Message 201

Communication from the Commission - TRIS/(2025) 1084

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Notification: 2025/0148/IT

Forwarding of the response of the Member State notifying a draft (Italy) to request for supplementary information (INFOSUP) of European Commission.

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1. MSG 201 IND 2025 0148 IT EN 18-06-2025 15-04-2025 IT ANSWER 18-06-2025

2. Italy

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4. 2025/0148/IT - SERV60 - Internet services

5.

6. With reference to the notification procedure for Notification No 2025/0148/I, and in particular to TRIS Message (2025)0964 with which the Commission has made a request for additional information regarding Resolution No 47/25/CONS of the Regulatory Authority for Communications (hereinafter also referred to as the Authority or Agcom), which proposes certain amendments to the Regulation concerning the protection of copyright on electronic communication networks and implementation procedures in accordance with Legislative Decree No 70 of 9 April 2003 as referred to in Agcom Resolution No 680/13/CONS of 12 December 2013), the Authority has stated the following. (hereinafter also referred to as 'the Regulation'), and the following statement is made.
First of all, it is important to note that the current draft merely proposes certain amendments, which are to be submitted for prior public consultation, to the aforementioned Regulation (Resolution No 680/13/CONS) adopted following the notification procedure for Notification No 2013/0496/I, incorporating, in the final text, the observations formulated at the time by the European Commission. All subsequent amendments made to the Regulation over the years were notified to the European Commission, specifically through notification procedures Nos 2018/0151/I, 2020/0700/I and 2023/0123/I.
The Regulation takes utmost account of the principles enshrined in the case-law of the Court of Justice of the European Union and of the European Court of Human Rights, in full respect of the fundamental freedoms, first of all freedom of expression and freedom to conduct business, and has received the implicit endorsement of the Constitutional Court (judgment No 247 of 2015), followed by the rulings of the Lazio Regional Administrative Court (judgments Nos 4101/2017 and 4102/2017) and the Council of State (judgment No 4993 of 2019) rejecting the appeals concerning the said Regulation. It is also recalled that the appeals initiated by an association of providers against Resolutions Nos 490/18/CONS and 189/23/CONS, concerning the precautionary proceedings and, in particular, that concerning live sports events carried out by using the Piracy Shield platform, were, following their meeting and joint hearing, rejected by the Lazio Regional Administrative Court (judgment No 1223/2024).
Finally, it should be noted that the text submitted for public consultation and notified to the European Commission takes

