

The digital transition impact on social systems and on the evolution of the link between rights and citizenship: the role of the Third Sector in the strategy and in achieving other health, integration, and inclusion objectives of the NRRP*

Mariaconcetta D'arienzo**

SUMMARY: 1. Introduction. – 2. Shared administration as a model of social and health proximity care: general considerations and food for thought starting from the recent developments in the process of National Health Service (NHS) digitization. – 3. The role of the Third Sector in the implementation of the integrated digital model: reality or illusion? – 4. Conclusions.

ABSTRACT:

From non-profit institutions to social cooperatives, from associations to foundations, the Third Sector, taking advantage of the acceleration of the digital transformation process imprinted by the

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** Associate Professor of Administrative Law at the Department of Medical Motor Sciences and Wellbeing - University of Naples Parthenope. E-mail: mariaconcetta.darienzo@uniparthenope.it. The paper is a reworking of the report presented at the International Conference on the topic "Application of Artificial Intelligence in the Health Sector – A Multidisciplinary Perspective", held on 19 October 2023 at the University of Naples "Parthenope", Palazzo Paganowski, Generale Parisi street, no. 13, Naples.

health crisis and carried out by the National Recovery and Resilience Plan (NRRP), is increasingly oriented to take on a key and strategic role in guaranteeing the effectiveness of social rights and welfare in line with the achievement of the objectives set out in Missions 5 and 6 of the NRRP.

Digitalization is a fundamental part of the strategy aiming at increasing and improving the presence of Third Sector entities in the area, provided, however, that they have the ability to meet evolutionary, transformative, and resilience needs (identifying organizational models and decision-maker alternative to traditional ones), both in ordinary situations and in health emergencies.

The real challenge launched by the NRRP, in fact, consists precisely in converting a contingent experience into a strategy based on awareness that enabling digital tools is useful first and foremost to re-evaluate Third Sector identity and role on the territory, as well as to pursue procedural simplification, the efficiency of organizational processes, and the implementation of know-how necessary to plan decisions aimed at raising the quality and efficiency of the services provided to users and to find the resources to allocate to them.

This objective appears to be consistent with the affirmation of a cooperative governance model that postulates the attribution of decision-making power also to Third Sector Entities (TSE) which should be included in the social, educational, and administrative co-design and co-programming of the interventions of NRRP Missions 5 and 6, especially in view of the demographic increase of the elderly population whose optimal management presupposes a long-term strategic vision and the integration between processes and services.

The paper aims at verifying the impact of digital skill development and the increase in the training offer on the TSE organization, which must also be recognized as having a leading role in the process of transition to digitalization, as an essential condition for the full integration of services, taking charge of and protecting the person in his or her global dimension.

1. Introduction

Digitalization and technological innovation are relatively recent acquisitions of a process that began in the 60s of the last century and has not yet ended.

The criticalities of the first phase of the process during the 70s have conditioned the development of the subsequent phases and the outcomes that have lasted over time, up to recent times. The phenomenon has been for a long time underestimated for the potential of its use and undermined by a short-sighted political-legislative approach incapable of grasping its effects on the organizational level. The lack of interest had repercussions on the implementation of the constitutional values of efficiency and good performance and above all on the construction of the concept of administrative citizenship.

The limited diffusion that it has had over the decades can be explained by the absence of an overall project of rethinking from an organizational and procedural point of view¹, i.e. a *guida complessiva in un contesto istituzionale altamente frammentato e compartimen-*

¹ A. PREDIERI *L'informatica nella pubblica amministrazione*, in *Dir. econ.*, 1971, p. 304 ss.; M.S. GIANNINI *Rapporto sui principali problemi dell'amministrazione dello Stato*, in *Foro it.*, 1979, V, 289; V. FROSINI *L'informatica e la pubblica amministrazione*, in *Riv. trim. dir. pubb.*, 1983, p. 483.

talizzato»², This is the origin of the issues at the heart of digital transformation strategies in the healthcare sector.

In this context, where the danger to the confidentiality of personal data and, in general, the concern about the distorting effects of the diffusion of technologies is quite high, even today «*Lo strumento nuovo (rischia di) rimane(re) inceppato nella struttura vecchia in cui è calato e vi si adegua, ripetendone i difetti*»³, relegating the country to a state of irreversible technological backwardness.

The scarcity of investment and the lack of skills within public organizations in a sector that has evidently not been considered a strategic resource for them for too long demonstrates this problem.

This has contributed to generate a climate of strong instability, the effects of which have been amplified by the pandemic, during which the foundations were laid for a change of course through the launch of the Next Generation EU and the adoption of the National Recovery and Resilience Plan (NRRP) with targeted investments in order to promote the use of individual applications, but above all in order to achieve forms of transversal coordination of the digitization process in public administrations through interoperability, platform integration, and data security.

Despite the acceleration caused by the health crisis⁴, the timing of the implementation of the technological innovation process (*Artificial Intelligence* and *blockchain*)⁵ and, therefore, the transition to the new organizational paradigm, depend on a series of variables that in turn affect the methods and intensity of the diffusion of the digital model.

First of all, the persistent separation between the social and health care spheres that has had a significant impact on the evolution of welfare systems in recent years, especially at the local level. Since the 1970s, the welfare *state model*, which has undergone continuous changes and transformations, has entered into a crisis of sustainability in conjunction with the downsizing and reorganization of social spending, the multiplication of risks, growing social insecurity and the inability of the State to cope with it, aggravated by the health emergency that led to its “surrender” due to the lack of autonomous capacity and resources.

The most worrying fact is represented by the emergence of new risks within a model that, despite having a strong social connotation, still sees both the care and health care areas and social inclusion divided with a consequent imbalance between the different care set-

² A. NATALINI *Come il passato influenza la digitalizzazione delle amministrazioni pubbliche*, in *Riv. trim. dir. pubbl.*, 1/2022, p. 95 ss.

³ S. CASSESE *Informatica e amministrazione*, in *Esiste un governo in Italia?*, Roma, 1980, p. 219.

⁴ D. AGOSTINO, M. ARNABOLDI, M.D. LEMA, *New Development: COVID-19 as an Accelerator of Digital Transformation in Public Service Delivery*, in *Public Money & Management*, 2020, p. 1 ss.

⁵ E. CARLONI, *Algoritmi su carta. Politiche di digitalizzazione e trasformazione digitale delle amministrazioni*, in *Dir. pubbl.*, 2019, p. 363 ss.

tings. This model is unprepared to intercept and process the care needs of the population; to “process” and “evade” increasingly differentiated, articulated, and complex requests from individuals and their families; to “take charge” of the human person as a whole, with respect to which the value and social function of Third Sector Entities (TSE) is emphasized as a component of the solidarity network⁶.

It has also to be considered that, as evidenced by distinguished doctrine, the time that the administration dedicates to care functions is decidedly modest, assuming that it is almost *«unicamente il ruolo di intermediaria fra servizi e beni che producono altre amministrazioni o più spesso privati [...]»*⁷. As a consequence, calling private entities to assume a subsidiary role appears a necessary solution to recover margins of activity and trust (also) in private individuals and, in particular, in *non-profit* organizations, consolidating the new structure of ordinary collaboration.

The new integrated and multidisciplinary system makes use of the collaboration (protection, investment, financing) of other subjects and local authorities (TSE, associations, volunteers, etc.) with which to give life to new organizational, managerial, and financial models due to the heterogeneity and transversality of the interests protected and the goals pursued. They go beyond profit being mostly aimed at promoting realization of human being and family in its complex, assuming care and responsibility on it⁸.

The activity carried out for solidarity and socially useful purposes (see Article 4, Legislative Decree no. 117 of 3 July 2017, the so-called Third Sector Code or CTS) and the function of the TSE cement the link between mandatory duties and fundamental social rights, enhancing and enhancing the role and participation of these entities in the progress of society and health, which also includes the planning and organization of social and health services.

Indeed, various state and regional laws provide for forms of coordination and integration of social and health interventions as well as co-design of services⁹, recently also with the

⁶ In particular, the Third Sector *«come soggetto erogatore della rete [...] rappresenta un possibile punto di accesso ad essa, ed è quindi chiamato gestire la valutazione multidimensionale dei bisogni, a verificare l'appropriatezza dei criteri di eleggibilità delle persone (particolarmente fragili e vulnerabili a causa di una malattia invalidante e irreversibile) a progettare la loro presa in carico nel setting più appropriato»* (così, P. GRAZIOLI, *Il ruolo del Terzo settore nel sistema di cure palliative e la sua risposta all'emergenza pandemica*, in *Biola Journal*, 2/2021, p. 221; A. BARONE, *Emergenza pandemica, precauzione e sussidiarietà orizzontale*, in *P.A. Persona e Amministrazione*, 2020, 185; V. MOLASCHI, *Integrazione socio-sanitaria e Covid-19: alcuni spunti di riflessione*, in *Il Piemonte delle Autonomie*, 2/2020).

⁷ A. PIOGGIA, *La cura nella Costituzione Prospettive per un'amministrazione della cura*, in G. ARENA, M. BOMBARDELLI (a cura di), *L'amministrazione condivisa*, Trento, 2022, p. 62.

⁸ This is a model of joint and several liability - referred to and distributed among all the subjects of the proximity network in which these entities participate through the instruments referred to in Article 55 of the CTS, which goes well beyond the supply of goods and services, (Article 5, paragraph 1, letter c), CTS) pursuant to Article 118, last paragraph, Cost.

⁹ Corte cost., 26 June 2020, no. 131, commented by E. ROSSI, *Il fondamento del Terzo settore è nella Costituzione. Prime osservazioni sulla sentenza n. 131 del 2020 della Corte costituzionale*, in *Forum di Quaderni costituzionali*, 3/2020; A. FIGI, L. GALLO, F. GIGLIONI (a cura di), *I rapporti tra pubbliche amministrazioni ed Enti del Terzo settore dopo la sentenza della Corte costituzionale n. 131 del 2020*, Napoli, 2020.

support of the NRRP aimed at encouraging the launch of projects, including in the planning phase, in order to activate collaborative processes aimed at promoting social well-being and attracting funding for the enhancement of the offer and processes of innovation and technological transfer, in line with the European objectives of the European Green Deal in the context of the UN 2030 Agenda.

Analyzed in a logic of result and with a view of patient empowerment, to which the plural and participatory welfare model is inspired and aimed, however, the absence of the provision of methods of effective involvement and connection¹⁰ of these entities increases the political-administrative risk of failure of these initiatives and, consequently, nullify the leverage effect of the TSE of the digital transition process of the National Health Service (NHS) in view of the best satisfaction of social rights, in terms of integrated mobility, home, and health care or telemedicine¹¹.

