

**EFFECTIVE LAW, MULTILEVEL GOVERNMENT AND THE
PANDEMIC TEST: A LOOK AT THE HEALTH CRISIS FROM AN
ITALIAN PERSPECTIVE.**

Maria DE BENEDETTO¹

INDEX

- 1. INTRODUCTION**
- 2. THE ITALIAN RESPONSE TO THE PANDEMIC AT A GLANCE**
- 3. HAS QUALITY OF MULTI- LEVEL REGULATION BEEN ENSURED?**
- 4. MAY REGULATORY DELIVERY BE CONSIDERED ADEQUATE?**
- 5. HAS REGULATORY EFFECTIVENESS BEEN ACHIEVED?**
- 6. COMBATING THE PANDEMIC: HEALTH PROTECTION OR INTERNATIONAL
PROPHYLAXIS?**
- 7. COOPERATION AND TRUST, AT THE HEART OF THE RESPONSE TO THE
PANDEMIC.**
- 8. THE ITALIAN NATIONAL RECOVERY AND RESILIENCE PLAN AND BEYOND.**

1. INTRODUCTION

Constitutional democracies have been challenged by the current pandemic which - during these months - has made manifest some evidence: that regulation and regulatory

¹ Full Professor of Administrative Law, Department of Political Sciences, Roma Tre University, Italy

enforcement are at the heart of the response to Covid-19; that rules must be effective in order to ensure prevention and protection from risks; and that regulation is the way to balance different public interests such as health, economic freedoms and fundamental rights.

On the other hand, not everything has worked as planned and/or hoped, in European countries and elsewhere: criticisms have been connected to public health care systems; tensions have sometimes characterized the relationships between national Parliaments and Governments; other dysfunctions have affected multi-level decision-making. In this last regard, State and subnational actors (such as *Länder*, *Regions*, *Comunidades autonomas* as well as local authorities and municipalities) have sometimes developed a dialogue marked by frictions; the same applies to relationships between member States and the EU.

In other words, the pandemic has represented a real trial by fire for regulatory effectiveness and (more in general) a stress test of the quality of legal and institutional systems and of multi-level governance. This is true especially in Italy, where in the middle of the health crisis (in February 2021) there was also a political crisis with a changing of the guard in the Government, now headed by Mario Draghi - former President of the European Central Bank – who has assumed the responsibility to lead the nation with a large parliamentary majority.

The present contribution is intended to be a short analysis of the Covid19 crisis from an Italian point of view by adopting a regulatory perspective. After a first introductory glance (sec. 2), the question will be analyzed by considering if quality of regulation has been ensured over this period (sec. 3), if regulatory delivery (and the contributions of different kinds of administrations) may be considered adequate (sec. 4) and if regulatory effectiveness (to be intended as compliance with rules associated with the impact of rules consistent with their objectives, without undesired effects) has been achieved (sec. 5). The article will mention a specific recent case of constitutional litigation regarding multi-level governance in the fight against the pandemic (sec. 6) by drawing some conclusive remarks about cooperation and trust as crucial for the response to the pandemic (sec. 6) and about contents and perspective of the Italian National Recovery and Resilience Plan, recently adopted (sec. 7).

2. THE ITALIAN RESPONSE TO THE PANDEMIC AT A GLANCE.

In March 2020, Italy was the first European country and the first constitutional democracy to face the pandemic. From the beginning, it has been clear that regulation is “*at the heart of the response to Covid-19*”².

The Italian response was described nearly as a structured model³. However, last March, Italy was a sort of frontline where people together with their multi-level Government experienced a hectic and stressed regulatory balance between competing values⁴. There is no doubt that the equation was (and continues to be) complex – a real conundrum. In fact, public decision-making requires consideration, balance and necessarily combining health vs business solutions and many other fundamental rights⁵, variables which are not relevant in

² OECD, *Tackling Coronavirus (Covid-19). Contributing to a global effort, Regulatory Quality and COVID-19: Managing the Risks and Supporting the Recovery*, Note by the Secretariat in consultation with the Chairs and the Bureaus of the Regulatory Policy Committee and the Network of Economic Regulators, 2020, p. 2, in [http://www.oecd.org/regreform/regulatory-policy/Regulatory-Quality-and-Coronavirus%20-\(COVID-19\)-web.pdf](http://www.oecd.org/regreform/regulatory-policy/Regulatory-Quality-and-Coronavirus%20-(COVID-19)-web.pdf). See also National Conference of State Legislatures, *State Action on Coronavirus (COVID-19)*, Database, in <https://www.ncsl.org/research/health/state-action-on-coronavirus-covid-19.aspx>.

³ F.G. Nicola, *Exporting the Italian Model to Fight COVID-19*, in “The Regulatory Review”, April 3, 2020, in <https://www.theregreview.org/2020/04/23/nicola-exporting-italian-model-fight-covid-19/>.

⁴ See M. De Benedetto, *Regulating in time of tragic choices*, in “The Regulatory Review”, May 6, 2020, in <https://www.theregreview.org/2020/05/06/de-benedetto-regulating-times-tragic-choices/>.

⁵ On this point, see D.M. Studdert and M.A. Hall, J.D., *Disease Control, Civil Liberties, and Mass Testing — Calibrating Restrictions during the Covid-19 Pandemic*, in “The New England Journal of Medicine”, April 9, 2020. On this point, see also J. Grace, *UK Human Rights Challenges in the Time of Covid-19*, in *Ius Publicum Network Review*, Issue no. 1/2020, available at: http://www.ius-publicum.com/repository/uploads/29_04_2021_10_55-J_Grace_UK_human_rights_challenges_in_the_time_of_COVID.pdf

the same way in all parts of the world. The consequence was a strong influence on adopted solutions, for instance by necessitating legitimate and proportionate imposition of social distancing measures (SDMs) or data protection for smart tracking controls⁶ (e.g. in the app named *Immuni*)⁷.

All of this is of great interest from a regulatory perspective because Italy was the first institutional Laboratory to experience responses to the pandemic which had to be respectful of fundamental rights, as far as possible. They may be grouped in two different categories.

The first type of responses regards the *health care* area. In this framework, it is possible to distinguish at least three levels: the *strict health care response*, which has been given by hospitals and by family doctors (via home care assistance) and which can be considered, at the end of the day, a good performance, implemented by a “world-class health system”⁸; the *health care prevention via tracing* and other health care system activities,

⁶ On this point, see T. Lattisi, H. Kyeong Hwang, E. Talin, editing and input provided by F Blanc, *Blockchain and Self-Sovereign Identity: how to fight covid-19 without sacrificing privacy*, in medium.com, March 27, 2020, in <https://medium.com/@tizianolattisi/tracing-contamination-through-mobile-phone-locations-balancing-effectiveness-with-privacy-and-1ca4b6c9a7b6>.

