Message 077

Communication from the Commission - TRIS/(2024) 1389

Directive (EU) 2015/1535

Notification: 2023/0554/IT

Message further to the dialogue between the Commission and the Member States following recourse to the official reactions expressly laid down by Directive (EU) 2015/1535.

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2. Italy

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4. 2023/0554/IT - SERV30 - Media

5.

6. With reference to communication TRIS/ (2024) of 4 March 2024, concerning the European Commission's final assessments of the draft technical regulation notified by Italy, and taking note of the information also communicated by the Commission by email of 8 May and 27 May, please find below the following replies, illustrative of the changes made and their improving effects to the notified draft which took place during the course of the legislative procedure.
The European Commission stated in the above-mentioned Communication that "the provision on thresholds for direct investment in the production of European works [which] will be amended in order to raise the threshold from 50 to 60 % [...] constitutes a substantial change falling within the scope of Article 5(1), third paragraph, of the SMTD: "Member States shall communicate the draft technical regulation again to the Commission under the conditions set out in the first and second subparagraphs of this paragraph if they make changes to the draft that have the effect of significantly altering its scope, shortening the timetable originally envisaged for implementation, adding specifications or requirements, or making the latter more restrictive".
In this regard, it should be firstly noted that, in order to overcome and comply with all the requests set out in the above-mentioned TRIS communication, Italy has made significant corrections to the draft technical regulation already notified, in line with the comments received from the European Commission after previous discussions and with a view to greater certainty and a significant reduction in investment obligations for operators in the sector.
The draft, which is attached, was approved in the final text by the Council of Ministers on 20 March 2024, published in the Official Journal on 17 April 2024 and has been in force since 2 May 2024.
In particular, with reference to the provisions concerning European and independent audiovisual production, it is hereby informed that, in light of the European Commission's request and communication, the Italian Authority, in developing the final text of the draft technical regulation, has reduced the share of investment obligations in European works, as referred to in Article 55(2)(b) of Legislative Decree No 208/2021, from 20 % to 16 %, namely a decrease of four

percentage points in total (corresponding to a 20 % reduction in the share of net turnover that non-linear operators are required to invest in European works).
In addition to this significant quantitative reduction in the share of investment obligations in European works, including the share of investment in original Italian works, there is also a guarantee of greater certainty for non-linear operators, achieved by removing the possibility of increasing, through the regulatory source, both the percentages of the various sub-quotas provided for by TUSMAV as well as the possibility of introducing other types of sub-quotas (see amendment to Article 53(2) of Legislative Decree No 208/2021).
Therefore, in this overall context, the Italian legislator has adjusted, within the scope of the above-mentioned reduction, the relationship between the investment obligations in European works and the sub-quota allocated to Italian original works. The latter, in the most recently approved text (see amendment to Article 55(8) of Legislative Decree No 208/2021) records an increase from 10 % (corresponding to 50 % of turnover in European works) to 11.2 % (corresponding to 70 % of net turnover in European works, as currently reduced to 16 % compared to the previous 20 % forecast) out of total investment obligations.
The minimum increase in the sub-quota of Italian original expression works (1.2 %) is therefore more than offset by the significant reduction in investment obligations in European works (4 % of the total investment compared to the previous forecast).
In addition, further simplification provisions were added, as already described in the previous notification of the draft technical regulation, such as the removal of the regulatory source to regulate the contractual arrangements for the fulfilment of planning and investment obligations (see amendment to Article 57 of Legislative Decree No 208/2021).
In short, in accordance with the European Commission’s request, and in line with the objectives set out in Directive 2015/1535 to facilitate the participation and monitoring of the sectoral legislation by all operators, it can be considered that the most recently approved text strikes a balance between the interests involved, reducing the burden on operators, as requested by them, while at the same time meeting the producers’ demands for greater emphasis on the dissemination of national values and artistic expression through the Italian audiovisual work.
These provisions of the draft, as last amended, do not alter the scope of sectoral legislation, but rather lessen the specifications and requirements for investors under the domestic regulations. For this reason, it did not seem necessary to send a new notification of the draft technical regulation to the Commission, as Italy thus largely transposed the information set out in the detailed opinion.

