

# ONLINE LEGAL EDUCATION IN ITALY

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**Keywords:** COVID-19 pandemic; online education; legal education; Italy; comparative law.

## 1. INTRODUCTION

This report focuses on online legal education in Italy before the COVID-19 pandemic and after the first lockdown. Italy was one of the first European countries affected by the pandemic. In late January 2020, two cases of coronavirus were identified in Chinese tourists visiting Rome. On February 21, what was mistakenly referred to as ‘patient zero’ was found, and within days, Northern Italy was hit by a first devastating wave of the virus. Authorities attempted to contain the spread of the contagion by imposing a national lockdown. At the beginning of March 2020, a decree of the Prime Minister suspended on-site lectures in all Italian universities but allowed the ‘possibility of carrying out distance learning activities.’ Although online legal education previously existed, it was limited to distance learning universities (called ‘telematic universities’) or other niche experiences. Due to the pandemic, all universities that followed a traditional in-person model until then, switched to online distance learning in a matter of days. Online education thus became the daily reality of all professors and students.

The ‘emergency teaching’ phase began. Within days, the transmission of knowledge and relationship between professors and learners shifted online without an adequate period for rethinking or adapting teaching methods and styles. Consequently, all academic players were required to deal with new teaching methods and utilise technologies that had not yet entered their classrooms. The relationship between teaching and new digital technologies has come to the forefront of online legal education raising concerns over the inherent limitations in its application: primarily the exacerbation of the so-called ‘digital divide’ for those lacking requisite hardware or high-speed internet connection, or simply the knowledge to operate new technologies.

This report first briefly outlines the Italian framework for legal education and access to legal professions, provides an overview of information and communication technologies and finally highlights the impact of the pandemic on online legal education. The outcomes of this complex process remain uncertain. The fourth wave of the virus currently underway in Europe makes it difficult for academics to both design education plans that are truly post-pandemic and set the foundation of what will be ‘the new normal’. These are the challenges universities must face.

## 2. BACKGROUND

### 2.1. LAW SCHOOLS

#### 2.1.1. Overview

Italian universities offer two types of law degrees: A three-year first level degree intended to prepare students for prompt access to the labor market (labour consultants, in-house legal advisors, law clerks, etc.) and a five-year course (‘Laurea magistrale’) required by students to access to traditional legal professions (attorney, magistrate, notary) but not primarily oriented toward professional training.<sup>1</sup> Both degrees are undergraduate courses, suggesting why the *Laurea magistrale* offers ‘virtually all-encompassing and, above all, mainly preparatory, institutional teaching.’<sup>2</sup>

Law school remain rooted in ‘the legacy, dating back at least to the middle of the nineteenth century, of its perception as a school of higher education providing generic training to the ruling class rather than as a real “school of law” aimed at preparing its pupils for legal professions, such as lawyers and magistrates.’<sup>3</sup> Traditionally, public university law programs do not set barriers to entry: There are no entrance tests,<sup>4</sup> course attendance is not compulsory, and students take exams when they themselves feel ready and prepared. Students essentially remain enrolled until they have completed the core curriculum and attained the requisite credit points for graduation (if they pay tuition). This structure explains why there has not been any real necessity or sense of ‘need’ to provide forms of distance learning that cater to working or non-resident students unable to attend in-person lectures.

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<sup>1</sup> V. Barsotti and V. Varano, ‘Legal education in Italy’ (2010) 1 *Opinio Juris in Comparatione*, 1–16 <http://liderlab.sssup.it/opinio>.

<sup>2</sup> A. Dondi, ‘Qualche considerazione comparata in tema di educazione giuridica istituzionale’ (2013) 1-2, *Politica del diritto*, 105, 120.

<sup>3</sup> A. Dondi, *ibid.*, 121, referring more generally to Law Schools in Continental Europe.

<sup>4</sup> There are some law schools that require an entrance test, the failure of which may entail additional educational obligations for students who wish to confirm their choice, generally to be fulfilled in the first year (as in the case of the University of Milan), while others have a programmed number of students (for example, the University of Trento). The Single Annual Form of Study Courses (SUA - CDS) of all Law Schools, containing this and other information, can be read on the portal <https://www.universitaly.it/index.php/cercacorsi/universita>.

In the 1970s Merryman noted a profound difference between American and Continental universities regarding the ‘degree of self-consciousness about the objectives and methods of university education’, which he perceived as marked in the United States. By contrast, he argued: ‘Most who teach in civil law universities are, by comparison, totally unconcerned’ about such objectives and methods; ‘this characteristic is particularly marked in the law schools’.<sup>5</sup> The portrait he sketched is outdated and less true today.<sup>6</sup> There is now significant debate on educational objectives, teaching methodology, and offering of e-learning across Italian universities (as attested, for example, by the existence of Teaching Learning Centres, University E-learning Centres, courses for the training of young academics, and innovative teaching projects such as online teaching), albeit not yet widespread nor encompassing all academic players.

Conversely, it is necessary to remember the rather high average age of Italian professors<sup>7</sup> who belong to the group Eric Prensky terms ‘digital immigrants [not] digital natives’<sup>8</sup>, and the fact online courses, especially in their first edition, require significant investments of time and money — two scarce resources. Further consideration is required regarding the little weight teaching has in a professor’s career progression in Italy<sup>9</sup>, and allocation of fewer funds towards academia and research compared to other European countries — funds that have seen further cuts in recent years.<sup>10</sup> These

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<sup>5</sup> J. H. Merryman, ‘Legal Education There and Here: A Comparison’ (1975) 27 *Stanford Law Review* 859, 864.

<sup>6</sup> Merely as an example, we note the ‘Collana per l’osservatorio per la formazione giuridica’, which includes numerous contributions on the subject (conducted according to different points of view) and, more recently, the essays collected in B. PASCUTA, L. LOSCHIAVO, *La formazione del giurista. Contributi a una riflessione*, Roma 2018, at <https://romatrepress.uniroma3.it/wp-content/uploads/2020/02/La-formazione-del-giurista.-Contributi-a-una-riflessione.pdf>.

Italian scholars are involved in a broader European dialogue, which takes place within the European Law Faculties Association.

The International Association of Comparative Law has always shown interest in the topic, see the volume on the internationalization of legal education, where the Italian report was edited by R. Sacco and A. Gianola (C. Jamin and W. Van Caenegem (eds), *The Internationalisation of Legal Education*, Springer, Switzerland 2016) and the surveys on comparative law and multicultural legal classes and bilingual legal education presented at the 2018 Congress and fresh off the press.

<sup>7</sup> This aspect is characteristic of the entire university system, as has recently been reported in the Ministry of Universities and Research’s focus on the academic year 2020/2021: ‘the classic pyramid structure of teaching and research staff is confirmed, as well as the high age of almost all qualifications, including those for access to academic careers.’

At state universities, the average age is 52, ranging from 58 for full professors and 52 for associate professors to 46 for researchers. If we also include research fellows (‘assegnisti di ricerca’, generally the first post doc temporary position), the overall average age drops to 48. Specifically for legal sciences, the average age (also considering ‘assegnisti di ricerca’) is 49.3 years (56.6 for full professors; 49.7 for associated professors; 39 for temporary assistant researcher and 34.1 for ‘assegnisti di ricerca’). See the Ministerial ‘Focus on “Teaching and non-teaching staff in the Italian university system- Academic Year 2020/2021”’, September 2021, available at [http://ustat.miur.it/media/1208/focus\\_pers\\_univ2020.pdf](http://ustat.miur.it/media/1208/focus_pers_univ2020.pdf).

<sup>8</sup> M. Prensky, ‘Digital Natives, Digital Immigrants’ (2001) 9 *On the Horizon*, 1–6 <https://www.marcprensky.com/writing/Prensky%20-%20Digital%20Natives,%20Digital%20Immigrants%20-%20Part1.pdf>.

<sup>9</sup> M. Vogliotti, ‘Per una nuova educazione giuridica’ (2020) XX *Diritto & Questioni pubbliche*, 229–59 [http://www.dirittoequationipubbliche.org/page/2020\\_n20-2/00-DOXX-2020-2\\_02-6\\_studi\\_Vogliotti.pdf](http://www.dirittoequationipubbliche.org/page/2020_n20-2/00-DOXX-2020-2_02-6_studi_Vogliotti.pdf).