⁷ See, *Coronavirus: Italian government reveals plans to use tracking app*, in “The Local”, April 17, 2020, in <https://www.thelocal.it/20200417/coronavirus-italian-government-reveals-plans-to-use-tracking-app>.

⁸ D. Chow and E. Saliba, *Italy has a world-class health system. The coronavirus has pushed it to the breaking point*, in “NBCnews.com”, March 18, 2020, in <https://www.nbcnews.com/health/health-news/italy-has-world-class-health-system-coronavirus-has-pushed-it-n1162786>. On the other hand, see the proposals in matter of health system for the Annual Competition Law 2021 coming from the Italian Competition Authority AGCM in the *Report to the Government dated 22 March 2021* (Segnalazione AS1730, *Proposte di riforma concorrenziale ai fini della legge annuale per il mercato e la concorrenza - anno 2021*, 22 marzo 2021), available at: <https://www.agcm.it/dotcmsdoc/allegati-news/S4143%20-%20LEGGE%20ANNUALE%20CONCORRENZA.pdf>. On National Health Systems in EU, see also, European

developed by the Ministry of Health together with other competent Ministries, Expert Committees and the Regions⁹, which have presented a number of criticalities, starting from the failure of the app, *Immuni*¹⁰; finally, the *health care prevention via social distancing measures*, such as the lockdown and other measures imposed to limit business and social activity (especially schools and universities) with the purpose of reducing physical contacts among people. These measures have been implemented and enforced by administrations different from the National Health Care System (*Servizio Sanitario Nazionale*)¹¹ and were sufficiently effective for the most part.

Court of Auditors, *Public health - Audit reports published between 2014 and 2019*, December 2019, available at: <https://op.europa.eu/it/publication-detail/-/publication/5a0bdba9-db7e-11ea-adf7-01aa75ed71a1/language-it>.

⁹ M. Paolo, *Immuni: Does the Italian app against coronavirus work?*, in “Italicmag.com”, July 7, 2020, in <https://italicmag.com/2020/07/07/immuni-does-the-italian-app-against-coronavirus-work/>. However, not only the Italian tracing system has failed, see in this regard, M. Burgess, *Why the NHS Covid-19 contact tracing app failed. Test, track and trace – just not with the NHS app*, in “Wired.co.uk”, June 19, 2020, in <https://www.wired.co.uk/article/nhs-tracing-app-scrapped-apple-google-uk>.

¹⁰ On this aspect see, *Il flop della App Immuni: ecco perché non funziona*, 24/11/2020, in <https://www.ofcs.it/cyber/il-flop-della-app-immuni-ecco-perche-non-funziona/#gsc.tab=0>, as reported in English language by *Vogon.Today: The Immuni flop: that is, digitization is useless if managed by Conte and Speranza (thanks OFCS.report)*, 24/11/2020, in <https://www.vogon.today/economic-scenarios/the-immuni-flop-that-is-digitization-is-useless-if-managed-by-conte-and-speranza-thanks-ofcs-report/2020/11/26/>: “But the real problem with Immuni is not the app, but the process that is around it and that some enlightened mind has concocted. Every digital innovation, which is not just an IT application, first of all involves a process that involves actors, systems, procedures and functions. In Immuni, much emphasis has been placed on the technological, security, and privacy aspects, but very little on the process that governs digital contact tracing. In this process, a fundamental role is played by the Local Health Authorities which, in the face of a positive person in possession of the Immuni app, request the code provided by them and actually activate the procedure of automatic Immuni notifications”.

¹¹ On this point, see G. Briscese, N. Lacetera, M. Macis, and M. Tonin, *Compliance with COVID-19 Social-Distancing Measures in Italy: The Role of Expectations and Duration*, in National Bureau of Economic Research - NBER Working paper 26916, in <https://www.nber.org/papers/w26916>.

The second type of response is the *economic response* to the pandemic. In this regard, there are three main different fields of intervention which have to be included: measures adopted to face the *social emergency* and increasing poverty¹²; prescriptions designed to restore financial losses for *business activities*, both as free grants or as payment suspensions¹³; and finally, measures adopted to *support the economic system* and to promote business restart, from the specific fiscal deduction called 110% ‘ecobonus’ and ‘earthquake bonus’¹⁴ to the National Recovery and Resilience Plan in the more general framework of the Next Generation EU¹⁵.

3. HAS QUALITY OF MULTI- LEVEL REGULATION BEEN ENSURED?

¹² M. Natili and M. Raitano, *Coping with the pandemic: The new Emergency Income in Italy*, in “European Social Policy Network – ESPN”, Flash Report 2020/67, Dec. 2020, in ec.europa.eu/social/BlobServlet?docId=23308&langId=hr

¹³ Regarding recent measures, see D. Figureoa, *Italy: Miscellany of Measures Enacted to Fight Covid-19 Pandemic*, in “Library of Congress Global Legal Monitor”, Jan 28, 2021, in <https://www.loc.gov/law/foreign-news/article/italy-miscellany-of-measures-enacted-to-fight-covid-19-pandemic/>.

¹⁴ On this point see <https://www.mef.gov.it/en/covid-19/The-measures-introduced-by-the-Italian-government-to-support-families-00001/> : “the Relaunch Decree introduced a 110% tax deduction for costs incurred to improve energy performance and/or earthquake protection work, with the possibility of transferring the relative tax credit. This applies to expenses incurred from 1 July 2020 to 31 December 2021 for thermal insulation work and other measures to improve energy efficiency. Any work to reduce the earthquake risk is also included (‘earthquake bonus’) as is work to install photovoltaic systems and columns to charge electric vehicles”.

¹⁵ The National Plan is available at https://www.governo.it/sites/governo.it/files/PNRR_0.pdf. A focus on the NRRP is available at <https://www.mef.gov.it/en/focus/The-Recovery-and-Resilience-Plan-Next-Generation-Italia/>.

As we know, *quality of regulation* requires not only drafting activities but also specific regulatory evaluation (Impact Assessment or Regulatory Impact Analysis) in the law-making and rule-making process, in order to ensure that a specific piece of legislation and/or regulation will be clear, consistent, comprehensible (from a formal perspective)¹⁶ and will meet its objectives without producing undesirable side-effects (from a substantial perspective)¹⁷. In this context, the regulatory process is presupposed to be evidence-based and must include objectives and indicators, consultation with stakeholders, regulatory options, evaluation of the preferred regulatory option, and all of this must be consistent with good quality regulation standards established by guidelines, circulars, executive orders, manuals, directives or regulations adopted in different legal systems¹⁸.

According to a number of OECD Reports¹⁹, Italy has probably not been considered the best example among countries engaged in the use of quality of regulation tools; rather,

¹⁶ Regarding legislation and drafting, see U. Karpen and H. Xanthaki (eds.), *Legislation in Europe: A Comprehensive Guide For Scholars and Practitioners*, Hart, 2017 and U. Karpen and H. Xanthaki (eds.), *Legislation in Europe: A country by country guide*, Hart, 2020.