adopts the indications set out in the European Parliament Resolution with recommendations to the Commission on 'Challenges of sports events organisers in the digital environment' (2020/2073 (INL)) of 19 May 2021 and the European Commission Recommendation on "combating online piracy of sports and other live events" (2023/1018) of 4 May 2023.
Today's notification refers to the proposals for additions to the Regulation contained in Decision No 47/25/CONS launching the public consultation. These additions were necessary to take account of the significant changes in the relevant regulatory framework, both at EU and national level. Reference is made, in particular, to Regulation 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 (hereinafter the Digital Services Act or DSA), but also to the changes introduced to Law No 93 of 14 July 2023 (hereinafter the anti-piracy law) by Decree-Law No 113 of 9 August 2024 on 'urgent fiscal measures, extensions of regulatory deadlines and economic measures' (hereinafter the Omnibus Decree), converted with amendments by Law No 143 of 7 October 2024, and to the new Consolidated Act on audiovisual media services (Legislative Decree No 208 of 8 November 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 coordination of certain provisions laid down by law, regulation or administrative action in the Member States concerning the Consolidated Act on audiovisual media services in view of the changing market realities'), and in particular to Article 32 thereof.
That being said, it will be the author's responsibility to transpose the points deriving from the dialogue with the Commission in the context of this notification procedure when drafting the final text.
With specific reference to the individual questions formulated in the note referred to above, we note the following.
1. The Commission services welcome any explanations on the obligations for service providers under the scope of the Regulation (EU) 2022/2065 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act, hereinafter "DSA") that would arise from the notified draft.
Decision No 680/13/CONS, by which the Regulation was adopted, implements the provisions of the Decree on electronic commerce transposing Directive 2000/31/EC (Legislative Decree No 70 of 9 April 2003 implementing Directive 2000/31/EC on certain legal aspects of information society services in the internal market, with particular reference to electronic commerce).
In particular, with a view to ensuring effective protection of copyright against infringements committed online, Articles 14, 15 and 16 of the aforementioned Legislative Decree No 70/2003 specified, with reference to the various types of activities of intermediary service providers (mere conduit, caching and hosting), the conditions under which they are not responsible for the content of the information transmitted or stored. Without prejudice to the prohibition to impose general monitoring obligations on service providers, in order to benefit from the exemption from liability, pursuant to the aforementioned Articles 14, 15 and 16 of the e-Commerce Decree, upon obtaining actual knowledge or awareness of illegal activities they have to act expeditiously to remove or to disable access to the information concerned, in safeguarding the proportionality of the injunctions with regard to the seriousness of the infringements and ensuring, at the same time, compliance with the principle of freedom of expression and the procedures established for this purpose at national level.
The adoption of the Digital Services Regulation, which amends Directive 2000/31/EC, introduces significant changes in the fight against the online dissemination of illegal content. In particular, Article 89 of the DSA, amending Directive 2000/31/EC, provides that Articles 12 to 15 of that directive are deleted and that references to those articles shall be construed as references to Articles 4, 5, 6 and 8, respectively, of the Digital Services Act. Legislative Decree No 50 of 25 March 2024 therefore repealed Articles 14 to 17 of Legislative Decree No 70 of 9 April 2003. The aforementioned Articles 4, 5 and 6 of the DSA, on the basis of the definition of 'intermediary service' pursuant to Article 3 of the same DSA, define the liability regime, services of 'mere conduit', 'caching' and 'hosting', respectively, without making, as far as is of interest for the purposes of this provision, significant changes to the previous definitions. Moreover, Article 8 confirms the exemption of liability for the same subjects, understood as the absence of general obligations to monitor or establish facts actively. Those provisions provide that a judicial or administrative authority having supervisory functions may require, even as a matter of urgency, the provider, in the exercise of its activities as defined therein, to prevent or put an end to the infringements committed, by acting immediately to remove illegal information or disable access thereto.
It is also worth pointing out that the Digital Services Act is without prejudice to (see Recital (11): It should be clarified that this Regulation is without prejudice to Union law on copyright and related rights, including Directives 2001/29/EC(21), 2004/48/EC(22)and (EU) 2019/790(23)of the European Parliament and of the Council, which establish specific rules and procedures that should remain unaffected) the rules on copyright protection and, in particular, the derogations from the

