

INTEROPERABILITY OF LAW ENFORCEMENT DATABASES AND THE CONTROL OF PUBLIC FUNDING AT NRRP TIMES

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Abstract

Within a fragmented and varied scenario of digitalisation initiatives, at national level, dedicated to interoperability and in view of the EU SOCTA 2021 produced by Europol on criminal infiltration and long-term impacts of the pandemic, there is one area that would require specific attention. This concerns the European Union's Area of Freedom, Security and Justice (AFSJ), with particular focus on law enforcement databases interoperability aimed at the investigation of corruption and criminal infiltration in public funds. This issue today falls within the interoperability framework established by the Regulations (EU) 2019/817 and 2019/818 even in the field of judicial and police cooperation. The proper application of those European guidelines and the resulting effects on the level of investigation, not only repressive but especially preventive, should not be separated from considering the peculiarities of the Italian legal system, with special regard to its Recovery and Resilience Plan governance model.

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1. Interoperability and law enforcement databases: an introduction on the state of the art¹

Public sector databases – «a set of homogeneous data of relevant interest for one or more organisational units, stored in one or more IT archives, organised and accessible by means of a software tool»² – are characterised by pursuing the aim of carrying out institutional functions. In order to achieve greater efficiency³ of the administrative actions, pursuant to Article 3-*bis* of the Law August 7th, 1990, n. 241, it is increasingly necessary that these databases communicate with each other, in fully (or partially) automated way. Saving time, reducing operating (or management) costs, improving the quality of data and public services offered are some of the main objectives that, now for more than a decade, the European institutions (and consequently the national ones) aim at promoting interoperability. Along the direction of the enhancement of the information assets held by the Public Administration (P.A.), even the most recent Italian National Recovery and Resilience Plan (NRRP) provides for a specific investment (1.3), within Component 1 on Digitalisation, Innovation and Security in the P.A. of Mission 1, dedicated to interoperability among the databases of administrations, aimed at promoting the knowledge and use of public data.

Before going into the more specific topic of this article, there is a concept that needs to be clarified.

¹ This article is the revised and expanded version of the paper presented at the ICON-S Mundo Annual Conference 2022 “Global problems and prospects in Public Law”, held at the University of Wrocław, Poland, July 4th-6th, 2022

² Italian Digital Authority (AgID), *Linee guida per la stesura di convenzioni per la fruibilità di dati delle pubbliche amministrazioni*, June 2013, 5.

³ The Italian doctrine offers many scientific articles and reflections on the efficiency of Public Administration. Among others, see: M.R. Spasiano, *Organizzazione e risultato amministrativo*, in M. Immordino & A. Police (eds.), *Principio di legalità e amministrazione di risultati* (2004), 342; L. Mercati, *voce Efficienza della pubblica amministrazione*, in S. Cassese (ed.), *Dizionario di diritto pubblico* (2006), 2144; A. Massera, *I criteri di economicità, efficacia, ed efficienza*, in M.A. Sandulli (ed.), *Codice dell'azione amministrativa* (2011), 22; R. Ursi, *Le stagioni dell'efficienza. I paradigmi giuridici della buona amministrazione* (2016); R. Ursi, *La giuridificazione del canone dell'efficienza della pubblica amministrazione*, in B. Marchetti & M. Renna (eds.), *A 150 anni dall'unificazione amministrativa italiana* (2017), 445-471; D. Vese, *L'efficienza della decisione amministrativa. Semplificazione e accelerazione del procedimento nelle recenti riforme della pubblica amministrazione*, 18 *federalismi.it* 2-49 (2018).

To date, there is no unanimous definition of «interoperability»⁴. According to the 2005 Communication from the Commission interoperability is defined as the «ability of IT systems and of the business processes they support to exchange data and to enable the sharing of information and knowledge»⁵. In this text,

⁴ Looking back at the etymology of the word «interoperable», according to the Online Etymology Dictionary compiled by Douglas R. Harper, it is derived from the combination of the Latin word «*inter*», meaning «among, between, betwixt, in the midst of» (also used extensively as a prefix), and the late Latin word (*latinitas serior*) «*operabilis*», meaning «capable of treatment by operation». In the same sense also the Italian Garzanti Linguistica. According to the Merriam-Webster Dictionary, the first known use of «interoperability» was in 1965.

