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# Legal Basis and Regulatory Applications of the Once-Only Principle: the Italian Case.

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**Abstract.** This study presents how the OOP is related to the constitutional and institutional principles concerning the good performance and impartiality of public authorities and the protection of citizens' rights against the action of public administration, with special regard to the Italian regulatory framework. The national path towards the implementation of the principle is examined, starting from the obligation of the use of self-certifications in place of certificates and the automatic acquisition of data and documents in administrative procedures down to the digitalization of administrations and the interoperability of public databases. A specific paragraph is devoted to the OOP in public procurement, as crucial for development of the European digital single market.

**Keywords:** Once-only principle, interoperability, public administration.

## 1 Introduction

The once-only principle (OOP), states that “public administrations should collect information from citizens and businesses only once and then, respecting regulations and other constraints, this information may be shared”. In other words, the OOP consists in the prohibition or, at least, in the limitation for public administrations to request documents and information that are already in their possession, with the consequent obligation to share data they contain, nowadays through IT systems interoperability [1,2,3].

Already in 2009, a declaration of this content was signed by the Ministers of the EU Member States: “we will use eGovernment to reduce administrative burdens, partly by redesigning administrative processes in order to make them more efficient. We will exchange experience and jointly investigate how public administrations can reduce the frequency with which citizens and businesses have to resubmit information to appropriate authorities” [4].

In 2015, the once-only principle was indicated as a pillar of the Digital Single Market Strategy for Europe launched by the European Commission, with the decision to undertake a pilot project to explore the possibilities of setting up a secure IT solution to achieve the objective of the widespread application on the continent of the principle, since only in (optimistic!) 48% of the cases “the public administration uses the information on citizens or businesses it already has, avoiding to ask again” [5].

Although it is recognized that Member States are digitising their public administrations to save time, reduce costs, increase transparency, and improve both data quality and the delivery of public services, the Commission has confirmed that digital public services are not yet a reality in the European Union, therefore a coordinated approach is necessary at all levels, when legislation is prepared, when public administrations organise their business processes, when information is managed and when IT systems are developed to implement public services. Otherwise the existing digital fragmentation will be intensified, which would endanger the offering of connected public services across the EU [6,7].

In this context, this study will therefore deal with the Italian legal experience of implementing the OOP. First, it will seek to show that the once-only principle is strictly related to the constitutional principles of the Italian legal system in the field of public administration and constitutes a natural development of them.

Secondly, that many regulatory applications of the OOP can already be found in the internal legal system, starting from the non-recent rules concerning self-certifications. In this sector, the Italian legal system has gone from authorizing the use of self-certifications to complete de-certification and ex officio acquisition of data and documents by public entities.

In more recent times, copious legislation has developed regarding the digitization of administrative procedures, with the attempt to make interconnected public databases. It will therefore appear evident that the country is still lacking in terms coordination, the IT governance being divided between central and local authorities.

Finally, particular attention will be dedicated to the area of public procurement, also indicated by the European Commission, at the start of its Communication on the European Interoperability Framework, as the sector which accounts for over a quarter of total employment and contributes to approximately a fifth of the EU's GDP, and therefore plays a key role in the digital single market as a regulator, services provider and employer [6], especially in critical times, as in the current recovery period after the Covid-19 pandemic.

## **2 The Constitutional Basis of the OOP in Italy, as a Fundamental Rule of Administrative Activity and Organization**

In the Italian legal system, the OOP reflects some general principles concerning organization and administrative activity: the rational organization and the correct performance of the administrative function is aimed at the protection of the position of private individuals [8,9]. It is well known that procedural complications lend themselves to illegal negotiations [10,11,12] and they could represent a risk for impartiality and thus, organizational measures, in addition to behavioural ones, are indicated as fundamental to prevent corruption in public administrations [13].

Many studies have described the administrative function as constituted by organizational elements (function conceived as competence, office: from the Latin meaning of

“officium”, “munus”) intrinsically connected with dynamic action (function as public purpose and function as carrying out of targeted activity) [14,15].

The once-only principle can play an essential role in regulating the organization of bodies, as much as the dynamic development of their action from a service perspective [16,17,18,19]. OOP is aimed at increasing service levels, reducing costs, simplifying, but also improving the integrity of the administration and more fully satisfying the needs of citizens. It is therefore in close correlation with the institutional principle of functionality of public entities.

A general “right to good administration” is today declared by the Charter of Fundamental Rights of the European Union (having the same legal value as the Treaties: Art. 6 T.E.U.). If the art. 41 of this Charter literally refers to the need for administrative decisions to be taken impartially, fairly and within a reasonable time, many have provided a broad interpretation of it. This includes the duty of loyalty and the spirit of collaboration of the administrations with citizens, according to an approach of “administrative simplicity” which responds to the needs of substantial legality: burdens that are not strictly indispensable for the administration to carry out its service function should not be imposed on the citizen [20,21,22].

The principle of good administration (more than the right<sup>1</sup>, or at least a duty<sup>2</sup>) is included in the Italian Constitution in the cardinal principles of the rule of law, impartiality and good performance (Art. 97 of the Constitution), as well as in the fundamental principles of the democratic State (art. 2 and 3 of the Constitution). In addition, numerous “programmatic rules” place proactive tasks on the Republic (from its highest institutions - the Parliament and the Government, as well as, on the implementation level, its executive institutions - the administrative offices)<sup>3</sup> to favour the implementation of the principle.

The criteria of economy, effectiveness and efficiency, set out in the general law on the administrative procedure are based on these constitutional rules, in addition to the

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<sup>1</sup> If considered as a right, it would necessarily correspond - in Italian law - to an action that can be brought before a judge. The principle of good administration includes, however, rules substantial and procedural, not all executable, to which administrative activity should conform in a modern democratic system of law [22].