principle of the country of establishment of the service provider pursuant to Article 3 of Directive 2000/31/EC; likewise, pursuant to Article 4 of Legislative Decree No 70 of 9 April 2003, which is still in force, 'copyright rights' and 'similar rights' are excluded from the application of the specific provisions of Article 3(1) and (2) concerning the prohibition, in the so-called 'regulated field', of 'limiting the free movement of information society services originating from a service provider established in another Member State'.
The DSA Regulation therefore reproduces the same provisions laid down in the e-Commerce Decree transposing Directive 2000/31/EC without introducing, as expected, significant new developments of interest for the purposes in question.
With specific reference to the deadline of 30 minutes within which service providers are required to disable access to domain names or IP addresses that illegally transmit live audiovisual content, we would point out that this deadline, in addition to being provided for by the aforementioned Anti-Piracy Law, reflects what has been underlined both by the European Parliament Resolution and by the Commission Recommendation mentioned above.
The Resolution, in particular, points out that illegal streaming of sports events broadcasts is more harmful in the first 30 minutes they are available online and that an immediate reaction is needed to end the illegal online broadcasting of sports events. The European Parliament therefore stressed that the objective to be pursued is real-time removal in cases of illegal broadcasts of live sports events, provided that there is no doubt as to the ownership of the rights and the fact that the broadcast has not been authorised. In the same vein, the European Commission pointed out in its recommendation that 'It is important to ensure that remedies available to holders of rights allow prompt action, which takes into account the specific nature of the live transmission of an event, in particular its time sensitive element'.
In light of the above, it is stated that the amendments to the Regulation subject to notification do not give rise to any further obligations for intermediary service providers under the Digital Services Act other than that deriving from Article 9 of the DSA, namely that of informing, without undue delay, the Authority that issued the order of the follow-up given to the order, specifying whether and when the order was followed up. This provision has been transposed with the proposed amendments to the Regulation implementing the DSA and taking into account that, over the course of eleven years of application of the Regulation, intermediary service providers have traditionally always informed the Authority of the follow-up given to orders issued in the field of copyright protection, although they have not been obliged to do it so far.
2. The Italian authorities are kindly invited to clarify whether they deem Articles 8, 8-bis, 9-bis and 10 of Annex B of the notified draft:
(i) act as legal bases under national law to issue orders to act against illegal content pursuant to Article 9 DSA; and
(ii) whether the orders and injunctions issued based on these articles are orders to remove illegal content pursuant to Article 9 DSA.
Articles 8, 8-bis, 9-bis and 10 of the Regulation constitute the national legal basis for issuing orders to combat illegal content, since the Regulation is a secondary source of legislation implementing primary legislation; primary legislation consists mainly of Law No 249 of 31 July 1997 establishing the Authority and entrusting it, inter alia, with powers in the field of copyright protection (Article 1(6)(b), point 4-bis)), as well as Law No 633 of 22 April 1941 on the protection of copyright and other rights related to its exercise and Law No 93 of 14 July 2023 on provisions for the prevention and repression of the illicit dissemination of content protected by copyright through electronic communication networks.
With particular reference to the power to issue precautionary orders, Law No 167 of 20 November 2017 laying down provisions for the fulfilment of obligations arising from Italy's membership of the European Union — European Law 2017 is relevant, and, in particular, Article 2 thereof, entitled 'Provisions on copyright'. Full compliance with Directive 2001/29/EC and Directive 2004/48/EC', which sets out that '1. For the implementation of the provisions of Article 8 of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001, and Articles 3 and 9 of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004, upon application of the right holders the Communications Regulatory Authority may order, as a precautionary measure, information society service providers, to immediately put an end to infringements of copyright and related rights, if these infringements are identified on the basis of a summary assessment of the facts and there is a threat of an imminent and irreparable detriment to the right holders. 2. Using its own rules, the Authority regulates the procedures with which the precautionary measure referred to in paragraph 1 is adopted and communicated to the parties involved, as well as the parties entitled to lodge a complaint against this provision, the terms within which to lodge a complaint, and the procedure whereby the Authority's final decision is adopted. 3. By the Regulation referred to in paragraph 2, the Authority shall identify appropriate measures to prevent the recurrence of infringements already established by the Authority'. Article 2 of the aforementioned European Law 2017 has expressly foreseen the possibility for the Authority to issue, upon application of the right holders, administrative injunctions of both precautionary and definitive nature in

