

# Digital Rights, Public Administrations and the European Union Law\*

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**ABSTRACT** The article explores the evolving landscape of digital rights within the EU, emphasizing their significance for public administrations and European citizenship. Initially, the expansion of the Internet raised issues around access and competition, prompting legislative efforts to protect citizens' digital rights, particularly regarding personal data and democratic principles. The EU's focus on creating a digital single market underscores the importance of advanced digital public services and data interoperability for economic development. Central to this digital transition is the concept of European digital citizenship, encompassing rights like good administration as outlined in the Charter of Fundamental Rights of the EU. The Single Digital Gateway Regulation exemplifies efforts to streamline access to information and administrative procedures, enhancing the digital relationship between EU institutions and citizens. The notion of digital citizenship is discussed in two dimensions: one focused on the rights and responsibilities within administrative processes, and the other on broader societal digital engagement. It is argued for a balanced approach that includes both rights and duties, encouraging citizens to engage responsibly with digital tools provided by public administrations. This dual approach aims to foster a comprehensive and effective digital administrative citizenship within the EU framework.

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## 1. Digitalisation of public administrations and European citizenship

The acknowledgment and the protection of so-called “digital rights”, in an initial phase of technological evolution, have raised a series of issues related to the use of technologies, mainly in relation to access and primarily to Internet access.<sup>1</sup> International organizations and national-law systems focused their attention on potential advantages, but above all on the risks of new technologies possibilities in terms of global market and economy. In Western democracies, technology and the Internet have expanded with incredible speed, by virtue of the rights recognized by these same democracies, primarily freedom of information and freedom of to conduct a business.

With the expansion of the Internet and the ensuing interaction potential, given the acquisition of *de facto* monopoly positions by some online service providers, lawmakers' attention has been absorbed by the protection of competition and citizens' digital rights. This seemed particularly warranted since the main internet service providers and markets were headquartered in other countries, responding to other legal systems and therefore to a different framework of recognition and protection of both citizens' and consumers' rights.

Major online service providers now also play a greater role in the relationship between public authorities and individuals: this relationship, in the digital dimension, is mediated or, anyway, tracked, by private entities that provide digital services and tools. Citizens and public authorities themselves are thus exposed to new challenges, in terms of security and respect for democratic principles, protection of rights, as well as the promotion of markets.

Moreover, in light of internet service providers' mediation role, the attention of international organizations and European and national legislators is now focusing mainly on the difficult balance between the protection of individuals' rights - primarily the protection of personal data - and the promotion of digital tools, in so far as they benefit people's lives and society. Attention is increasingly paid to the security of the digital dimension, given the changing geopolitical framework and the spread of systematic attempts to exert undue influence in the information field, mainly for the purposes of destabilizing political-electoral systems.

The involvement of public administrations is today one of the main axes of intervention by the European Union in its attempt to achieve a breakthrough in the digital economy and create a digital single market. It is in fact clear that public authorities' use of the most advanced technological tools is an essential part of economic development, increasingly based on digital systems and digitization of

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<sup>1</sup> See the United Nations Human Rights Council Resolution of 5 July 2012.

information. The creation and the reliability of adequate digital public services for people and businesses, the interoperability of digital solutions and systems within the same system as well as between different systems, the use and reuse of data held by public administrations are all fundamental components of any economy's development and competitiveness, in any system, mainly in the EU system.

However, they raise unprecedented issues in terms of the security of the systems themselves and the protection of individuals, thus requiring a deeper reflection on the bonds of belonging, the pact that lies at the basis of the special relationship between people and legal systems that passes under the concept of "citizenship". On such matters, therefore, the legislation of the European Union intervenes in different ways and with progressive strength and scope, mainly in light of the creation of a digital single market but also with the aim of achieving a fuller and more effective enjoyment of European citizenship (therefore including the right to free movement and residence and the right to non-discrimination on the basis of nationality).

Hence, the sphere of European citizens' digital rights takes on ever more importance in a public dimension, drawing on a digitalised relationship between legal systems - that of the EU and that of the respective member states, as well as within national legal systems - and addressing other dimensions of citizenship.

In fact, it is necessary to consider the qualifying prerequisite of European citizenship and the recognition of fundamental rights directly linked to it. First of all, the right to good administration (affirmed by art. 41 of the Charter of Fundamental Rights of the European Union, which states that the institutions of the Union are required to guarantee the right to good administration to the citizen) and the consequent right to compensation, by the Union, for damages caused by its institutions or its agents.<sup>2</sup>

In particular, according to the Charter of Fundamental Rights of the European Union, every individual has the right to have matters that concern him or her dealt with impartially,

fairly and within a reasonable period of time; to be heard before measures are taken against him or her; to access the files concerning him or her; to demand that the EU administration justifies its decisions. Any citizen or any natural or legal person residing or having headquarters in an EU country has the right of access EU institutions', bodies and agencies' documents (articles 41 and 42 CDFEU).

