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Digital Transition and Territorial Disparities: Legal and Constitutional Dimensions for the Inclusion of Inner Areas^{**}

ABSTRACT (EN): This paper analyses Italy's digital transition, with particular attention to the *aree interne*, questioning its capacity to realise the constitutional principles of substantive equality and territorial cohesion. While acknowledging the importance of the PNRR and the PNBUL, the argument is that digital transformation requires a stronger constitutional foundation and effective coordination across levels of government. The digital divide, particularly in the healthcare sector, emerges as a form of structural inequality in tension with Articles 3, 5, 32, and 119 of the Constitution. The paper concludes by proposing the recognition of digital inclusion as an emerging constitutional right.

ABSTRACT (IT): Il contributo analizza la transizione digitale italiana, con attenzione alle aree interne, interrogandosi sulla sua capacità di attuare i principi di uguaglianza sostanziale e coesione territoriale. Pur riconoscendo il rilievo del PNRR e del PNBUL, si evidenzia come la trasformazione digitale richieda un solido ancoraggio costituzionale e un coordinamento effettivo tra livelli di governo. Il divario digitale, specie in ambito sanitario, emerge come forma di disuguaglianza strutturale in contrasto con gli artt. 3, 5, 32 e 119 Cost.; da qui, la proposta finale di riconoscere l'inclusione digitale quale diritto costituzionale emergente.

SOMMARIO: 1. Introduction. – 2. The Constitutional Framework for the Digital Transition. – 3. The Constitutional Gaps in Italy's Digital Transition. – 4. Challenges in Inner Areas. – 5. Digital Inclusion and Territorial Equality. – 6. Final Remarks.

1. Introduction

As a paradigm shift in public administration, the digital transition is more than just a technological upgrade; it signifies a profound change in institutional dynamics, service delivery, and citizen interaction with public authorities. Beyond innovation, it represents a strategic opportunity to address long-standing territorial inequalities, particularly those separating urban centres from inner areas marked by chronic economic marginalisation, demographic decline, and infrastructural deficits. In territories that have endured decades of depopulation and underinvestment, digital tools such as telemedicine, online learning, and e-governance emerge as essential instruments for guaranteeing access to rights and restoring social and economic vitality.

The National Strategy for Inner Areas Plan (*Piano Strategico Nazionale delle Aree Interne*, hereinafter referred to as PSNAI) emphasises that access to essential services, such as healthcare,

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education, mobility, and internet connectivity, is critical for restoring dignity and opportunity in these communities. In this sense, digitalisation is not only a policy choice but a strategic pathway to social inclusion, territorial cohesion, and the reconstruction of trust between the State and its citizens in remote areas¹.

Nevertheless, digitalisation has not been a uniformly democratising process. Without deliberate redistributive and inclusive policies, it risks entrenching, rather than reducing, existing territorial inequalities. Inner areas (covering almost 60% of the national territory and home to around 23% of the population) face unique challenges in accessing the infrastructure and services that are increasingly indispensable for participation in modern society². These challenges include deficient broadband coverage, low levels of digital literacy, and under-resourced municipal administrations, creating a multidimensional disadvantage that risks systematically excluding entire communities from the benefits of the digital age.

Beyond practical obstacles, digitalisation raises fundamental constitutional questions. The principle of equality, enshrined in Article 3 of the Italian Constitution, obliges the State to remove social and economic barriers that delay the whole exercise of citizenship. When access to digital infrastructure and skills is distributed unevenly, substantive equality and the universality of rights are threatened, especially as public administration becomes increasingly dependent on digital tools³. This constitutional dimension transforms the digital divide into a question of rights and citizenship, rather than one of technological delay.

Accordingly, this analysis explores Italy's digital transition through the interconnected lenses of constitutional and public law, highlighting the normative and institutional obligations deriving from articles 3 (substantive equality), 5 (territorial autonomy), and 119 (fiscal and infrastructural equalisation). It interrogates whether current policy frameworks and implementation strategies genuinely align with these constitutional imperatives or, conversely, contribute to the deepening of the digital divide. Furthermore, it examines how constitutional principles influence the State's responsibility to promote digital inclusion, with particular attention to legislative frameworks and to the structural and administrative limitations that undermine their effectiveness. Finally, the paper explores both the challenges and opportunities for promoting digital inclusion in Italy's inner areas and argues for reform strategies aimed at achieving a constitutionally sound, human-centred digital transformation capable of empowering marginalised communities and reinforcing democratic participation.

¹ The *Piano Strategico Nazionale per le Aree Interne* offers a detailed analysis of the long-standing socio-economic challenges confronting Italy's inner areas, including demographic decline, deteriorating infrastructure, and limited access to fundamental services. It emphasises the strategic role of digital technologies (such as telemedicine, online education, and broadband connectivity) not simply as tools for service delivery, but as levers for restoring dignity, strengthening social cohesion, and fostering active citizenship in these territories. In particular, the strategy frames digital inclusion as a structural response to territorial inequality and as a means to rebuild trust between institutions and communities that have historically been neglected by public investment. Presidenza del Consiglio dei Ministri, *Piano Strategico Nazionale delle Aree Interne*, Roma, 2025, pp. 7-10.

² ISTAT, *The Geography of Inner Areas in 2020: Territories between Potential and Weaknesses*, Rome, 2022, p. 4.

³ R. BIFULCO, *Diritto Costituzionale*, Giappichelli, Torino, 2022, pp. 94-96.

2. The Constitutional Framework for the Digital Transition

Article 3 of the Italian Constitution mandates that the State guarantees equality and actively removes economic and social barriers that inhibit individuals' full development and participation in the country's political, financial, and social life. This double dimension, formal and substantive equality, acquires critical relevance in the digital era. Access to digital infrastructure and literacy has become an indispensable precondition for exercising fundamental rights, including education, health, democratic participation, and access to justice. Nevertheless, Italy's inner areas face persistent digital disparities, marked by significantly lower internet usage rates, weaker digital skills, and fewer opportunities to access digital services than urban centres. Socio-demographic factors such as age, educational attainment, and geographic location contribute to digital exclusion, with older adults and less-educated individuals disproportionately affected. These factors aggravate exclusion and underscore the need for targeted regulatory measures to bridge the digital divide in underserved areas⁴.

