



*Preventing corruption
through administrative measures*

Handbook edited by Enrico Carloni
in collaboration with Diletta Paoletti

Preface by Raffaele Cantone

Morlacchi Editore *U.P.*

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*. This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

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The role of computerization in efficiency and impartiality

Introduction. A strategic and conscious innovation towards efficiency and impartiality

Over the last twenty years, studies on Administration and its reforms were aimed at starting a new modernization process in order to make the change in Administration adequate and consistent with that taking place in the society of the country. A path that was unraveled around a red thread: the aspiration to efficiency and cost-effectiveness.

This meant that law-makers focused on digital administration and on the added value represented by the use of technologies to achieve a modernization of the administrative apparatus thanks to its reorganization in the logic of cooperative coordination on the one hand, and the simplification of procedures and the rationalization of processes on the other hand, also by using computer files and the interoperability among administrations. In a word, we gradually identified the way to achieve simplification, transparency, security and accountability in the systemic application of ICTs to public administration (with its twofold face of both organization and activity, just like the god Janus).

In 2005, Italian Legislative Decree No. 82 approved the Digital Administration Code to implement the ‘rules’¹. But, as Horace taught us in his Odes², law per se cannot determine the application of the precepts contained in it. It is necessary for man to make his own law and respect it. This implies several critical issues. First of all, the idea that ‘administration’ and ‘digital administration’ are two distinct subjects, not the same one to which mandatory apply the new rules. Secondly, the contextualization of the law

1. In *Lo Stato del digitale, Come l'Italia può recuperare la leadership in Europa* (The State of the digital, how Italy can regain its leadership in Europe, TN), Marsilio, Venezia, 2014, p.41, F. Caio has defined the DAC ‘a sort of Constitution of how to digitize Public Administration, a tool that is well structured, but often ignored by law-makers’.

2. Quintus Horatius Flaccus, *Odi ed Epodi*, edited by G. Zanghieri, Led on line, 2006, The odes, III, 24, p. 169. ‘What can laws, that needs must fail shorn of the aid of manners form’d within.’

through key words of the project, i.e. ‘change’ and ‘innovation’, which are often repeated without being filled with any content. We must add another criticality to this one, which is probably the most relevant: as per the implementation, we believed that applying new instruments to old models could be enough to induce change by opening up to new processes³.

That it is not how it works and so it did not. This is the reason why the issue of the reform of administration along with its weaknesses appears again years later cyclically. That it is why every new government⁴ takes into account the opportunities – also in terms of growth – offered by e-government, as well the reorganization of public IT⁵.

We often disregarded what had already been done and what still remains to do based on the assessment of the dynamics and results. Instead, we started the process again in order to claim its paternity. Therefore we exacerbated the winding road towards computerization.

Now, however, it is necessary to admit that in this process of re-engineering and change of Administration in favor of a new, open, simplified and transparent relationship with the citizen, we have underestimated the critical effect caused by a dynamism not aimed at reconsidering and therefore redefining the models of a digital administration and that took into account only one side of the problem instead.

3. In line with this consideration and the subsequent critical approach, see Linnefell, W., A. Hallin e M. Lagergren, E-government Policy Formation – Understanding the roles of change drivers, veto players and advocacy coalitions, *Electronic Journal of e- Government*, 2014, Volume 12, Issue 2, pp. 131-141.

4. In 2002, in *Public information technology, e-government and sustainable development*, in the Italian journal of European public law, v.5, p. 1099, M. Bombardelli made some proper reflections on how often it is inevitable to verify that the interest of the policy makers in individual administrations for e-government are translated into statements of principle which are not followed by the necessary concrete actions to implement them. It is hard to see that this consideration is still contemporary after so long.

5. The debate on e-government, from its definition and the criteria to refer to for its qualification (see OECD, *The e-Government Imperative, e-Government Studies*, OECD, Paris., 2003), to its emancipation or not as independent discipline (Heeks, R., e S. Bailur, *Analysing e-Government Research: Perspectives, Philosophies, Theories, Methods and Practice*, e-Government Working Paper Series, 2006, No. 16; as well as Hu, G., W. Pan, M. Lu e J. Wang, *The widely shared definition of e-Government: An exploratory study*, The Electronic Library, 2009, Vol. 27, Issue 6, pp. 968 – 985), it has been and still is subject of great attention in literature. For a general reconstructive introduction about this topic, see Grönlund, Å. and T.A. Horan, *Introducing e-Gov: History, Definitions, and Issues*, Communications of the Association for Information Systems, 2005, Vol. 15, Article 39.