It is also hereby pointed out that Italy has complied with the information provided by the European Commission in its note of 4 March 2024 concerning the risk of overlapping Article 4(1) of Legislative Decree No 207/2021 with Article 19 of Regulation (EU) 2022/2065. To this end, the reference to platform services for sharing audiovisual content or even audio-only content, which are subject to the scope of the DSA, has been deleted and the application of the national provision is limited to audiovisual media and radio broadcasting services only. (see Article 1(4)(a) of Legislative Decree No 50/2024).

Finally, in response to the latest communication received from the European Commission, it is hereby confirmed what has already been stated in the reply to the detailed opinion (see note of 19 January 2024) concerning the following points:
- paragraph 12 of article 41 of Legislative Decree No 207/2021 has been deleted, also concerning the relevant obligations on video-sharing platforms, with a view to full harmonisation with the country of origin principle laid down in Article 28a of the SMAV directive; (see Article 1(29) of Legislative Decree No 50/2024)
- articles 14 to 17 of Legislative Decree No 70 of 9 April 2003, implementing Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market as suggested by the European Commission, have been repealed; (see Article 3(4) of Legislative Decree No 50/2024)
- finally, certain provisions have been removed which, as the Commission pointed out, could create legal uncertainty or incompatibility with the principle of direct applicability of the DSA, and in particular the following: ‘Articles 6 and 8 of the EU Digital Services Act 2022/2065 shall apply to video-sharing platform providers established in Italy pursuant to the previous paragraphs’ and ‘Without prejudice to Articles 4, 5, 6 and 8 of Regulation (EU) 2022/2065’, wherever they appear in the text, Articles 41 and 42 of Legislative Decree No 207/2021, as well as the closing provisions laid down in Article 67(13) and Article 71(5a) of the draft legislative decree, which established the primacy, in the event of conflict between the national provisions of penalties and those of the DSA, of the provisions governed by Regulation (EU) 2022/20. (see Article 1(29), (30), (39) and (41) of Legislative Decree No 50/2024).

Finally, it should be recalled that Italian law, in order to promote film and audiovisual production, the enhancement of the circuit of cinemas and the digitisation of film heritage recognises, by Law No 220 of 14 November 2016, a tax incentive in the form of a tax credit, which is in favour of companies investing in film and audiovisual production for the development and production of films and television works.
Specifically, the film and audiovisual 'Tax credit for production enterprises', governed by Article 15 of Law No 220/2016 and subject to recognition of the cultural eligibility of the work, is disbursed at the request of the producer in an amount of no less than 15 % and no more than 40 % of the cost of the works, and allows beneficiaries to use the credit on the basis of the expenses incurred by offsetting the taxes due against the accrued credit.
Thus, those who invest, by producing quality works, can also get compensation for tax and social security debts, which is calculated automatically on the basis of the expenses incurred for the development, production as well as national and international distribution of films, TV works and web works. In those circumstances, the investment obligations imposed on audiovisual media service providers under Italian jurisdiction (especially those on demand referred to in Article 55 of Legislative Decree No 207 of 2021, as amended by Legislative Decree No 50 of 2024), in accordance with the system of quotas (in European works and original works in Italian) described above, must be taken into account in the light of the possibility of claiming such benefits, which act as compensation for the investments themselves, thereby reducing, in fact, the burden laid down in the provision in question, which must necessarily be read in conjunction with the provisions of Article 15 of Law No 220/2016.

Finally, considering that, in the light of the above, we have complied with the requests made by the Commission in its detailed opinion of 21 December 2023 and the subsequent interlocutory note of 4 March 2024, and in reply to the email of 8 May, we remain at your disposal for whatever further needs may arise.

Legislative Decree No 50 of 25/03/2024.
Supplementary and corrective provisions to Legislative Decree No 208 of 8 November 2021, laying down the consolidated text of audiovisual media services in view of changing market realities, implementing Directive (EU) 2018/1808 amending Directive 2010/13/EU.
Published in the Off. Journal No 90 of 17 April 2024.

