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LEGAL DESIGN AND ARTIFICIAL INTELLIGENCE IN SUPPORT OF LEGISLATIVE DRAFTING DURING CRISIS

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Abstract:

During the emergency period of the coronavirus, numerous legislative acts have been issued in Italy, the content of which is full of references to other measures, long and complex periods that are incomprehensible to citizens. These measures have revealed a lack of legislative drafting, in which the methodology of legal design can be a remedy.

Key-words: legal design, new technologies law, legislative drafting, covid-19.

Italian citizens, in the emergency Covid-19, have been complying with decree after decree, often announced late at night and entered into force the next day.

These legal texts not only seemed too long and complex, but they were also full of interpretative doubts, so much that amendments and clarification were needed, as well as conferences, explanatory press releases, both at the national and regional level.

For example, the decree of the President of the Council of Ministers announced on the evening of 21 March, which came into force on 23 March¹, contains about 2000 words and ten references to other decrees, laws, ordinances, codes, and protocols.

This is not surprising, considering that the Italian legislation is composed of approximately 110 thousand laws currently in force and there are laws containing even 150 thousand words (such as the budget law of 2018).

But in a similar situation, during a world - wide epidemic, the ambiguity of these normative (or, more correctly, *administrative*) texts has also been noted by

¹ The decree was published by the Italian Council of Ministers on 22 march 2020 and is available at: http://www.governo.it/sites/new.governo.it/files/dpcm_20200322.pdf.

eminent legal experts because they were too ambiguous even for them. Indeed, Professor S. Cassese criticized the extension and complexity of the latest Government's decrees on coronavirus², instead praising the document (entitled "brevity") in which Churchill, on 9th August 1940, described in four points how government documents should be written.

In fact, the legislator should consider that he is not writing these laws for himself but for an entire and uneven community, to which the principle "*ignorantia legis non excusat*" applies rigidly.

The principle of clarity of legal texts is also enshrined in art. 13 bis, of Law n. 400/1988 (as amended by Law n. 69/2009) according to which: "*a) any rule intended to replace, amend or repeal existing rules or to establish derogations must expressly state the rules replaced, amended, repealed or derogated; b) any reference to other rules contained in legislative provisions, regulations, decrees or circulars shall indicate the text or subject to which they refer or the principle contained in the rules referred to, in full or **in clear and brief form***". These premises suggest that a clear and brief form will it remain only a dream in Italy.

This legislative mess, however, had a side effect: the Internet and social networks have become the main source of help, for common citizens, in understanding the rules and lots of national and regional institutions used them to deliver a more clear description of these rules, sometimes in a "particular" manner (we can remember that some regional governors used these channels to communicate more quickly to the citizens who don't wear masks and don't respect social distancing). But that evolution of the information networks came at a cost: considering that the opportunity of technology cannot be exhausted in the speed of the diffusion of information, of whereby social networks are pioneers, we must note that there is an increasing risk of fake news relying, in fact, on the speed of their diffusion and crippling the institutional attempts to control the pandemic.

But there is also a good side of technology. In fact it can help the legislator, through the application of the legal design methodology, to enact clear laws and administrative acts. Legal design is defined by M. Hagan - researcher at Stanford University - as the application of human-centred design to the world of law, in order to create more immediate legal services, usable and fulfilling for the user³. This approach is analyzed in the Research Centre of European Private Law (ReCEPL) of Suor Orsola Benincasa University - of which Professor Lucilla Gatt is Director and Professor Ilaria Amelia Caggiano is Deputy Director -

² The recent article was published in the newspaper Corriere della Sera on 23rd March 2020) https://www.corriere.it/editoriali/20_marzo_23/dovere-essere-chiari-b5b36828-6d39-11ea-ba71-0c6303b9bf2d.shtml.

³ Hagan M, 'Law by Design' (Retrieved March 2018), in www.lawbydesign.co/en/home

where are carried out researches on the subject of legal design, with particular reference to a contract, using various methodologies, including multidisciplinary ones⁴.

Returning to the subject of this article, we can say that, first of all, it is necessary to improve the legislative technique through the use of a clearer and unequivocal language, avoiding cryptic references to other normative texts. Indeed, it is crucial to avoid jeopardising values such as legal certainty and the efficiency of justice. Secondly, the legislator could apply the legal design methodology in the drafting of legal texts, providing – also in explanatory annexes – graphical summaries, infographics, maps and interactive tools to ensure a comprehensive and immediate understanding of the rules.

The use of these techniques would make recipients more aware and, as a result, the law would immediately become more effective.

So, following that approach, the first thing a legislator should do is to ask himself if the act/law can be understood by common citizens on a lexical structure and how can improve the text's understanding.

Then he should modify the overall structure of the text by also using images, diagrams, schemes that can show the correct behaviour a citizen should have.

But it is not a simple objective to fulfill during a world crisis. So, what can he do? In a similar context, given the difficulty in ensuring clarity and transparency of rules, with the use of the suggested methodologies combined with the lack of public confidence in the political class and the problems that need to be dealt with during a similar crisis (for example the problem of achieving a solution as quickly as possible), the aid of artificial intelligence can be also considered useful.

In fact, currently, the AI is used within the legislative field only in order to analyze with which probability the laws are approved⁵.

It could be a lot more helpful if used during a similar situation, because an AI could not only guarantee the writing of clearer and simpler rules and the understanding of how that rule fits into the legislative landscape in order to predict its efficiency, as we can see during an “ordinary” exercise of legislative power, but it could also help in an emergency situation, analyzing social behavioural patterns, to understand how the rules should be *presented* and *explained* in or-

⁴ The Research Centre of European Private Law (ReCEPL) of Suor Orsola Benincasa University of Naples develops research itineraries on the relationship between law and new technologies. See <https://www.unisob.na.it/ateneo/c008.htm?vr=https://www.unisob.na.it/ateneo/c008.htm?vr=1>.

⁵ A study found that out of nearly 70,000 bills submitted to the United States Congress from 2001 to 2015, only 2,513 (4%) were passed and became law. On the point see A. Santosuosso, *Intelligenza artificiale e diritto. Perché le tecnologie di I.A. sono una grande opportunità per il diritto* (Mondadori 2020) 73.

der to gather more support from the population in implementing the efforts needed to control the crisis.

For example, think about social distancing: in a lot of cases it is not clear if it should be maintained or not. And what about the face mask? A lot of people don't understand when it is mandatory to wear it!

We could also think of all those Apps developed in order to help citizens use the public services in the era of social distancing and that a lot of them don't know how to use it correctly.

So it is very clear how the AI can be a *game changer* in every situation of exercise of the legislative power and a real help for the improvement of the citizen's life by clearing away all those doubts and ambiguities that make indecipherable our legal system.