From this point of view, in fact, the recent Ministerial Decree 77/2022 implementing the Reform of territorial social-health and welfare assistance did not gain the desired results due to the lack of awareness of the role of the TSE. In fact, they are excluded from the social, educational, and administrative co-design and co-programming of Mission 6 interventions, highlighting few lights and many shadows on the future structure of the NHS also conditioned by the results of the digitalization in progress.

Clear indications in this sense come from the analysis of the updated guidelines of telemedicine, which I believe are particularly useful in highlighting some credentials common to the phenomenon of digital transformation in the health sector, in parallel with the implementation of the ESF, and the developments of the crisis of the State-Region distribution of functions which, however, specifically in this area, would seem to resolve towards State polarization.

These concomitant factors introduce further critical elements, fueling the vicious circle and the chain reaction likely to widen in the near future the already worrying and pre-existing gap between the individual and the State¹².

¹⁰ On topic, E. FREDIANI, *I rapporti con la pubblica amministrazione alla luce dell'art. 55 del codice del Terzo settore*, in *Non Profit*, 2017, 170 ss.; L. GILI, *Il Codice del Terzo settore ed i rapporti collaborativi con la P.A.*, in *Urb. e app.*, 1/2018, p. 8 ss.

¹¹ A. MOLITERNI, *Le prospettive del partenariato pubblico-privato nella stagione del PNRR*, in *Dir. amm.*, 2/2022, p. 441 ss. It is also permissible to refer to M. D'ARIENZO, *La sanità in trasformazione: dalla legge n. 833 del 1978 al DM 77/2022. Appunti e proposte sulla riforma dell'assistenza sanitaria territoriale*, in *P.A. Persona e Amministrazione*, 1/2023, p. 418 ss. and bibliography cited therein.

¹² P. RESCIGNO, *Persona e comunità*, Bologna, 1966. C. MORTATI, *La persona, lo Stato, le comunità intermedie*, Roma, 1971; R. BIN, *La sussidiarietà "orizzontale": alla ricerca dei soggetti "privati"*, in *Ist. fed.*, 1999, p. 5; A. RINELLA, *Il principio di sussidiarietà: definizioni, comparazioni e modello di analisi*, in A. RINELLA, L. COEN, R. SCARCIGLIA (a cura di), *Sussidiarietà e ordinamenti costituzionali*, Padova, 1999; L. ANTONINI, *Il principio di sussidiarietà orizzontale: da welfare state a welfare society*, in *Riv. dir. fin.*, 2000, p. 99; F. BILANCIA, voce *Sussidiarietà (principio di)*, in M. AINIS (a cura di), *Dizionario costituzionale*, Roma-Bari, 2000, p. 455; P. RIDOLA, *Il principio di sussidiarietà e la forma di Stato di democrazia pluralista*, in A. CERVATI, S.P. PANUNZIO, P. RIDOLA (a cura di), *Studi sulla riforma costituzionale*, Torino, 2001, p. 221; F. MANGANARO,

In a pluralistic society informed by constitutional principles, and in which «individuo, cambiamento, progresso, ragione e libertà» coexist with «disorganizzazione, disintegrazione, declino, mancanza di sicurezza, collasso, instabilità»¹³, a timely and effective response to the demand for care and assistance and to the existential needs of individuals comes from social formations and, in particular, from the TSE. Nevertheless, their role in participating to realize the NRRP vision, also permeating the recent health reform, as well as their activity impact the in creation of an analog and digital social-welfare and territorial competency model¹⁴ should be verified in practice.

2. Shared administration as a model of social and health proximity care: general considerations and food for thought starting from the recent developments in the digitalization process of the National Health Service (NHS)

At this point it is necessary a reflection and verification of the role of the administration and non-profit entities in the construction of the digital health system, the achievement of the objectives of the NRRP and the reforms, as well as the management of critical issues related to the introduction of new technologies.

These issues have recently taken on extraordinary relevance and relevance with the NRRP¹⁵ which, as is well known, devotes particular attention to the digitization of the NHS and, above all, to the phenomenon of telemedicine¹⁶. This phenomenon guides the transition process with targeted government interventions, as demonstrated by the recent up-

Combattere povertà ed esclusione: ruolo e responsabilità delle amministrazioni e delle comunità locali e subnazionali, in *Dir. econ.*, 2/2003, p. 41.

¹³ R.A. NISBET, *La comunità e lo Stato. Studio sull'etica dell'ordine e della libertà*, Milano, 1957, p. 14-16.

¹⁴ Among the most recent contributions on the subject, cfr. A. ALBANESE, *L'integrazione socio-sanitaria*, in F. MANGANARO, V. MOLASCHI, R. MORZENTI PELLEGRINI, D. SICLARI (a cura di), *Manuale di legislazione dei servizi sociali*, Torino, 2020, 183 ss.; A. PIOGGIA, *Diritto sanitario e dei servizi sociali*, Torino, 2020.

¹⁵ Recently, R. BALDUZZI, *Diritto alla salute e sistemi sanitari alla prova della pandemia. Le "lezioni" di alcuni Piani nazionali di ripresa e resilienza*, in *DPCE online*, 1/2023, 399 ss.; A. BARONE, F. MANGANARO, *PNRR e Mezzogiorno*, in *Quad. cost.*, 1, 2022, p. 148.

¹⁶ I am referring to the Ministerial Decree of 21 September 2022 (in the Official Gazette no. 256 of 2 November 2022) containing the new Guidelines for telemedicine services, functional requirements and service levels, prepared by the National Agency for Regional Health Services as the implementing entity of sub-investment 1.2.3 "Telemedicine for better support for chronic patients", within measure 1.2 "Home as the first place of care and telemedicine", preceded in 2020 by the "National Guidelines for the provision of telemedicine services" approved at the Permanent Conference on 17 December 2020, rep. no. 215, to update and better articulate the related "National Guidelines" already approved ibid. on 20 February 2014 (rep. acts no. 16/CSR).

The above-mentioned Guidelines have the declared objective of providing technical support to the Regions for the design of telemedicine services related to the NRRP Mission 6 - Component 1, taking into account the measures already adopted in the sedes materiae and in the transversal ones, such as the Guidelines for the implementation of the Digital

date of the Guidelines for telemedicine services based on the most recent approaches of digitalization and home care marked by the reforms inscribed in the NRRP. This should be conceived in addition, of course, to the changes in the regulations of the Digital Medical Record (hereinafter CCD) and the Electronic Health Record (EHR)¹⁷ which appeared to be strengthened in some ways following the collaboration agreement signed in November 2022 between the ISS, the CINECA Interuniversity Consortium, the National Institute of Nuclear Physics and the Italian Society of Telemedicine, through which, as far as is relevant here, the Tech2Doc platform, created by Enpam, will be used to provide training on the topics of telemedicine and digital health.

The rationale behind the intervention to which I referred relates to the decision to make the telemedicine service accessible¹⁸ only to those patients who, in various respects (clinical, cultural, technological and personal autonomy or guaranteed by a caregiver), are suitable to receive this type of health service. In particular, it is the doctor who is responsible for choosing the conformity between the characteristics marking telemedicine and the eligible candidates/patients: in other words, the screening entrusted to the healthcare professional will explain an assessment of compatibility between the technology to be used and the patient's concrete ability to use it. From another point of view, one cannot help but point out that if, on the one hand, this organizational model reinforces the role and organizational skills of the Regions which are entrusted with various functions of a composite nature and declined in various forms (tele-visit, tele-consultation, tele-consultancy, tele-monitoring, tele-assistance), on the other hand, the process of digitization undermines some axioms of health regionalization, as in the case of the ESF, in relation to which the doctrine has also recently stated that *«la funzione di omogeneizzazione nella raccolta e nella gestione dei dati sanitari non può non essere riconosciuta se non allo Stato»*¹⁹.

As required by the Guidelines, for each Regional Infrastructure there must be a Service Center that will support the provider Center for the technological aspects, if the former does not have its own organization such as to be able to manage the IT aspects by itself in compliance with the rules set by the Digital Administration Code (hereinafter, CAD) and guaranteeing the provision of telemedicine services 7 days a week and 24 hours a

Administration Code and for the SPID, as well as EU Reg. 2016/679 (General Data Protection Regulation), EU 2017/745 (Medical Device Regulation) and EU 2017/746 (In Vitro Diagnostic Medical Device).

They are divided into three distinct sections: the first is dedicated to the minimum functional requirements; the second focuses on the minimum technological requirements to be ensured at regional level to ensure the homogeneity of services at national level; and the third aimed at identifying the skills and training needs required for the provision of and access to the service, intended for health professionals and users.

¹⁷ N. POSTERARO, *Sanità digitale, Fascicolo Sanitario Elettronico e PNRR*, in *Sanità Pubblica e Privata*, 2/2023, p. 19-25

¹⁸ Cfr. A.M. LUPI, L. PERUGINO, *Smart litigation: opportunità e limiti delle operazioni peritali da remoto (teleCTU) nel processo civile*, in *Riv. It. Med. Leg. (e del Diritto in campo sanitario)*, 1/2023, p. 30.

¹⁹ In these terms E. CATELANI, *La digitalizzazione dei dati sanitari: un percorso ad ostacoli*, in *Corti supreme e salute*, 2023, 2, p. 432.

day, with the timing of taking charge and restoring the service, taking into account the assessment of the priority of anomalies/incidents.

If, on the one hand, constitutional physiology elevates the Regions as institutionally pre-eminent subjects in the development of telemedicine, the success of the entire operation in progress stands out on the interoperability of regional platforms with the national one, in which not only the exchange of data but also - and above all - the guarantee of fluidity and homogeneity during the use of telemedicine services are decisive steps to decree its success²⁰. To this end, it is necessary that the interfaces and the interaction with their functionalities are designed in line with the canons of coherence and standardization of the interfaces, reporting in both elements of recognition and giving the user the perception of using the same environment.

In particular, for the implementation of televisits and teleconsultations/teleconsultations, the regional operating system has the task of ensuring the management of the availability of the regional specialists who will carry out this service, both synchronously and asynchronously²¹. In addition, in the event that medical devices are used during the televisit, the software and hardware for the provision of the service must be certified as a medical device with an appropriate risk class within the regional telemedicine infrastructure.

In telemonitoring, on the other hand, the technical complexity lies more than anything else in the ability of the regional system to integrate with the medical devices intended to record data during the service provided.