Article 1 Amendments to Legislative Decree No 208 of 8 November 2021, in force since 2 May 2024
[…]
4. The following amendments are made to Article 4 of Legislative Decree No 208 of 2021:
a) paragraph 1 is replaced by the following:
'1. The audiovisual media services and radio system shall comply with the following principles to guarantee users:
a. freedom and pluralism of the broadcasting media;
b. freedom of expression of every individual, including freedom of opinion and the freedom to receive or communicate information or ideas without borders, respecting human dignity, the principle of non-discrimination and combating hate speech;
c. objectivity, completeness, loyalty and impartiality of information;
d. countering disinformation strategies;
e. protection of copyright and intellectual property rights;
f. openness to different political, social, cultural and religious views and tendencies;
g. safeguarding ethnic diversity and cultural, artistic and environmental heritage, at a national and local level, respecting freedoms and rights, in particular individual dignity and the protection of personal data, the promotion and protection of well-being, health and harmonious physical, mental and moral development of the child, guaranteed by the Constitution, by European Union law, by international standards in force in Italian law and by state and regional laws;
h. without prejudice to point b), countering the contemporary trend of destroying or otherwise reducing the elements or symbols of the history and tradition of the country (cancel culture).';
b) paragraph 3 is replaced by the following:
'3. The Ministry, in agreement with the Authority, after consulting the Ministry of Culture, the Ministry of Universities and Research, the Ministry of Education and Merit, the Policy Authority with delegated responsibility for technological

innovation and the Policy Authority with delegated responsibility for the family, shall promote media and digital literacy, through media service providers and providers of video or even audio-only content sharing platforms or both, and without prejudice to the activities to support image education and promote literacy in production techniques and media, as well as in image dissemination referred to in Articles 3 and 27 of Law No. 220 of 14 November 2016.";
c) in paragraph 4, the second sentence shall be replaced by the following:
'Every three years, the Ministry shall submit to the European Commission a report on the promotion of literacy on the basis of the regular reports prepared by the Authority';
d) paragraph 8 is repealed.

[…]

29. Article 41 of Legislative Decree No 208 of 2021 is replaced by the following:
'Article 41 (General provisions). 1. Video-sharing platform service providers established within the national territory are subject to Italian jurisdiction.
2. A video-sharing platform provider that is not established within the national territory pursuant to paragraph 1 shall be deemed to be established within Italy if:
a) the parent company or a subsidiary is established in Italy;
b) or it is part of a group and another company of that group is established in Italy.
3. For the purposes of this Article, the 'group' shall include the parent company, all its subsidiaries, and all other companies that have organisational, economic, and legal links with them.
4. For the purposes of applying paragraphs 2 and 3, where the parent company or the subsidiary or other group companies are established in different Member States, the video-sharing platform provider shall be deemed to be established in Italy, if the parent company is established there or, in the absence of this, if one of its subsidiaries is established there or, in the absence of this, where a group company is established there.
5. For the purposes of applying paragraph 4, where there are various subsidiaries controlled by one company and each of them is established in a different Member State, the video-sharing platform provider shall be deemed to be established in Italy if one of the subsidiaries first started operating in Italy, provided that it maintains an effective and stable link with the Italian economy.
6. Articles 3, 4 and 5 of Legislative Decree No 70 of 9 April 2003, shall apply to video-sharing platform providers established in Italy pursuant to paragraphs 1 to 5.
7. Without prejudice to paragraphs 1, 2, 3, 4, 5 and 6, the free movement of programmes, user-generated videos and audiovisual commercial communications conveyed by a video-sharing platform whose supplier is established in another Member State and directed to the Italian audience may be restricted, by decision of the Authority, in accordance with the procedure laid down in Article 5(2), (3) and (4) of Legislative Decree No 70 of 9 April 2003, for the following purposes:
a) the protection of minors from content that may harm their physical, mental or moral development in accordance with Article 37;
b) the fight against incitement to racial, sexual, religious, or ethnic hatred and against the violation of human dignity;
c) the protection of consumers, including investors, within the meaning of this consolidated act.
8. In order to determine whether a programme, a user-generated video or an audiovisual commercial communication are directed to the Italian audience, criteria such as the language used, the achievement of a significant number of contacts present in Italy or the achievement of revenues in Italy shall apply.
9. The procedure for adopting the measures referred to in paragraph 7 shall be defined by the Authority with its own regulation.
10. The Authority shall draw up and maintain an up-to-date list of video-sharing platform providers established in Italy, notifying the European Commission of the list and any updates, or that are considered to be operating within Italy, indicating which of the criteria referred to in paragraph 8 the action referred to in paragraph 7 is based on. To this end, these providers are required to notify the Authority the start of their activities or, where they already exist, their operations on the national territory.
11. If the Authority does not agree with the claim of its jurisdiction by another Member State, it shall without delay refer the matter to the European Commission.
12. In the event of infringements of Articles 41 and 42 by a video-sharing platform provider established in another Member State, the Authority may send appropriate alerts to the national regulatory authority of that Member State.

