



EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs
Single Market Enforcement
Notification of Regulatory Barriers

Message 201

Communication from the Commission - TRIS/(2025) 0536

Directive (EU) 2015/1535

Notification: 2024/0578/IT

Forwarding of the response of the Member State notifying a draft (Italy) to of European Commission.

MSG: 20250536.EN

1. MSG 201 IND 2024 0578 IT EN 17-02-2025 24-02-2025 IT ANSWER 17-02-2025

2. Italy

3A. Ministero delle imprese e del Made in Italy

Dipartimento Mercato e Tutela

Direzione Generale Consumatori e Mercato

Divisione II. Normativa tecnica- Sicurezza e conformità dei prodotti, qualità prodotti e servizi

00187 Roma - Via Molise,2

3B. Autorità per le garanzie nelle comunicazioni (AGCOM)

4. 2024/0578/IT - SERV60 - Internet services

5.

6. Communication pursuant to Article 9a, para. 3, 2 and 7 of Law 317/86, of information concerning notification 2024/0578/IT relating to the draft resolution on 'Technical and procedural arrangements for ascertaining the age of majority of users pursuant to Article 13a of Decree-Law No 123 of 5 September 2023, converted with amendments into Law No 159 of 13 November 2023' - Issuance of a detailed opinion pursuant to Article 6(2) by the Commission. Extension of the deadlines for the period of mandatory abstention from adoption and obligation to report to the Commission on the intended follow-up to the reasoned opinion - Response.

Summary

1 Premise

2 Follow-up to the reasoned opinion issued by the European Commission

2.1 Description of the measures to be adopted to take account of the detailed opinion issued:

3 Conclusions

1 Premise

With Resolution No 9/24/CONS of 10 January 2024, the Authority initiated the procedure aimed at implementing Article 13a of Decree-Law No 123 of 15 September 2023 (hereinafter also the Caivano Decree, not notified to the Commission) on 'Urgent measures to combat youth hardship, educational poverty and juvenile crime, as well as for the safety of minors in the digital environment'.

At its meeting of 24 September 2024, the Authority approved the draft final measure governing the technical and procedural modalities for ascertaining the age of majority of users of online pornographic content, having regard to the



EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs
Single Market Enforcement
Notification of Regulatory Barriers

favourable opinion of the Italian Data Protection Authority.

The draft final measure was notified on 16 October 2024 to the European Commission as a technical regulation under Directive (EU) 2015/1535 (Notification 2024/578/IT). The notification interrupted the period for the adoption of the final measure for 3 months until 17 January 2025.

In relation to the notified draft, on 28 October 2024, the Commission addressed a request for additional information to the Italian authorities in order to obtain clarifications on the measures of the notified draft, to which the Authority replied by means of a note sent on 12 November 2024. On 16 January 2025, the European Commission sent a detailed opinion pursuant to Article 6(2) of Directive (EU) 2015/1535.

With this note, the Authority intends to explain the additions and changes made to the notified draft in order to take utmost account of the comments made by the Commission in the above-mentioned detailed opinion, to which we intend to reply specifically here. To this end, for the sake of completeness and greater clarity, we enclose the amended draft measure in light of the Commission's comments (ANNEX).

2 Follow-up to the reasoned opinion issued by the European Commission

As a preliminary point, it is important to underline that the Commission shared the objective pursued by AGCOM through the notified draft of protecting minors online, in particular from pornographic content, which may harm their health and physical, mental and moral development. These objectives are aligned with those of the European legal framework for online services, in particular Regulation (EU) 2022/2065 (hereinafter the 'Digital Services Act' or DSA) and Directive 2000/31/EC (Directive on electronic commerce).

As the Commission points out, that regulation is directly applicable without implementing measures in all Member States and provides an effective regulatory framework at EU level with regard to some of the objectives pursued by the notified draft.

Therefore, acknowledging the need to ensure the harmonised implementation of the aforementioned regulation and the necessary compliance of the draft with the aforementioned directive, it was considered, as a preliminary step, to proceed with an overall simplification of the regulatory framework of the proposed draft in order to avoid the risk of encountering the issues envisaged by the Commission.

In this sense, those purely repetitive definitions of what is already provided for in the directly applicable European legislation, for which the Commission is competent, have also been removed.

2.1 Description of the measures to be adopted to take into account the detailed opinion issued:

a) Application of Article 3(1), (2), and (4) of Directive 2001/31/EC and introduction of a list of entities

Given that the provisions of the notified draft apply to information society service providers offering their services in Italian territory, irrespective of the Member State in which they are established, it is appropriate to clarify at the outset that this scope (both subjective and objective) is defined by the primary legislation that this Authority is responsible for implementing.