relation to information society service providers, aimed at immediately putting an end to violations of copyright and related rights online.
To that end, European law refers, first of all, to Article 8 of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 and Articles 3 and 9 of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004. European Law 2017 was then implemented with amendment to the Regulation (Decision No 490/18/CONS), which, as stated, was notified to the European Commission.
Finally, also with regard to precautionary orders, Article 2 of the Anti-Piracy Law provides that 'The Regulatory Authority for Communications, hereinafter referred to as 'the Authority', orders service providers, including network access providers, with its own provision, to disable access to illegally disseminated content by blocking the DNS resolution of domain names and blocking the routing of network traffic to IP addresses primarily intended for illicit activities. 2. With the measure referred to in paragraph 1, the Authority shall also order the blocking of any other future domain name, subdomain name, or IP address, to whomever they may be traced, including variations of the name or of the simple declination or extension (so-called top level domain), which allows access to the same illegally disseminated content and content of the same nature. 3. In cases of seriousness and urgency, which concern the provision of live broadcast content, first releases of cinematographic and audiovisual works or entertainment programmes, audiovisual content, including sports content, or other similar intellectual works, sporting events and events of social interest or of high public interest within the meaning of Article 33(3) of Legislative Decree No 208 of 8 November 2021, the Authority shall, by means of a precautionary measure adopted with an abbreviated procedure without adversarial proceedings, order service providers, including providers of network access services as well as providers of VPN services and those of publicly available DNS services wherever resident and wherever located, to disable access to illegally disseminated content by blocking domain names and IP addresses within the meaning of paragraphs 1 and 2 of this Article.'.
The orders referred to in Articles 8, 8-bis, 9-bis and 10 of the Regulation constitute orders to act against illegal content within the meaning of Article 9 of the Digital Services Act in so far as they comply with the conditions laid down therein, in particular paragraph 2 thereof. Indeed, it should be noted that all orders issued by the Authority already complied, prior to the entry into force of the DSA, with the conditions set out in Article 9(2), as they were already laid down in Law No 241 of 7 August 1990 on 'New rules on administrative procedure and the right of access to administrative documents'.
3. If so, the Italian authorities are kindly invited to clarify whether the orders and injunctions to be issued pursuant to Articles 8, 8 bis, 9 bis and 10 of Annex B of the notified draft meet the minimum conditions listed under Article 9(2) of the DSA, as well as how the notified draft ensures that the rest of the requirements of Article 9 are met.
As noted above, all orders issued by the Authority, including therefore the orders referred to in Articles 8, 8-bis, 9-bis and 10 of the Regulation, comply with the conditions set out in Article 9(2). This is because the orders adopted by the Authority contain: a reference to the legal basis of the order under Union or national law, the reason why the information constitutes illegal content, by means of a reference to one or more specific provisions of Union law or national law in conformity with Union law, information identifying the issuing authority (i.e. Agcom), clear information enabling the intermediary services provider to identify and locate the illegal content in question, such as one or more exact URLs and, if necessary, additional information, as well as information on the redress mechanisms available to the intermediary services provider and the recipient of the service that provided the content.
Furthermore, the territorial scope of orders issued in the field of copyright protection is limited to what is strictly necessary to achieve its objective. Suffice it to say that orders to disable access to sites issued in respect of mere conduits have effect exclusively on Italian territory.
As regards the language in which orders are transmitted, the Authority adopts its orders in Italian but, in the event of their transmission to providers established in another Member State, Agcom also transmits the courtesy translation in the English, as has recently been the case with the orders issued against Cloudflare Inc. and Microsoft Ireland Operations Limited, which will be discussed below.
Pursuant to the amendments that are the subject of today's notification, the orders adopted by the Authority concerning the protection of copyright will also contain information as to which authority should receive the information relating to the follow-up of the orders.
With reference to the remaining requirements referred to in Article 9, it should be noted that, as is known, Decree-Law No 123 of 15 September 2023 on 'Urgent measures to combat youth distress, educational poverty and juvenile crime, as well as for the safety of minors in the digital field' and, in particular, Article 15 has designated the Authority as the digital services coordinator in implementation of Article 49 of the Digital Services Act and that the office of the digital services coordinator is located within the same Directorate of Agcom responsible for the protection of copyright and related rights,