The continuing digital divide between urban centres and inner areas effectively denies residents equal opportunity to benefit from digitalisation, generating serious concerns about indirect discrimination. Furthermore, digital exclusion limits access to technological resources and undermines fundamental constitutional principles, such as dignity and self-determination, which also underpin the rights to privacy and data protection today⁵. When digital access is unevenly distributed or structurally constrained, especially in marginalised territories, it entrenches patterns of social exclusion. It curtails individuals' capacity to participate fully in civic, economic, and democratic life.

This dynamic creates serious constitutional challenges. As emphasised in the relevant scholarship, Art. 3 is not limited to declaratory equality but imposes a positive duty on the State to remove structural barriers. Thus, the digital divide cannot be treated as a mere infrastructure gap; it is a contemporary manifestation of precisely the kind of barriers that the Constitution obliges the State to dismantle. Addressing digital exclusion is therefore not just a question of institutional performance but an essential requirement of constitutional fidelity⁶.

In the era of digital governance, this constitutional mandate acquires renewed and expanded significance. Access to digital technologies is no longer a luxury but a structural prerequisite for the enjoyment of civil, political, and social rights. The capacity to use public digital services, participate in remote education, benefit from telemedicine, or interact with e-government platforms directly determines whether individuals can fully participate in civic and socio-

⁴ As highlighted in the Italy Digital Decade Country Report 2024, rural areas in Italy continue to experience structural disadvantages in digital transformation, including lower levels of digital skills, limited access to high-speed internet, and insufficient local administrative capacity to implement digitalisation projects. These territorial disparities are identified as major obstacles to equitable access to digital services, with a direct impact on citizens' ability to participate in and benefit from digital governance. The report emphasises that such gaps risk worsening social exclusion and undermining the broader goals of cohesion and inclusivity, which are central to the EU's digital and social agendas. European Commission, *Italy Digital Decade Country Report 2024*, Brussels, 2024, pp. 23-24.

⁵ F. PETRUCCO, *The Right to Privacy and New Technologies: Between Evolution and Decay*, in *MediaLaws - Rivista di diritto dei media*, n. 1, 2019, pp. 1-17.

⁶ Constitution of the Italian Republic, Art. 3.

economic life. Hence, the digital divide between urban and rural areas remains a critical obstacle to territorial cohesion, as highlighted by the National Strategy for Inner Areas (*Strategia Nazionale per le Aree Interne*, hereinafter referred to as SNAI). The strategy identifies inadequate broadband and insufficient infrastructure as key barriers to development, undermining equal opportunities to access services and benefit from digitalisation⁷. This imbalance translates into a constitutionally significant “access deficit”, which is increasingly relevant as services move online.

The SNAI recognises poor connectivity and limited digital services as structural obstacles to inclusion⁸. These gaps affect citizens’ equal access to key services, full participation in economic and social life, and the exercise of their fundamental rights in an increasingly digital society. Moreover, there are still regulatory instruments that fail to account for territorial disparities, which may worsen inequities. Thus, the State must redesign development instruments that specifically target structurally disadvantaged territories rather than assuming uniform starting conditions nationwide⁹.

A constitutional interpretation of Art. 3 in the digital context requires both formal equality of opportunity and substantive equality of access, mandating interventions to overcome infrastructural, economic, and educational barriers endemic to Italy’s inner areas.

Article 5 of the Constitution further affirms the State’s dual commitment to national unity and local autonomy. Digital governance, therefore, requires balancing central coordination with territorial decentralisation. In theory, decentralisation allows municipalities and regions to design services shaped to local needs¹⁰. In practice, however, it has often resulted in incoherent administration and regional asymmetries, as limited resources frequently reduce local autonomy to a merely formal principle¹¹. Autonomy without adequate financial and institutional support results in structural incapacity, particularly acute in inner areas where municipalities face severe constraints. Rather than reducing disparities, this institutional mismatch risks worsening them¹².

As Arianna Pitino observes, the regional autonomy model in healthcare must remain consistent with “the national framework of needs planning” and with “the collective responsibility of regions for the efficiency and sustainability of the National Health Service (*Servizio Sanitario Nazionale*, hereinafter referred to as NHS),” since fragmented decentralisation may compromise “the effective guarantee of LEA”¹³. Similarly, Renato Balduzzi and Davide Servetti warn that when differentiation is supported by “strong and certain financial constraints but weak and indeterminate substantive ones,” it opens the way to “a possible and probable

⁷ F. BARCA, P. CASAVOLA, S. LUCARELLI, *A Strategy for Inner Areas in Italy: Definition, Objectives, Tools and Governance*, Rome, 2014, pp. 17-19.

⁸ *Ibid.*, pp. 17-19.

⁹ *Ibid.*, pp. 8-10.

¹⁰ S. PAJNO, *Le autonomie territoriali tra principio di sussidiarietà e principio di corrispondenza tra funzioni e risorse*, in *Federalismi.it*, n. 7, 2023, pp. 228-229.

¹¹ *Ibid.*, pp. 228-229.

¹² *Ibid.*, pp. 228-229.

¹³ A. PITINO, *Il regionalismo differenziato e il conseguimento di “ulteriori forme e condizioni particolari di autonomia” nella materia “tutela della salute”*, in *Corti Supreme e Salute*, n. 2, 2024, pp. 743-745.

deconstruction of the model of health protection embodied in the NHS”, highlighting that only “coherence between financial coordination and solidarity” can prevent “a differentiated regionalism risky for public finances and detrimental to national cohesion”¹⁴.

One of the most challenging issues in digitalising public administration is combining Art. 5’s protection of local autonomy with Art. 3’s mandate to ensure substantive equality. While decentralisation enables municipalities to design services shaped to local requirements, it also raises the possibility of territorial disparities, mainly when financial and technical capacities differ significantly among regions. Without unified standards and proper resource transfer, access to digital public services may depend on the uneven capacities of local municipalities rather than constitutional guarantees. As a result, local autonomy risks becoming a vehicle for inequality rather than a means of empowerment. A constitutional reading of Art. 5 in the digital transition context, therefore, requires robust national coordination, technical support, and equalisation mechanisms to prevent autonomy from degenerating into neglect of disadvantaged territories.