Here it is useful to remind the distinction between legal, organisational, semantic and technical interoperability. The first one is about ensuring that organisations operating under different legal frameworks, policies and strategies are able to work together; the second one concerns the definition of the purposes of the internal organisation, the reorganisation of the management processes and the creation of the means to collaborate with other administrations in the exchange of information; the third consists of the implementation of specific technologies capable of inferring, relating, interpreting and classifying the implicit meanings of resources and electronics; finally, technical interoperability refers to the automatic processing and reuse of information between different systems and platforms, dealing with aspects such as the interconnection of services, the integration of data and middleware systems, data exchange, and security systems. On this distinction, see the NIFO website (joinup.ec.europa.eu), AgID *Linee guida sull'interoperabilità tecnica delle Pubbliche Amministrazioni* (circular October 1st, 2021, no. 547) and in the Italian literature especially G. Carullo, *Gestione, fruizione e diffusione dei dati dell'amministrazione digitale e funzione amministrativa* (2018), 132-137. As reiterated by the European Commission in the ISA² programme (COM(2017) 134 final), discussed below, interoperability initiatives should cover all four levels (legal, organisational, semantic and technical).

⁵ Communication of 2005 from the Commission to the Council and the European Parliament on «improved effectiveness, enhanced interoperability and synergies among European databases in the area of Justice and Home Affairs», 3. Interoperability is defined in the same way by the International Organization for Standardization (ISO/TS 27790:2009) in its 2009 Document Registry Framework, point 3.39. A similar definition is adopted by the Italian *Codice dell'amministrazione digitale* (CAD), Legislative Decree March 7th, 2005, no. 85, Art. 1, par. 1, lett. dd), where interoperability is defined as «characteristic of an information system [...] to interact automatically with other information systems for the exchange of information and the provision of services». The definition provided by the Commission in its Communication September 26th, 2003, (COM(2003) 567) is different: interoperability is «the means by which this inter-linking of systems, information and ways of working will occur». G. Carullo, *Dati, banche dati, blockchain e interoperabilità dei sistemi informativi*, in R. Cavallo

even at that time, the Commission initiated an in-depth debate on the form and long-term architecture of information systems, making interoperability as a part of the rationalisation of information, which is now plentiful in the European Union⁶. The technical, and not juridical⁷, nature of this definition refers to the way in which systems can interface with each other in an automated manner within interconnected networks, thus allowing access to data stored on a system other than the one requesting the information.

There is one area that would require specific attention. This concerns the European Union's Area of Freedom, Security and Justice (AFSJ)⁸, with particular focus on law enforcement databases⁹

Perin & D.U. Galetta (eds.), *Diritto dell'amministrazione pubblica digitale* (2020), 207, seems to prefer this last definition.

⁶ On this topic, see the Report from the Commission to the European Parliament and the Council on the results of the final evaluation of the ISA programme (COM(2016) 550 final), 4-19. For a recent and short essay on the interoperability of public sector databases at NRRP times, see G. Buttarelli, *L'interoperabilità dei dati nella Pubblica Amministrazione*, in V. Bontempi (ed.), *Lo Stato digitale nel Piano Nazionale di Ripresa e Resilienza* (2022), 141-146.

⁷ G. Carullo, *Dati, banche dati, blockchain e interoperabilità dei sistemi informativi*, cit. at 4, 210. In the same way, P. Guarda, *Il regime giuridico dei dati della ricerca scientifica* (2021), 233, who emphasises that the term «interoperability» does not have a direct juridical connotation, being, rather, an expression of the technical world.

⁸ The Area of Freedom, Security and Justice falls within the main purposes of the European integration set forth in Article 3, paragraph 2, TEU. For an in-depth analysis on the AFSJ see the recent volume by A. Di Stasi & L.S. Rossi (eds.), *Lo Spazio di libertà, sicurezza e giustizia. A vent'anni dal Consiglio europeo di Tampere* (2020). See also: F. Coman-Kund, *Europol's International Exchanges of Data and Interoperability of AFSJ Databases*, 26 *European Public Law* 181-204 (2020), who defines interoperability at AFSJ as a «thorny issue» to which «international cooperation adds a further level of complexity», 184; M. Gnes & E. Chiti, *Cronache europee 2018*, 1 *Rivista trimestrale di diritto pubblico* 286 ff. (2020); R. Mavrouli, *The challenge of today's Area of Freedom, Security and Justice: a re-appropriation of the balance between claims of national security and fundamental rights*, 2 *Freedom, Security & Justice: European Legal Studies* 90-119 (2019); A. Zanobetti, *La circolazione degli atti pubblici nello spazio di libertà, sicurezza e giustizia*, 3 *Freedom, Security & Justice: European Legal Studies* 20-35 (2019).

