted. The grade of interaction between the model and human users is also crucial and is adapted to the human purpose to produce a desired output.

In order to provide a set of different models for human users, Gen AI interfaces have been additionally created or updated by developers, facilitating their broad approach and use from the same human users in a more friendly and direct manner (over this point, a large set of models is worth of mentioning: ChatGPT, Bard, DALL-E, Midjourney, and DeepMind).

In relation to the current and potential use of Gen AI, it is out of question that foundational models now perform different and yet unfinished tasks, but the more diffused multimodal applications work along language, audio and speech, visual and imagery, and data generating components. This all-inclusive approach, which requires also a multidisciplinary perspective when Gen AI models are designed, trained and operationalised, encompasses both benefits and hindrances.

Positive advantages are: the impact of automatization on tasks performances, increasing the productivity rate and, confidently, let human users free to spend their time for personal interest; the speed of research and activities for content generation, also at a lower cost; a comprehensive functioning of models over really complex data in short time, further providing for test models to be applied to improve other AI systems in place.

Meanwhile Gen AI raises important concerns when it is misused, negatively impacting on digital trust of human users towards technologies: this also recalls the concept of a responsible Gen AI in technical, legal, ethical terms.

With regard to technical non-functioning of models, eventual errors which do not correspond to real facts or logical reasoning could be anticipated through appropriate correctives to avoid poor and nonsense outputs. Notwithstanding this kind of technical amendments, outputs always rely on qualitative, consistent and labelled data, also in order to catch and filter out inappropriate content that sounds offensive. From a legal point of view, criticalities are thoroughly recorded concerning the violation of copyright laws in force as well as personal data collection, storage and use and related accountability. The high rate of Gen AI in perpetuating discrimination and biases in data training amounts to be really an ethical issue.

Translating these considerations into the business sector, the use of Gen AI is widely applied, along the expansion of technological knowledge and larger use of digital tools by industry in fields, apart from administrative management, such as healthcare – jointly with scientific research, education for learning tutoring and materials, media

for the generation of creative products, automotive, climate science for anticipating scenarios and simulating rapid response reactions to natural and human-made disasters. The list of benefits and hindrances in the industry sector descending from Gen AI is one among the core-topics under discussion, to be equally and supportively managed to increase productivity while preserving quality and ethical principles.

2. *UNGPs and Digital Governance: How to Deal with Technological Challenges of AI at Large*

The UNGPs represent the voluntary framework that has introduced rights-respecting soft regulation and suggestions for responsible business practice at the global level around three key pillars: the State duty to protect human rights, the corporate responsibility to respect human rights, and the access to remedy.

Any kind of analysis of the UNGPs from a digital standpoint has been provided since the launch and the subsequent implementation of the B-Tech project from the UN Office of the High Commissioner for Human Rights in 2019 with the contribution of all concerned stakeholders – States, businesses, civil society, academy, experts.

The project has been built to work over four strategic focus areas: Addressing Human Rights Risks in Business Models; Human Rights Due Diligence and End-Use; Accountability and Remedy; 'A Smart Mix of Measures': Exploring regulatory and policy responses to human rights challenges linked to digital technologies.

As a matter of fact the UNGPs have influenced tech companies in developing innovative approaches and practices encompassing the concept of human rights due diligence in business risk assessment, and have been influenced to update their contents for targeted technology principles and initiatives to inform the design, access and use of digital products and services.

The need to prevent and counteract any adverse impact from business companies onto economic and social development due to technology factors is enshrined in the vision along which the UNGPs have been formulated, even also framed into future times when the digital power will prevail in our societies. This added value is encapsulated in the multistakeholder approach, involving States as for their duty to protect human rights through the adoption and implementation of a smart-mix of legislative

and political measures to guide the development and use of technologies, as well as tech companies recommended to operationalise the promotion and protection of human rights in their business, independently from the size and sub-sector where they perform it. Ultimately digital challenges ask to both actors to provide for access to remedy and just compensation for victims of business harms and violations.

The aforementioned B-Tech project has developed key-considerations for the best and comprehensive implementation of the UNGPs.

Firstly, due to their global nature and application, the UNGPs have been considered as the proper tool to find the right nexus between technology innovation and risk management over people, as digital users. Secondly, according to the UNGPs pillars States and business companies have clear and complementary roles to reinforce human rights standards: if States are called to contribute for strengthening the legal framework at the national, regional and – hopefully – international level amending norms according to technological innovation, companies are titled to work at a speed pace and through peer networking to address systematically peoples' risks suffered from contested innovative value chains. Thirdly, especially for companies, a wide acknowledgement about human rights standards is an absolute precondition to design and use their digital products avoiding any risk of rights' compression and violation: this background helps tech companies in preventing collapsing legal, commercial, reputational consequences in the relationship with the final user of their digital products but also in drawing high attention on the respect of the UNGPs in ensuring specific rights of their users – e.g. discrimination and biases, freedom of opinion and expression, right to privacy. Fourthly, the more action is implemented as for internal structure and programmatic policies, in other term for an effective business governance, previously identifying tech risks and taking action for preventing or mitigating them, the more companies' products and services will be appreciated by final users and result in human rights protection in an open and constructive manner. Finally, even if the UNGPs are voluntary in their nature, a global multistakeholder input for the adoption of mandatory human rights due diligence, including specific regulations for tech companies, is ongoing. In line with principles behind the corporate responsibility to protect human rights, which have informed several non-binding standards both at the international and national level, a step forward has been encouraged to introduce laws and policies which require a major level of political and legal commitment; meanwhile the discussion within the UNGPs framework has been intensified with a focus on tech-specific benchmarks, AI, Gen AI – as explained later. This

long process could start from an open, transparent, clear and inclusive State process to introduce mandatory legislation and proper incentive-based policy instruments to support tech companies performance along a comprehensive set of human rights to assess related risks and to adopt due diligence practices in the AI and Gen AI use across the full value chain.

3. *UNGPs First Pillar: the State Duty to Protect as a Basic Precondition for Legal Governance in the Age of Digital Technologies and AI*

As yet reported, according to the first pillar of the UNGPs, introducing the State Duty to Protect human rights, governance challenges in the age of digital technologies, including AI and Gen AI, are at stake.

To ensure the full compliance with international legal standards in force and related obligations for the protection of human rights along the UNGPs (UNGP1), States have adopted and implemented a wide range of legislative, policy and other kind of measures to manage risks and abuses associated with digital technologies depending upon machine learning and AI that create products and services.

In doing so, States have encouraged dialogue and participation of tech business companies and have proposed and applied a smart-mix of regulatory and policy measures (UNGP3) based on transparency and including guidance and incentives for companies, while safeguarding any attempt to possible roll back in human rights' protection at all. At the same time States have stimulated the interest of tech companies to do business by locating their digital production where the aforementioned set of measures sounded more favourable: so far, an high rate of digital start-ups, for example, have invested in Countries that incentivised research for digital economy development whereas reinforcing the legislation and soft laws to protect human rights in sectors at risk such as privacy, advertising, cyber-security.

Within the set of smart-mix measures, the formulation and insertion of mandatory human rights due diligence regimes is included, upgrading and extending corporate responsibility regulations yet in force.

This approach is key under the so called 'State-Business' nexus (UNGPs 4-6), when State-owned companies are in place or the State outsources or privatizes public productions and services. In such circumstances human rights obligations should be well-maintained, especially when some sectors – e.g. health, surveillance and national defence – are

concerned. The nexus also entails that States carry out proper oversight on corporate conducts, including independent monitoring and accountability mechanisms (UNGP5), adopt and request companies to adhere to strict transparency requirements and collect corporate data in order to improve ICT infrastructures and systems and to adjust corporate practices at proper convenience. This is particularly significant when States negotiate trade tech agreements with peers or attract foreign tech companies to invest in their territory: the validation of public commitment to act in compliance with human rights obligations is a cornerstone along a globalized and cross-borders digital economy track.

The nexus has also a direct impact over the endorsement of these practices from State-based institutions and public authorities (UNGP8): this action demands for the provision of a coherent policy framework for the best use of technologies while protecting human rights and calls for a constant and mutual dialogue and collaboration among data protection authorities, consumer protection bodies, equal opportunities commissions, public research departments, and tech industry. The outcomes of this interaction could facilitate broad technical and social knowledge about the functioning of digital technologies and related risks to be properly prevented and managed.

Additionally, the nexus might be interpreted by enlarging the number and nature of actors involved: a multilateral and multistakeholder approach is instrumental for enhancing digital economy opportunities along a more consistent set of policies to protect human rights comprehensively (UNGP10).

On a further general note some targeted actions are necessary for the State Duty to Protect to be fully executed.

The adoption, enforcement and periodic assessment of legislation recommending tech companies to protect human rights is the first area where States should strongly work for a proper systematization, which encompasses privacy law, data protection and data security law, labour law, consumer law, just to mention a few. The added value of such a complex regulatory scheme stays upon its adaptation to tech companies agendas, operational procedures and related economic targets, and its real effectiveness is fostered through a clear and foresighted guidance on how to best protect human rights according to tech specific sectors, products and services.

The second relevant area attains to the definition of a profitable communication programme about States and tech companies management over human rights impacts, inspired by principles of transparency and

periodic reporting. On one side, transparency is essential for detecting specific and serious risks, for assessing how to manage and respond to risks, for evaluating the technical effectiveness of removing, suspending and closing measures over digital contents. Operational clarity increases digital users' trust about tech companies' commitment in mitigating human rights risks in technologies' design and use. Equally the relevance of qualitative of periodic reporting boosts data collection and comparability, especially when due diligence mandatory measures are in place (UNGP11).