<sup>2</sup> It should also be remembered the theories regarding a duty of good administration, including those operative rules which, although not always expressed, are not less relevant and no less binding for the administration, because imposed by the real and actual need to draw from the goal imposed by law [23]. The authors describe these “extra legem” rules (good administration directives) as flexible elements which represent an immanent necessity in this system, due to the flexibility necessary for administrative action in relation to the purposes to be achieved, and for the ineptitude of the written norm to adequately foresee all the situations that are determined in order for the purposes themselves. The Italian administrative justice traditionally sanctions the violation of this “ius non scriptum” (unwritten law) which guides the action of the public administration through judgment on excess power [24].

<sup>3</sup> Italian scholars refer to the programmatic rules of the Constitution as a “promised revolution”, still to be implemented (as directives) with regulatory activity. In this sense, the discipline of public administration cannot be derived from Articles 97 and 98 only, but from the entire Constitution [25,26,27,28].

prohibition of unjustified aggravation of the procedure<sup>4</sup>. and they represent an expression of the institutional principles of proportionality<sup>5</sup> and reasonableness (attributable to the theories of procedural rationality) of public action [29,30].

According to scholars, the prohibition of aggravation – as one of the principles of the “minimum procedure” [31] – constitutes a fairness or good faith canon, whose normative explanation is to prevent any harassment in contact between public authority and citizens, with the aim of guaranteeing the values of the person safeguarded at the constitutional level (Art. 2 and 3 of the Constitution) and, at the same time, enhance the spirit of collaboration that must connote the activity of the public official (Art. 98 of the Constitution) [32].

The EU legal framework and the Italian constitutional principles therefore represent a solid basis from which to derive the rule of legal civilization, according to which users (citizens and other public offices) must not be repeatedly requested by the administration to provide data already produced to it. In other words, the once-only principle, as a fundamental rule of simplification, responding to a public and private interest of good administration [9,30], tends to avoid duplication of requests for unnecessary and overabundant documentary mailings, which represent inefficient and uneconomical operations for the administration and which generate intolerance and distrust in citizens, often causing them harm.

In literature, the principle recalls the famous novel “The Castle” by Franz Kafka, in which the irrational management of documents by public servants causes an extreme discouragement in citizens who meet them: “The woman opened the cupboard at once, while K. and the mayor watched. It was stuffed with papers, and when it was opened two large bundles of files fell out, tied up as you might tie up bundles of firewood. The woman flinched in alarm. ‘Try lower down, lower down,’ said the mayor, directing operations from his bed. The woman, gathering up the files in her arms, obediently cleared everything out of the cupboard to get to the papers at the bottom. The room was already half full of papers. [...] ‘I don’t think the files are going to be found,’ said K. ‘Not found?’ cried the mayor. ‘Mizzi, please search a little faster! For a start, however, I can tell you the story without files...’” [33].

In the Italian experience, the formalism of the procedures is often justified also by the lack of mutual trust that characterizes the relationship between citizens and public administrations. The former are inclined to exploit the shortcomings of the offices to their advantage (for example, the high rate of non-veracity of the self-certifications, which is also favored by the absence of controls); the latter are often not very credible as regards the information provided and inclined to disregard the credit lines generated. The same legislator tends to set rigid and binding rules (for example in terms of conflict

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<sup>4</sup> Art. 1, par. 2 of the Law no. 241 of 1990, according to which the public administration cannot aggravate the procedure except for extraordinary and motivated needs imposed by the conduct of the proceeding.

<sup>5</sup> The proportionality principle is stated by Art. 5 of the T.E.U. and from its Protocol no. 2 on the application of the principles of subsidiarity and proportionality. Here we can summarize it according to the liberal formula, which in Italy can be traced back to the studies of the early nineteenth century by Gian Domenico Romagnosi, of the “minimum means”, that is the pursuit of the public interest with the least possible sacrifice of the interests of citizens.

of interest) that seem to convey the idea that the public administration cannot be trusted [34].

In fact, the rules on administrative action and organization (such as the prohibition of procedural aggravation and therefore the once-only principle) are set to protect the dignity of the individual and to guarantee his full development (see Art. 3, par. 1 of the Constitution), not only as mechanisms for increasing functionality and administrative efficiency, according to the logic of good performance (Art. 97 of the Constitution) [32]. Thus, they assume a double role, of organizational and functional principles with which the public entity (“ex parte principis”) must comply, but also of protection of citizens’ rights towards power (“ex parte civis”) [22,35]. Conversely, acts of maladministration constitute a potential violation of the fundamental rights of the individual and the constitutional principle of solidarity (Art. 2 of the Constitution) [36].

### **3 A First Regulatory Application: Self-Certifications and Ex Officio Acquisition of Data and Documents**

In Italy, a first, temperate, application of the once-only principle can be found in the self-certification legislation. Since the reform of 1968<sup>6</sup>, it has been possible to prove with declarations, also contextual to the application, signed by the interested party in place of the normal certificates, the date and place of birth, residence, citizenship, the enjoyment of political rights, the state of celibate, married or widowed, family status, existence in life, birth of son, death of spouse, ascendant or descendant, position for the purposes of military obligations and registration in registers or lists kept by the public administration<sup>7</sup>. The law also introduced temporarily substitutive declarations, substitutive declarations of the deed of notoriety and proof of date and place of birth, residence, unmarried, married or widowed state and any other state or personal quality by showing identity documents<sup>8</sup> [37]. Previously, the legislation already provided that the requirements of citizenship, good conduct and the absence of criminal records were ascertained ex officio by the administration which must issue the provision. On the other hand, the administration could not request documents or certificates from the private individual concerning facts and circumstances that were attested in documents already in its possession or that it itself was required to certify<sup>9</sup>.

From a legal point of view, self-certifications can be associated to the scheme of liberalization from administrative authorizations. In the past, certifications represented the only suitable tool to create legal certainty and, therefore, to legitimize the activities and behaviours that in this declaration found a prerequisite. Through self-certification, the public title is replaced by an act formed independently by the citizen concerned, through a private declaration, which is recognized as having the same validity and effectiveness as the certification act issued by the public authority [38].

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<sup>6</sup> Law of 4 January 1968, no. 15, which states rules on administrative documentation and on the legalization and authentication of signatures.