The goal of the basic tele-monitoring service is acquiring data of the devices assigned to patients by conveying them within a single regional telemonitoring system so that, once the data has been aggregated, it will be possible to manage the entire flow. In the meantime, clinical users will be able to carry out the association/dissociation of the *devices* and the relative settings depending on the patient's needs (setting alerts or setting other events related to monitoring), while patients will be able to consult the overall data independently (in perspective also through access to the EHR, within which the data are destined to flow).

Tele-assistance is configured as a remote interaction between patient (possibly supported by the *caregiver*) and health professional by means of video call, sharing of clinical data detected by medical devices and administration of questionnaires, so that from a technical

²⁰ D. MORANA, *La tutela della salute fra competenze statali e regionali: indirizzi della giurisprudenza costituzionale e nuovi sviluppi normativi*, in *Osserv. cost.*, 1/2018, p. 7, noted, in this regard, that «*alla fisiologica debolezza del riparto verticale di competenza basato sulla demarcazione tra "disciplina di principio" e "normativa di dettaglio" (che è, per sua natura, tutt'altro che rigido e sicuro, non essendo agevole individuare dove si arresti il principio e dove abbia inizio la normativa che ne costituisce lo sviluppo e l'ulteriore specificazione), continua insomma ad affiancarsi, anche dopo la riforma del Titolo V, una certa propensione del legislatore statale ad invadere l'ambito riservato alla legge regionale, attraverso la previsione di regole specifiche ed autoapplicative.*»

²¹ G. BINCOLETTO, «*mHealth app" per la tele visita e il telemonitoraggio. Le nuove frontiere della telemedicina tra disciplina sui dispositivi medici e protezione dei dati personali*, in *BioLaw Journal*, 4/2021, p. 381 ss.

point of view it encompasses the functions of both televisit and telemonitoring because health professionals may need to access the data of both to which they must be previously enabled²².

The integration of the data present in the Regional Telemedicine Platform can be either native, when it is already grafted into the Health Data Ecosystem (EDS); i.e. transient, i.e. based on a temporary interaction system, pending the take-off of the EDS. In this second case, the national telemedicine platforms interact with the regional ones, the latter used within the contexts of the individual companies present in the area, are integrated with the components introduced by the ESF 2.0 project (i.e. FHIR gateway and Health Data Ecosystem) and are intended to feed the ESF and the EDS through the Gateway.

The transmission of such data from the company context to the regional context first and then to the national one, makes it possible to validate the clinical workflows implemented at regional level thanks to the identification of events related to telemedicine services (for example, it will be possible to identify the beginning and end of a home care path for a patient under a protected discharge regime or to acquire from the alerts recorded in the telemonitoring plans, the information necessary for the segmentation of the patient population into homogeneous clusters).

As for the system to be designed for the provision of telemedicine services, the Guidelines impose a micro-services architecture on regional platforms, capable of developing solutions incrementally, ensuring releases of self-consistent functionalities and application components that can be integrated into regional organizational contexts each characterized by a specific information ecosystem²³.

It should be noted that the adoption of this solution promotes the highest technological and functional independence of the individual modules of the solution. Pursuing this organizational option makes the individual micro-services more coherent, which, in turn, will have a limited functional perimeter, resulting in less interdependence between them: as a result, it is possible to provide the service, through this technological organization, flexible and easier to manage²⁴.

²² Cfr. A. MAZZA LABOCCETTA, *Telemedicina: sfide, problemi, opportunità*, in *www.federalismi.it*, n. 22/2023, p. 135 ss. A. illustrates the advantages of this approach, which is shared and appreciated, which also emphasizes the importance of leaving the patient «a casa» when the health service should not be attracted to the gradually higher level or to the medical facility or hospital, setting as its ultimate objective the establishment of a health system characterized by equity in access to care.

²³ Recently on the topic P. FALLETTA, *La riforma delle amministrazioni pubbliche, tra piattaforme interoperabili e atti amministrativi digitali*, in *www.federalismi.it*, n. 31/2023, pp. 110-127.

²⁴ With regard to the general issue of digital platforms in the public sector, also on the basis of the new code concerning the regulation of public procurement, reference should be made to the contribution of G. CARULLO, *Piattaforme digitali e interconnessione informativa nel nuovo Codice dei Contratti Pubblici*, in *www.federalismi.it*, n. 19/2023, pp. 110-127; A. SIMONCINI, *La co-regolazione delle piattaforme digitali*, in *Riv. trim. dir. pubbl.*, 4/2022, p. 1031 ss.; I. ALBERTI, *La creazione di un sistema informativo unitario pubblico con la Piattaforma digitale nazionale dati*, in *Ist. Fed.*, 2/2022, p. 473 ss.

The technical and semantic interoperability²⁵ of the information assets produced and exchanged within the Regional Telemedicine Platform enables an operative collaboration between the regional verticals and towards the micro-services of the INT, ensuring the orchestration of resources in local contexts and the correct use of data and services to and from the central level.

The Guidelines also recommend that the production environments of the Telemedicine Platforms must be delivered in the “Cloud”²⁶ according to the SaaS (Software As A Service) or PaaS (Platform as a Service) service model in order to enable, for each region/health-care company, the use of a “turnkey” service that can be combined with the modules of the minimum telemedicine services.

Basically, the system must ensure that a single application instance is able to simultaneously serve multiple entities and sites at the local level, which access the same application instance running on shared virtual resources.

Finally, the Platform must meet the accessibility, usability, and security requirements identified by the Agency for Digital Italy within the design guidelines for the digital services of the Public Administration. At the same time, each region must take care to test the satisfaction of users on a constant basis. The application interfaces of the regional systems will also have to be the same and directly accessible to the various regional infrastructures, since the telemedicine services offered are also aimed at the population residing in other regions.

The innovations briefly illustrated above show a renewed attention to healthcare Big Data and its critical issues²⁷ ranging from the seemingly irreconcilable opposition between the right to health and the protection of privacy²⁸ homogeneity between the service provided downstream by the Region and other regional platforms and interoperability with the national platform²⁹.

²⁵ Cfr. art. 1, paragraph 1, lett. dd), CAD. Communication from the Commission of 26 September 2003, COM(2003) p. 567-21.

²⁶ Cfr. E. MONTAGNANI, *Le pubbliche amministrazioni nell'era delle tecnologie “cloud” ed “edge computing” tra opportunità e rischi: il Piano Nazionale di Ripresa e Resilienza e le comunità digitali*, in *Riv. it. inf. dir.*, 1/2022, 2, p. 189-200; M.N. CAMPAGNOLI, *Il “cloud computing”: vantaggi e problematicità*, in *Rivista di filosofia del diritto*, 1/2016, p. 109-125; V. AMBRIOLA, C. FLICK, *Dati nelle nuvole: aspetti giuridici del “cloud computing” e applicazione alle amministrazioni pubbliche*, in *www.federalismi.it*, n. 6/2013, p. 3; A. OSNAGHI, *Pubblica amministrazione che si trasforma “Cloud Computing”, federalismo, interoperabilità*, in *Amministrare*, 1/2013, p. 59-68.

²⁷ Cfr. A. PIOGGIA, *Il Fascicolo sanitario elettronico: opportunità e rischi dell'interoperabilità dei dati sanitari*, in C. PERIN (a cura di), *L'amministrazione pubblica con i big data: da Torino un dibattito sull'intelligenza artificiale*, Torino, 2021, p. 221.

²⁸ Recently on the topic, A. CINQUE, *Privacy, big-data e contact tracing: il delicato equilibrio fra diritto alla riservatezza ed esigenze di tutela della salute*, in *Nuova Giur. Civ.*, 2021, 4, p. 957; A. BERNES, *La protezione dei dati personali nell'attività di ricerca scientifica*, in *Nuove Leggi Civ. Comm.*, 2020, 1, p. 175; I. RAPISARDA, *La privacy sanitaria alla prova del mobile ecosystem. il caso delle app mediche*, in *Nuove Leggi Civ. Comm.*, 2023, 1, p. 184.

²⁹ On the question of the indefectible assumption of the re-organization of health care in a digital key, cfr. N. POSTERARO, *La digitalizzazione della sanità in Italia: uno sguardo al Fascicolo Sanitario Elettronico (anche alla luce del Piano Nazionale di Ripresa e Resilienza)*, in *www.federalismi.it*, n. 26/2021, p. 189 ss.

Undoubtedly, the fragmentation of the overall telemedicine service, that is an organizational choice that adheres to the path of technological autonomy of the health administration, is justified by the need for the entire system to respond very well to the canons of flexibility and efficiency, but there remain many perplexities regarding the fireproof preservation of the system outlined by the Constitutional Reform of 2001.

From this point of view, it certainly cannot be ignored that the claim and – sometimes – the necessary polarization towards the center to the detriment of the regional peripheral role, not only for telemedicine but, as we have seen, also for the ESF, is one of the substantial connotations of the digitization process, in which the marriage between greater systemic and technological coherence leans towards a re-evaluation (retius exhumation) of the state-centric model³⁰. Without underestimating the risks associated with the ongoing problem of the *digital divide*³¹, the presumed competence of the health worker with respect to the unprecedented technology and the ability of the same to facilitate and identify patients able to wisely use this health service are recurring themes in the work of rewriting the NHS in a digitized key.

The *focus* on the state of the art of telemedicine, the ideas that can be drawn from it concern the indefectibility of a modernization of the technological infrastructure³², the fundamental attention to be paid to the training of health personnel to increase their degree of technological competence, the guarantee of access to this form of health care can only be separated from the growth of a digital culture widespread among citizens broadly understood.

However, the “side effects” of the current transition should not be underestimated, represented by the exposure to new risk factors of groups of people marginalized by health policies and care and social-health assistance models (especially self-sufficient elderly and/or people with psycho-physical problems)³³.

These critical issues could be largely resolved by exploiting the expansion capacity of the subsidiarity principle aimed at encouraging greater involvement of third sector bodies

³⁰ In this regard, the contribution of C. SILVANO, *La digitalizzazione dei servizi sanitari alla luce del riparto di competenze tra Stato e Regioni. Il caso del Fascicolo Sanitario Elettronico*, in *www.federalismi*, n. 26/2023, pp. 228-246. The Author, deepening the intersections between the process of digitalization of health through the implementation of the ESF, underlines how the centripetal force of the State, as an attractive institutional subject, can eliminate the spaces reserved for the Regions in the meanders of the health organization.

³¹ G. SARACENI, “*Digital Divide*” e *Povertà*, in *Diritti fondamentali*, 2019, 2, p. 19, has analysed a phenomenon that goes beyond national territorial boundaries, identifying it as a «*linea di confine che, passando all'interno di un medesimo Stato, divide i cittadini tra possessori e non possessori di computer, fruitori e non fruitori della rete internet, consapevoli e non consapevoli utenti di questi stessi servizi. In questo ultimo caso, con il termine digital divide si intende fare riferimento alla differenza che intercorre tra i maschi e le femmine, tra i diversamente abili e non, tra i giovani e i vecchi, tra i lavoratori e i disoccupati*».

