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Subject: **Notification 2023/554/I**

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

Delivery of a detailed opinion pursuant to Article 6(2) of Directive (EU) 2015/1535 of 9 September 2015

Delivery of comments pursuant to Article 5(2) of Directive (EU) 2015/1535 of 9 September 2015

Sir/Madam,

Within the framework of the notification procedure laid down by Directive (EU) 2015/1535 ([1]), the Italian authorities notified to the Commission on 25 September 2023 the draft "*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*" ('the notified draft').

According to the notification message, the notified draft intends "to restructure, supplement and correct the provisions concerning audiovisual media services, as set out in Legislative Decree No 208 of 8 November 2021 ('TUSMA'), containing the consolidated text on audiovisual media services, in order to better adapt the existing provisions to the European single market for audiovisual media services and to the evolution of market realities, so as to trigger positive effects on the market, on the protection of users and on competitiveness, as well as to ensure a more effective

[1]() Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (codification), OJ L 241, 17.9.2015, p. 1.

protection of the fundamental values covered by it". TUSMA was originally adopted to transpose Directive (EU) 2018/1808 amending Directive 2010/13/EU ('AVMSD') ([2]).

In their notification message, the Italian authorities referred in particular to Article 31 (Accessibility), Articles 41 (General provisions) and 42 (Protection measures), Chapter III (Provisions applicable to video-sharing platform services) of Title IV (Regulations for audiovisual and radio media services), as well as to Articles 52 (General principles for the protection of European and independent audiovisual production), 53 (Obligations for programming of European works by linear audiovisual media service providers), 54 (Obligations to invest in European works of linear audiovisual media service providers), 55 (Obligations of on-demand audiovisual media service providers), 56 (Attributions of the Authority) and 57 (Application provisions on original Italian audiovisual works) of Title VII (Promotion of Italian and European works by service providers), as amended by the notified draft.

Certain provisions of the notified draft apply to providers of on-demand audiovisual media services and the video-sharing platforms services within Italian jurisdiction. These services constitute information society services as defined in Article 1(1)(b) of Directive (EU) 2015/1535, insofar as they fulfil the conditions mentioned therein ("*any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services*").

In addition, some of the provisions of the notified draft aim to make use of the possibility under Article 13(2) of the AVMSD for a Member State to require media service providers, in particular video-on-demand services, established in other Member States but targeting audiences in its territory (hereafter "cross-border services") to contribute, in a non-discriminatory and proportionate way, to the production of European works. Additionally, some of the provisions aim to transpose the provisions applicable to video-sharing platform services, in particular under Article 28b AVMSD. Furthermore, the notified draft includes some amendments regarding the provisions on accessibility under Article 7 AVMSD.

In the context of the notified draft, the Commission services addressed to the Italian authorities a request for supplementary information on 18 October 2023 to obtain clarifications on the measures of the notified draft. The answers provided by the Italian authorities on 3 November 2023 are taken into account in the following assessment.

Examination of the notified draft, which is limited to the text notified to the Commission on 25 September 2023, has prompted the Commission to issue the following detailed opinion and comments.

1. Detailed opinion

[2]() Directive (EU) 2018/1808 of the European 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, OJ L 303, 28.11.2018, p. 69.

1.1. Assessment of Article 1(28) of the notified draft in the light of Article 3 of Directive 2000/31/EC and Article 28a of Directive 2010/13/EU

The notified draft falls within the scope of the Directive 2000/31/EC (Directive on E-commerce). Certain provisions of the notified draft apply to video-sharing platforms services within Italian jurisdiction. These services constitute information society services as defined in Article 1(1)(b) of Directive (EU) 2015/1535, insofar as they fulfil the conditions mentioned therein ("*any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services*"), and therefore also within the meaning of Articles 1 and 2 of the Directive on electronic commerce, insofar as they fulfil the conditions set out therein([3]).

Article 1(28) of the notified draft, amending Article 41(12) of TUSMA, imposes an obligation on Italian undertakings which are controlled by or are part of the same group as a video-sharing platform operating or deemed to be operating in another Member State, to make available in Italian and for Italian users certain information. In particular, the notified draft imposes the following obligations: a) provide an Italian language version of the terms and conditions of the video-sharing platform; b) make the transparent and user-friendly notice mechanisms accessible to Italian users; c) ensure that Italian users get the feedback information from the video-sharing platform regarding the notices submitted to them; d) report to the Authority any complaints submitted by Italian users. Those obligations therefore fall within the coordinated field of the Directive on electronic commerce, as set out in Article 2(h)(i) thereof. In their replies to the request for further information from the Commission services, the Italian authorities recognise that this provision is aimed at ensuring transparency for users residing in Italy of certain content moderation actions by video-sharing platforms not established in Italy but that target the Italian public. It cannot be excluded, furthermore, that this includes services designated as very large online platforms or very large online search engines by the Commission pursuant to Regulation (EU) 2022/2065 ('DSA')([4]).