<sup>7</sup> Art. 2 of the Law no. 15 of 1968.

<sup>8</sup> Respectively, Articles 3, 4, 5 of the Law no. 15 of 1968.

<sup>9</sup> Art. 2 of the Presidential Decree of 2 August 1957, no. 678.

Although self-certification does not imply the total exclusion of sending information already held by the administration, nevertheless it has represented a significant simplification and lightening of the burden to present documents [39], especially when the automatic exchange of content between the various “static” archives of public administrations was not yet possible, unlike “dynamic” archives of today’s databases [40].

Following further reforms, the legislation was taken up, reordered and expanded by the Consolidated Act of the laws and regulations of 2000 on administrative documentation [41] which provided for the general prohibition for public administrations to issue and request the production of certificates [42] accompanied by the obligation to automatically acquire the information subject to substitute declarations as well as all data and documents that are already in their possession<sup>10</sup>. Especially the original version of Art. 43 of the Act presented a structure very close to the European definition of the once-only principle<sup>11</sup> [43].

The binding force of these rules lies, moreover, in the presence of specific sanctions for officials who do not accept self-certifications or who, on the contrary, request and receive certificates<sup>12</sup>, in addition to the limitation of the validity and usability of certificates issued by the public administration only in relations between private subjects<sup>13</sup>.

In this regard, however, the consequence of the spontaneous presentation by the citizen of certificates for the initiation of an administrative proceeding is not clear. If the rule on decertification is interpreted rigorously, it could lead to the result - quite contrary to the idea of simplification - of invalidity of the decision adopted by the proceeding administration based on the illegitimately produced certificate. This conclusion has been discarded, since the rules on decertification are primarily aimed at protecting the

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<sup>10</sup> Art. 43, par. 1 of the Presidential Decree of 28 December 2000, no. 445, as amended by Art. 15 of the Law of 12 November 2011, no. 183, which states that public administrations and managers of public services are required to acquire ex officio the information which is the subject of the substitutive declarations referred to in articles 46 and 47 of the same Decree, as well as all data and documents held by public administrations, upon indication by the interested party, of the essential elements for finding the information or data requested, or to accept the substitute declaration produced by the interested party.

<sup>11</sup> Art. 43, par. 1 of the Presidential Decree no. 445 of 2000, in its original version, stated that public administrations and managers of public services could not request deeds or certificates relating to states, personal qualities and facts listed in art. 46 of the same Decree, or which in any case they were required to certify. In place of these deeds or certificates, the subjects indicated were required to acquire the relevant information ex officio, upon indication, by the interested party, of the competent administration and of the elements essential for the retrieval of the information or of the requested data, or to accept the substitute declaration produced by the interested party.

<sup>12</sup> Art. 74 of the Presidential Decree no. 445 of 2000, which punishes as a violation of official duties the non-acceptance of the substitute declarations of certification or deed of notoriety made pursuant to the provisions of the Decree, the request and acceptance of certificates or notarial deeds; the refusal by the employee in charge of accepting the attestation of states, personal qualities and facts through the presentation of an identification document; the request and production, respectively by civil status officers and health directors, of the certificate of assistance at birth for the purpose of training the birth certificate; the issue of certificates that do not comply with the provisions of Art. 40, par. 2, of the same Decree.

<sup>13</sup> Art. 40, par. 1 of the Presidential Decree no. 445 of 2000.

user who submits the application in order to reduce the bureaucratic burden on him [43].

With the 2005 reform, it was also included in the general law on the administrative procedure the obligation of ex officio acquisition of the documents necessary for the investigation certifying deeds, facts, qualities and subjective states, when they are in the possession of the proceeding administration or which are held, institutionally, by other public administrations [44]. The law only allows the proceeding administration, collaborating with private citizens, to request from interested parties the elements which are strictly necessary for the search for documents<sup>14</sup>. On the other hand, the law allows the suspension of the deadline for the conclusion of the procedure only for the acquisition of information or certifications relating to facts, states or qualities not attested in documents already in possession of the administration itself or not directly obtainable from other public administrations<sup>15</sup>.

The ex officio assessment, expression of the non-aggravation and economy principles, as an ordinary and prevalent method for the acquisition of evidence by the administrations, represents a fundamental instrument, which simplifies to the widest possible extent, up to practically eliminating them, the obligations to provide certain data to the administration, while ensuring that the data acquired are fully reliable [42]. Rare judgments of administrative justice on this subject have underlined the relationship between the rules on the ex officio assessment and the principles of non-aggravation and cost-effectiveness, as well as the principle of “informality”, initially present in the draft law on administrative procedure prepared by the Commission chaired by Mario Nigro [45,46].

If effectively respected, the obligation to acquire ex officio data and documents would represent the overcoming of both certifications and self-certifications and substitute declarations, as perfect applications of the once-only principle, with the further positive effect of the greater degree of certainty for the administration as the certification cycle would be completely exhausted within the public organization [38].

#### **4 The OOP and Public Systems Interoperability**

The practical application of self-certification and ex officio document acquisition necessarily requires efficient systems of communication and exchange of information between paper archives and databases [47]. In fact, there are many public and private interests which are compared with reference to administrative data: the interest of the proceeding administration in the safe storage of its documents, the interest of other authorities in acquiring public information quickly and efficiently, the citizen’s interest in avoiding providing administrations with duplicate information for different administrative procedures, but to provide data only once for the entire administrative system interconnected on the network [48].

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<sup>14</sup> Art. 18, par. 2 of the Law no. 241 of 1990, as amended by Art. 3 of the Law-Decree of 14 March 2005, no. 35.

<sup>15</sup> Art. 2, par. 7 of the Law no. 241 of 1990.



According to the definition given by the European Commission, when we talk about interconnected networks we indicate a (computer) system within which two or more terminals are able to communicate and therefore exchange information between themselves in an automated way, thus allowing access to data stored on a system other than the one requesting the information itself [5].

By applying this paradigm within administrations, a public entity could have access to information held by another one without the need - at least technical - for any interaction between officials. It would be enough for the proceeding office to request, through its own computer system, the data it needs, and it could automatically retrieve the information requested by the system made available by another public administration [40].