<sup>10</sup> In 2019, public spending in Italian universities reached 0.4% of GDP, much lower than not only France (1.1%) and Germany (1%), but also the EU average (0.9%); see OECD 2020 data. The distance with respect to European benchmarks is also recorded on other important parameters, see *Research training and university recruitment*, document approved by

issues are compounded by the requirement for all university courses (as well as all universities) to be accredited by ministerial structures, which leads to a certain rigidity.

In Italy, there are state universities and non-state universities. This is a traditional distinction, although it has been observed non-state universities are quite varied, including universities of a public nature linked to local authorities and others that depend entirely on private initiatives.<sup>11</sup> There are so-called ‘telematic universities’ within the sphere of non-state universities that are subject to less rigid rules<sup>12</sup> but have been reported to provide a poorer quality of education compared to traditional universities.<sup>13</sup> Further, the Italian university model (based on the model established in Germany in the 19<sup>th</sup> century) combines didactics and scientific research. The importance of university libraries is highlighted in this model as they are necessary to carry out research activities and guarantee continuously updated teaching. The low prestige that has characterised telematic universities can also be explained by the fact that they separated teaching from research<sup>14</sup>, generally resulting in inadequate libraries and databases, particularly foreign ones.

### 2.1.2. Funding

The primary source of funding for public universities comes from the Ministry of Universities and Research (MUR)<sup>15</sup> through the ‘Ordinary Financing Fund’ (FFO). Money from the FFO is distributed among universities according to criteria that are subject to continual adjustments. In particular, the FFO is most substantially composed of the basic quota which primarily depends on the number of students enrolled,<sup>16</sup> the bonus quota which concerns the quality of research and teaching, and the equalisation quota which is intended to rebalance the situation among state universities. After the 2008 financial crisis, the FFO was eroded and returned to the nominal 2008 level only in 2019, albeit with a reduction in real value, to grow even in 2020. Presently, the National Recovery and

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the assembly of the Italian University Rectors’ Conference (Conferenza dei Rettori delle Università Italiane or ‘CRUI’) on 22.04.2021.

<sup>11</sup> A. Sandulli, ‘L’arcipelago delle università non statali’ (2015) 3 *Munus*, 609–622 <https://www.rivistamunus.it/wp-content/uploads/2020/04/Munus-3-2015.pdf>.

<sup>12</sup> Report of the Study Commission on Issues Pertaining to Telematic Universities established by DM 429 of 3 June 2013, p. 14 at [https://www.istruzione.it/allegati/relazione\\_conclusiva\\_commissione\\_studio\\_universita\\_telematiche.pdf](https://www.istruzione.it/allegati/relazione_conclusiva_commissione_studio_universita_telematiche.pdf).

<sup>13</sup> V. Barsotti and V. Varano, ‘Legal education in Italy’ (2010) 1 *Opinio Juris in Comparatione*, 1, 2. <http://liderlab.sssup.it/opinio>. On this point, the same evaluation was given a few years ago by the National University Council – CUN – which noted ‘less preparation possessed by graduates from telematic universities than that achieved by graduates from conventional universities.’ (as reported in Report of the Study Commission on Issues Pertaining to Telematic Universities established by DM 429 of 3 June 2013, p. 15).

<sup>14</sup> See National Committee for the Evaluation of the University System, Analysis of the Situation of the Telematic Universities, January 2010, p. 9 <http://www.cnvsu.it/library/downloadfile.asp?id=11682>; Report of the Study Commission on Issues Pertaining to Telematic Universities established by DM 429 of 3 June 2013 [https://www.istruzione.it/allegati/relazione\\_conclusiva\\_commissione\\_studio\\_universita\\_telematiche.pdf](https://www.istruzione.it/allegati/relazione_conclusiva_commissione_studio_universita_telematiche.pdf).

<sup>15</sup> For an overview of the financial aspects of the management of the universities, with data from recent years, see the Report on the University System, issued by the Corte dei Conti in May 2021, pp. 95 ff. <https://www.corteconti.it/Download?id=5078c35f-a683-482b-821c-33e05flac3e5>.

<sup>16</sup> The criterion currently used is the so called ‘standard cost per student’.

Resilience Plan (NRRP)<sup>17</sup> plays an important role in the 2021 growth through the provision of extraordinary European funds.<sup>18</sup>

The second most significant source of funding for public universities comes from student tuitions. Universities have discretion to determine tuition amounts (which must reflect progressive principles with graduated fees based on the student's tax bracket), but student tuition cannot exceed 20% of the amount of FFO.<sup>19</sup> The accredited private universities (including telematic ones) rely on private tuition fees, but also receive annual State funding in accordance with Law No. 243/1991.

## 2.2. LEGAL PROFESSIONS: ATTORNEY AT LAW, NOTARY AND MAGISTRATE

Graduates of a five-year law degree who wish to pursue a traditional legal profession must continue their legal training.<sup>20</sup> To become an attorney, a notary or a magistrate graduates must follow different paths that conclude with a different examination. To become a lawyer, it is necessary to both complete an 18-month apprenticeship in a law firm<sup>21</sup> and sit and pass the bar exam.<sup>22</sup> The bar exam is held annually in December and consists of a written component comprising of three written works and an oral component.<sup>23</sup> The written exams are corrected over a period of several months, with those who pass going on to sit the oral component. After passing both sections of the exam, it is necessary to join the local Bar Association and take the oath to practice law.

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<sup>17</sup> Many of the increases for 2021 are linked to specific provisions, which provide for allocation constraints. The criteria for the distribution of the FFO for the year 2021 were defined by Ministerial Decree No. 1059 of 09.08.2021, which distributes over €8,383 billion. The text is available at <https://www.mur.gov.it/it/atti-e-normativa/decreto-ministeriale-n-1059-del-09-08-2021>.

<sup>18</sup> The budget for the three-year period 2021-2023 confirms these values, with forecasts of the item (Chapter 1694) of €8,402,986,950 for 2022 and €8,399,292,950 for 2023: see d.m. of 30.12.2020, available at [https://www.rgs.mef.gov.it/Documenti/VERSIONE-I/attivita\\_istituzionali/formazione\\_e\\_gestione\\_del\\_bilancio/bilancio\\_di\\_previsione/bilancio\\_finanziario/2021-2023/LB/RIC/LB\\_2021\\_LB-04-DRC-110-MUR.pdf](https://www.rgs.mef.gov.it/Documenti/VERSIONE-I/attivita_istituzionali/formazione_e_gestione_del_bilancio/bilancio_di_previsione/bilancio_finanziario/2021-2023/LB/RIC/LB_2021_LB-04-DRC-110-MUR.pdf).

<sup>19</sup> See Art. 5 of d.P.R. No. 306 of 25.7.1997, concerning university fees.

<sup>20</sup> 83% of graduates have participated in at least one postgraduate educational activity (including internship and apprenticeship) within one year after graduation. The percentage increases to 88% if the timeframe is extended to 3 years after graduation. See AlmaLaurea data for 2020. These and other interesting data can be found at <https://www2.alma-laurea.it/cgi-php/universita/statistiche/tendine.php?config=occupazione>.

<sup>21</sup> It is possible to fulfill up to one year of the apprenticeship period by attending (and receiving a diploma from) a school of specialization for the legal professions. Additionally, up to twelve months of the apprenticeship period may be carried out at the State Legal Service, the legal department of a public entity, or at a court, and up to six months may be spent in another European Union country, under the supervision of an attorney. Lastly, students regularly enrolled in law school may begin the apprenticeship period early, in the last six months of their degree program.

<sup>22</sup> From 2022 onwards, the apprenticeship, in addition to the practice in a law firm, will also consist of compulsory attendance (for a period of at least eighteen months) of professional training courses held by legal professional associations, as well as by some other entities.

<sup>23</sup> For the written part, the prompts, or legal problems, which are the same throughout the state, are prepared by the Ministry of Justice and the bar examinations take place concurrently at each Court of Appeal in their respective district. The Minister appoints the members of the commissions that evaluate the candidates. According to Article 47 of Law No 247 of 31.12.2012, each commission consists of 5 full members (and an equal number of substitute members), of whom: three are lawyers designated by the National Bar Council (one of whom chairs it); one member is a magistrate (retired as a priority, and only in the second instance, still in service); one member is a university professor or assistant professor in legal matters.