13. The provisions of this Article shall also apply to platform services for sharing user-generated audio or audio-only content, or both, to the extent compatible'.

30. Article 42 of Legislative Decree No 208 of 2021 is replaced by the following:
'Article 42 (Protection measures). 1. Video-sharing platform providers under Italian jurisdiction must take appropriate measures in order to protect:
a) minors from programmes, user-generated videos and audiovisual commercial communications that may harm their physical, mental or moral development in accordance with Articles 37 and 43;
b) the general public from programmes, user-generated videos, and audiovisual commercial communications that incite violence or hatred against a group of persons or a member of a group on one of the grounds referred to in Article 21 of the Charter of Fundamental Rights of the European Union;
c) the general public from programmes, user-generated videos and audiovisual commercial communications which include content the dissemination of which constitutes a criminal offence under the law in force in the Member States of the European Union, with particular reference to public incitement to commit terrorist offences within the meaning of Article 5 of Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017, offences relating to child pornography within the meaning of Article 5(4) of Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 and offences concerning racism and xenophobia within the meaning of Article 1 of Council Framework Decision 2008/913/JHA of 28 November 2008.
2. Video-sharing platform providers under Italian jurisdiction are required to comply with the requirements of Article 43 with regard to audiovisual commercial communications that are commercially promoted, sold or organised. The Authority shall ensure that video-sharing platform providers take appropriate measures for that purpose in respect of audiovisual commercial communications which are not commercially promoted, sold or organised by them. Video-sharing platform providers under Italian jurisdiction shall clearly inform users in the event that the programmes and videos generated by users contain audiovisual commercial communications, provided that such communications are declared in accordance with paragraph 7(c), or the provider is otherwise aware of this fact.
3. The Authority shall promote forms of co-regulation and self-regulation through codes of conduct, in accordance with Articles 4a and 28b of Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010, as last amended by Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018. The codes shall be communicated without delay to the Authority, which shall verify their compliance with the law and its regulatory acts and gives them effect with its own approval decision, while also supervising their implementation.
4. The codes of conduct referred to in paragraph 3 shall also identify measures aimed at effectively reducing the exposure of persons under the age of 12 to audiovisual commercial communications relating to foodstuffs, including supplements, or beverages containing nutrients and substances with a nutritional or physiological effect, such as in particular fats, trans-fatty acids (TFA), sugars, sodium, and salt, the excessive intake of which in the general diet is not recommended. The codes shall also ensure that audiovisual commercial communications do not emphasise the positive quality of the nutritional aspects of such foods and beverages.
5. The Authority, having consulted the Supervisory Authority for Children and Adolescents and the Ministry, shall, by means of its own order, adopt guidelines setting out the specific criteria informing the codes of conduct referred to in paragraph 3, in the light of the nature and content of the service offered, the damage it may cause, the characteristics of the category of persons to be protected as well as all the rights and legitimate interests, including those of video-sharing platform providers and users who have created or uploaded content, and the general public interest. The measures do not aim to preventively control and filter content at the time of upload, shall be practicable and proportionate and shall take into account the size of the video-sharing platform and the nature of the service offered. The Authority shall also establish the supervisory procedure for monitoring and periodic assessment of compliance, in accordance with the principles of transparency, non-discrimination, and proportionality.
6. For the purposes of protecting minors referred to in paragraph 1(a), the most harmful content shall be subject to the strictest access control measures.
7. Video-sharing platform providers shall in any case be required to:
a) include the requirements referred to in paragraph 1, in the terms and conditions of the video-sharing platform services, whose acceptance by users constitutes a condition of access to the service;
b) include and apply, in the terms and conditions of video-sharing platform services, the requirements set out in Article 9(1) of Directive (EU) 2018/1808 of the European Parliament and of the Council, of 14 November 2018, for audiovisual