The third area for a better State Duty to Protect refers to business in high-risk contexts such as conflict-affected areas and post-conflict settings where States and tech companies play a key role when interested national authorities are unable or unwilling to fully protect human rights.

4. *UNGPs Second Pillar: for a Diverse Taxonomy and Responsible Development and Deployment of Gen AI from Business Companies Along a Risk Approach*

The global tech scenario where a wide range of public and private actors is engaged to promote a proper use of digital technologies while preventing human rights risks and managing all forms of adverse effects descending thereon is a challenging field of action for tech companies to contribute for a renovated taxonomy of human rights and the development of Gen AI not to undermine but to uphold democratic values and protect human rights.

Henceforth the UN Office of the High Commissioner for Human Rights has recently launched a new line of research and study within the framework of the aforementioned B-Tech project: the B-Tech Gen AI project.

It has been proposed with the intent to «raise awareness and facilitate exchange among key stakeholders and interdisciplinary experts and shape a comprehensive understanding about the role the UNGPs can play in governing generative AI responsibly». Common areas of interest and intervention, indeed, are the elaboration and adoption of more effective human rights risks management tools by tech companies and the proposal for valuable policy options for a responsible development and deployment of Gen AI. For this twofold purpose, all concerned stakeholders (Governments, civil society, academics, technologists, investors and businesses) have yet shared the need for a proper regulation to govern the design and use of Gen AI to protect against harms and abuses and maximize the beneficial impact of these new technologies in forthcoming years.

The project has started, as above mentioned, by framing a new taxonomy of Human Rights Risks connected to Gen AI in order to outline the best operationalisation of the UNGPs to address related human rights risks. The focus has been paid not only on the set of rights and freedoms at risk to be violated but also on the Gen AI use impacting and undermining legal entitlements as disciplined by international human rights law, primarily the Universal Declaration of Human Rights and complementarily legally binding instruments in force at the international and regional levels. This approach clearly goes beyond generic Gen AI features corresponding to safe, fair, responsible, ethical foundational and operational requirements as such.

Notwithstanding recorded and managed risks suffered from a wide set of human rights due to an incorrect use of AI, the taxonomy details negative impact and risks to which Gen AI exposes several legal entitlements: these risks have been noted at an highest pace and, for this reason, the taxonomy takes into account further associated risks depending upon the rapid technical evolution of Gen AI. Moreover, the analysis endorses the global, interrelated and interdependent nature of human rights, considering several factors which impact on the grade of risk such as the localization of Gen AI systems, individual or collective right-holders positioning, the sectors where Gen AI is developed and deployed.

If Gen AI might prove to be beneficial for digital economy and human rights protection in fields such as access to information and freedom of opinion and expression, on the contrary it could impact negatively on their enjoyment. Evidently, online misinformation and disinformation is a product of Gen AI when creating false digital contents convincing users about their authenticity and reliability, especially in relation to multiple Gen AI models which contribute for a larger dissemination of information. Furthermore, the lack of trust from users generated along these lines enhances profitable interaction with digital technologies limiting their freedom of opinion and expression – the users being aware that every kind of thought shared online could be altered in an irresponsible and incorrect manner by Gen AI systems. Also the large amount of personal data managed through AI and Gen AI puts at risk the right to privacy: when automatization moves from individual and controlled datasets and encourages other technical tools to collect and use personal data differently, higher risks to privacy could emerge.

Responsible AI and Gen AI practices from companies to protect human rights have been recorded in the implementation of the B-Tech Gen AI project.

When a tech company that has developed and deployed Gen AI tools incorporates a human rights-based approach in its mission, its performance is quite secured in terms of human rights protection. The tech corporate agenda might explicitly refer to some key components of this approach: «the promotion of human values and human control over technology, fairness and non- discrimination, transparency, explainability, accountability, safety and security, privacy, and human rights». Just to mention a few practices: Google's AI principles include a commitment to not design or deploy «technologies whose purpose contravenes widely accepted principles of international law and human rights», while Meta and Microsoft have reinforced the aforementioned approach along the whole value chain (Meta human rights policy – «Human rights also guide our work developing responsible innovation practices, including when building, testing, and deploying products and services enabled by Artificial Intelligence (AI)»; Microsoft's human rights policy – «[…] mitigate and prevent risks by applying rights-aware decision making throughout our products' lifecycles and business relationships. For example, we are committed to a responsible approach to artificial intelligence (AI) by applying our AI principles to its development and use»). As for Gen AI specifically, the reference to a responsible conduct is provided in the statutory mission or in ethics commitments as follows: for OpenAI's this has been formulated to «avoid enabling uses of AI that harm humanity» and to «to doing the research required to make AGI safe», the Anthropic goal is to «build systems that people can rely on and generate research about the opportunities and risks of AI», and Hugging Face has listed Gen AI cases to be prevented as well as ethical principles – transparency and fairness – for a better performance.

Many tech companies (e.g. Google and Microsoft) which have developed and deployed Gen AI tools have invested in technical expertise of their teams to include human rights-based approaches in risk assessment and mitigation processes or have hired external experts to bring responsible AI and Gen AI tools into the corporate activities. In all cases these teams and experts are called to collaborate with research, product and sales teams of the tech company to incorporate and implement responsible practices (Microsoft).

Gen AI risks are multiple and multi-faceted: hence a complex and articulated system is expected in order to assess and address these risks. It should encompass both ethics – reminding to general principles that proved to be effective in corporate decision-making, and international

human rights standards to improve the assessment and the management of risks to people and society associated with Gen AI. The structural and procedural features of risk and impact assessment models are quite diffused: they are technical and not; they could be integrated in the whole product development process or they work only in some timeframes during the product life cycle; they are carried out internally or outsourced; they could be put under test for the proper identification of risks and so far several methodologies are now in place: the most used is the fairness testing (Google), which examines the training dataset to check if the AI/Gen AI model creates unfair outputs and intensifies societal biases even if the human rights-based approach is not comprehensively encapsulated in it if not according to some vulnerable groups; the red teaming (Meta, OpenAI) is carried out by a group of experts with different backgrounds to test the AI/Gen AI model and catch out its vulnerabilities. Also, in past years algorithmic audits and impact assessments (Meta, Open AI) have been introduced: the first monitor the compliance with a specific standard and analyse which factors have determined a negative impact or proceed on for the identification and prioritization of risks for the formulation of targeted recommendations to properly address them; the latter are instrumental to assess potential social impacts of AI/Gen AI products and services.

Additionally, tech companies have adopted other kinds of useful methodologies: data quality reviews analysing raw data to train AI models and carry out fact-checking over incorrect labels, representativeness, accuracy and bias of Gen AI products and services; privacy best practices to cover risks associated with training AI/Gen AI models on personal and sensitive data; model training and fine tuning approaches for examining Gen AI datasets biases and inaccuracies.

An added relevance has been attributed to technical disclosure of tech companies which use AI/Gen AI tools, to facilitate a human rights impact risk assessment often associated with labour rights along the value chain. Until now any form of disclosure has been conceived to map tech companies performance focusing on their products and services and its release has reached only technical operators such as AI/Gen AI researchers and developers (Meta, Open AI; Microsoft and Google have occasionally tested non-technical disclosures about risks).

Finally, any adverse human rights impact depending upon the use of AI/Gen AI from tech companies entails a proper remedy, as provided in the third pillar of UNGPs. Even if redress mechanism are yet in place,

for Gen AI products and services a broad ecosystem is needed involving all public and private stakeholders to collaborate for the elaboration and endorsement of specific legal or para-legal standards (see, as an example, ChatGPT and Google BARD tools).

5. *Some Concluding Remarks*

Along the articulated reflection above proposed, it is evident that only a multistakeholder governance model could have a relevant impact for a broad general and technical debate for a sounding regulating framework of Gen AI in future times, also counting upon the UNGPs to ensure a responsible corporate Gen AI across the whole value chain.

Taking on board the current process towards a mandatory human rights due diligence system, both States and tech companies, involving civil society and experts, might respectively guide and adapt their practices for proper regulation in this field.

The UNGPs represent the foundational reference document to this scope: public and private actors are recommended to create tools, assess methodologies and training that support an evaluation of impacts based on the full range of international human rights standards – as provided in the first and second pillars of the UNGPs.

As foreseen in the first step of the implementation of the B-Tech Gen AI project, States and tech companies have worked and should work in future to embed an effective human rights risk assessment into corporate culture and across products' and services' value chains, focusing on quantitative and qualitative technical mitigations involving vulnerable and marginalised people, and enable all forms of remedy for harms and abuses, counting on higher informal and formal engagement and participation of communities at large.

Significant progress has been recorded for a responsible AI until now and this approach should be enhanced as for Gen AI to prevent and manage current and future human rights risks, also leveraging the UNGPs as a foundational framework for risk assessment and mitigation.

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Digital Infrastructure in the Digital Age: Benefits and Challenges

Abstract: This paper analyses the topic of digital infrastructure and its main opportunities and challenges. It illustrates some examples of digital infrastructure, highlighting its link with the UN 2030 Agenda for Sustainable Development; in this regard, the paper emphasises the need to provide equitable access to services related to digital infrastructure by overcoming the digital divide. Moreover, the paper highlights some relevant instruments adopted at the EU level and the targets to be achieved in line with the Digital Decade Policy Programme 2030. It underlines that the availability of a solid digital infrastructure enables accessibility to digital services and to new opportunities arising from them, such as those offered by digital identity systems. The paper also stresses the importance of seeking innovative and sustainable digital solutions that can generate economic growth and development.