Thus, launching a strategy to implement interoperability, the European Commission proposed it as a key factor in making a digital transformation possible, that allows administrative entities to electronically exchange, amongst themselves and with citizens and businesses, meaningful information in ways that are understood by all parties. It includes the four fundamental aspects that impact the delivery of digital public services: legal issues (legal interoperability), by ensuring that legislation does not impose unjustified barriers to the reuse of data in different policy areas; organisational aspects (organisational interoperability), by requesting formal agreements on the conditions applicable to cross-organisational interactions; data/semantic concerns (semantic interoperability), by ensuring the use of common descriptions of exchanged data; and technical challenges (technical interoperability), by setting up the necessary information systems environment to allow an uninterrupted flow of bits and bytes [6,7].

In order to reach the effective possibility for citizens, institutions and companies to provide data only once to the administration that needs to have it, also according to the Italian Court of Auditors it is therefore necessary to apply an “organic approach” [49], which involves the creation of information systems able to guarantee interoperability, that is the effective and automated exchange of data and information, both internally between offices of the same administration, and externally between different public entities [50].

The possibility of correlating the collected data multiplying the information capacity of the consultations and the possibility of exchanges between different databases are considered features of the electronic processing systems that bring undeniable advantages for an orderly and efficient performance of administrative activity. The easiest access to information, the reduction of costs and times, the elimination of duplications of data collections, the uniformity of the techniques that can be adopted and the simplification of the controls that the public administration could carry out on a large scale thanks to the existence of the databases, constitute great advantages of any technically organized documentation [51].

Interoperability is defined by the Italian legislator as characteristic of an information system, whose interfaces are public and open, to interact automatically with other information systems for the exchange of information and the provision of services<sup>16</sup>. It

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<sup>16</sup> Art. 1, par. 1, lett. dd of the Legislative Decree of 7 March 2005, no. 82, Digital Administration Code, added by Art. 1, par. 1, lett. g of the Legislative Decree of 26 August 2016, no. 179.

constitutes an indispensable prerequisite for promoting and accelerating the circulation of public evidences without resorting to the traditional instrument of certificates [42]. The simplification of the document burdens is therefore closely related to the rules on digitization, starting from the general provision according to which public administrations use in internal relations, in those with other administrations and with private individuals information and communication technology, ensuring the interoperability of the systems and the integration of service processes between the various administrations in compliance with the Guidelines<sup>17</sup> [47].

In organizing their own activity autonomously, the same administrations are required to use information and communication technologies to achieve the objectives of efficiency, effectiveness, economy, impartiality, transparency, simplification and participation in compliance with the principles of equality and non-discrimination, as well as for the effective recognition of the rights of citizens and businesses in accordance with the objectives indicated in the three-year Plan for information technology in the public administration<sup>18</sup>. One of the three fundamental «paradigms» of the 2019-2021 Plan is precisely the once-only principle, according to which public administrations must avoid asking citizens and businesses for information already provided [52]. For public procurement the interoperability of the platforms is indicated as a key factor to guarantee quality, uniqueness and certainty of data [53,54].

In this context, information technology has moved from a simple tool to support procedures to an enabling factor for innovation and development, with a strategic role in contemporary society: the once-only principle makes it possible to rethink the control and monitoring processes using all the potential offered by ICT technologies [49].

Data governance aimed at guaranteeing uniformity in management through a common system design, is therefore essential for full interoperability, “the key to a holistic approach” (as we said, technical and organizational but, above all, semantic interoperability which requires a common language that allows systems to communicate with each other) [7,50,55]. The Italian Constitution, as amended in 2001, takes due consideration of this aspect, entrusting the legislative and IT information coordination of state, regional and local administration data to the exclusive legislative competence of the State<sup>19</sup> [48,56].

Unfortunately, it must be noted that in the Italian administrative system, characterized by sections of accentuated centralism and sections of strong decentralization [48], this essential function of coordination has so far been carried out in an at least fluctuating manner – so that it has been described as a “harnessed giant” [57]. The evolution of governance in the field of public IT has been widely described, with continuous transformations in terms of the subjects involved and related institutional structures, competences and assigned resources, organizational models adopted. It can provide useful elements to understand the public response to the evolving market of citizens and businesses [49].

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<sup>17</sup> Art. 12, par. 2 of the Legislative Decree no. 82 of 2005.

<sup>18</sup> Art. 12, par. 1 of the Legislative Decree no. 82 of 2005.

<sup>19</sup> Art. 117, par. 1, lett. r of the Constitution.

Since the nineties, the need for a unitary direction to improve innovation in the public sector was evident. In 1993 an Authority for Information Technology in the Public Administration (AIPA) was established<sup>20</sup>, which became in 2003 the National Center for IT in the Public Administration (CNIPA). From 1 January 2004, the CNIPA incorporated the Technical Center for the RUPA (Unitary Network of Public Administration).

In the years 2001-2006 a Minister for Innovation and Technologies was appointed, with authority for the coordination and direction of the Government policy in matters of development of ICT and, at the same time, set up a Department for the Innovation of Public Administration. In the years 2008-2011, the Innovation and Technologies Department was entrusted to the Minister for the Public Administration.

In 2009 CNIPA was transformed into DigitPA, a public body charged with design, technical and operational functions, and with the mission of contributing to the creation of value for citizens and businesses through the implementation of the digital administration.

Subsequently, within the framework of the strategies outlined by the European Digital Agenda, in 2012 the establishment of a “Control Room” for the implementation of the Italian Digital Agenda<sup>21</sup> was provided. The Agency for Digital Italy (AgID)<sup>22</sup> was also established, to support the implementation of the Digital Agenda and therefore to direct the innovative digital evolution. AgID took over the functions of DigitPA and the Innovation and Technologies Department.

In 2016, the “Control room” was replaced by an Extraordinary Commissioner for the implementation of the Digital Agenda, with operational coordination functions of public entities operating in the field of ICT<sup>23</sup>. The powers of the Extraordinary Commissioner were joined by a “Digital Transformation Team”, composed of selected experts also outside the public administration. The Commissioner and the Team ended their mandate in 2019.