(NOTE: Article 13a of Decree-Law No 123 of 15 September 2023 (the Caivano Decree) provides, in paragraphs 2 and 3, that:

2. Without prejudice to the provisions of Article 42 of Legislative Decree No 208 of 8 November 2021, website operators and providers of video-sharing platforms which disseminate pornographic images and videos in Italy, are required to verify the age of majority of users, in order to prevent access to pornographic content by minors under the age of eighteen.

3. The Communications Regulatory Authority shall, within 60 days of the date of entry into force of the law converting this Decree, by adopting its own measure, after consulting the Data Protection Commissioner, lay down the technical and



EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs
Single Market Enforcement
Notification of Regulatory Barriers

procedural arrangements that the entities referred to in paragraph 2 are required to adopt for the verification of the age of majority of users, ensuring a level of security appropriate to the risk and respect for the minimisation of personal data collected due to the purpose.)

Therefore, it is for the Authority to lay down the technical and procedural arrangements that the parties referred to in paragraph 2 are required to adopt to ascertain the age of majority of users, an aspect on which the opinion did not raise any issues.

That said, it is noted that the Commission has also observed that the Member State may derogate, if necessary, from the principle of home State control for the reasons exhaustively listed in Article 3(4)(a) of Directive 2000/31/EC and in compliance with the substantive and procedural requirements set out in Article 3(4)(a) and (b) thereof.

Indeed, a similar clarification has already concerned the adoption of a different regulation (the one on video sharing platforms implementing Article 41 of the TUSMA referred to in AGCOM Decision No 289/24/CONS) on which the Commission, also in light of the clarifications provided by the Authority, has not raised doubts as to compliance with the European regulatory framework despite the fact that the rules apply irrespective of the place of establishment of the VSP.

Consequently, in order to overcome the identified issues, the Authority intends to limit the scope of the provisions introduced by the notified draft to information society services established in Italy or outside the European Union (see Article 1(1) of the draft) and to provide for the extension to entities established in other Member States in accordance with the criteria and procedures set out in Article 3 of Directive 2000/31/EC (see Article 1(3) of the draft).

Therefore, when the conditions laid down in Article 3(4)(a) of Directive 2000/31/EC are met, the measures referred to in Article 13a(5) of the Caivano Decree shall apply following the procedures laid down in Article 3(4)(b) or, where appropriate, Article 3(5) of the same Article. In particular, the measure may be adopted by the Authority only after having addressed the Member State in which the service provider is established, requesting the adoption of the measure, and this has not been followed up or the follow-up has not been considered appropriate, and, in any case, after having notified the Commission and the Member State of the intention to adopt the aforementioned measure.

Furthermore, in order to avoid the regulatory provisions laying down general and abstract obligations imposed on broad and undefined categories of service providers, regardless of their place of establishment, it has been clarified, from a subjective point of view, that the entities to which the notified project applies are website operators and video-sharing platforms that disseminate pornographic images and videos in Italy.

It should also be noted that the Authority intends to draw up a list (compiled and updated periodically, and communicated to the European Commission) which will identify the entities for which the notified project applies (see the last sentence of Article 1(1)).

In the same vein, it has been provided (in Article 4) that the provisions introduced will also apply to website operators and video-sharing platforms disseminating pornographic images and videos in Italy, irrespective of the Member State of establishment, three months after the publication of the list referred to above.

b) Full harmonisation of the Digital Services Act by introducing a review clause and eliminating additional transparency obligations.

As regards the possible issues related to the need to ensure full harmonisation of the notified measure with the DSA, avoiding any risk of overlap, particularly concerning minors, it is known that the Commission will adopt guidelines on the application of Article 28 of the Regulation on the adoption of appropriate and proportionate measures to ensure a high level of protection of privacy, security, and protection of minors in their service.

On the basis of this awareness, the Authority proposes certain amendments to ensure full consistency with the DSA.



EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs
Single Market Enforcement
Notification of Regulatory Barriers

It should be noted, however, that the notified measure, which also falls within the scope of Article 28b(6) of the AVMS Directive, does not appear to overlap with the Digital Services Regulation or merely to provide the minimum requirements which, in order to protect privacy, the system must lay down.

