

# e-Health as a Multilevel Public Policy\*

Elena di Carpegna Brivio

(Assistant Professor of Public Law at University of Milan-Bicocca)

---

**ABSTRACT.** The pandemic has highlighted how public organizations must increasingly abandon the logic of rigid attributions of competence to embrace instead the effective pursuit of public policies. In this regard, e-Health represents a particularly significant case, because it sees specific goals set by the European Union be implemented by Regions and Municipalities, while the State assumes the role of facilitator and coordinator.

---

## 1. A new season for Public Law

### 1.1. Less separation of competencies, more public policies

The Coronavirus pandemic has radically changed the development of public policies. The emergency has exposed an institutional framework that, previously, was difficult to perceive beneath the legislative model. While social distancing was depriving society of all the connections that spontaneously animate the development of a community, it became clear how unrealistic it was to think of public action starting from abstract lists of competencies. Instead, it emerged how necessary it is to set service goals and then go looking for the institutional actors that could rebuild the post-pandemic world on a solid foundation.

Legal scholars witnessed the first phase of the emergency, emphasizing how much the grounding concepts of their discipline struggled to adapt to the fast-moving new reality. Today, however, it is evident how the emergency has opened up a new phase that could permanently influence how political institutions deal with the problems of their communities. In particular, it is now evident the importance of crossing all the institutional and territorial separation of competencies to effectively care for the new needs of the population.

This essay aims to highlight how the driving force behind this transformation has been the European Union, which has addressed the pandemic emergency by defining a series of new goals that, to be realized, require a substantial enhancement of territorial systems, with regions and municipalities acting as the public entities that can nuance the unitary purposes according to the territorial needs.<sup>1</sup>

The old concept of territorial institutions that defend their particularism is then replaced by a vision that conceives equality in rights and services as the result of careful calibration of public interventions.<sup>2</sup>

The role of the States, in this context, is no longer to act as a central decision-maker but to become a facilitator and coordinator of the various actions needed in the territories.

This essay aims to verify how this happened, analysing a specific public policy, e-Health, that lies at the heart of the post-pandemic social reconstruction. Indeed, this is an area where the transformation of public policies can be very well verified. Although the European legal competence in health is minimal, e-Health is a key element for the post-pandemic EU agenda.<sup>3</sup>

The paper is organized into three sections. In the first one, paragraph 1.2 traces the emerging model, with a focus on how the EU has been able to use its competencies to build new paths of cooperation with Member States and sub-national institutions. Then, in the second section, paragraphs 2.1 and 2.2 examine the rise of e-Health as a public policy around which innovative service goals have been set. It is highlighted how their implementation requires intense cooperation,

---

*Politics and Governance*, vol. 9, no. 3, 2021, 175; C. Buzzacchi, *Local governance: analisi dell'impatto del Recovery Fund sul rapporto di sussidiarietà tra Stato e Regioni e sull'organizzazione degli enti locali*, in G. Dolso (ed.), *Governare la ripresa. La Pubblica Amministrazione alla prova del Recovery Plan*, Trieste, Edizioni dell'Università di Trieste, 2022, 53.

<sup>2</sup> Such a perspective on autonomy had been particularly explored by some thinkers of the 1940s and had a strong influence on some constituent experiences after World War II. S. Trentin, *Stato-Nazione-Federalismo*, Milan, La Fiaccola, 1940; A. Olivetti, *L'ordine politico delle comunità*, Ivrea (Switzerland), Nuove Edizioni Ivrea, 1945; Ch. Eisemann, *La centralisation et la décentralisation: principes d'une théorie juridique*, in *Revue du droit public*, no. 1, 1947, 27.

<sup>3</sup> M. Guy, *Towards a European Health Union: What Role for Member States?*, in *European Journal of Risk Regulation*, vol. 11, no. 4, 2020, 757.

---

\* Article submitted to double-blind peer review.

<sup>1</sup> S. Bekker, *The EU's Recovery and Resilience Facility: A Next Phase in the Socioeconomic Governance?*, in

*Elena di Carpegna Brivio*

producing a new convergence between levels and territories. Paragraph 2.1 analyses in depth the method of building new European public policies. Starting with financial instruments such as EU4Health and the Recovery and Resilience Facility (RRF), the EU has developed the ambition to overcome, through the enhancement of e-Health, the traditional fragmentation of health services in the Member States. As a result, paragraph 2.2 then explores how the National Recovery and Resilience Plans (NRRPs) have articulated European e-Health goals into investment and reform projects. In particular, Italy's National Recovery and Resilience Plan (PNRR) is considered a critical case study. In Italy, competencies in health and care have, since the 1990s, been intensely fragmented amongst the central level of government, the Regions, and the Municipalities. The achievement of the Next Generation EU (NGEU) goals on e-Health is thus a significant test for the ability of post-pandemic strategies to overcome the fragmentations that traditionally affect the territorial management of social and health services.

Paragraph 3, as a third section, highlights, in the end, how this season of public law is an opportunity to realize, in a multi-stakeholder and multilevel approach, a new European substantive equality firmly rooted in social rights.