The right to good administration and the other rights recognized by the Charter also shapes EU and member states' administrative law in the digital dimension, as it emerges by the progressive and increasingly intense effort of the EU in this sense.<sup>3</sup>

In my opinion, an extremely significant step is represented, in this sense, by the EU regulation which establishes a Single Digital Gateway for access to information, procedures and assistance and problem-solving services.<sup>4</sup> The Gateway was established with three main objectives: to reduce the administrative burden on citizens and businesses exercising or intending to exercise their rights relating to the internal market, including the free movement of citizens, in full compliance with the rules and national procedures; eliminate discrimination; ensure the functioning of the internal market with regard to the provision of information, procedures and assistance and problem-solving services (Whereas 6). The regulation provides that the main administrative procedures are available online both for users in their own country and for cross-border users, providing that they are displayed in a clear and linear way and in English, both on the websites of the administrations responsible for the procedure (for now only state administrations) and via the Digital Single Gateway, called "Your Europe".<sup>5</sup> The Help Desk therefore acts as a single-entry point through which citizens and businesses can access information on the rules

<sup>3</sup> E.g. Directive (EU) 2016/2102 of the European Parliament and of the Council of 26 October 2016, on the Accessibility of the websites and mobile applications of public sector bodies or the recent Regulation (EU) 2024/903 of the European Parliament and of the Council of 13 March 2024 laying down measures for a high level of public sector interoperability across the Union (Interoperable Europe Act).

<sup>4</sup> Regulation (EU) 2018/1724 of the European Parliament and of the Council of 2 October 2018 establishing a Single Digital Gateway to provide access to information, to procedures and to assistance and problem-solving services and amending Regulation (EU) No 1024/2012.

<sup>5</sup> [https://europa.eu/youreurope/index\\_en.htm](https://europa.eu/youreurope/index_en.htm).

<sup>2</sup> D.U. Galetta, *Digitalizzazione e diritto ad una buona amministrazione (il procedimento amministrativo, tra diritto UE e tecnologie ICT)*, in *Il Diritto dell'Amministrazione Pubblica digitale*, R. Cavallo Perin and D.U. Galetta, Turin, Giappichelli, 2020, 86 ff.

and requirements that they must satisfy under Union or national law for some main administrative procedures (residence, purchase of a house, ...). In particular, with the articles dedicated to the definition of the quality of information on rights, obligations and rules, quality of information on procedures, on assistance and problem-resolution services (articles 6 et seq.) and on cross-border access of these online procedures (art. 13) effectively establish the minimum requirements, a skeleton of a digitalized administrative procedure. In this way, the Regulation contributes indirectly but consistently to the evolution of the debate on the European administrative procedure.<sup>6</sup>

The EU attention at this digital perspective is shown in a recent European Parliament document.<sup>7</sup> In particular, acknowledging the need to share a European administrative procedure, the document expresses the need to bring the digitalisation of public administrations to a higher level, in light of the needs and possibilities of digitalisation and the relations between Union institutions, the primary recipients of these recommendations, and member states' administrations.

## 2. Digital rights and public administration: the gradual definition of digital citizenship and the European Union

The term citizenship always raises very particular sensitivities, as it immediately evokes the classical and constitutional meaning of belonging to a specific system and the ensuing special relationship between individual and state, historically comprising a complex set of rights as well as duties, active and passive situations, shaped by the contents, methods and legal jurisdictions determined by

each legal system itself.<sup>8</sup> For citizens of the European Union member states, citizenship as recognized within national normative frameworks implies, moreover, by law, the recognition of European citizenship, which qualifies the special relationship between citizens and member states of the Union and, directly, between citizens and the European Union itself.<sup>9</sup> The derived nature of European citizenship and the rights recognized to European citizens by Union law are such that the legal projections of the meanings of citizenship, progressively recognized within the member states, also strictly involve European citizenship.

In times featuring migration and the ensuing complexities, as well as limits to freedom of movement induced by the health emergency and public-safety concerns, the topic of citizenship has assumed special relevance in public discourse, in its main meaning but also in the other definitions that, even from the EU perspective, have emerged over time. This variety of meanings can be referred to the progressive recognition of a core of fundamental rights and different legal positions even for non-citizens, in the various systems, whereby there has been a transition from "citizenship" to "citizenship rights", where citizenships are determined, one could

<sup>6</sup> See at least, R. Mastroianni and F. Rolando (eds.), *La codificazione dei procedimenti amministrativi dell'Unione europea*, Naples, Editoriale scientifica, 2017; G. Della Cananea and D.U. Galetta (eds.), *Codice RENEUAL del procedimento amministrativo dell'Unione europea*, Naples, Editoriale Scientifica, 2016; F. Bignami and S. Cassese (eds.), *Il procedimento amministrativo nel diritto europeo*, Milan, Giuffrè, 2004. About the SDG, A. Monica, *Lo sportello digitale unico: uno strumento che può unire cittadini e amministrazioni europee*, in *Rivista Italiana di Diritto Pubblico Comunitario*, 3, 2019, 477 ff.

<sup>7</sup> *Digitalisation and administrative law*, European Parliament Resolution of 22 November 2023 with recommendations to the Commission on digitalisation and administrative law (2021/2161(INL)), P9\_TA(2023)0426.

<sup>8</sup> The scholarly literature about the concept of citizenship is impressively large. For the sake of economy of the text here we will refer only to some references, mainly Italian: G. Azzariti, *La cittadinanza. Appartenenza, partecipazione, diritti delle persone*, in *Diritto Pubblico*, 2011, 2, 426; G. Berti, *Cittadinanza, cittadinanze e diritti fondamentali*, in *Riv. Dir. Cost.*, 1997, 3; G. Biscottini, *Cittadinanza* (voce), in *Enc. dir.*, VII, Milan, 1960; R. Clerici, *Cittadinanza*, in *Dig. Pubbl.*, III, 1989; P. Costa, *Cittadinanza*, Rome-Bari, Laterza, 2005; F. Cortese, G. Santucci and A. Simonati (eds.), *Dallo status di cittadino ai diritti di cittadinanza*, Naples, Editoriale scientifica, 2014; M. Cuniberti, *La cittadinanza. Libertà dell'uomo e libertà del cittadino nella Costituzione italiana*, Padua, CEDAM, 1997; A. Morrone, *Le forme della cittadinanza nel terzo millennio*, in *Quad. Cost.*, 2, 2015, 303; D. Kochenov, *Cittadinanza*, Bologna, il Mulino, 2020.