These requirements are not regulated by the DSA, as recognised by the Commission when it notes that 'In the absence of an EU-wide solution to verify the age of users, any national transitional solution should remain compliant with Union law, including Article 3 of Directive 2000/31/EC, and also envisage a mechanism to withdraw or repeal any national measures that become redundant once the European technical solution is implemented. The draft notified to the Commission does not reflect such mechanism.'

The Commission thus does not exclude national transitional solutions, provided that they comply with Union law, including Article 3 of Directive 2000/31/EC.

Therefore, an express mechanism has been introduced in the final provisions to ensure compliance of the provisions with the ensuing European legislation: where necessary, the Authority will amend, revoke or repeal measures taken at national level with regard to entities established in other Member States, as from the date of entry into force of the guidelines adopted pursuant to Article 28 of the DSA.

We reiterate, in this regard, that this Authority places significant importance on the need for coordination and enhancement of the comparison between various national experiences, actively participating in specific European working groups on the protection of minors and, more generally, on the concrete application of the DSA.

Harmonisation requirements are also ensured by the scheme for the entry into force of the notified draft which, pursuant to Article 13b(4) of the Caivano Decree, provides that the provisions in question are to enter into force six months after the adoption of the measure by the Authority.

Further harmonisation requirements have led this Authority, in view of the observations made in the opinion, to remove the transparency obligations which the Commission considered to be additional to the directly applicable European legislation. The reference is to the obligations under the previous version in Article 2 of the notified draft, (i) to report to the Communications Regulatory Authority and (ii) to increase transparency towards users regarding information related to online content moderation through the age assurance mechanism.

The following provisions have therefore been deleted from the final decision:

Obligations to notify the Authority

Website operators and providers of video-sharing platforms, which disseminate pornographic images and videos in Italy, must communicate to the Authority the third parties entrusted with the age verification operation (the independent third party), together with a report containing any useful information on the entity, on the method of age verification and on the reasons for the choice, for the purposes of the supervisory activity under their responsibility.

viii. Transparency:

- Regulated entities should be transparent towards users regarding the systems and data processed and the purposes, through simple, clear, and complete explanations, not only for adults but also for minors.
- Regulated entities shall make available on their websites data on the accuracy and effectiveness of the age assurance systems used, reporting the metrics and parameters employed in the evaluation as well as the results obtained.

c) Modification of the monitoring and forecasting system for cooperation.



EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs
Single Market Enforcement
Notification of Regulatory Barriers

The Commission noted that 'the notified draft entrusts the supervision and enforcement of its provisions, including those falling within the fully harmonised field of the DSA, to the Italian Communications Authority. This supervision and enforcement system under the notified draft would also apply with regard to service providers outside the jurisdiction of Italy and to VLOPs in as much as they are covered by the scope of the notified draft.'

In the light of these comments, the Authority amended the notified draft accordingly, taking into account the provisions of the DSA (Articles 56 and 57).

3 Conclusions

In light of the above, in order to provide all the clarifications required in relation to the requests made by the Commission in the detailed opinion adopted pursuant to Article 6(2) of Directive (EU) 2015/1535, and in accordance with the duty to notify, the amendments and additions made to the draft are summarised below:

1. Simplification of the regulatory framework of the measure in compliance with the necessary full harmonisation with the relevant European legislation;
2. Clarification of the subjective and objective scope of the measure, specifying the operators of websites and video-sharing platforms that disseminate pornographic images and videos in Italy;
3. Introduction of the express reference (for non-Italian entities established within the EU) to the conditions and procedures referred to in Article 3 of Directive 2000/31/EC ('Directive on electronic commerce'). It follows that the measures referred to in Article 13b(5) of the Caivano Decree apply at the end of the procedure laid down in the aforementioned provision of the Directive.
4. Preparation of a list by the Authority for the purpose of identifying obliged entities and provision of a three-month period for the applicability of the measure to entities established in another Member State;
5. Elimination of additional transparency obligations compared to directly applicable European legislation;
6. Without prejudice to the procedure laid down in the e-Commerce Directive, harmonisation of monitoring, supervision, and introduction of cooperation at the European level;
7. Providing for, in the final provisions, an express mechanism to amend, revoke or repeal, where necessary, measures adopted at national level with regard to entities established in other Member States, from the date of entry into force of the guidelines adopted pursuant to Article 28 of Regulation (EU) 2022/2065, in order to adapt to the ensuing European legislation;
8. Provision for a special regime for the entry into force of the measure, also to ensure full European harmonisation.

European Commission
Contact point Directive (EU) 2015/1535



EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs
Single Market Enforcement
Notification of Regulatory Barriers

email: grow-dir2015-1535-central@ec.europa.eu