Keywords: Digital infrastructure – connectivity – digital age – sustainability – digital divide – digital identity – technological progress – economic growth.

1. *Digital Infrastructure: Definition and Framework*

Digital infrastructures, sometimes referred to as the 'infrastructure of the digital era', are frequently contrasted with more conventional infrastructures, like highways and railroads, which are necessary for people to move around, for areas to be accessible, for the transportation of goods, for the delivery of essential services, etc. Just like these infrastructures, digital infrastructure assets - such as networks of fibre optic cables, communication towers that carry data traffic across mobile networks, and data repositories, such as data centres and clouds, to store, manage, transmit, or share large amounts of data - allow people to establish contacts across territories, enabling the flow of data worldwide.

From a broader perspective, digital infrastructure encompasses all the tools we need to make digital spaces accessible and usable. It represents

an interconnection of different collective systems, including software, hardware, standards, the Internet, and platforms. For instance, digital identity systems that allow citizens access to digital services are digital infrastructures. Search engines, such as Google and Microsoft Bing, which facilitate information retrieval, can be understood as digital infrastructures. Similarly, marketplaces for apps, like Android and iTunes stores, which provide a platform for app distribution, are also examples of digital infrastructures.

There is a direct link between digital infrastructure and Goal 9 (Industry, Innovation, and Infrastructure) of the UN 2030 Agenda for Sustainable Development (SDG-9), which aims to build resilient infrastructure, promote inclusive and sustainable industrialisation, and foster innovation. To achieve SDG-9 by 2030, it is essential, among other things, to invest in advanced technologies and increase mobile broadband access; in particular, target 9.c. of SDG-9 aims to increase access to information and communications technology, and to provide universal and affordable access to the Internet in the least developed countries of the world. According to the International Telecommunication Union's (ITU) Facts and Figures 2023, as of 2023, access to a mobile broadband network was available to 95 per cent of the world population, but some areas remain unserved. For instance, mobile broadband remains out of reach for 18 per cent of the population in the least developed countries (LDCs) and Landlocked Developing Countries (LLDCs), which fall under target 9. c. of Sustainable Development Goal 9.

In addition to Goal 9, digital infrastructure can be linked with other SDGs: among others, with Goal 10 (Reducing Inequalities), providing equal access to information and opportunities, regardless of location or socio-economic status; Goal 4 (Quality education) as online learning platforms and digital resources democratise education, making high-quality learning accessible to all; Goal 7 (Affordable and clean energy) because digital solutions can optimise energy distribution, monitor consumption and promote renewable energy sources; Goal 13 (Climate Action) because there is an increasing focus on implementing eco-friendly practices in digital infrastructure development.

In recent years, digital infrastructures have been the focus of discussions at various high-level international meetings. These discussions have primarily revolved around the public value of digital infrastructures, highlighting their role in societal development and the need for their equitable distribution.

India's 2023 G20 Presidency marked a milestone by reaching a

consensus on a definition of digital public infrastructure (DPI) as an accelerator of the Sustainable Development Goals (SDGs).

According to the G20 New Delhi Leaders' Declaration, DPI is «A set of shared digital systems that are secure and interoperable, built on open technologies, to deliver equitable access to public and/or private services at a societal scale». For the first time, a description of DPI has been collectively adopted by a group of countries, reflecting the shared commitment of the G20 members.

DPI can be understood as an intermediate layer between digital infrastructure assets and sectorial applications. The three most commonly discussed elements of DPI are platforms for digital identification (ID), digital payments, and data sharing. These systems are the building blocks for developing digital services at a societal scale.

A developed digital infrastructure plays a critical role in the digitalisation process and has the potential to stimulate and accelerate growth in many sectors (among them manufacturing, health care, finance, education, energy, agriculture, and governmental institutions). However, the development and maintenance of digital infrastructure also pose significant challenges, such as ensuring security, sustainability, managing data privacy, as well as addressing the digital divide.

At the G7 level, the 2024 G7 Ministerial Declaration on Industry, Technology, and Digital, adopted under the Italian Presidency, affirmed the importance of promoting global connectivity through secure and resilient digital infrastructures with particular regard to undersea cables which transmit the overwhelming majority of international data traffic.

The G7 Partnership for Global Infrastructure and Investment (PGII) - a shared commitment launched by the G7 leaders in 2022 to advance public and private investments in sustainable, inclusive, resilient, and quality infrastructure - aims to mobilise $600 billion in infrastructure investment in emerging economies, representing a strategic opportunity for developing countries to accelerate progress towards achieving the Sustainable Development Goals (SDGs) and the targets of the Agenda 2030. Since its launch at the G7 Elmau Summit, the PGII has been delivering investments across a range of priorities, including connectivity through digital infrastructure and transport networks.

At the EU level, Global Gateway - a European strategy launched in 2021 to boost intelligent, clean, and secure links in different sectors, including the digital sector, across the world - is the principal contribution to the PGII; through Global Gateway, the Union is strengthening

connections between Europe and the rest of the world, helping partner countries address the digital divide and further integrate into the global digital ecosystem.

2. *European Union and Digital Infrastructure*

On 14 December 2022 was adopted the Decision (EU) 2022/2481 of the European Parliament and of the Council establishing the Digital Decade Policy Programme 2030.

The decision sets out the digital targets that the EU and its member states aim to achieve by the end of the decade; the digital targets follow the four cardinal points, identified as the essential areas for the digital transformation of the Union, including the area of digital infrastructures.

Among the general objectives of the Digital Decade Policy Programme 2030, the decision includes «The development of a comprehensive and sustainable ecosystem of interoperable digital infrastructures where high performance, edge, cloud, quantum computing, artificial intelligence, data management and network connectivity work in convergence to promote their uptake by businesses in the Union, and to create opportunities for growth and jobs through research, development and innovation».

The reference to sustainability frequently recurs in the decision; in particular, Article 3 (h) states that the EU aims to «Ensure that digital infrastructure and technologies become more sustainable, resilient, and energy- and resource-efficient, to minimise their negative environmental and social impact, and contributing to a sustainable circular and climate-neutral economy and society in line with the European Green Deal», a package of policy initiatives, which aims to set the EU on the path to a green transition, with the ultimate goal of reaching climate neutrality by 2050.

Article 4 of the decision is dedicated to digital objectives to which the European Parliament, the Council, the Commission, and the Member States shall cooperate, including secure, resilient, performant, and sustainable digital infrastructures that ensure the availability of high-quality connectivity for everybody and everywhere in the Union. To that end, art. 4.2 (a) of the decision promotes, among other things, the deployment of next-generation wireless high-speed networks with performance at least equivalent to that of 5G.

In 2024, the European Commission adopted a package of measures for digital connectivity; within this framework, in February, the Commission

published the White Paper *How to meet Europe's digital infrastructure needs?* to launch a wide-ranging consultation with Member States, civil society, industry, and academia, to inform the Commission's future proposals in the area of digital infrastructure.

The White Paper offers an overview of the current situation in the EU as well as its future needs in terms of high-performance, secure, and sustainable digital networks and services. It analyses the obstacles that could prevent the EU's digital targets from being accomplished and the main challenges in the digital infrastructure sector, including 1) connectivity and technological challenges; 2) security challenges, with particular regard to the security and resilience of submarine cable infrastructures; and 3) sustainability challenges. We will focus here briefly on the description of these specific challenges.

2.1 *Connectivity and Technological Challenges*

The White Paper underlines that the Union's connectivity infrastructure «Is not yet ready to meet future challenge of the data-driven society and economy and the future needs of all end-users». Aiming to achieve the 2030 Digital Decade targets, the document highlights the delays in the deployment of high-capacity networks, such as fibre and 5G, and the investment needed.

Regarding fibre, the White Paper, mentioning the 2023 Report on the state of the Digital Decade, underlines limited coverage, especially in rural areas (56% of all households, 41% of households in rural regions of the EU).

As regards the 5G roll-out, basic 5G population coverage in the EU currently stands at 81% (with only 51% population coverage in rural areas). Still, coverage is much lower when considering 5G stand-alone networks, a more advanced generation mobile network that guarantees better performance. The deployment of 5G stand-alone networks can be estimated at significantly less than 20% of populated areas in a small number of the EU Member States.

Most often, where 5G is deployed, it is not stand-alone, but it is 5G non-stand-alone, a hybrid mode that combines existing 4G LTE infrastructure with a 5G Radio Access Network (RAN).

The delays in deploying capable digital networks adversely affect the delivery of advanced data services, AI-based applications, and the deployment of edge computing infrastructure, a key enabler for time-

critical applications and computing capabilities in relation to real-time data-intensive use cases and IoT. The Digital Decade Policy Programme sets out a target of 10,000 climate-neutral, highly secure edge nodes to be deployed by 2030, as well as targets for the adoption of digital technologies, such as cloud, big data and AI.

Technological advancements related to AI, IoT or the App Economy, are creating new markets and business concepts. New applications require a continuous increase in data processing, storage and transmission. The remote storage and processing of data in the cloud and close to the end user (edge computing) address the need to process and transport large amounts of data across the entire global Internet. This has led to a complex digital ecosystem of traditional electronic communications networks/service providers and cloud or other digital service providers.