for which there is no need to transmit the orders in question within the same structure of the Authority.
As regards the transmission of orders to the other digital service coordinators through AGORA, the Authority has already had the opportunity to share with the other DSC two orders recently adopted pursuant to the Regulation and Article 9 of the DSA. In particular, reference is made to Resolutions Nos 49/25/CONS and 50/25/CONS by which the Authority adopted two orders against Cloudflare Inc. and Microsoft Ireland Operations Limited (for the Bing search engine) under the combined provisions of Articles 2 of the Anti-Piracy Law and 9 of the Digital Services Act. In detail, Cloudflare Inc. was ordered to disable the DNS resolution of domain names and the routing of network traffic to the IP addresses reported by the right holders via the Piracy Shield platform (the list of which has been annexed to the provision) or in any case to take the technological and organisational measures necessary to make the illegally disseminated content unavailable to end users and Microsoft to adopt all technical measures necessary to hinder the visibility of illegal content and in any case to ensure the de-indexing from the Bing search engine of all domain names subject to the Authority's blocking orders (the list of which has been annexed to the measure). It is reported that Microsoft has complied with the Authority's order. These orders were uploaded to AGORA on 19 March 2025, together with the follow-up given to the order by Microsoft. Cloudflare Inc., on the other hand, did not reply to the measure, nor to the previous communications sent by the Authority, of which the European Commission is aware.
As part of Working Group 7 – Orders and Criminal Issues of the European Board for Digital Services, the Authority is trying to understand whether it is necessary to transmit to all DSCs also all the orders adopted in the field of copyright protection and, in particular, the so-called domestic orders, i.e. those adopted against mere conduit service providers established in Italy, which constitute the majority of the orders adopted pursuant to the Regulation. If so, the Authority will transmit all orders adopted pursuant to the Regulation to all DSCs via AGORA.
Finally, as regards the requirement set out in paragraph 5, pursuant to which intermediary service providers must inform the recipient of the service in question about the receipt of the order and the follow-up given to it, it should be noted that already with the resolution adopting the Regulation (No 680/13/CONS) the Authority provided that in the event that the measure of disabling access to the website is adopted, the provider must redirect the user to a web page drafted in accordance with the methods identified by the Authority. This redirection page responds precisely to the need to inform the recipient of the service that the site blocking was carried out in execution of an order of the Authority for infringement of copyright and related rights.
In addition, on the occasion of the amendments introduced by Decision No 189/23/CONS, which were also notified to the European Commission concerning the precautionary measure and the implementation of the Piracy Shield platform, the Authority has established that the redirection page also contains a notice of the possibility of lodging a complaint by interested parties, including by means of a link to the Authority's website detailing the relevant procedures.
4. The Italian authorities are kindly invited to clarify the interplay of Article 8(5) of Annex B to the notified draft, which would impose an obligation on the service provider to redirect the recipient of the service, with the maximum harmonization effect of the DSA.
As a preliminary point, it is worth noting that automated redirection to dedicated Internet pages is a useful tool to educate users on the correct use of works disseminated on electronic communications networks. The aim of this instrument is to raise awareness of the legality of the consumption of digital works and to promote awareness of, and access to, services that enable the legal use of digital works protected by copyright.
The provision referred to in Article 8(5) of the Regulation, in addition to being provided for by Resolution No 680/13/CONS, as mentioned above, meets the requirement referred to in Article 9(5) of of the DSA, i.e. the need to inform the recipients of the service where access to a site has been disabled upon the execution of an order of the Authority.
5. The Italian authorities are kindly invited to clarify the interplay between Articles 8, 8-bis, 9-bis and 10 of Annex B of the notified draft and Recital 27 DSA and the Charter, in particular the fundamental right to freedom of expression and information, given the removal of infringing content can also take place at the level of hosting and mere conduit service providers. In particular, the Italian authorities are kindly invited to provide information on the redress mechanisms available to users.
In order to reconcile the different interests involved and taking utmost account of European case-law, in the choice between the abstractly possible measures, the Authority will always give preference, since the adoption of the Regulation, to those that are best suited to achieving the aim pursued by affecting as little as possible the freedom of expression. In this context, the two types of measures provided for by the relevant legislation, namely the removal of illegal information or the disabling of access to it, are identified, in addition to the technical intervention that providers