commercial communications not commercially promoted, sold or organised by video-sharing platform providers;
c) have a functionality that allows users uploading user-generated videos to declare whether such videos contain audiovisual commercial communications of which they are aware or can reasonably be expected to be aware of;
d) establish transparent and user-friendly mechanisms for users of video-sharing platforms to report or indicate to the platform provider concerned the content referred to in paragraph 1 uploaded to its platform;
e) establish systems by which video-sharing platform providers explain to users of those platforms the follow-up to the reporting and indication referred to in point (d);
f) establish systems to verify, in compliance with the legislation on personal data protection, the age of users of video-sharing platforms with regard to content that may harm the physical, mental or moral development of minors;
g) establish user-friendly systems that allow users of video-sharing platforms to evaluate the content referred to in paragraph 1;
h) establish parental control systems under the supervision of the end-user as regards content that may impair the physical, mental, or moral development of minors;
i) establish transparent, user-friendly and effective procedures for the management and resolution of user complaints against video-sharing platform providers in relation to the implementation of the measures referred to in points (d) to (h);
l) put in place effective media literacy measures and tools and raise users' awareness of these measures and tools.
8. Personal data of minors collected or otherwise generated by video-sharing platform providers pursuant to paragraph 7, letters f) and h), shall not be processed for commercial purposes.
9. Without prejudice to the possibility of recourse to the Judicial Authority, alternative and out-of-court dispute resolution procedures between users and video-sharing platform providers may be used to resolve disputes arising from the application of this article, in accordance with Legislative Decree No 28 of 4 March 2010, laid down in a specific regulation adopted by the Authority.
10. In the event of infringement, by a provider of video-sharing platform services, of the provisions contained in this article, the administrative penalties referred to in Article 67(9) shall apply, except as provided for in Article 74 of Regulation (EU) 2022/2065 for infringements of the provisions of the same European Regulation.
11. The provisions of this Article shall also apply to platform services for sharing user-generated audio or audio-only content, or both, to the extent compatible'.

[…]

37. Articles 52 to 57 of Legislative Decree No 208 of 2021 are replaced by the following:
Article 52 (General principles for the protection of European and independent audiovisual works). 1. Providers of audiovisual media services, whether linear or on-demand, shall promote the development and dissemination of European and independent audiovisual production in accordance with European law and the provisions of this Title.
Article 53 (Obligations of programming of European works by providers of linear audiovisual media services). 1. Providers of linear audiovisual media services reserve most of their broadcasting time, excluding time spent on news, sports events, television games, advertising, teletext services and teleshopping, to European works.
2. For Italian-language works, wherever produced, a sub-quota of the European works quota referred to in paragraph 1 shall be reserved to the extent of:
a. half, for the concessionaire of public radio, television and multimedia services;
b. a third, for other providers of linear audiovisual media services.
3. In the time slot from 6:00 p.m. to 11:00 p.m., the public radio, television and multimedia service concession company shall reserve at least 12 % of the broadcasting time, excluding time for news, sports events, television games, advertising, teletext and teleshopping services, to cinematographic and audiovisual fiction and animation works, as well as original, Italian-language documentaries, wherever produced. At least one quarter of this quota shall be reserved for Italian-language cinematographic works, wherever produced.
The quotas and percentages referred to in paragraphs 1, 2 and 3 shall be respected on an annual basis.
Article 54 (Obligations to invest in European works of linear audiovisual media service providers). 1. Linear audiovisual media service providers, other than the public radio, television and multimedia service concession company, shall reserve a share of their annual net revenue in Italy of not less than 12.5 % for the pre-purchase or the purchase or production of European works produced by independent producers. These revenues are those that the obliged entity derives from advertising, teleshopping, sponsorship, contracts and agreements with public and private entities, public

