Solidarity for a Digital Welfare State: The case of online public services in the Italian legal system
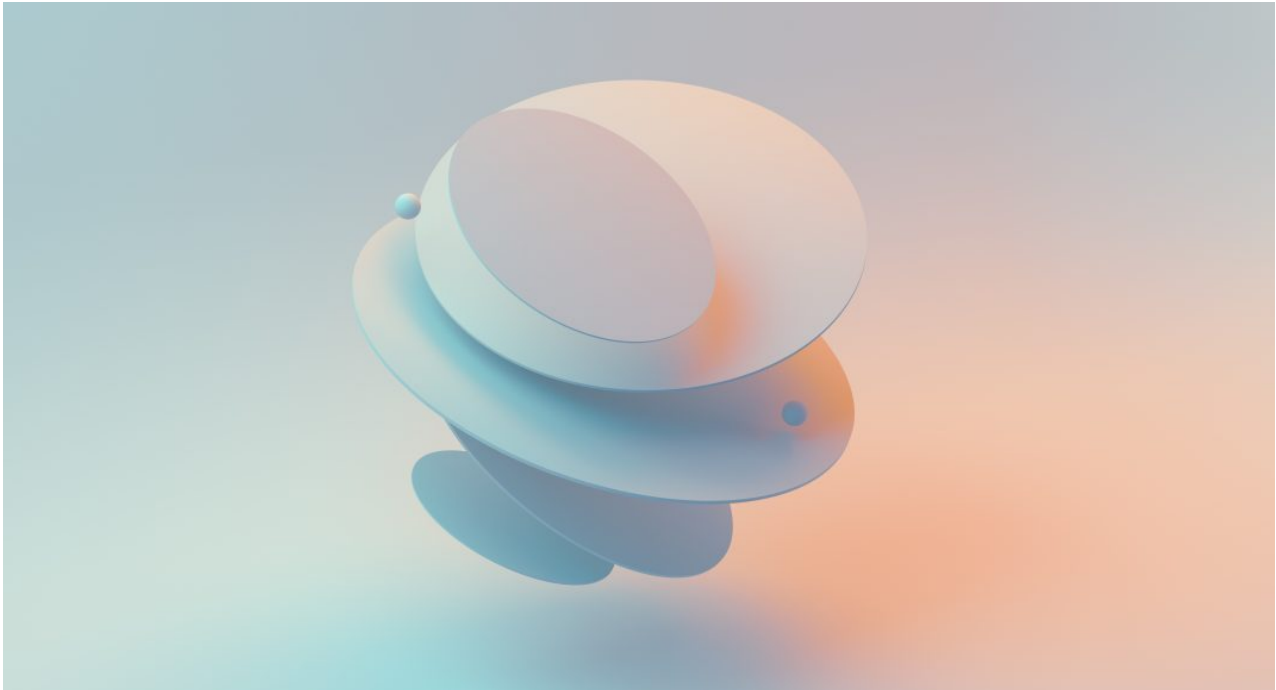
1. Introduction

The principle of solidarity for a Digital Welfare State is the new frontier in an era characterised by the fervent use of telematics.

The technological progress and the development of telematics have had an incisive influence on the legal sphere, as well as on the economic sphere. With reference to the administrative apparatus, the entry of telematics and the network have mainly led to a rethinking of the relationship between citizen-user and administration. It is therefore necessary today to think not only from a Welfare State perspective, but also properly from a Digital Welfare State perspective.

In order to analyse the digitisation process that is affecting the public administration on a day-to-day basis, the Italian perspective was chosen as a case study, while keeping an overview of the European context, considering the constant commitment that Italy, especially with the national Recovery and Resilience Plan, is making in its attempt to adapt to European standards. The idea is to understand how a classic principle of law, such as the principle of solidarity, is necessary for the digital revolution, which invests the public sphere as well as the private one, and therefore the definition of the so-called Digital Welfare State. Imagining the Digital Welfare State as a multifaceted prism, in particular the dimension of online public services was explored. Given that the principle of solidarity is essential for the Digital Welfare State, the heart of the question is to understand how solidarity translates into it and how the aspects of this principle immerse

themselves in the digital to allow for a complete and satisfactory as well as quantitatively and qualitatively efficient usability of online public services. The various aspects of the solidarity principle are accessibility, inclusiveness, and protection of personal data.