<sup>9</sup> M. Cartabia, *Cittadinanza europea*, in *Enc. Giur. Treccani*, 1995; M. Condinanzi and B. Nascimbene, *Cittadinanza dell'Unione e libera circolazione delle persone*, in *Trattato di diritto amministrativo europeo*, Parte generale, M.P. Chiti and G. Greco (eds.), I, Milan, Giuffrè, 2007, 87; V. Lippolis, *Cittadinanza dell'Unione europea*, in *Dizionario di diritto pubblico*, S. Cassese (ed.), vol. II, Milan 2006, 932; A. Tizzano, *Alle origini della cittadinanza europea*, in *Il Diritto dell'Unione Europea*, 4, 2010, 1031; A. Pinelli, *Cittadinanza Europea*, in *Enc. dir.*, Annali, I, 2007; Vv.Aa., *Special Issue EU Citizenship: Twenty Years On*, in *German Law Journal*, vol. 15 (5), 2014.

say, “with variable geometries”, or, better yet, according to a “multiple-dimension citizenship” model.<sup>10</sup>

In this way, the adjectives that over time have been placed alongside the term citizenship, distinguishing it from its main meaning, have engendered new legally relevant definitions which are used, in particular, to identify novel and different ways in which the relationship between public powers and individuals could be expressed: social citizenship, administrative citizenship,<sup>11</sup> active citizenship,<sup>12</sup> global citizenship.<sup>13</sup> These “other” citizenships all interact with historically understood citizenship within the context of a bond of belonging to one’s own national legal system, but also with European citizenship itself.

Perhaps a further sense of “citizenship” could now be added to these meanings: digital citizenship, which currently lacks a distinct legal standing and definition. In fact, the relevant debate oscillates between the recognition of digital citizenship as having its own legal status - within the context of recognition of “new” digital rights - and its possible attribution to the “other” mentioned

citizenships, as a result of technological evolution and therefore as their simple corollary.

With reference to the digital dimension of citizenship, it is necessary first of all to consider the issue of the recognition, by major international organizations and, progressively, in various national systems, of “new” digital rights, including the acknowledgment of Internet access and freedom of online expression as fundamental human rights.<sup>14</sup> These new rights are affirmed, in a broader and more detailed sense, in recent documents, in particular the “European Declaration on digital rights and principles for the digital decade”,<sup>15</sup> which, although not legally binding, seems to strongly contribute, with other European-Union legal sources, to the progressive definition of a European dimension of digital citizenship.

In this context, ongoing regulatory interventions appear to identify at the very least a dual meaning of digital citizenship.

The first meaning comprises a set of fundamental rights of individuals in the use of digital services and the interaction with other (especially private but also public) subjects. This meaning is closer to the approach promoting awareness of individual rights as a basic feature in the acquisition of digital skills, through digital education initiatives (also called digital citizenship education).

The second meaning interprets “new” digital rights, recognized in international sources and national legal systems, within the grammar of the relationship between individuals and public powers and, in particular, between public administrations and administered subjects. We will mainly focus on this second meaning, albeit in a unifying perspective, endorsed by the European Declaration: “With the acceleration of the digital transformation, the time has come for the EU to spell out how its values and fundamental rights applicable offline should be applied in the digital environment. The digital transformation should not entail the regression of rights. What is illegal offline, is

<sup>10</sup> A. Bartolini and A. Pioggia, *Le cittadinanze amministrative. Percorsi e prospettive, dell’amministrazione tra diritti e doveri a 150 anni dalle leggi di unificazione amministrativa*, in *Cittadinanze amministrative* (A. Bartolini and A. Pioggia (eds.), vol. VIII; L. Ferrara and D. Sorace (eds.) *A 150 anni dall’unificazione amministrativa italiana*, Florence, FUP, 2016, 14 ff.

<sup>11</sup> G. Arena, *Il principio di sussidiarietà nell’art. 118, u.c. della Costituzione*, in *Studi in onore di Giorgio Bertti*, vol. I, Naples, Jovene, 2005, 215; A. Bartolini and A. Pioggia (eds.), *Cittadinanze amministrative*, vol. VIII; L. Ferrara and D. Sorace (eds.), *A 150 anni dall’unificazione amministrativa italiana*, Florence, FUP, 2016; C.E. Gallo, *La pluralità delle cittadinanze e la cittadinanza amministrativa*, in *Dir. Amm.*, 2002, 483; R. Cavallo Perin, *La configurazione della cittadinanza amministrativa*, in *Diritto Amministrativo*, 2004, 204. About European citizenship and social citizenship see D. Schiek, *Perspectives on Social Citizenship in the EU: From Status Positivus to Status Socialis Activus via Two Forms of Transnational Solidarity*, in *EU Citizenship and Federalism*, D. Kochenov (ed.), Cambridge University Press, 2017.