In this long wake of reforms, lastly, a Minister for Innovation and Technologies was appointed to the new Government. At the same time, from 1 January 2020, the Department for Digital Transformation<sup>24</sup> was restored, as a general structure of the Prime Minister’s Office, aimed at ensuring, also through technological-interoperable architectural choices, the necessary operational coordination between the State administrations involved, in various capacities, in the pursuit of the Government’s objectives regarding innovation and digitalisation. The new Department makes use of the experts who already formed the Digital Transformation Team.

Despite the effort of continuous improvement and reorganization, the need to overcome the fragmentation and overlaps of governance in this field remains, given that other institution such as the Department of the Public Function, the Ministry of Economy and Finance, the Ministry for Economic Development, the AgID, the National Anti-Corruption Authority (A.N.AC.), the Guarantors for the protection of personal

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<sup>20</sup> In implementation of the Legislative Decree of 12 February 1993, no. 39.

<sup>21</sup> Art. 47 of the Law of 4 April 2012, no. 35.

<sup>22</sup> Law-Decree of 22 June 2012, no. 83.

<sup>23</sup> Legislative Decree no. 179 of 2016.

<sup>24</sup> Decree of the Prime Minister (d.P.C.M.) of 19 June 2019.

data continue to maintain relevant data coordination functions in their sectors of activity.

Recent reforms to the Digital Administration Code have required the conclusion of framework agreements in order to share data between certifying bodies, other public administrations and private individuals, in the absence of which the Government can intervene by establishing a deadline within which administrations they make the data available, accessible and usable. Failure to fulfil the obligation to share data is sanctioned as failure to achieve a specific result by the managers responsible for the structures and leads to reductions in the remuneration<sup>25</sup>.

For years the legislator has issued numerous tools to try to implement interoperability between public databases. At European level the Commission has established and periodically updates a European Interoperability Framework, as a commonly agreed approach to the delivery of European public services in an interoperable manner, which defines basic interoperability guidelines in the form of common principles, models and recommendations [3]. As it is not possible to review all the tools provided in specific sectors here (a focus on public procurement will be carried out in the following paragraph), we can however identify two main interoperability systems envisaged at a general organization level of public administrations by the Digital Administration Code.

From a technical point of view, the first infrastructure that addressed the interoperability needs was the RUPA, created by AIPA, later replaced by the Public Connectivity System (SPC) which defines both the enterprise architecture of the Italian PA (i.e. the reference system for linking inter-administrative operational processes with the information systems that support them) both the subsidiary, coordination and governance actions<sup>26</sup> [58,59]. It was further developed in 2016, when it was clarified in the Digital Administration Code that the SPC is established as a set of technological infrastructures and technical rules that ensures interoperability between the information systems of public administrations, allows the information and IT coordination of data between central administrations, regional and local and between them and the systems of the European Union and is open for accession by public service operators and private entities<sup>27</sup> [50].

The SPC is thus a tool aimed at overcoming the barriers between administrations, with a view to full decertification, to make it possible to fully share and acquire data ex officio: the law establishes that exchanges of IT documents carried out within the framework of the SPC, created through the application cooperation and in compliance with the related safety technical procedures and rules, constitute valid documentary transmission for all legal purposes<sup>28</sup>.

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<sup>25</sup> Art. 50, par. 2-ter, of the Legislative Decree no. 82 of 2005, introduced by the Law-Decree 19 May 2020, no. 34; Art. 50, par. 3-ter, of the Legislative Decree no. 82 of 2005, introduced by the Law-Decree 16 July 2020, no. 76, converted by Law 11 September 2020, no. 120.

<sup>26</sup> Introduced in the Digital Administration Code (Articles 72 et seq. of the Legislative Decree no. 82 of 2005) by the Legislative Decree of 4 April 2006, no. 159.

<sup>27</sup> Art. 73, par. 1, of the Legislative Decree no. 82 of 2005, as amended by the Legislative Decree no. 179 of 2016.

<sup>28</sup> Art. 76 of the Legislative Decree no. 82 of 2005.

A further important tool aimed at promoting the knowledge and use of the information assets held, for institutional purposes, by administrations and managers of public services, as well as for the sharing of data between the subjects who have the right to access it for the purpose of simplifying administrative requirements of citizens and businesses, is the National Digital Data Platform (PDND) governed by Art. 50-ter of the Digital Administration Code, recently reformulated by the Law-Decree for simplification and digital innovation<sup>29</sup>.

Promoted by the Prime Minister's Office, it consists of a technological infrastructure that makes it possible to interoperate information systems and public databases, through accreditation, identification and management of the authorization levels of the subjects authorized to operate on it, as well as the collection and storage of information relating to accesses and transactions made through it<sup>30</sup>. It was first developed by the Digital Transformation Team as Data and Analytics Framework (DAF); since 2019 it was entrusted to the new public company, PagoPA Spa<sup>31</sup>. The Department for Digital Transformation has the task of supervising the strategic objectives of the PagoPA company [60].

The new regulation provides that, in the first application phase, the PDND ensures priority interoperability with the information system of the Indicator of the Equivalent Economic Situation (ISEE), with the National Registry of the Resident Population (ANPR) and with the Revenue Agency databases. The AgID is in charge of adopting guidelines for the definition of technological standards and safety, accessibility, availability and interoperability criteria for platform management<sup>32</sup>.

The Law-Decree for simplification and digital innovation of 2020 has also introduced a National Data Strategy, to be adopted with a Decree of the Prime Minister, which identifies the types, limits, purposes and methods of making available aggregated and anonymised public data<sup>33</sup>.

## 5 The OOP in Public Procurement

The Digital Single Market Strategy for Europe launched by the European Commission in 2015 already indicated the need to apply the once-only principle in public procurement, which represents about 19% of the Union's GDP. Given the few and fragmented possibilities of contact between public administration, citizens and businesses, the Commission estimated the economies of scale brought about by the electronic reform

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<sup>29</sup> Art. 50-ter, par. 1 of the Legislative Decree no. 82 of 2005, as amended by the Law-Decree no. 76 of 2020.