However, in its Judgment N. 10/2010, the Italian Constitutional Court reaffirmed the State’s obligation to guarantee uniform essential performance levels (*Livelli Essenziali delle Prestazioni*, hereinafter referred to as LEP) across all regions, stressing that disparities in their provision can undermine constitutional principles such as equality and the right to health. While the judgment did not address digital access directly, its reasoning can be extended to support the inclusion of digital services within the LEP framework as part of the modern realisation of fundamental rights¹⁵. While this ruling did not specifically address digital infrastructure, the principles outlined can be extrapolated to support the argument that unequal access to digital health services may violate constitutional mandates.

Furthermore, in the Judgment N. 131/2020, the Constitutional Court emphasised the importance of community-based organisations and the Third Sector in collaborating with public administrations to deliver services of general interest, particularly in health and social care. While the judgment does not address digital inclusion directly, its reasoning supports the view that inclusive and participatory approaches are essential to ensuring equitable access to services, a principle that could be extended to the delivery of digital services in underserved communities¹⁶.

¹⁴ R. BALDUZZI, D. SERVETTI, *Regionalismo differenziato e materia sanitaria*, in *Rivista AIC*, n. 2, 2019, pp. 13-14.

¹⁵ Constitutional Court, *Judgment N. 10/2010*, held that under Article 117, paragraph 2(m), of the Constitution, the State has the exclusive competence to determine and guarantee LEP to be ensured uniformly throughout the national territory in matters concerning civil and social rights. The Court emphasised that ensuring uniform essential levels is a constitutional safeguard against territorial disparities that could undermine equality (Art. 3) and other fundamental rights, such as the right to health (Art. 32).

¹⁶ Constitutional Court, *Judgment N. 131/2020*, examined the legislative framework governing relations between public administrations and entities of the Third Sector in the delivery of services of general interest. The Court affirmed that such relations should not be limited to contractual procurement but may legitimately take the form of collaborative partnerships based on co-programming and co-design, especially in areas such as social and health care. This approach, it is held, reflects constitutional principles of solidarity and subsidiarity and recognises the role of community-based organisations as active partners in public service delivery.

This emphasis on inclusivity and participation provides a governance model that may be especially valuable for bridging digital divides. Building on these decisions, an emerging strand of constitutional doctrine now conceptualises digital inclusion as a constitutional precondition for the realisation of rights. From this perspective, Italian constitutional thought increasingly supports recognition of a “right to digital inclusion”, grounded in the intersecting guarantees of Articles 3, 5, 32, and 119. This evolving concept holds that the State has a positive obligation to promote universal, equitable, and effective digital access in all areas, acknowledging that internet connectivity is indispensable for fulfilling fundamental rights and fostering social and economic cohesion.

3. The Constitutional Gaps in Italy’s Digital Transition

Italy’s legal framework for digital transformation is complex and multilayered, comprising statutory norms, national strategies, European directives, and administrative instruments that aim to modernise the delivery of services and promote digital inclusion. Although this framework appears formally comprehensive, its implementation exposes structural and operational limitations, particularly in addressing territorial disparities affecting inner areas. This section critically analyses the key normative instruments shaping Italy’s digital transition, evaluating their design, objectives, and shortcomings through a constitutional and distributive justice lens.

The Digital Administration Code (*Codice dell’Amministrazione Digitale*, hereinafter referred to as CAD), enacted in 2005 (Legislative Decree N. 82/2005) and subsequently amended, represents the primary legal framework for the digitalisation of Italy’s public administration. The CAD establishes core principles of digital administration, including the obligation of public authorities to provide services electronically, the legal validity of digital documents, and citizens’ rights to interact digitally with public authorities. It also institutionalises key tools, such as the Public Digital Identity System (*Sistema Pubblico di Identità Digitale*, hereinafter referred to as SPID), and mandates interoperability among public sector information systems.

Furthermore, the CAD serves as the foundational legislative act that aligns Italy’s public administration with the European Union’s digital agenda, embedding digital rights within the legal framework of administrative relations. Nevertheless, despite the ambitious normative framework laid out in the CAD, its territorial implementation remains highly uneven. While urban centres have advanced in integrating digital public services, many inner and mountainous areas continue to face significant infrastructural and human capacity barriers¹⁷. As the OECD observes, a deficit of local digital skills and institutional support hampers the deployment of digital services precisely where they are most needed. Without addressing these asymmetries,

¹⁷ G. D’IPPOLITO, *Il diritto di accesso ad Internet in Italia: dal 21(bis) al 34-bis*, in *MediaLaws - Rivista di diritto dei media*, n. 1, 2021, pp. 81-94. D’Ippolito highlights that while the *Codice dell’amministrazione digitale* (CAD) provides a detailed legal framework for digital inclusion, its practical implementation is delayed by territorial disparities in digital infrastructure and service delivery. He stresses that unequal access (particularly in inner areas) risks transforming a constitutional right into an empty formalism without adequate public investment and administrative commitment.

the promise of universal digital citizenship remains rhetorical¹⁸. From a constitutional perspective, this division between formal entitlement and effective access challenges the State's obligation under Article 3 to remove socio-economic barriers to equality.

The CAD also implicitly assumes that sufficient infrastructure and competencies already exist. This presupposition is not valid in underserved areas, where infrastructural and socio-economic deficits remain acute. Consequently, the CAD risks institutionalising a form of territorial conditionality in the enjoyment of rights: access to digital services becomes contingent on unevenly distributed conditions. Norms that presuppose what is absent in practice risk functioning as instruments of exclusion despite their formally inclusive language¹⁹. This highlights the need to integrate positive obligations into normative frameworks to ensure their constitutional validity.

