Message 301

Communication from the Commission - TRIS/(2023) 2914

Directive (EU) 2015/1535

Notification: 2023/0554/IT

Request for supplementary information from the Commission.

Request for supplementary information - Demande d'informations complémentaires - Žádost o doplňující informace - Ersuchen um ergänzende Informationen - Искане за допълнителна информация - Žádost o dodatečné informace - Anmodning om supplerende oplysninger - Αίτηση συμπληρωματικών πληροφοριών - Solicitud de información complementaria - Lisateabe edastamise palve – Lisätietopyyntö - Zahtjev za dodatne informacije - Kiegészítő információ kérése - Domanda di informazioni complementari - Prašymas pateikti papildomos informacijos - Papildu informācijas pieprasījums - Talba għal tagħrif addizzjonali - Verzoek om aanvullende inlichtingen - Prośba o uzupełnienie informacji - Pedido de informações complementares - Solicitare de informații suplimentare - Žiadosť o ďalšie informácie - Zahteva za dodatne informacije - Begäran om kompletterande upplysningar - Iarraidh ar fhaisnéis fhorlíontach

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1. MSG 301 IND 2023 0554 IT EN 27-12-2023 18-10-2023 COM INFOSUP COM 27-12-2023

2. Commission

3. DG GROW/E/3 - N105 04/63

4. 2023/0554/IT - SERV30 - Media

5.

6. Notification 2023/554/IT – Request for supplementary information

Within the framework of the notification procedure under Directive (EU) 2015/1535, the Italian authorities notified to the Commission on 25 September 2023 the “Draft legislative decree laying down supplementary and corrective provisions to Legislative Decree No 208 of 8 November 2021 on the Consolidated Text on Audiovisual Media Services implementing Directive (EU) 2018/1808 of the Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities” (the “notified draft”).
In order to allow the Commission services to complete their analysis under the relevant provisions of EU law, the Italian authorities are kindly invited to reply to the following request for supplementary information:
1. The proposed amendment of Article 31(1) of Legislative Decree 8 November 2012, no. 208 provides for the deletion of the reference to “progressively” in relation to the obligation for media service providers to make their services more accessible to persons with disabilities. Furthermore, Article 1 (20)(b) of the notified draft, amending Article 31(2) of Legislative Decree 8 November 2012, no. 208establishes the following: “For the purposes referred to in paragraph 1, suppliers shall develop, at least every three years, appropriate action plans and report periodically to the Authority on the implementation of the measures taken” The Italian authorities are kindly requested to explain the expected impact that the above changes would produce in the accessibility for media service providers, including the expected impact of the introduction of those specific timeframes on the media service providers accessibility policies.

2. Articles 1(28) and (29) of the notified draft transpose respectively Article 28a and 28b of Directive (EU) 2018/1808 (the

revised AVMSD). The amended Article 42 of Legislative Decree 8 November 2012, no. 208, in particular, refers to the adoption of codes of conduct in this context. The Commission services kindly invite the Italian Authorities to clarify whether the implementation of Article 28b of the revised AVMSD will only take place through the co- and self-regulatory solutions referred to in Article 42 (3) of Legislative Decree 8 November 2012, no. 208, as amended by the notified draft. In addition, the Italian authorities are kindly asked to clarify whether the criteria set out in the amended Article 42(5) only apply to the measures taken by video-sharing platforms pursuant to the co- and self-regulatory solutions referred to in Article 42(3), as amended by the notified draft, or whether such criteria apply also to measures adopted by video-sharing platforms outside co- and self-regulation, e.g. the measures listed in Article 42(7), as amended by the notified draft.

3. Article 55(8) of Legislative Decree 8 November 2012, no. 208, as amended by Article 1(35) of the notified draft provides for a sub-quota of 50 percent of the percentage provided for European works “in paragraphs 1, 2 and 3 respectively” that is reserved for works of original Italian expression. The Italian Authorities are kindly invited to clarify whether this sub-quota applies not only to the quota of 30 percent of European works, but also to the investment obligation stipulated in Article 55(2b).