<sup>12</sup> G. Arena, *Il principio di sussidiarietà*; Id., *La cittadinanza attiva nella Costituzione*, in *Dallo status di cittadino*, F. Cortese, G. Santucci and A. Simonati (eds), 241; E. Grosso, *Le vie della cittadinanza. Le grandi radici. I modelli storici di riferimento*, Padua, CEDAM, 1997; Vv.Aa., *Special Issue EU Citizenship: Twenty Years On*.

<sup>13</sup> R. Cavallo Perin, *L’ossimoro della locuzione “cittadinanza globale”*, in *Diritto Amministrativo*, 2005, 211; R. Romano Tassone and F. Manganaro (eds.), *Dalla cittadinanza amministrativa alla cittadinanza globale*, Milan, Giuffrè, 2005.

<sup>14</sup> See the United Nations Human Rights Council Resolution of 5 July 2012. See at least L. Cuocolo, *La qualificazione giuridica dell’accesso a Internet, tra retoriche globali e dimensione sociale*, in *Politica del Diritto*, 2-3, 2012, 263 ff.

<sup>15</sup> European Declaration on Digital Rights and Principles for the Digital Decade, 2023/C 23/01, Joint Declaration of the European Parliament, the Council and the Commission.

illegal online” (Whereas 3).

As previously stated, currently there is no legally univocal meaning of digital citizenship, but there is no doubt that lawmakers and scholars are increasingly focusing on this term.<sup>16</sup>

Examining supranational sources, we can refer first of all to the definition of digital citizenship given by the Council of Europe as a set of citizens’ digital skills, to be promoted and supported to overcome the digital divide to the broadest possible extent.<sup>17</sup> This approach is most reflected in the first of the two considered meanings of digital citizenship, although it also represents an essential part of the second one.

In reference to the meaning most connected to the relationship between individuals and public powers, following the interpretation and objectives given by international organizations, the theme of digital citizenship is increasingly oriented towards the needs of the user/citizen (user-/citizen-centred) and towards an approach based on people’s needs, which considers their voice as the driving

force of public-administration activities, as a “people-citizen driven” or “user voice” dimension.<sup>18</sup> The application of these models, despite appearing to be rhetorical, has a significant impact on the organization and the activities of public administrations, as well as on how citizen participation is understood and implemented, and even more in the digital dimension. These models have been largely rethought in the debate on smart cities<sup>19</sup> (and therefore smart people and smart citizenship), at the international, European and national levels. Experiments conducted in cities, as an expression of local-government autonomy and in the framework of their competencies, have displayed an innovative character and often served as a driving force for reflections on digital citizenship.

Mainly in this perspective, but then in a more general sense, digital citizenship has been compared to administrative citizenship, as “belonging to a community other than the sovereign one, with legitimation of subjective positions that do not depend on the status of citizen-sovereign... as legitimation, which in public services, however, has always been recognized as pertaining to each person administered”, legitimation of ownership of subjective legal situations towards public administration.<sup>20</sup> Administrative citizenship

<sup>16</sup> M. Caporale, *Dalle smart cities alla cittadinanza digitale*, in *federalismi.it*, 2, 2020, 30-47; Id., *Dalla smart citizenship alla cittadinanza digitale*, in *L'amministrazione pubblica con i big data: da Torino un dibattito sull'intelligenza artificiale*, R. Cavallo Perin (ed.), Turin, *Quaderni del Dipartimento di Giurisprudenza dell'Università di Torino*, 261; F. Costantino, *La c.d. cittadinanza digitale*, in *Diritto Pubblico*, 2, 2023, 143; P. Costanzo, *Avete detto “diritti digitali”?*, in *Diritto Mercato Tecnologie*, 2, 2016, 145; T. E. Frosini, *Il diritto costituzionale di accesso ad internet*, in *Rivista AIC*, 1, 2011; P. Marsocci, *Cittadinanza digitale e potenziamento della partecipazione politica attraverso il web: un mito così recente già da sfatare?*, in *Rivista AIC*, 2, 2015; E. Menéndez Sebastián and J. Ballina Díaz, *Digital Citizenship: Fighting the Digital Divide*, in *ERDAL*, 2021, vol. 2 (1), 149 ff.; E. Menéndez Sebastián, *From Bureaucracy To Artificial Intelligence. The Tension Between Effectiveness And Guarantee*, Wolter&Kluwer-CEDAM, 2023; G. Berti and G.C. De Martin (eds.), *Gli istituti della democrazia amministrativa*, Milan, Giuffrè, 1996; F. Saitta, *Cittadinanze, partecipazione procedimentale e globalizzazione*, in *Codice delle cittadinanze*, R. Ferrara, F. Manganaro and A. Romano Tassone (a cura di), Milan, Giuffrè, 2006, 336 ff; G. Napolitano, *La logica del diritto amministrativo*, Bologna, il Mulino, 2021, speaks of citizens as “clients” [it: “committenti”] of the public administration, without political intermediation of their rights and interests, 59 ff.

<sup>17</sup> Council of Europe, *Digital Citizenship Education Handbook*, Council of Europe Publishing, 2019, Strasbourg. Similar initiatives, aimed at promoting digital citizenship education, intended as digital-skill acquisition, are implemented by other international organisations, in particular Un, Unesco e Unicef, Oecd... Furthermore, there are various meanings of the same term “digital divide”, v. J. van Dijk, *The digital divide*, Cambridge, Polity, 2020.