In this regard, the Commission would like to recall that the CJEU has recently reminded the limits of the possibility for Member States to derogate from the principle of country of origin set out in Article 3(1) and (2) of the E-Commerce Directive. In particular, in its judgement on case C-376/22, the CJEU has clarified that: "*to allow Member States to adopt, under Article 3(4) of Directive 2000/31, measures of a general and abstract nature aimed at a category of given information society services described in general terms and applying without distinction to any provider of that category of services would ultimately amount to subjecting the service providers concerned to different laws and, consequently, reintroducing the legal obstacles to freedom to provide services which that directive seeks to eliminate*" and, consequently, "*Article 3(4) of Directive 2000/31 must be interpreted as meaning that general and abstract measures aimed at a category of given information society services described in general terms and applying without distinction to any provider of that category of services do not fall within the concept of*

[3]() In particular, "*any service normally provided for remuneration, remotely by electronic means and at the individual request of a recipient of services*".

[4] () Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) (OJ L 277, 27.10.2022, p. 1);

measures taken against a 'given information society service' within the meaning of that provision"[5].

From the information received from the Italian authorities, and in view of the recent CJEU case law, the Commission cannot exclude that the application of Article 1(28) of the notified draft would amount to a restriction to the free provision of information society services, prohibited under Article 3 of Directive 2000/31/EC.

In addition, the Commission would like to point out that obligations for video-sharing platforms set out in Article 1(28) of the notified draft are equally problematic with regard to AVMSD. Article 28a AVMSD introduces the application of the country-of-origin principle for video-sharing platforms by reference to Article 3 of the E-Commerce directive. The Commission reminds that the procedure to derogate from the country-of-origin principle for video-sharing platforms, as confirmed by Article 28a (5) AVMSD, is established in Article 3 of the Directive 2000/31/EC and must comply with the procedural and material criteria envisaged in that Article.

1.2. Assessment in light of Regulation (EU) 2022/2065 and Directive 2010/13/EU

In the context of the notified draft, the Commission would like to stress that Regulation (EU) 2022/2065 aims to contribute to the proper functioning of the internal market for intermediary services by establishing fully harmonised rules for a safe, predictable and reliable online environment.

It does so by providing a common set of EU rules that impose a wide range of obligations on hosting service providers and online platforms, among other intermediary services, while strengthening the European single market.

Directive 2010/13/EU coordinates EU-wide legislation on audiovisual media, including television and video-on-demand services. It also lays down protection measures with regard to audiovisual content shared on video-sharing platforms.

The providers of video-sharing platforms services in scope of the notified draft are defined in Article 1 of TUSMA, which coincides with the definition under Article 1(1)(aa) AVMSD. The DSA applies to all providers of online intermediary services, which include online platforms as defined in Article 3(i) thereof. In as much as online platforms would fulfil the criteria of Article 1(1)(aa), AVMSD, these would also qualify as video-sharing platform services. Therefore, in such a situation, both the AVMSD and the DSA would apply.

Concerning the material scope of the notified draft, in the notification message the authorities confirm that one of the objectives of the notified draft is to have positive effects on the market, on the protection of users and on competitiveness, as well as to ensure a more effective protection of the fundamental values. These are all key objectives pursued by the DSA, as clearly stated in its Article 1, and as explained in Recitals 3 and 9 of its preamble. The fact that the notified draft partly covers the same regulatory fields as the DSA is shown by the fact that, as described below, several of its provisions make express references to the DSA.

[5] ()Judgment of the Court of 9 November 2023, *Google Ireland Limited and Others v Kommunikationsbehörde Austria (Komm Austria)*, C-376/22, EU:C:2023:835, paras 56 and 60.