### 1.2. *A next generation of public policies*

The European Union hasn't replicated the legitimation mechanisms typical of Member States. Instead, it has built its political role on the identification of policy goals that, to be effectively achieved, require participation, technical surveys, negotiation with stakeholders, and monitoring activities.<sup>4</sup>

In this perspective, the EU competencies defined by the Treaties aren't elements of separation but norms enabling a pathway that breaks the correspondence between input and output to introduce, instead, the evaluation of outcomes as main criterion for consolidating the European integration.<sup>5</sup>

<sup>4</sup> U. Puetter and S. Fabbrini, *Catalysts of integration – the role of core intergovernmental forums in EU politics*, in *Journal of European Integration*, vol. 38, no. 5, 2016, 633.

<sup>5</sup> F.W. Scharpf, *Governing in Europe: Effective and Democratic?*, Oxford, Oxford University Press, 1999; A. von Bogdandy and J. Bast, *I poteri dell'Unione: una questione di competenza. L'ordine verticale delle com-*

The primary tools for the implementation of this different way of policy making are the economic-financial powers of the Union: starting with the Maastricht Treaty, and even more following the Eurozone crisis, financial surveillance allowed Europe to assess in-depth and ex-ante the policies that Member States intend to pursue.<sup>6</sup>

The Pandemic, on the one hand, has significantly mitigated fiscal parameters. The decision, in March 2020, to use the general escape clause introduced with the Six Pack in the Stability and Growth Pact, allowed Member States to temporarily deviate from the path to the medium-term target to deal with the severe economic recession.<sup>7</sup> But, on the other hand, it has also opened up a new evolutionary phase in the integration process, less focused on compliance with quantitative parameters and more oriented explicitly to the definition of a new political vision.<sup>8</sup> This kind of change is particularly relevant. If, in the logic of the Rome Treaty, the European unification was conceived as a matter of great guiding principles and general policies, since the Maastricht Treaty, instead, being part of the European-integration process has been understood primarily as the ability to produce non-inflationary growth, to ensure an open-market economy with free competition, and to maintain balanced public finances.<sup>9</sup>

Following the Covid-19 crisis, European policies have not discarded the idea that the European process has a defining moment in economic-financial integration. Still, it has emerged the need to new overarching issues that should overcome the singularity

*petenze e proposte per la sua riforma*, in *Rivista italiana di diritto pubblico comunitario*, no. 2-3, 2002, 303; P.S.M. Leino-Sandberg, *The Institutional Politics of Objective Choice: Competence as a Framework for Argumentation*, in S. Garben, I. Govaere (eds.), *The Division of Competences between the EU and the Member States: Reflections on the Past, the Present and the Future*, Oxford-Portland, Hart Publishing, 2017, 210.

<sup>6</sup> V.A. Schmidt, *Europe's Crisis of Legitimacy: Governing by Rules and Ruling by Numbers in the Eurozone*, Oxford, Oxford University Press, 2020.

<sup>7</sup> European Commission, *Communication from the Commission to the Council on the activation of the general escape clause of the Stability and Growth Pact*, COM (2020), 123 final.

<sup>8</sup> P. Genschel and M. Jachtenfuchs, *Postfunctionalism reversed: solidarity and reordering during the COVID-19 pandemic*, in *Journal of European Public Policy*, vol. 28, no. 3, 2021, 350.

<sup>9</sup> G. Guarino, *Pubblico e privato nell'economia. La sovranità tra Costituzione e istituzioni comunitarie*, in *La Costituzione economica*, Padova, Cedam, 1997, 46.

perspective and definitely overcome the crises of the past decade.<sup>10</sup> In particular, the priorities set by the Commission with the European Green Deal and the digital single-market Agenda have been chosen as new guiding policies for a greener, more digital, and resilient post-pandemic Europe.<sup>11</sup>

The initial European responses to the COVID-19 crisis were financial instruments specifically targeted at overcoming the economic shock of the Pandemic. During the spring of 2020 the European Central Bank activated the Pandemic emergency purchase program (PEPP),<sup>12</sup> while the Commission and the Council defined a new European-Stability Mechanism loan and a new financing program called SURE to support the employment policies of the Member States.<sup>13</sup>

At the end of May 2020, however, the European strategy was already shaped into a holistic recovery plan, the Next Generation EU (NGEU).

The main characteristic of the NGEU is to be a large pot of resources (about 750 billion euros) made available to Member States under the specific condition of matching targets that can either consist of the implementation of structural reforms or the design and implementation of modern and innovative services.

With this in mind, the Next Generation EU is articulated in three components:

- the European Union Recovery Instrument (EURI) that distributes the resources across the different spending programs;
- the EU funds (mainly the Recovery and Resilience Facility, RRF, that covers 90

percent of the entire NGEU) that form the legal basis for spending in the single programs;

- an amendment to the Own Resources Decision that allows to raise the 750 billion euros through EU loans on the financial markets.<sup>14</sup>

The NGEU has turned around the financial flow to the territories and it also introduced a new method of investment in which reforms and services are not simply an outcome but are steps whose achievement determines the possibility of receiving additional resources.<sup>15</sup>

Consequently, negotiations between the EU and the Member States did not only focus on the financial amounts but also engage a wide confrontation on the new goals of the European integration.<sup>16</sup> Significantly, Member States were suddenly able to invest in their economies without incurring further debt and they could set a new relationship with their own multilevel public organization. While the single State has been responsible for defining its own Plan, the need to achieve specific outcomes has opened the opportunity to a new confrontation between the State and the local authorities responsible for bringing the new services to citizens and communities.