The career paths to become a notary or magistrate present considerable challenges including a highly competitive national competition organised by the Ministry of Justice with a limited number of seats available. The notary is a socially prestigious figure and has traditionally been a very lucrative profession. The Ministry of Justice determines the number of notaries and almost always annually announces a national public competition. Eligibility to participate in the competition is conditional on an 18-month training period in a notary's office.<sup>24</sup> The exam to become a notary consists of the drafting three deeds, and undertaking an oral component after passing the written exam. Like the bar exam, the written element of the notary exam is corrected over a period of several months with those who pass ranked by the Ministry of Justice, who subsequently assigns the available seats.

Eligibility to sit the competition to become a magistrate depends on the possession of additional qualifications, such as a diploma from a school of specialization for the legal professions, being an attorney at law, the completion of an 18-month apprenticeship at judicial offices or being awarded a doctorate in law.<sup>25</sup> The public competition to become a magistrate also consists of three written essays and an oral exam, with several months required to correct the written portion. Thus, many months tend to pass between the two sittings. The number of candidates who pass both tests is generally less than the number of posts to be filled. Newly appointed magistrates then commence an 18-month training period.<sup>26</sup>

### 2.2.1. Gatekeepers of the legal professions

Most Italian law schools do not present barriers to enrolment. However, the post-graduate path to the legal professions is long and not without obstacles. This is compounded by the increasingly limited absorption capacity of the market (also because of the recent economic crisis) which has contributed to the decline in matriculation rates in law courses.<sup>27</sup>

While there is a significant barrier to entry and only a limited number of graduates can aspire to become notary or magistrate, the difficulties for attorneys arise even after passing the bar examination. It is worth considering, in fact, that the bar exam is not a competition; it is a qualifying exam without an established quota of candidates that can pass. Moreover, eligible candidates can take

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<sup>24</sup> It is possible to begin the notary apprenticeship as early as the last semester (i.e., six months) of the final year of law school.

<sup>25</sup> For the complete list see D.lg. of 05.04.2006, No. 160, Article 2 as amended.

<sup>26</sup> The path to becoming a notary or magistrate tends to be long and uncertain, so many aspiring notaries or magistrates become lawyers in the meantime.

<sup>27</sup> For a comprehensive analysis of the crisis in legal studies, see A. Banfi, 'Fine di un amore? A proposito del crollo delle iscrizioni nei corsi di giurisprudenza' in B. Pasciuta and L. Loschiavo (eds), *La formazione del giurista. Contributi a una riflessione*, Romatrepres, Rome 2018, pp. 15–30 <https://romatrepres.uniroma3.it/wp-content/uploads/2020/02/La-formazione-del-giurista.-Contributi-a-una-riflessione.pdf> and R. Caso, 'The law does not live here anymore: the legal education crisis between data and questions' [2016] *Trento Law and Technology Research Group Paper series 25*, [https://iris.unitn.it/retrieve/handle/11572/133900/59285/LTRP\\_25\\_Caso.pdf](https://iris.unitn.it/retrieve/handle/11572/133900/59285/LTRP_25_Caso.pdf).

the exam an infinite number of times. Despite a long period where the annual increase in the number of lawyers registered to the Bar Association was between 4,000 and 5,000, the increase in the number of members has gradually attenuated to only 48 more units between 2019 and 2020.<sup>28</sup> This testifies to the fact that the legal profession has lost its appeal in recent years. The extremely high number of Italian lawyers<sup>29</sup> (one of the highest in Europe) and periods of economic crisis have collectively resulted in a ‘proletarianization’ of the legal profession,<sup>30</sup> with a contraction in turnover and income for lawyers.<sup>31</sup> In 2019, the average annual income declared by practicing lawyers was €40,180, an increase of 1.8% compared to the previous year. The figure remains unaffected by the pandemic crisis, as the income data for 2020 is not yet known.<sup>32</sup>

The exams to become a notary or a magistrate entail public competitions with a limited number of available positions — announced by the Ministry of Justice based on the number of seats deemed necessary to fill. Both competitions are considered very challenging in terms of difficulty and duration. Candidates may only sit the exam to become a magistrate three times, compared to five times for the notary exam. Many candidates who are unsure of their papers in the written exam prefer not to submit them to avoid wasting one of the (few) opportunities to access the profession. Many aspiring notaries and magistrates attend prep-courses to increase their chances of passing the exam. A competitors socio-economic background may play an important role in the choice to pursue these careers and persevere, since both competitions require much preparation and aspiring notaries and magistrates may remain in ‘limbo’ for years before achieving their goal, considering how long it may take to finally pass the competition.

The extent of these challenges is illuminated in the following examples. In the 2018 competition, 6,682 candidates applied and competed at the first written test for 330 ordinary magistrate positions. Many aspiring magistrates withdrew, and only 3,091 delivered their essays. Only 301 candidates were admitted to the oral part, of whom only 285 were successful.<sup>33</sup> The ranking list of those who passed the competition was not published until 31 March 2021. Likewise, in the

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<sup>28</sup> The data are from D. Monterisi, ‘Rapporto Censis-Cassa Forense sull’avvocatura 2021: molte ombre, pochissime luci’, [2021] *La Previdenza Forense* 1 <https://www.cassaforense.it/riviste-cassa/la-previdenza-forense/avvocatura/rapporto-censis-cassa-forense-sull-avvocatura-2021-molte-ombre-pochissime-luci/>.

<sup>29</sup> In 2020, there were 231,295 active attorneys enrolled in the Pension Fund for Attorneys (Cassa Forense), which corresponds to approximately four active attorneys every 1,000 inhabitants. See *Ibid.*

<sup>30</sup> The expression, here translated, is from A. Banfi, ‘Fine di un amore? A proposito del crollo delle iscrizioni nei corsi di giurisprudenza’ in B. Pasciuta and L. Loschiavo (eds), *La formazione del giurista. Contributi a una riflessione*, Romatrepres, Rome 2018, p. 24 <https://romatrepres.uniroma3.it/wp-content/uploads/2020/02/La-formazione-del-giurista.-Contributi-a-una-riflessione.pdf>.

<sup>31</sup> *Ibid.*

<sup>32</sup> D. Monterisi, ‘Rapporto Censis-Cassa Forense sull’avvocatura 2021: molte ombre, pochissime luci’ [2021] *La Previdenza Forense* 1 <https://www.cassaforense.it/riviste-cassa/la-previdenza-forense/avvocatura/rapporto-censis-cassa-forense-sull-avvocatura-2021-molte-ombre-pochissime-luci/>.

<sup>33</sup> See <https://www.mgiudiziario.it/mgiudiziario/notiziario-concorsi-magistratura-ordinaria-3/>.

2019 competition for 310 ordinary magistrate positions (whose written tests, due to the pandemic, were held on 15 and 16 July 2021), only 3,797 of the 5,827 who sat the exam submitted their written tests. Corrections are still in progress.<sup>34</sup> Similarly, the last notary competition to be completed was announced in 2018 for 300 notary positions: 1,585 candidates submitted their exams for the session held in April 2019, and only 244 participants were admitted to the oral part. In November 2021, the ranking list of the 199 who ultimately passed the competition was published.<sup>35</sup>

### 2.3. ACCESS TO IT AND ADOPTION OF TECHNOLOGY

The use of new Information and Communication Technologies (ICT) by individuals and families represents one of the fundamental goals of social and cultural inclusion policies.<sup>36</sup> Internet access and broadband are some of the prerequisites for the diffusion of ICT among the population. Over the preceding decade in Italy, the number of people connected to the internet has significantly increased. Yet, the ‘digital divide’ is still present.<sup>37</sup> Pre-pandemic data from the National Institute of Statistics (ISTAT) painted the following picture: In 2019, 76.1% of Italian households had internet access and 74.7% had a broadband connection.<sup>38</sup> However, there were wide disparities between regions, with Central and Northern Italy at an advantage. There were also asymmetries between municipalities with different demographic size. In metropolitan areas, broadband access rates reached 78.1%, while in municipalities of up to 2,000 inhabitants this figure dropped to 68.0%. Among households, a strong digital divide remained, primarily due to generational and cultural factors. Almost all households with at least one minor had a broadband connection (95.1%); among households composed exclusively of persons over 65 years of age, this share dropped to 34.0%. Most households without home Internet access indicated lack of capacity as the main reason (56.4%), while 25.5% did not consider the Internet a useful or interesting tool. Economic reasons were also reported, related to the high cost of connections or of the necessary tools (13.8%), while 9.2% did not surf the Net at home because at least one member of the family accessed the Internet from another place.