⁹ In recent literature, the locution «law enforcement databases» is used by: F. Coman-Kund, *Europol's International Exchanges of Data*, cit. at 7; T. Quintel, *Interoperable Data Exchanges Within Different Data Protection Regimes: The Case of Europol and the European Border and Coast Guard Agency*, 26 *European Public Law* 212 ff. (2020); A. Fiodorova, *Information Exchange and EU Law Enforcement* (2018), 227.

interoperability aimed at the investigation of corruption and criminal infiltration in public funds.

Upon closer examination, the issue of databases interoperability at AFSJ is therefore far from new. According to some authors, who are amongst the first to address this issue on a scientific level¹⁰, «the access to and sharing of each others information in the justice realm should be governed by three guidelines or guarantees: (1) 'sharing' should only be possible for law enforcement purposes; (2) the receiving party can only 'get' the information when he or she uses it for the purposes that have initially led to its gathering by the sending party; (3) the general principle of efficiency in state administration practice». The interpretation given by later authors – although from different viewpoints – seems not to deviate much from this one and, indeed, seems to have been fuelled over time by visions that are all (more or less) guaranteeing¹¹.

Unlike the period when these early authors were writing, when there was not yet a specific regulation on interoperability – nor on law enforcement databases interoperability –, this topic is

¹⁰ P. De Hert & S. Gutwirth, *Interoperability of police databases within the EU: An accountable political choice?*, 20 *Int. Rev. Law Comput. Technol.* 24 (2006). As pointed out by N. Vavoula, *Interoperability of EU Information Systems: The Deathblow to the Rights to Privacy and Personal Data Protection of Third-Country Nationals?*, 26 *European Public Law* 133 (2020), the academic and institutional interest in this issue started in the aftermath of 9/11. However, in Italy it is initially almost absent on both sides. Since the first ISA program (2010-2015) and then the 2015 Paris terror attack, scientific attention increased.

¹¹ For recent essays see E. Brouwer, *Large-scale databases and interoperability in migration and border policies: The Non-Discriminatory Approach of Data Protection*, 26 *European Public Law* 71-92 (2020); F. Coman-Kund, *Europol's International Exchanges of Data*, cit. at 7; G. Caggiano, *L'interoperabilità fra le banche-dati dell'Unione sui cittadini degli Stati terzi*, 1 *Diritto, Immigrazione e Cittadinanza* 169-184 (2020); O. Borgogno, *Regimi di condivisione dei dati e interoperabilità: il ruolo e la disciplina delle A.P.I.*, 3 *Il Diritto dell'informazione e dell'informatica* 689-709 (2019). See also D. Bigo, L. Ewert, E. Mendos Kuşkonmaz, *The Interoperability Controversy or How to Fail Successfully: Lessons from Europe*, 6 *International Journal of Migration and Border Studies* 93-114 (2020), in which the authors critique the technical framework within the interoperability plans have been framed. In doctrine, the two biggest issues seem to be data protection and standardisation. About standardisation, although reasoning in general terms on the use of algorithms in administrative proceedings, see J.B. Auby, *Administrative Law Facing Digital Challenges*, 1 *European Review of Digital Administration & Law - Erdal* 12 (2020).

now part of the EU Strategy to tackle Organised Crime 2021-2025¹² and of Regulations (EU) 2019/817 and 2019/818 (so called Interoperability Regulations) that establish the interoperability framework even in the field of judicial and police cooperation (in addition to asylum and migration). It aims at strengthening cooperation between national (e.g. Italian State Police) and European (e.g. Europol, Eurojust) authorities concerning the sharing of data and information¹³. As a matter of fact, it is since the terrorist attack in Paris on November 13th, 2015, that the automatic interconnection among databases has received new impetus with the program «ISA² 2016-2020», established by Decision (EU) 2015/2240. Meanwhile, the enhancement of interoperability was also foreseen in the proposals for Eurodac¹⁴ and European Travel Information and Authorization System (ETIAS)¹⁵, as well as already in the program on interoperability solutions «ISA 2010-2015», forerunner of ISA².

Despite such interest from the European institutions, according to the «State-of-play report on digital public administration and interoperability 2020» from the European Commission Directorate-General for Informatics (so called DIGIT)¹⁶,

¹² This Strategy does no more than welcome at European level interventions and initiatives that have already been implemented in the Italian legal system for some time. On this point, see in particular the hearing of Franco Roberti in the Italian Anti-Mafia Parliamentary Commission (18th legislature), May 6th, 2021, available on the institutional website of the Camera dei deputati (camera.it).