It is a relevant change in respect to the past decade. During the economic crisis, European financial targets were defined as quantitative restrictions. States were responsible for the aggregate of public finance and the single State could be inclined to bind the autonomy of territories to comply with the set parameters.<sup>17</sup>

<sup>10</sup> J. White, *Politics of Last Resort*, Oxford, Oxford University Press, 2020; P. Dermine, *The EU's Response to COVID-19 Crisis and the Trajectory of Fiscal Integration in Europe – Between Continuity and Rupture*, in *Legal Issues of Economic Integration*, vol. 47, no. 4, 2020, 337.

<sup>11</sup> Commission Communication, *The EU budget powering the recovery plan for Europe*, COM (2020) 442, 27 May 2020; Commission Communication, *Europe's moment: Repair and prepare for the Next Generation*, COM(2020)456, 27 May 2020.

<sup>12</sup> The PEPP is a non-standard monetary policy tool consisting of a temporary asset purchase program of private and public-sector securities: European Central Bank, Decision 2020/440, 24 March 2020.

<sup>13</sup> The SURE program (The temporary Support to mitigate Unemployment Risks in an Emergency) has been financed by the European Commission through the emission of social bond. With the last payment in December 2022, the Union provided 98.4 billion euros to all 19 member countries that applied: European Union Council, Regulation 2020/672, 19 May 2020.

<sup>14</sup> The NGUE was presented by the European Commission on 28<sup>th</sup> May 2020 and became effective in February 2021. For an analysis of its internal articulation B. De Witte, *The European Union's Covid-19 Recovery Plan: the Legal Engineering of an Economic Policy Shift*, in *Common Market Law Review*, vol. 58, 2021, 635.

<sup>15</sup> G. Falcon, *Viaggio al centro del PNRR*, in *Le Regioni*, no. 4, 2021, 715.

<sup>16</sup> P. Leino-Sandberg and M. Ruffert, *Next Generation EU end its Constitutional Ramifications: a critical Assessment*, in *Common Market Law Review*, vol. 59, 2022, 433; N. Lupo, *Next Generation EU e sviluppi costituzionali dell'integrazione europea: verso un nuovo metodo di governo*, in *Diritto pubblico*, no. 3, 2022, 729; B. De Witte, *The European Union*, 678.

<sup>17</sup> L. Schramm and W. Wessels, *The European Council as a crisis manager and fusion driver: assessing the EU's fiscal response to the COVID-19 pandemic*, in *Journal of European Integration*, vol. 45, no. 2, 2023, 257; J. Creel, N. Leron, X. Ragot and F. Saraceno, *Embedding the Recovery and Resilience Facility into the European Semester*, *ETUI Policy Brief*, no. 14, 2021; S. Bekker, *The social dimension of EU economic governance after the Covid-19 pandemic: exploring new inter-*

**Elena di Carpegna Brivio**

Now, the NGEU pushes the States to cooperate with their local authorities because achievements will be measured on the implementation of specific services and reforms.<sup>18</sup>

As a result, the State is no longer simply at the top of a closed system. It becomes, instead, a pivot point responsible for connecting the territories with the large-scale purposes defined at the European level.<sup>19</sup>

Specifically, the NGEU requires national-spending policies to align with two macro-policies outlined by the Union, the Green Deal and the Digital Agenda. They are the main guidelines around which the National Recovery and Resilience Plans (NRRPs) have been built.<sup>20</sup>

In order to build their own National Plans, the States were thus nudged to explore the potential of their domestic system and then to design a development strategy that could match with that.<sup>21</sup>

This approach required a new effort for States because to be compliant with Union law they have to develop a new method of governance that should verify the achievement of objectives, solve any problems of implementation, and be accountable according to a logic of coordination and support of their

linkages, in *Italian Labour Law e-Journal*, vol. 15, no. S1, 2022, 1.

<sup>18</sup> A. Biondi and O. Stefan, *EU Health Union and State Aid Policy: With Great(er) Power Comes Great Responsibility*, in *European Journal of Risk Regulation*, vol. 11, 2020, 894.

<sup>19</sup> The priorities and limitations within which the National Plans must move are set out at the EU level. In particular, the NGEU has indicated the need to converge spending policies with certain macro-policies indicated by the Union, the Green Deal and the Digital Agenda, which constitute the major guidelines around which the National Recovery and Resilience Plans (NRRPs) have been built. Regulation 2021/241. S. Bekker, *The EU's Recovery and Resilience Facility: A Next Phase in the Socioeconomic Governance?*, in *Politics and Governance*, vol. 9, no. 3, 2021, 175; N. Lupo, *Il Piano Nazionale di Ripresa e Resilienza: un nuovo procedimento euro-nazionale*, in *Federalismi.it*, 15 February 2023; G. Piccirilli, *Il PNRR come procedimento euro-nazionale e la "fisarmonica" governativa*, in V. Di Porto, F. Pamolli, A. Piana (eds.), *La fisarmonica parlamentare tra pandemia e PNRR*, Bologna, Il Mulino, 2022, 137.