provision and pay TV offers of non-sports programmes for which it has editorial responsibility, in accordance with the additional specifications contained in the Authority's regulations. In the same Regulation, the Authority shall indicate the eligible cost items for the purpose of fulfilling the investment obligations.
2. A sub-quota equal to half of the quotas referred to in paragraph 1 shall be reserved for Italian-language works, wherever produced, by independent producers in the last five years.
3. Linear audiovisual media service providers other than the public radio, television and multimedia service concession company, taking into account the schedule, shall also reserve for Italian-language cinematographic works, wherever produced by independent producers, a sub-quota of the quota for European works referred to in paragraph 1 of 3 % of their annual net revenue, as defined in paragraph 1. A percentage of 75 % of this quota shall be reserved for Italian-language works wherever produced by independent producers in the last five years. The provisions referred to in this paragraph shall not apply to parties that programme cinematographic works in a non-significant and marginal manner, according to annual threshold criteria contained in the Authority's regulation.
4. The public radio, television and multimedia service concession company reserves a quota of its total annual revenue of not less than 17 % for the pre-purchase or purchase or production of European works produced by independent producers. This revenue is that deriving from the licence fee for the broadcasting offer, as well as the advertising revenue related to the offer, net of the income from agreements with the public authority and the sale of goods and services, and according to the additional specifications contained in the Authority's regulation.
5. A sub-quota equal to half of the quotas referred to in paragraph 4 shall be reserved for Italian-language works, wherever produced, by independent producers in the last five years.
6. The public radio, television and multimedia service concession company, taking into account the schedule, shall also reserve a sub-quota of the quota for European works referred to in paragraph 4, equal to at least 4.2 % of its total net revenues, as defined pursuant to paragraph 4, to Italian-language cinematographic works, wherever produced by independent producers.
7. 85 % of the quotas referred to in paragraph 6 shall be reserved for the co-production or pre-purchase of Italian-language cinematographic works wherever produced by independent producers
8. The public radio, television and multimedia service concession company reserves an additional sub-quota of not less than 7 % of the quota for European works referred to in paragraph 4, for works produced by independent producers and specifically intended for minors of which at least 65 % shall be reserved for animated works.
9. The provisions referred to in this Article shall not apply to entities with a small turnover or audience, in accordance with the threshold criteria contained in the Authority's regulation.
10. The provisions of this Article shall also apply to providers of linear audiovisual media services that have editorial responsibility for offers addressed to consumers in Italy, even if established in another Member State.
Article 55 (Obligations of on-demand audiovisual media service providers). 1. All catalogues of on-demand audiovisual media service providers subject to Italian jurisdiction must consist of at least 30 % European works that are highlighted.
2. On-demand audiovisual media service providers under Italian jurisdiction shall promote the production of and access to European works by respecting at the same time:
a. the obligations to program European audiovisual works produced within the last five years, not less than 30 % of the titles in its catalogue, as provided by the Authority's regulation. For providers of on-demand audiovisual media services which provide for the payment of a specific fee for the use of individual programmes, the obligation to schedule European audiovisual works produced in the last five years shall not apply;
b. the investment obligations in European audiovisual works produced by independent producers equal to 16 % of their annual net income in Italy, as provided for by the Authority's regulation. In the same Regulation, the Authority shall indicate the eligible cost items for the purpose of fulfilling the investment obligations.
3. The obligations referred to in paragraph 2(b) shall also apply to providers of on-demand audiovisual media services who have editorial responsibility for offers addressed to consumers in Italy, even if they operate in another Member State.
4. The Authority shall regularly draw up a report on the implementation of paragraphs 1, 2 and 3 to be submitted to the European Commission every two years.
5. The requirement for media service providers targeting consumers in Italy referred to in paragraphs 1, 2 and 3 does not apply to media service providers with a small turnover or audience, pursuant to the threshold criteria contained in the Authority's regulation. The waiver of those requirements shall also apply where the requirements are impracticable or unjustified due to the nature or subject-matter of the audiovisual media services.