2. The legal framework of the principle of solidarity

The principle of solidarity is affirmed in the Italian Constitution in articles 2 and 119. In Article 2, the concept of solidarity is affirmed, on the one hand, as a justifying *ratio* for the duties laid down for every citizen, and on the other hand, as a principle aimed at fulfilling a social integration function and guaranteeing a minimum level of homogeneity in the social structure. Solidarity is thus placed by the Constitution among the founding values of the legal system, so much so that it is solemnly recognised and guaranteed, together with the inviolable human rights, as the basis of social coexistence normatively envisaged by the Constituent Assembly. Solidarity, therefore, goes beyond the level of duties, also investing in the area of individual liberality and social spontaneity. Moreover, Article 119 provides for the objective of cohesion and social solidarity among the prerequisites justifying the allocation of additional resources or special State interventions in favour of certain municipalities, provinces, metropolitan cities, and regions (Comm. cost. Bifulco-Celotto-Olivetti, 2006).

It should also be pointed out that for decades the concept of solidarity has declined in the vertical dimension alone, resulting in coherent legislative policy guidelines, whereas recently it has declined in a dual dimension, the horizontal as well as the vertical. The horizontal dimension, together with the principle of subsidiarity, seems to take shape as a guideline for the reform of the State in the direction of solidarity and community (Giuffrè F., *Solidarietà*, in Diz. dir. pubbl. Cassese, 2006).

Finally, solidarity as a legal principle also plays a primary role in the framework of EU values and objectives. Starting from far, the first reference can be found in the Schuman Declaration of 9th May 1950, in which it is affirmed: ‹‹Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create a *de facto* solidarity››. Then, also in the Preamble of Treaty establishing the European Coal and Steel Community of 1951, solidarity is referred to in the same terms: ‹‹Europe can be built only through practical achievements which will first of all create real solidarity, and through the establishment of common bases for economic development››.

The Treaty on European Union also refers to the principle of solidarity in Articles 2 and 3. In particular, the latter speaks of "solidarity between generations" and "solidarity between Member States". These two levels are certainly indispensable in the reflection on a Digital Welfare State, to achieve a digitised single market and to bridge the digital education gap between generations.

Besides, the Title IV of Charter of Fundamental Rights of European Union is dedicated to the *Solidarity*, including articles on workers' rights, family and working life, social security and social assistance, health, environment, and services of general economic interest.

3. Digital Welfare State and online public services

Observing the legal framework of the principle of solidarity, it is useful to understand how to overcome certain difficulties and situations of inequality that do not allow the full realisation of the Digital Welfare State. A fundamental knot is the phenomenon of digital divides, which for instance represents a brake on the development of online public services.

The Digital Welfare State can be defined as ‹‹a transition to data-driven social policy›› (van Zoonen, 2020), and it ‹‹is presented as an altruistic and noble enterprise designed to ensure that citizens benefit from new technologies, experience more efficient governance and enjoy higher levels of well-being›› (Alston, 2019). One of the aspects of the Digital Welfare State is the provision of online public services. One of the European Union's first reactions in defining the digital spaces of the welfare state was properly the strategic objective of ensuring generalised electronic access to all basic public services by 2003, making low-cost, high-speed interconnected networks for Internet access accessible in all European countries. Also linked to this perspective is the eEurope project, launched in December 1999, which aimed at accelerating the adoption of digital technologies throughout Europe.

More recently, European standards have provided important opportunities to boost the digitisation process. In 2021 with the Digital Compass 2030, four targets have been set to be achieved by 2030: skills, enterprises, infrastructure, and public services. With reference to the latter, it is envisaged that all major public services will have to be available online, that all citizens will have access to their electronic health records, and that 80% of citizens will have to have an electronic identity.

In Italy, the project has been developing since the 1990s as part of the reform of public administration, with the aim of modernising P.A. through greater efficiency, transparency, and administrative simplification (Masucci, 2003). Thus, the need for online public services arose: the first to appear was the bureaucratic public services. In Italy, the digitisation process then received important impulses with the national Recovery and Resilience Plan, whose first mission allocated 21.05% of total resources to the digitisation of the public administration.

Regarding the brake on the development of online public services, it must be said that the phenomenon of the digital divide describes the gap between those who are interconnected and those who are not, generating a situation of substantial inequality. Considering this divide, the need emerges to protect a genuine right to interconnection, which must be guaranteed through the provision of universal service.

Digital divides are therefore very relevant, which contrasts with full development of the digitisation process of services.

There is still a long way to go. Italy, according to the DESI report (Index of digitisation of the economy and society) updated to 2022, with reference to the state of digitisation occupies the 18th position in the ranking compared to the 27 Member States. It is at the

lower end of the ranking, but it should be noted that compared to the last five years it is advancing at a fast pace. With respect to the basic skills figure, Italy is trying to close the pronounced gap, but to date, more than half of its citizens still lack basic digital skills.

The use of public digital services is still far from the European average; in fact, only 40% of Italian Internet users use them, while the rest of Europe averages 65%. However, the growth rate recorded over the last two years, amounting to 10 percentage points from 2020 to 2022, is important and hopefully optimistic.