<sup>20</sup> P. Leino-Sandberg and M. Ruffert, *Next Generation EU*, 455.

<sup>21</sup> L. Schramm, U. Krotz and B. De Witte, *Building Next Generation after the pandemic: The implementation and implications of the EUCovid Recovery*, in *Journal of Common Market Studies*, vol. 60, 2022, 114; S. Raignone, *From deregulatory pressure to laissez faire. The (moderate) social implications of the EU recovery strategy*, in *Italian Labour Law e-journal*, vol. 15, no. 1s, 2022, 30.

territories.<sup>22</sup>

## 2. The e-Health and the question of multilevel governance

### 2.1. The European policies of e-Health after the Pandemic

One of the main effects of the COVID-19 Pandemic has been to radically change the impact of technology and digitization on daily life.

Healthcare was undoubtedly one of the areas that had to rethink its functioning to cope directly with the emergency and to reorganize all other healthcare services that, with social distancing, could no longer run normally. In particular, prevention and monitoring suffered severe delays and rescheduling with a significant impact on diagnosis and daily care.

In addition, the widespread acceleration of remote activities made it clear how, in the health-care field, Telemedicine could open up potentials hitherto only partially explored. Remote technologies revealed also new relationships between healthcare and assisted living that, in perspective, could become pivotal assets for welfare systems facing the aging of populations.<sup>23</sup>

In the European Union, the pandemic discussion on ICT became part of the path towards e-Health that the Union had launched before the Covid emergency. E-Health is meant as the use of information and communication technologies for improving patient health and increasing the efficiency of the healthcare system as a whole. European policies on e-Health involved, before the Pandemic, the use of Telemedicine, the implementation of electronic records, and health-information exchange.<sup>24</sup>

<sup>22</sup> Article 18(q) of the RRF requires the Member States to include regional and local authorities and other relevant stakeholders in the design and implementation of the policies contained in the NRRP. A specific section of the plan must then be devoted to the consultation of these stakeholders. S. Bekker, *The social dimension of EU economic governance after the Covid-19 pandemic*, 11.

<sup>23</sup> I. Ahmad, Z. Asghar, T. Kumar et al., *Emerging Technologies for Next Generation Remote Health Care and Assisted Living*, in *IEEE Access*, vol. 10, no. 4, 2022, 1.

<sup>24</sup> M.M. Luca, L. Mustea et al., *Challenges on Radical Health Redesign to Reconfigure the Level of e-Health Adoption in EU countries*, in *Frontiers in Public Health*, vol. 9, 2021, 1; S. Whitelaw et al., *Applications of digital technology in COVID-19 pandemic planning and response*, in *Lancet Digital Health*, no. 2, 2020, 435.

In 2008 the Commission's communication *Telemedicine for the benefit of patients, health systems and society* encouraged Member States to increase their telemedicine efforts.<sup>25</sup>

Then, in 2019, Recommendation n. 2019/243 signaled out digital health records as elements to be framed within the right to cross-border health care recognized in Directive n. 2011/24.<sup>26</sup> It was a relevant tool meant to create in the European area a health data-sharing environment and a homogeneous grounding for health services and care paths that could cover the whole territory of the Union.<sup>27</sup>

With the Pandemic, a regulatory framework capable of ensuring, at the European level, an effective and safe infrastructure for the management of patient health data became a priority. However, it also became clear how challenging it was for Europe to fit into a subject, Healthcare, where EU competencies are minimal and differences between Member States are very pronounced.<sup>28</sup>

Indeed, in this case, the element that enabled the European institutions to formulate an EU policy on e-Health was different from an actual title of competence. The establishment of the Multiannual Financial Framework for 2021-2027, in December 2020, provided the occasion for the development of a new European strategy on the subject.<sup>29</sup> The Framework designed two

specific programs on digitization. The first, Digital Europe, aimed to govern a generalized transition to digital technologies focusing on artificial intelligence and cybersecurity. The second was called EU4Health and strengthened the Union's role in disease prevention and health protection. The program, funded with 5.1 billion Euros, explicitly aimed at fostering cooperation amongst national health systems. The countries should bring the digital health record fully operational, develop joint diagnostic studies and share the results of health-technology assessment processes through Health Technology Assessment (HTA).<sup>30</sup>

In addition, 20 percent of the fund has been reserved for disease promotion and prevention activities with a work program to strengthen health systems, improve access to health services and build a data infrastructure that should support Member States' health policies. EU4Health has also helped shape a broader initiative called the European Health Union (EHU), announced by President Ursula von der Leyen in September 2020 and involving a series of legislative proposals to strengthen the European role in health.<sup>31</sup>

With the definition of the Next Generation EU, the European healthcare role has been shaped through loans and grants subject to minimal conditionality.<sup>32</sup> It was a step forward towards a European integration based on solidarity between countries and on the ability of the Union's policies to reduce inequalities in the different territories. Moreover, the Recovery and Resilience Facility (RRF), NGEU's largest fund, has the double goal of mitigating the impact of the Pandemic and accelerating the transition to a green and digital economy. With this in mind, the Commission sought to guide the use of the

<sup>25</sup> European Commission, *Telemedicine for the benefit of patients, health systems and society*, COM (2008) 689, 4 November 2008.

