The Telematic Procedures in the European Union.
Introducing a Draft Directive

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1. INTRODUCTION / INTRODUZIONE

Thirty-three European scholars have participated in a series of conferences on the subject of telematic procedure in European Public Administrations. The working group, who later collected and coordinated all the suggestions, found that the most useful conclusion of this work was to write a final text in the form of a possible EU directive. There are 25 “whereas”: a deliberately large number, as they constitute a veritable report supporting the entire project.

To the specialist in administrative law, it is blatantly obvious that the activity of the public administrations is based on the procedure, defined as a set of rules governing the initiation, investigation, transparency, participation, cooperation among offices and public bodies.

To the scholar of administrative law it is also obvious that the main legal acts of public administrations are the result of a set of complex activities, conducted through the cooperation of various governmental bodies and several offices. Only few minor acts are performed by a single office and a single public official.

However, such awareness did not result in adequate, complete and executable regulation, when the Community and national legislators resolved to regulate the use of ICT in public administrations exclusively by way of dematerialization of documents.

Since the early days, research on the tele-administration (1978) had shown that the purpose of dematerialization was to enable networked management of digitalized procedures.

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Conversely, up to the present moment, the attention of legislators (with some exceptions) has focused on the electronic document, ignoring the essential phase of its creation. That is, the administrative telematic procedure.

As this knowledge is now acquired, or at least it is gaining grounds, it seems highly appropriate that the EU play its role, just as it did for electronic signatures in 1999, of coordinating the various solutions before they are adopted by individual Member States, before creating preset situations that are difficult to remove, with the disastrous effect of making it impossible for the administrations of States to interoperate digitally and telematically among themselves (horizontal interoperability) and with the EU institutions (vertical interoperability). In this situation, the operational difficulties for the European citizen would be self-evident.

The legal basis for intervention, as well as the limits of the Directive, are clearly stated in the whereas of the text, and we refer to them.

We would like to remind the reader of the generalization of the telematic “single point of contact”, already enhanced by the Directive 2006/123/EC on services; the electronic office and the electronic folder (dossier). Many crucial problems are dealt with, such as the technical readability of documents immediately and over time.

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Trentatre studiosi europei hanno partecipato a convegni sul tema del procedimento telematico nelle pubbliche amministrazioni europee e lavorato successivamente coordinando tutti i suggerimenti raccolti. Il gruppo di lavoro ha ritenuto utile concludere i lavori redigendo un testo nella forma di una possibile direttiva comunitaria. I «considerando» sono 25: volutamente numerosi perché rappresentano complessivamente anche una relazione di supporto all’intero progetto.

Per gli specialisti del diritto amministrativo è estremamente ovvio che l’attività delle pubbliche amministrazioni è basata sul procedimento, inteso come un insieme di regole che disciplinano l’avvio, l’istruttoria, la trasparenza, la partecipazione, la cooperazione tra uffici ed amministrazioni.

Per gli studiosi di diritto amministrativo è altrettanto ovvio che i principali atti giuridici della pubblica amministrazione sono il risultato finale di attività complesse, svolte attraverso la cooperazione di più uffici e di più amministrazioni pubbliche. Sono pochi e poco rilevanti gli atti che si compiono ad opera di un solo ufficio e di un solo pubblico funzionario.

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