4. The quota of European works, provided for in the amended Article 55(1) of Legislative Decree 8 November 2012, no. 208, applies to media service providers subject to Italian jurisdiction only. Article 55(3) of the notified draft only extends the obligation regarding an investment obligation (Article 55(2b) of Legislative Decree 8 November 2012, no. 208, as amended) to media service providers not established in Italy, but targeting audiences in Italy. Against this background, the Commission services would like to kindly ask the Italian Authorities to clarify whether the replaced Article 55(8) also applies to media service providers that are not established in Italy but target Italian audiences.

5. Article 35 of the notified draft, amending Article 55(2b) of Legislative Decree 8 November 2012, no. 208, provides for an investment obligation of 18 percent (of the provider’s annual net income in Italy) from 1 January 2023 and 20 percent from 1 January 2024, which, by virtue of the amended Article 55(3) of Legislative Decree 8 November 2012, no. 208, applies also to media service providers not established in Italy, but targeting Italian audiences. Additionally, the sub-quota referring to works of original Italian expression might also apply (see questions 3 and 4). The Italian Authorities are kindly invited to provide clarifications on the criteria which have been used to determine the proportionality of the mentioned percentages and, if applicable, of the application of the sub-quota to the investment obligation.

6. The Commission services would welcome clarifications on how catch-up television services will be considered in view of Article 55(9) of Legislative Decree 8 November 2012, no. 208, as amended by Article 35 of the notified draft. Furthermore, the Italian Authorities are kindly requested to clarify the rationale of Article 55(9) of Legislative Decree 8 November 2012, no. 208, as amended by Article 35 of the notified draft, the criteria applied to select this particular threshold (80 %) and the practical effect on the audiovisual market (which type of providers will be exempted in practice from the investment obligations foreseen for on-demand services).

7. As regards the provisions laid down in Article 57(1) and 57(2) of Legislative Decree 8 November 2012, no. 208, as amended by Article 35 of the notified draft, the Italian Authorities are kindly requested to clarify what criteria will be used to define the audiovisual works of original Italian expression and what criteria will be used to determine the sub-quotas allocated to works of original Italian expression, and, more importantly, whether such sub-quota of works of original Italian expression can go beyond what has been set in the notified draft. In addition, the Italian Authorities are kindly requested to highlight in what way the notified draft leads to a “simplification of the system”.

8. The Commission services would kindly ask the Italian authorities to clarify, in their view, the interplay between Regulation (EU) 2022/2065, in view of its full harmonization effect, and Article 1(28) and (29), of the notified draft, which amend Article 41 and Article 42 respectively of Legislative Decree 8 November 2012, no. 208.

9. Could the Italian authorities please provide further information on the scope and legal value of the guidelines to be adopted by the Italian competent authority in accordance with Article 1(29) of the notified draft that amends Article 42(5) and, in particular, as regards their compatibility with the maximum harmonization nature of Regulation (EU) 2022/2065?

10. The Commission services would like to receive further information on the implications of Article 1(4) of the notified draft and the extension of the scope of the law to “platform services for the sharing of audio-visual content or even audio-only content” which, according to Article 1(1), are equal to “video sharing platform services”. In particular, the Commission services would welcome clarifications on how providers of video-sharing platform services are expected to comply with the obligations under Article 1,(4) including in view of Regulation (EU) 2022/2065, and in particular under its Articles 6, 8, 14, 28, 34 and 35, and its supervision and enforcement framework.

11. The Italian authorities are also kindly requested to clarify the objective of the references to Articles 6 and 8 of Regulation (EU) 2022/2065 in Article 1(28) of the notified draft amending Article 41(6) of Legislative Decree 208 of 8 November 2021.

12. The Commission services would be grateful to receive further information on the obligation set out in Article 1(28) of the notified draft amending Article 41(12) of Legislative Decree 208 of 8 November 2021, and in particular on the addressee of the obligation, the objective pursued by the obligation and the means by which the addressee of the obligation is expected to comply with it.

The Italian authorities are kindly invited to reply by 31 October 2023.

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