<sup>18</sup> See Oecd, *Recommendation of the Council on Digital Government Strategies*, 15 July 2014, where Digital Government is defined as: “...the use of digital technologies, as an integrated part of governments’ modernisation strategies, to create public value. It relies on a digital government ecosystem comprised of government actors, non-governmental organisations, businesses, citizens’ associations and individuals which supports the production of and access to data, services and content through interactions with the government.” More recently, see Oecd, *Digital Government Strategies for Transforming Public Services in the Welfare Areas, Comparative Study*, 2016: “The challenge is not to introduce digital technologies into public administrations (digitisation); it is more transformative. The challenge is to integrate the use of digital technologies into public sector modernisation efforts (digital government)”. See again Oecd, *Strengthening Digital Government*, www.oecd.org/going-digital/strengthening-digital-government.pdf, 2019.

<sup>19</sup> In the definition provided, for the first time, by Gartner Group, *Western Europe Government Sector: IT Solution opportunities*, 2000. To date there is no single definition of e-government. With reference to Italy, see F. Merloni (ed.), *Introduzione all’e-Government*, Turin, Giappichelli, 2005.

<sup>20</sup> R. Cavallo Perin, *La configurazione*, cit. G. Arena, *Il principio di sussidiarietà*. See again the argumentation in M. Caporale, *Dalla smart citizenship*. See also E. Fragale, *La cittadinanza amministrativa al tempo della digitalizzazione*, in *Diritto Amministrativo*, 2, 2022,

intended in this way will contribute to overcoming of national states' political legitimation crisis, "integrating formal political representation with real participation in administrative procedures".<sup>21</sup>

It would therefore be closely connected to political democracy and administrative-democracy principles, as a result of an evolution of the relationship between public authorities and citizens, between administrations and those administered according to a relationship increasingly oriented towards equal relations and active participation of citizens in the activities of institutions.<sup>22</sup>

This interpretation effectively highlights the terms in which we can talk today about digital citizenship in a European dimension.

### 2.1. The "European Declaration on Digital Rights and Principles for the Digital Decade" and the centrality of the person

The centrality of individuals appears to be the distinctive and common feature of the measures adopted by the EU in the digitalisation of public administrations, even in the absence of a definition of digital citizenship. This centrality should be considered as referring to the European administrative citizen, and here too, it seems, in a perspective more consistent with the objective of creating a digital single-market than recognition of rights per se. Indeed, the structure of European competences appears to favour this perspective. The EU's interventions in the field of digitalisation therefore reflect a serious consideration of the rights of European citizens but above all the need to affirm a role for the EU in the digital economy which, at the moment, is weak compared to that exercised by other countries. This approach is also crucial in the pursuit of e-government and the creation of European digital single market policies. It also echoes a set of declarations that have accumulated with growing intensity in recent years<sup>23</sup> and

prepared the ground for the approval of the "European Declaration on Digital Rights and Principles for the Digital Decade".<sup>24</sup>

The European Declaration, as already precised, is not legally binding, but programmatic,<sup>25</sup> defining a framework of fundamental rights and principles intended to inspire European and national legislators in the implementation of the European Digital Decade. So, it's a declaration of rights with an expiration date, connected to a precise time

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vember 2009; Tallinn, Declaration on eGovernment at the ministerial meeting during Estonian Presidency of the Council of the EU on 6 October 2017; Lisbon Declaration – Digital Democracy with a Purpose, Lisbon, 1° June 2021.

<sup>24</sup> The EU, in particular after the Lisbon Council of 2002, has adopted several Action Plans for e-government, the latest referring to the period 2016-2020, Accelerating the digital transformation of public administration, Communication from the Commission to Parliament European Council, the European Economic and Social Committee and the Committee of the Regions, EU Action Plan for eGovernment 2016-2020, Bruxelles, 19 April 2016 COM(2016) 179 final. In 2018 the European Commission has presented a financing programme "Digital Europe" 2021-2027, Regulation (EU) 2021/694 of the European Parliament and of the Council of 29 April 2021 establishing the Digital Europe Program and repealing Decision (EU) 2015/2240. To date, e-government plans are an integral part of the programmes prepared by the EU for digital Europe and in particular the creation of a Digital Single Market, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions a Digital Single Market Strategy for Europe, COM/2015/0192 final. The more recently approved UE e-government plan (E-Government Action Plan 2016-2020), unsurprisingly, is an integral part of the strategy for the Digital Single Market. The "European Digital Decade" consists of a strategic programme that identifies tangible digital objectives, to be achieved by 2030, based on four cardinal points: digital skills, digital infrastructures, digitalisation of businesses and digitalisation of public services. This last point is pursued through three key objectives that the Commission intends to achieve within the digital decade: online availability of 100% of main public services; online access to medical records by all citizens; use of digital identity solutions by 80% of citizens: digital-strategy.ec.europa.eu/en/policies/europes-digital-decade infra. One should also underline the primary importance of actions financed, in the various member states, through the Next Generation EU initiative and the pertinent national plans.

<sup>25</sup> See preamble, par. no. 10 of the Declaration. However, the Declaration is directly referred to by one of the most significant regulations recently adopted by the European Union, see Recital 7 of the approved text of the Artificial Intelligence Act (P9\_TA(2024)0138, European Parliament legislative resolution of 13 March 2024 on the proposal for a regulation of the European Parliament and of the Council on laying down harmonised rules on Artificial Intelligence (Artificial Intelligence Act) and amending certain Union Legislative Acts (COM(2021)0206 – C9-0146/2021 – 2021/0106(COD)).