The Ultra-Broadband Strategic Plan (*Piano Nazionale Banda Ultra Larga*, hereinafter referred to as PNBUL), adopted in 2015, represents Italy's principal initiative aimed at extending high-speed internet access nationwide, in line with the EU's Digital Agenda targets of achieving universal 100 Mbps connectivity²⁰. The Plan prioritises so-called "white areas", territories where market-driven broadband deployment is economically unviable, encompassing much of Italy's inner areas. Furthermore, the Plan's market-oriented approach, observing that "while the PNBUL formally targets the most underserved areas, its reliance on private sector implementation has left critical gaps in coverage due to low investor interest in sparsely populated regions"²¹. Moreover, the deployment of high-speed broadband infrastructure in Italy has encountered delays, particularly due to lengthy authorisation procedures and limited administrative capacity at the local level, which continue to delay timely implementation²².

From a constitutional standpoint, the inability to deliver adequate infrastructure in inner areas perpetuates marginalisation. State initiatives, undermined by inefficiency and uncoordinated administration, have often failed to reduce territorial inequalities. These failures risk contravening Art. 119, which obliges the Republic to promote balanced territorial development²³.

¹⁸ OECD, *Developing Skills for Digital Government: A Review of Good Practices Across OECD Governments*, in OECD Working Papers n. 303, OECD Publishing, Paris, 2024, pp. 9-10.

¹⁹ V. BRIGANTE, *Digitalization and Public Services: Critical Notes Concerning Emerging Ways of Administering*, in *Italian Journal of Public Law*, Vol. 13, n. 1, 2021, pp. 231-238, notes that digital reforms in public administration may underestimate the impact of digital tools on individuals' rights, particularly when access to such tools is not guaranteed to all. He further warns that digital innovation risks reinforcing user asymmetries, as the ability to benefit from these services remains unevenly distributed.

²⁰ Presidenza del Consiglio dei Ministri, *Strategia italiana per la banda ultralarga*, Roma, 2015, p. 13.

²¹ F. CALVINO et al., *Closing the Italian Digital Gap: The Role of Skills, Intangibles and Policies*, in OECD Economic Surveys: Italy 2022, OECD Publishing, Paris, 2022, pp. 4-5.

²² The European Commission's 2023 Country Report underscores that persistent structural bottlenecks significantly undermine Italy's ability to achieve the Digital Decade targets, particularly in rural and inner areas where digital transformation remains uneven and fragile. See: European Commission, *2023 Country Report - Italy, Institutional Paper 236*, Brussels: Directorate-General for Economic and Financial Affairs, June 2023, p. 41, https://economy-finance.ec.europa.eu/system/files/2023-06/ip236_en.pdf.

²³ G. COPPOLA, S. DESTEFANIS, *Sono efficaci le politiche per la riduzione dei divari territoriali in Italia?*, in *Regional Economy* 6, n. 1, 2022, pp. 6-8.

Furthermore, the Constitutional Court in Judgment N. 10/2010 clarified that disparities arising from State inaction or neglect can amount to constitutional violations: the State must actively intervene to correct infrastructural deficits, and equalisation is a constitutional duty, not a policy option²⁴.

The National Recovery and Resilience Plan (*Piano nazionale di ripresa e resilienza*, hereinafter referred to as PNRR), adopted in 2021 under the EU's *NextGenerationEU* framework, allocates €6.7 billion to digital transformation initiatives, with explicit provisions for improving connectivity, modernising public administration, and enhancing digital skills²⁵. Approximately €2 billion is earmarked for interventions in inner areas, including investments in broadband infrastructure, digital literacy programs, and cloud-based administrative platforms²⁶. While the PNRR has been acknowledged as an unprecedented opportunity to accelerate digital inclusion, its implementation relies heavily on a vertical distribution of public powers, which involves coordination among central ministries, regional, and local authorities. Moreover, the European Commission's 2023 Country Report notes that "this complexity raises risks of a lack of integrated execution mechanisms, particularly in regions with weaker administrative capacities"²⁷. Therefore, inner areas often suffer from precisely such administrative deficits, threatening their ability to access and manage PNRR resources effectively.

While the PNRR strongly emphasises digital skills development, this focus is particularly critical in Italy's inner areas. Given their higher structural vulnerability and lower service access, these areas are likely to reflect or exceed the national figure reported in 2021, when fewer than 50% of adults possessed basic digital skills. However, critics argue that urban-centric program delivery risks bypassing the neediest communities²⁸. Without shaped outreach, mobile training units, and community-based delivery models, inner areas may again be marginalised in the digital skills agenda.

Constitutionally, the PNRR's ambition to reduce territorial disparities is consistent with the principles enshrined in Arts. 3 and 119 of the Italian Constitution require the Republic to promote substantive equality and territorial equalisation. However, the success of these efforts depends heavily on the administrative capacity of regional and local actors. In this light, a plan structurally depends on a decentralised institutional framework. Still, it fails to address pre-existing inequalities in institutional quality, risking the undermining of constitutional guarantees by reproducing the disparities it seeks to correct.

The Simplification Decree (Decree Law N. 76/2020) marked another milestone. Its central measures included the mandatory adoption of SPID and the Electronic Identity Card (*Carta di Identità Elettronica*, hereinafter referred to as CIE), the integration of services through the IO app, and procedural simplifications to enable digital-by-default interactions with public

²⁴ Constitutional Court, *Judgment N. 10/2010*.

²⁵ Presidenza del Consiglio dei Ministri, *Piano Nazionale di Ripresa e Resilienza* (PNRR), PCM, Rome, 2021, p. 45.

²⁶ *Ibid.*, p. 60.

²⁷ European Commission, *Country Report Italy 2023, Commission Staff Working Document (SWD (2023) 634 final)*, accompanying the document Recommendation for a Council Recommendation on the 2023 National Reform Programme of Italy and delivering a Council opinion on the 2023 Stability Programme of Italy, Brussels, 2023, p. 38.