<sup>30</sup> Art. 50-ter, par. 2 of the Legislative Decree no. 82 of 2005.

<sup>31</sup> Law-Decree of 14 December 2018, no. 135.

<sup>32</sup> Art. 50-ter, par. 2 of the Legislative Decree no. 82 of 2005, as amended by the Law-Decree no. 76 of 2020.

<sup>33</sup> Art. 50-ter, par. 4 of the Legislative Decree no. 82 of 2005, as amended by the Law-Decree no. 76 of 2020.

of public contracts at 50 billion euros per year. Therefore, the objectives of administrative simplification and efficiency by digitizing public procurement appear immediately closely related: “The Commission will present a new e-Government Action Plan 2016-2020 which will include (i) making the interconnection of business registers a reality by 2017, (ii) launching in 2016 an initiative with the Member States to pilot the ‘Once-Only’ principle; (iii) extending and integrating European and national portals to work towards a ‘Single Digital Gateway’ to create a user friendly information system for citizens and business and (iv) accelerating Member States’ transition towards full e-procurement and interoperable e-signatures” [5].

In this sense, the potential in terms of economic benefits of digitalisation of public administrations has been highlighted for a long time, if it is conceived not so much as a simple transposition of paper procedures into computerised (which would involve a mere transfer of the criticalities of the former in the latter), but as an opportunity to radically reorganize and simplify the same [34,53]: in particular the digitalisation of the public procurement sector [61,62] can play a strategic role for the economic and social increase especially in critical times, for instance capturing the effects of structural renewal of the impact of the Covid-19 emergency [63].

In addition, the OECD has suggested the digitalization of public procurement for numerous other reasons, in terms of improving efficiency, transparency and anti-corruption [64]. In particular, the OECD highlights the purposes of e-procurement to increase “transparency, facilitate access to public tenders, reduce direct interaction between procurement officials and companies, increasing outreach and competition, and allow for easier detection of irregularities and corruption, such as bid rigging schemes. The digitalisation of procurement processes strengthens internal anti-corruption controls and detection of integrity breaches, and it provides audit services trails that may facilitate investigation activities” [65].

With reference to cross-border trade, the once-only principle also appears as one of the main reasons for the European Union’s decision to establish a single digital gateway to reduce bureaucratic burdens towards all Member States, with the aim of simplifying administrative procedures for citizens and businesses within the single market [66,67]. Already the Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement referred at least implicitly to the OOP, providing for the establishment of the single European tender document [67].

With the Union Action Plan for e-Government 2016-2020, the Commission programmed to gradually introduce the ‘digital by default’ and ‘once-only’ principles, eInvoicing and eProcurement and to assess the implication of a possible implementation of the ‘no legacy’ (action no. 6); to launch a pilot on the once-only principle for business (action no. 13); to assess the possibility of applying the once-only principle for citizens in a cross-border context (action no. 18) [68].

At the beginning of 2020, the Italian Government has repeatedly stated that it intends to focus on the once-only principle for a strong simplification of bureaucracy in the post-emergency phase [69].

According to European Commission, “reliable data are essential to prepare appropriate policy responses. The digital transformation, the growing wealth of data in gen-

eral and the availability of open data standards offer opportunities to create better analytics for needs-driven policy-making and warning systems to signal and tackle corruption in public procurement. [...] Access to public procurement data should enable the dialogue with civil society and holds governments more accountable. [...] To this end, setting up publicly accessible contract registers is strongly recommended, providing transparency on awarded contracts and their amendments. [...] New digital technologies offer great opportunities to streamline and simplify the procurement process through the roll-out of electronic public procurement. [...] However, the full benefits of e-procurement will only be captured if the whole public procurement process undergoes digital transformation”. Its Communication on public procurement includes among the specific actions: new procurement standard forms to improve the collection of data; publicly accessible contract registers; implementation of the European Single Procurement Document, the once-only principle and electronic invoicing in the Member States [62].

In response to these European requests, the once-only principle was recently introduced in the Italian Public Contracts Code, which defines it as the principle according to which each data is provided only once to a single information system, and cannot be requested by other systems or databases, but is made available by the receiving information system. This principle applies to data relating to the planning of works, services and supplies, as well as to all the procedures for awarding and implementing public contracts subject to the Code, and to those excluded from it, in whole or in part, whenever reporting obligations to a database are imposed by the same Code<sup>34</sup>. From the linguistic point of view, the Council of State made some comments on the draft of this Decree, which initially reported the principle of “univocità” of sending data. It seemed preferable instead to refer to the principle of “unicità” of sending data, since it is a quantitative (one-time sending) and non-qualitative (sending data with unambiguous meaning) requirement for the dispatch [70]. This appears a logical consequence: evidently, in order to have unequivocal data, it is primarily essential to have a unique transmission of them.

The regulatory definition was introduced with the aim of significantly reducing the administrative burden for entities generally subject to the so-called “statistical harassment”, or to the uncoordinated request for data by various administrations [71], and therefore primarily to avoid duplication of mailings by the contracting authorities - especially for the officials responsible for the procedure - to whom a considerable amount of information and publication obligations are imposed for each award procedure started (and, for some kinds of contract) concluded and executed.

Unfortunately, today there is no complete and organic recognition of the information obligations imposed on the contracting authorities. The direct channel for sending data to A.N.AC. is SIMOG (Tender Monitoring Identification System) and SmartCIG (simplified channel for low-value contracts) [72]. At the same time, in absence of coordination between these two information systems, the publication of the data is mandatory

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<sup>34</sup> Art. 3, par. 1, lett. ggggg-bis of the Legislative Decree of 18 April 2016, no. 50, Public Contracts Code, added by Art. 4 of the Legislative Decree of 19 April 2017, no. 56.