471. On European administrative citizenship, see A. Bartolini and A. Pioggia, *Cittadinanze amministrative*, 25 ff.

<sup>21</sup> F. Manganaro, *Dalla cittadinanza alle cittadinanze questioni su un concetto polimorfico*, in *Ambientedito.it*, 4, 2022, 1 ff.

<sup>22</sup> J. Chevallier, *De l'administration démocratique à la démocratie administrative*, in *Revue française d'administration publique*, 2011, vol. 137-138, 217 ff.

<sup>23</sup> We refer to Ministerial Declaration on eGovernment approved unanimously in Malmö, Sweden, on 18 No-

horizon. The Declaration also explicitly places people at the centre of a digital transformation that is intended to be “anthropocentric”,<sup>26</sup> underscoring the EU urgent goal of specifying how consolidated fundamental values and rights, currently applied offline in the EU legal system should be implemented in the digital, online environment. On the other hand, the Declaration opens with an affirmation of the rights and values of the Union which closely echoes the one contained in the Preamble to the European Charter of Fundamental Rights, which states that the EU places people at the centre of its actions by establishing citizenship of the Union.<sup>27</sup> It therefore seems important to underline the connection between anthropocentric digital transformation, upheld by the European Declaration, and the centrality of the people supported by the European Charter of Fundamental Rights, from which the institution of European citizenship is derived.

Individuals are therefore at the centre of both documents, which evidently have different legal value, and this legitimizes to an even greater extent the recognition of digital rights as a corollary of European citizenship. Particularly relevant is the passage in the European Declaration in which the EU asks its institutions and member states to commit to creating instruments that are closely linked to European citizenship, freedom of movement, prohibition of discrimination and equal

treatment, which is what the EU means when it applies European fundamental values and rights, already established offline, in the digital environment.<sup>28</sup> The interpretation of digital citizenship within the context of European administrative citizenship, which essentially represents a corollary, is here confirmed. Furthermore, as previously argued, within the Union itself it was hoped that European citizenship would be strengthened through the use of digital tools, starting with electronic identification, facilitating access to online public services and participation throughout the whole Union.<sup>29</sup>

The European Union embraces the continuity of rights, in the European framework, between the online and the offline dimensions, and even where it is not possible or useful to distinguish between them. The EU acknowledges that it will be possible to grant this continuity through an increase in digital skills, among both citizens and administrations, and via a progressive and deliberate diffusion of digital public services, in a perspective of interoperability and accessibility consistent with European citizenship and its principles.

### **3. The previous experiences of Internet Declaration of Rights in Italy and in Spain**

The European Commission, in adopting the first draft of the Declaration, claimed that it was the first declaration of its kind in the world. The adoption of an “Internet Bill of Rights” had actually been discussed for some time in Europe,<sup>30</sup> in part due to the debate raised, at an international level, by Stefano Rodotà’s far-sighted proposal, within the Internet Governance Forum, of an Internet Bill of Rights.<sup>31</sup> The proposal was never followed up. As regards other precedents with respect to the European Declaration, in

<sup>26</sup> According to the first draft of the Declaration: “Putting people at the center of the digital transition is a key priority for the European Commission. The digital transformation should be shaped according to our European values and norms. Today the Commission proposes to establish a set of principles for an anthropocentric digital transformation”; Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the establishment of a European declaration on digital rights and principles (SWD(2022) Bruxelles, 26.1.2022 COM(2022) 27 final. In the final text of the Declaration the term “anthropocentric” was not included.

<sup>27</sup> European Declaration on Digital Rights and Principles, par. 1: “The European Union (EU) is a ‘union of values’, as enshrined in Article 2 of the Treaty on European Union, founded on respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. Moreover, according to the Charter of fundamental rights of the European Union, the EU is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity. The Charter also reaffirms the rights as they result, in particular, from international obligations common to the Member States”.

<sup>28</sup> See especially Preamble, par. no. 3, above mentioned, and Preamble, par. no. 12: “...The promotion and implementation of the Declaration is a shared political commitment and responsibility of the EU and its Member States within their respective competences and in full compliance with EU law...”.

<sup>29</sup> *Report on Parliamentarism, European citizenship and democracy*, 25 July 2023 - (2023/2017(INI)), European Parliament, Committee on Constitutional Affairs, Rapporteurs: Alin Mituța, Niklas Nienaaß.

<sup>30</sup> European Parliament recommendation of 26 March 2009 to the Council on strengthening security and fundamental freedoms on the Internet (2008/2160(INI)).

<sup>31</sup> S. Rodotà, *Una Costituzione per internet?* in *Politica del Diritto*, 2020, 2, 342 ff.

addition to these unsuccessful attempts, we have to mention two declarations of internet rights, adopted in Italy and Spain: for Italy, the Declaration of Internet Rights, adopted in 2015; for Spain, the Carta de Derechos Digitales, adopted in 2021.<sup>32</sup> These documents share the same perspective expressed by the European Declaration, albeit with some differences, partly determined by the different periods during which the three texts were developed. Like the European Declaration, the Italian and Spanish Declarations are not binding and adopt the general approach of affirming online digital rights in a broad sense even if, in the Spanish and European Declarations, digital public services are also expressly considered. The Italian Declaration lacks an article expressly dedicated to digital public administration but does outline a strong role for public authorities in the promotion and protection of established digital rights; also, individual rights connected to public administrations (e.g., accessibility to public information, reuse of data and public information..., article 14, subsections 5 and 6) are expressly mentioned.