²⁸ *Ibid.*, p. 30.

authorities. These reforms aligned Italian public administration with the EU's digital agenda, aiming to reduce bureaucratic inefficiencies²⁹. However, the decree's design presupposed a uniform baseline of connectivity and capacity across territories³⁰. This assumption risks reinforcing existing structural inequalities, resulting in a two-tier system: one for digitally connected, literate citizens, and another for disadvantaged communities excluded due to infrastructural or educational deficits. Digital disparities mirror and perpetuate pre-existing social hierarchies; access to and use of digital technologies are conditioned by economic and educational status, thereby reproducing structural disadvantage within the broader framework of social and institutional inequality³¹.

In such cases, formal equality in legal entitlements does not translate into substantive equality of access, thereby calling into question the constitutionality of the reforms under Article 3, which obliges the state to actively remove barriers to full participation. Thus, a reform that enhances accessibility for some while excluding others risks transforming constitutional guarantees into nominal ideals rather than enforceable rights³².

Italy's digital inclusion strategy, supported by the PNRR and DESI 2022, combines demand- and supply-side initiatives such as the *Italia a 1 Giga Plan*, the broadband *Voucher Plan*, and the *Digital Civil Service*. Additional investment through the *Fondo per la Repubblica Digitale* supports infrastructure and skills expansion, particularly in underserved areas³³. Within the framework of fiscal federalism, Legislative Decree N. 68/2011 defines the criteria for determining costs and needs associated with LEP. While digital services are not explicitly included, the framework could be extended to incorporate digital access as a constitutionally protected LEP.

Despite ambitious commitments, significant territorial disparities persist in ultra-fast broadband deployment. EU monitoring highlights the gap between targets and inner-area realities, rooted in fragmented governance and weak coordination. This implementation gap erodes the transformative potential of digital standards, undermining constitutional legitimacy by masking structural inequalities behind formal compliance.

4. Challenges in Inner Areas

While Italy's digital transition provides a strategic opportunity to promote constitutional equality and territorial cohesion, its implementation continues to face complex challenges,

²⁹ Decree Law N. 76/ 2020, *Misure urgenti per la semplificazione e l'innovazione digitale* (Urgent measures for simplification and digital innovation), marked a turning point in Italy's digital transition, introducing mandatory use of national digital identity systems (SPID and CIE), the IO app as a single access platform for public services, and streamlined digital administrative procedures. By embedding these requirements into law, the measure reinforced the alignment of Italian public administration with the EU's digital agenda and strengthened citizens' digital rights within administrative relations.

³⁰ *Ibid.*

³¹ J. VAN DIJK, *The Digital Divide*, 2nd ed., Cambridge, Polity Press, 2020, pp. 57-60, 120-128, 152-155.

³² Constitution of the Italian Republic, Art. 3., see also M. DI GIULIO, G. VECCHI, *How "Institutionalization" Can Work: Structuring Governance for Digital Transformation in Italy*, *Review of Policy Research* 40, n. 6, 2022, pp. 407-428.

³³ European Commission, *Digital Economy and Society Index (DESI) 2022*, Italy, Brussels, European Commission, 2022, pp. 11-12.

especially in inner areas. These challenges are multifaceted, involving structural gaps in broadband coverage, insufficient digital skills, institutional fragmentation, and broader socio-economic disadvantages. As highlighted by the OECD, despite national reforms and investment efforts, significant disparities in digital infrastructure and service adoption persist between regions, calling for stronger multilevel coordination, targeted capacity-building, and place-based delivery models³⁴. The infrastructural deficit in Italy's inner areas remains a critical impediment to digital inclusion despite the objectives outlined in the PNBUL. While the Plan targets so-called "white areas", its implementation has been constrained by administrative barriers, delays, and uneven geographical deployment. These challenges directly impact access to essential digital services, including e-government, telemedicine, and digital education, thereby deepening territorial inequalities and undermining national cohesion³⁵. In effect, infrastructure failures translate into systematic exclusion from rights delivered digitally.

The predominantly market-oriented framework guiding Italy's broadband infrastructure development has led to a concentration of investment in urban and economically strategic areas, where profitability is assured. This investment logic structurally disadvantages low-density territories, resulting in a persistent digital divide that undermines the constitutional principle of territorial equality. In the absence of resilient public mechanisms to ensure equitable access, the right to participate fully in the digital society remains unevenly distributed, worsening existing socio-economic disparities under a formally unified legal regime. Thus, market coordination must be complemented by constitutionally-oriented public intervention.

Additionally, when regulatory frameworks depend on commercial viability, they tend to exclude structurally disadvantaged territories, creating a constitutionally problematic form of "territorial conditionality" in the enjoyment of rights. This raises serious concerns regarding substantive equality and the fulfilment of socio-digital rights. In the absence of strong public interventions to counterbalance market dynamics, the legal commitment to territorial cohesion risks being rendered ineffective in practice³⁶. Such infrastructural neglect engages Article 119's equalisation mandate, raising constitutional concerns regarding the State's failure to allocate adequate resources to redress territorial imbalance. Therefore, without public investment, infrastructural deficits become self-perpetuating: the absence of broadband deters business entry, remote work, and digital entrepreneurship, feeding demographic and economic decline.

Even where digital infrastructure is partially present, uptake is constrained by a systemic shortage of digital competencies. As acknowledged in the *Strategia Nazionale per le Competenze Digitali* (National Strategy for Digital Skills), this skills deficit is not merely the result of lagging education; it reflects entrenched socio-economic and territorial inequalities that delay equal

³⁴ F. CALVINO et al., *Closing the Italian Digital Gap: The Role of Skills, Intangibles and Policies*, in *OECD Economic Surveys: Italy 2022*, Paris: OECD Publishing, 2022, pp. 5-6.

³⁵ European Commission, *Study on National Broadband Plans in the EU-27: Final Report*, Luxembourg: Publications Office of the European Union, 2023, pp. 132-135.

³⁶ M. DI GIULIO, G. VECCHI, *How "Institutionalization" Can Work: Structuring Governance for Digital Transformation in Italy*, in *Review of Policy Research* 40, n. 6, 2022, pp. 410-412.

access to digital citizenship and essential public services³⁷. Existing digital literacy programs are often centralised in urban hubs, missing the last-mile delivery challenge in inner areas³⁸.