(in part coinciding with those of SIMOG and SmartCIG) on the websites of the contracting authorities [73]. Other types of data must be transmitted to other central authorities such as the Ministry of Economy and Finance and the Ministry of Infrastructure and Transport. Recently A.N.AC. asked for a complete rationalization of the rules on administrative transparency in public contracts [54].

In order to prevent this principle from remaining a “chimera” [74] it is important, first of all, the complete digitization of the documentation relating to public contracts for the production, from the beginning of each procedure, of digital native data, which feeds the sector databases exhaustively and correctly. Numerous provisions of the Public Contracts Code already lay in this direction (Articles 44, 212 and Art. 213 which we will examine below)<sup>35</sup>, although they have not yet been fully implemented, in addition to the recent European Regulation which, starting from 2023, require the adoption of standard digital forms for the above-threshold assignments. The Recital no. 8 of this Regulation states that “notices are electronic files rather than paper documents. In order to comply with the ‘once only’ principle in e-government, and thus reduce administrative burden and increase data reliability, and to facilitate voluntary publication of notices whose value is below the EU threshold or which are based on framework agreements, such standard forms should be established that can be automatically filled-in with information from previous notices, technical specifications, tenders, contracts, national administrative registries and other sources of data. Ultimately, such forms should no longer need to be filled-in manually, but should be automatically generated by software systems” [75]. The goal, recalled by the National Anti-Corruption Authority, is therefore to achieve an automatic interconnection between all the publication platforms of the documents (European, national and of the individual contracting authorities) and the central databases [54].

Since 2010 the National Public Contracts Database (BDNCP), managed by A.N.AC., was established as a specific tool for interoperability in this sector<sup>36</sup>. The

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<sup>35</sup> Art. 44 of the Legislative Decree no. 50 of 2016 states that within one year from the date of entry into force of the same Decree, by Decree of the Minister for Simplification and Public Administration, in consultation with the Minister of Infrastructure and Transport and the Minister of Economy and Finance, after consulting the Agency for Digital Italy (AGID) as well as the Privacy Authority, the procedures for digitizing the procedures of all public contracts should have been defined, also through the interconnection for interoperability of data of public administrations. Best practices should also be defined regarding organizational and work methodologies, programming and planning methodologies, also referring to the identification of relevant data, their collection, management and processing, IT, telematic and technological support solutions. Art. 212, par. 1, lett. d, of the same Decree orders the creation of a control body in the Prime Minister’s Office to promote the creation, in collaboration with the competent subjects, of a national plan on the subject of electronic purchase procedures, in order to spread the use of IT tools and to digitize the stages of the purchase process.

<sup>36</sup> Art. 62-bis of the Legislative Decree no. 82 of 2005, added by Art. 44 of the Legislative Decree of 30 December 2010, no. 235 introduced the National Public Contracts Database (BDNCP) managed by the National Anti-corruption Authority, to facilitate the reduction of administrative burdens deriving from information obligations and to ensure the effectiveness, transparency and real-time control of administrative action for the allocation of public expenditure on



institutional purpose of BDNCP [76] is indicated in the collection of all the data relating to public contracts contained in the existing databases, also at a territorial level, in order to guarantee unified accessibility, transparency, publicity and traceability of the tender procedures and their preparatory and subsequent phases<sup>37</sup>.

For public works, the law also provides for the conclusion of agreements between the public entities managing databases on how to collect and exchange information, to ensure compliance with the once-only principle and reducing administrative burdens<sup>38</sup>. In implementation of the Decree, A.N.AC. and the Ministry of Economy and Finance concluded a Framework Agreement on 19 December 2018 for the exchange of knowledge, data, analysis methodologies and good practices and for the full deployment of institutional synergies.

Since the establishment of the new National Anti-Corruption Authority in 2014, the management and analysis of the databases it owns has appeared among its most important functions for the prevention and contrast of corruption and the promotion of efficiency [77,78,79,80]. On 18 October 2018 the BNDPC won the first prize in the Better Governance through Procurement Digitalization competition, National Contract Register category, having successfully assessed its scope, given that “there are essentially no value thresholds for being included” and its interoperability with other systems: “6 different systems send data to the Italian contract register and 10 systems take data from the contract register and use it elsewhere” [81]. Moreover, some criticisms of the setting up and management of the same database have been raised, especially from the point of view of accessibility to its data, but also of the lack of coordination with other information systems [82].

The Digital Administration Code places the BDNCP among the Databases of National Interest<sup>39</sup>, unitary information systems that consider the different institutional and territorial levels and that guarantee the alignment of information and access to the same by public administrations concerned. These information systems must adhere to the

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works, services and supplies, also in order to respect legality and the correct action of the public administration and to prevent corruption.

<sup>37</sup> Art. 213, par. 8, of the Legislative Decree no. 50 of 2016.

<sup>38</sup> Art. 213, par. 8, of the Legislative Decree no. 50 of 2016 lays down for public works that A.N.AC., the Ministry of Economy and Finance and the Ministry of Infrastructure and Transport, the Prime Minister’s Office and the Regions and Autonomous Provinces as managers of the computerized systems referred to in Art. 29, par. 4 of the same Decree conclude an agreement on the methods for collecting and exchanging information within the National Public Contracts Database and other relevant databases, in order to ensure compliance with the once-only principle and the reduction of administrative burdens for the effective monitoring from planning to construction of the works and the traceability of the related financial flows or the agreement of the fulfilments in terms of preventive transparency. It also states that, without prejudice to the autonomy of the National Database of Economic Operators referred to in Art. 81 of the same Code, A.N.AC. and the Ministry of Infrastructure and Transport agree on the methods for exchanging information to guarantee the function of preventing corruption and protecting the legality of the Authority and at the same time avoid overlapping of competences and optimize the use of data in the interest of the use of the same by businesses and contracting authorities.

<sup>39</sup> Art. 60, par. 3-bis, lett. c of the Legislative Decree no. 82 of 2005.

minimum characteristics of security, accessibility and interoperability<sup>40</sup>. The information contained therein must be made available by the administrations that manage it according to the safety and management standards and criteria defined in the Guidelines, also through the National Digital Data Platform (PDND)<sup>41</sup>. According to scholars, the organizational rules on Databases of National Interest, although of a sectorial nature and above all referring to the central administration, represent the first and most relevant nucleus of provisions that pertain to the constitutional principle of IT coordination [56].