High connectivity and cloud infrastructures enable applications based on data processing, artificial intelligence (AI), and Internet of Things (IoT) devices. Some examples are advanced e-health services, advanced e-health services, including e-health monitoring and e-health care in remote areas, connected and autonomous vehicles interacting in real-time with edge networks deployed along the road for smart mobility and transportation systems, and the use of robot and drone services for industry and agriculture.

2.2 *Security Challenges*

Regarding security and challenges, the White Paper focuses on the security and resilience of submarine cable infrastructures, which transmit the vast majority of internet data traffic. Indeed, according to the White Paper, over 99% of intercontinental data traffic is carried through submarine cables. Almost 1.5 million kilometres of undersea cables are estimated to operate worldwide, enabling global communication.

In February 2024, the European Commission adopted the Commission Recommendation on Secure and Resilient Submarine Cable Infrastructures. According to the Recommendation's recital 14, these infrastructures include not only cables but also supporting infrastructure, such as landing stations, repair centres and the fleet of cable-laying vessels.

In the current geopolitical context of increased tensions and conflicts, governments in all regions are paying particular attention to their reliance on critical submarine cables. The Russia-Ukraine war and the rising tensions in the Red Sea pose growing risks to communications channels,

including threats to disrupt submarine cables.

The Recommendation encourages Member States to promote a high level of security of submarine cable infrastructures, ensure that the infrastructure is properly managed and controlled, and assist the Commission in mapping the existing cable infrastructures informing an EU-wide assessment of risks.

Beyond that, the Recommendation aims to support the deployment of submarine cable infrastructures via Cable Projects of European Interest (CPEI) that should be funded by the private sector and supported where necessary and appropriate by EU funding programmes; in this regard, the Recommendation mentions, in particular, the CEF regulation, i.e., the regulation establishing the Connecting Europe Facility, a European Union funding instrument that supports the development of high performing, sustainable and efficiently interconnected trans-European networks in the fields of transport, energy and digital services.

2.3 *Sustainability Challenges*

One of the main aspects related to digital infrastructures is sustainability.

Not so long ago, it was believed that the use of the Internet had only a positive environmental impact due to its intangible nature and its ability to reduce resource consumption by saving paper, ink, plastic, etc. Today, research not only underlines the environmental benefits of the digitalisation process but also demonstrates its negative impact.

Nowadays, it is possible to measure the pollution caused by online digital activities through the Carbon Footprint, a measurement that expresses the amount of greenhouse gas emissions generated during the lifetime of a product, service, organisation, event, or individual, usually expressed in tonnes of CO2 equivalent.

Specifically, the digital technologies/ICT sector accounts for about 3.7 per cent of global greenhouse gas emissions (CO_2) or 1.7 billion tonnes per year; according to estimates, it accounts for more than the amount produced by the airline industry globally; indeed, air transport is responsible for 2.5% of global CO_2 emissions. However, there is no widespread perception of the scale of the problem.

The Internet's energy consumption and carbon emissions are significant due to the electricity needed to handle the vast amount of data processed, which enables people to surf the Web to perform multiple activities, such as exchanging e-mails and chat messages, conducting Google searches,

uploading images, and streaming high-quality music and video.

Although the energy required for a single Internet search or email is small, one has to consider the substantial number of people globally who have access to the Internet. According to a Statista's recent survey, as of April 2024, out of the nearly 8 billion people in the world, there were 5.44 billion internet users worldwide, which amounted to 67.1 per cent of the global population. Of this total, 5.07 billion, or 62.6 per cent of the world's population, were social media users.

Furthermore, higher data rates due to advanced broadband services lead to more data-rich websites and an increase in data-intensive streaming services such as YouTube, Netflix, and Spotify. According to some estimates, the average size of a web page today is almost four times larger than in 2010. As the Internet's capacity grows, the number of users is set to increase. In fact, in just five years, Internet users are expected to grow from 5.44 billion to 7.9 billion in 2029.

The environmental cost of digital technologies is very significant and expected to increase in the coming years, demanding connectivity solutions that minimise the negative ecological impact. If properly used and governed, digital technology can help cut global emissions, outweighing the emissions caused by the sector. Advanced IoT applications in various sectors can have positive environmental effects. For instance, intelligent building design has the potential to generate energy savings and smart mobility applications have been shown to be able to reduce transport emissions. Connected and Automated Mobility is expected to be one of the main drivers of decarbonisation in the transport sector, and 5G is expected to be one of its main enablers.

3. *Digital Identity Infrastructure*

Digitalisation is a growing process, and more and more States are adopting digital identity systems that allow citizens access to a multitude of digital services.

Digital identities (eID) are one of the crucial building blocks of a national digital infrastructure; they facilitate secure authentication and trusted interactions among individuals, governments, and businesses, providing individuals with an effective tool for accessing digitalised public and private services. The digital identity can be used in many cases, for example:

- public services such as requesting birth certificates, medical certificates, and reporting a change of address;
- opening a bank account;
- filing tax returns;
- applying for a university;
- storing a medical prescription;
- proving your age;
- renting a car using a digital driving licence;
- registering at a hotel.

From the user's perspective, a digital ID can increase convenience and reduce waiting time by providing access to digital services through remote authentication. From a government perspective, digital ID can improve administrative efficiency and reduce the risk of identity fraud. From a business's perspective, it can produce significant cost savings and support regulatory compliance.

On 26 March 2024, the Council of the European Union approved the proposal for a regulation establishing a new system for a European digital identity. The European Parliament had already approved this regulation on 29 February, following an agreement reached on 8 November 2023 by the European Parliament and the Council of the EU.

In May 2024, the Regulation (EU) 2024/1183 (the eIDAS Regulation) establishing the European Digital Identity Framework entered into force. The framework mandates Member States to offer an EU Digital Identity Wallet to citizens up to 24 months after the adoption of implementing acts, which will detail technical specifications and certification. These acts, to be adopted within12 months after the Regulation approval, will ensure uniform implementation of wallets across Europe.

Various sectors and countries in Europe are currently testing the technical specifications and software prototypes of the EU Digital Identity Wallet through large-scale pilot projects. These pilots, which involve private companies and public authorities across Member States, aim to assess the wallet's usability in scenarios such as accessing government services, opening bank accounts, and facilitating secure online payments.

One of the pilot projects is the Nordic-Baltic eID (NOBID) Consortium, which will address the use of the EU wallet to authorise cross-border payments for products and services by the user/wallet holder. Italy participates together with Germany and a set of Nordic and Baltic countries.

The European digital wallet does not replace the existing national digital identities but will complement them with the aim to promote

interoperability, facilitate access to cross-border digital services, and ensure greater control over privacy; by adding functionalities, it will contain proof of other personal attributes such as academic qualifications, including university degrees, or other educational or professional entitlements. In Italy, the most recent innovation in the area of digital identity is the Italian digital wallet (IT-Wallet), adopted in 2024, which can be accessed via the IO app, with the SPID or thanks to the electronic identity card (CIE).

4. *Conclusions*

To realise the full benefits of digital transformation, investments in digital public infrastructure are critical, just as railways were essential for economic integration during the first industrial revolution.

The era in which we live can be defined as that of the fourth industrial revolution, the age of digitalisation. Thanks to today's computing power and the possibility of analysing a huge amount of data, we can understand and measure phenomena as never before.

This revolution has impacted several sectors, from the manufacturing industry (e.g., the automotive sector) to health care, finance, etc. With the exponential advance of new technologies, entire communities can benefit from a growing array of digital solutions, for example, digital money transfers, digital health services (e-health), and, more generally, all the various opportunities that can be accessed through digital identity systems.

While digital infrastructure offers immense potential for societal and economic development, its development and maintenance are not without challenges. Ensuring security, sustainability, data privacy management, and addressing the digital divide are significant goals.

In terms of security, growing digitalisation around the world is exposing States, economies, and societies as a whole to new and significant cyber risks. Consequently, security in digital infrastructure implies the need to protect systems, networks, programmes, devices, and data from such risks, as well as ensure a higher level of resilience and integration of communication channels. It is essential to strengthen the security and resilience of submarine cables, which are crucial for the international communication infrastructure as they provide high transnational data capacity.

Regarding sustainability, there is an increasing focus on implementing eco-friendly practices in digital infrastructure development to align with SDG 13. The environmental cost of digital technologies is very significant

and is expected to increase in the coming years, demanding connectivity solutions that minimise their negative ecological impact. Smart digital solutions using high connectivity, such as advanced IoT sensors in intelligent transportation systems, agriculture, or building design, can reduce the climate and environmental footprint across industrial processes, energy systems, buildings, mobility, and agriculture.

Creating a resilient digital infrastructure requires a delicate balance between privacy and data sharing. In the age of big data, ensuring the privacy and protection of personal information is critical to building a reliable and sustainable digital ecosystem.

In line with data protection principles, the aim of digital identity wallets should be to give people full control over their data while accessing online services, eliminating unnecessary data sharing. In particular, according to the data minimisation principle, any digital service has to collect only the absolute minimum of data required to provide the service. The European Digital Identity Wallet should have built-in features designed to enhance its data minimisation capabilities such as the selective disclosure of attributes, and zero-knowledge proofs.

Can digital infrastructure bridge the significant challenge of the digital divide, providing equal access to information and opportunities, regardless of location or socio-economic status? There are still gaps in mobile broadband deployment, with people in some regions of the world lacking access.