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<sup>34</sup> For a critical perspective on the current system of magistrate recruitment, see a recent resolution of the self-governing body of the Italian judiciary (CSM), welcoming the idea of allowing law graduates to directly access the competition, as provided for in a bill of 2020 (DDL No. 2681, presented on 28.09.2020). See CSM, 07.12.2021, available at <https://www.csm.it/web/csm-internet/-/risoluzione-sulla-normativa-in-materia-di-concorso-per-il-reclutamento-di-magistrati-ordinari>

<sup>35</sup> For more information, see [https://www.giustizia.it/giustizia/it/mg\\_1\\_6\\_1.page?facetNode\\_1=5\\_2&facetNode\\_2=1\\_2\(2018\)&facetNode\\_3=5\\_2\\_2&contentId=SCE153339&previousPage=mg\\_1\\_6](https://www.giustizia.it/giustizia/it/mg_1_6_1.page?facetNode_1=5_2&facetNode_2=1_2(2018)&facetNode_3=5_2_2&contentId=SCE153339&previousPage=mg_1_6).

<sup>36</sup> See the report of the National Institute of Statistics (ISTAT), available at <https://www.istat.it/it/files//2019/12/Cittadini-e-ICT-2019.pdf>.

<sup>37</sup> On the digital divide, see P. Zuddas, ‘Covid-19 e digital divide: tecnologie digitali e diritti sociali alla prova dell’emergenza sanitaria’ (2020) 3 *Osservatorio Costituzionale*, 285–307 [https://www.osservatorioaic.it/images/rivista/pdf/2020\\_3\\_17\\_Zuddas.pdf](https://www.osservatorioaic.it/images/rivista/pdf/2020_3_17_Zuddas.pdf).

<sup>38</sup> The framework and related data are taken from ISTAT Report, available at <https://www.istat.it/it/files//2019/12/Cittadini-e-ICT-2019.pdf>.



With the COVID-19 pandemic that has hit, a race has emerged to access the new technologies essential for ‘smart working’, distance learning (employed from primary school through university), and other needs. Over 1 million people connected to the internet for the first time during 2020 (an increase of 2.2%<sup>39</sup>). 97% of the population reported owning a smartphone, and 3 out of 4 people reporting using a desktop or laptop computer.<sup>40</sup>

During the emergency phase, various measures were launched to ensure adequate economic, technological, and cognitive support for distance teaching. In 2020, €85 million was added to the budget to finance the National Plan for Digital Schools.<sup>41</sup> Other initiatives to bridge the digital divide caused by economic reasons also emerged. For instance, ADSL technology was installed and activated, free of charge, in some areas of the country, free cloud services for distance teaching were offered, as well as web hosting for e-commerce, students without personal computers received them on loan, and free internet was offered –for a period – in areas particularly affected by the pandemic.<sup>42</sup>

The European Commission has monitored Member States’ digital progress and published annual Digital Economy and Society Index (DESI) reports. The DESI 2021 report, based primarily on 2020 data concerning the state of the digital economy and society in the first year of the pandemic, ranks Italy 20th out of 27 EU Member States.<sup>43</sup> It reveals that during 2020, Italy made some progress in both coverage and uptake of connectivity networks, with a particularly notable increase in connectivity services offering speeds of at least 1 Gbps. However, the pace of fibre deployment slowed between 2019 and 2020, and efforts are still required to increase the coverage of Very High-Capacity Networks and 5G and to stimulate take-up.<sup>44</sup>

Italy lags significantly behind its EU counterparts on human capital. Compared with the EU average, it records lower levels of basic and advanced digital skills.<sup>45</sup> However, these issues do not apply to lawyers and notaries. In recent years, lawyers have had to equip themselves and learn to interact with new technologies to fulfil the requirements of ‘telematic civil process’<sup>46</sup> while notaries have computerized their offices. Instead, judicial offices are still lagging in the process of computerization and use of new technologies. Therefore, among the objectives of the NRRP,

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<sup>39</sup> The data are those of the Report ‘Digital 2021’ by We Are Social, in collaboration with Hootsuite available at <https://wearesocial.com/it/blog/2021/02/digital-2021-i-dati-italiani/>.

<sup>40</sup> Ibid.

<sup>41</sup> P. Zuddas, ‘Covid-19 e digital divide: tecnologie digitali e diritti sociali alla prova dell'emergenza sanitaria’ [2020] 3 *Osservatorio Costituzionale*, 286, 298 [https://www.osservatorioaic.it/images/rivista/pdf/2020\\_3\\_17\\_Zuddas.pdf](https://www.osservatorioaic.it/images/rivista/pdf/2020_3_17_Zuddas.pdf).

<sup>42</sup> Ibid., p. 303.

<sup>43</sup> See Digital Economy and Society Index (DESI) 2021, Italy, available at <https://digital-strategy.ec.europa.eu/en/policies/countries-digitisation-performance>.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

<sup>46</sup> The Telematic Civil Process consists of a fixed series of procedural activities that are carried out telematically (i.e., remotely) and therefore requires the possession of some computer skills.

digitalisation and computerisation of judicial offices are essential to reducing the duration of the justice process.<sup>47</sup>

The Italian Recovery and Resilience Plan is the largest in the EU, accounting for a total of about €191.5 billion, of which 25.1% (i.e., approximately €48 billion) is devoted to the digital transition.<sup>48</sup> The reforms and investments contributing to the digital transition cover the digital transformation of the public administration and justice system and the strengthening of the healthcare system through digital technologies, the modernization of businesses through the uptake of advanced technologies (Transition 4.0), and the deployment of gigabit connectivity across the country.<sup>49</sup> The plan also addresses digital-skills development, with measures aimed at improving the basic digital skills of the general population, increasing the offer of training on advanced digital skills, and upskilling and reskilling the workforce.<sup>50</sup>

### 3. MOVES TOWARD ONLINE LEGAL EDUCATION

#### 3.1. ACHIEVEMENTS BEFORE THE PANDEMIC

In the most generic sense, the term e-learning refers to the application of new information technologies to teaching. These technologies were previously adopted by Italian universities, for example by using platforms to make materials available, to exchange documents, to create forums. However, the provision of online degree courses was a field left primarily to telematic universities. Before the pandemic, online education in traditional universities was used in some ‘experimental’ projects, left to the initiative of individual universities and/or teachers.<sup>51</sup> In the legal field<sup>52</sup> for

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<sup>47</sup> One of the major innovations brought about by the health emergency is undoubtedly the launch of the Telematic Criminal Process, introduced in forced stages during 2020 to counterbalance the measures that restricted access to the registries and secretariats of judicial offices, thus preventing physical access. The Ministry of Justice intends to replicate in the criminal sector the model already introduced in the Telematic Civil Process to improve the efficiency of the criminal process – from the investigative phase to the moment of criminal execution – guaranteeing the transfer of information between the various offices and making the elements necessary for decisions available more quickly.

<sup>48</sup> Digital Economy and Society Index (DESI) 2021, Italy, available at <https://digital-strategy.ec.europa.eu/en/policies/countries-digitisation-performance>.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

<sup>51</sup> From the academic year 2015/2016, for example, the University of Turin provides that students of the five-year degree in Law can attend some courses online (up to a maximum of 200 CFU, out of the total 300 CFU). Students who make this choice can take advantage of all the services offered to ‘traditional’ students, plus the possibility of being included in online classes, upon payment of an additional contribution to university fees. The University of Turin already offered the entire three-year degree course in Administrative Sciences in online mode.

<sup>52</sup> It should be noted that a survey conducted in 2013 showed that e-learning appears to be relatively uncommon in law (M. Gaebel, V. Kupriyanova, R. Morais and E. Colucci, ‘E-learning in European Higher Education Institutions’ [2014] *EUA publications*, 33 <https://www.eua.eu/downloads/publications/e-learning%20in%20european%20higher%20education%20institutions%20results%20of%20a%20mapping%20survey.pdf>).

example, there were massive open online courses (MOOCs)<sup>53</sup> and other selected courses<sup>54</sup> available with distance learning.