¹³ The Interoperability Regulations allow the processing by Europol of personal data stored also in non-law enforcement databases. On this point, see F. Coman-Kund, *Europol's International Exchanges of Data*, cit. at 7, 182.

¹⁴ The most recent Commission proposal (COM(2020) 614 final) amends the 2016 proposal, which had already extended the scope of Eurodac, adding new categories of persons for whom data should be stored, allowing its use to identify irregular migrants, lowering the age for fingerprinting, allowing the collection of identity information along with biometric data and extending the period of data retention.

¹⁵ The concept of ETIAS was constituted by the Communication stronger and smarter information systems for borders and security (COM(2016) 205). After being adopted with the proposal of November 16th 2016, a specific discipline is introduced with the ETIAS Regulation (EU) 2018/1240.

¹⁶ The «State-of-play report on digital public administration and interoperability 2020» was published within the framework of the National Interoperability Framework Observatory (NIFO) action of the ISA² Program: the entire document can be found at joinup.ec.europa.eu. For updates, see the official IRPA website in the part dedicated to the «Osservatorio sullo Stato digitale» (irpa.eu): e.g. see the

there are not enough digitalisation initiatives – at national level – dedicated to interoperability. Nevertheless, this does not seem to be a problem in all sectors, and its *status quo* even depends on the EU Member State in question¹⁷.

Although this is not the place to review the state of the art on interoperability in all areas where it is required today, it is worthwhile to mention the health sector, which is the other area where – especially during the Covid-19 pandemic – the EU pays particular attention to interoperability. In order to improve access to health data and their use and integration and to optimise health outcomes for all individuals, on May 3rd, 2022, the European Commission presented a proposal for a Regulation on the European Health Data Space (COM(2022) 197)¹⁸. Here too, interoperability is not just a recent issue. Looking at the Italian legal system, already the November 11th, 2010, Guidelines on the Electronic Health File (EHF) of the Ministry of Health emphasised that interoperability (firstly semantic) is functional to the realisation of the EHF. In spite of the recent interest also shown by the Italian courts¹⁹, interoperability in the health sector is partly still at an experimental state²⁰.

communication by B. Carotti, *Digitalizzazione della PA e interoperabilità: lo stato dell'arte secondo la Commissione europea*, January 12th, 2021.

¹⁷ For more information on focus areas monitoring results, see the Location Interoperability Framework (LIFO) website.

¹⁸ This Regulation proposal has been presented after the Communication on «A European Health Data Space: unlocking the potential of health data for people, patients and innovation» (COM(2022) 196). These are both parts of the broader objective of the so-called European Health Union, set out in the Commission Communication of November 11th, 2020, «Building a European Health Union: strengthening the EU's resilience to cross-border health threats» (COM(2020) 724).

¹⁹ The reference is in particular to Cons. Stato, III, sent. October 7th, 2020, no. 5962, concerning a public procurement procedure where the interoperability among health devices is one of the requirements. See also the Italian Court of Accounts case-law: Corte dei conti Sicilia, contr. sec., delib., April 5th, 2022, no. 57; Corte dei conti Trentino-Alto Adige, contr. sec., December 6th, 2021, no. 7 and no. 8.

The doctrine also started to show interest: EHF and its interoperability was discussed by A. Pioggia at the *Primo convegno nazionale coordinamento dottorandi in Diritto amministrativo "L'amministrazione pubblica con i big data"*, held at the University of Turin, May 20th -21st 2019.

²⁰ According to a study carried out by IBM in 2021, interoperability for healthcare has four different levels that have been defined by IT experts and the Healthcare Information and Management Systems Society (HIMSS): some of these levels can

In the interoperability context described above, the profile we would like to focus on concerns the interoperability of the AFSJ databases against corruption and criminal infiltration in the economic and financial field – which today is particularly relevant given the disbursement of the NRRP funds²¹ –, and how the latter fits into the Italian governance model.

2. Illicit businesses and proper management of the financial flow of the Italian National Recovery and Resilience Plan (NRRP)

Without focusing on the distinction between money laundering and reusing illegal money²², which deflect the competition in the market, there are some areas of the public sector, such as procurement processes, which are especially vulnerable to corruption²³ and criminal infiltration, with risks of manipulation of tenders in exchange for bribes and kickbacks.

During the pandemic and the ensuing economic crisis²⁴, according to the EU Serious and Organised Crime Threat Assessment (SOCTA) 2021²⁵ produced by Europol, criminal groups

be achieved today with existing healthcare IT architecture and systems, while others will require innovation and further developments in patient-centred technology.