Thus IT has been considered as the final aim because of its potentials as mere tool⁶ to be applied to unaltered bureaucratic processes within a static organizational framework, whose staff has not been involved in dedicated and innovative training programs.

This way of proceeding – although pursuing a positive and declared intent –, of being willing to reform the PA and to foster the transition towards a digital administration, presented some strengths as it wanted to contribute to better quality services, reduce the waiting times, limit the costs, increase productivity and better identify responsibilities. However, it was hard to implement it, and in parallel it caused a digital divide⁷, both within and outside the Administration. Another consequence of this is the use of the double channel, the paper and the digital one⁸, something redundant and cumbersome, not in line with an overall strategic governance, the expression of a conscious reconsideration of Administration.

6. Interesting assessments on the potentials of ICTs expressed in 2003 by P. Zocchi in *Il digital divide globale* (The global digital divide, TN) contained in Buongiovanni A., Marzano F., Tesi E., Zocchi P., “*Digital Divide: la nuova frontiera dello sviluppo globale*” (The global digital divide: the new frontier of global development, TN), Milano 2003, Franco Angeli ed., in which he notes that “...Information and Communication Technologies today have the strength of a different pattern, an alternative one, almost a revolutionary one, not only compared to the technologies of the past, but also regarding to the form and organization of our society as we know it.” If this is undeniably true, today we cannot but consider that paradoxically are the very same great potentials of these new tools to hinder change.

7. Again P. Zocchi, *The global digital divide*, cited above, correctly observes that acting against (and preventing, I would add), ‘the digital divide does not only mean to support the development of the digital components within the society, but also to relate virtuously the technological development to the one of the society as a whole.’ Allow me also to refer to P. Piras, *The digital divide*, Conference proceedings ‘Legal tools for e-government in Europe’, Caserta (Italy) 20-22 November 2003, at <http://www.teleamministrazione.it>; as well as to P. Piras, *Organization, technologies and new rights*, in “Information and information technology law”, 2005, p. 591.

8. In 2001 Fountain J.E., *Paradoxes of Public sector Customer service*, Governance: An International Journal of Policy and Administration, Vol. 14, No. 1, January, pp. 55-73, justified the double channel based on the assumption that the presence of users without any digital skill or with no access to computers imposes to the public sector to guarantee the provision of services, even if this means to keep traditional communication channels open in parallel to those online that have been developed in the meantime. See the more recent IDEM, *On the Effects of e-Government on Political Institutions*, Contribution in: D. L. Kleinman and K. Moore (eds.), Routledge Handbook of Science, Technology and Society, 2014, Routledge.

1. *The reorganization of public administrations and the open government model*

The actions implemented for a long time revealed the inadequacy of the paths already followed and aimed at affecting computerization only, regardless of the overall organization, insofar as the former imposes inevitably a radical change of the latter, and the latter is instrumental to the activity.

Therefore, if technological innovation of Public Administration is an essential prerequisite for the efficiency, the efficacy and the cost-effectiveness of the public action, the added value to achieve a real and full digitalization of administrative procedures is clear in an overall context of reappraisal⁹. The latter is also an organizational one, and should be developed after having considered the resistance to change often expressed by public bureaucracy and in the light of an assessment of the criticalities at the different levels of e-government¹⁰, which so far have affected also public administrations, and that obviously cannot be simply meant as functional to the mere provision of online services¹¹.

Although aware of the value of online services, of the importance to shift the attention from accessibility – meant as mere quantity – to quality and to

9. About the criticalities resulting from a mere transposition of the procedures on computer models, diffusely Zouridis, S., and M. Thaens, *E-Government: Towards a Public Administration Approach*, Asian Journal of Public Administration, 2003, Vol. 25, No. 2, December, pp. 159- 183; as well as Beynon-Davies, P., *Models for e-government*, Transforming Government: People, Process and Policy, 2007, Vol. 1, Issue 1, pp. 7 – 28.