The paper highlighted the work of India's G20 Presidency on defining digital public infrastructure. Regarding digital divide, the G20's commitment is to minimize it by initiatives aimed at enhancing and building digital infrastructure, increasing access to affordable digital services, and promoting digital literacy for all.

According to the Digital Decade Policy Programme 2030 «Policies about, and investments in, digital infrastructure should aim to ensure connectivity accessible to all and everywhere in the EU, with available internet access, in order to close the digital divide across the Union ».

The availability of essential infrastructure for digital development is a prerequisite for enabling accessibility to digital services and promoting digital literacy.

A robust digital infrastructure is also the backbone of innovation; in particular, digital innovation involves high digital competitiveness, sustainable innovation ecosystems, driving technological advancement that is crucial for sustainable economic growth and competitiveness.

Achieving and maintaining innovation requires continuous investment in research and development with the participation of public and private actors, including businesses, startups and research institutions.

By combining the right technology, governance frameworks and public and private innovation, digital infrastructure can lead to growth and development.

5. *Legislation and Official Documents*

EU

Regulation (EU) 2024/1183 of the European Parliament and of the Council of 11 April 2024 amending Regulation (EU) No 910/2014 as regards establishing the European Digital Identity Framework

Commission Recommendation (EU) 2024/779 of 26 February 2024 on Secure and Resilient Submarine Cable Infrastructures

Decision (EU) 2022/2481 of the European Parliament and of the Council of 14 December 2022 establishing the Digital Decade Policy Programme 2030

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Claudio Di Maio

Technology for Managing Migration Flows. Test Case for EU Member States

Abstract: The European Union's migration policy aims to address the intricate nature of migration flows while simultaneously grappling with security concerns and integration policies. Technological advancements are instrumental in managing these flows by providing tools for forecasting, automated processing, and data sharing. The recently established EU Pact on Migration and Asylum underscores the importance of solidarity among Member States, with digital solutions facilitating relocation and integration. Nonetheless, several challenges remain, including data protection, technological biases, and digital literacy among migrants. This research examines the potential benefits and drawbacks of digitalization in migration management, emphasizing the necessity of ethical frameworks to safeguard the protection of fundamental rights.

Keywords: EU migration strategy – digitalization – integration – asylum – data protection.

1. *EU Migration Strategy: What Is the Future?*

The European Union has always been one of the most attractive territories for migrants. Migration to the territories of the Old Continent, and particularly to certain Member States with better growth expectations and optimal geographic locations, constitutes a concrete possibility for many migrants to obtain a higher income, a better quality of life, and access to the labour market with profitable opportunities for personal development. However, the inflow of labour, the possible economic, social, and demographic impacts, and the strengthening aspects of social security systems do not dispel the fears of host societies. These fears arise from inadequate management of these phenomena by government authorities and the persistent perception of issues that emphasize the securitarian approach rather than integration within individual national

perspectives of migration policy (Scipioni et al., 2020).

These are just some of the reasons why the European Union's strategy on immigration and asylum follows certain guidelines that make achieving a truly common consensus difficult, not only in recent times. These difficulties persist despite the first direction being driven by crises of a much greater magnitude than the current ones. The new vision inaugurated by the European Commission in September 2020 was characterized by a difficult negotiating path that ended—at least for now—in May 2024 under the impetus of the Spanish and Belgian presidency. This process has, in some cases, resulted in «A puzzle whose pieces have been broken up and placed elsewhere, in a different order. Some completely changed, others added» (Favilli, 2020).

After the political agreement of December 2023, on the five main regulations that will reform (at least in part) the regulatory approach to immigration and asylum, it will be up to the Member States to translate the complex and articulated system derived from the supranational *acquis* into coherent national legislation. A path has been chosen that should speed up the recognition and repatriation phases, with solidarity mechanisms between Member States structured on a predominantly voluntary basis (though far from obligatory in compliance) and a system that does not deviate from the historical criterion of the so-called State of first entry, accompanied by measures aimed at preventing secondary movements (Borraccetti, 2021).

For these reasons, the most delicate phase, which requires even more attention, will be implemented within 27 European legal systems. One key factor will be understanding how Member States around immigration will converge or exploit the digital transition, one of the two major challenges that will characterize European societies for the next decade.

The relationship between the use of new technologies and flow management has already been developed in many countries of the Old Continent, with varied use of tools ranging from forecasting tools, automated processing of residence and citizenship applications, document verification, identification, and assistance in matching practices in the reception or use of certain benefits (Ozkul, 2023). The technologies for legal and administrative processes are widely used. On the one hand, digitalization has brought certain advantages for citizen-users: greater flexibility in the use of services, which increasingly extends to methods of use even at a distance, free from office opening hours, and the presence of offices in the territory. However, not all individuals (including those of foreign origin) are able to keep up with these changes. This situation also

makes it necessary to pay attention to the risks that such instruments may entail, especially in terms of fundamental rights.

This contribution attempts to make a preliminary assessment of the opportunities and risks arising from the use of digitalization in processes that may influence the management of migration flows. It examines the scope of some tools that are strongly linked to the implementation of the new European Pact on Immigration and Asylum. This analysis, which starts with a legal approach, is supported by a multidisciplinary approach because of the peculiarities of the topics.

2. *Solidarity (Compulsory and Flexible) and Technological Tools in Relocation*

The new Pact on Migration and Asylum is based, among other pillars, on a system designed to enhance responsibility sharing among Member States. Every National authority can participate in managing the influx of migrants from third countries in various ways. They can either opt for a voluntary relocation mechanism for asylum seekers and beneficiaries of international protection within their territory or contribute through financial support and alternative solidarity measures. These measures may include state-capacity building for the implementation of returns. Relocation is one of the most anticipated challenges, given that this mechanism has already been attempted in the fragile but evolving European system, experiencing both success and failure by some Member States.

The system resulting from the Pact assigns a predominant role to the European Commission. The Commission is tasked with determining whether the situation in a Member State warrants adoption of solidarity measures. It also has the authority to propose a system of flexible contributions that initially operates on a voluntary basis, becoming compulsory only in situations of significant pressure (Morgese, 2020).

Essentially, the application of solidarity mechanisms allows Member States to choose between relocating migrants, sponsoring returns, or contributing to enhancing capacities in asylum, reception, and return processes during migratory pressure, including those arising from Search and Rescue operations.

Given this system, which allows for the reallocation of asylum seekers or those already holding a protection title, subject to their consent, to different territories, the potential role of technological mechanisms and

tools becomes pertinent. One promising area involves software that facilitates matching applications with opportunities for the integration of migrants in destination communities. These tools often incorporate machine-learning methods and provide an additional database for the decision-making processes of state authorities. The combination of machine learning and instance matching could be useful for applying a set of rules or regulatory predictions based on intelligent learning generated by the system.

This automated decision-making process, already in experimental use within the United Nations, is part of the UNHCR's procedural mechanism. Among other functions, it supports the pre-filling of forms with legal analysis and relevant information on the country of origin for protection claims, sharing data with the authorities of some states (Akhmetova, 2020). In the EU, Germany has partially automated the asylum application process, establishing a digitized procedure with essential steps. This includes the advance registration of refugees, data sharing via a basic data system accessible to all public authorities involved in the asylum and integration process, issuance of proof of arrival, direct communication with administrative courts, and a centralized video-interpretation system.

Recent studies on the effectiveness of information matching in enhancing data sharing and administrative action have compared models used in Canada, the United States, and the United Kingdom. These studies indicate that advanced data architecture can smooth certain stages of the process, such as registration and eligibility verification. This approach avoids fragmentation in pathways to obtain international protection and supports cooperation among states and civil society organizations in matching applications from a universal typology of applicants, irrespective of different regulations and requirements (Smith & Ugolini, 2023). The UNHCR's Roadmap 2030 also emphasizes the potential of data and technological interventions to support relocation mechanisms, monitor outcomes effectively, and systematize indicators and program eligibility requirements.

Some academic analyses have focused on the relationship between data interoperability, the use of technology, and the immigration sector, examining aspects closer to process control rather than functions that support applicant mobility. It is also noted that the use of technology is not neutral, as it serves political goals and interacts with established implementation practices (Penasa, 2021).

However, in our analysis, it is important to recognize that using a standardized set of data on the correspondence between applicants and

the regulatory process can improve the cataloguing of needs among different migrant types and national systems. This approach aids in better application management by assigning subjects based on their real preferences or capacities, enhancing solidarity, and sharing administrative systems. Authorities should not blindly rely on the predictive functions of technological systems but should examine the validity of the proposed solutions through a dual analysis system. It is essential to maintain an adequate digital ecosystem to ensure data integrity and provide correct information to those concerned (Salgado, Beirens, 2023). Additionally, preventing human trafficking networks' infiltration, misinformation, and the misuse of digital tools against refugees and internally displaced persons is crucial to ensuring respect for the right to asylum and avoiding new security obstacles (Newfoundland, 2023).

3. *Digital Identity for Migrants' Integration*

When discussing integration systems for migrants in the European Union, we come across a varied and complex concept characterized by multifaceted elements. These elements primarily stem from the relationships and distinct perspectives provided by the authorities of Member States and the European institutions. The latter has promoted a model that aims to align the legal status of national and European citizens with the specific situation of migrants from other countries. This model seeks, though not always with the desired timeliness, a multidimensional integration approach inspired by respect for fundamental rights and the principle of non-discrimination, as suggested by a systemic reading of the founding Treaties, the Charter of Fundamental Rights, and the European Convention on Human Rights. Consider, for instance, the status of migrants in family reunification, the status of long-term residents, or the possibility of accessing certain social benefits since European legislation on equal treatment and non-discrimination, as proposed in the new European Pact on Immigration and Asylum.