<sup>26</sup> Commission Recommendation, *On a European Electronic Health Record exchange format*, no. 2019/243 of 6 February 2019. European Parliament and Council, directive no. 2011/24/EU *on the application of patients' rights in cross-border healthcare*, 9 March 2011.

<sup>27</sup> T. Ferreira, *E-Health Application and Data Protection: a comparison of selected European Union members' national legal systems*, in *Bioethica*, vol. 8, no. 1, 2022, 74.

<sup>28</sup> The Union's health competencies are defined by 168 TFEU, §§ 2, 5, 7. They primarily give the Union a role in supporting and complementing States' competencies in health field. K. Purnhagen, M. Flear *et al.*, *More competences than you knew? The web of health competences for Union action in response to the COVID-19 outbreak*, in *European Journal of Risk Regulation*, vol. 11, no. 2, 2020, 297; E. Brooks, *European Union health policy after the pandemic: an opportunity to tackle health inequalities?*, in *Journal of Contemporary European Research*, vol. 18, no. 1, 2022, 67.

<sup>29</sup> Council of the EU, *Multiannual financial framework for 2021-2027*, 17 December 2020; Council Regulation (EU, Euratom) 2020/2093, Laying down the multiannual financial framework for the years 2021 to 2027, 17 December 2020.

<sup>30</sup> European Parliament and Council, Regulation On the establishment of a Program for the Union's action in the field of health –for the period 2021-2027 and repealing Regulation (EU) No 282/2014 ("EU4Health Programme"), COM (2020) 405 final; European Commission, Annex to the Implementing Decision on the financing of the Programme for the Union's action in the field of health ("EU4Health Programme") and the adoption of the work programme for 2021, C (2021) 4793 final, 24 June 2021.

<sup>31</sup> M. Guy, *Towards a European Health Union: What Role for Member States?*, in *European Journal of Risk Regulation*, vol. 11, no. 4, 2020, 757.

<sup>32</sup> E. Brooks and R. Geyer, *The development of EU health policy and the COVID-19 pandemic: trends and implications*, in *Journal of European Integration*, vol. 42, no. 8, 2020, 1057.

*Elena di Carpegna Brivio*

funds by identifying seven focus areas: clean technology and renewables, energy efficiency, sustainable transport, broadband services, digitalization of public administration, data cloud and sustainable processor capacities, and education and training for digital skills. The Commission has also established that National Plans should serve these priorities, ensuring that at least 37 percent of budgeted spending will be allocated to climate investments and reforms and that no less than 20 percent will promote the digital transition. Finally, national-spending plans should demonstrate that they address the four priorities (environmental sustainability, productivity, fairness, and macroeconomic stability) outlined in the 2021 Annual Sustainable Growth Survey. Within these goals there is ample room for investment and reform in health.

All the NRRPs developed by Member States include actions specifically aimed at improving and modernizing the national health system with digitization and integration between health and social-welfare policies.<sup>33</sup> The digital transformation of healthcare consistently appears in the pillars of different national plans.<sup>34</sup>

The next paragraph analyzes the Italian National Recovery and Resilience Plan (PNRR) as a particularly significant case study for understanding how e-Health is changing the traditional logic of fragmented governance in healthcare.

## **2.2. The impact of e-Health in the national health policies. The case of the Italian PNRR**

For Italy, health protection represents a key element of the welfare state designed by the 1948 Republican Constitution. Indeed, the Constitution expressly protects health (Art. 32) and several other social rights (Art. 33, 34,

35, 36, 37, 38). However, the structure of functions and competencies concerning social and health services has undergone a progressive devolution over the decades, with an increasing commitment of local governments to the realization of welfare goals.<sup>35</sup> In particular, since the 1990s, Regions and Municipalities have become essential providers of health and social-welfare policies. Regions are now responsible for organizing health services in the territory following standards established by the State to ensure minimum equality. At the same time, Municipalities are responsible for designing and delivering social-welfare services. A further element of complexity is that only the State finances the entire welfare. As a result, Italy presents an extremely differentiated organizational model with significant territorial variations in healthcare performance.<sup>36</sup> With dramatic evidence, the Covid-19 Pandemic has exposed how personal protection requires increasing complexity and interdependence and how it is necessary to implement policies to integrate services entrusted to separate authorities and administrations.<sup>37</sup>

The National Plan for Recovery and Resilience (PNRR) identifies the main issues affecting the Italian system and specifies how NGEU resources can help address them. There is a specific awareness of structural problems in the National Health System that the Pandemic has exacerbated. The Plan is articulated into six Missions (Digitization, Innovation, Competitiveness, Culture and Tourism; Green Revolution and Ecological Transition; Infrastructure for Sustainable Mobility; Education and Research; Inclusion and Cohesion; and Health) and every mission

<sup>33</sup> S. Bekker, *The social dimension of EU economic governance after the Covid-19 pandemic*, 3. For an analysis of the different RRP see *Italian Labour Law e-Journal*, vol. 15, no. 1s, 2022.

