

**RIA Report- ) Regulatory Impact Assessment (RIA) with regard to the draft Legislative Decree correcting Legislative Decree No 208 of 8 November 2021, pursuant to Article 3 of the European Delegation Law 2019-2020 (Law No 53 of 22 April 2021) implementing Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the provision of audiovisual media services in view of changing market realities.**

*Measure:* Supplementary and corrective provisions of Legislative Decree No 208 of 8 November 2021 laying down the consolidated text for audiovisual media services.

*Competent Administration:* Ministry of Enterprises and Made in Italy

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## **SUMMARY AND MAIN CONCLUSIONS OF THE RIA**

### **● CONTEXT AND PROBLEMS TO BE ADDRESSED**

Law No 53 of 22 April 2021 granted the Government the power to implement Directive (EU) 2018/1808 on the reorganisation of the provisions concerning the provision of audiovisual media services, as set out in Legislative Decree No 177 of 31 July 2005 laying down the consolidated text for audiovisual and radio media services.

To implement this mandate, the Government adopted Legislative Decree No 208/2021, laying down the new consolidated text for the provision of audiovisual media services.

More than a year after its adoption, it became necessary to make use of the power granted to the Government by Law No 234 of 24 December 2012 laying down ‘General rules on the participation of Italy in the formation and implementation of European Union legislation and policies’, which, in Article 31(5), as also referred to in Article 1 of Law 53/2021, authorises, within 24 months of the date of entry into force of Legislative Decree No 208/2021, in compliance with the principles and guiding criteria laid down by the European Delegation Law, the adoption of supplementary and corrective provisions to the aforementioned legislative decree.

The measure in question constitutes a revision and update of the Consolidated Text for Audiovisual Media Services both with a view to correcting the typos and updating to what are the new features introduced in the regulatory field, always remaining in line with the mandate principles referred to in Article 3 of the above-mentioned European Delegation Law.

The regulatory changes are largely due to the technological innovation, both fast and impactful, that has taken place in the sector in recent years. This development was first felt at the European level, which has pushed the most for the reforms in question.

As is well known, the electronic communications sector is a decisive enabler of the economy given that consumers and businesses have a strong need to access data and, more generally, the internet in a fast and secure way.

The technological evolution and convergence between television and internet services have significantly changed the habits of users and consumers of audiovisual media services, who before used to rely only on television.

The adoption of the revolutionary change in technologies, including in the field of electronic communications and audiovisual media services, has also affected the European context, which, in fact, has intervened in this area with numerous important legislative and regulatory initiatives.

On 17 April 2019, the Parliament and the Council adopted the Directive on copyright and related rights in the Digital Single Market (Directive (EU) 2019/790). The legislative text amended the two previous Directives on copyright issues (Directives 96/9/EC and 2001/29/EC). The main purpose of the Directive was to modernise copyright rules in order to achieve a number of key objectives: (1) enhancing cross-border access to online content; (2) providing more opportunities to use copyright-protected materials for education, research and cultural heritage; (3) ensuring a better functioning of the copyright market; and 4) implementing the Marrakech Treaty in EU law. The new legislation has the biggest impact on online platforms such as YouTube, Facebook and Google News.

On 14 June 2017, the Parliament and the Council adopted Regulation (EU) 2017/1128 to ensure that subscribers to online content services in their own EU Member State, such as those offering films, sports events, e-books, video games and music, can access it when they are temporarily staying in other EU countries. This regulation came after the adoption of new roaming rules in the same year, which are part of the EU Digital Single Market Strategy.

Finally, there was EU Directive 2018/1808<sup>1</sup> 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 the changing market reality.

The Directive was published in the Official Journal of the European Union on 28 November 2018, and entered into force on 19 December 2018. The EU Audiovisual Media Services Directive (AVMS Directive) regulates the coordination at the Union level of Member States' national legislation on all audiovisual media, for traditional television broadcasts as well as for on-demand audiovisual media services.

In support of Member States for the transposition of the Audiovisual Media Services Directive, the Commission adopted in 2020 two guidelines aimed at contributing to the harmonious implementation and application of the European Directive: (1) guidelines on video-sharing platforms<sup>2</sup>; and (2) guidelines on European works<sup>3</sup>.