However, it is well known that European institutions' ability to act (and legislate) is significantly limited and primarily oriented towards support and coordination. Consequently, the prediction of certain goals and the implementation of respective initiatives do not necessarily have a direct impact on member states' legislation in this field. This is evident even in the new European Pact and the Integration Action Plan 2021-

2027: both documents once again reveals an ambitious prediction of actions and measures by the European Commission, which also depends on the support and vision of integration by the 27 national governments (Brandl, 2022). This predominance of Member States thus imparts a multiple dimension to the field of integration, implicitly leading to the promotion and introduction at the national level of pre-access 'integration conditions' and 'integration measures' in the form of civic and language programs, courses, or tests. These measures transform the concept into a legal instrument that may lean more towards selection than integration of the migrant (Bottero, 2022).

The potential role of technology in this area naturally has direct repercussions on the model in which European institutions and Member State authorities intend to follow digital identity initiatives and the extensive sharing of these data. In this context, the institutions of the European Union, which already utilize numerous databases for controlling and supervising migration flows (e.g., SIS, Eurodac, VIS, EES, ETIAS), have promoted, also with the 2019 reforms, the interoperability of these databases, as confirmed in the proposals of the new Pact on Immigration and Asylum. In concrete terms, the European Commission has chosen to reinforce its support for the link between identity and technology, despite numerous concerns raised by various parties, including the European Data Protection Supervisor, stemming from the risk that interconnection may compromise respect for the purpose-limitation principle, which is essential for protecting the personal data of the data subject (Marinai, 2021).

It should be noted that similar personal identity digitization initiatives (e.g., the EU Digital Identity Wallet) have also been proposed for European citizens, as envisaged in the framework of the United Nations Sustainable Development Goals. These goals indicate that digital identity is one of the means to foster inclusive societies in which all individuals have access to legal status and related rights, including social services, health, personal protection, and economic inclusion. If analyzed in these terms, the adoption of a technological infrastructure for a common identity holds immense, sometimes unexpressed, potential: it could equip Member States' administrations with common systems for identifying individuals and ensure easier recognition of personal data, facilitating the determination of specific experiences, competencies, and all data enabling access to national integration systems. Indeed, it is worth considering that several Member States have already implemented such experimental approaches for sharing data through 'digital portfolios', even in cases where individuals are unable to produce paper documentation due to

fleeing conflict zones or supported by blockchain technology and smart contracts to provide confidence and security in accessing data, thus building a framework of interoperable services at all levels of the host community (Visvizi et al., 2023).

In any case, as these are still early implementation tools, some risks and challenges in adopting these systems by state authorities can already be identified. In addition to issues related to compliance with European data protection legislation and the possible tendency to use them solely to monitor and prevent criminal phenomena, there are certain obstacles that may concern the inability of some individuals to access these systems, the impossibility of transferring or producing personal information (Bither & Ziebarth, 2020), and the potential interaction between state regulations and private recognition models that, as has already been suggested, could lead to the emergence of new economic models in the management of migration data by the platforms involved (Cheesman, 2022).

4. *Concluding Remarks*

Digitization and the use of new technologies have influenced various areas of human mobility and migration for some time. All the actors involved, whether primary stakeholders or managing authorities, use digital and mass communication tools in an increasingly instantaneous and pervasive manner. For instance, one may consider the crucial use of social networks, search engines, and data storage applications. Consequently, migrants today follow paths not only in the physical sense but also leave 'digital traces' in their quest for better living conditions (Blumenstock et al., 2023).

States and EU institutions are also increasingly utilizing digitised process management mechanisms in their activities. This is done not only to enhance and support administrative and management actions but also to improve data sharing, efficiency, and effectiveness. Moreover, it aims to enhance the ubiquity of service delivery through the progressive use of automated and algorithmic systems to support final decision-making (Count, 2023). For our purposes, one might consider the numerous decentralized actions accessible to individuals for simple requests or the enjoyment of certain rights, even those of a social nature. Additionally, the digital transition will guide the actions of EU Member States within a precise strategic program initiated by the European Commission, which

also includes multinational projects and the affirmation of rights and principles within the anticipated common ecosystem of the so-called Digital Decade.

Like all interactions that, by their nature, are not innate but rather induced by the evolution of times and the needs of the subjects determining their scope and extent, the relationship between technological systems and immigration also has a dual nature and does not necessarily result in a win-win scenario. On one hand, adopting technological tools could significantly aid various levels involved in the planning and management of migration flows. However, the success of these systems depends on the consideration of specific critical issues that can already be preliminarily highlighted.

The first set of observations concerns the (perceived or real) neutrality of technology in relation to the migration phenomena. The use of data through machine learning and information matching mechanisms presupposes careful monitoring for protection, control, and integrity, ensuring that decision-making is supported but not entirely swayed by automation. This is because automation can potentially be influenced by biases, both algorithmic and human.

The second set of remarks pertains to digital proficiency, that is, the range of digital skills that all stakeholders must possess when accessing specific technologies. Different identification models and applications that allow access to services require not only a deeper understanding of their functionality than the normal use of platforms, but also awareness of one's rights as a user and the protection possibilities provided by current regulations.

Therefore, it is essential to address the concept of identity. In the digital age, its meanings are even more challenging to synthesize, encompassing official forms of identification issued by governments, identities provided by public or private sector service providers, and forms individuals create online. Therefore, the terms identity, identification, and categorization describe distinct but interconnected phenomena that should be understood in their dynamic nature. Specifically, for migrants, perceived identity may differ from the identity represented for identification purposes, complicating the criteria used by data collectors and thus their categorization (Madon & Schoemaker, 2021). For example, individuals from communities with distinct social models or migrants, driven by the possession of a specific identity, illustrate this complexity. Hence, the technological management model should incorporate ethical and protective criteria to prevent access barriers and foreseeable inequality.

Undoubtedly, significant attention is being paid to the implementation

of the new European Pact on Immigration and Asylum by Member States. This attitude is genuinely supported by the crucial opportunity for the European Union to develop a migration policy that balances the ethical and anthropocentric principles set forth by European institutions, with the need for a digital ecosystem to support state authorities' decision-making processes. This must be done while mitigating the risks to individual integrity and protecting fundamental rights. This challenge requires time and resources, and establishing a framework of clear legal rules that considers the significant advancements in technology is imperative.

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Davide Zecca

Algorithmic Predictions and Migratory Flows

Abstract: The text discusses the potential of the resort to tools of algorithmic prediction that exploit the mechanisms of artificial intelligence to foresee migratory fluxes and manage all issues of social and legal nature associated with the status of migrant. In this regard, the article underlines the risks connected with a massive use of such instruments under the perspective of the limitation of migrants' individual rights, highlighting some of the critical issues of existing and prospective regulations of this subject matter. The text eventually maintains that adequate digital literacy concerning the use of algorithmic decision making for the processing of immigration related issues would reinforce effective democratic legitimacy of all political decisions in this regard.

Keywords: Artificial intelligence – technological awareness – algorithmic prediction – migratory fluxes – individual rights.

1. *Algorithms, Technology and Immigration Policies*

The existence of an enhanced trend towards the resort to systems of artificial intelligence and to algorithmic predictions for the unfolding of a wide array of public functions is a prominent feature of contemporary systems of immigration governance in many legal systems in the comparative panorama. The capability of such systems to predict with a reliable degree of accuracy future phenomena based on an extensive amount of rough data seems very appealing for the purpose of managing migratory flows, especially in countries traditionally or currently considered as places concerned by steady yet consistent influxes of immigrants.

The availability of formidable tools for foreseeing migratory trends and implementing more efficient systems of border control, patrolling and processing of requests for entry into a given country must however

be assessed against remarks that AI-based systems may be politicized and taken advantage of to pursue restrictive immigration policies, irrespective of core duties to protect the rights of the people concerned. When authorizing resort to such tools, lawmakers should therefore make sure that the automatization of some stages of the process does not unfairly impinge on the constitutional rights of migrants. Legislators should also acknowledge the role of automatized tools and processes as auxiliary means to corroborate decisions ultimately resting on human assessments. Moreover, any such procedure, before being implemented in practice, should be debated and, possibly, contrasted in the public discourse, to ensure that the citizenry legitimizing governmental actions through the dynamics of political representation is fully competent to understand the essential functioning of the systems adopted and the risks underlying their use by public authorities.

In light of the above reasons, the present text aims to address the use of algorithms and artificial intelligence in the prediction of migratory flows by summarily discussing pros and cons of their implementation for what concerns the protection of rights recognized also to migrants by constitutional legal frameworks. Moreover, it maintains that adequate technological literacy is pivotal for ensuring that all citizens are aware of the implications associated with the use of the above tools for the management of migratory fluxes. It is argued that the legitimacy and admissibility of these procedures in democratic systems of self-governance should ultimately rest upon such awareness, that is reflected in the votes cast by the people to elect their representatives in parliaments. The text will therefore discuss to what extent procedural safeguards already exist to protect individuals from the abuse of technological tools by State authorities and the private institutions that own the platforms or software enabling such procedures. The argument put forward is that a more enhanced civic involvement could provide much-needed legitimacy to collective decision making when it comes to the use of technology in migratory policies.