10. Plans which erroneously have adopted in a plain way the assumption that the application of the IT tool per se would have led to modernization and change. Critically, Bonina, C.M. and A. Cordella, *The new public management, e-government and the notion of public value: lessons from Mexico*, Proceedings of SIG Glob Dev's First Annual Workshop, Paris, 2008, December 13th.

11. The annual US report on e-government (<https://publicadministration.un.org/egovkb/en-us/Reports/UN-E-Government-Survey-2016>) strongly emphasizes the provision of online services by the State and its positive effects. However, this does not mean that the state of implementation of e-government processes can be considered directly proportional nor overlapping to the quantity of access to online services (public or non-public) provided. So much so that from the data of the Digital Economy and Society Index published on May 19, 2016 (<https://ec.europa.eu/digital-single-market/en/news/2016-i-desi-report>), in which Italy registered positive figures as for digital services provided by Public Administration, even though only 18% of users make use of them. This despite the fact that Italy did not reach good results in the digital society, as it ranked among the last in the European ranking (it was ranked 25th out of 28 countries, while in 2015 it was ranked 24th). Although its performance is still not as good as that of the whole EU, Italy is among those countries which are recovering the delay, i.e. among those countries whose score has increased more rapidly than that of the overall EU. In fact, despite being below the EU average compared to the data of DESI 2015, the last year it registered progresses which approached it to the EU average.

the identification of the essential levels, there is the need to guarantee that the provision modes are compatible with the enjoyment of the rights pursuant to the equality principle stated in art. 3 of the Italian Constitution¹².

Public administration has a dual role. On the one hand is affected by external dynamics, while on the other it provides new stimuli to relations with citizens to whom it provides services and with whom it communicates. Over the last years being aware of this has allowed the reorganization of public administrations and their modernization took into account open government policies based on transparency¹³ and participation aimed at enhancing the role of active citizens also in relation to modernization and the use of information technologies.

Despite this, a study by the Bank of Italy¹⁴ of February 2016 has highlighted a still unsatisfactory implementation of change in Italy, ‘...with a prevailing percentage of citizens and an important share of companies that usually interact with the Public Administration through direct contact at the counter¹⁵, maybe for the reasons outlined above – but not only.

12. About this, diffusely, E. Carloni, *The provision of public services online*, Report presented at the LUISS- CNIPA seminar, ‘From e-government to e-administration’, in Rome at Centro Bachelet, 9 February 2006, available at <http://www.astrid-online.it/amministrazione-pubblica/e-governme/index.html>. See also G. Cammarota, *L'erogazione on line di servizi pubblici burocratici* (*The provision of bureaucratic public services online, TN*), in *Informatica e diritto*, vol. XI, 2002, pp. 45-82. It goes without saying that inequalities in new technologies only mirror the inequalities already present in the society, sometimes in an amplified way. In order to remove them, actions aimed at guaranteeing accessibility to the Internet are not enough, instead policies to support and stimulate the use of digital technologies are needed. See also Sartori L., *Il divario digitale. Internet e le nuove disuguaglianze sociali* (*The digital divide. The Internet and the new social inequalities, TN*), Bologna, Il Mulino, 2006.

13. Hoped for by F. Turati since 1908 as philosophy of public administration, Proceedings of the Chamber of Deputies, 17 June 1908.

14. Arpaia, Ferro, Giuizio, Ivaldi, Monacelli, *L'e-government in Italia: situazione attuale, problemi e prospettive* (*E-government in Italy: current situation, problems and prospects, TN*), QEF (occasional papers) Bank of Italy, No. 309, February 2016, p. 32.

15. IDEM, work cited, in which it is stated that ‘The studies carried out have shown deficiencies as for citizens in the demand of online services related to a lack of digital culture and to a low propensity to use the Internet in general. On the other hand, as for companies, they seem to indicate a greater responsibility for delays in public administration regarding the offers of e-gov: companies – especially larger ones – compared to the EU average, on the whole show a relative ‘digital maturity’ and they seem to be more prepared and receptive to the innovations offered by an e-gov present and efficient.