¹⁷ C.M. Radaelli and O. Fritsch, *Measuring Regulatory Performance, Evaluating Regulatory Management Tools and Programs*, OECD Expert Papers n. 2, 2012; C. Coglianese, *Measuring Regulatory Performance, Evaluating the Impact of Regulation and Regulatory Policy*, OECD Expert Paper n. 1, 2012.

¹⁸ C.M. Radaelli, *The diffusion of Regulatory Impact Analysis in OECD countries: best practices or lesson-drawing?*, in “European Journal of Political Research”, Vol. 43, issue 5, 2004, p. 723; J.-B. Auby and T. Perroud (eds.), *Regulatory Impact Assessment/La evaluación de impacto regulatorio*, Global Law Press/Inap, 2013; N. Rangone, *The Quality of Regulation. The Myth and Reality of Good Regulation Tools*, in *Italian Journal of Public Law*, Vol. 4, Issue 1, 2012.

¹⁹ OECD, *Italy: ensuring regulatory quality across levels of government*, OECD Publishing, 2007; OECD *Reviews of Regulatory Reform - Italy: Better Regulation to Strengthen Market Dynamics*, OECD 2010, Executive summary, p. 23: “The experience of Italy with RIA still leaves scope for improvement. Recent steps to rejuvenate RIA might help, but mechanisms for quality control still need to be consolidated. The methods of RIA should be more explicit and more precise. The Ministry of Public Administration is making bold attempts to professionalise public services, but further investment in staffing and RIA training will be necessary to enable the ministries to conduct analysis

the Italian system has long been characterized by legislative inflation (as in every inflationary process, the greater the quantity of legislation, the less the quality) and also by regulatory failures²⁰. If this is true in ordinary times, one might expect that it would be even more true under extraordinary circumstances, such as the pandemic. During last year, three different factors seem to have influenced quality of regulation.

The first factor is the *primacy of the Government over the Parliament*, with special regard to the role of the President of the Council, especially in the first period of the pandemic. As a consequence, government regulation has been prevalent: “the Italian response to coronavirus was led by prominent use of governmental legal instruments in the form of decree-laws, prime ministerial decrees and ministerial orders. While this legal architecture, built in a very short timeframe under an extreme emergency situation, was sometimes criticised for lack of legal certainty and the suspicion of abuse of government prerogatives to the detriment of Parliament”²¹. In any case, as a matter of fact, quality of regulation is not easily achieved for rules resulting from a layered series of urgent laws and decrees²².

sufficient to compare options and understand the consequences of their actions before they act. Finally, a targeted approach of “proportional analysis” would help build skills and support over time”; OECD, *Better Regulation in Europe: Italy 2012: Revised edition, June 2013*, Better Regulation in Europe, OECD Publishing, 2013.

²⁰ On this point see N. Rangone, *Italy's Complex Legislative Framework Impairs its COVID-19 Response*, in “The Regulatory Review”, June 8, 2020, in <https://www.theregreview.org/2020/06/08/rangone-italy-complex-legislative-framework-impairs-covid-19-response/>.

²¹ See K. Binder, M. Diaz Crego, G. Eckert, S. Kotanidis, R. Manko and M. Del Monte, *States of emergency in response to the coronavirus crisis: Situation in certain Member States*, European Parliament, Members' Research Service, June 2020, p. 8.

²² See R. Cavallo Perin, *2020 Pandemic: Emergency decrees and ordinances*, in *Ius Publicum Network Review*, Issue no. 2/2019, available at: http://www.ius-publicum.com/repository/uploads/30_06_2020_20_35-IusPublicum_RCavalloPerindef.pdf. A complete analysis of the Covid19 statutory provisions in Italy is in S.

The second factor regards the *role of experts in regulation*²³. The Italian Government have regulated according to a special a Committee of experts operating within the Presidency of the Council of Ministers, the Technical and Scientific Committee-*Comitato tecnico-scientifico*²⁴ and to the emergency administration (*Protezione Civile*). This might imply greater gathering of evidence in the regulatory process and also regulation focused on indicators intended to allow monitoring and steering of collective behaviours. From a regulatory perspective, one of the most interesting things in the Italian pandemic experience is just this increasing recourse to sets of indicators developed by experts as a way to allow decision-making to be as objective and reactive as possible in the presence of changing evidence, as in the case of the monitored trend of the pandemic curve which influences the mechanism of changing “colour” for Regions (red, orange, yellow and white, corresponding to specific restrictive regimes²⁵).

Civitaresse Matteucci, A. Pioggia, G. Repetto, D. Tega, M. Pignataro, M. Celepija, entry *Italy: Legal Response to Covid-19*, in *Oxford Constitutions*, Oxford University Press, 2021, in <https://oxcon.ouplaw.com/view/10.1093/law-occ19/law-occ19-e11>; see also <https://www.theregreview.org/2020/04/23/nicola-exporting-italian-model-fight-covid-19/>. Regarding the Austrian case, see P. Bußjäger, M. Eller, A. Meier, *Central or Regional Corona-Management? A Journey Through Time in The Jungle of Ordinances*, in *Ius Publicum Network Review*, Issue no. 1/2020, available at: http://www.ius-publicum.com/repository/uploads/29_04_2021_11_21_Bussjager_Eller_Meier_IusPub_Report_Central_regional_corona_management.pdf.

²³ A. Lavazza and M. Farina, *The Role of Experts in the Covid-19 Pandemic and the Limits of Their Epistemic Authority*, in “Democracy, in *Frontiers in Public Health*”, Vol. 8, 2020, p. 356.

²⁴ In particular, the National Health Institute/*Istituto Superiore di Sanità-ISS*, in <http://old.iss.it/chis/index.php?lang=2&tipo=9>.

²⁵ “Regions and Autonomous Provinces are classified into four areas - red, orange, yellow and white - corresponding to three risk scenarios, for which specific restrictive measures are foreseen. The classification is based on ordinances issued by the Ministry of Health”, in

The third and last factor consists in the *ambiguous role of evidence* in the regulatory process. As already mentioned, some prescriptions have been adopted on the basis of evidence being evaluated by experts. Other prescriptions have constituted limitations of constitutional freedoms and rights assisted only by limited rationales and weak justifications. Let us consider the regulatory measures adopted to limit the spread of the virus among students, especially those prescriptions devoted to high-schools which have resulted in a serious compression of the education of students in the age group 14-18 years: no evidence (or only vague reasons) was related to these limitative measures, while it would have been better to provide a much stronger rationale about the consequences of school attendance on the pandemic curve²⁶.