The persistence of low digital competencies among socio-economically disadvantaged groups represents a structural barrier to effectively exercising constitutionally protected rights. In this light, Article 3(2) takes on renewed force: the State's obligation to remove social and economic obstacles to equality must include deficits in digital literacy and usability, not only connectivity. Ensuring substantive equality today requires equipping all citizens with the skills and knowledge to navigate the digital infrastructure through which many rights and services are provided³⁹. Consequently, place-based, community-embedded training is a constitutional necessity, not a policy luxury.

Furthermore, Italy's multilevel institutional framework, characterised by significant regional autonomy, has contributed to marked disparities in implementing digital and innovation-oriented public measures. This divergence is rooted in varying institutional quality and administrative capacity levels, leading to uneven access to innovation and digital inclusion across the national territory⁴⁰. Despite national efforts, the European Commission has warned that structural asymmetries in powers and capacities risk reinforcing territorial disparities, undermining national cohesion and equal citizenship. Particularly for digital inclusion, such incoherence deepens north-south and centre-periphery divides⁴¹.

Incoherence across territorial regulatory frameworks undermines the constitutional principles of unity (Art. 5) and equality (Art. 3). When access to digitally mediated rights varies with local administrative capacity, differentiated citizenship emerges. In contexts where digital policy is left to uneven local discretion, disparities risk becoming structurally entrenched, contrary to equal dignity and rights⁴².

The PNRR's implementation model, which delegates substantial responsibility to regional and local authorities, raises concerns about administrative equality and the realisation of territorial cohesion. Underserved areas, often administered by entities with limited capacity, are structurally disadvantaged in accessing, managing, and reporting PNRR resources. Without

³⁷ Presidenza del Consiglio dei Ministri - Dipartimento per la Trasformazione Digitale, *Strategia nazionale per le competenze digitali*, Rome, 2021, p. 14.

³⁸ E. COCCHIARA, *Il divario digitale nel PNRR: la garanzia del diritto sociale di accesso ad Internet*, in *Forum di Quaderni Costituzionali*, n. 2, 2023, p. 195.

³⁹ Presidenza del Consiglio dei Ministri - Dipartimento per la Trasformazione Digitale, *Strategia nazionale per le competenze digitali*, Rome, 2021, p. 14.

⁴⁰ J. PIERÓ-PALOMINO, F. PERUGINI, *Regional Innovation Disparities in Italy: The Role of Governance*, in *Economic Systems* 46, n. 4, 2022, pp. 2-6.

⁴¹ European Commission. *Regional Trends for Growth and Convergence in the European Union*, SWD (2023) 173 final, June 1, 2023, pp. 14-15. This report highlights how persistent regional disparities in productivity and administrative performance, particularly between northern and southern Italian regions, pose a challenge to national cohesion and equal access to services, including those linked to digital and innovation capabilities.

⁴² E. ROSSI, *La doverosità dei diritti: analisi di un ossimoro costituzionale?*, in edited by F. MARONE, *La doverosità dei diritti: analisi di un ossimoro costituzionale?*, Editoriale Scientifica, Napoli, 2019, pp. 11-13.

compensating technical assistance and equalisation, redistributive objectives may fail at the point of delivery⁴³.

The constitutional principle that essential levels of care (*Livelli Essenziali di Assistenza*, hereinafter referred to as LEA) must be guaranteed uniformly across the national territory, regardless of regional disparities, has been unequivocally affirmed by the Constitutional Court in Judgment N. 169/2017. In that decision, the Court held that the right to health under Article 32 of the Constitution entails ensuring access to healthcare services as a form of «*spesa costituzionalmente necessaria*» (constitutionally necessary expenditure), immune from purely financial constraints. Although the ruling did not explicitly address digital health, its reasoning is directly applicable to the context of telemedicine and digital healthcare delivery. Where infrastructural and digital divides prevent the adequate provision of telemedicine services in certain regions, the resulting disparities may amount to a constitutionally significant breach of the right to health and the principle of substantive equality, as outlined in Article 3 of the Constitution⁴⁴. The Judgment emphasised that technological disparities cannot justify differentiated access to essential services.

Similarly, the constitutional importance of ensuring equitable access to digital healthcare services has been indirectly affirmed by the Constitutional Court in Judgment N. 40/2022. In that decision, the Court upheld a fiscal incentive to support pharmacies in small municipalities acquiring telemedicine service equipment. The measure was considered constitutionally legitimate as it aimed to reduce territorial disparities in healthcare access by promoting the diffusion of digital tools in underserved areas. This ruling illustrates how public measures must actively address the digital divide to ensure that innovations in healthcare, such as telemedicine, do not worsen existing inequalities but instead contribute to realising the right to health under Article 32 of the Constitution⁴⁵.

Moreover, scholarship increasingly conceptualises digital access as a constitutional precondition. On this view, exclusion from the internet equals exclusion from effective citizenship, requiring public investment and legal recognition of digital inclusion as a constitutional obligation⁴⁶. Failure to address territorial digital gaps thus implicates articles 3 and 119 and invites judicial scrutiny.

Inner areas face compounding socio-economic vulnerabilities: demographic decline, ageing, and low-income levels reduce demand and affordability for digital services, deter investment,

⁴³ Presidenza del Consiglio dei Ministri, Piano Nazionale di Ripresa e Resilienza (PNRR), PCM, Rome, 2021, pp. 10-16.

⁴⁴ Constitutional Court, *Judgment N. 169/ 2017*, affirms the State's obligation to ensure uniform provision of healthcare services, framing this obligation as constitutionally necessary and non-negotiable, even in the face of financial constraints. This sets a strong legal foundation for extending the principle to digital healthcare (telemedicine), especially in contexts where territorial digital divides structurally limit access.

⁴⁵ Constitutional Court, *Judgment N. 40/2022*, affirms that fiscal support for telemedicine in small municipalities is constitutionally legitimate as it addresses territorial disparities in access to health services, aligning with Article 32 (right to health) and Article 3 (substantive equality).