²¹ On the Recovery Plan funding, see M. Sapała & N. Thomassen, *Recovery Plan for Europe: State of play, September 2021*, published on EPRS website (europarl.europa.eu); A. Vespignani, *Quali risorse, quali progetti, quali regole per il "Recovery Plan"?*, 4 I Contratti dello Stato e degli Enti pubblici 7-12 (2020).

²² Among others, see G. Soana, *Tracciabilità e trasparenza: la protezione del mercato tra auto riciclaggio e reati tributari*, 4 Rivista trimestrale di diritto tributario 1023-1041 (2020).

²³ On this topic, see V. Brigante, *Law enforcement against corruption in Italian Public Procurement, between hetero-imposed measures and procedural solutions*, 11 Ital. J. Public Law 334-358 (2019); E. Carloni, *Fighting corruption through administrative measures. The Italian Anticorruption policies*, 2 Ital. J. Public Law 261-290 (2017).

²⁴ About the economic crisis caused by the Covid-19 pandemic, see G. Di Gennaro & G. Pastore, *La crisi economica post-pandemia: alcuni indicatori di "risk assessment" strategico dell'operatività delle mafie*, 1 Riv. giur. Mezzogiorno 39-67 (2021); C. Marchese, *Il ruolo dello Stato a fronte dell'emergenza pandemica e le risposte elaborate in sede europea: la garanzia dei diritti ed il rilancio economico alla luce del rapporto tra condizionalità e solidarietà*, 1 Rivista AIC 232-267 (2021).

²⁵ Europol (2021), EU SOCTA, *A corrupting influence: the infiltration and undermining of Europe's economy and society by organised crime*, Publications Office of the European Union, Luxembourg. The reference is on page 94 and the document is

have quickly adapted to profit from the new business opportunities the pandemic economy has presented them with and have quickly capitalised on these changes by shifting their market focus and adapting their illicit activities to the crisis context. Criminal organisations traits, although appreciably different from each other, are at the basis of «processes of modernization of criminal circuits that multiply the opportunities and patterns of collaboration linked to the needs of speculative reinvestment»²⁶.

In this period, there was a huge «hypertrophy» of public support²⁷, which consisted of two forms of aid²⁸: non-repayable financing and guaranteed loans. In the Italian legal system two requirements were (and are) demanded to access this: the first one is that, according to Decree-Law May 19th, 2020, no. 34 (so called «Decreto rilancio»), the company had suffered in 2020 a decrease of more than two-thirds compared to the turnover of April 2019²⁹; the second one is the so called «antimafia aspect», which means to be in order under the profile of the antimafia certification³⁰. This last requirement necessitates some clarification here.

In order to obtain the adoption of the anti-mafia documentation, the interested party could not be in the conditions

freely downloadable from the website europol.europa.eu. EU SOCTA, after analysing the main activities of criminal organisations in the EU (including fraud, cybercrime, currency counterfeiting), examines the long-term impacts of the pandemic from Covid-19 could determine on the role of criminal organisations in the economy. On this last topic and for an economic-managerial perspective, see the volume by S. Consiglio, P. Canonico, E. De Nito, G. Mangia (eds.), *Organizzazioni criminali. Strategie e modelli di business nell'economia legale* (2019), 25-97. As noted on page 51, based on an interpretation of some data provided by Europol in 2013, the financial power of criminal organisations has more serious consequences in economic and financial crisis situations. This investigation, contextualised at Covid-19 pandemic times, is a very current topic. For a reflection on this topic, see F. Roberti, *Mafie e pandemia*, in F. Roberti (ed.), *Mafie e pandemia. Una opportunità per i poteri criminali in Europa. Come reagire?* (2020), 5-13.

²⁶ G. Melillo, *Organizzazioni criminali, modelli di impresa e mercati*, in S. Consiglio, P. Canonico, E. De Nito, G. Mangia, *Organizzazioni criminali*, cit. at 24, 20.

²⁷ On the NextGenerationEU financial grant for each Member State, see renovate-europe.eu. In literature, see J. Núñez Ferrer, *Avoiding the main risks in the Recovery Plans of Member States*, 1 Recovery and Resilience reflection papers 9-10 (2021).

²⁸ With this regard, see the paper *Financial support measures and credit to firms during the pandemic*, written by S. De Mitri, A. De Socio, V. Nigro, S. Pastorelli, 665 *Questioni di Economia e Finanza* (2021).

²⁹ Article 25, comma 4, of Decree-Law May 19, 2020, no. 34.