There was also an important online offering related to continuing legal education, which is required of attorneys. Although the flexibility and time efficiency of online education is particularly suited to the needs of professionals, the use of such technologies face a series of limitations. Indeed, the National Bar Council<sup>55</sup> (CNF) establishes a limit of 40% of continuing education credits to be obtained through accredited online courses in a three-year period,<sup>56</sup> and such courses are only allowed to the extent it is possible to verify participation.<sup>57</sup>

### 3.1.1. Telematic Universities and Distance Learning

Before the pandemic, online legal education at the undergraduate level was primarily provided by telematic universities. Indeed, Italy contains both traditional (public and private) universities and telematic universities, specifically designed according to an e-learning model. Legislative openings toward distance learning date back to the last century,<sup>58</sup> but the growth of telematic universities took place from 2003.<sup>59</sup> Since then, there have been numerous regulatory actions, albeit rather piecemeal and chaotic.<sup>60</sup> The initial permissive legal framework led to the creation of various universities, whose educational offerings and quality, however, were considered inadequate. Therefore, the establishment

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<sup>53</sup> See, for example, the offer of free courses (also) in the legal area of the telematic University Uninettuno, partner of the OpenupEd project.

<sup>54</sup> The University of Milan, for example, already in 2017 allowed online participation in the postgraduate course in 'Diritti e inclusione delle persone con disabilità in una prospettiva multidisciplinare' (Rights and Inclusion of People with Disabilities in a Multidisciplinary Perspective).

<sup>55</sup> The National Bar Council (Consiglio Nazionale Forense, acronym: CNF) is the highest institution of Italian attorneys at law. It is a public institution and the governing and regulatory body of the Italian legal profession. For more information see both the Professional Law, adopted in 2012 (L. no. 247/12) and <https://www.consigionazionaleforense.it/>

<sup>56</sup> Lawyers must acquire 60 credits over the period of three-year and at least 15 credits each year. The number of credits depends on the activity carried out. For refresher activities (mainly aimed at adapting and deepening the acquired experience and knowledge gained in initial training): half-day events are attributed from one up to three credits; one day (or more) events receive from two up to twelve credits. Training initiatives may be organised and promoted not only by CNF and by local Bar Associations, but also by other associations, institutions, public or private organisations, including for-profit organisations. See CNF, *Regulations for Continuing Education* (Reg. 16.07.2014, No. 6), at <https://www.consigionazionaleforense.it/documents/20182/182382/Regolamento+16+July+2014.+n.+6+-+Continuing+Education>.

<sup>57</sup> See CNF, *Nota tecnica sull'accREDITamento delle attività di formazione a distanza (FAD)*, at [https://www.consigionazionaleforense.it/documents/20182/182382/Nota+tecnica+sulle+procedure+di+accREDITamento+delle+attivita%3%A0+di+Formazione+a+distanza+\(FAD\)](https://www.consigionazionaleforense.it/documents/20182/182382/Nota+tecnica+sulle+procedure+di+accREDITamento+delle+attivita%3%A0+di+Formazione+a+distanza+(FAD)).

<sup>58</sup> See D.P.R. 382/1980, art. 92 ('Experimentation of new teaching methods') and L. 341/1990, which provides for 'financial support for university distance learning initiatives implemented by universities, including in consortia with other public and private entities.'

<sup>59</sup> D. interm. of 17.04.2003, containing 'Criteria and procedures for the accreditation of distance learning courses of state and non-state universities and university institutions authorized to issue academic titles as per art. 3 of Decree No. 509 of 3 November 1999', which also took into account the requests coming from Europe (see National Committee for the Evaluation of the University System, *Analysis of the Situation of Telematic Universities*, January 2010, at <http://www.cnvsu.it/library/downloadfile.asp?id=11682>).

<sup>60</sup> Report of the Study Commission on Issues Pertaining to Telematic Universities established by DM of 3 June 2013, No. 429, 3 at [https://www.istruzione.it/allegati/relazione\\_conclusiva\\_commissione\\_studio\\_universita\\_telematiche.pdf](https://www.istruzione.it/allegati/relazione_conclusiva_commissione_studio_universita_telematiche.pdf).

of new telematic universities was prohibited and the quality criteria were defined with greater precision and rigor. In the end, these universities (which are recognised by the MUR) issue degrees that have the same legal value as those issued by traditional universities.

In an annex to a 2016 ministerial decree on accreditation,<sup>61</sup> degree courses were divided in: a) conventional courses (delivered in person or combined with limited online activities, not exceeding 10%); b) mixed mode (with online activities not exceeding two-thirds of the total educational activity); c) predominantly distance learning (online activities exceeding two-thirds) and d) entirely distance learning. Telematic universities may only establish type c) and d) courses, but exams and final dissertations must be conducted on-site, in a traditional setting.<sup>62</sup> There are currently eleven accredited telematic universities; ten of these offer degree programs in the legal field, eight offer the five-year degree in law.

The national agency for the evaluation of universities and research institute (Agenzia di Valutazione del Sistema Universitario e della Ricerca, or ‘ANVUR’) provides criteria for calculating university credits (‘CFU’) for online courses, where CFUs represent the student workload and educational activities aimed at passing exams. For traditional, on-site courses, one CFU corresponds to 25 hours of learning activities, 6-10 hours of which are dedicated to frontal teaching (lectures) with the rest comprising of individual study. Regarding online teaching, a distinction has been made between ‘didattica erogativa’ (like frontal teaching in the classroom, focused on the presentation of content by the teacher) and interactive teaching. For each CFU, the teaching must reach the minimum threshold of 6 hours, ensuring at least one hour for each of the two forms of teaching.<sup>63</sup> The ANVUR therefore clarifies the importance of didactic interaction, and must be ensured in the context of courses held through telematic means. Faced with initial unflattering evaluations received by telematic universities, ANVUR has opportunely intervened, following indications of scientific literature on online education.<sup>64</sup>

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<sup>61</sup> Annex 3 of Miur DM of 08.08.2016, No. 635 (General guidelines for university planning 2016-2018 and indicators for periodic performance assessment); this distinction is found reiterated in Annex 3 of DM 989/2019 and Annex 4 of DM 298/2021.

<sup>62</sup> The telematics university Pegaso proposed to amend its regulation, to make permanent the possibility of taking the exams remotely (as had been allowed during the emergency), but the Minister rejected the amendment and that decision has been considered legitimate by the administrative Court (Tar Lazio, Roma, 17 maggio 2021, no. 5797, in *database Pluris*).

<sup>63</sup> See ANVUR’s ‘GUIDELINES for pre-activation evaluations of Courses of Study (CdS) in telematic mode by the Commission of Evaluation Experts (CEV)’ of 23.12.2013, available at [https://www.unite.it/UniTE/Engine/RAServeFile.php/f/presidioateneo/03\\_LGPreattivTelematiche\\_Def231213.pdf](https://www.unite.it/UniTE/Engine/RAServeFile.php/f/presidioateneo/03_LGPreattivTelematiche_Def231213.pdf). The distinction between the two different teaching methods can be found also in the following documents.

<sup>64</sup> See A.R. Formiconi, ‘La tortuosa via della didattica online nell’università’ (2016) 1 *Studi sulla formazione/Open Journal of Education*, 105, 127 <https://oajournals.fupress.net/index.php/sf/article/download/9121/9119/>.

## 3.2. THE PANDEMIC'S 'CREATIVE DESTRUCTION'

### 3.2.1. *Emergency Teaching*

On 8 March 2020, a decree of the Italian Prime Minister suspended in-person lectures in all Italian universities but allowed them to continue through distance learning activities. Therefore, all Italian universities have transitioned from a traditional model of face-to-face teaching to distance learning (in Italian 'didattica a distanza' or DAD). This transition can be defined as an emergency phase of teaching: In just a few days, the transmission of knowledge had to shift online. Academics, with the support of their universities (who provided e-learning platforms), have been generally independent in choosing their modalities. For instance, some provided live video lectures while others made recorded video lectures available or opted for slides with audio commentary.<sup>65</sup> Most law professors also accompanied online lectures with additional, supplemental teaching material, such as texts, diagrams, slides, images, videos, bibliographies or suggestions for supplementary readings or exercise materials.<sup>66</sup> There were those who delivered the courses with modifications and adaptations related to the methods and times of delivery and those who kept them identical.<sup>67</sup>

On the positive side, roll-out delays were limited to a few days, class schedules did not depart from those previously established, most professors managed to carry out their teaching programs in full, the number of 'attending' students did not decrease, and exams were held regularly.<sup>68</sup>

Professors interacted with the students by appointments through the digital platforms, by email or by phone. For the most part, examinations for law schools continued in the same way as before the pandemic, mainly through the provision of (online) oral examinations.<sup>69</sup>

Depending on their computer skills, preferences and possibilities, each academic tried to cope with the new reality of distance learning. ANVUR research shows most of them felt they have both

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<sup>65</sup> These indications are taken from the survey carried out by ANVUR, on universities teaching experiences during the COVID-19 health emergency. The results of the questionnaires on the governance of the emergency and on distance learning (intended for teachers), cited here as the 'ANVUR survey' can be read at this address: <https://www.anvur.it/attivita/ava/didattica-a-distanza/>.