The DSA will become fully applicable by 17 February 2024. For providers of services designated by the Commission as very large online platforms and very large online search engines, pursuant to Article 33(4) of the DSA, the DSA entered into application four months after their designation. By the time of this detailed opinion, the Commission has designated 17 very large online platforms and 2 very large online search engines (decisions dated 25 April 2023). It is not excluded that video-sharing platforms as defined in TUSMA and under the scope of the notified draft may also qualify and be designated as very large online platforms under the DSA.

The Commission recalls that ensuring a safe and transparent online environment is one of the key policy goals of the DSA. In this regard, the DSA has fully harmonized the due diligence obligations and responsibilities of online intermediary services, including video-sharing platforms under the scope of the DSA, in several respects. Following Article 2(4) DSA (and Recital 10 of its preamble), the DSA is without prejudice to rules laid down by the AVMSD regulating other aspects of the provision of intermediary services in the internal market or specifying and complementing the DSA.

In particular, Article 14 DSA imposes already an obligation to use clear, plain, intelligible, user-friendly and unambiguous language in their terms of service; Article 16 introduces a fully harmonised obligation for hosting services, including video-sharing platforms, to set up and operate a mechanism to allow recipients of the service to submit notices for content which would be illegal, and to process those notifications; Article 17 imposes an obligation to send clear and specific statement of reasons to any affected user regarding restrictions of the service. The DSA also includes an obligation for providers of online platforms to promptly inform the competent law enforcement or judicial authorities of the concerned Member States of any suspicion of a criminal offence involving a threat to the life or safety of a person or persons has taken place, is about to take place or is likely to take place (Article 18). In addition, the DSA imposes on online intermediary services concrete obligations to regularly and publicly report on their content moderation actions (Articles 15, 24 and 42). The DSA obligations of online intermediary services to provide transparent information to their users across the EU fully apply as regards users residing in Italy. Finally, the DSA empowers the Commission as the exclusive enforcer for those obligations that apply solely to the providers of designated very large online platforms and very large online search engines. On 25 April 2023, the Commission designated 17 very large online platforms, among which several meet the criteria to be considered video-sharing platforms under the AVMSD (and the notified draft).

Consequently, the Commission is of the view that the obligations for video-sharing platforms set out in Article 1(28) of the notified draft, amending Article 41(12) of TUSMA, fall within the fields fully harmonized by the DSA. In this context, the Commission recalls that, being a Regulation, as a general rule, the DSA does not require national implementing measures and Member States are precluded from maintaining or adopting national laws in the fields fully harmonised by the DSA.

Article 1(4) of the notified draft extends the scope of Article 4(1) of TUSMA to video-sharing platforms. The amended Article 4(1) of TUSMA would require that the system of audiovisual media services, radio services and platform services for the sharing of audiovisual content or even audio-only content complies with a set of general principles in order to guarantee to users, among others: (i) combating hate speech; (ii) countering

disinformation strategies; (iii) protecting copyright and intellectual property rights; (iv) promoting and protecting the well-being, health and harmonious physical, mental and moral development of the child.

As regards possible further obligations for video-sharing platforms on the basis of those general principles, the Commission recalls that it fully supports the objective of ensuring a safer and more trustworthy online environment for users, in particular minors. The Commission also recalls that the DSA contains (i) a provision devoted to the protection of minors on online platforms (Article 28); and (ii) additional obligations applicable to the providers of those designated as very large online platforms and very large online search engines to identify and mitigate any systemic risks to civic discourse and electoral processes, and public security; as well as the protection of minors and the rights of the child (Articles 34 and 35).

The Commission takes note of the explanations of the Italian authorities regarding the fact that a closure provision in Article 1(39) of the notified draft would clarify that the notified draft is without prejudice to the DSA. The Italian authorities also point out that the Agcom, the authority responsible for implementing the protection measures for the draft amendment to Legislative Decree No 208/2021, coincides with the coordinating authority referred to in Article 49 DSA. The Italian authorities derive from this that, on the one hand, there is no conflict between the legislative provisions at stake, and on the other hand, that consistency with the relevant regulatory framework, including supranational legislation, is ensured in full compliance with the principle of full harmonisation.

The Commission recognizes the support of Italy and Agcom to achieving the objectives of the DSA. However, the Commission recalls that the principles of direct effect and primacy of EU law preclude national laws in fields fully harmonized by an EU Regulation. In addition, the relationship between directly applicable measures, on the one hand, and the national law of the Member States, on the other, is such that those measures by their entry into force render automatically inapplicable any conflicting provision of current national law. These principles are also not affected by the fact that Agcom is competent for the enforcement of the notified draft and that at the same it has been appointed as a Digital Services Coordinator. Additionally, the fact that Agcom is competent for the enforcement of the notified draft and of the DSA in accordance with the powers entrusted to the Digital Services Coordinators on providers within their jurisdiction is also per se insufficient to ensure the full compatibility of the notified draft with the DSA.