³⁰ Article 25, comma 9 and 12, of the same Decree-Law.

set out in Article 67 of the Legislative Decree September 6, 2011, no. 159 (so called Antimafia Code). Article 67 enumerates the effects of preventive measures affecting persons to whom one of the preventive measures provided for in Book I, Chapter II has been definitively applied, including contributions, financing, soft loans or other disbursements, certain types of concessions and licences³¹. This is where police databases and their functionality come into play, but it becomes necessary here to ask how the existing legislations and criteria for the use of these databases can be harmonised and what initiatives are currently in place.

In view of the Decision of the «Economic and Financial Affairs» Council (ECOFIN) of July 13th 2021, point 47, in which the role of the Guardia di Finanza³² in the implementation phase of the NRRP «for the prevention, detection and correction of fraud, corruption and conflicts of interest» is mentioned, among the initiatives undertaken, we can refer to the case of the Guardia di Finanza in Naples³³. To control pandemic funding, the latter have

³¹ For some recent articles on the Italian anti-mafia administrative measures, see L. Bordin, *Contraddittorio endoprocedimentale e interdittive antimafia: la questione rimessa alla Corte di Giustizia. E se il problema fosse altrove?*, 22 *federalismi.it* (2020), 34-65; J.P. de Iorio, *Le interdittive antimafia ed il difficile bilanciamento con i diritti fondamentali* (2019); V. Salamone, *La documentazione antimafia nella normativa e nella giurisprudenza* (2019); F.G. Scoca, *Le interdittive antimafia e la razionalità, la ragionevolezza e la costituzionalità della lotta "anticipata" alla criminalità organizzata*, 6 *giustamm.it* (2018). For a *focus* on the interested party participation in the anti-mafia administrative procedure, it is allowed to refer to C. Pezzullo, *Le informative interdittive antimafia e il favor participationis*, 107-108 *Amministrazione pubblica – Rivista ANFACI* 38-47 and 72-83 (2022).

³² In the Italian legal system, consider also the Legislative Decree of 19 March 2001, n. 68, on «Adaptation of the tasks of the Guardia di Finanza Corps, pursuant to Article 4 of the Law March 31th, 2000, n. 78», which identifies the Guardia di Finanza as a military police force with general competence in economic and financial matters.

³³ This project was presented during the «Mafie, corruzione ed economia sociale» Conference, held at the University of Naples "Federico II", Department of Social Sciences, on June 10th, 2022, organised by Lirmac (Interdisciplinary Research Lab on Organised crime and Corruption) of the "Federico II" University and Lies (Economic and Social Investigation Laboratory), under the patronage of Fondazione Finanza Etica, Fondazione Pol.i.s. and Associazione Amato Lamberti. Its official Report, containing a data analysis by L. Brancaccio and A. Scaglione, is in course of publication.

Although without resorting to this precise technique tried out in Naples, the Lazio Region has also taken steps to strengthen the link among databases: a Memorandum of Understanding was in fact signed between the Lazio Region,

begun working on a data analysis process using Article 67 of the Italian Antimafia Code and textmining³⁴.

This process would integrate databases containing information on the composition of companies and the list of subjects who received funding. This means the functional supplementing of police data (which are by definition «pathological») and economic data (relating to companies and individuals that make them up). In this sense, the only feasible process is the adoption of effective management and preventive control tools, capable of reducing the risk of recycling, with consequent (and just potential) disqualifications. This tool is mainly identifiable in the adoption of an organisational model of management and control which is appropriate and suitable to prevent the engagement in money laundering, through the identification of the areas in which crimes can be committed.

The Italian legislators established a control mechanism that also involves the Guardia di Finanza, which will be mentioned in the next paragraph. It becomes quite evident the choice to attribute a privileged role to the Guardia di Finanza in terms of communication and data exchange with the Ministry of Economy and Finance (MEF).

There remains only to ask how interoperable investigative databases fit into the renewed framework of institutional relations drawn up by the NRRP and the decrees issued for its implementation. Those just stated seem to be two different issues, but in fact the issue is the same: it concerns the anticipation of the control action and, in particular, the police pre-emptive role within the public funding system via interoperable information systems.

the Prefecture of Rome, the Rome Police Headquarters, the Lazio Carabinieri Legion Command and the Lazio Regional Command of the Guardia di Finanza, which can be found on the official website interno.gov.it.