6. The Authority's regulation referred to in this Article shall, inter alia, provide for the manner in which the audiovisual media service provider shall adequately highlight European works in the catalogues of the programmes offered and shall define the quantification of obligations with respect to European works produced by independent producers.
7. The Authority's regulation referred to in this Article shall be adopted mutatis mutandis in accordance with the provisions of Articles 52, 53, 54 and 56, as well as the principle of the promotion of European audiovisual works. In particular, the Regulation, when defining the arrangements for the fulfilment of programming obligations, provides, irrespective of any methods, processes or algorithms used by providers of on-demand audiovisual media services for the customisation of user profiles, including the adoption of tools such as the provision of a dedicated section on the main access page or a specific category for searching for works in the catalogue and the use of a quota of European works in advertising or promotion campaigns for the services provided. For on-demand audiovisual media service providers that require the payment of a specific fee for the use of individual programmes, the methods for fulfilling the obligations also include granting the holder of the right remuneration linked to the commercial success of the work and the costs incurred for the digital distribution of the work on the digital platform.
8. A quota of 70 % of the percentage for European works stipulated in paragraphs 1, 2 and 3 respectively shall be reserved for Italian-language works, wherever produced, in the last five years, by independent producers, of which 27 % shall be reserved for cinematographic works of the same characteristics.
9. The provisions of Articles 53 and 54 shall apply to providers of linear audiovisual media services, which achieve not less than 80 % of their annual net income from that activity and who also carry out the activity of providing on-demand media services.
Article 56 (Attributions of the Authority). 1. One or more regulations of the Authority, issued in its capacity as an independent regulatory authority, shall also lay down:
a) the specifications relating to the definition of an independent producer referred to in Article 3(1)(t);
b) the further definitions and specifications of the items that are included in the net income and total annual revenue referred to in Article 54(1) and (4), with particular reference to the calculation methods in the case of aggregate offers of paid content attributable to entities that are at the same time providers of audiovisual media services and commercial platforms, without prejudice to compliance with the principle of editorial responsibility;
c) the technical arrangements for fulfilling the obligations laid down in Articles 53, 54 and 55, taking into account market development, the availability of works, as well as the types and characteristics of audiovisual works and the types and characteristics of the schedules and editorial lines of audiovisual media service providers, with particular reference, in the case of schedules including cinematographic works, to European cinematographic works;
d) measures aimed at strengthening market mechanisms for increased competition, including through the adoption of specific rules aimed at avoiding situations of conflict of interest between producers and agents representing artists and to encourage the plurality of publishing lines;
e) the procedures aimed at ensuring both the adoption of simple and transparent mechanisms in the relations between audiovisual media service providers and the Authorities, including through the preparation and online publication of the appropriate forms, and an effective monitoring and control system;
f) the details of the investigation procedure and the graduation of the formal reminders to be communicated prior to the imposition of the penalties, as well as the criteria for determining those penalties on the basis of the principles of reasonableness, proportionality, and appropriateness, also taking into account the differentiation between planning and investment obligations.
2. Audiovisual media service providers may apply to the Authority for waivers to the obligations referred to in this Title, stating the reasons therefore and providing any useful supporting evidence where one or more of the following circumstances arise:
a) the thematic nature of the schedule or catalogue makes it impossible to comply with the quotas referred to in this Title;
b) the audiovisual media service provider has a market share or turnover below a certain threshold set by the Authority by regulation;
c) the audiovisual media service provider has not made any profit in each of the last two years of operation;
d) the obligations are, in any case, impracticable or unjustified in the light of the nature or subject-matter of the audiovisual media service provided by certain providers.
3. The obligations under this Title shall be checked on an annual basis by the Authority in accordance with the procedures and criteria laid down by the Authority in its own regulation. In any event, where an audiovisual media service