³² In this regard, it is worth noting the contribution of P.S. MAGLIONE, *I rapporti tra Stato e autonomie nell'infrastrutturazione digitale del Paese*, in *Nuove Autonomie*, 1/2023, p. 273-336.

³³ M. DEL SIGNORE, *I servizi sociali nella crisi economica*, in *Dir. amm.*, 3/2018, p. 587 ss.

through expansion of the use of shared administration model for the purposes of implementing digitalization process.

Indeed - already during the health crisis - models have been tested based on shared social and health administration to support families in service and space needs which, by exploiting the knowledge of the citizenship needs and resources, use the tools and skills of public administrations. This choice was the result of a careful reflection on the consistency and protection of rights of proximity in the era of global national and European crises - initiated by the doctrine a few years ago³⁴. It culminated with the gradual rethinking of the Public Administration role and the redefinition of the scope of intervention based on a new “vision” of care and assistance aimed at identifying a new paradigm (model) of social and health administration.

The need of re-establishing the minimum levels of protection of fundamental rights through targeted policies has given rise to the process of contamination between the two branches of the legal system thanks to the gradual overcoming of traditional decision-making schemes, recently implemented, first of all in the design phase, in implementation of organizational principles (subsidiarity and solidarity). This approach is expression of a multifaceted and multisense concept (collaborative administration for the realization of “intervention projects” planned together with the TSE linked to the Administration by an ongoing relationship of duration) through which – on the basis of an inter- and multi-disciplinary approach – the objective is to overcome the country out of the crisis of the *welfare state*³⁵.

Designing the future to improve the present situation means, of course, working on it, pre-figuring a factual reality *in the making* destined to be embodied in an innovative model. This system is also a tool to subvert predefined orders, overcome boundaries and broaden visions, experiment with new solutions and/or process and organizational models, even at the cost of accepting unknown risks to embrace a global and transdisciplinary vision that intercepts multiple and often contradictory instances. To this end, it is appropriate to focus on these entities, enhancing their vocation, *mission* and ability to produce actions and develop projects oriented towards a holistic vision of health and care, demonstrating

³⁴ S. STAIANO, *Diritti e confini nell'Europa della crisi*, in *www.federalismi.it*, n. 22/2015; N. LIPARI, *Il ruolo del terzo settore nella crisi dello Stato*, in *Riv. trim. dir. e proc. civ.*, 2, 2018, p. 637.

³⁵ In this sense, S. CASSESE, *L'Aquila e le mosche. Principio di sussidiarietà e diritti amministrativi nell'area europea*, in *Foro. it.*, 1995, V, 373; F. MANGANARO, *Combattere povertà ed esclusione: ruolo e responsabilità delle amministrazioni e delle comunità locali e subnazionali*, in *Dir. econ.*, 2, 2003, p. 41; F. MANGANARO, A. ROMANO TASSONE (a cura di), *Persona ed amministrazione*, Torino, 2004; V. CERULLI IRELLI, voce *Sussidiarietà (dir. amm.)*, in *Enc. giur.*, XII, 2004, p. 1. Specifically on the application of the principle of horizontal subsidiarity in social services and, in particular, in the health and social care sector, for the protection of the right to care and assistance cfr. G.U. RESCIGNO, *Principio di sussidiarietà orizzontale e diritti sociali*, in *Dir. pubbl.*, 1, 2002, p. 19; A. ALBANESE, *Il principio di sussidiarietà orizzontale: autonomia sociale e compiti pubblici*, in *Dir. pubbl.*, 1, 2002, p. 74; G. PASTORI, *Sussidiarietà e diritto alla salute*, in *Dir. pubbl.*, 1, 2002, 95; T.E. FROSINI, *Sussidiarietà (principio di)*, in *Enc. Dir.*, Annali, 2007, p. 1133; G. PASTORI, *Amministrazione pubblica e sussidiarietà orizzontale*, in *AA.Vv.*, *Studi in onore di Giorgio Berti*, Napoli, II, 2005, p. 1756 ss.

the peculiar adaptability of the health organization to changes, thanks to the commitment and involvement of private bodies and associations present in the area in the management and solution of the problems of the sector.

In this way it is possible to enhance and exploit the peculiar freedom of initiative of the health administration that is expressed through research, sharing, and development of skills (*problem solving skills*) through participation, the contamination of the spaces traditionally reserved for it as a function of the sharing of orientations, objectives, methodologies, and the co-management of organizational processes, material infrastructures, resources, etc.

The shared administration model had practical, theoretical, and legal developments that were unimaginable at the dawn of its theorization³⁶, evoking multiple concepts and embodying constitutional principles and values recalled and specified in art. 1, paragraphs 1 *ter* and 2 *bis* of Law no. 241/90 for the protection of common goods (including health) protected by the Constitution.

This model represents a paradigm of administrative action and of its way of being in relations with citizens through associations and/or bodies that, in a spirit of solidarity and in implementation of a positive and responsible model of sociality, provide services in general and, especially, services to the person. As a consequence, it definitively clears the State monopoly, solicits, and enhances the autonomous initiative of citizens and the “profound sociability” of which these entities are an expression³⁷.

Co-programming, co-design, and partnership pursuant to art. 55 CTS are based precisely on the convergence of objectives and on the aggregation of public and private resources for the joint planning and design of services and interventions aimed at raising the levels of active citizenship, cohesion, and social protection.

In particular, co-design is the most widespread form of collaboration between the P.A. and Third Sector entities and particularly valued in the Third Sector Code³⁸ based on co-deci-

³⁶ As highlighted by D. DE PRETIS, *Principi costituzionali e amministrazione condivisa*, in G. ARENA, M. BOMBARDELLI (a cura di), *L'amministrazione condivisa*, cit., 31 ss., where it states «ciò che è importante cogliere è che, nel momento in cui l'articolo 2 configura l'attività solidaristica come “dovere”, nondimeno esso prevede appunto un intervento dei privati in campo pubblico, e dunque offre una base giuridica sicura alla legittimazione piena di questo stesso intervento dei privati in funzione del perseguimento di obiettivi lato sensu pubblici». A. recalled the countless contributions on the subject by G. Arena published from the end of the 90s until that moment and whose ideas have also been developed subsequently (*Introduzione all'amministrazione condivisa*, in *Studi parlamentari e di politica costituzionale*, 1997, p. 29 ss.; *L'amministrazione condivisa ed i suoi sviluppi nel rapporto con cittadini ed enti del Terzo Settore*, in *Giur. cost.*, 3, 2020, p. 1452 ss.; *I custodi della bellezza. Prendersi cura dei beni comuni. Un patto per l'Italia tra cittadini e le istituzioni*, Roma, 2020; G. ARENA, M. BOMBARDELLI (a cura di), *L'amministrazione condivisa*, Napoli, 2022, *passim*).

³⁷ Corte cost., judgment no. 131/2020 in the wake of previous decisions (judgments nn. 228/2004 e 75/1992); Id., 15 marzo 2022, no. 72.

³⁸ S.S. SCOCA, *L'amministrazione condivisa nei servizi sociali: una complessa strada ancora da percorrere*, in *Dir. econ.*, 3, 2021, p. 90; E. Frediani, *La co-progettazione dei servizi sociali. Un itinerario di diritto amministrativo*, Torino, 2021, *passim*; E. Rossi, *Profili evolutivi della legislazione del Terzo Settore*, in A. FICI, E. ROSSI, G. SEPIO, P. VENTURI (a cura di), *Dalla parte del Terzo Settore. La Riforma letta dai suoi protagonisti*, Bari-Roma, 2020, p. 65; R. PARISI, *Il sistema dei servizi sociali*, cit., p. 166.

sion and co-participation in a common project on the basis of which the Administration chooses the Third Sector as its «partner con il quale condividere le scelte organizzative migliori per soddisfare i bisogni della comunità di riferimento»³⁹.

In this perspective, the ethical, scientific, and cultural value of the protagonists of the network within which the relationship is born and develops is rediscovered, which therefore becomes the conceptual and operational hub of every project that involves the territory, a place of identity in which actions, research, and good practices are developed.

In this way, the aim is to prevent the NHS from being entangled in mechanisms of “blind intelligence”⁴⁰. Instead, it is part of a process of multidirectional transformation in which each identity unfolds its potential by becoming collective intelligence.

A good health reform can withstand the *shock* of future emergencies and crises only by exploiting the potential of the tools offered by Article 55 CTS⁴¹ and provided that the support measures adopted are part of a strategy starting from the observation that these objectives are not achieved by the mere albeit efficient provision of services to users, but rather by contributing to the overall growth of each person as a person and citizen.

The latter, in fact, in addition to being bearers of needs, are also endowed with capacities to be valued and subjects with mandatory duties of social solidarity⁴² towards vulnerable individuals and needs for personalized and continuous care with whom a relationship is established that is a source of specific duties and responsibilities, giving rise to more or less intense forms of collaboration with the P.A. which makes use of it for the resolution of complex problems, respecting the prerogatives, role and responsibilities of each one⁴³.

³⁹ D. CALDIROLA, *Il terzo settore nello stato sociale in trasformazione*, Napoli, 2021, 48. In fact, it «si basa sulla convergenza di obiettivi e sull'aggregazione di risorse pubbliche e private per la programmazione e la progettazione, in comune, di servizi e interventi diretti a elevare i livelli di cittadinanza attiva, di coesione e protezione sociale, secondo una sfera relazionale che si colloca al di là del mero scambio utilitaristico» (Corte cost., judgment no. 131/2020 with comments).

⁴⁰ The expression is of E. MORIN, *Introduzione al pensiero complesso. Gli strumenti per affrontare la sfida della complessità* (trad. it. a cura di M. Corbari), Milano, 1993.

⁴¹ TAR Tuscany, Florence, sez. III, 4 October 2021, no. 1260.