³⁴ Textmining requires the use of algorithms. About the issue of law enforcement and technology, focusing on 'predictive policing' and the use of new tools, see F. Galli, *Law Enforcement and Data-Driven Predictions at the National and EU Level: A Challenge to the Presumption of Innocence and Reasonable Suspicion?*, in H.W. Micklitz, O. Pollicino, A. Reichman, A. Simoncini, G. Sartor, G. De Gregorio (eds.), *Constitutional Challenges in the Algorithmic Society* (2021), 111-130. For some reflections on algorithm and administrative proceedings, see J.B. Auby, *Administrative Law Facing Digital Challenges*, cit. at 10, 7-15.

3. The NRRP governance model and funding control mechanism: the relationship between the Ministry of Economy and Finance and the Guardia di Finanza

Linking national and European judicial and investigative databases is now even more relevant in the economic and financial field in light of the national implementation mechanisms by the NextGenerationEU.

In order to observe the time schedule established by and for the successful implementation of the NRRP and to understand what will happen to the EU funds, a particular institutional control mechanism – so called «governance model» – has been provided³⁵. In such a system, it would be appropriate for the central authorities to coordinate their activities with local authorities, using interoperable databases to ensure the respect of sound financial management and to take measures to prevent irregularities and fraud, corruption, conflicts of interest and duplication of funding.

The Italian governance model involves several institutions: the first level consists of an apparatus set up under the Presidency of the Council of Ministers, with responsibility for guidance, divided into a Control Room, chaired by the President of the Council with the participation of the Ministers and Undersecretaries responsible for their own matters; on the same level of governance but with different functions³⁶ is the Central

³⁵ The governance model solicited by the NRRP was defined by Decree-Law May 31st, 2021, no. 77, (so called Decreto semplificazioni), converted with amendments by Law July 29th, 2021, n. 108, without any imposition by the European institutions on the structures to be assigned their own competences. In doctrine, see the recent article by V. Bontempi, *L'amministrazione centrale alla prova della governance per il PNRR: attualità e prospettive*, 2 Dir. Cost. 66 (2022). For further information, see the Dossier *Governance del PNRR e prime misure di rafforzamento delle strutture amministrative e di accelerazione e snellimento delle procedure*, July 26th, 2021, 3 ff., produced by the Research Departments (Servizi studi) of the Italian Camera dei deputati and Senato, available on the senate.it website.

³⁶ V. Bontempi, *L'amministrazione centrale*, cit. at 34, 74, defines the governance structure in question as a «peculiar pyramid» which, although having a single basis, is characterised by the presence of two tips: the Presidency of the Council of Ministers and the MEF.

Service for NRRP established at the MEF – State General Accounting Office³⁷, with monitoring and reporting tasks³⁸.

In such a system of governance, the relationship between the MEF and the Guardia di Finanza³⁹ today moves within a specific memorandum of understanding⁴⁰ that was signed in 2021 in order to implement their mutual collaboration to protect the resources of the NRRP. For this reason, the sharing of information assets – including through the interoperability of the respective databases, consisting of data and information on the implementers and executors of the interventions financed by the NRRP – is established. Collaboration activities include the participation of the Guardia di Finanza, with its own representatives, in the so-called «anti-fraud network» established at the State General Accounting Office. In fact, in view of the reinforcement of the control activity referred to

³⁷ Within the same State Accounting Department, an NRRP audit body is also set up to prevent, identify, report and correct cases of fraud, corruption or conflict of interest. It should be remembered that the Central Service, given its reporting function, is the national liaison point with the European Commission.

³⁸ The Italian Ministry of the Interior also takes part in the governance: Article 12, paragraphs 1-*sexies* and 1-*septies* of Decree-Law no. 68 of June 16th, 2022, converted by Law of August 5th, 2022, no. 108, provides that the Ministry of the Interior and the MEF – Department of the State General Accounting Office enter into a special memorandum of understanding to define the cooperation activities aimed at setting up unitary territorial garrisons between the Prefectures and the State General Accounting Offices. See also the circular of the Ministry of the Interior, Department for Internal and Territorial Affairs – Central Directorate of Local Finance, no. 9 of January 24th, 2022, concerning «*Piano Nazionale di Ripresa e Resilienza (PNRR) – Indicazioni sul rispetto degli obblighi euro unitari e di ogni altra disposizione impartita in attuazione del PNRR per la gestione, monitoraggio, controllo e rendicontazione delle misure*».

³⁹ According to the Report on the General State Accounts for 2021 of the Court of Auditors, Sections on Auditing, 59, with reference to Mission 29, for Programme 3 «Prevention and repression of fraud and violations of tax obligations», focused mainly on the activity of the Guardia di Finanza, in the relationship with the MEF, controls on non-repayable grants are highlighted.