<sup>66</sup> Ibid.

<sup>67</sup> Regarding teaching methods, see F. Ramella, M. Rostan, 'Universi-DaD, Gli accademici italiani e la didattica a distanza durante l'emergenza Covid-19' (2020) 1 *Working Papers CLB-CPS*, 1, highlighting that 67% of faculty have modified somewhat both the content and structure of their teaching, 24% have kept it unchanged, and 9% have taken the opportunity to significantly rethink their teaching.

<sup>68</sup> These are the results of the national survey on emergency teaching accomplished in June 2020 through the interview of 3,398 teachers, by an online questionnaire highlighting positivities and criticalities of emergency teaching: F. Ramella, M. Rostan, 'Universi-DaD, Gli accademici italiani e la didattica a distanza durante l'emergenza Covid-19' (2020) 1 *Working Papers CLB-CPS*, 1 [https://www.dcps.unito.it/do/documenti.pl/ShowFile?\\_id=gfk5;field=file;key=4G3PLidHy8YQAwy46cnWQSzYCxRhjocgmo6f2vGxXL03D8js7D6;t=3283](https://www.dcps.unito.it/do/documenti.pl/ShowFile?_id=gfk5;field=file;key=4G3PLidHy8YQAwy46cnWQSzYCxRhjocgmo6f2vGxXL03D8js7D6;t=3283).

<sup>69</sup> See ANVUR survey available at <https://www.anvur.it/attivita/ava/didattica-a-distanza/>.

the ability to adapt to DAD and an adequate connection to carry it out.<sup>70</sup> More negatively, professors have also highlighted difficulties encountered. They lamented lack of direct interaction with students,<sup>71</sup> difficulty in keeping students' attention, a great organisational effort and an excess of time spent in front of a screen.<sup>72</sup>

Some universities have conducted internal surveys on emergency teaching. For example, the University of Trento carried out a survey aimed at collecting information on the experiences, evaluations, and opinions of students with respect to distance learning delivered in the second semester of the academic year 2019-20.<sup>73</sup> Among other data, it is interesting to highlight how online teaching for almost all students represented an absolute novelty: Only 14.9% had some experience, generally quite limited, with online classes. Based on their experience, the comparison between online teaching and classroom teaching shows an overwhelming preference for the latter over the former. However, the data indicates students appreciated DAD as an alternative mode of learning and continuing their studies in a particular situation, which did not allow for alternative solutions. For the rest, other positive aspects do not undermine the primacy of traditional teaching. The major problems encountered by students were difficulty in concentration and motivation and lack of involvement.

Other interesting insights are those provided by the University of Pisa survey.<sup>74</sup> Among them, that DAD can be very advantageous for certain types of disabilities (especially physical) but exacerbates the difficulties of those with certain learning disabilities. On the one hand, there has been a proliferation of written materials not designed for students with learning disabilities, and on the other, there is less direct interaction with teachers and classmates, a fundamental element for overcoming the obstacles related to understanding concepts and student learning.<sup>75</sup>

While traditional universities have adapted quickly to DAD, they have been unable to quickly increase their stock of digital libraries and develop necessary library services for academics and students alike. While paper libraries have been partially replaced by databases, this replacement is not complete and many law libraries remain undigitised, unlike France and other European countries.

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<sup>70</sup> Ibid.

<sup>71</sup> Ibid.

<sup>72</sup> Ibid.

<sup>73</sup> The survey, to which over 5,100 students responded (31% of the student body), was conducted between 28.05.2020 and 25.06.2020. The questionnaire collected information on attendance levels, the assessment of the different forms of online education (synchronous and asynchronous) compared to that in presence and the difficulties encountered (technical, psychological, and relational problems). See <https://www.unitn.it/alfresco/download/workspace/SpacesStore/415c1950-9d02-4312-8c93-802d29661d36/Studenti%20e%20DOL.pdf>.

<sup>74</sup> See the survey 'Evaluation report on the distance learning model adopted by the University of Pisa during the lockdown' by Human Foundation Do&Think Tank per l'Innovazione Sociale, Pisa University Press, Pisa 2020, open access e-book available at <https://store.streetlib.com/it/aavv/limpatto-sociale-della-dad-di-unipi?product=6184f070ea9042c7bb03a3ea>.

<sup>75</sup> Ibid.

### 3.2.2. *The Pandemic Continues: Dual Teaching*

September 2021 marked the start of the first semester in which a return to ‘relative’ normality was possible. However, while the beginning of the semester the curve of COVID cases dropped considerably, at the end of the semester, Europe was hit by the so-called ‘fourth wave’. The format adopted in this semester entailed the so-called ‘mixed’ or ‘dual’ delivery approach, where face-to-face lectures were also available online, via streaming and/or recorded video lectures. The capacity of classrooms was reduced to allow adequate distancing and ensure safety, and, for the same reasons, physical access to the classrooms has been possible mostly through a reservation system, whereby students reserve their spot in class. Access to university facilities also requires a COVID-19 Green Certificate.<sup>76</sup>

The adoption of dual teaching catered to different needs. It allowed for the participation of students who were unable to reserve a seat in the classroom or could not participate in in-person activities for health reasons, and simultaneously proved a useful tool for other students who, for whatever reason, preferred not to attend on-site lectures and for non-resident students unwilling or unable to travel in such uncertain times.

### 3.2.3. *Other Pandemic Effects*

The suspension of in-person teaching has had an impact on all post-graduate courses, from the schools of specialization to master courses and continuing legal education generally. Given this exceptional period, the National Bar Council has removed the 40% limit on credits that can be earned through distance learning, at first only for 2020 but since extending through to 2021 and 2022.

Distance learning – via e-learning, streaming, webinars, and video conferencing – has spread like wildfire. The compulsory shift online has made it possible to appreciate the advantages of online education, including freedom to follow courses regardless of one’s physical location or the cities in which they are held. The greater difficulty in networking is, on the other side, one of the negative aspects.

The pandemic has impacted access to the legal professions. Due to the emergency, some changes have been introduced concerning the apprenticeship and bar exam:<sup>77</sup> The 2020 session was postponed to May 2021. The modality was also amended: The written component was abolished, and

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<sup>76</sup> The green certificate is a document that attests to one of the following criteria: vaccination against COVID-19, a negative antigenic or molecular swab taken within the last 48 hours, or recovery from the infection. As of 1.02.2022 University staff are subject to compulsory vaccination (D. L. no 1 of 7.01.2022), because of which a ‘super green pass’ is issued.

<sup>77</sup> See D.L. No. 22 of 8.04.2020, converted with amendments by L. of 06.06.2020, No. 41.

candidates instead took two oral exams. This new approach has also been adopted for the 2021 exam (which, due to the slip of the 2020 exam, will not take place until 2022).

The 2019 competition for 300 new notary positions could not be held due to the pandemic and was only held, with the addition of 100 seats, in late November/early December 2021. Finally, also the competition for 320 ordinary magistrate posts, scheduled for November 2019, was delayed until July 2021 and the written part was modified such that candidates were required to complete only two tasks (in civil and criminal law) instead of three. Both national competitions are still in progress, and many aspiring lawyers have also yet to complete the bar exam.

#### **4. ONLINE LEGAL EDUCATION: ACHIEVEMENTS AND CHALLENGES**

Although considerations on the didactic methodologies for legal studies were present in the Italian debate, they were not central, and e-learning experiences carried out by the universities (more developed in other disciplinary fields) were still limited, except for telematic universities. However, the pandemic (still underway) has accelerated the process which had already begun: All professors have had to acquire new technological skills, which has opened up possibilities that were previously inconceivable. The debate regarding online education has emerged from the niches where it was taking place, acquiring greater centrality and renewing enthusiasm but also raising concerns related to online education.