may implement depending on the service offered, in relation to the characteristics and severity of the infringements established and in application of the criteria of graduality and proportionality.
On the basis of those criteria, the scope of the Authority's powers in the field of copyright on electronic communications networks is, in compliance with the principle of proportionality of the measures in relation to infringements, a graduation of the interventions, which are more selective and directed solely at the content where occasional infringements of copyright occur on the website, while, where the infringement is massive, they are the expression of a more incisive action, while always giving priority to the less restrictive measures among the various measures that can be adopted in the abstract.
As regards the redress mechanisms for users, it should be recalled, first of all, that the Regulation provides that the Directorate must notify the applicant, the service providers identified for that purpose and, where traceable, the uploader and the operators of the page and website of the initiation of the procedure. These parties may submit rebuttal arguments during the proceedings or voluntarily comply with the applicant's request. The institution of spontaneous adjustment responds to the need for swift action to protect copyright online and reflects the Authority's intention to encourage the amicable resolution of disputes in this area, limiting its priority action against sites structurally dedicated to piracy, according to the principles of graduality, proportionality and appropriateness. It should be noted in this regard that the figure of the web page operator does not fall within the scope of the e-Commerce Directive and now of the DSA, but has been provided for by the Regulation because that entity can nevertheless play a useful role in the amicable settlement of the matter, without eliminating the direct liability of that entity for any infringements of online copyright, within the scope of the provisions of the primary legislation on intellectual property. This responsibility, the pursuit of which lies not with Agcom but with the judicial authority, is without prejudice to the administrative action which is only responsible for the application of the instruments made available by the e-Commerce Directive and now by the DSA in the form and within the limits of the responsibilities set out therein.
In this regard, it should also be recalled that, at the time of the approval of Resolution 680/13/CONS, in order to respond to the indications of the European Commission, it was decided to eliminate the request for information addressed to the service providers identified for this purpose and aimed at enabling the identification of the website manager, as this party cannot be the recipient of measures adopted by the Authority for the purposes of protecting copyright.
In the event of measures taken without any other party, these are first and foremost notified to the service providers identified for that purpose, as the sole recipients of the order by the Authority and, if it is possible to identify site managers and uploaders, also to the latter, as a further guarantee of participation and with a view to taking action to bring the infringement to an end (if this is the case, the Authority shall revoke the precautionary measure and close the application administratively), as well as for the purposes of a possible complaint. Without prejudice to the fact that the Regulation is not addressed to end-users, end-users may lodge a complaint against interim decisions of the Authority.
If a complaint is lodged, the Directorate shall initiate proceedings, during which rebuttal arguments may be submitted. The collegiate body is expected to decide on the claim within ten days of the date on which it was submitted.
Finally, it should be noted that, like all decisions of the Authority, copyright decisions can also be challenged before the Lazio Regional Administrative Court.
6. The Italian authorities are kindly invited to provide more information as regards the interplay between Articles 8, 8-bis, 9-bis and 10 of Annex B of the notified draft and Article 8 of the DSA, in particular as regards preventive measures.
As mentioned above, the nature of the implementation measures for orders to cease infringement issued by the Authority against service providers is likely to change in relation to the characteristics and seriousness of the infringements established and in application of the criteria of graduality, proportionality and appropriateness. In support of the intervention measures identified by the Regulation, namely the selective removal of content and the disabling of access to the site, it should be noted that the European framework provides the same range of options. Without prejudice to the prohibition on establishing general monitoring obligations, in fact, in order to benefit from the exemption from liability, the service provider must act immediately to remove or disable access to illegal information, as soon as it is actually aware that the activity or information is illegal, safeguarding the proportionality of the injunctions with regard to the seriousness of the infringements and ensuring, at the same time, compliance with the principle of freedom of expression and the procedures established for that purpose at national level. In compliance with the provisions of Article 8 DSA, already contained in Directive 2000/31/EC, the Regulation does not lay down any general monitoring obligation on intermediary service providers, which are required to implement the measures identified by the Authority only and exclusively after the adoption of an order, including a precautionary one.
In this regard, it should be noted that the Regulation indicates the type of intervention, leaving it to service providers to