On the role of the state police in this matter, with particular reference to the financial police, see P. Sorbello, *Banche dati e predittività. L'archivio dei rapporti finanziari e l'analisi del rischio di evasione*, in A. Massaro (ed.), *Intelligenza artificiale e giustizia penale* (2020), 187-195; U. Sirico, *La Guardia di Finanza e le attività di prevenzione e repressione delle organizzazioni criminali*, 3 *Rivista di Criminologia, Vittimologia e Sicurezza* (2009). See also L. Borlini & F. Montanaro, *The evolution of the EU Law against criminal finance: the "hardening" of FATF standards within the EU*, 48 *Georget. J. Int. Law* 1009-1062 (2017).

⁴⁰ On the memorandum of understanding, see MEF public statement no. 234 of December 17th, 2021.

Article 7, paragraph 8, of Decree-Law May 31st, 2021, no. 77, the possibility of entering into specific memoranda of understanding with the Guardia di Finanza concerns not only the MEF but all the central administrations in charge of the measures (of which the same administrations may possibly also be the implementing bodies).

In addition, the Bank of Italy performs the Treasury function on behalf of the State and, within the State Accounting Department, the inspectorate of reference for the opening of special accounts, in collaboration with the Central Service for the NRRP, is the Inspectorate General for the Finance of Public Administrations (IGEPA)⁴¹.

As already pointed out⁴², if the key topic is implementing communication among administrations on investigations also in economic and financial fields, strengthening anti-money laundering strategy becomes central.

This strategy, at European level, is governed by Directive (EU) 2019/1153 of the European Parliament and of the Council of June 20th, 2019⁴³. The need for the strengthening of international anti-money laundering instruments, which is even more relevant today by virtue of the funding from the various national recovery plans, could in part be met by the harmonisation of anti-money laundering rules⁴⁴ and national practices, as well as by the monitoring of supranational legislation itself. The recent proposal for a Regulation establishing an Anti-Money Laundering and Anti-Terrorist Financing Authority seems to go in this direction⁴⁵.

⁴¹ IGEPA instructs the file and activates the opening of the special account.

To manage the entire financial circuit, the Central Service for the NRRP has made the «System» available to administrations, which can be accessed through the link available on the website. The link is the following: regis.rgs.mef.gov.it: to access the System, user names and respective roles must be provided.

⁴² The reference is in particular to Franco Roberti's hearing in the Anti-Mafia Parliamentary Commission (18th legislature), cit. at 11.

⁴³ This directive (EU) lays down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA.

⁴⁴ In view of the individual implementation measures of the Directive by each EU member state (for which the enactment of a EU regulation would have left no space).

⁴⁵ It is the so called AML Package. Concerning this, see the European Central Bank Opinion of 16 February 2022 on a Proposal for a Regulation Establishing an Anti-Money Laundering and Anti-Terrorist Financing Authority (CON/2022/4) 2022/C 210/05.

4. A few tentative final considerations

The challenge to the timeliness and completeness of information exchange comes from the European Commission, pioneer and champion of databases interoperability.

Compared to other areas (e.g. health sector) and although there are still no relevant references in case-law, it must be acknowledged the existence of an extensive and diversified legal framework which allows the interpreter to evaluate effectively the interoperability of law enforcement databases.

It still remains to be seen how the interoperability of these databases, in the Italian legal system, fits into the broader relationship between the executive branch (in which police action is included) and the judiciary.

Moving on an abstract level, at AFSJ the scenarios could be at least two: in the first scenario, which should be excluded in light of the current scientific knowledge on interoperability and in line with some of the reflections on digital administration⁴⁶, this relationship would not be affected by such an automated data exchange; in the second scenario, the interoperability would be seen as an «administrative tool» aimed at the efficiency of Public Administration and in implementation of the principle of cooperation between powers of the State⁴⁷. The recent experience of the financial authorities to control the public funding system, through the use of interoperable databases – set up by means of agreements and arrangements between the different institutional entities – seems to confirm the latter scenario.

⁴⁶ According to J.B. Auby in his preface to G. Carullo, *Gestione, fruizione e diffusione dei dati dell'amministrazione digitale*, cit. at 3, XX, «a new chapter of administrative law is really opening up with the problems of public data»: «administrative decision-making processes will follow new directions as they are increasingly fed by large amounts of data, which are necessarily increasingly processed by algorithms», and «[t]hese new guidelines will have an impact on the definition of administrative powers».

⁴⁷ About the principle of cooperation between powers of the State, among others, see R. Bin, *Lo Stato di diritto. Come imporre regole al potere* (2017), 64-71.