⁴⁶ T. E. FROSINI, *Il diritto costituzionale di accesso a Internet*, in *Il diritto di accesso ad Internet*, edited by M. PIETRANGELO, ESI, Napoli, 2011, pp. 26-32.

and erode local capacity. The result is a “digital poverty trap” that widens territorial gaps⁴⁷. Hence, articles 3, 5, and 119 must be read as an integrated mandate, requiring coordinated, redistributive strategies that respond to multifaceted vulnerabilities. Left to market dynamics alone, the digital transition risks reproducing, not remedying, territorial inequalities.

The persistence of these structural inequalities raises questions about the State’s capacity to fulfil its constitutional obligations. These norms require not only the removal of barriers but also outcome-oriented conditions, enabling all communities to exercise autonomy on an equal footing. A mere technocratic response is insufficient: digital inclusion must be framed as a substantive constitutional right, demanding binding implementation mechanisms, institutional investment, and enforceable guarantees.

5. Digital Inclusion and Territorial Equality

The Italian digital transition, which is normatively ambitious and backed by the PNRR, will reinforce long-standing territorial inequalities unless its implementation confronts the structural realities of inner areas. These territories, characterised by infrastructural deficits, limited administrative capacity, and socio-economic fragility, have long experienced institutional neglect. Therefore, policy coherence must be territorially oriented, centred on the interdependence of Articles 3, 5, and 119. Pursuing substantive equality, local autonomy, and fiscal equalisation in isolation renders each principle ineffective; only their coordinated operation can turn digital innovation into territorial cohesion.

The persistence of territorial disparities raises questions about the State’s capacity to fulfil these constitutional mandates. In his reflections, Sabino Cassese has warned that uncoordinated decentralisation, particularly in states’ structures with a vertical distribution of powers, such as Italy, risks institutionalising inequality when local entities lack the capacity to manage complex transitions⁴⁸. Thus, a coherent digital transition requires not only finance and technology but also a decentralised institutional framework aligned with constitutional and territorial realities. According to the OECD’s Digital Government Policy Framework, effective digital transformation must be “digital by design”, enabling public administrations to embed digital tools across the entire framework of public intervention. In countries with pronounced regional disparities, central coordination must ensure consistency and equity without eroding autonomy. Incoherent, uncoordinated implementation risks entrenching inequalities where local capacity is low. The OECD emphasises coordinated leadership, shared data infrastructure, and inclusive service design to prevent further marginalisation. Hence, a national institutional architecture is required to convert digital innovation into inclusive public value, consistent with equality, subsidiarity, and cohesion⁴⁹. Coordination here is a constitutional technique, not just an administrative task⁵⁰.

⁴⁷ ISTAT, *The Geography of Inner Areas in 2020: Territories Between Potential and Weaknesses*. Rome, 2022, pp. 6-10.

⁴⁸ S. CASSESE, *La nuova costituzione economica*, Roma-Bari: Laterza, 2011, pp. 389-404.

⁴⁹ OECD, *The OECD Digital Government Policy Framework: Six Dimensions of a Digital Government*, in *OECD Public Governance Policy Papers*, n. 2, OECD Publishing, Paris, 2020, p. 18-20.

⁵⁰ S. CASSESE, *La nuova costituzione economica*, Roma-Bari: Laterza, 2011, pp. 389-404.

Operationalising this framework requires setting binding targets and enforcing them. Incorporating legally enforceable inclusion benchmarks for inner areas within the PNRR would elevate equalisation from aspiration to obligation. Moreover, legal measures must also go beyond coordination to guarantee access. The CAD should be used to set minimum connectivity and usability thresholds across municipalities; regulators such as AGCOM⁵¹ and AGID⁵² should have explicit, justiciable duties to ensure compliance, with sanctioning powers and remedial orders where needed.

A more transformative step involves the formal recognition of a right to digital inclusion, i.e., an enforceable entitlement to minimum standards of connectivity, accessibility, and skills support, regardless of location. This would align with European trends and recast digital access as a condition of citizenship, enabling litigation where communities are systematically excluded and strengthening accountability through constitutional review⁵³. Recognising this right through legislative amendment of the CAD or authoritative constitutional interpretation would transform digital access into an enforceable entitlement grounded in fundamental rights. Such recognition would align Italy with European trends and impose positive obligations on the State to eliminate structural and infrastructural barriers to digital participation⁵⁴. It would provide a legal basis for litigation by communities systematically excluded from essential services, thereby strengthening accountability and enabling access to constitutional remedies.

Naturally, the strategic investment in digital infrastructure and public administration is essential to ensure the effective implementation of a modern, efficient state. The PNRR aims to achieve this by allocating at least 20% of its total expenditure to the digital transition. By specifically focusing on strengthening public administrations with outcome-based performance incentives and by allocating at least 40% of its territorialisable resources to the *Mezzogiorno* (Southern Italy), the PNRR ensures that these investments effectively close the territorial gaps. To succeed, these flows must be coupled with municipal technical assistance, skills programs, and delivery capacity, ensuring Art. 119's equalisation shifts from formal allocation to substantive, measurable outcomes.

The PNRR recognises Italy's lag in digital skills and invests across education, the public sector, and the business sector. This is how Art. 3(2)'s positive obligation is made operational, by removing obstacles that limit participation in a digital society. Demographic challenges in inner areas (low density and decline) compound delivery, so skills policies must be mobile,

⁵¹ The *Autorità per le Garanzie nelle Comunicazioni* (AGCOM) is Italy's independent regulatory authority for communications, established by Law N. 249 of 31 July 1997 to oversee the telecommunications, broadcasting, and media sectors, ensuring market competition, pluralism, and user protection.

⁵² The *Agenzia per l'Italia Digitale* (AGID), created under Legislative Decree n. 83/2012, coordinates the national digital strategy and oversees the digital transformation of public administration.

⁵³ L. BIFULCO, *Citizenship and Governance at a Time of Territorialization: The Italian Local Welfare between Innovation and Fragmentation*, in *European Urban and Regional Studies* 23, n. 4, 2016, pp. 634-642.