2. From the DAC to the 'new' DAC towards... a 'future' DAC?

Then, one wonders if today digital administration exists and where it is, and why we insist on connoting administration as such, without recognizing that at present it is the only possible one.

The processes and the organization of an administration which wants to mirror the dynamism of society, as well as being transparent, open and simplified, able to relate to citizens with due regard to the principles of participatory democracy, can only be computerized.

But, if we have a look at the 'life' of the Digital Administration Code, we cannot help but notice how the principles contained in it are deeply disregarded; how and how many times from 2005 to today, it has been necessary to amend it before the approval of Italian Legislative Decree no. 179/2016 (entered into force on 14 September 2016), which proposes to rewrite it based on the proxy provided by Law 124/2015 (and on the principles of Regulation No. 910/2014 of the European Parliament and of the Council¹⁶) defined as 'one of the most ambitious actions that the legislator has pursued in recent times'¹⁷ and which radically reorganizes public administrations.

Therefore, we cannot help but wonder why when it was enacted they felt the need to surprisingly announce the imminent adoption of a 'future' DAC, different from the 'new' one that had been just issued, resulting from the stratification of subsequent interventions with an emendative character although radically rethought.

A Code that by going beyond the New Public Management model would match the *Digital Era Government model* consistently¹⁸, as wished for in the

16. Reference to Regulation No. 910 of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market.

17. In L. Vandelli, *La riorganizzazione delle amministrazioni pubbliche* (The reorganization of public administrations, NT), Astrid on line 2016; B. G. Mattarella, *Il contesto e gli obiettivi della riforma* (The context and the objectives of the reform, NT), *Il giornale di diritto amministrativo*, n.5/2015 p. 621, it is defined as 'an extraordinary maintenance law'.

18. P. Dunleavy, H. Margetts, S. Bastow, J. Tinkler, *New Public Management is Dead-Long live Digital –Era-Government*, *Journal of Public Administration Research and Theory*, September 8, 2005; P. Dunleavy, *The globalization of public services production: Can government be "best in world"?* *Public Policy and Administration* 9 (2): 16–46, 1997; Zhiyuan Fang, *E-government in Digital Era: Concept, Practice, and Development*, in *International Journal of The Computer, The Internet and Management*, Vol. 10, No.2, 2002, p 1-22; Fishenden Jerry and Thompson Mark *Digital Government, Open Architecture, and Innovation: Why Public Sector IT Will Never Be the Same Again*, *Journal of Public Administration Research and Theory*, 2013, 23(4) pp.977- 1004; Dunleavy Patrick, Margetts Helen, Z. Tinkler, Jane, Bastow Simon, *Digital-era Governance: IT Corporations, the State and e-Government*, 2006. Oxford: Oxford University Press.

OECD report of 2014¹⁹, focused on an overall revision of the processes, functional to the full participation of citizens.

Actually at present the sixth version of the Code approved by Legislative Decree 217 of 13 December 2017 and entered into force on 26 January 2018, does not radically rewrite the previous version, but once again it proceeds by successive stratifications and intervenes to amend in order to integrate and correct Legislative Decree 179/2016.

We must remember that Art. 1 of Law No. 124/2015 – the so-called Madia reform – labeled as Charter of digital citizenship, guarantees citizens and companies the right to access data, documents and services they need, also through ICTs, in digital mode. It also gives the Government the power to adopt decrees to reform, amend and integrate the DAC. Moreover, it identifies many directive criteria, among others the simplification of procedures; the definition of instruments to establish the minimum standard of security, quality, availability and timing of online services; as well as the single authentication through the Public Digital Identity System (SPID); the access and reuse; the participation in decision-making processes of public institutions through digital tools. Implementing decree No. 179/2016, approved by the Italian government in line with the proxy received, implementing the principles of good performance contained in Art. 97 of the Italian Constitution, and of good administration contained in Art. 41 of the European Charter of Rights, rejected the DAC reform through a path that can be summarized in three main points:

- The overcoming of the technological backwardness through actions aimed at ‘fostering the digital culture among citizens with particular regard to minors and categories at risk of exclusion, also to foster the development of legal information technology skills and the use of digital services offered by public administrations with specific and concrete actions, by using a set of different means, including radio and television services (Art. 8, still amended today).
- The definition of the contents of digital citizenship: generalization of the right to use technologies for public administrations and state-owned enterprises (Art. 3); introduction of the possibility for citizens to choose a digital domicile for the communications and notifications by public administrations and state-owned enterprises (Art. 5 bis); the right to make any payment using electronic payment systems (Art. 5); electronic democratic participation (art. 9); the possibility to

19. OECD Council on 15 July 2014 [C(2014)88, available at <http://www.oecd.org/gov/digital-government/Recommendation-digital-government-strategies.pdf>.

contact the ombudsman responsible of the digital sector established pursuant to Art. 17, section 1 quater; the establishment of the permanent Conference for technological development at the premises of the Italian Council of Ministers, as an open system of participation to which submit the proposal of rules and administrative acts likely to affect the subjects regulated by the DAC (Art. 18).

- The start of a process regarding the management and structural reorganization of public administrations (Artt. 12-13) based on technical rules referred to in Articles 15 and 71, but not better specified, aimed at guaranteeing the ‘transition’ to the digital operative mode, pursuant to Art. 17.

All the points referred to have been revised by Legislative Decree 217/2017, which amended the DAC implementing Art. 1, approved as a preliminary item on 8 September 2017 and then definitively on 11 December 2017.

These considerations and the analysis of the text encourage some reflections.

First of all, if we consider that the first draft of the Digital Administration Code dates back to 2005, it is justified to feel a sense of amazement at the persistence to the reference to the ‘transaction’ from the paper format to the digital one, after 11 years, and it is a clear sign of the failure of the reform started then.

Secondly, on the basis of what has emerged so far, we can summarize briefly the main weaknesses of the current amendment of the DAC in macro categories. First of all, the persistent recourse to the instrument of the so-called ‘announcement’, and the deferment to future technical rules by AGID (the agency for making Italy digital), whose issuance strongly influences the implementation of the Code, beyond the good intentions and statements of principle contained in it.

Even today, in its recently approved version, technical rules are envisaged, although they are contained in AGID’s guidelines, with the aim of favoring a more agile and flexible regulation. These rules will come into force as soon as they are published online, encouraging the timing of their application.

But, from the substantive point of view, the criticality of the content of art. 71 still remains. In particular, as for the implementation of Chapter II on electronic documents and electronic signatures; of Chapter III on the making, management and storage of electronic documents; of Chapter IV on the electronic sending of the documents and of Chapter IV on the data of public administrations and online services.

This has led some to reiterate that after the DAC it is necessary to make the digital PA²⁰.

Thirdly, the persistent reference to the invariance of spending and to the impossibility to introduce new burdens on public finance, even though in such an ambitious reorganizational context.

Law-makers imagine to start a revolution aimed at training qualified managers, with legal information technology skills, and they also aim to give life to a real digital citizenship. However, they unrealistically foresee to be able to disregard any investment.

Miele²¹, in a path revised also by Cassese, when designing the administrative function and explaining its organization, represented a circular process which, starting from the function to be pursued and the objectives underlying the action, quantified the human, financial and instrumental resources required and then observed the subsequent dynamic profile, represented by the activity. According to him, a different path would have resulted in a dysfunction. Looking back, thinking about the Masters' thought, we are led to the fourth point: the staff. In the light of the above, in fact, a reform project of such wide scope requires qualified staff, aware of being the engine of change. Therefore they do not only need to be trained with IT skills, but they should become the expression of a true digital culture. Exactly as already stated, from a formal point of view, in a way expressed by the combined provisions of Articles 8 and 13 of Legislative Decree No. 179/2016 and today included in the corrective and reiterated in Article 9 with regard to electronic democratic participation. To achieve this result, investments are needed also in terms of people, in their training, in their growth, as a 'new administration' necessarily passes through 'new and greater competences'. All this is missing today, or at least it is hidden behind a veil. It is not found in its substantial dimension in the 'new' Code strictly anchored to the logics of spending review, typical of the reforms of the last five years. It is therefore legitimate to ask oneself what is the state of the art towards digital administration: if we still should search for it 'with the lamp'²²; if the path is completed or if we should recognize that we