<sup>34</sup> It is mainly the countries subjected to austerity during the financial crisis (Belgium, Italy, Portugal, Spain) that saw the NGEU as a vital opportunity to revive investment in social policies. In contrast, countries with greater fiscal capacity (Austria, Germany) built their National Plans around investments already planned. In this regard F. Corti, A. Liscai and T. Ruiz, *The Recovery and Resilience Facility: boosting investment in social infrastructure in Europe?*, in *Italian Labour Law e-Journal*, vol. 15, no. 1s/2022, 15.

<sup>35</sup> For an overview of the different reforms B. Pezzini, *Il riordino del 1992 (un sistema sanitario universale, nonostante il riordino del 1992)*, in *Corti supreme e salute*, no. 3, 2018, 559.

<sup>36</sup> For an analysis over the different regional systems Vv. Aa., *L'integrazione socio-sanitaria e il diritto delle Regioni*, Rapporto 2022 dell'Osservatorio Diritto & Innovazione Pubblica Amministrazione Bicocca, Torino, Giappichelli, 2022; more in general S. Nicodemo, *Diritto dei servizi sociali*, Milano, Giuffrè, 2021; A. Papa, *La tutela multilivello della salute nello spazio europeo. Opportunità o illusione?*, in *Federalismi.it*, no. speciale 4, 2018, 80.

<sup>37</sup> Italy was one of the countries most affected by the initial spread of the virus, with a particular impact on the most fragile population, such as the elderly. On the critical issues for the Italian system V. Molaschi, *Integrazione socio-sanitaria e COVID-19: alcuni spunti di riflessione*, in *Il Piemonte delle autonomie*, no. 2, 2020.

presents several different components.

Mission 6, funded with 15.63 billion euros, is integrally focused on healthcare. The Plan explicitly aims to effectively improve the National Health System into a more modern, digital, and inclusive service that will ensure equality equity of access by strengthening prevention and local services.<sup>38</sup>

Within Mission 6 there are two components: M6C1 (Neighborhood networks, facilities and telemedicine for territorial Healthcare) and M6C2 (Innovation, research and digitization of the national health service).

The first component aims to strengthen the services provided locally by creating territorial facilities and centers (such as Community Homes and Community Hospitals), investing in home care, developing Telemedicine, and fostering more effective integration amongst all social-health services.

Within the component, references to the digitization of healthcare are Reform 1 (Neighborhood networks, facilities, and Telemedicine for community healthcare and the National Health, Environment, and Climate Network) and Investment 1.2 (Home as the first place of care and Telemedicine). Achievement of Reform 1 will unlock further tranches of NGEU resources. Specifically, it involves the identification of a new healthcare strategy that should facilitate, through an overall reorganization and implementation of new performance standards, the approximation of the Italian Healthcare system to the best-performing European countries. This reform refers to Telemedicine only indirectly, as the Plan mainly refers to two distinct procedures that will define the new strategies. A ministerial decree should identify homogeneous structural, organizational, and technological standards for territorial care and the facilities assigned to it. The Government will present in Parliament also a proposal about the design of a new institutional integrated system for prevention following the One-Health approach that considers human health relying on institutional actions taken for the environment and climate.<sup>39</sup>

<sup>38</sup> Italian Republic Government, *Piano nazionale di ripresa e resilienza*, 225.

<sup>39</sup> The One-health approach is now recognized also by the European Commission and major international Health organizations. In this respect N. Posteraro, *La telemedicina*, in V. Bontempi (ed.), *Lo Stato digitale nel Piano Nazionale di Ripresa e Resilienza*, Roma, Roma

Regarding territorial facilities, the Plan identifies Community Homes as the place for coordinated services offered in the territory, particularly for chronic patients. Community Homes are the facilities where a multidisciplinary team of general practitioners, pediatricians, specialist physicians, nurses, and other social-service professionals should operate. In addition, the Community Home will be a permanent reference for the population, with the presence of the IT infrastructure, a point of withdrawal, multi-specialist instrumentations, and the Single Point of Access (PUA) for the multidisciplinary assessment of social-welfare needs.<sup>40</sup>

These purposes imply considerable coordination between Regions and Municipalities as they require an intense dialogue between health and social-welfare services. But it's investment 1.2 that raises even more strongly the question of territorial integration. The investment, called "Home as the First Place of Care and Telemedicine", contains a specific outcome target since it intends to upgrade healthcare home-based services for 10 percent of the population over 65 by 2026.<sup>41</sup>

Achievement of this goal involves four distinct actions:

- Identification of a shared model for home care that takes full advantage of the possibilities offered by new technologies (such as Telemedicine, home automation, and digitization);
- The implementation at each Local Health Authority (ASL) of an information system collecting clinical data in real time;
- The activation of 602 Territorial Operations Centers coordinating home care with other health services, ensuring a persistent dialogue with hospitals and the emergency network;
- The use of Telemedicine to better support patients with chronic diseases.<sup>42</sup>

The investment is financed with 4 billion euros; 1 billion is entirely dedicated to Telemedicine.