In accordance with Chapter IV of the DSA, the supervision and enforcement of the DSA are based on close cooperation, on the one hand, between the appointed national digital services coordinators (and other competent authorities) under the country-of-origin principle and, on the other hand, between these national authorities and the Commission (Articles 55 and 56 of the DSA). The Commission calls on the Italian authorities to ensure that the final law is aligned with DSA’s supervision and enforcement architecture.

Therefore, due to the full harmonization effect of the DSA concerning the due diligence obligations of online platforms, and in order to preserve the integrity of the Single Market for digital services, Member States are prevented from adopting national measures that would overlap or contradict the fully harmonizing framework of the DSA. Regarding the legality or harmfulness of certain content disseminated to users via online

platforms, Member States may adopt legislative provisions determining what type of content is illegal or harmful, including in the implementation of Article 28b AVMSD, provided those provisions comply with Union law.

For the reasons set out above, the Commission hereby issues a detailed opinion in accordance with Article 6(2) of Directive (EU) 2015/1535.

The Commission reminds the Italian authorities that, in accordance with that article, the delivery of a detailed opinion requires the Member State that is the author of the concerned notified draft, to postpone its adoption by four months from the date of its notification.

This deadline therefore ends on 26 January 2024.

Furthermore, the Commission draws the attention of the Italian authorities to the fact that, under the same provision, the Member State to which a detailed opinion is addressed is required to inform the Commission of the action it intends to take on such an opinion.

If the Italian authorities fail to comply with the obligations laid down in Directive (EU) 2015/1535 or if the text of the notified draft under consideration is adopted without taking account of the objections raised or is otherwise contrary to EU law, the Commission reserves the right to initiate proceedings against Italy in accordance with Article 258 of the TFEU.

2. Comments

2.1. Assessment in light of Regulation (EU) 2022/2065

Concerning the interplay and compatibility with the DSA

The Commission notes that the notified draft includes several references to the DSA. In particular, Article 1 (28) and (29) of the notified draft amending respectively Article 41 and Article 42 of TUSMA set out that "*video-sharing platforms established in Italy shall be subject to […] Articles 6 and 8 of the EU Digital Services Regulation 2022/2065*" and "*Without prejudice to Articles 6 and 8 of EU Regulation 2022/2065*", respectively.

The Commission takes note of the correction pointed out by the Italian authorities in their replies to the request for supplementary information. However, as described above, the DSA is a fully harmonising EU Regulation and, as such, is of general application, binding in its entirety, and directly applicable in all Member States (Article 288 TFEU). References to the DSA in national rules cannot affect the scope of application of the Regulation, and on the contrary may create legal uncertainty. The Commission calls on the Italian authorities to ensure that the final law is in line with the principle of direct applicability as regards the DSA, as EU Regulation, in all Member States ([6]). The Commission recalls also that the measures transposing Articles 12 to 15 of the Directive on electronic commerce into Italian law (which have been repealed and replaced by

[6] () Cf. *Case* 40/69, *Bollmann*, EU:C:1970:12, para 4; Case 74/69, *Krohn*, EU:C:1970:58, paras 4 and 6; and joined cases C-539/10 P and C-550/10 P, *Stichting Al-Aqsa*, EU:C:2012:711, para 87.

Articles 4 to 8 of the DSA), as well as any reference to these transposition measures in national law, should also be formally repealed.

In their replies to the request for further information, the Italian authorities refer to the specific draft regulation (Decision No 76/23/CONS) implementing Article 41(7) of Legislative Decree No 208 of 8 November 2021 on programmes, user-generated videos or audiovisual commercial communications addressed to the Italian public and conveyed by a video-sharing platform whose provider is established in another Member State, which was also notified to the Commission pursuant to Directive (EU) 2015/1535 (reference 2023/208/IT).