4. Accessibility, inclusiveness, and data protection vs digital divides

The principle of solidarity, in its vertical and horizontal dimensions, is fundamental to guarantee the efficient development of online public services. It can be declined in several aspects, such as accessibility, inclusiveness, and data protection. This principle is therefore one of the possible responses to the phenomenon of the digital divide, which risks creating new forms of social exclusion and reinforcing existing ones. The issues of interconnection, right to the internet, digital education, and holding of digital devices constitute the points to work on to enable quantitative and qualitative usability of online public services.

Besides, accessibility and inclusiveness represent not only useful tools to counteract digital divides but they are also related to the concept of administrative citizenship.

In this inclusiveness and accessibility, it also unfolds the right not to be excluded from the use and benefit of public facilities and from the use of the telematic resources that these facilities can offer. It should be noted that as Rodotà emphasised on the relationship between new inequalities and universal service, ‹‹the abstract prediction of the universality of the service and the openness of access to new technologies is not enough. Active public literacy policies are needed, aimed precisely at eliminating the factors that produce widespread and growing inequalities, if we are to avoid mass exclusion phenomena that directly affect the democratic nature of a system: an exclusion that can also be determined by pricing and service location policies›› (Rodotà, 2004).

Online public services are thus one of the main frontiers of the digitisation process of public administration. They represent the link between the public administration and the citizen-user, or rather, the citizen as an active participant, and besides a strategic resource for the definition of a new relationship between them.

The user can request and benefit from a given service without going in person to the competent office but only by electronic access, even from mobile devices to a virtual counter of the providing administration.

In the Italian Digital Administration Code, the citizen's right to access online public services does not exactly coincide with the right to enjoy them. The right of access is the right not to be excluded from the use and benefit of public facilities and from the use of telematic resources, and it is therefore a right of general scope. Instead, the right to enjoy the service provided is linked to the provision of telematic information and relational

instrumentarium available to the user, in addition to often being linked to the presence of certain necessary prerequisites in fact or in law on the part of the user. For the realisation of usability for everyone, the above-mentioned *instrumentarium* must be equipped with telematic information tools, by which we mean websites and web portals, and then with relational telematic tools, which are those that enable the relationship between the citizen-user and the administration, of which e-mail is the main example (Masucci, 2019). Therefore, the right to access and the right to use contribute one abstractly and the other concretely to the definition of online public services as a factor of social and territorial cohesion.

Besides, the new relationship between administration and citizen-user is thus to be found in the possibility for the latter to be an active part of the service delivery process itself. In fact, in the transition from the *e*-government season of the 1990s to that of *open* government (Costantino, *Open government*, in *Dig. pubbl*., 2015), the citizen is transformed from mere user to participant, and his contribution is significant especially because the involvement increases trust in the institutions. Thus, we move from a simple change of an organisational nature, achieved by digitising the management of documents and procedures and the use of technologies aimed essentially at transposing paper-based services into electronic form, to a season implemented by the evolution of technologies. *Open* government achieves the transition from the availability in a telematic version of services of a purely informative nature to the possibility of realising a wider range of services in a complete online mode through the realisation also of online communities that favour data sharing and new forms of communication. In the participatory model, thus a level of interaction, which was absent in the first season, is established.

Alongside participation, the other two cornerstones are transparency and collaboration. While transparency refers to access to documents, the publication of data and their re-use, considering them *open data* for an increasing "open" administration, collaboration refers to the provision of services. This leads to the idea that the administration uses the citizen as a resource (van Zoonen, 2020).

Finally, the other pillar is the protection of the privacy and data security of each citizen. This aspect of solidarity is relevant because it entails the necessary balancing act between, on the one hand, data accessibility and interoperability, in order to exchange information more quickly, and on the other hand the protection and safeguarding of the sensitive data of the citizen using the service. It is also the most controversial and sensitive point, which retains in itself the question of what the acceptable limit is.

The citizen as a resource is also an emblematic concept for reflecting on the principle of solidarity, because on the one hand, it is implemented in guaranteeing the right to access and use services to the widest possible audience, and thus we speak of a resource in the sense of a component of the recipient system. From another point of view, the citizen is a resource in the sense of a participating actor, a tool for digital literacy.

Then, it will be necessary not only to guarantee general access to the Internet and the possibility for everyone to have access to the essential technological tools but also to ensure that everyone can learn the essential knowledge needed to use these tools. With reference to the principle of accessibility, equality of access must be guaranteed, thus also including those who require special assistance due to certain forms of disability.

In the process of digitisation and dematerialisation of services, therefore, the principle of solidarity sees in the citizen a necessary resource whose participation qualitatively affects the delivery of the service, of which he is the recipient, and contributes to the realisation of the Digital Welfare State.