Particularly relevant is the provision that

Tre Press, 2022, 201.

<sup>40</sup> Italian Republic Government, *Piano nazionale di ripresa e resilienza*, 228.

<sup>41</sup> Italian Republic Government, *Piano nazionale di ripresa e resilienza*, 226.

<sup>42</sup> Italian Republic Government, *Piano nazionale di ripresa e resilienza*, 228, 229.

*Elena di Carpegna Brivio*

the State should negotiate all the implementations related to the investment with the Regions and the Municipalities implicated in services.

Indeed, the identification of the home as the principal place of realization of social-welfare public policies implies a deep rethinking in the delivery of services because the institutions must coordinate, in a logic of mutual integration, to provide all the elements of care that can guarantee holistic social welfare. Thus, digitization takes on the role of fostering the full efficiency and interoperability of home-care services, and the Plan requires full coordination between the Mission on Healthcare and the actions for fragile population (e.g., elderly and people with disabilities) of other parts of the Plan.<sup>43</sup> For the purposes of this essay, it is then relevant that the PNRR plans to realize the investment by financing telemedicine projects proposed directly by the Regions and matching the priorities and guidelines set out by the Ministry of Health. Regional proposals can move along the entire care and treatment pathway, consisting of telecare, teleconsultation, telemonitoring, and telereport activities.

Projects will be funded only if they integrate with the Electronic Health Record (EHR), meeting precise quantitative targets and ensuring better health-service harmonization and the prioritization of multiregional projects.<sup>44</sup> The regional projects should be defined by the end of 2023, and the goal of the Plan is to assist through Telemedicine at least 200,000 people by 2025.

An additional aspect concerning the implementation of e-Health in the Italian PNRR is in the second component of Mission 6, M6C2, devoted to “Innovation, Research, and Digitization of the National Health Service.”

In this component, funded by 8.63 billion euros, there are three targets:

- Development of the Healthcare strengthening investments in human,

digital, structural, instrumental, and technological resources;

- Biomedical and health research;
- Digital innovation of the NHS, both at the central and regional level, in order to increase the quality, responsiveness, and involvement of patients.

7.36 billion is specifically intended for digitalizing hospitals with three separate actions: modernizing the hospital technology and digital stock, creating safe and sustainable hospitals, and strengthening the technology infrastructure for data collection, processing, analysis and simulation.<sup>45</sup> The latter action includes implementing the Electronic Health Record (EHR) and establishing a new technological infrastructure dedicated to data management at the Ministry of Health.<sup>46</sup>

The EHR is a central element of the digitization of healthcare as it is suitable for enhancing the delivery of digital health services and the value of national clinical data, fostering a new capacity for healthcare governance and planning. The main goal of the EHR is to promote accessibility, homogeneity, and harmonization of health services throughout the country. Although its introduction preceded the adoption of the PNRR, its pre-pandemic implementation proved only partially effective.<sup>47</sup> While all Italian Regions have introduced this tool, its use by caregivers varies significantly in different territories.<sup>48</sup>

The Pandemic has acted as a generalized wake-up call on the usefulness of digital tools. Still, their stable inclusion in Italian administrative culture requires the development of new policies.<sup>49</sup> Italy’s PNRR is aware of this, and it intends to stimulate the use of EHR on the one hand by investing in the digital skills of individuals and, on the other hand, by allocating 0.74 billion euros for

<sup>43</sup> The investment should be coherent with investments 1.1 e 1.2, Component 2, Mission 5 (Social Infrastructure, Families, Communities and the Third Sector) dedicated to the support of vulnerable people, the prevention of institutionalization of the non-self-sufficient elderly, and pathways to autonomy for people with disabilities. Italian Republic Government, *Piano nazionale di ripresa e resilienza*, 229.

<sup>44</sup> Italian Republic Government, *Piano nazionale di ripresa e resilienza*, 229.

<sup>45</sup> A. Mascolo, *Lo Stato digitale nel PNRR – L’ammodernamento del sistema ospedaliero*, in *Osservatorio sullo Stato digitale IRPA*, 23rd of September 2021.

<sup>46</sup> Italian Republic Government, *Piano nazionale di ripresa e resilienza*, 233.

<sup>47</sup> About EHR in Italy M. Ferrara, *La digitalizzazione della sanità in Italia: uno sguardo al Fascicolo Sanitario Elettronico (anche alla luce del Piano Nazionale di Ripresa e Resilienza)*, in *Federalismi.it*, no. 26, 2021.

<sup>48</sup> N. Posteraro, *La telemedicina*, 191.

