

TRIS NOTIFICATION PROCEDURE

Contribution to the Italian draft Regulation on programs, user-generated videos or audiovisual commercial communications conveyed by a video-sharing platform whose supplier is established in another Member State

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Introduction

The Computer & Communications Industry Association (CCIA Europe) welcomes the opportunity to provide its contribution to the [TRIS notification procedure](#) 2023/0208/I regarding the Italian draft Regulation implementing Article 41(9) of the Legislative Decree No 208 of 7 November 2021 on programs, user-generated videos or audiovisual commercial communications addressed to the Italian public and conveyed by a video-sharing platform whose supplier is established in another Member State (hereon after “draft Regulation”).

The adoption of the EU’s Audiovisual Media Services [Directive](#) (AVMSD) in 2018 – transposed into Italian law through legislative Decree No 208 of 7 November 2021 – marked an important step towards the harmonisation of national legislation on audiovisual media and has since facilitated the cross-border circulation of audiovisual services while ensuring a minimum level of harmonised rules.

The country-of-origin principle at the core of the AVMSD is enshrined in the e-Commerce [Directive](#), which regulates the provision of information society services at EU level. The Digital Services Act (DSA), adopted last year ([Regulation](#) 2022/2065) and now in force, has established an updated framework to regulate intermediary services, including video-sharing platforms (VSPs) that qualify as online platforms, and ensures that the provision of these services across the EU is subject to harmonised rules.

In the context of this framework, CCIA Europe considers it crucial to ensure consistency between EU law and Member States’ legislation. Our two main recommendations regarding this draft Italian Regulation are to:

- I. Make sure that the country-of-origin principle is fully and effectively upheld in Member State legislation, and to;
- II. Ensure that the process to derogate from it is fully aligned with the provisions of the e-Commerce Directive and the DSA.

We therefore call on the European Commission to issue a detailed opinion that will persuade the Italian government to remove from the draft Regulation any references to turnaround times, since these would *de facto* limit the free provision of VSP services in the European Union.

I. Ensure that the country-of-origin principle is upheld

- The defence of the country-of-origin principle, at the core of both the AVMSD and the e-Commerce Directive, is essential to ensure that VSP services can be provided across the EU with minimum restrictions, to the benefit of consumers.
- Any deviation from this principle should be fully aligned with the provisions in the e-Commerce Directive and ensure that the Member State of establishment of the service provider is involved.

Article 3(4) of [Directive 2000/31/EC](#) (e-Commerce Directive) foresees a possibility for Member States to limit the free circulation of information society services but sets a number of narrow conditions that should be met by a Member State, in order to preserve the country-of-origin principle.

In its draft Regulation, the Italian government implements this procedure introduced by Article 3 of the e-Commerce Directive¹. While the draft Regulation requires a notification to the European Commission as well as to the Member State where the VSP provider is established, the proposed seven-day timeframe to coordinate with the Member State is very tight and would in practice make such coordination extremely difficult. If the service provider's Member State of establishment is to be effectively involved in the decision, enough time should be provided to allow for a meaningful consideration of the request made by the notifying Member State.

The European Regulators Group for Audiovisual Media Services (ERGA) adopted a [Memorandum of Understanding](#) (MoU) in 2020 which facilitates a framework for the coordination of cross-border issues between national regulatory authorities. Based on it, national regulatory authorities commit to act transparently and “in good faith in their dealings with each other”. The MoU does not specify a concrete timeframe for dealing with a request for information after it has been received, merely noting that the competent regulatory authority shall comply with requests “without undue delay”.

In this regard, it is essential to guarantee an effective coordination process in order to uphold the country-of-origin principle and avoid a fragmented implementation of the AVMSD across the EU. CCIA Europe thus warns against the introduction of concrete turnaround times for the coordination between the Italian regulatory authority (AGCOM) and the Member State of establishment of the service provider.

II. Avoid fragmented implementation of the DSA

- Correct implementation of the Digital Services Act (DSA) by EU Member States will be crucial to safeguarding the integrity of the Digital Single Market and to guaranteeing that online platforms are subject to harmonised obligations across the European Union.

¹ Implemented in Italy through Article 5 of legislative [Decree](#) No 70 of 9 April 2003.

The draft Italian Regulation suggests introducing specific turnaround times for the VSP provider to remove harmful content from their platform when requested by a competent authority. However, this requirement would contradict the provisions established in Article 9(1) of the DSA [Regulation](#), which sets out that providers of intermediary services should give effect to an order to remove content “without undue delay”.

CCIA Europe would like to warn about the risks posed to the Digital Single Market by the adoption of legislation in Member States that affects services in scope of the DSA but which is not fully in line with the spirit and provisions in the DSA Regulation. If the Italian draft Regulation is adopted, other Member States or regions might see it as a possibility to go beyond the DSA, defeating the purpose of the Regulation and undermining the benefits it brings to European consumers.

Conclusion

CCIA Europe asks the European Commission to issue a detailed opinion that will ensure the draft Italian Regulation is aligned with the DSA and the AVMSD, especially considering the importance of the country-of-origin principle – which has proven to be a cornerstone of the European Union’s internal market – and the need to correctly implement the DSA Regulation at Member State level.

Indeed, this is the only way to strike the right balance between freedom of expression and the swift removal of certain types of content, while also safeguarding the harmonisation of the EU internal market.

About CCIA Europe

The Computer & Communications Industry Association (CCIA) is an international, not-for-profit association representing a broad cross section of computer, communications, and internet industry firms.

As an advocate for a thriving European digital economy, CCIA Europe has been actively contributing to EU policy making since 2009. CCIA’s Brussels-based team seeks to improve understanding of our industry and share the tech sector’s collective expertise, with a view to fostering balanced and well-informed policy making in Europe.

For more information, visit: twitter.com/CCIAEurope or www.ccianet.org

CCIA is registered in the EU Transparency Register with number 15987896534-82.

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