The deadline for transposition of the Directive within the national framework was 19 September 2020. Ireland, which hosts the largest number of video-sharing platforms, was the last country to communicate its legislation transposing the Directive in February 2023.

As regards the protection of minors, the rules contained in the revised Audiovisual Media Services Directive were supplemented by the 1998<sup>4</sup> and 2006<sup>5</sup> recommendations relating to the protection of minors and human dignity.

Finally, a new strategy for a better internet for kids (BIK +) was adopted in 2022<sup>6</sup>, as a follow-up to the 2012 European Strategy for a Better Internet for Kids. This strategy, which aims to ensure that

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<sup>1</sup> 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 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L1808&from=pl>

<sup>2</sup> [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020XC0707\(02\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020XC0707(02))

<sup>3</sup> [https://eur-lex.europa.eu/legalcontent/EN/TXT/?toc=OJ:C:2020:223:TOC&uri=uriserv:OJ.C\\_.2020.223.01.0010.01.ITA](https://eur-lex.europa.eu/legalcontent/EN/TXT/?toc=OJ:C:2020:223:TOC&uri=uriserv:OJ.C_.2020.223.01.0010.01.ITA)

<sup>4</sup> [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.1998.270.01.0048.01.ITA&toc=OJ:L:1998:270:TOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.1998.270.01.0048.01.ITA&toc=OJ:L:1998:270:TOC)

<sup>5</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32006H0952&qid=1651650987834>

children are protected, respected and empowered online, is supported under the Connecting Europe Facility and through programmes such as Horizon Europe. Among the various initiatives in this field are the Better Internet for Kids programme and the Safer Internet Centres. A version for minors<sup>7</sup> of the BIK+ strategy is also available.

In light of all this, the legislative amendment aims to ensure the development of an inclusive simplification and digitalisation process capable of seizing and developing the opportunities arising from technologies. Revisions of specific elements of the decree appear necessary, in a process useful to pursue further benefits for the national economy and also for professionals.

## 2. AIMS OF THE INTERVENTION AND RELATED INDICATORS

### 2.1 General and specific objectives

**General objectives** of the intervention shall be considered as follows:

- making the necessary corrections to eliminate misprints and interpretative ambiguities on the application of the rules;
- updating and amending the definitions;
- the need for changes to the administrative structure on contributions;

### 2.2 Indicators and reference values

The aim of the new framework, in line with EU provisions, is to adapt the current provisions to the new scenario characterised by technological innovations that have taken place since, in order to produce positive effects on the market, on user protection and on competitiveness.

The level of achievement will be monitored by the competent administrations.

As regards the main reference indicators that the Administration can use to monitor over time the implementation of regulatory measures and the consequent achievement of the related objectives, taking into account what is reported in the AGCOM's annual report, these can be qualitatively identified in compliance with pluralism, as expressed in the different meanings of the EU provisions:

- respect for “external” pluralism that can be described through indicators such as, for example, the verification of the change in the concentration index of operators in the free or paid TV sectors;
- respect for “internal” pluralism, verifiable through the so-called “information pluralism” means, for example, the number of hours of news programmes;
- respect for quantifiable “social” pluralism, again by way of example, such as the percentage of speaking time left to different social actors in the news;
- finally, respect for “cultural” pluralism in the context of the planning and investment obligations of economic resources, measurable, for example, according to the programming quotas of national or European production works<sup>8</sup>.

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<sup>6</sup> <https://digital-strategy.ec.europa.eu/it/policies/strategy-betterinternetkids#:~:text=La%20nuova%20strategiaEN%E2%80%A2,EN%E2%80%A2%E2%80%A2%E2%80%A2%20europei.>

<sup>7</sup> [Version for minors of the European Strategy for a Better Internet for Kids \(BIK+\) | Shaping Europe's digital future](#)

<sup>8</sup> *Regulatory Action Monitoring Indicators — Media Sector in the 2021 AGCOM Annual Report*, p. 85  
<https://www.agcom.it/documents/10179/23560628/Documento+generico+26-07-2021/32d25996-0a6b-4e0b-a303-0c1e9152e4cc?version=1.1>

### **3. INTERVENTION OPTIONS AND PRELIMINARY ASSESSMENT**

The current regulatory framework, post-transposition of Directive (EU) 2018/1808, has undoubtedly provided largely positive effects over time, encapsulating, in the approximately twenty years since the enactment of the 2005 Consolidated Text on Media and Radio Services, in a single piece of legislation, the legislative changes that have taken place over the years, while also transposing the new provisions of Directive (EU) 2018/1808 into a uniform and harmonized framework.