20. A. Longo, forumpa, leading article on the DAC.

21. G. Miele, entry *Funzione pubblica* (Public function, TN), in Noviss. Dig. it., 1961.

22. The paraphrase is referred to Diogenes the Cynic who used to wander with his lamp on his quest for finding man, not meant as a human being, rather the one who really had the features required to man. The lamp helps us to find a virtuous model of digital administration in the example provided by the Italian National Institute for Insurance against Workplace Accidents and Occupational Disease (INAIL) since 2012, when a strategic plan for the computerization of services was approved. See seminar ASTRID 2016.

are still in front of its mere enunciation, without having provided the actual tools to implement it.

3. *The good performance of the 'new' Digital Administration or of the native Digital Administration?*

The path followed so far leads us to believe that the road may and should be different and that computerization can be a good instrument for the good performance of Public Administration. However, it should not be constrained by the grip of making it efficient in terms of saving public resources, but it rather should be efficient making the administrative action punctual, as M. Nigro²³ would put it.

Talking about innovation of Public Administration today means making progresses forward, reinventing it concretely, from inside, reconsidering rules and processes, and from outside, in the relations with the citizens, in a dimension that goes beyond the current simplification of the processes, the provision of online services and transparency in the exercise of power. In order to make computerization real, investments are required. Changing means to look at Administration with a critical awareness, to imagine it as 'digital native'. Now, however, it is clear that being a digital native in its true sense cannot be applied to administrations simply, as they are historical existing bodies, therefore they existed before the digital era. Thus, we can assume a different analysis for them. It should be organ-oriented and not institution-oriented; individually-oriented and focused on single processes linked to the public organizational culture. In this way we can try to grasp how the organ and the digital native physical person affect the overall administration context and, based on the identification with the organ, we can understand what are the consequences in terms of administrative processes – both internal and external – after being 'projected' in the digital native dimension. Apart from the example provided by some virtuous models of computerization experiences already implemented in local administrations, i.e. online services offered by public transports (in this regard, the Municipality of Cagliari ranks first in a national ranking) or in the global reorganizational one of the Italian National Institute for Insurance against Workplace Accidents and Occupational Disease, INAIL, or in the definition of functional platforms for the IT management of administrative procedures, also to standardize them and foster cooperation among adminis-

23. M.Nigro, *Studi sulla funzione organizzatrice della pubblica amministrazione* (Studies on the organizational function of public administration, TN), Milano, Giuffrè, 1966, pp.66, 84.

trations. We can assert that the ‘substantial’ making of the digital, consistent with the modernization needs, which goes beyond the statement of principle expressed in the digital first and set as the priority objective of the reform, cannot be limited to the transposition of the new instruments on old models. Figuratively, we can say that designing the ‘new online home’ for those citizens who communicate with the PA is not enough, once we laid the foundations we must build it. We must pass from the blueprint to the actual building. We must raise the walls.

It is not enough to provide a more precise definition of digital domicile in line with the European and national legislations; reconsidering the establishment of the digital ombudsman as a central figure with mere moral suasion powers over non-compliant administrations; creating a national platform of public data, managed by the Italian National Institute of Statistics, ISTAT, to enhance the information assets held by the administrations or to include fundings for local administrations to be invested in the actions of the three-year IT plan.

It is essential to leave the past behind and to impose the abandonment of the dual channel in favor of the digital one only, setting the latter to respect the new rights and procedures, reconsidered and designed according to a different procedural engineering logic.

This is the only way to reach a turning point based on a renewed pact between citizens and public powers and, quoting Robert Frost²⁴ (*The road not taken*, Mountain Interval, NY, Henry Holt and Company, 1916), we will be able to say:

‘Two roads diverged... And... sorry I could not travel both and be one traveler, long I stood... Then took the other, as just as fair, and having perhaps the better claim... Oh, I kept the first for another day! Yet knowing how way leads on to way, I doubted if I should ever come back... I took the one less traveled by, and that has made all the difference.’

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24. R. Frost, *The road not taken*, Mountain Interval, NY, Henry Holt and Company, 1916.

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