⁴² In the present case, it is a question of participation in the exercise of public powers and activities entrusted to persons entitled to carry out a duty of solidarity carried out in subsidiarity, an expression of a «nuova forma di libertà, responsabile e solidale» or expression of the principle of pluralism (social and organizational) that permeates the model, role, activity, and interests of subjects responsible for satisfying social needs that can also be traced back to other constitutional provisions. On this subject, reference should be made to the fundamental contributions of G. ROSSI, *Gli enti pubblici*, Bologna, 1991; F. DE LEONARDIS, *Soggettività privata e azione amministrativa. Cura dell'interesse generale e autonomia privata nei nuovi modelli di amministrazione*, Padova 2000; A. PIOGGIA, *La competenza amministrativa. L'organizzazione fra specialità pubblicistica e diritto privato*, Torino, 2001; G. NAPOLITANO, *Pubblico e privato nel diritto amministrativo*, Milano, 2003; F. MANGANARO, *Le amministrazioni pubbliche in forma privatistica: fondazioni, associazioni e organizzazioni civiche*, in *Dir. amm.*, 2014, p. 45 ss.; V. CERULLI IRELLI, *Amministrazione pubblica e diritto privato*, Torino, 2011; D. MARRAMA, *Soggetti “legali” e autonomia privata*, Torino, 2012. The expression in quotation marks is G. ARENA, *I custodi della bellezza Prendersi cura dei beni comuni. Un patto per l'Italia fra cittadini e le istituzioni*, Milano, 2020; E. ROSSI, *Costituzione, pluralismo solidaristico e Terzo settore*, Modena, 2019.

⁴³ Forerunner was F. BENVENUTI (*Il nuovo cittadino*, 1994) whose intuition has been developed and incorporated into the Constitution and Legislative Decree no. n. 117/2017 entailing a significant paradigm shift in the relationship between the P.A. and the citizen and the model of enhancement, administration and management of common goods in the general interest of the community. G. ARENA, *Cittadini attivi*, Roma-Bari 2006, *passim*.

Historically, the aversion to this model of shared functional administration⁴⁴, that is more invasive than the “codified” hypotheses of participation in the exercise of power limited to some segments of administrative activity, concealed the substantial inability to involve and share skills and/or resources to invest in a hypothetical collaboration relationship in various capacities for the care of common goods.

Constitutionalization is full «legittimazione del fare (dei cittadini) che si affianca al fare dell’amministrazione»⁴⁵ in the shared administration model, it has contributed to the rise and affirmation of a privileged instrument of collaboration between public administrations and TSE, from which the former acquire human, organizational, and technological resources for the purpose of innovating the activity and management of social and welfare services. The systematic use of the model in question would have a significant impact on the Administration, on the organization, also influencing the *process*, timing and outcomes of the changes in progress.

In fact, the objectives to which it aims are too high to hinder the autonomous initiative of citizens to carry out activities of general interest and, consequently, the adoption of the instruments of shared administration, not least in order to encourage the joint exercise of administrative functions that are poorly exercised due to lack of resources or, worse, for reasons of a bureaucratic nature, the same limitations for which in the past “traditional” public intervention has often proved to be ineffective and faithful to a model incapable of «superare il vecchio steccato dell’autorità e delle libertà»⁴⁶ and «costruire una democrazia più matura e inclusiva»⁴⁷.

3. Third Sector role in realizing the integrated digital model: reality or illusion?

The added value of these organisations is appreciable to the extent that they: a) create an integrated health and social-welfare system consistent with the approach and objectives of the NRRP transfused into the Ministerial Decree. 77/2022; b) represent a vehicle for the

⁴⁴ As considered «una “distorsione” del tradizionale rapporto gerarchico con i privati, fondato sull’esercizio del potere e sulla netta distinzione dei ruoli fra soggetti pubblici e privati» (G. ARENA, *Un approccio sistemico all’amministrazione condivisa*, in G. ARENA, M. BOMBARDELLI (a cura di), *L’amministrazione condivisa*, Trento, 2022, 2; ID., *L’amministrazione condivisa ed i suoi sviluppi nel rapporto con cittadini ed enti del Terzo Settore*, cit., 1452).

⁴⁵ COSÌ, D. DE PRETIS, *op. cit.*, p. 39.

⁴⁶ V. CERULLI IRELLI, *L’amministrazione condivisa nel sistema del diritto amministrativo*, in G. ARENA, M. BOMBARDELLI (a cura di), *L’amministrazione condivisa*, cit.; F. GIGLIONI, *Forme e strumenti dell’amministrazione condivisa*, cit., pointed out that «l’amministrare attraverso la collaborazione risulterà un fattore essenziale per la buona attuazione del PNRR».

⁴⁷ In the same sense, cfr. V. CERULLI IRELLI, *L’amministrazione condivisa nel sistema del diritto amministrativo*, cit., p. 28-29, where it states that «Attraverso forme di amministrazione condivisa i beni comuni riacquistano vitalità, diventano spazi della vita comune, diventano fattori di sviluppo della persona umana, di esercizio di diritti di libertà e di libertà fondamentali».

dissemination of new technologies in line with the objectives of Mission 6 of the NRRP by focusing on infrastructure, technological and digital updating of modern, digital and inclusive health facilities with obvious repercussions on service delivery, communication, management of information flows, etc.; c) acquire a decisive role in the process of digitalization of the NHS in making effective the proximity dimension of care and social-health care and *welfare state* by re-establishing, through the subsidiarity network, the role of the State as guarantor of the right to health and assistance of the person.

Very soon, in fact, the reform of territorial social and health care disappointed the expectations of transforming the Community Houses into places of co-programming and co-design for the purposes of social, health, and social integration, producing results. In disregard of the prescriptions of the RRNP and the constraints imposed by the EU, about two years after the entry into force of the aforementioned Ministerial Decree, it reveals significant regulatory and protection “gaps” for people with disabilities and/or suffering from chronic diseases that are particularly disabling and/or not self-sufficient.

Despite the fact that proposals had been made at the Unified Conference for the establishment of Community Houses, the Health Budget and the integrated supply chains of services and Third Sector entities present in the area – the results achieved in the meantime appear rather misaligned with the objectives of the NRRP, reinforcing the conviction that social and health integration is an objective that is not achieved only with *«una legge delega importante, ampiamente condivisa, compiuta e attuata, ma attraverso un preciso mutamento della configurazione dell'interesse pubblico, tradizionalmente ritenuto “espressione dell'amministrazione e della sua funzione nell'ordinamento giuridico” e, ora perseguito da una pluralità di centri di riferimento coinvolti nell'attuazione dei principi costituzionali attraverso significative risorse e “un'adeguata organizzazione dei servizi sociali, senza eccessivi vincoli esterni provenienti dalla legislazione di regolazione del mercato”»*⁴⁸.

In the wake of the 2017 Reform, the Third Sector has now emancipated itself from the role of *«subfornitore di servizi progettati da attori diversi»*⁴⁹ overcoming the critical issues traditionally identified on the regulatory, autonomous, organizational, financial, structural, and activity fronts, which even then had not prevented the recognition of the use of this form of collaboration as an indispensable opportunity for *«riconvertire i piccoli ospedali costosi e pericolosi per la salute dei cittadini in servizi per anziani, per i disabili e per quanti hanno bisogno di essere presi in carico e di ricevere cure low-tech e contestualmente investire in efficienza ed efficacia negli ospedali per acuti»*⁵⁰ for the purpose of encouraging inte-

⁴⁸ COSÌ E. CARUSO, *L'evoluzione dei servizi sociali alla persona nell'ordinamento interno ed europeo*, in *Riv. it. dir. pubbl. com.*, 1/2017.

⁴⁹ A.I. ARENA, *Su alcuni aspetti dell'autonomia del terzo settore. Controllo, promozione, modelli di relazione con il potere pubblico*, in *Rivista AIC*, 3, 2022, p. 43.

⁵⁰ G. VITTADINI, *Il terzo settore e la sfida della sussidiarietà*, in T. NANNICINI (a cura di), *Non ci resta che crescere*, Milano, 2011, p. 81 ss.

grating social policies with health policies, ensuring processes of continuity of care and taking charge of the non-self-sufficient person, as the main and necessary interlocutor of the Public Administration.

This condition, if satisfied, could mark the decline of the self-referentiality that originates from indifference to the needs of citizens and is the main cause of inequality and damage due to non-fulfilment of organisational and performance duties, especially in some regions.

The digital restructuring of the National Health System is a challenge of complex actualization, since it is an operation whose positive outcome depends on a series of conditions: among these, in the opinion of the writer, the intervention (*rectius* collaboration) with the Third Sector Entities stands out, net of the criticalities of the relationship between the Third Sector Code and the discipline of public contracts, also confirmed by Legislative Decree no. 36/2023, persisting the distance between the principle of horizontal subsidiarity referred to in art. 118 of the Constitution and the principle of competition.⁵¹

The Legislative Decree no. 117 of 3 July 2017 favours the autonomous initiative of private individuals who contribute to pursue the common good as well as to raise the level of protection and cohesion and active citizenship through the promotion of their participation and consequent collaboration with the State, the Regions, the Autonomous Provinces and the Local Authorities, thus confirming the peaceful adherence of the *non-profit activity* of these entities to the principles of solidarity and horizontal subsidiarity referred to into the Articles 2 and 118, last paragraph, of the Constitution⁵² and more.

The speciality of Third Sector Entities, the definition of which is found in the combined provisions of art. 4 and 5 of the Code, rests on the mixture of the private structure of which they consist and the contextual pursuit of a general interest, but in art. 55 of the Code, there is an express reference to co-design and shared administration allowing the public sphere to use the propulsive solutions coming from the non-profit world, as an expression of the principles enunciated therein, but also and above all the result of a partial review of

⁵¹ On the constitutional basis of the institutions referred to in art. 55 CTF, cfr. F. TRIMARCHI BANFI, *Teoria e pratica della sussidiarietà orizzontale*, in *Dir. amm.*, 1, 2020, p. 5, where it specifies that «La partecipazione dei privati all'elaborazione degli atti di programmazione [...] soddisfa l'esigenza di carattere generale che gli interessati intervengano nei processi decisionali che li riguardano, ma non trasforma il rapporto tra i pubblici poteri e i privati in una relazione di sussidiarietà». F. BOCCHINI, *La sussidiarietà tra asimmetrie giudiziali ed asimmetrie sostanziali della corte costituzionale e della corte di giustizia dell'unione europea*, in www.nomos-leattualitaneldiritto.it, 2018; U. DRAETTA, *Elementi di diritto dell'Unione Europea. Parte istituzionale. Ordinamento e struttura dell'Unione Europea*, Milano, 2018; B. CARAVITA DI TORITTO, *BREXIT: keep calm and apply the European Constitution*, in www.federalismi.it, n. 13/2016.