provider has not fully discharged its obligations during the year in question, any missed quota, within a maximum of 15 % of the quota due in that year, shall be recovered in the following year in addition to the obligations due for that year. Where the audiovisual media service provider has exceeded the quota due annually, the excess quota may be counted for the purpose of achieving the quota due in the following year.
4. For the purposes referred to in paragraph 3, the Authority shall annually inform each audiovisual media service provider of the achievement of the annual quota or any missed quota to be recovered in the following year or any exceeding of the quota to be counted in the following year.
5. The penalties referred to in Article 67 shall remain valid in the event of non-recovery of the missed quota in the following year or an annual deviation of more than 15 % of the quota due in the reference year.
6. The Authority shall submit to the Chambers, by 31 March each year, a report on the fulfilment of obligations for the promotion of European and Italian audiovisual works by providers of linear and paid audiovisual media services, the measures taken, and the penalties imposed. The report also gives an account of data on the verification of investment obligations in works of original expression by on-demand media and audiovisual service providers who have editorial responsibility for consumer-oriented offerings in Italy, even if they operate in another Member State. The report also provides micro and macroeconomic data and indicators of the sector that are relevant for the promotion of European works, such as production volumes in terms of hours broadcast, turnover of production companies, revenues from audiovisual media services, the quota and indication of European and Italian-language works in the schedules and catalogues, the number of employees in the audiovisual media services production sector, the international circulation of works, the number of waivers requested, accepted and rejected, together with the reasons for this, as well as the summary tables indicating the percentages of the investment obligations fulfilled by the various providers offering services to the Italian public, with the relevant European and Italian-language works.
Article 57 (Provisions applying to Italian-language audiovisual works). 1. By Regulation of the Ministers of Enterprises and Made in Italy and Culture, adopted pursuant to Article 17(3) of Law No 400 of 23 August 1988, after consulting the Authority, the definition of original Italian-language audiovisual works, wherever produced, with particular reference to one or more elements such as culture, history, identity, creativity, language or places is established, on the basis of the principles of proportionality, adequacy, transparency and effectiveness.
2. The Regulation referred to in this Article shall be adopted by 30 June 2024 and shall be updated at least every three years, including on the basis of annual reports prepared respectively by the Authority pursuant to Article 56(6) and by the Directorate-General Cinema and Audiovisual, of the Ministry for Culture, in accordance with Article 12(6) of Law No 220 of 14 November 2016 as well as the results achieved by the works promoted through the fulfilment of the investment obligations and the effectiveness of the contractual conditions used.’

[…]

39. The following amendments are made to Article 67 of Legislative Decree No 208 of 2021:
a) in paragraph 1(b), the words: ‘content providers’ are replaced by the following: ‘media service providers’;
b) in paragraph 1(r), the words: ‘in the case of events of social interest and of high public interest within the meaning of Article 33(2) and (4)’ are replaced by the following: ‘for the regulation of events referred to in Article 33.’;
c) in paragraph 4, the words: ‘in respect of the television broadcaster or radio broadcaster, whether or not analogue’ are replaced by the following: ‘in respect of the audiovisual or radio media service provider or radio broadcaster’;
d) in paragraph 11, the words: “or radio broadcaster, including digital radio” are replaced by the following: ‘or radio services or radio broadcaster’.
40. In Article 68 of Legislative Decree No 208 of 2021, paragraph 2 is replaced by the following:
a) ‘2. The administrative penalties provided for in Article 30 of the Electronic Communications Code, referred to in Legislative Decree No 259 of 1 August 2003 shall be reduced to one tenth in respect of broadcasters and local television network operators.’.
41. The following shall be added after paragraph 5 of Article 71 of Legislative Decree No 208 of 2021:
‘5a. For the years 2024-2025, for the promotion of media and digital literacy, the Ministry shall use the resources provided for, for each of the years 2024 and 2025, referred to in Article 1(360) of Law No 197 of 29 December 2022.’

[…]

Article 3 Final provisions
1. Article 3(24) of Law No 249 of 31 July 1997 is hereby repealed.
2. Article 1(930) of Law No 296 of 27 December 2006 is hereby repealed.
3. Article 5(5) of Legislative Decree No 207 of 8 November 2021 is hereby repealed.
4. Articles 14 to 17 of Legislative Decree No 70 of 9 April 2003 are repealed.

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