Online teaching (not entailing simply lectures held in front of the camera or live-streamed or dual teaching methods provided by universities this year for pandemic reasons) offers important opportunities and specific offerings different from those of face-to-face teaching. To transform the difficulties in higher education caused by the pandemic into a valuable learning opportunity, it is important not to solely view online teaching from the perspective of the pandemic experience.<sup>78</sup> In fact, there are a multitude of studies, knowledge and experiences in the field that can be exploited. On their basis, it should be possible to design innovative educational solutions that are more widespread, accelerating the existing trend towards online and hybrid learning.<sup>79</sup>

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<sup>78</sup> There seems to be a broad consensus on this observation, which is also expressed by the Commission in her recent communication, on ‘Digital Education Action Plan 2021-2027. Resetting education and training for the digital age’. See COM (2020) 624 final, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0624>. The Commission concludes that ‘The COVID-19 pandemic is impacting heavily on education and training systems. In highly difficult circumstances it has accelerated the digital transformation and triggered rapid, large-scale change. Developments that could have taken years happened in just a few weeks. We are now faced with both challenges and opportunities. This means we need to use the lessons of recent months to step up our efforts and gradually evolve from temporary, emergency-focused remote education to more effective, sustainable, and equitable digital education, as part of creative, flexible, modern, and inclusive education and training. This process should be informed by contemporary teaching practices and research.’

<sup>79</sup> See for example, the Unitutor project of the University of Foggia, which calls for each department to create at least one course of study in blended mode (for that of Law, the Course in ‘Investigative Sciences’). The new three-year degree



Consider the MOOCs, for example: After gaining the attention of the New York Times in 2012 (called ‘The Year of the MOOC’), MOOCs have proven to be an interesting training ground for educational innovation.<sup>80</sup> However, MOOCs are characterised by heterogeneous experiences in terms of methodological choices and possibilities of didactic interaction of learners, for the business model followed, for the type of students and target, and for the objectives pursued. At an institutional level, as well as in scientific literature, there is a lively discussion on the state of the art and most promising pathways, the practical advantages, and the possible risks and strategies to pursue, considering different contexts. The European context distinguishes itself from the North American one. In Europe, discussions are carried out, projects are launched, and funding is offered.<sup>81</sup> Italy actively participates in this debate,<sup>82</sup> with interesting extending well beyond just some universities and scholars (consider the work done at the Italian University Rectors’ Conference – CRUI<sup>83</sup>). A recent survey on the offer and characteristics of Italian MOOCs has depicted the Italian MOOCs ecosystem as ‘rather dynamic both in terms of scientific debate and actual offering.’<sup>84</sup>

In recent years, MOOCs have not only increased in number but have new potentials to be exploited (and may be further exploited in the future) following what has been achieved in other experiences. MOOCs can, for example, be used as an orientation tool (as well as a recruitment tool) for high school students, who can follow courses on some of the qualifying subjects of the various university degree courses and are thus able to explore the educational offer and assess their interest

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course at the University of Turin in ‘Agricultural and Food Law’ was created in 2020-2021 with lectures held entirely online, also to meet a demand from students from all over Italy.

<sup>80</sup> L. PAPPANO, ‘The year of the MOOC’ [02.11.2012] *The New York Times*.

<sup>81</sup> See for instance the EMMA platform, born from a pilot project funded by the European Union called Emma European Multiple Mooc Aggregator, launched in 2015 and coordinated by the University of Naples Federico II. Here you can also find several lessons related to the EulaWinEN project, coordinated by the Fondazione Italiana del Notariato and aimed at providing a blended and integrated content and language training for European notaries and magistrates. See [http://project.europeanmoocs.eu/deliverables/D2.1\\_Aggregator\\_UNINA.pdf](http://project.europeanmoocs.eu/deliverables/D2.1_Aggregator_UNINA.pdf) and R. De Rosa, ‘Emma: una piattaforma Mooc che parla europeo’ (2015) 6 *Universitas*, 67 [https://www.researchgate.net/publication/304115056\\_EMMA\\_Una\\_piattaforma\\_MOOC\\_che\\_parla\\_europeo](https://www.researchgate.net/publication/304115056_EMMA_Una_piattaforma_MOOC_che_parla_europeo).

<sup>82</sup> Italy, with Spain and France, is a leader in absolute numbers in the EU (cf. the Commission Staff working document accompanying the Communication on ‘Digital Education Action Plan 2021-2027. Resetting education and training for the digital age’ mentioned above, p. 37, and the various studies cited here). An indication of this interest is also the fact that some important international conferences have been hosted by Italian universities, such as the eMOOC19 Conference hosted by the University Federico II of Naples, and the OEGlobal Conference 2019 hosted by Polytechnic of Milan.

<sup>83</sup> See, S. Paleari, F. Corradini, A. Perali, F. Porta, and E. Breno, *MOOCs Massive Open Online Courses. Prospettive e opportunità per l’Università italiana*, Fondazione CRUI, Rome 2015 (available at [https://www.cruai.it/images/demo/cruai\\_web/pubblicazioni/cruai\\_mooc\\_2015.pdf](https://www.cruai.it/images/demo/cruai_web/pubblicazioni/cruai_mooc_2015.pdf)) which was followed by the elaboration of National Guidelines for the preparation of quality MOOCs delivered by Italian Universities (available at [https://www.cruai.it/images/1-LineeGuidaMOOCsItalia\\_aprile2017.pdf](https://www.cruai.it/images/1-LineeGuidaMOOCsItalia_aprile2017.pdf)). The discussion continued in the context of the 2018 meeting on the National Digital University Plan; see in particular the report by M. Calise, ‘MOOCs: sfide e opportunità’ [2018] *I Magnifici Incontri CRUI 2018* <https://www.pisauniversitypress.it/news-news-i-magnifici-incontri-cruai-2018-6252.html>.

<sup>84</sup> See V. Goglio and F. Nascimbeni, ‘Moocs in Italy: an open and fragmented landscape’ [2021] *Italian Journal of Educational technology* <https://ijet.itd.cnr.it/article/view/1233/1110>.

and predisposition<sup>85</sup>(this is also the goal of the lessons freely accessible on platforms such as YouTube<sup>86</sup>). MOOCs can further be integrated into curricular courses<sup>87</sup> or courses recognised directly in the student's curriculum. The possibility of earning credits to be applied toward one's major by following MOOCs of other universities is gaining increasing attention.

In Italy, the experience of Federica and EduOpen is particularly illustrative. In 2007, the University Federico II of Naples launched a web-based learning project called 'Federica', which evolved from the Federica.eu platform. Federica Web Learning is the University Centre for innovation, experimentation and dissemination of multimedia teaching of the University of Naples Federico II.<sup>88</sup> It presents a rich educational offer<sup>89</sup>where also courses from other universities can be found thanks to its established partnerships.<sup>90</sup> The FedericaGo project was launched at the outbreak of the pandemic to allow all professors, even those who did not already participate in existing partnerships, to use the format and assistance offered by Federica to (quickly) prepare a MOOC.

Further, a MOOC platform called 'EduOpen' was created in 2016 by a consortium of Italian Universities and other partners, coordinated by the University of Foggia, within a project funded by the Minister of Education, University and Research.<sup>91</sup> The EduOpen platform also activated masters modules and advanced courses in non-legal subjects.<sup>92</sup> Participants who completed the required activities were awarded an attendance certificate and open badge, and certain courses also offered the opportunity to obtain a verified certificate or receive ECTS credit upon course completion and passing of an exam.<sup>93</sup>

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<sup>85</sup> The orientation of high school students is an objective pursued for example by the project of the University of Turin start@unito, where students may also attend courses that will be recognized in their university career plan. See <https://start.unito.it/>; for an overall analysis of the project, see M. Marchisio, S. Rabellino and M. Sacchet, 'Start@unito as Open Educational Practice in Higher Education' (2020) 16 *Journal of e-Learning and Knowledge Society*, 46–55 [https://www.je-lks.org/ojs/index.php/Je-LKS\\_EN/article/download/1135354/1240/](https://www.je-lks.org/ojs/index.php/Je-LKS_EN/article/download/1135354/1240/).

<sup>86</sup> See for example the video cycle 'The first lesson of', on the YouTube channel of the Ca' Foscari University of Venice.