In any case, as regards the Italian and Spanish Declarations, even rights and principles of a general nature, also cited in the European Declaration, have a value in the “digitalised” relationship between public authorities and citizens: the right to education and training in the acquisition of digital skills, the overcoming of every digital divide (economic, gender, age...), the principles of inclusiveness, the constraints placed on artificial intelligence (pending the approval of the European regulation on artificial intelligence) and citizens’ freedom of choice...

The European Declaration contains, as

<sup>32</sup> For Italy: *Dichiarazione dei diritti in internet*, 28 July 2015, text developed by the *Commissione per i diritti e i doveri relativi a internet, istituita dalla Camera dei Deputati*, chaired by Stefano Rodotà himself, 28 July 2014; the charter is not binding for the legislator but the Chamber of Deputies approved the motion “Quintarelli and others”, n. 1-01031 and the motion “Caparini and others”, n. 1-01052, aimed at committing the government to activate every useful initiative for the promotion and adoption at national, European and international levels of the principles contained in the Declaration. [https://www.camera.it/application/xmanager/projects/leg17/commissione\\_internet/testo\\_definitivo\\_inglese.pdf](https://www.camera.it/application/xmanager/projects/leg17/commissione_internet/testo_definitivo_inglese.pdf); for Spain *Carta de Derechos Digitales*, 2021, developed by the Grupo asesor de Expertas y Expertos constituido por la Secretaría de Estado de Digitalización e Inteligencia Artificial del Ministerio de Asuntos Económicos y Transformación Digital [https://derechodigital.pre.re.d.es/documentos/CartaDerechosDigitales\\_04\\_ENG.pdf](https://derechodigital.pre.re.d.es/documentos/CartaDerechosDigitales_04_ENG.pdf).

anticipated, a paragraph expressly dedicated to online digital public services, expressing the relevance of the digitalisation of public administrations for the full affirmation of digital rights, and in which the core of a true European digital administrative citizenship can be glimpsed. In fact, it affirms the right of every person to have online access to main public services in the EU, as well as the principle according to which no one should be asked to provide personal data more often than necessary when accessing and using digital public services.

The Declaration therefore refers to every person, not just EU citizens, thus confirming the proposed interpretation about a possible affirmation of European digital administrative citizenship.

And the next point refers accordingly to the need to provide the possibility of enjoying a digital identity to all people living in the EU.<sup>33</sup>

The following point states the commitment to facilitate and support seamless, secure and interoperable access across the EU to digital public services, designed to meet people’s needs efficiently, including, in particular, digital health and care services.

If one compares the rights defined in the European Declaration with the Italian legal context, the Declaration seems to mirror the normative choices that have been made in Italy with reference to digital citizenship, where its explicit legal recognition lies in the Digital Administration Code (DAC) more particularly in the “Digital Citizenship Charter”,<sup>34</sup> within the framework of the constitutional principles of good performance of public administration (art. 97, Italian Constitution) and information rights (art. 21, Italian Constitution). According to DAC “Digital Citizenship Charter”, anyone has the

<sup>33</sup> On the element of the habitual residence in the configuration of administrative citizenship, see R. Cavallo Perin, *La configurazione...*, cit. With reference to the same requirement for the purposes of European administrative citizenship and for the case-law of the Court of Justice, see A. Bartolini and A. Pioggia, *Cittadinanze amministrative...*, cit.

<sup>34</sup> D. Lgs. 82 of 7 March 2005, Codice dell’Amministrazione Digitale, CAD, sezione II “Carta della Cittadinanza Digitale” – Digital Administration Code, DAC, Section II, “Digital Citizenship Chart”. The Code does not provide a definition of digital citizenship, which however can be inferred from articles 3 and 11 and the set of digital tools contained in the same section, according to an affirmation of digital citizenship strictly connected to the tools developed from time to time and progressively integrated into the digital administration, especially digital identity.



right to use, in an accessible and effective way, the solutions and tools provided by the same Code, including uses having the purpose of exercising rights concerning access and participation in administrative procedures in relations with public administrations (art. 3, DAC).

This recognition must be read as complementary to the obligation that establishes the so-called principle of digital priority, or “digital first” or even “digital by default”, according to which the Italian State, the Regions and local authorities ensure the availability, management, access, transmission, conservation and usability of information in digital forms and organize and act for this purpose using information and communication technologies in the most appropriate and in the most suitable ways, to satisfy the interests of the users (art. 2, c. 1, DAC). This perspective is completed by the right of anyone to use services provided by public administrations in digital modes and in an integrated way, through the services made available by public administrations; moreover, these services must be organized and updated on the basis of a prior analysis of users’ real needs (art. 7, DAC).

Furthermore, once again in a similar way to the Italian solutions,<sup>35</sup> the European Declaration indicates some essential tools through which the digital transformation of public services must take place in the digital decade: digital identity; reuse of public data; digital health.

The idea of a sphere of rights to be recognized and promoted online is therefore supported, at both the Italian and the European level, in general and in particular in digital public services. Furthermore, for the realization of these rights, it is necessary to create specific digital tools, to be implemented in all European countries in compliance with the principles established by the Declaration itself. These tools and services are the subject of various regulatory interventions, which are currently underway for all the areas considered.<sup>36</sup>

<sup>35</sup> See again M. Caporale, *Dalla smart citizenship*.