However, all these factors have on some occasions contributed to strengthening, and on others to weakening quality of regulation but, in any case, they have operated in a context characterized from the beginning of the pandemic by problems of data quality (for instance, few diagnostic tests), misalignments of statistical measurements (the mortality rate in Italy has included people with comorbidity, where death is due to the severity of the consequences of the Covid-19) and, more generally, by limited knowledge about the Coronavirus²⁷. And this, of course, has definitely undermined the quality of regulation in a country in which regulation quality has never been too high.

<http://www.salute.gov.it/portale/nuovocoronavirus/dettaglioContenutiNuovoCoronavirus.jsp?id=5367&area=nuovoCoronavirus&menu=vuoto>.

²⁶ On this point, see European Centre for Disease Prevention and Control, *COVID-19 in children and the role of school settings in transmission* - first update, Stockholm, 2020, in https://www.ecdc.europa.eu/sites/default/files/documents/COVID-19-in-children-and-the-role-of-school-settings-in-transmission-first-update_0.pdf.

²⁷ See G.P. Pisano, R. Sadun and M. Zanini, *Lessons from Italy's Response to Coronavirus*, in "Harvard Business Review", March 27, 2020, in <https://hbr.org/2020/03/lessons-from-italys-response-to-coronavirus>.

4. MAY REGULATORY DELIVERY BE CONSIDERED ADEQUATE?

As everybody knows, once approved, rules are implemented and also enforced via controls and sanctions: the whole set of administrative activities designed to achieve and/or support compliance with rules has been defined “regulatory delivery”²⁸.

The pandemic has resulted in an incredible deployment of resources, human resources above all, in order to implement services and to ensure compliance and enforcement with public measures.

Alongside the incredible effort in facing the dramatic medical emergency via healthcare personnels, enforcement officers operating in local and national police have been in charge of *regulatory enforcement* tasks, especially to ensure Social Distancing Measures-SDM (also Social and Physical Distancing Measures-SPDM)²⁹.

In fact, Italian regulation has adopted an integrated approach by combining trusting in people and public enforcement: on the one side, this has involved self-limitation of free movement, mandatory self-quarantine and self-certification about the reasons for moving and travelling³⁰; on the other side, a certain number of controls have been carried out, by

²⁸ G. Russell and C. Hodges, *Regulatory Delivery*, Hart/Beck, 2019.

²⁹ European Centre for Disease Prevention and Control, *Considerations relating to social distancing measures in response to COVID-19 – second update*, 23 Mar 2020, in <https://www.ecdc.europa.eu/en/publications-data/considerations-relating-social-distancing-measures-response-covid-19-second>.

³⁰ See Imperial College, COVID-19 Response Team, Report *Estimating the number of infections and the impact of non-pharmaceutical interventions on COVID-19 in 11 European countries*, 30 March 2020, p. 30 (Data sources and

implementing strict enforcement via police controls and sometimes even via drones³¹. In this regard, research about the response to different kinds of restrictions and limitations has reported “a remarkable level of confidence about both knowledge of the rules and the self-reported extent of their compliance”³².

This integrated approach indicates that the Italian Government has pragmatically considered compliance with SPDR very relevant to contain the spread of the pandemic³³ and this is the reason why rules were rapidly and consistently enforced, in order to result in unambiguous prescriptive messages³⁴. In fact, communication has been confirmed to be part of the regulatory game³⁵: during the lockdown, every day the Ministry of the Interior made

Timeline of Interventions), in <http://www.imperial.ac.uk/mrc-global-infectious-disease-analysis/covid-19/report-13-europe-npi-impact/>.

³¹ M. Holroyd, *Coronavirus: Italy approves use of drones to monitor social distancing*, in “Euronews”, March 23, 2020, in <https://www.euronews.com/2020/03/23/coronavirus-italy-approves-use-of-drones-to-monitor-social-distancing>.

³² S. Civitarese Matteucci, A. Pioggia, G. Repetto, D. Tega, M. Pignataro, M. Celepija, entry *Italy: Legal Response to Covid-19* cit.

³³ M. Molinari, *Coronavirus has taught Italy hard lessons. Other countries must learn from us*, in “The Guardian”, March 20, 2020, in <https://www.theguardian.com/commentisfree/2020/mar/20/coronavirus-italy-lessons-countries-crisis-information>.

³⁴ J. Horowitz, E. Bubola, E. Povoledo, *Italy, pandemic’s new epicenter has lessons for the whole world*, in “New York Times”, March 21, 2020, in <https://www.nytimes.com/2020/03/21/world/europe/italy-coronavirus-center-lessons.html>.

³⁵ L.M. Friedman, *Impact. How Law Affects Behaviour*, Harvard University Press, 2016.

information public about police controls and infringements regarding social distancing regulation³⁶.

5. HAS REGULATORY EFFECTIVENESS BEEN ACHIEVED?

Quality of regulation, compliance, enforcement and regulatory delivery (in general) are relevant because they represent determinants of *regulatory effectiveness*: this concept expresses “the idea [...] that a rule can be considered effective when desired results are effectively achieved and the public interest which justifies the rule has been safeguarded”³⁷. In a wider sense, regulation may be considered effective when it “consists not only of rules which are valid, enforceable and possibly applied (legal normativity); not only of rules characterized by high rates of compliance and few costs of enforcement (theories of compliance); nor only of the results of rules which are consistent with regulatory objectives (outcomes). Effective [regulation] is all of these things together and implies complex and integrated administrative management in order to be achieved”³⁸.

The pandemic has represented an incredible, unique and (in a certain way) irreproducible condition in which to monitor and check the effectiveness of regulation. For instance, as never before, compliance with SPDM has been directly related to the objectives of restrictive regulation and to its outcome – the trend of the pandemic curve – even though the data set of controls regarding SDMs has seemed not to be sufficiently specific for

³⁶ <https://www.interno.gov.it/it/coronavirus-i-dati-dei-servizi-controllo>.

³⁷ M. De Benedetto, *Effective law from a regulatory and administrative law perspective*, in "European Journal of Risk Regulation", 9, 2018, p. 395-396

³⁸ *Ibid.*, p. 396

conclusive insights in this regard³⁹. In any case, Italian Covid19 regulation – with special regard to the first period of the pandemic – has been considered substantially effective⁴⁰: an Imperial College Report estimated that at the date of 30th March lockdown and SDMs have already averted 38,000 deaths⁴¹. On the other hand, an Italian research has provided insights to public authorities on the best way to announce limitations and restrictive measures (as lockdown) and on the way in which managing people’s expectations: in fact, where compliance has “collective benefits but full enforcement is costly and controversial, communication and persuasion”⁴² (in other words, cooperative enforcement) have a fundamental role.

As a matter of fact, not everything has worked perfectly⁴³.