<sup>87</sup> See for example the experience of the MOOC on 'Human Rights and International Criminal Law', by C. Dal Bon and C. Ferranti, 'MOOC non curricolari @Unipd: tra diffusione nazionale e internazionalizzazione', in M. Fedeli, D. Mapelli and C. Mariconda, *L'innovazione didattica all'Università di Padova. Teorie, Ricerche e Pratiche*, Unipd, Padova 2020, available at [http://www.padovauniversitypress.it/system/files/attachments\\_field/9788869382185.pdf](http://www.padovauniversitypress.it/system/files/attachments_field/9788869382185.pdf).

<sup>88</sup> Naples University has also begun offering degree courses with the MOOC format in the Premium mode; there are not currently any degree courses in legal studies, but there are law courses included in the activated online curricula.

<sup>89</sup> Federica.eu is Europe's leading platform for open access multimedia education.

<sup>90</sup> At the same time, Federica's MOOCs can be found on EdX, and a deal with Coursera was reached in 2021.

<sup>91</sup> See <http://learn.eduopen.org/>.

<sup>92</sup> See A. De Santis, K. Sannicandro, B. Fazlagic, C. Bellini, C. Tedeschi and T. Minerva, 'I MOOC per L'alta Formazione: I Master su EduOpen Attivati dall'Università di Modena e Reggio Emilia', in *European Distance and E-Learning Network Annual Conference (EDEN 2018), Exploring the Micro, Meso and Macro - Navigating between Dimensions in the Digital Learning Landscape*, 2018, p. 673, at [https://www.researchgate.net/publication/335830713\\_I\\_Mooc\\_per\\_lalta\\_formazione\\_i\\_master\\_su\\_EduOpen\\_attivati\\_dallUniversita\\_di\\_Modena\\_e\\_Reggio\\_Emilia](https://www.researchgate.net/publication/335830713_I_Mooc_per_lalta_formazione_i_master_su_EduOpen_attivati_dallUniversita_di_Modena_e_Reggio_Emilia).

<sup>93</sup> For an analysis of the outcomes of a survey conducted after two years of activity, see A. De Santis, K. Sannicandro, B. Fazlagic, C. Bellini, C. Tedeschi and T. Minerva, 'Gli Open Learners di EduOpen: Numeri e Prospettive', *ibid.*, p. 887, [https://www.researchgate.net/publication/335830790\\_Gli\\_open\\_learners\\_di\\_EduOpen\\_numeri\\_e\\_prospettive](https://www.researchgate.net/publication/335830790_Gli_open_learners_di_EduOpen_numeri_e_prospettive).

Transmissive (content-oriented) education based on formal lectures has proved unsuitable for developing a series of skills required in the labor market.<sup>94</sup> Online education – suitably designed as student-centred – can also teach the necessary soft skills. E-learning can also become a tool for opening international experiences to a greater number of students, and it could be integrated in agreements between professors, universities, and within the Erasmus program,<sup>95</sup> including through blended mobility formats.

Distance learning is also a tool that can be very attractive to those who are already in the labor market. Beyond the continuing education required of lawyers, the lifelong learning sector assumes a crucial role in a society affected by increasingly rapid change, and universities have an interest in carving out a greater space for themselves in this market. In this context, the so-called ‘micro-credentials’ could take on increasing importance, also stimulated by European policies and the intention to develop a European approach to such micro-credentials (a Council Recommendation on micro-credentials for lifelong learning and employability is expected by the end of 2021).<sup>96</sup>

## 5. CONCLUSIONS

While the COVID pandemic remains ongoing, it is difficult to make predictions about the future. The opportunities offered by new technologies and the arrival of new education market players (not only universities but also private companies) pose important challenges to our university system. In order to face those challenges, imagine the future of higher education and the new pedagogical possibilities for universities, we must first of all accept the challenge, and face it with cultural awareness and an open mind.<sup>97</sup> Law professors have partially considered these issues although with less pressure, as the five-year law degree remains compulsory to access the traditional legal professions and ministerial regulations and associated rigidity limits the possibility of carving out innovative paths within this degree. These issues have not prevented changes in legal education<sup>98</sup> and emergence of a

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<sup>94</sup> On the soft skills required for the legal professions, of which the university system designed by the Bologna process should take charge, see G. Pascuzzi, *Giuristi si diventa*, 3<sup>rd</sup> ed., Il Mulino, Bologna 2019. The author has also long emphasized the potential of new technologies in legal education; see the experiments and possible trajectories reported in G. Pascuzzi, ‘L’evoluzione dell’e-learning: l’apprendimento delle abilità’ [2008] *Journal of e-Learning and Knowledge Society*, 129–135, and updates in G. Pascuzzi, *Avvocati formano avvocati*, Il Mulino, Bologna 2015.

<sup>95</sup> See Erasmus+ 2021-2027 program, Key Actions 1 (available at [https://ec.europa.eu/programmes/erasmus-plus/sites/default/files/2021-erasmusplus-programme-guide\\_en.pdf](https://ec.europa.eu/programmes/erasmus-plus/sites/default/files/2021-erasmusplus-programme-guide_en.pdf)), which provides for blended mobility.

In the Commission’s Communication on ‘Digital Education Action Plan 2021-2027’ cited above, it is stated that ‘As digitalisation advances, the Action Plan provides the policy context and strategic guidance to increase the digital impact of the Erasmus programme. Blended mobility will be “mainstreamed” (i.e., integrated) into the Erasmus programme by introducing a “virtual learning” component to Erasmus’.

<sup>96</sup> See [https://ec.europa.eu/education/education-in-the-eu/european-education-area/a-european-approach-to-micro-credentials\\_en](https://ec.europa.eu/education/education-in-the-eu/european-education-area/a-european-approach-to-micro-credentials_en).

<sup>97</sup> See P. Limone, ‘Towards a hybrid ecosystem of blended learning within university contexts’, in *CEUR Workshop Proc. 2817*, Foggia 2021, available at <http://ceur-ws.org/Vol-2817/paper26.pdf>.

<sup>98</sup> See M. Graziadei, ‘Eppur si muove: la rivoluzione silenziosa in corso nell’educazione giuridica’ (2021) 1 *Diritto & questioni pubbliche*, 67–75 [http://www.dirittoquestionipubbliche.org/page/2021\\_n21-1/index.htm](http://www.dirittoquestionipubbliche.org/page/2021_n21-1/index.htm).

didactic style that is not only transmissive.<sup>99</sup> However, innovative online teaching experiences are quite limited, also for an inadequate knowledge of necessary technologies and their potential.

The Italian background was not particularly helpful, since, on the one hand, expertise in a certain subject has been considered sufficient to be able to teach it for too long and, on the other, the quality of teaching is not valued for the purposes of academic career progression. The Italian university system does not encourage teachers to invest in their own training as instructors and is reluctant to valorise the efforts required to prepare innovative courses. This aspect – irrespective of the nostalgic phase ‘in which the need for a return to presence and forms of socialisation of knowledge is accentuated’<sup>100</sup> – could mean missing out on the opportunities offered by online education.

In Italy, there have been innovative experiences that have exploited e-learning and pilot projects aimed at paving the way for the education of the future where universities can maintain a central role and guarantee quality teaching at affordable costs.

The debate about online education concerns the entire university system and its future. Law schools cannot avoid it. For some time now, legal scholars, not only in Italy, have been discussing the future of legal education, currently said to be under fire.<sup>101</sup> The time, the consistency, and the quality of the response depend on many variables (Recovery Fund interventions could provide important support), but also on the commitment of academics. Professors must receive the necessary technical and didactic knowledge and incentives to exploit them and be part of a vision in which they are conscious actors to make valuable contributions to the future of legal education. Appropriate funding, cultural and pedagogical awareness, and commitment of academics are certainly needed if we want the ‘new normal’ will be a better one.

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<sup>99</sup> See, for example, the spread of so-called legal clinics.

<sup>100</sup> See. G.A. TOTO, P. LIMONE, *From Resistance to Digital Technologies in the Context of the Reaction to Distance Learning in the School Context during COVID-19*, in *Educ. Sci.*, 2021, 11, p. 163, available at <https://www.mdpi.com/2227-7102/11/4/163>.

<sup>101</sup> The reference is to S. Cassese, ‘Legal Education under Fire’ (2017) 25 *European Review of Private Law*, 143–150.  
# In July 2021, e-mails were sent to most Italian universities requesting a series of information relevant for this report. Unfortunately, only very few responded. Our thanks to those who did. This report is up to date as of 20 December 2022.