⁵² It could be shareble the opinion of the scholarship that considered rbe Code as «il primo intervento normativo volto a rendere possibile che, «sulla base del principio di sussidiarietà», «l'autonoma iniziativa dei privati cittadini, singoli o associati, per lo svolgimento di attività di interesse generale» possa risultare effettivamente favorita» da Stato, Regioni, Città metropolitane, Province e Comuni (articolo 118, comma 4, Cost.); in these terms F. SCALVINI, *Co-programmazione, co-progettazione e accreditamento: profili e questioni applicative*, in A. FIGI (a cura di), *La riforma del Terzo Settore e dell'Impresa Sociale*, Napoli, 2018, p. 263 ss. (spec. P. 265).

the pan-publicist vision in the performance of administrative functions aimed at achieving a public interest⁵³.

As far as we are concerned here, in the economy of the survey focused on the digitalized rewriting of healthcare, it is necessary to address the *vexed question* relating to the applicability of the rules on public contracts: in other words, to the operation of the rules of public evidence for the selection of the Third Sector Entity with which to start co-programming and co-design.

Without claiming to be exhaustive, it is useful to recall the opinion given by the Council of State at the request of ANAC⁵⁴ comparing it with the rulings of the Constitutional Court in the judgment of 26 June 2020, no. 131 *«una pietra miliare nella storia del diritto italiano»*⁵⁵. To sum up, the problem arose on the assumption that the Third Sector Code *«non abbia provveduto all'individuazione dei criteri e delle modalità "per l'affidamento agli enti dei servizi di interesse generale e non faccia alcun riferimento alla normativa comunitaria e nazionale in materia di procedure di affidamento nella definizione dei rapporti tra tali organismi con gli "enti pubblici"»*, in its request for an opinion, ANAC requested that *«chiarimenti in ordine alla definizione degli ambiti di applicazione, rispettivamente, delle disposizioni del Codice dei contratti pubblici e della normativa speciale del Terzo settore in caso di affidamenti agli organismi del Terzo settore delle attività di interesse generale di cui all'articolo 5 del decreto legislativo n. 117/2017»*. On this point, the Council of State has expressed itself by affirming the applicability tout court of the procurement rules for the assignment of a public service to a Third Sector entity, specifying for this purpose that *«al ricorrere di alcune condizioni la procedura di affidamento di servizi sociali disciplinata dal diritto interno non è soggetta alla regolazione di origine euro-unitaria. Ciò accade allorché: - la procedura disciplinata dal diritto interno non abbia carattere selettivo; - non tenda, neppure prospetticamente, all'affidamento di un servizio sociale; - la procedura disciplinata dal diritto interno miri sì all'affidamento ad un ente di diritto privato di un servizio sociale che, tuttavia, l'ente affidatario svolgerà a titolo integralmente gratuito [...]»*, that is, more precisely, *«in perdita per il prestatore»*.

⁵³ The provision reads as follows: *«in attuazione dei principi di sussidiarietà, cooperazione, efficacia, efficienza ed economicità, omogeneità, copertura finanziaria e patrimoniale, responsabilità ed unicità dell'amministrazione, autonomia organizzativa e regolamentare, le amministrazioni pubbliche [...], nell'esercizio delle proprie funzioni di programmazione e organizzazione a livello territoriale degli interventi e dei servizi nei settori di attività di cui all'articolo 5, assicurano il coinvolgimento attivo degli enti del Terzo settore, attraverso forme di co-programmazione e co-progettazione e accreditamento, poste in essere nel rispetto dei principi della legge 7 agosto 1990, n. 241, nonché delle norme che disciplinano specifici procedimenti ed in particolare di quelle relative alla programmazione sociale di zona»*.

⁵⁴ Cons. Stato, opinion 2° August 2018, no. 2052.

⁵⁵ L. GORI, *Terzo settore e Costituzione*, Torino, 2022, p. 80; V.F. GIGLIONI, *L'Amministrazione condivisa è parte integrante della Costituzione italiana*, in *www.labsus.org*, 2020, p. 6; E. ROSSI, *Il fondamento del Terzo settore è nella Costituzione. Prime osservazioni sulla sentenza n. 131 del 2020 della Corte costituzionale*, cit.; F. CIARLARIELLO, *Un conflitto di competenza sul terreno della sussidiarietà: quale rapporto tra pubblica amministrazione ed enti del terzo settore?*, in *www.giurcost.it*.

The prudent position of the Council of State limits and sizes the participation of Third Sector Entities in the *res publica*, considering their participation in the administrative function as a sort of derogation from the competition principle, placing the matter of the Third Sector in correlation with the procurement discipline. Well, as recently pointed out by the doctrine, the fallacy of this syllogism is obvious given that the Third Sector Code is «un contenitore di strumenti innovativi, volti ad attuare in concreto l'evocato principio di sussidiarietà orizzontale e quindi a favorire la libera e "autonoma iniziativa" dei privati nonché, in definitiva, a sviluppare un terzo genere di azione amministrativa: quella "collaborativa"»⁵⁶. This interpretation is based on Directive no. 2014/24/EU, transposed by Legislative Decree no. Recital No 50/2016 is referred to, only in part, by the opinion of the Council of State: recital No 11427 states that Member States are free to provide services to the person directly or to organise social services in ways that do not involve the conclusion of public contracts, for example simply by financing such services.

A similar provision is contained in Article 1(4) of the above-mentioned directive: it is required that «without prejudice to the freedom of Member States to define, in accordance with Union law, what they consider to be services of general interest, how those services are to be organised and financed, in accordance with State aid rules, and to which specific obligations they are to be subject [...]». The same conclusions are also reached by the "Concessions" Directive (2014/23/EU) both in recitals nos. 13 and 54, and Articles 2 and 4, denying the indiscriminate application of the procurement regulations unjustly limiting the role of the Third Sector, in order to accommodate a «concezione più moderna dei principi della concorrenza e del (libero) mercato, che vengono conciliati con altre politiche e altri obiettivi parimenti riconosciuti dai Trattati europei»⁵⁷. In the wake of the aforementioned Directives, the oft-cited judgment of the Constitutional Court no. 131 of 2020 based on the interpretation of art. 55 of the Third Sector Code, considered decisive as an application of the principle of horizontal subsidiarity, bearer of a new – and autonomous, i.e. free from the discipline on public contracts – collaborative relationship between Public Administration and Third Sector Entities⁵⁸. A further confirmation of this assumption comes from the

⁵⁶ M. PETRACHI, *Welfare sussidiario, salute e inclusione sociale. Il contributo del Terzo Settore*, in *www.federalismi.it*, n. 1/2023, p. 188; L. GORI, *La "saga" della sussidiarietà orizzontale. La tortuosa vicenda dei rapporti fra Terzo settore e P.A.*, in *www.federalismi.it*, n. 14/2020, p. 179.

⁵⁷ E. CARUSO, *L'evoluzione dei servizi sociali alla persona nell'ordinamento interno ed europeo*, in *Riv. it. dir. pubbl. com.*, 2017, 5, p. 1115 ss.

⁵⁸ V.E. ROSSI, *Il fondamento del Terzo settore è nella Costituzione. Prime osservazioni sulla sentenza n. 131 del 2020 della Corte costituzionale*, cit., p. 55-56. According to Author «l'articolo 55 prevede l'instaurazione tra i soggetti pubblici e gli ETS di "un canale di amministrazione condivisa, alternativo a quello del profitto e del mercato": e in tale canale alternativo, la co-programmazione, la co-progettazione e il partenariato "si configurano come fasi di un procedimento complesso espressione di un diverso rapporto tra il pubblico ed il privato sociale, non fondato semplicemente su un rapporto sinallagmatico". In particular, the Author believes that «se dunque per gli enti diversi da quelli appartenenti al mondo del terzo settore il rapporto che si instaura con la pubblica amministrazione è di tipo sinallagmatico, quello che riguarda gli ETS è di tipo collaborativo: e ciò in quanto questi ultimi sono costituiti al fine di perseguire quello stesso interesse generale cui anche le pubbliche amministrazioni devono essere rivolte».

opening provisions of the new Code of Public Contracts. Expressly recalling the horizontal subsidiarity and solidarity principles, the provision contextually clarifies unequivocally that, in relation to activities with a strong social value, the public administration can provide organizational models of co-administration, without synallagmatic relationships, based on the sharing of the administrative function with private individuals, provided that non-profit organisations contribute to the pursuit of social objectives under conditions of equal treatment, in an effective and transparent manner and on the basis of the result principle. According to the provision, the procedures for awarding the aforementioned activities should comply with the regulations contained in the Third Sector Code and do not fall within the scope of Legislative Decree no. 36/2023. From the comparison between the aforementioned Directives, the constitutionally oriented reinterpretation of the Constitutional Court and the provisions of the new Code of Public Contracts, it is legitimate to believe that the relationship between the Third Sector Code and public contracts has found a point of conjunction and synthesis between the methods of implementation of the public function and the provision of the service⁵⁹, since the relationship between conception and function is marked by a fundamental elasticity between the two disciplines⁶⁰.

⁵⁹ COSÌ M. PETRACHI, *Welfare sussidiario, salute e inclusione sociale. Il contributo del Terzo Settore*, cit., p. 195.

⁶⁰ TAR Tuscany, Florence, sez. III, 4 October 2021, no. 1260. Recently, Cons. Stato, sez. V, 26 may 2023, no. 5217; 13 June 2023, no. 2023.

For an in-depth look at the topic, cfr. A. BERRETTINI, *La coprogettazione alla luce del Codice del terzo settore e nella penombra del Codice dei contratti pubblici*, in www.federalismi.it, n. 27/2022; A.S. ALBANESE, *I servizi sociali nel Codice del Terzo settore e nel Codice dei contratti pubblici: dal conflitto alla complementarietà*, in *Munus*, 2019, p. 147; EAD., *La collaborazione fra enti pubblici e terzo settore nell'ambito dei servizi sociali: bilanci e prospettive*, in *Ist.fed.*, 3/2022, p. 635 ss. highlighted that in the passage from the legislative Decree no. 50/2016 to Legislative Decree no. 36/2023 the debate has intensified without definitively resolving the problem of coordination between the provisions of the Third Sector Code and Public Contracts Code, despite the Council of State in the advisory opinion redend on the draft guidelines "Indicazioni in materia di affidamenti di servizi sociali" of the 12 April 2022 had recognized that on the basis of «diritto dell'Unione europea nulla impedisce agli Stati di membri ... di apprestare, in relazione ad attività a spiccata valenza sociale, un modello organizzativo ispirato non al principio di concorrenza ma a quello di solidarietà».

On closer inspection, considering the interventions that have taken place during the transition to the new discipline, in my opinion, the only and decisive interpretative key is represented precisely by the type of relationship between public administration and third sector bodies that suggest a change of perspective in consideration of the role and purpose of said bodies. These considerations, only mentioned here, have been explored in depth in my article entitled "Demitizzazione della concorrenza e principio del risultato nella contrattualistica pubblica" will be published soon.