⁵⁴ M. R. ALLEGRI, *Il diritto di accesso a Internet: profili costituzionali*, in *MediaLaws - Rivista di diritto dei media*, n. 1, 2021, pp. 57-80.

community-embedded, and adapted to ageing populations⁵⁵. Without capacity-building, infrastructure alone cannot deliver the constitutional promise.

Measurement and accountability. Ambition requires diagnostics: a disaggregated national digital inclusion index (modelled on DESI) would surface local inequalities in access, infrastructure, and skills, guide resource allocation, and enable public scrutiny. Without it, policies risk reproducing structural inequalities. Making digital inclusion a measurable public objective gives concrete meaning to Art.3(2) and permits judicial enforcement where minimums are not met⁵⁶.

Ultimately, Italy's digital transition is a constitutional project. Digital exclusion in inner areas is embedded in a complex ecosystem of economic fragility, educational disparities, and institutional under-capacity. Only by embedding digital inclusion within the constitutional framework, and backing it with enforceable standards, capacity, and redistribution, can the Republic deliver equal citizenship in the digital age. In today's society, internet access is a precondition for exercising rights; bridging the divide is therefore a question of connectivity, democratic legitimacy, and territorial justice⁵⁷. Therefore, bridging the digital divide is a matter of connectivity, democratic legitimacy, and territorial justice.

6. Final Remarks

The digital transition in Italy, although formally ambitious and infused with strong institutional mandates, must be reinterpreted not simply as a programme of technological advancement but, more profoundly, as a constitutional endeavour. At its core, the expansion of digital infrastructure, services, and competencies intersects with the fundamental principles enshrined in the Italian Constitution, most notably those of substantive equality, territorial autonomy, and the duty to promote balanced development and solidarity among territories. Digitalisation is therefore not a neutral administrative project but a site where the scope of citizenship and the effectiveness of rights are actively contested and redefined.

As argued herein, digital exclusion in Italy's inner areas is neither incidental nor temporary. On the contrary, it is a manifestation of deep-rooted territorial disparities shaped over decades by uneven development, infrastructural neglect, and administrative undercapacity. While national instruments such as the PNRR, the CAD, and the PNBUL offer comprehensive frameworks for intervention, their implementation has often mirrored rather than corrected existing asymmetries. As a result, the communities most in need are frequently the least able to access resources, meet procedural requirements, or sustain long-term participation, turning eligibility into an additional barrier rather than a gateway. In this scenario, the constitutional

⁵⁵ Presidenza del Consiglio dei Ministri, *Piano Nazionale di Ripresa e Resilienza (PNRR)*, PCM, Rome, 2021, pp. 11, 83, 171.

⁵⁶ A. BENEDECCHI et al., *Digitalisation in Italy: Evidence from a New Regional Index*, in *Social Indicators Research* 169, n. 1, 2023, pp. 26-29.

⁵⁷ T. E. FROSINI, *Il diritto costituzionale di accesso a Internet*, in *Il diritto di accesso ad Internet*, edited by M. PIETRANGELO, ESI, Napoli, 2011, p. 24.

guarantee of equality risks becoming contingent on geography, which is in tension with Articles 3 and 119.

From a constitutional perspective, such divergence is far from acceptable. Moreover, the second paragraph of Article 3 imposes a proactive duty on the State: to remove obstacles that constrain the full development of individuals and impede the effective participation of all in social and political life. In a context where education, healthcare, employment, and deliberative processes are mediated digitally, the lack of connectivity is not just an inconvenience but a form of exclusion. In this light, the digital divide assumes constitutional significance, becoming a structural inequality that demands rights-based, not just technocratic, remedies.

Furthermore, access to the internet now constitutes a “*condizione necessaria per l’esercizio della cittadinanza*”, that is, a necessary condition for the exercise of citizenship itself⁵⁸. Disconnection in a digital society amounts to institutional marginalisation. Moreover, the failure to formalise digital access as a justifiable right leaves individuals vulnerable to gaps in discretionary regulatory frameworks. By contrast, recognising such access, through constitutional interpretation or legislative reform (in particular via the CAD), would align Italy with European trends and impose positive, enforceable obligations on the state to remove structural and territorial barriers⁵⁹.

Furthermore, digital inclusion must be approached not as a technocratic objective but as a dynamic dimension of equality. It is a tool through which the principles of justice, autonomy, and participation are either fulfilled or denied. Ensuring equitable access to digital services goes beyond institutional reform; it reflects a constitutional obligation and serves as a benchmark for the State’s effectiveness in safeguarding fundamental rights, particularly for marginalised communities⁶⁰. Thus, the measure of success is not the number of platforms launched but the degree to which previously excluded communities can meaningfully use them.

In addition, the digital divide in Italy’s inner areas is not simply a question of missing infrastructure or outdated technology; it exposes deeper constitutional tensions between formal promises and substantive outcomes, between autonomy and equality, between rhetoric and reality. Bridging this divide will require more than investment in networks or hardware. It calls for a reorientation of legal and institutional priorities, sustained by enforceable minimum standards, targeted equalisation mechanisms, and long-term capacity-building measures. These interventions must rest on the combined reading of Articles 3, 5, and 119 of the Constitution, which together outline a duty of solidarity and balanced territorial development.

In this light, the argument advanced here is that digital inclusion should be recognised as an emerging constitutional right. This right translates access to digital infrastructure, services, and competencies into a concrete condition for exercising citizenship. Recognising such a right would not only align Italy with broader European constitutional trends but also reaffirm the Republic’s foundational commitment to substantive equality and social cohesion. Only by

⁵⁸ *Ibid.*, p. 2.

⁵⁹ M. R. ALLEGRI, *Il diritto di accesso a Internet: profili costituzionali*, in *MediaLaws - Rivista di diritto dei media*, n. 1, 2021, p. 64.

⁶⁰ L. BIFULCO, *Citizenship and Governance at a Time of Territorialization: The Italian Local Welfare between Innovation and Fragmentation*, in *European Urban and Regional Studies* 23, n. 4, 2016, pp. 628-644.



embedding digital inclusion within the constitutional framework can the digital transition become a genuine instrument of democracy, territorial justice, and effective citizenship in the digital age.