In that regard, the Commission also recalls that in the notification message accompanying that draft regulation, the Italian authorities explained that the notified regulation aimed at ensuring the application of the provisions of Article 41(7) of the TUSMA (transposing Directive (EU) 2018/1808), and that it was in line with the provisions of Article 5(2), (3) and (4) of Legislative Decree No 70 of 2003 (which transposes Directive 2000/31/EC, and without prejudice to its Articles 14 to 17). To the Commission's understanding, based on the information received from the Italian authorities, the notified draft aimed at specifying the conditions and procedures to implement Articles 3(4) and 3(5) of Directive 2000/31/EC in the case of providers of video-sharing platform services that are not established in the territory of Italy.

The Commission would therefore like to recall its comments issued in the context of that notified draft regulation, which remain pertinent, though not fully relevant for the examination of the notified draft.

Finally, the Commission would like to recall that Article 8 of the DSA precludes the imposition on providers of online intermediary services of general obligations to monitor the information which they intermediate, nor to actively seek facts or circumstances indicating illegal activity. Taking this into account, the Commission fails to see how video-sharing platforms are expected to adapt their systems so as to "guarantee to users", among others, that they are (i) combating hate speech; (ii) countering disinformation strategies; (iii) protecting copyright and intellectual property rights; (iv) promoting and protecting the well-being, health and harmonious physical, mental and moral development of the child, as set out under Article 1(4)(a) of the notified draft, amending Article 4 of TUSMA, in a way that is compatible with Article 8 of the DSA.

The Commission would thus welcome additional clarifications on this point.

2.2. Assessment in light of Directive 2010/13/EU

<u>On the application of direct investment obligations to "cross-border video-on-demand services (VODs)" and Article 13(2) AVMSD</u>

According to Article 1(35) of the notified draft, amending Article 55(2) of the Legislative Decree No 208 of 8 November 2021, on-demand audiovisual media service providers ([7]) under Italian jurisdiction must invest in European audiovisual works produced by

[7] ()According to Article 54 of the notified draft, the investment obligations of linear audiovisual media service providers in European works correspond to a share of their annual net revenues in Italy of not less than 12.5%. At least 50% of this quota must be reserved for works of original Italian expression wherever produced by independent producers in the last five years.

independent producers a percentage of their annual net income in Italy. According to paragraph 55(2)(b), this percentage will gradually increase until 2024 as follows:

18% as of 1 January 2023;

20% as of 1 January 2024.

Article 1(35) of the notified draft, amending Article 55(3) of TUSMA, states that "the obligations referred to in paragraph 2(b) shall also apply to providers of on-demand audiovisual media services which have editorial responsibility for offers addressed to consumers in Italy, even if they operate in another Member State". Therefore, the financial obligations set up in Article 1(35) of the notified draft, amending Article 55(2) of TUSMA, apply also to providers of on-demand audiovisual media services established in other Member States, but targeting audiences in Italy ("cross-border VODs").

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Furthermore, Article (1)35 of the notified draft, amending Article 55(8) of TUSMA, establishes that "not less than 50% of the contribution due by on-demand audiovisual media service providers have to be reserved for audiovisual works of original Italian expression, wherever produced in the last five years, by independent producers" and establishes also a specific investment sub-quota of at least one fifth of the aforementioned sub-quota for Italian-language cinematographic works, wherever produced, in the last five years by independent producers. According to the provision, these obligations will also apply to cross-border VODs.

In relation to the aforementioned financial contribution scheme, the Commission makes the following comments:

i) Thresholds for direct investment in production of European works

According to settled case-law, measures affecting the freedom to provide services may be justified if they pursue a legitimate public interest, such as cultural and linguistic diversity. Considering in particular the obligation to finance the production of European works, the Court of Justice of the European Union has ruled ([8]) that protecting linguistic diversity can justify restrictions to the free movement of services, as long as the national measures are proportionate. While the judgment concerned obligations imposed on providers under the Member State's jurisdiction, the Commission understands that the same objective can be invoked also in relation to obligations imposed on cross-border providers to contribute financially to European works, but also only if the principles of non-discrimination and proportionality are respected.

The contributions required under the notified draft are substantially higher than those considered as proportionate under the quoted case-law. Also, the high potentially unlimited ("not less than 50%") – sub-quota of works of Italian expression could have the effect of creating an advantage for production companies which work in Italian language and which, accordingly, may in practice mostly comprise undertakings established in Italy.