2. *Benefits and Risks of the Implementation of Algorithmic or AI-Driven Processes in the Prediction of Migratory Flows*

An analysis of the convenience to implement migratory policies outsourcing partially or entirely critical decisions to algorithmic-based systems requires outlining the benefits of the use of these procedures as

well as the risks potentially associated with the resort to predictive and automatized models in order to adopt informed immigration policies. On the one hand, algorithms might enable decision makers to shape adequate measures to handle migratory flows and design effective reception policies, based on rational data input rather than emotional policy making. The prediction of the amount of people entering the State territory in a given time frame would also contribute to elaborate more organized strategies to distribute immigrants in different areas of a country, thereby preventing the arising of social tension in localized territorial areas that would otherwise bear most of the burden for accommodating these people. Moreover, applying prediction patterns based on algorithms would make it possible to forecast demographic trends in the medium-long term, assessing also their consequences on the sustainability of welfare systems as well as the capacity of the job market to provide working opportunities to immigrants and the availability of sufficient housing infrastructures to ensure a proper integration between residents and immigrants.

On the other hand, resorting to AI-driven procedures to forecast migratory flows brings about a series of risks for the rights of individuals as well as for the admissibility of these policy making mechanisms within the constitutional framework of several countries. First and foremost, the processing of sensitive data concerning immigrants might harm the right to privacy of each of the individuals concerned, especially when human decision making is necessary to validate prior automated assessments. Moreover, the implicit bias associated with the engineering of the algorithms underlying AI-driven predictions might inadvertently inveterate discrimination patterns that unduly affect certain individuals as opposed to others in assessing their credentials for admittance into a country. In addition to the above, reliance upon algorithmic predictions is a potential driver for the adoption of policies aggressively pursuing the reduction of migratory flows and the empowerment of harsher strategies of maritime and terrestrial border control. This, in turn, could threaten the possibility of immigrants to effectively invoke their right to asylum, at least when they actually qualify for this legal status. Furthermore, predictions, as such, are estimates that, while designed to be extremely accurate, are subject to a margin of error. The pernicious effects of such errors should be duly taken into account when assessing pros and cons of adopting similar mechanisms to support critical decisions in the field of immigration policy.

To tackle the risks connected with an otherwise reckless use of algorithmic predictions in the design and actual implementation of

migratory policies, it is expedient to establish a general framework for law enforcement authorities competent to determine the status and affect the rights of immigrants. In light of the inherent impossibility to ensure that predictions are always fully reliable, all individuals concerned by an immigration procedure entailing the use of artificial intelligence tools or the elaboration of predictions based on algorithms shall be recognized a right not to be subjected to completely automated decisions. This principle implies that human oversight shall always be required when validating any decision concerning the migratory status of individuals, irrespective of the extent to which the data collected and analyzed by a specific software support or advise such decision.

This requirement is directly connected to another salient issue associated with the resort to artificial intelligence tools for public decision making, which is the so-called 'black box problem'. This concept refers to systems whose outside functioning is known to observers and programmers, so that it is possible to describe how they react to an input by handing out a given output. For example, an algorithm that, based on the data provided about a person applying for asylum, estimates to what extent that person is likely to commit a crime if granted asylum status. The problem rests on the partial or total incapacity to fully understand the specific reasons originating the final decision or suggestion of the algorithm. It is therefore a matter of legitimacy of AI-based decision making, requiring more transparency towards the citizenry for all decisions that affect very seriously the individual rights of migrants.

The above issue is directly related to another very relevant, yet sometimes overlooked concern. Algorithms in general and AI systems, despite being able to refine their abilities through so called processes of machine learning, inherently remain tools designed to fulfil specific needs of policy makers and law enforcement agents. Therefore, similarly to the need to refine so called prompts when inserting any kind of input in a system of generative artificial intelligence in order to receive a proper output that satisfies the requests of the user, the choice of the questions addressed to artificial intelligence systems makes a difference also with reference to decision making in immigration procedures. To provide an actual example, requesting the algorithm to compute the number of immigrants necessary to provide sufficient resources to pay the pensions of retired workers (so called old age dependency ratio number of workers per retiree) does not equal the request to estimate the number of immigrants necessary to maintain steady the number of active workers over a given time frame (if the request does not instruct the algorithm to take into

account as well the ratio of workers per retiree). This implies that decision makers at all governmental levels should be able to shape adequate policy questions before submitting them to algorithms and AI systems. They shall strive to avoid all kinds of input and prompt capable of willfully bending the output of the processes run by automated systems so that the results fit the partisan interests pursued by a given political bloc or governmental majority.

The above concerns make it all the more necessary to tackle the resort to algorithmic decision making from a perspective that gives adequate weight to transparency and awareness deficits that might undermine the legitimacy of the resort to such tools in the design and enforcement of immigration policies. The following paragraph will therefore address these concerns by putting forward some proposals on a principled approach to a constitutionally sound reliance on AI for shaping policy making in the subject matter of immigration. The argument will consider the recent efforts undertaken within the European Union context, building on the foundations of the AI Act to provide supplemental elements for the adoption of more efficient patterns of AI and algorithmic accountability towards all citizens.

3. *Current and Prospective Institutional Remedies in a Fluctuating Legal Framework*

The backdrop sketched above is a useful reference to discuss to what extent existing legal frameworks take into account these concerns and what could be the necessary remedies to ensure that the increasing use of AI-powered tools does not unduly impinge on the protection of individual rights of migrants. The goal of the current paragraph is to illustrate what are some of challenges associated with the effort to reconcile the current regulation of AI and algorithmic-driven decision making with the protection of the privacy of migrants that is mandated by the principles enshrined in paramount instruments of legislation such as the GDPR (Regulation 679/2016).

The approval of the AI Act has been a significant move in the EU strategy to tackle the challenges presented by the spread of AI tools for the performance of several activities by public authorities. For what concerns the consequences in terms of immigration policies, the comprehensive piece of legislation recently passed by EU institutions (Regulation

1689/2024) qualifies AI systems employed for migration, asylum and borders control management among those featuring a high risk (Annex III). Qualifying an AI system as high risk implies that the use of such system is subject to the establishment of a proper risk management system and to the compliance with specific rules dictated by the AI Act in terms of training of AI models, prior arrangement of technical documentation, systematic recording of logs, transparency obligations, guarantees of the existence of appropriate human oversight mechanisms and the adoption of adequate patterns of accuracy and cybersecurity.

Arguably the most interesting mechanism designed by the AI Act is the fundamental rights impact assessment for high risk AI system (art. 27). All public bodies resorting to high risk AI systems are bound to carry out an assessment of the prospective impact of the selected tools on the fundamental rights of individuals, irrespective of their status as citizens or foreigners. More specifically, this assessment shall consist in a description of the processes in which high risk AI systems will be employed, together with an indication as to the duration and frequency of the use of such tools. Moreover, the assessment shall also encompass a reference to the categories of individuals or groups that are likely to be affected by the use of AI-driven software, as well as the risks associated with the implementation of such tools. In addition, the assessment shall also provide a description of the measures of human oversight designed to monitor the decisions proposed by automated systems, the potential avenues to complain about such decisions and the internal governance mechanisms to manage complaints.

Indeed, encompassing the systems for the management and monitoring of migration and border control policies within the category of high risk AI systems implies that their use will be subjected to higher standards of control. This should hopefully prevent the spiraling of their implementation into patterns that ultimately affect in an adverse manner the rights of individuals. Even acknowledging the significance of the steps forward undertaken with the adoption of the AI Act, it is expedient to discuss whether further arrangements might be useful in order to design a legal framework that ensures a fair, yet effective, resort to AI or algorithmic-driven decisions while fully complying with the concerns for the protection of privacy rights of migrants and recognizing their interests in seeking protected status where they migrate.

In this regard, at least two categories of supplemental remedies might be helpful to combine with the procedures already laid down by the AI Act. The first is inherently connected to the risks associated with the

automation of decision making by AI systems, as already illustrated in the previous paragraph. The second depends instead on the design of algorithms and the unintentional discriminatory patterns that may be replicated by algorithms, even when their creators are unaware of the discriminatory nature of the structure of the algorithms provided to law enforcement authorities.

As for the former, all AI systems affecting the status of migrants shall be designed to include an oversight phase loyal to the so-called principle of the 'human in the loop'. This implies that human control shall always be part of decision making processes affecting individual rights, even as a mere validation of a decision proposed by a machine-driven procedure. Procedures should therefore never lack the possibility to retrieve an actual and traceable assessment of the rationality and the fairness of the decision, as machines and software cannot ultimately bear the legal responsibility in case the rejection of an asylum application or any similar request proves harmful for a migrant. It is therefore a matter of accountability, on the one side, as well as an issue of transparency, as a human decision maker could always ultimately be requested to provide a summarily account of the reasons justifying a given decision. Being able to clarify the reasons upon which any given act undertaken by public authorities is rooted is pivotal to ensure that public trust in the legitimacy of collective decision making mechanisms does not deteriorate inexorably over time.

For what concerns the latter, the risks associated with discriminatory patterns should not be tackled exclusively by implementing calibrated arrangements aimed at neutralizing the inherent bias associated with the identity of the programmers of the algorithms powering AI predicting tools. The remedy that appears more adequate is the adoption of proper mechanisms enhancing the participation of minority representatives to the design and implementation of algorithmic systems. The direct involvement of data scientist and programmers that come from diverse backgrounds, especially those that have a pre-existing experience of migration dynamics, shall ultimately have a positive net effect on the otherwise unfair and discriminatory policy decisions that stem from algorithmic-powered systems employed to fulfil a wide array of tasks in the management of migratory flows.