In this context, the once-only principle refers to the exchange of data especially between administrations, in order to simplify the flow of information that contracting authorities must send to the various agencies responsible for controlling and monitoring public procurement. In the absence of a total centralization of the cognitive function of the State - the Regions and autonomous Provinces, maintain the competence of monitoring the planning, entrusting and execution of contracts of regional importance or territorial entities<sup>42</sup> - as mentioned, coordination is essential and therefore interoperability between local and central databases<sup>43</sup>.

For this reason the Public Contracts Code provides that between A.N.AC., the Ministry of Economy and Finance, the Ministry of Infrastructure and Transport and the Conference of Regions and Autonomous Provinces a general protocol is concluded to define the interoperability rules and the methods for exchanging data and documents between the respective databases, in compliance with the once-only principle<sup>44</sup>. The Protocol has not yet been adopted, although the desire to collaborate has been expressed in order to rationalize and simplify the obligations within the Conference of Regions and Autonomous Provinces [83]. The major problems of the system of regional observatories on public contracts have been recently highlighted by A.N.AC. [54].

The law entrusts A.N.AC. with the important role of coordinating data: on the one hand, the Authority has to identify information on the public procurement subject to the

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<sup>40</sup> Art. 60, par. 2 of the Legislative Decree no. 82 of 2005.

<sup>41</sup> Art. 60, par. 2-bis of the Legislative Decree no. 82 of 2005, as amended by the Law-Decree no. 76 of 2020.

<sup>42</sup> Art. 29, par. 3 of the Legislative Decree no. 50 of 2016.

<sup>43</sup> Art. 29, par. 4 of the Legislative Decree no. 50 of 2016, according to which for contracts and public investments of local or regional competence, the contracting authorities provide for the fulfilment of the information and advertising obligations set out in the same Decree, through the regional computerized systems and the e-procurement telematic platforms interconnected to them, ensuring the exchange of information and interoperability, with the databases of A.N.AC., the Ministry of Economy and Finance and the Ministry of Infrastructure and Transport.

<sup>44</sup> Art. 29, par. 4-bis of the Legislative Decree no. 50 of 2016.

publication obligation and the related transmission methods pursuant to the anti-corruption legislation<sup>45</sup> and Public Contracts Code<sup>46</sup>; on the other hand, it defines the functioning of the Observatory for public contracts, as well as the mandatory information, terms and forms of communication that contracting authorities and contracting entities are required to transmit<sup>47</sup>.

In exercising these responsibilities, A.N.AC. asked the legislator, in order to avoid overlapping of information burdens on the contracting authorities and to homogenize the system for acquiring information data from the BDNCP, considering that much of the information relating to the contractual changes referred to in Art. 106 of the Legislative Decree no. 50 of 2016 are already acquired by the Public Contracts Observatory pursuant to Art. 213, par. 9 of the same Code, to replace the precise indications on how to communicate such data and related documents<sup>48</sup>. This is to allow the same Authority to indicate the relevant information and the related transmission methods, in order to better organize the information flows with a view to complete digitalization and to manage the supervision of the variants in a more efficient manner by requiring only the transmission of the data necessary to process certain anomaly indices [84]. Further proposals for simplification and coordination of legislation addressed to Parliament and Government have been formulated by A.N.AC after the Covid-19 emergency [54].

Parallel to the BDNCP, the Public Contracts Code also establishes the National Economic Operators Database (BDOE) as an information tool which, if operational, would constitute a significant concentration of data in order to simplify and significantly reduce the time required to verify the requirements of the economic operators participating in the tender procedures<sup>49</sup>. Since this Code rule has never been implemented, various hypotheses have been put forward for the relaunch of the previous information

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<sup>45</sup> Art. 1, par. 32 of the Law of 6 November 2012, no. 190 states that with reference to every public procurement procedure, the contracting authorities are required to publish on their institutional websites: the proposing structure; the subject of the call; the list of operators invited to submit offers; the contractor; the award amount; the completion times of the work, service or supply; the amount of the amounts paid. Administrations transmit this information in digital format to A.N.AC., which publishes them on its website in a section freely with - available to all citizens, catalogued according to the type of contracting authority and by region. The Authority identifies with its resolution the relevant information and the related transmission methods.

<sup>46</sup> According to the art. 29, par. 1 of Legislative Decree no. 50 of 2016, all the documents of the contracting authorities relating to the planning of works, services and supplies, as well as to the procedures for the award of public service contracts, supplies and works, public planning competitions, ideas and concessions, must be published and updated on the profile of the client, in the "Transparent Administration" section with the application of the provisions of Legislative Decree 14 March 2013, no. 33.

<sup>47</sup> Art. 213, par. 9 of Legislative Decree no. 50 of 2016.

<sup>48</sup> Art. 106, par. 8 and par. 14.

<sup>49</sup> Art. 81, par. 1 of Legislative Decree no. 50 of 2016 provides that the documentation proving the possession of the general, technical-professional and economic and financial requirements, for participation in the public procurement procedures and for the control during the execution of the contract of the permanence of these requirements, is acquired exclusively

management system for the documentation relating to the qualification of economic operators (AVCpass, held transiently by A.N.AC.<sup>50</sup>) [85], in order to achieve the automatic acquisition of proof documents with important benefits in terms of speed, efficiency of procedures and once-only principle for companies and contracting authorities [53,54].

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through the centralized database managed by the Ministry of Infrastructure and Transport, called the National Economic Operators Database.

<sup>50</sup> Art. 216, par. 13 of Legislative Decree no. 50 of 2016 and Art. 6-bis of the Legislative Decree no. 163 of April 12, 2016 which provided that from 1 July 2014, the documentation proving the possession of the general, technical-organizational and economic-financial requirements for participation in the public procurement procedures has been acquired exclusively through the National Public Contracts Database.

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