According to the case-law, when introducing measures that affect the free movement of services, national authorities should ensure that they are appropriate for securing the

[8] ()Judgment of the Court of 5 March 2009, *UTECA v Administración General del Estado*, C-222/07, EU:C:2009:124.

attainment of the objective sought and do not go beyond what is necessary to attain it (proportionality). The Italian authorities have not provided information on the proportionality of the thresholds foreseen for the investment by media service providers in European works and works of Italian original expression. When requested, as part of the request for supplementary information, to provide clarifications on the criteria used to determine the proportionality of these thresholds, the Italian authorities simply referred as "means of comparison" to "the share of French language works", apparently pointing to the French *Décret no 2021-793 du 22 juin 2021 relatif aux services de médias audiovisuels à la demande*, indicating that this share would be "slightly higher than in Italy". The cited French law provides for contributions of 15% and 20% of annual net turnover (and 25% in a specific situation) for different categories of VOD providers, with sub-quotas for works of French expression of 12% and 85%, again depending on the category of VOD provider.

In this regard, it is important to stress that the Commission had also indicated to the French authorities the need to justify the proportionality of the cited law and its contribution thresholds. The Commission also signalled that those thresholds were well above those considered as proportionate under the quoted case-law, as it is the case for Italy. The financial contribution thresholds set in the French and Italian systems are the highest in the EU. Therefore, the Commission considers that the simple comparison or reference to the French contribution thresholds does not provide enough justification or information about the criteria used by the Italian authorities to determine the proportionality of the thresholds.

ii) Regulations further developing the definition of audiovisual works of original Italian expression and their sub-quota; potential additional subquotas

The Commission notes that, based on Article 1(35) of the notified draft, amending Article 57(1) of TUSMA, the definition of works of original Italian expression and the sub-quotas reserved for these works are to be established by one or more regulations of the Minister for Enterprises and Made in Italy and Culture. The regulations referred to in this Article should provide that at least one fifth of the sub-quota reserved for works of original Italian expression produced in the last five years by independent producers is to be reserved for cinematographic works of original Italian expression, wherever produced, in the last five years by independent producers (Article 55(8)). As a reminder, the sub-quota for works of original Italian expression produced in the last five years by independent producers represents at least 50% of the contribution due for European works. Moreover, according to Article 1(35) of the notified draft, amending Article 57(2) of TUSMA, these regulations may provide for additional sub-quotas in favour of particular types of audiovisual works produced by independent producers within the last five years: cinematographic and audiovisual fiction works, original animation or documentary works or other types of audiovisual works, "with a view to simplifying the system".

The Commission notes that Article 57(1)(a) provides some guidance for the regulations, as far as the definition of works of original Italian expression is concerned, in the way that "particular reference to one or more elements such as culture, history, identity, creativity, language, or places" should be made. However, no particular criteria is indicated to be used in the regulations for setting up the definition.

The fact that no clarification is provided as to what criteria will be used to determine the sub-quotas allocated to works of original Italian expression, in particular as the sub-quota for works of original Italian expression produced in the last five years by independent producers could potentially cover the whole contribution due, increases the risk of favouring the production companies which work in Italian language and which, accordingly, may in practice mostly comprise undertakings established in Italy. Further (detailed) definition in the regulations of the works of original Italian expression could also exacerbate such risk.

Additionally, audiovisual media service providers face legal uncertainty as to how they have to allocate their contribution to the promotion of European audiovisual works. In that context it seems also worth mentioning that, according to the results of the public consultation which the Italian authorities carried out, the "majority of correspondents ask for a simplification of the quota system through the rationalization of provisions that are not strictly necessary for the transposition of EU Directives".

On the implementation of the rules on accessibility of content to persons with disabilities

According to Article 7 AVMSD, Member States must ensure that services provided by media service providers under their jurisdiction are made continuously and progressively more accessible to persons with disabilities.

Article 1(20) of the notified draft, amending Article 31 of the Legislative Decree No 208 of 8 November 2021, 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.

Based on the information given by the Italian authorities in their reply to the request for further information, the Commission understands that the Italian authorities intend to reintroduce the reference to the term 'progressively' in relation to the obligation imposed on audiovisual media providers to make their services more accessible to persons with disabilities. In this regard, the Commission reminds the Italian authorities about the importance to ensure the alignment of national legislation to the rules on accessibility set out in AVMSD.

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The Commission invites the Italian authorities to take into account the abovementioned comments in order to ensure that the national legislation is adopted and applied in conformity with the applicable EU law.

The Commission services are open to a close cooperation and discussion with the Italian authorities on possible solutions to the identified issues in full respect with EU law.

Yours faithfully,

For the Commission

Thierry Breton
Member of the Commission