First of all, there have been problems regarding *specific decisions*, such as when the lockdown was declared and massive groups of people moved from Northern Italy to the

³⁹ On this point, see F. Blanc and M. De Benedetto, *Do social distancing rules work: looking at enforcement and mobility data*, April 20, 2020, in <https://medium.com/@florentinblanc/do-social-distancing-rules-work-looking-at-enforcement-and-mobility-data-58d219a3ec38>.

⁴⁰ <http://www.protezionecivile.gov.it/media-communication/press-release>.

⁴¹ Imperial College, COVID-19 Response Team, Report *Estimating the number of infections and the impact of non-pharmaceutical interventions on COVID-19 in 11 European countries* cit., p. 11

⁴² G. Briscece, N. Lacetera, M. Macis, and M. Tonin, *Compliance with COVID-19 Social-Distancing Measures in Italy: The Role of Expectations and Duration* cit.

⁴³ M. Molinari, *Coronavirus has taught Italy hard lessons. Other countries must learn from us* cit.

South: in this occasion, the worst was feared because the SDMs were observed in the Southern Regions but there are no doubts that the resulting situation was critical⁴⁴.

Furthermore, in the early phase of the pandemic, many criticisms were related to the *Italian public health care system (Servizio Sanitario Nazionale-SSN)*, which was not designed to face a large-scale epidemic. Overall, delays in separating Covid-19 and non Covid-19 pathologies⁴⁵ in hospital emergency departments contributed to the diffusion of the pandemic, similarly to what has happened in residential care facilities for the elderly. However, despite an initial shock, the SSN productive capacity reacted positively and was incredibly strengthened⁴⁶.

Moreover, controversial opinions have characterised the difficult work of the Extraordinary Commissioner for the Covid-19 (*Commissario straordinario per l'attuazione e il coordinamento delle misure occorrenti per il contenimento e contrasto dell'emergenza epidemiologica Covid-19*)⁴⁷, in charge of a number of tasks to face the health emergency (among others management of human and instrumental resources, purchasing and distribution of medicines, medical and personal protective equipment and devices, together

⁴⁴ Which Italian regions will be first to beat the coronavirus?, in "The Local", April 20, 2020, in <https://www.thelocal.it/20200420/which-italian-regions-will-be-first-to-beat-the-coronavirus>.

⁴⁵ G.P. Pisano, R. Sadun and M. Zanini, *Lessons from Italy's Response to Coronavirus*, cit.

⁴⁶ L. Aimone Gigio, L. Citino, D. Depalo, M. Francese and A Petrella, *Tackling Tackling the emergency. The scaling up of productive capacity in the Italian health system: progress overview*, in "Banca d'Italia, Covid-19 Note", 21 April 2020, in <https://www.bancaditalia.it/media/notizia/tackling-the-emergency-the-scaling-up-of-productive-capacity-in-the-italian-health-system-progress-overview/>.

⁴⁷ On this point, see S. Civitarese Matteucci, A. Pioggia, G. Repetto, D. Tega, M. Pignataro, M. Celepija, entry *Italy: Legal Response to Covid-19* cit.

with the Chief of the Civil Protection Department) so complex that at a one point the Commissioner was involved in a judicial investigation and was replaced⁴⁸.

Other dysfunctions have constantly affected *multi-level decision-making*: the relationship between State and Regions – as already mentioned – has developed in a “fragmented chain of command”⁴⁹ and stressed dialogue. The same tension has characterized the relationships between Italy and the EU, especially in the early phase of the crisis⁵⁰ when there was great uncertainty about the European institutions’ economic response⁵¹ to the pandemic⁵².

The question was relevant also at international level: the World Health Organisation-WHO in particular has been criticised not only with regard to the late declaration of pandemic but also for its ineffective monitoring of international levels of

⁴⁸ See *Chinese masks, the former commissioner Domenico Arcuri investigated for embezzlement*, in <https://www.italy24news.com/News/15171.html>.

⁴⁹ J. Horowitz, E. Bubola and E. Povoledo, *Italy, pandemic’s new epicenter has lessons for the whole world* cit.

⁵⁰ J. Gill, *EU Commission President offers 'heartfelt apology' to Italy, as MEPs debate coronavirus response*, in “Euronews”, 26 April, 2020, in <https://www.euronews.com/2020/04/16/eu-commission-president-offers-heartfelt-apology-to-italy>.

⁵¹ D. Boffey, *Italy criticises EU for being slow to help over coronavirus epidemic*, in “The Guardian”, 11 March, 2020, in <https://www.theguardian.com/world/2020/mar/11/italy-criticises-eu-being-slow-help-coronavirus-epidemic>.

⁵² M. Johnson, S. Fleming and G. Chazan, *Coronavirus: Is Europe losing Italy?*, in “Financial Times”, April 6, 2020, in <https://www.ft.com/content/f21cf708-759e-11ea-ad98-044200cb277f>

pandemic preparedness⁵³, as in the case of the outdated Italian pandemic plan which could have contributed to thousands of Covid-19 deaths⁵⁴.

The problem of regulatory effectiveness will also influence the extraordinary set of economic measures adopted (and of those in course of adoption) to face huge and widespread unemployment and poverty produced by the pandemic. Regulation must be effective for the simple reason that it represents matters of life or death, both if we consider health care, psychological suffering for social deprivation or economic measures to provide financial support for the loss of work, for the closure of businesses and for emerging new poverty among large sectors of the population.

6. COMBATING THE PANDEMIC: HEALTH PROTECTION OR INTERNATIONAL PROPHYLAXIS?

Italian scholars and academics have observed that during these months many tensions and dysfunctions between levels of government in the fight against the pandemic, have been occasioned upstream, by uncertainty regarding the qualification of interested powers and related institutional competences⁵⁵. In other words, Regions have considered to

⁵³ A. Giuffrida, *WHO accused of conspiring with Italy to remove damning Covid report*, 11 Dec., 2020, in <https://www.theguardian.com/world/2020/dec/11/who-accused-conspiring-italy-remove-damning-covid-report>. See also A. von Bogdandy and P. Villarreal, *International Law on Pandemic Response: A First Stocktaking in Light of the Coronavirus Crisis*, March 26, 2020, Max Planck Institute for Comparative Public Law & International Law (MPIL) Research Paper No. 2020-07.

⁵⁴ A. Giuffrida and S. Boseley, *Italy's pandemic plan 'old and inadequate', Covid report finds. Outdated guidelines and lack of protocols may have led to thousands of extra deaths*, 13 Aug 2020, in <https://www.theguardian.com/world/2020/aug/13/italy-pandemic-plan-was-old-and-inadequate-covid-report-finds>.

⁵⁵ On this point, see S. Cassese, *Cassese: dal governo basta forzature si torni alla normalità. Il giurista: ecco il perché del mio intervento al convegno in Senato*, in "Corriere della sera", 28 July 2020. See also B. Caravita, *La*

be in charge of full competences, in the framework of their concurring legislative competence, with special concern for “health protection”⁵⁶; while the proper category for allocating and distributing competences in the presence of pandemics would be the exclusive legislative power of the State, defined as “international prophylaxis” (art. 117.2, q) of the Italian Constitution)⁵⁷.