D. PALAZZO, *Pubblico e privato nelle attività di interesse generale*, cit., spec. 447 e 456, clarified that «Il punto di equilibrio tra il principio di non discriminazione e parità di trattamento tra tutti gli operatori economici europei [...] e l'esigenza di conservare un ruolo ventrale al Terzo settore nella fornitura dei menzionati servizi si ravvisa nella peculiare disciplina applicabile agli stessi, che garantisce la stabilità dell'impegno verso il perseguimento delle finalità civiche, solidaristiche e di utilità sociale, ossia verso la realizzazione del progetto costituzionale di trasformazione sociale attraverso la previsione di una procedura comparativa riservata agli enti del Terzo settore». By meeting the conditions set out in art. 55 CTS (community of interests, impartiality with respect to the market and the profit purposes that characterize it). Cfr., Corte cost., 26 June 2020, n. 131). This interpretation is consistent with the rationale of art. 55 of the institutions provided for therein, «tentano [...] di porre al centro del sistema organizzativo, dei servizi sociali e di assistenza, gli enti del terzo settore, allo scopo di sgravare le amministrazioni dai costi connessi alla gestione di tali servizi e di riequilibrare il rapporto tra efficienza amministrativa ed effettività dei diritti sociali» (M. INTERLANDI, *Protezione sociale ed equilibrio intergenerazionale*, in *Dir. e Soc.*, 2022, p. 105). M. RENNA, *La dimensione contrattuale nel Codice del Terzo settore italiano*, in *Actualidad Jurídica Iberoamericana* No 16, febrero 2022, p. 1800 ss.

4. Conclusions

Reorganization of care and assistance, redevelopment of services, and enhancement of territorial medicine centered on the individual - central pivot of the legal system, contractual power vis-à-vis the State on which precise obligations of provision and services are incumbent in order to guarantee the effectiveness of rights (to health and social health care) - evoke a participatory and complex model of assistance, oriented towards the well-being of the person on the basis of a global approach (*One Health*) aimed at ensuring adequate care and social assistance support by the public and private social sectors at the service of the «*società del bisogno*»⁶¹.

And indeed, in some territorial contexts (Veneto, Lombardy, Calabria, Trentino-Alto Adige and Friuli-Venezia Giulia)⁶² the Third Sector has demonstrated the ability to intercept and satisfy in an innovative way the growing and changing social and health needs of the individual, organizational, and intervention skills, with evident savings in resources and raising the quality of services and services offered.

⁶¹ Corte cost., judgment no. 131/2020, cit. In doctrine, cfr., M. CLARICH, B. BOSCHETTI, *Il Codice del Terzo settore, un nuovo paradigma?*, in *JusOnline*, 3, 2018; L. GILI, *Il Codice del Terzo settore ed i rapporti collaborativi con la P.A.*, in *Urb. app.*, 2018, p. 17; M. TIBERII, *Il ruolo degli enti no profit nell'attività pubblica di programmazione e coprogettazione*, in *Amministrativamente*, 2019, 4, p. 90; A.I. ARENA, *Su alcuni aspetti dell'autonomia del terzo settore. Controllo, promozione, modelli di relazione con il potere pubblico*, in *Riv. AIC*, 3, 2022, p. 43; M. BOMBARDELLI, *L'organizzazione dell'amministrazione condivisa*, in G. ARENA, BOMBARDELLI (a cura di), *L'amministrazione condivisa*, Napoli, 2022, p. 113; B. GILIBERTI, *L'amministrazione condivisa e la co-progettazione*, Convegno annuale AIPDA "Lo spazio della pubblica amministrazione tra vecchi territori e nuove frontiere", Università degli Studi di Napoli Federico II, 29-30 settembre 2023, in *www.aipda.it*.

⁶² In other territorial contexts, on the contrary, the role and function of these bodies have been frustrated as they have been relegated to an executive role imposed by a performance and highly competitive model. On this topic, cfr., G. PISANI, J. DECORTE, *L'integrazione socio-sanitaria come asse di un nuovo modello di assistenza. Il possibile ruolo del Terzo settore*, in Euricse, Working Paper n. 128/2023; S. PELLIZZARI, *La co-progettazione nelle esperienze regionali e nel codice del terzo settore*, in S. PELLIZZARI, A. MAGLIARI (a cura di), *Pubblica amministrazione e terzo settore. Confini e potenzialità dei nuovi strumenti di collaborazione e sostegno pubblico*, Napoli, 2019, p. 93; G. LEONDI, *Riforma del terzo settore e autonomie locali*, Torino, 2019; M. RENNA, *Beni pubblici e diritti d'uso pubblico. La resilienza delle prerogative collettive al mutare dei modelli di sviluppo*, in *Riv. trim. dir. pubbl.*, 2022, p. 689; M. INTERLANDI, *Protezione sociale ed equilibrio intergenerazionale*, cit., calls for the essential role of the TSE to be strengthened «*per intercettare e soddisfare le specifiche esigenze dei singoli contesti territoriali*» which does not in any way automatically imply the retreat of the public authorities, but rather a mere reorganisation of activities which does not affect the ownership of the function, nor the roles and responsibilities which remain clearly differentiated, but pursues the objective of ensuring «*la stessa eguaglianza sostanziale, prescritta in Costituzione [...] [che] ricostruita sul parametro dei livelli essenziali delle prestazioni*» (F. MANGANARO, *Le amministrazioni pubbliche in forma privatistica*, cit., spec. pp. 53 and 62). In the same terms, albeit with regard to a different context, it expressed itself V. PARISIO, *Risorse idriche, contratti di fiume e amministrazione condivisa*, cit., p. 189 ss. On this subject, please refer to the contributions of G. PASTORI, *Amministrazione pubblica e sussidiarietà orizzontale*, cit., p. 1752; P. DURET, *La sussidiarietà «orizzontale»*, cit., p. 115; D. PALAZZO, *Pubblico e privato nelle attività di interesse generale*, cit., pp. 74-75. This framework implies the perspective reversal and the definitive overcoming of the public-private opposition that also produces the useful effect of "revitalizing" «*l'autonomia faticosamente conquistata con il Codice del terzo settore [...] la natura collaborativa dell'istituto (co-progettazione) le cui potenzialità diversamente sarebbero state disperse all'interno di un rapporto procedimentale autoritativo e certamente non paritario*»; così R. PARISI, *Il sistema dei servizi sociali*, cit., pp. 159-160). F. GIGLIONI, *Forme e strumenti dell'amministrazione condivisa*, in G. ARENA, M. BOMBARDELLI (a cura di), *L'amministrazione condivisa*, cit., p. 72.

The enhancement of these resources within a solidarity model that is more collaborative and informed by the principle of social and health integration aims to strengthen the territorial dimension of health, to the development of the social dimension of medicine⁶³, and the digital transformation of healthcare with a view to coexistence and comparison between subsidiarity and the market, aimed at finding the optimal combination of services for the community, favoured by the use of the tools offered by art. 55 of the Third Sector Code. Not by chance, it has taken on decisive value for the purposes of regulating relations between the P.A. and the Third Sector and in the provision of services of general interest and for the achievement of the objectives of the RRNP merged into the recent Reform of territorial social and health care referred to in Ministerial Decree no. 77/2022. Among these, the updating of the digital health model is an objective that is linked to the recent health emergency and the consequent emergence of the space for public intervention, on which the NRRP focuses most, which in fact strongly insists on the relevance of infrastructures, on the technological and digital updating of modern, digital and inclusive health facilities that ensure equal access to the service itself. From this perspective, the objective is achieved by strengthening, in particular, the provision of the service at local and proximity level through the establishment of proximity hospitals, dedicated to patients with mild diseases or chronic relapses, as well as community houses to reinforce home care and 602 territorial operations centers to manage home services, as well as the spread of home automation and telemedicine to ensure meticulous home care and, therefore, the efficiency of the NHS and the gradual overcoming of the critical issues of the system that affect the quality of care and assistance.

⁶³ In this perspective, the establishment of new digital professionals (including digital educators and psychologists) with transversal managerial and social skills and experience and able to use innovative tools and new technologies that facilitate interaction with professionals and experts belonging to the educational, clinical, therapeutic and welfare fields, for the prevention, treatment and rehabilitation needs of individuals and/or groups, should be seen. If adequately confronted and contaminated, they can initiate cultural and digital transformation paths in each professional field in order to bring out new perspectives of investigation useful for the search for innovative methodologies, opportunities and organizational solutions, which are also sustainable for the organization, for professionals and for end users - investing in training and constant updating for "Health", "Inclusion" and "Social Cohesion". Tra i contributi più recenti sul tema, cfr. F. MANGANARO, voce *Politiche di coesione*, in *Enc. Dir., I tematici*, Milano, 2022, p. 839; R. MORZENTI PELLEGRINI, *Il ruolo del Terzo settore nel sistema integrato di interventi e servizi sociali*, in F. MANGANARO, V. MOLASCHI, R. MORZENTI PELLEGRINI, D. SICLARI (a cura di), *Manuale di legislazione dei servizi sociali*, Torino, 2020, p. 279; S.S. SCOCA, *L'amministrazione condivisa nei servizi sociali*, cit., p. 97; R. PARISI, *Il coinvolgimento attivo del Terzo settore nella gestione dei servizi sociali, tra solidarietà e concorrenza*, in *Dir. proc. amm.*, 1, 2022, p. 218; D. CALDIROLA, *Il terzo settore nello stato sociale in trasformazione*, cit.; S. PELLIZZARI, A. MAGLIARI (a cura di), *Pubblica amministrazione e terzo settore. Confini e potenzialità dei nuovi strumenti di collaborazione e sostegno pubblico*, Napoli, 2019, p. 32; V. MOLASCHI, *Programmazione e organizzazione dell'equità in sanità. L'organizzazione come "veicolo" di uguaglianza*, in *BioLaw Journal*, 2019, 2, p. 51.

To this end, the contribution of the Third Sector clearly seen by examining the medical transport service in public-private partnership on which both the EU Court of Justice has recently ruled⁶⁴ and the administrative court⁶⁵.

The first declared the compatibility of the Veneto regional law with art. Articles 10(h) and 12(4) of the Procurement Directive⁶⁶ recalling its precedents to confirm that contracts concluded by public sector bodies, which do not fall within the scope of EU law, include contracts establishing cooperation between public sector bodies to ensure the fulfilment of a public service task common to them⁶⁷.