<sup>49</sup> Istituto Superiore di Sanità, Report 12/2020; Conferenza permanente per i rapporti tra lo Stato, le Regioni e le Province autonome, *Indicazioni nazionali per l’erogazione di prestazioni in telemedicina*.



the training of health personnel.<sup>50</sup>

The Plan aims to make the EHR the access point for all essential services the National Health Service provides. It is also useful to create a homogeneous database able to adequately reconstruct patients' medical history and, on an aggregate basis, to predict future changes in the services. To this end, the Plan intends to unify all health records and bring them into a new central repository that must ensure uniform planning, management, and control tools in every territory, as well as full interoperability and data compatibility.<sup>51</sup>

In addition, the Ministry of Health will have to set up a new Health Information System (NSIS) as an infrastructure that should enable the central government to monitor compliance with basic levels of care and plan with a full knowledge of the changing needs on the ground.

To sum up, the Italian PNRR contains many ambitions for e-Health. On the one hand, there is a clear awareness of the need to focus on technological transformation to strengthen territorial medicine and improve the standards of care for citizens. On the other hand, telemedicine services are seen as an essential tool to address some structural problems of the National Health System and particularly to successfully address territorial gaps and enable new standards of care, especially in areas such as prevention.<sup>52</sup>

There is also awareness of how e-Health can create homogeneity in the use of services, significantly improving the care experience and fostering a multidisciplinary and flexible approach.

It is clear, however, that this approach requires a brand-new organizational culture because administrations can no longer consider their own set of competencies, functions and resources as separate property. The prescription within the PNRR of a series of collaborative and negotiated-planning tools is a step in the correct direction, as it is the introduction of coordinating bodies whose purpose is to guide the Plan implementation and resolve any critical issues. On October 11,

<sup>50</sup> Missione 6, *Formazione, ricerca scientifica e trasferimento tecnologico*, Componente 2 (M6C2), investimento 2.2, *Sviluppo delle competenze tecniche, professionali, digitali e manageriali del personale del sistema sanitario*.

<sup>51</sup> Italian Republic Government, *Piano nazionale di ripresa e resilienza*, 234.

<sup>52</sup> P. 22.

2021, the Interministerial Committee for Digital Transition formalized a working group on Telemedicine, and Agenas, the national agency for regional health services, formalized in September 2021 a technical working group on Telemedicine that should define standards for telemedicine services and draft guidelines for the implementation of a digital home care model.

In addition, according to the second report on implementation the government presented to Parliament on October 5, 2022, the Ministry of Health has signed institutional contracts with the Regions to develop Community Homes, Community Hospitals, and Home Care. It has also approved guidelines containing a digital model for implementing Home Care.

While these steps are undoubtedly positive, the actual realization of the goals will depend mainly on the adequacy of the administrative and technical structures of the subnational levels of government, which must formulate projects that are adequate to respond to the various lines of investment. Even before that, a key role will be played by the ability of the central government to direct, through the activation of public calls for proposals, the allocation of funds in a manner consistent with the objectives of the Plan.<sup>53</sup> So far, the entire ascending construction of the PNRR has been characterized by solid centralism. Modest has been the involvement of Regions and local authorities in goal setting, just as numerous are the instruments of control and substitution that leave the State with a strong influence in the entire implementation of the Plan.<sup>54</sup>

In conclusion, e-Health will be a serious test for Italy and it will allow to verify if Italian administrative culture has reached the necessary maturity to shape territorial relations through co-programming and co-designing.<sup>55</sup>

### **3. Conclusions**

The Pandemic has highlighted how public policies cannot be effective through fragmentations and separations. It has downsized specific issues that, before, were central at the legal level. Today the lines

<sup>53</sup> C. Buzzacchi, *Local governance*, 54.

<sup>54</sup> On this matter European Committee of the Regions, *Regional and local authorities and the National Recovery and Resilience Plans*, 2021, 30.

<sup>55</sup> C. Buzzacchi, *Local governance*, 59.

*Elena di Carpegna Brivio*

between different institutional actors and levels of government are blurring, and the legitimacy of public policies should be found in the results and benefits they can produce for the community rather than in the strict respect of the legal framework.

In particular, it has become evident how the European integration is, in its deepest *raison d'être*, an instrument that must enable Europeans to achieve all the possible benefits of a more efficient allocation of goods and services.<sup>56</sup>

Any attempt to draw lines and boundaries between what is economic and what is not, what is competence of the Union, and what is responsibility of the Member States or subnational autonomies, thus poses the risk of losing the relevance of integration policies in responding to people's needs and overcoming social inequalities.<sup>57</sup>

Of course, the European Union has to act with legal titles, and it can't override the organizational structures set up by Member States. In this work, however, it has been possible to highlight how identifying innovative social goals such as e-Health can allow, even with limited legal titles, to start an institutional dialogue that makes multilevel governance a tool for integrating different competencies. In this sense, the presence of many institutional actors is not a cause of fragmentation. It can, actually, enable the construction of public interventions in order to adapt to the territorial differences existing in society.

However, the proper functioning of this model requires, at all levels of government, a broad willingness to conceive their role not as safeguarding widespread particularism but as a contribution to a genuine substantive equality.

---

<sup>56</sup> D. C. Mueller, *Constitutional Issues Regarding European Union expansion*, in B. Steunenberg (eds.), *Widening the European Union: Politics of Institutional Change and Reform*, London, New York, Routledge, 2003, 41.

<sup>57</sup> A. Biondi and O. Stefan, *EU Health Union*, 898.