In this regard, the Italian Constitutional Court, in its decisions n. 37/2021⁵⁸ declared the unconstitutionality of a regional law by which the Valle d’Aosta established several measures to contain the pandemic⁵⁹. In other words, the Constitutional Court reaffirmed the full legitimacy of the State power to adopt legislation and coordinate activities related to the

sentenza della Corte sulla Valle d’Aosta: come un bisturi nel burro delle competenze (legislative) regionali, in “Federalismi”, 21 April 2021; M. Bordignon and G. Turati, *Chi comanda in pandemia*, in “Lavoce.info”, 2 March 2021. In general, see E. Alber, *Action and reaction: What Covid-19 can teach us about Italian regionalism*, 29 May 2020, in <https://uacesterpol.wordpress.com/2020/05/29/action-and-reaction-what-covid-19-can-teach-us-about-italian-regionalism/> and E. Lamarque and L. Giacomelli, *The Italian Constitutional Court and the Pandemic. A National and Comparative Perspective*, in E. Hondius, M. Santos Silva, C. Wendehorst, P. Coderch, A. Nicolussi and F. Zoll (eds.), *Coronavirus and the Law in Europe*, 2020, Intersentia.

⁵⁶ Art. 117.3: “Concurring legislation applies to the following subject matters: [...] health protection [...] In the subject matters covered by concurring legislation legislative powers are vested in the Regions, except for the determination of the fundamental principles, which are laid down in State legislation”.

⁵⁷ The Italian Constitution in English is available on the site of the Italian Presidency of the Republic https://www.quirinale.it/allegati_statici/en/costituzione_inglese.pdf.

⁵⁸ Corte Costituzionale, sentenza 24 February 2021, n. 37, available at <https://www.cortecostituzionale.it/actionPronuncia.do>.

⁵⁹ Regional Law Valle d’Aosta, 9 December 2020, n. 11, *Misure di contenimento della diffusione del virus SARS-COV-2 nelle attività sociali ed economiche della Regione autonoma Valle d’Aosta in relazione allo stato di emergenza*.

management of the pandemic, even when this would imply limitations in fields of otherwise regional competences.

The recourse of the Italian Government to the Constitutional Court was motivated with reference to a number of constitutional provisions; art. 117.2(q) (which indicates, as already mentioned, the exclusive legislative power of the State in matter of “international prophylaxis”); art. 117.2(m) (which indicates the exclusive legislative power of the State in matters of “determination of the basic level of benefits relating to civil and social entitlements to be guaranteed throughout the national territory”); art. 117.3 (which gives to the State – in the framework of the concurring legislation – the competence on “determination of the fundamental principles”); and finally, art. 118 Cost. (which establishes the principles of subsidiarity by requiring that administrative functions are carried out at the most immediate level that is consistent with their resolution, it depends on the interested level of government).

Moreover, the Italian Government has also complained about a violation of the principle of loyal co-operation⁶⁰ between levels of government (art. 120.2 Italian Constitution): the regional law would have encroached upon competences of the State related to the sole management of the crisis by adopting its own measures intended to tackle the pandemic.

After an *interim* measure⁶¹, the Constitutional Court ruled that in the matter of the contested regional Law, there is a legislative and exclusive competence of the State, with special reference to the mentioned “international prophylaxis”, which includes any measures

⁶⁰ See, on a related aspect, G. Falcon and D. de Pretis, ‘Loyal Cooperation’: *Italian Regions and the Creation and Implementation of European Law*, in R. Scully and R.W. Jones (eds), *Europe, Regions and European Regionalism*, Palgrave Studies in European Union Politics, 2010, Palgrave Macmillan.

⁶¹ Corte Costituzionale, ordinanza 14 January 2021, n. 4 del 2021, at <https://dait.interno.gov.it/territorio-e-autonomie-locali/legittimita-costituzionale/legge-regionale-valle-daosta-del-9-dicembre>

to combat or prevent an ongoing health pandemic⁶², also with regard to the WHO declaration of the *Public Health Emergency* dated 30th January, 2020.

At this point, a couple of remarks may be conclusively made.

Firstly, there is no doubt that regional performances in matters of health protection in Italy are and have been characterized by relevant inequalities⁶³ by exacerbating during the pandemic the structural asymmetry which comes from the National Health System itself. On the other hand, the pandemic has expressed unpredictable impacts, as in the case of the excellent regional health system of Lombardy, which has expressed all its fragility⁶⁴. This has produced a context in which the sole management of the fight against the pandemic is really crucial as well as complex: let us think, in this regard, to the whole chain of activities related to the vaccination campaign.

Secondly, despite the clarity and the relevance of the Constitutional Court decision, it is reasonable to assume that the matter will continue to be sensitive and critical, far from being solved: Governors of the Italian Regions are politicians strongly dependent by political communication and the pandemic represents a too relevant opportunity, in the light of political consensus, for them to stay out of the game. In this perspective, the system may be viewed as affected by internal conflict and misalignments. There are too many political

⁶² Corte Costituzionale, sentenza 24 February 2021, n. 37 cit., considerando 7: “ogni misura atta a contrastare una pandemia sanitaria in corso, ovvero a prevenirla”.

⁶³ On this aspect see the VIII Report Cittadinanzattiva, Osservatorio civico sul federalismo in sanità, *Disuguaglianze regionali su prevenzione, assistenza ospedaliera e territoriale*, 8 December 2020, available at <https://www.insalutenews.it/in-salute/disuguaglianze-regionali-su-prevenzione-assistenza-ospedaliera-e-territoriale-report-di-cittadinanzattiva/>.

⁶⁴ P.S. Goodman and G. Pianigiani, *Why Covid Caused Such Suffering in Italy's Wealthiest Region. Lombardy has been overwhelmed by the pandemic, in part because of a poorly executed medical privatization program*, Nov 10, 2020, in <https://www.nytimes.com/2020/11/19/business/lombardy-italy-coronavirus-doctors.html>.

incentives to intervene and adopt regional measures in the presence of constitutional and practical conditions which would require the primacy of the State and central decision-making.

7. COOPERATION AND TRUST AT THE HEART OF THE RESPONSE TO THE PANDEMIC.

Current times may be considered times of “tragic choices”⁶⁵. A first aspect of this tragedy concerns regulation and decision-making which are based on limited and uncertain knowledge. A second aspect regards rules and decisions which must be made in a short time in order to be timely.

All areas of administration are interested in the tragedy, though some more than others. In health care, the choice may be prioritising patients with the best chance of survival⁶⁶ or using restricted diagnostic or serological testing⁶⁷ possibilities⁶⁸ or, even, defining priorities in the vaccination campaign. In business regulation, the decision may involve

⁶⁵ G. Calabresi, P. Bobbit, *Tragic choices*, Norton & co., 1978.