Nevertheless, regulatory developments over time had to be taken into account, as well as technological developments in networks and services, which is why, one year after the entry into force of Legislative Decree 208 of 2021, there were two possible roads to follow:

- Option 0, leave the current regulatory framework unchanged. Such a choice would not make it possible to modernise the regulatory framework, taking into account developments in the sector, nor to include the new definitions on the subject or to streamline the bureaucratic machine through simplified procedures. Moreover, it would not be possible to eliminate typos, to adapt internal legislation to the EU legislation, to modify the sanctioning framework, to allow the creation of a regulatory environment favourable to the investments necessary for the development of very high capacity networks and to achieve the objectives of connectivity. Option 0 is therefore not considered.
- Option 1, aimed at eliminating typos, adapting current regulatory forecasts to new technological and market dynamics, harmonising sectoral definitions to the regulatory environment linked to the development of electronic and digital communications networks and services.

### **4. COMPARISON OF THE OPTIONS AND JUSTIFICATION OF THE PREFERRED OPTION**

#### **4.1 Economic, social and environmental impacts by target group**

Following the entry into force of the Consolidated Text on Audiovisual Media Services, together with the legislative and regulatory reform processes implemented at the European level, the audiovisual sector has had many favourable effects on the parties involved by the legislation in question.

The technological evolution and convergence between television and internet services have significantly changed the habits of users, users of audiovisual media services that once only used the television. New types of content such as user-generated content are on the rise, including in Italy, especially among the younger population. In light of the increasing use of new services, the measures adopted by the EU Directive 2018/1808, transposed in this decree, therefore strengthen some important principles for both users and the audiovisual market. First of all, the identification of the country of origin with the introduction of clearer provisions to identify the Member State responsible for adopting the procedure in the event of infringements against broadcasters and on-demand service providers whose broadcasts are cross-border.

The Decree will have a positive impact, as the prohibition on committing public provocation to terrorist offences has been added to the prohibitions already provided for against incitement to hatred and violence. These rules are also applicable to video-sharing platforms, which will have to create a “transparent and user-friendly” mechanism to allow users to report content they consider dangerous.

This Decree also lays down appropriate rules to ensure the adequate protection of human dignity and of minors in relation to audiovisual content, including user-generated videos, and commercial communications by video-sharing platforms, entrusting the relevant tasks, including the promotion of self- and co-regulatory procedures, to the Communications Regulatory Authority as the national regulatory authority for the sector.

The specific measures already envisaged to ensure the protection of minors from content, including advertising, which may harm their physical, mental or moral development, including the prohibition of advertising related to gambling, have been supplemented: video-sharing platforms must take such measures, as part of self-regulation or co-regulation, having an appropriate mechanism to protect children's personal data from commercial uses.

The administrative and criminal sanctions system has been updated.

Stronger rules have also been established to protect users, and specific measures to protect consumers of audiovisual media services, including through the use of out-of-court dispute resolution procedures and compensation mechanisms in the event of disruption, entrusting the regulation of these procedures to the Communications Regulatory Authority.

Measures to promote European works, including on-demand audiovisual media services, as well as to promote the transparency of media service provider ownership structures, have been reinforced.

Even further.

In compliance with the principles of flexibility, proportionality and competitiveness, rules have been laid down for adapting the requirements for commercial communications to also apply to video-sharing platform services and for the revision of advertising crowding limits. The revision of the rules gives television broadcasters, in particular, more flexibility as regards the time slot in which advertisements can be broadcast. However, the overall limit of 20% of broadcasting time is maintained in the time slots between 6:00 and 18:00 and 18:00 and 24:00 in order not to expose the public to excessive advertising during prime time.

The promotion of digital literacy by media service providers and video-sharing platform providers has been introduced.

The duties of the Communications Regulatory Authority have been updated, further strengthening its prerogatives of independence, especially with regard to dominant positions in the integrated communications system.