<sup>36</sup> Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 910/2014 as regards establishing a framework for a European Digital Identity (SEC(2021) 228 final) - (SWD(2021) 124 final) - (SWD(2021) 125 final). A provisional political agreement was reached between the Council and the European Parliament on the original text, and therefore some proposals for amendments to

#### 4. European digital administrative citizenship: rights and duties

Digital citizenship therefore arises, in the interpretation developed here, in the relationship between public authorities and people as a corollary of administrative citizenship, including the European administrative citizenship approach, made necessary by technological evolution.

But if the digital dimension is considered as an attribute capable of strengthening administrative citizenship in the European citizenship dimension, it is important to underline that, precisely for the digital dimension, an essential element is missing. In fact, like any legally defined citizenship status, European citizenship should express a dimension of both rights and duties.<sup>37</sup>

In the background we already know that the general provision contained in art. 20 TFEU (“citizens of the Union enjoy the rights and are subject to the duties provided for in the Treaties”) has remained isolated, given that the Treaties do not cite any specific duties for citizens. Nor is it enough to invoke, in order to achieve cross-cutting coverage, the Charter of Fundamental Rights of the European Union, which in its Preamble affirms the indivisible and universal values on which the Union itself is founded, places the person at the centre of the EU’s action by establishing citizenship of the Union, yet also specifies that the enjoyment of the rights guaranteed by the Charter “gives rise to responsibilities and duties towards others as well as the human community and future generations”.

the draft regulation, <https://data.consilium.europa.eu/doc/document/ST-14959-2022-INIT/it/pdf>; for the reuse of public data, see Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and re-use of public sector information (recast) but also on data Governance Act, Regulation (EU) 2022/868 of the European Parliament and of the Council of 30 May 2022 relating to European data governance and amending Regulation (EU) 2018/1724 (Data Governance Regulation); for digital health, see the Proposal for a Regulation of the European Parliament and of the Council on the European health data space, COM(2022) 197 final of 3 May 2022.

<sup>37</sup> In this sense, see L. Violante, *Il dovere di avere doveri*, Turin, Einaudi, 2024, “duties express, perhaps more than rights, the political bond between citizens and promote the sense of belonging to the social body” [in Italian: “i doveri esprimono, forse più dei diritti, il legame politico fra i cittadini e favoriscono il senso di appartenenza al corpo sociale”]. The author virtually addresses S. Rodotà and his fundamnetal remarks in *Il diritto di avere diritti*, Bari-Rome, Laterza, 2013.

Reflecting this characteristic of European law, the European Declaration also lacks any explicit identification of duties that integrate the provision of recognized and promoted rights towards public administrations. The only reference is to the promotion of autonomy but also of greater responsibility of people in the digital environment which emerges in the Whereas and in some sections.<sup>38</sup>

It may be considered unpopular, in the specific context of digital citizenship, to talk about duties, given the complexity of the digital transformation and the various existing divides, and therefore the burden of change, which is often, in some way, borne by citizens.

If one considers, however, European and member states' citizenship rights in the administrative-citizenship perspective, one could refer to the rights/duties of administrative participation, especially, as regards Italy, those involving procedural participation, as acknowledged by the administrative-procedure act (Law no. 241/1990).

In the more restricted sense of digital citizenship, we can refer to the solution adopted by Italian legislation, according to which private individuals must respect the DAC and the related guidelines concerning electronic documents, electronic signatures, document reproduction and conservation, digital domiciles and electronic communications, digital identity - in short, the digital tools identified by the "Digital Citizenship Charter" of the DAC itself (art. 2, subsection 3, DAC),<sup>39</sup> those same digital tools through which the initial realization of digital citizenship is achieved and on which, to a large extent, the EU is currently intervening with its own regulations and directives, according to the priorities expressed for the Digital Decade and taken up within the same European Declaration on digital rights and principles for the Digital Decade with

reference to digital public services.

In any case, outside the rights-duties scheme, in light of the modulation of European digital administrative citizenship, in the various implications associated with administrative citizenship, passive situations are contemplated, borne by citizens, other than duties, such as burdens.<sup>40</sup>

In this historical phase it seems appropriate to invoke the burden, for citizens who interact with administrations through digital systems, to respect and, therefore, prefer the use of digital tools and to act responsibly. It is necessary that, as public administrations are committed to achieve "good digital administration", with the support of specific training activities, as per the objectives of the European Declaration, citizens should also strive to become "good digital citizens", making themselves available for training in the digital dimension, mainly via tools (and resources) provided by the regulations and on which the Declaration focuses significantly.

In conclusion, we can return to those two previously identified dimensions of digital citizenship, one more focused on education and the acquisition of digital skills, which is autonomous but also fully integrates the other meaning, that of a digital administrative citizenship, the European dimension of which we have attempted to highlight here.

<sup>38</sup> E.g. "The EU vision for digital transformation puts people at the centre, giving them greater autonomy and responsibility", Recital n. 6; the reference to the responsibility of citizens also occurs in some specific paragraphs of the Declaration (e.g. artificial intelligence; public participation etc.).

<sup>39</sup> The Italian Declaration of Internet Rights adopted in 2015, however, does not refer to any duty or obligation, even if the commission established to draft it was called the "Commission for Internet Rights and Duties established at the Chamber of Deputies".

<sup>40</sup> A. Bartolini and A. Pioggia, *Cittadinanze amministrative*, specifically S. Pieroni, *I doveri nella nuova frontiera della cittadinanza*, 391 ff.