⁶⁶ A. Remuzzi and G. Remuzzi, *COVID-19 and Italy: what next?*, in “The Lancet”, March 13, 2020, in [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)30627-9/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30627-9/fulltext).

⁶⁷ Imperial College COVID-19 response team, *Report 16: Role of testing in COVID-19 control*, 23 April 2020, in <http://www.imperial.ac.uk/mrc-global-infectious-disease-analysis/covid-19/report-16-testing/>.

⁶⁸ OECD, *Tackling Coronavirus (Covid-19). Contributing to a global effort, Regulatory Quality and COVID-19: Managing the Risks and Supporting the Recovery*, Note by the Secretariat in consultation with the Chairs and the Bureaus of the Regulatory Policy Committee and the Network of Economic Regulators, 2020, p. 4, in [http://www.oecd.org/regreform/regulatory-policy/Regulatory-Quality-and-Coronavirus%20-\(COVID-19\)-web.pdf](http://www.oecd.org/regreform/regulatory-policy/Regulatory-Quality-and-Coronavirus%20-(COVID-19)-web.pdf).

restrictive regulation⁶⁹ by defining which factories (or when factories) can reopen. In social regulation, decisions regard limiting freedoms of movement and economic activities⁷⁰ or addressing subsidies for one social category over others or, even, how long restrictions on high school attendance must remain in place.

In this “tragic” situation an intangible factor may increase the effectiveness of rules as well as possibly protecting and supporting businesses and social categories: this factor is trust, to be intended (firstly) as trust in institutions.

In fact, *trust in institutions*⁷¹ is normally associated with higher degrees of compliant behaviour⁷² and a discourse on quality of regulation, enforcement and effectiveness of rules adopted to fight the pandemic includes necessarily trust. Trust, in other words, is an intangible but incredibly relevant factor for regulatory effectiveness.

In April 2020 a survey showed that Italians were more trusting of national institutions today than in the past, while ever less so of European ones⁷³. This really was bad

⁶⁹ C. Coglianese, *Obligation Alleviation During the COVID-19 Crisis*, in “The Regulatory Review”, April 20, 2020, in <https://www.theregreview.org/2020/04/20/coglianese-obligation-alleviation-during-covid-19-crisis/>.

⁷⁰ D.M. Studdert and M.A. Hall, *Disease Control, Civil Liberties, and Mass Testing. Calibrating Restrictions during the Covid-19 Pandemic* cit.

⁷¹ See J. Domenicucci, *Trusting Institutions*, in “Rivista di estetica”, n. 68, 3, 2018.

⁷² See, for example, European Commission Communication on *Improving the delivery of benefits from EU environment measures: building confidence through better knowledge and responsiveness*, IP/12/220, 2012. On this point see J. Braithwaite and T. Makkai, *Trust and compliance*, “Policing & Society”, 4, 1, 1994 and C. Hodges and R. Steinholtz, *Ethical Business Practice and Regulation. A Behavioural and Values-Based Approach to Compliance and Enforcement*, Hart/Beck, 2018, p. 77-78.

⁷³ Demopolis, *Italy in time of Covid19*, 14-15 April 2020, in <https://www.demopolis.it/?p=7381>.

news⁷⁴ because trust is at the centre of the Covid19 “war-like mobilization”⁷⁵. The problem has affected Governments trusting experts⁷⁶ and the private sectors⁷⁷; people trusting Governments and experts⁷⁸; trust between regulators at different level of government⁷⁹ and so on.

Of particular relevance is trust in the case of vaccination campaigns, which really is a “hot topic” for health care systems in Europe⁸⁰. In Italy, public confidence in vaccines has seemed to increase compared to the past⁸¹: in September 2020 the Vaccine Confidence

⁷⁴ G. Dominioni, A. Quintavalla and A. Romano, *Trust spillovers among national and European institutions*, in “European Union Politics”, 2020, in <https://journals.sagepub.com/doi/full/10.1177/1465116519897835>.

⁷⁵ G.P. Pisano, R. Sadun and M. Zanini, *Lessons from Italy’s Response to Coronavirus*, cit.

⁷⁶ T. Yates, *Why is the government relying on nudge theory to fight coronavirus?*, in “The guardian”, March 13, 2020, in <https://www.theguardian.com/commentisfree/2020/mar/13/why-is-the-government-relying-on-nudge-theory-to-tackle-coronavirus>.

⁷⁷ Edelman Trust Barometer, *Special Report on Covid-19, Trust and the Coronavirus*, 2020, in <https://www.edelman.com/research/edelman-trust-covid-19-demonstrates-essential-role-of-private-sector>.

⁷⁸ T. Peck, *Just a day after Johnson told us to keep calm, we’ve gone into self-imposed lockdown. Was that the plan all along?*, in “Independent”, March 13, 2020, in <https://www.independent.co.uk/voices/coronavirus-uk-boris-johnson-chris-whitty-lockdown-travel-restrictions-a9400461.html>.

⁷⁹ E. Golberg, *Regulatory Cooperation to Combat Public Health Crises*, in “The Regulatory Review”, April 27, 2020, in <https://www.theregview.org/2020/04/27/golberg-regulatory-cooperation-combat-public-health-crises/>.

⁸⁰ World Health Organization, *Vaccination and Trust*, 2017. See also E. Lalumera, *Trust in health care and vaccine hesitancy*, “Rivista di estetica”, n. 68, 105, 2018.

⁸¹ A. de Figueiredo et al., *Mapping global trends in vaccine confidence and investigating barriers to vaccine uptake: a large scale retrospective temporal modelling study*, in “The Lancet”, September 11, 2020: “However, confidence in vaccine safety is increasing in several countries, including Finland, France, Italy, and Ireland (as well as the UK)”, in <https://medicalxpress.com/news/2020-09-largest-global-vaccine-confidence-survey.html>.

Project reported⁸² that 77.4% of Italians “would use a Covid19 vaccine”. On the other hand, the most recent public sentiment about vaccination indicates that a large majority of Italians think that vaccines deserve confidence but also that problems are related to lack of clarity in communication regarding vaccines (with special concern to the Astra Zeneca vaccine)⁸³. This risk of decline in confidence suggests that communication and good information are essential to tackling a pandemic⁸⁴.