At the same time, the Council of State affirmed the general value of the organisational agreements referred to in the aforementioned Article 15, admitting the use of public-private partnerships also in relation to ordinary and not only emergency medical transport, denying that this procedure could constitute a circumvention of the procurement regulations⁶⁸.

The public-public partnership is essentially attributable to the case referred to in article 15 of law no. 241/1990, according to which public bodies may always use the conventional instrument to conclude organisational agreements between themselves, aimed at regulating the joint performance of activities of common interest⁶⁹.

⁶⁴ CJUE, sez. IX, 6 February 2020, in case C-11/19.

⁶⁵ Cons. Stato, 16 November 2020, no. 7082, with a note by A. SANTUARI, *Trasporto sanitario e cooperazione tra enti pubblici e IPAB: alternativa alla indizione di gare e al convenzionamento diretto con le organizzazioni di volontariato*, in *Sanità pubblica e privata*, 2/2021, p. 36 ss.

⁶⁶ CJUE, sez. IX, 6 February 2020, cited, spec. § 56-58: «As is clear from the answer to the first question, neither Article 10(b) nor Article 12(4) of that directive precludes a regional law which envisages the award of a public contract only as an alternative and by way of derogation. Accordingly, EU law, in particular Article 10(b) and Article 12(4) of Directive 2014/24, cannot preclude a regional law which requires a contracting authority to demonstrate that the conditions for application of those provisions are not satisfied. The answer to the second question is, therefore, that Article 10(b) and Article 12(4) of Directive 2014/24 do not preclude a regional law that requires a contracting authority to provide reasons for its decision to award the contract for the provision of ordinary patient transport services by way of a tendering procedure rather than by direct award of the contract by means of an agreement entered into with another contracting authority».

⁶⁷ Cfr. CJUE, Grand Chamber, 9 June 2009, Case C-480/06, Racc. p. I-4747, § 37 Considered in law.

⁶⁸ Cons. Stato, sez. III, 16 November 2020, no. 7082. M. RAMAJOLI, *Gli accordi tra amministrazione e privati ovvero della costruzione di una disciplina tipizzata*, in *Dir. amm.*, 2019, p. 674. V. Padovani, *Il trasporto sanitario e il ruolo delle Ipab tra codice del terzo settore, partenariato-pubblico privato e gara. L'esperienza delle Regione Veneto*, in *www.federalismi.it*, n. 26/2023.

⁶⁹ As highlighted by ANAC in Resolution 833 of 1 August 2017, p. 4: «Occorre, in sostanza, una "sinergica convergenza" su attività di interesse comune, pur nella diversità del fine pubblico perseguito da ciascuna amministrazione».

In tema, cfr., Cons. Stato, sez. III, 16 December 2013, no. 1837, where it reads: «Gli accordi tra p.a. possono essere annoverati tra quegli atti a struttura negoziale, riconducibili all'attività amministrativa di carattere consensuale, sottoscritti per l'esercizio in comune di una competenza spettante agli enti pubblici contraenti. In questo senso, deve essere dunque riconosciuta valenza generale agli accordi organizzativi di cui all'art. 15 l. 241/1990, in forza del quale gli enti pubblici possono "sempre" utilizzare lo strumento convenzionale per concludere tra loro accordi organizzativi volti a disciplinare lo svolgimento in collaborazione di attività di interesse comune».

In the wake of this decision, subsequently, the Council of State, in judgment no. 7082/2020 cited in § 8.1, reiterated the importance attributed to it «al perseguimento di obiettivi di interesse pubblico mediante accordi tra pubbliche amministrazioni e ne afferma la compatibilità con la normativa comunitaria in materia di appalti; in tale quadro, la comunione

The provision was subsequently borrowed from art. 5, paragraph 6, of Legislative Decree no. 50/2016, (now art. 6 of the current Public Procurement Code), which established that agreements between pp.aa. (a) the agreements establish or implement cooperation between the participating contracting authorities or entities to ensure that the public services which they are required to perform are provided with a view to achieving the objectives which they have in common; (b) the implementation of such cooperation shall be governed solely by considerations relating to the public interest; (c) the participating contracting authorities or entities carry out less than 20% of the activities covered by the cooperation on the open market.

If it is true, as it is true, that our legal system has swallowed up the logic of public-private partnership, through a negotiation of public power with subjects coming from the Third Sector, in the name and on the basis of the horizontal subsidiarity principle⁷⁰, here it is important to emphasize that Third Sector Entities represent an indefectible resource for the realization of the health 2.0 project. The role and function to be recognized to private initiatives, free from the discipline of procurement, could develop on different prospective levels, since this does not represent, as we have seen, a “flight forward” with respect to the logic of competition or an exceptional derogation from the subject of procurement, but rather the effective implementation of a principle of solidarity having equal constitutional dignity with respect to competition.

Thus, by way of example, it should be noted that the Electronic Health Record can also consist of some supplementary elements⁷¹, These include the “personal notebook”, a specific area in which each patient can personally enter data and documents relating to their treatment path⁷². This is a particularly important integrative element allowing and ensuring the active participation of the patient in the construction of his or her own health database, especially through the inclusion of information regarding previous services.

di interessi, che è alla base degli accordi di collaborazione tra amministrazioni previsti dall'art. 15 della legge 7 agosto 1990, n. 241, rende, in definitiva, inapplicabili, per la conclusione degli accordi stessi, le regole del diritto dell'Unione in materia di evidenza pubblica, di cui detta conclusione non può considerarsi in alcun modo elusiva».

⁷⁰ Cfr., Cons. Stato, sez. III, 16 november 2020, no. 7082, cited referring to previous sentences (Cons. Stato, sez. V, 12 April 2007, no. 1707 and 16 September 2011, no. 5207); L. GORI, *Le perduranti tensioni fra diritto pubblico e diritto privato nella qualificazione degli enti del Terzo settore*, in *Nuov. giur. civ. comm.*, 3, 2022, p. 621.

⁷¹ Supplementary data and documents include: prescriptions, bookings, medical records, health reports, home care, diagnostic and therapeutic plans, residential and semi-residential care, drug dispensing, vaccinations, specialist care services, emergency services, hospital care services in hospital, medical certificates, personal notebook of the patient, reports relating to the services provided by the health care service. continuity of care, self-certifications, participation in clinical trials, exemptions, prosthetic assistance services, data to support telemonitoring activities, data to support integrated management of diagnostic-therapeutic pathways. In addition to these, there are the other documents referred to in art. 2, paragraph 3, lett. aa), D.P.C.M. no. 178/2015.

⁷² Pursuant to art. 4, D.P.C.M. n. 178/2015 «*Il taccuino personale dell'assistito è una sezione riservata del FSE all'interno della quale è permesso all'assistito di inserire dati e documenti personali relativi ai propri percorsi di cura, anche effettuati presso strutture al di fuori del SSN. I dati e i documenti inseriti nel taccuino personale dell'assistito sono informazioni non certificate dal SSN e devono essere distinguibili da quelli inseriti dai soggetti di cui all'articolo 12*».

As recently noted in legal literature, «*esso promuove in questo senso atteggiamenti di self management e di empowerment, che sono sicuramente in linea con l'evoluzione digitale del cittadino, reso maggiormente autonomo dalle tecnologie ICT*»⁷³.

Although the inclusion of such a tool for dialogue between the citizen/patient and the health administration is appreciable, it should not be overlooked that the entry of data depends on the patient's ability to retrieve them, as well as on his willingness/ability to enter them into the system. Therefore, the possibility that the patient will give up entering them because he or she is not fully able to navigate the platform cannot be excluded, or that erroneous or misleading data may be entered. This does not alter the fact that the initiative is a paradigmatic example of potential fruitful interaction with the patient, thanks to the EHR. In this case, through the compilation of the electronic notebook, the health administration could hypothetically make use of the collaboration of subjects belonging to the third sector to empower, instruct, and monitor the compilation and progressive formation of the electronic notebook.

This prospect is a mere antonomastic projection of a logic of involvement of civil society subjects capable of providing what is currently to be considered an essential public service, i.e. the reduction of the inconvenience and/or criticalities caused by the use of new technologies. Therefore, the establishment and promotion of initiatives, through the co-optation of Third Sector Entities through forms of public-private partnership governed by contracts with a public purpose⁷⁴ to which the principles of obligations and contracts apply, where compatible⁷⁵. It is potentially a solution aimed at mitigating the risks of the *digital divide*, which in the healthcare sector translates into a loss of *opportunity* for a more efficient protection of the good of health or, as in the case examined, even a deprivation of an appreciable initiative to bring patients and the healthcare world closer together. In this perspective and for these purposes, the horizontal cooperation between health administrations and Third Sector Entities in the performance of activities of common interest involves the main theme investigated here concerning the digital "rewriting" of the health system and the related problems such as the relationship between competition and subsidiarity, between the Procurement Code and that of the Third Sector, the complexity of the technological challenge, the unavoidable importance of taking into account the dif-

⁷³ Cfr., N. POSTERARO, *La digitalizzazione della sanità in Italia: uno sguardo al Fascicolo Sanitario Elettronico (anche alla luce del Piano Nazionale di Ripresa e Resilienza)*, cit., p. 204.

⁷⁴ Cfr., *ex multis* Cons. Stato, sez. I, 26 June 2018, n. 1645; sez. I, opinion 7 May 2019, no. 1389.

⁷⁵ In this sense cfr. CGUE, 9 giugno 2009, in cause C-480/06, *Stadt Halle e RPL Lochau*, considered in law §§ 50 e 51, in so far as the Court states that such cooperation between public authorities cannot interfere with the main objective of the Community rules on public procurement, namely the free movement of services and the opening up to undistorted competition in all the Member States, «*poiché l'attuazione di tale cooperazione è retta unicamente da considerazioni e prescrizioni connesse al perseguimento di obiettivi d'interesse pubblico e poiché viene salvaguardato il principio della parità di trattamento degli interessati di cui alla direttiva 92/50, cosicché nessun impresa privata viene posta in una situazione privilegiata rispetto ai suoi concorrenti*».

facilities of concrete implementation of ICT tools, and the related opportunity to address the digital review of healthcare provision through the involvement of private individuals. For the purposes of the digital switching of public health, the cooperation of the TSE constitutes a physiological alternative to the performance of the administrative function rather than an exception to the rule at the end of a reflection starting from the observation of the failure of the pan-public vision, since examples such as medical transport or the envisaged help of private third parties in reducing dysfunctions systemic information related to the use of new tools, as in the example of the digital notebook, or about the problems of using telemedicine for those who are less familiar with technology, confirms how indispensable the civic-subsidary contribution of private individuals is in the digital refoundation of public health.