It follows, in light of these interventions, that the Decree will have implications not only in the media services sector, but also in the entire digital economic ecosystem, beyond the limits of the radio and television sector. The basic requirement is to create a fair legal and regulatory framework that meets the needs of the market with the aim of creating a level playing field between traditional operators and over-the-top operators who, acting "above/beyond the network", are neither broadcasters nor publishers and therefore avoid all the countless regulatory provisions provided for these categories.

Therefore, the transposition of the Directive at a national level, in addition to avoiding the negative effects resulting from the opening of infringement proceedings against the Italian State, certainly had beneficial consequences for the various parties whose interests are affected by the legislation in question.

Moreover, the decree will also have a very positive impact on digital platforms, which are called upon to comply with common standards at a European level, thus avoiding the risk of different regulations depending on the country in which they operate, to the benefit of the smooth functioning of the internal market.

Nevertheless, it should not be omitted that the new opportunities that affect all sectors of society and the economy globally, although they can offer important benefits in terms of economic growth, due to the multiplicity of innovative services provided online, where every citizen can immediately be at the heart of entertainment, at the same time also represent new risks linked to the dissemination of content that could be harmful, to the management of personal data and to security.

## 4.2 Specific impacts

The audiovisual sector is identified, in its broadest sense, as the set of all supply chains specialised in the production of combined audio and video narrative content, distributed on various platforms and enjoyed through various devices. The sector, which began with the film industry dedicated to the “big screen”, has expanded with the television industry, dedicated to the “small screen”, and today is permeated by the digital transformations that have led to the multiplication of screens: from PC to Gaming Console, from Smartphone to Tablet. The same screen as the TV in the living room, today, thanks to set-top-boxes and Smart TVs, has become a terminal for new content characterised by a non-linear use (to the extent that it generated new phenomena such as binge watching television series).

**A. Effects on SMEs (SME Test):** Regarding the impact of this sector, some significant data have emerged from the 4<sup>th</sup> National Audiovisual Production Report<sup>9</sup>:

- the total cost of producing original video-television content (TV + VOD) reached EUR 1 420-1 470 million in 2021 (+ 37 % compared to 2017);
- investments in series and film for TV and VOD are the main component of the value of original audiovisual production. This is also the largest growth component between 2017 and 2021 (+ 62 %). The entertainment and other genres segment (documentaries, current events and in-depth programmes, talk shows, cultural shows, etc.) follows according to size of investment;
- between 2017 and 2021, the number of titles in foreign circulation increased significantly (from 17 to 48). The growth is due to both the production/distribution of titles for/on global platforms and the increased ability of the titles produced for TV to find distribution opportunities in international markets. The international value in 2021 is estimated at around EUR 100 million;
- half (24 out of 48) of the original Italian titles (fictional series and films) circulating abroad are produced for GVP (Global Video Platforms). Between 2017 and 2021, the number of titles produced for TV and that had some foreign circulation increased from 15 to 24.
- the growth in demand for fictional series and films for TV and VOD and the expansion of investments of global platform operators have contributed to the growth of production value in scripted genres;
- the consolidation of the sector continues through the multiplication of M&A including for small and medium-sized enterprises;
- there are 111 235 workers involved in audiovisual activities, divided into 44 075 employees, 47 014 self-employed, 14 155 directors, 3 488 ex-Enpals employees and 2 502 entrepreneurs. Including related industries, the sector involves more than 200 000 workers;
- in the 2021-2022 Fiction offering, among domestic fiction providers, the offerings of established linear TV operators (Rai, Sky, and Mediaset) continue to have greater weight than the Italian original production of platforms (Netflix, Amazon Prime Video, Disney+) but the share of streaming offerings is growing.

**B. Effects on competition:** there are no direct effects on competition, given that the specific measures make the process of digitisation of applications across the country homogeneous and

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<sup>9</sup> 4<sup>th</sup> National Audiovisual Production Report <https://www.apaonline.it/website/wp-content/uploads/2022/10/apa-associazione-produttori-audiovisivi-apa-presenta-il-4-rapporto-sulla-produzione-audiovisiva-nazionale-4-rapporto-sulla-produzione-audiovisiva-nazionale-1.pdf>

guarantee the standardisation of procedures to limit operational discrepancies between the institutions, to which each operator would otherwise be subject.

**C. Disclosure obligations:** There are currently no external conditions or factors affecting the foreseeable effects of regulatory intervention or affecting disclosure obligations.