7. THE NATIONAL RECOVERY AND RESILIENCE PLAN AND BEYOND.

Following a first version presented by the former Government, at the end of April 2021 the Italian Government approved the Recovery and Resilience Plan which defines the integrated set of investments and reforms necessary to overcome the economic and social impact of the pandemic. The Plan mobilizes funds coming from EU Next Generation program which will be complemented by other funds, part of which are earmarked for

⁸² *Issues in ensuring COVID-19 vaccine compliance*, 16 September 2020, in <https://www.smokefreeworld.org/issues-in-ensuring-covid-19-vaccine-compliance/>: “whether people’s willingness to use a COVID-19 vaccine and adopt other preventive healthcare measures was associated with trust [...] With the exception of China, India, and Indonesia, most respondents had relatively low levels of trust in their national government, but most of the respondents said they trusted the medical profession. Trust in both entities, but especially in the medical profession, was generally higher among those who said they would get vaccinated”.

⁸³ WHO, *Vaccination and trust. How concerns arise and the role of communication in mitigating crises*, 2017. See also E. Rodriguez Mega, *Trust in COVID vaccines is growing. Survey spanning several countries finds encouraging trends, but researchers warn vaccine hesitancy could slow pandemic recovery*, 10 February 2021, in <https://www.nature.com/articles/d41586-021-00368-6>.

⁸⁴ The Full Fact Report 2021, *Fighting a pandemic needs good information*, January 2021, in <https://fullfact.org/media/uploads/full-fact-report-2021.pdf>. See also M. Scott, *Trust in AstraZeneca vaccine wanes across EU, survey finds*, March 22, 2021, in <https://www.politico.eu/article/trust-oxford-astrazeneca-coronavirus-vaccine-wanes-europe-survey/>.

Southern Italy, intended “to unleash Italian growth potential, to generate a strong upturn in employment, to improve the quality of work and services for citizens and territorial cohesion and to promote the ecological transition”⁸⁵.

The Plan is articulated in investments and reforms aiming “to strengthen competitiveness, reduce bureaucratic burdens and remove constraints that have slowed down investments or reduced their productivity”⁸⁶.

The NRRP consists in 6 missions, which in turn group 16 components and 48 lines of intervention. In particular, the six missions are: *Digitisation, Innovation, Competitiveness and Culture*⁸⁷; *Green Revolution and Ecological Transition*; *Infrastructure for sustainable mobility*; *Education and research*; *Inclusion and Cohesion*; *Healthcare system*.

There is large agreement on the fact that the most critical aspect of the Plan regards the administrative factors and that this will strongly influence the success of different missions (and of the plan itself). In this regard, the NRRP has an entire chapter dedicated to administrative reforms, the real Italian way to respond to the pandemic crisis. Four reform priorities are indicated, some being “horizontal” administrative reforms (public administration and justice), others as “enabling reforms” (simplification of legislation and competition promotion).

Several kinds of simplification are considered in the plan: simplification of legislation and simplification of regulation in matters of: public procurement, environment,

⁸⁵ This part is related to the previous version of the plan, <https://www.mef.gov.it/en/focus/The-Recovery-and-Resilience-Plan-Next-Generation-Italia/>, February 9, 2021.

⁸⁶ <https://www.mef.gov.it/en/focus/The-Recovery-and-Resilience-Plan-Next-Generation-Italia/>.

⁸⁷ Ibid.: “modernisation objectives through a digital revolution in Public Administration and the production system, systemic reforms (Justice system and Public Administration) and investments in tourism and culture”.

building, urban planning and urban regeneration, investments in Southern Italy by establishing also the governance of simplification; on quality of regulation. Moreover, the plan introduce a relevant objective of regulatory anticorruption⁸⁸ by requiring the reform or the abrogation of rules which incentivize cases of corruption, a very important aspect, even still underestimated. Furthermore, the plan aims at strengthening the administrative capability to manage all the administrative steps related to the expenditure of the recovery funds. Finally, according to the usual and frequently repeated OECD recommendations, a specific section of the reform chapter is dedicated to the promotion of competition, with special regard to the annual law for competition.

The Plan is ready, its governance is in course of definition, money is coming from the EU. In this context, is Italy (un)prepared to manage the challenge⁸⁹?

⁸⁸ On this point see M. D’Alberti, *Combattere la corruzione. Analisi e proposte*, Rubbettino, 2016, p. 12; M. De Benedetto, *Understanding and preventing corruption: a regulatory approach*, in A. Cerrillo-i-Martínez, J. Ponce (eds.), *Preventing Corruption and Promoting good Government and Public Integrity*, Bruylant, 2017; see also M. De Benedetto, *Corruption from a regulatory perspective*, Hart Publishing, forthcoming.

⁸⁹ I. Bosa, A. Castelli, M. Castelli, O. Ciani, A. Compagni, M. Galizzi, M. Vainieri, *Response to COVID-19: Was Italy (un)prepared?*, in “Health Economics, Policy and Law”, 2021, p. 1, in <https://www.cambridge.org/core/journals/health-economics-policy-and-law/article/response-to-covid19-was-italy-unprepared/7946552DE995F34E06F426BCBEF494A5>.

The problem, once again, may be configured in terms of trust which only will make possible the indispensable cooperation: without trust it will be very difficult (or much more complicated) to achieve compliance with reforms and results⁹⁰.

However, Italian administrations have long been stuck in their procedures, by combining different kinds of fear, i.e. of financial responsibility, regarding anticorruption regulation, of possible reputational damages, and fear of litigation. They are blocked by a climate of suspicion and behave according to defensive administration⁹¹.

Changing these widespread administrative behaviours includes repairing trust in public officers, in citizens, in businesses and finally, restoring confidence among public officers themselves, at every level of government. This would mean taking off the handbrake

⁹⁰ Let's give an example regarding a research project intended to verify the use of health care information system based on the Health Card which collects for each citizen medical prescriptions regarding medicins, diagnostic testing and specialist visits. The Health Card system has been introduced as a tool for monitoring health care expenditure. However, these available data may be very interesting as an informative source to monitor *ex ante* and predict events via early warning, maybe as the pandemic itself. Alert indicators may contribute to develop administrative recommendations. The research project was developed by a University Department in the context of a cooperation with the OECD project RAC (Rating Audit Control). The problem in developing the project has been the impossibility to access to relevant data which are managed by the General Accounting Department (*Ragioneria Generale dello Stato*) in the Italian Ministry of Economic Affairs. The research has been blocked.

⁹¹ On defensive decision-making see F. Artinger, S. Artinger and G. Gigerenzer, *C. Y. A.: frequency and causes of defensive decisions in public administration*, in "Business Research", 10, 2018: defensive decisions "occur when professionals opt for the second-best option rather than (what they believe to be) the best option for their organization or client in order to protect themselves from potential negative consequences in the future". See also B.E. Ashforth and R.T. Lee, *Defensive behavior in organizations. A preliminary model*, in "Human Relations", 43, 7, 1990, p. 621. Regarding the Italian case, see S. Battini and F. Decarolis, *L'amministrazione si difende*, in "Rivista Trimestrale di Diritto Pubblico", 1, 2019, p. 293.

and starting the process. This must be the first decisive step towards Italian recovery and resilience, and is clearly preferable to mere spending money.