4. *Information and Technological Awareness as a Bolster for Democracy in Collective Decision Making*

The issue of legitimacy of decision making procedures involving algorithms and artificial intelligence tools touches upon the core of the mechanisms of representation and policy making in democratic societies. More specifically, the extraordinary reach and the very serious effects that may derive from an unbridled resort to AI-driven procedures require citizens, who are the stakeholders of a political community, to understand the kind of processes that shape ultimate decisions in a delicate subject matter such as that of immigration. Otherwise, an uneducated citizenry would struggle to trust automated decisions mainly based on data processing and would most likely refrain from consenting to the implementation of the technological tools mentioned above, thereby missing a major chance to exploit many of the assets that they provide to shape a sound and well-functioning management of migratory flows.

This argument is rooted on the idea that the neutralization of the populist risks underlying the structure and design of predictive algorithms for migratory policies does not necessarily require rejecting altogether the possibility to outsource some stages of these processes to machines and software. Instead, the most desirable avenue to foster the role of citizens in influencing policy decisions in this regard shall be to empower them to express an actual and self-determined consent to the deployment of similar tools in practice. Such an approach is consistent with the idea that democratic systems exist and thrive insofar citizens actually understand the civic issues at stake and enter into the public debate to make their voices and concerns heard by the other members of the political community. Failing to build such a public sphere hampers the possibility for all citizens to enjoy political equality to its full extent and, ultimately, makes it more difficult to ensure that governments are able to protect the interests of their peoples and to promote their overall well-being.

In order to approximate to such an ideal model, it would be convenient to provide basic awareness concerning the mechanisms underlying the functioning of public institutions and to make them available in a language that is commonly understood by most of the citizens taking part to the public discourse. Basic training about the core features of algorithmic-driven procedures and the potentialities and risks of the spread of AI-powered tools would be pivotal to ensure that a larger part of the population (prospectively, all members of the political community) is

capable of discerning the challenges associated with the deployment of such systems in the performance of law enforcement tasks by public institutions.

Pursuing the goal of technological literacy would indeed make it more likely that citizens understand the practical implications that the use of algorithms and AI tools entail for the rights of citizens and migrants alike. It is a sort of strategy of counter-profiling of these technologies, that promotes an approach of cultural cognition of the instruments of governance that may affect individual rights and equips citizens with valuable information on the account of which they can weigh the risks of ill treatment of individuals denied access to a given country. Adopting this stance means that governments bet on forms of agonistic machine learning, that discard a complete outsourcing of decisions and enhance different representations of reality, bearing in mind the goal to spread awareness about the risks and effects associated with the extensive use of algorithmic predictions.

Acknowledging the convenience to exploit the potentialities of these tools to bolster informed decision making in immigration related policies, data analysis might come at hand by supporting the elaboration of strategies developed against a more comprehensive background and that are therefore more responsive to the actual needs emerging in a given context or time frame. Moreover, postulating the relevance of adequate algorithmic literacy for all the citizenry might make it more likely that decision makers adopt policy choices after they have shared the relevant data set upon which they ground their decisions with all the population, thereby bolstering the democratic legitimacy of the political process shaping ultimate policy decisions.

5. *Preliminary Takeaways and Prospective Concerns*

The remarks articulated in the previous paragraphs intend to address the critical issue of the possibility of introducing limited or extended degrees of automation in immigration related decision making by public authorities. The preliminary analysis that is put forward revolves around the indisputable empirical finding about the advantages offered by technological tools and AI-powered systems to monitor and forecast migratory flows. These instruments therefore enable policy makers to act accordingly by establishing effective patterns to either reduce the influx of unauthorized immigrants or to put in place sensible strategies

enabling local communities to integrate migrants in the social context of the place where they migrate, while being able to provide them adequate economic support and welfare assistance. Whilst acknowledging the alleged neutrality of these tools, the present text purports to depoliticize the resort to algorithms by guaranteeing that their prospective implementation by law enforcement agencies is legitimatized by a comprehensive assessment of the people as a whole of the risks underlying the application of the above mentioned technological instruments to all decisions concerning the migratory status of individuals.

In this regard, this text maintains that these issues should be scrutinized accurately in the public discourse, making it possible for different policy preferences to be weighed by all citizens, who are ultimately the stakeholders consenting to the resort to such automated procedures through their elected representatives. The fulfillment of this ideal framework of governance for migratory flows requires the ability of citizens to actively explore the extent to which the adoption of mechanisms of automated decision making in the processing of tasks related to the status of immigrants is capable of hampering the core rights recognized under domestic (and supranational) constitutional frameworks to all individuals, irrespective of their belonging to the national citizenry, or unduly discriminating against their interests as migrants.

The considerations that have been laid down corroborate the argument that it is necessary to conceive of public policy making in immigration related subject matters as an area of governance that cannot be utterly outsourced to technology in pursuance of a scientifically rooted certainty that reduces decisions on immigration status to binary alternatives between generalized categories of immigrants, irrespective of the peculiarities of each situation. All decisions touching upon the personal status of individuals, included non-citizens, should instead rest on a thorough assessment of the interests affected by a given policy or by the use of given technological tools. Such a careful assessment is ultimately the cornerstone upon which decisions are perceived as legitimate and are complied with by the members of a political community.

Therefore, rather than discarding the avenues offered by AI and algorithms as evils that can be of no benefit whatsoever to the governance of migratory flows, lawmakers shall instead direct their efforts to exploit the emergence of powerful mechanisms of data processing to bolster public debate on the actual and most effective goals that governments should pursue when managing migratory flows. Technological literacy would therefore make it more likely that citizens engage consciously

in immigration related policy making through the mechanisms of representative democracy, bearing in mind the individual rights and interests that are more likely to be affected in this specific subject matter. Ensuring that most citizens are able to understand the implications of the use of AI or algorithmic-powered tools would therefore minimize the risk that these instruments are politicized for partisan goals. It would also increase the likeliness that the prospective implementation of such systems takes into account all the risks associated with this kind of technology (e.g. black box concerns, algorithmic discrimination, etc.) to ensure that appropriate steps are taken to prevent the scenarios that are most detrimental to the interests of individuals seeking to exercise their right to migrate or to flee their country of origin.

These remarks represent a set on considerations that do no exhaust all the concerns associated with the innovation of the procedures established to manage and oversee migratory flows from the arrival of migrants all through the processing of asylum requests or in other circumstances where immigrants are seeking to obtain a legal status of residence. Indeed, some questions remain unresolved and deserve further scrutiny by immigration lawyers and constitutional and comparative scholarship. The first concern revolves around the feasibility of coming up with a conclusive finding about the possibility (or the degree) to justify political decisions affecting immigration policies to any extent on the basis of the assessment of their consequences on the fundamental rights of individuals. The second issue concerns the identification of the person(s) responsible for assigning a procedure to the processing of an automatized system and those that are instead tasked with the actual oversight and the ultimate implementation of a given policy decision.

Well-grounded concerns about the existence and the content of legal safeguards for the use of algorithms in the engineering of systems to be employed also for the enforcement of immigration policies have been adequately addressed above. It would also be very significant, however, to investigate whether a right of migrants not to be subjected to automated decisions concerning their asylum or immigration status actually exists or could be derived from existing legal interests already granted to citizens or to foreigners. Lastly, AI-driven systems and algorithms should be designed to make prudent predictions on the foreseeable future, in order to be able to come up with decisions that do not suffer from an inherent bias related to uncertainty and a short term perspective. Ironically, the shortage of data that sometimes makes it more difficult to boost the performance of these

systems may be without proper remedy, as this need for more and more data to operate extremely complex mechanisms of algorithmic predictions highlights a conundrum apparent in attempting to reconcile the principles enshrined in EU legislation (e.g. the principle of the minimization of data, art. 5 GDPR; the enhanced concerns about the black box issue, art. 22 GDPR) with the necessity to widen the scope of the data gathered by the software powered by AI or algorithms in general.

In light of the above considerations, it is all the more convenient that all future decisions concerning the prospective integration of AI-driven or algorithmic-powered systems in the procedures of public authorities competent for the enforcement of immigration policies are the result of an informed public debate. This latter should highlight the benefits associated with these tools in terms of capacity to foresee the social impact of migratory flows and the dangers inherent in neglecting a sensible approach to tackle the salient issue of immigration. Immediate and well-tailored actions to spread knowledge and awareness about the functioning of the tools underlying these procedures will therefore be pivotal to make it possible to discuss the implementation of algorithmic decision making and AI-driven processes in the public sphere freely but with sufficient understanding of the instruments at stake. All decisions disposing of a robust phase of debate in this regard will ultimately fail the test of legitimacy. Any form of policy making within a political community that vests elected representatives with the authority to shape legislation and policies, indeed, implies also the possibility to take that power back in the exercise of a people's self-determination for all political issues, most prominently when immigration policies are at stake.

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The volume examines the topic of digital citizenship within the context of the European integration process, not only from a legal perspective but also in its political, economic, and sociological dimensions. It explores the multifaceted aspects of digital citizenship and the impact of digitalization on citizenship relations, broadly understood, in a constantly evolving, though no longer entirely new, reality of legal, economic, and social relations where the (European) individual becomes a citizen of a digital world. Organized into three sections, the various chapters address – within the context of the European multilevel legal system – several specific issues related to the digitalization of relations between government, public administration, and private individuals, as well as between public and private powers and even between private individuals themselves.

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