**D. Compliance with the minimum levels of European regulation:** The minimum levels of European regulation are complied with.

### **4.3 Justification of the preferred option**

The proposed regulatory intervention introduces a set of rules with a primary regulatory vehicle in the audiovisual and video-sharing platform sector aimed at their use to promote, enhance and develop the sector of reference within the country.

## **5. METHODS OF IMPLEMENTATION AND MONITORING**

### **5.1 Implementation**

The parties responsible for the implementation of the legislative measure are primarily the Ministry of Enterprises and Made in Italy and the Communications Regulatory Authority, as the National Regulatory Authority, for aspects regarding their respective competence. Moreover, the measure has no impact on the organisation and activity of the public administration, since the functions that the parties concerned are called upon to perform are already legally assigned to them.

### **5.2 Monitoring**

The monitoring will be carried out by the implementing entities, as indicated in point 5.1, on the basis of the reference indicators that will be defined when the amendments to the legislative decree transposing the Directive are prepared.

## **CONSULTATIONS CARRIED OUT DURING THE RIA**

### **SECTION 2 - CONSULTATION PROCEDURES**

The Ministry of Enterprises and Made in Italy considered it necessary to launch a market consultation on corrective measures in Legislative Decree No 208 of 8 November 2021 transposing 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 in view of changing market realities.

The consultation, which is aimed at acquiring the guidance of economic operators and stakeholders, in addition to being an obligation, is a great opportunity to acquire the market's guidance on the application, one year after the entry into force of the decree, of the new sector legislation in line with the objectives of the directive.

The consultation document and the communications provided by the parties participating in the survey do not constitute any title, condition or constraint with respect to any subsequent decisions of this Administration and the competent national authorities, in relation to the topics covered.

The consultation document was published on 9 June 2023<sup>10</sup>, aimed at acquiring market guidance on the application, one year after the entry into force of the Decree, through publication on the institutional website asking all market operators of electronic communications networks and services to submit observations, comments and proposals for amendments by 3 July 2023, and generated 47 contributions, summarised in the report below.

The contributions were sent by the following companies and/or associations: RAI – RADIOTELEVISIONE ITALIANA SPA; CONFINDUSTRIA RADIO TELEVISIONIMETA; GOOGLE; NETFLIX; THE WALT DISNEY COMPANY ITALIATIM; PARAMOUNT; AMAZON PRIME VIDEO, LA7, TIMVISION; PRIME VIDEO ON BEHALF OF AMAZON DIGITAL UK LIMITED; MOTION PICTURE ASSOCIATIONANICA – NATIONAL INDUSTRY ASSOCIATION; CINEMATOGRAFICHE AUDIOVISIVE DIGITALICNA – CINEMA E AUDIOVISIVOIAB ITALIA; CARTOON ITALIA; WRA – WEB RADIO ASSOCIATIONAPA – ASSOCIATION OF AUDIOVISUAL PRODUCERSAERANTI – CORALLO; RNA – NATIONAL RADIO ASSOCIATION; WARNER BROS. DISCOVERYUPA – ASSOCIATION OF ADVERTISING USERS; EURODAB ITALIA; OMITALIANE ASSOCIATION; M.A.V.E ASSOCIATIONMEDIASET; SKY ITALIA; IAP – INSTITUTE OF ADVERTISING SELF-REGULATION

The summary of the consultation is published on the institutional website of the Ministry available at this link <https://www.mimit.gov.it/it/normativa/notifiche-e-avvisi/consultazione-pubblica-concernente-il-testo-unico-per-la-fornitura-di-servizi-di-media-audiovisivi> .

#### **ASSESSMENT PATH**

The General Directorate for Electronic Communication, Broadcasting and Postal Services has investigated this issue in depth, making use of its own facilities, as well as for the part under the responsibility of the General Directorate for Communications Technology and Information Security - Higher Institute for Communications and Information Technology.

The Legislative Office cooperated in the drafting of the text following further in-depth analysis.

No particular difficulties were encountered at this stage.

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<sup>10</sup> <https://www.mimit.gov.it/it/normativa/notifiche-e-avvisi/consultazione-pubblica-concernente-il-testo-unico-per-la-fornitura-di-servizi-di-media-audiovisivi>