identify the technical methods for implementing it. This not only complies with the CJEU's ruling in Case C-314/12 UPC Telekabel, but also responds to the European Commission's finding in the context of the first notification procedure of the Regulation regarding the need to avoid generic orders that could conflict with the prohibition of general monitoring obligations. In this regard, it should be noted that, following discussions with service providers, the Authority shared operational guidelines with network access providers concerning the execution of orders adopted in the field of copyright protection. Those guidelines shall identify the measures, in addition to the technical intervention that providers may implement depending on the service offered, in relation to the characteristics and seriousness of the infringements established and in accordance with the criteria of graduality and proportionality.
Also with reference to orders issued for infringements relating to live events, the same rules governing the liability regime of intermediary service providers, also referred to by the European Commission in the aforementioned Recommendation, shall apply. The Recommendation, in fact, encourages Member States to provide for orders that may consist of blocking access to unauthorised retransmissions of live sports events against providers of intermediary services whose services are used for these purposes, 'regardless of the lack of responsibility of the intermediary', for the purpose of ending or preventing such retransmissions.
That being said, the notified provision clarifies that Articles 4, 5 and 6 of the DSA Regulation, on the basis of the definition of 'intermediary service' in Article 3 of the same Regulation, define, respectively, the services of 'mere conduit', 'caching' and 'hosting' without making significant changes to the previous definitions. Moreover, Article 8 confirms the exemption of liability for the same subjects, understood as the absence of general obligations to monitor or establish facts actively. the execution of the precautionary injunction, therefore, does not impose on the service provider an obligation to monitor nor a general obligation to actively seek facts or circumstances indicating the presence of illegal activities: it therefore takes place in compliance with the guaranteed regime of exemptions therefrom.
In fact, this procedure, in addition to allowing for the issuance of a measure that immediately inhibits infringements already committed through the sites, allows the prevention of subsequent and further unlawful conduct, since the electronic addresses subsequently identified convey content equivalent to those already subject to an injunction, without the provider being burdened by any surveillance burden.
7. The Italian authorities are kindly invited to provide their views on how the notified draft takes into account Article 4(3) DSA in combination with Article 9(1) DSA.
As mentioned above, the Regulation was adopted in implementation of Legislative Decree No 70 of 9 April 2003 (e-Commerce Decree) transposing Directive 2000/31/EC (e-Commerce Directive, now amended by the Digital Services Act). In particular, Articles 4, 5 and 6 of the DSA (as provided for in Articles 14, 15 and 16 of the aforementioned e-Commerce Decree, now repealed by Legislative Decree No 50 of 25 March 2024), provide that a judicial or administrative authority with supervisory functions may require that, in the exercise of its activities as defined therein, the provider prevents or puts an end to the infringements committed, by removing unlawful information or disabling access to it. Furthermore, according to Article 5 of the aforementioned Decree No 70/2003, 'The free movement of a given information society service originating in another Member State may be restricted by decision of the judicial authority or supervisory administrative bodies or independent authorities in the sector, for reasons of [...] detection and prosecution of criminal offences [...]'. Without prejudice, therefore, to the prohibition of imposing general monitoring obligations on service providers, in order to benefit from the exemption from liability provided for by the relevant legislation, they must act immediately to remove the information (in the case of hosting) or to disable access to it (in the case of mere conduit) as soon as they are informed or become aware of the illegal activities, in safeguarding the proportionality of the injunctions with regard to the seriousness of the infringements.
In the same sense, the Regulation provides that once an order has been received by the Authority, the provider of mere conduit services shall disable access to the site disseminating works that infringe copyright and related rights.
The notified draft therefore implements from its first draft the provisions of Article 12 of Directive 2000/31/EC, now re-proposed by Article 4(3) DSA. In addition, with the amendments that are the subject of this notification, providers of intermediary services, upon receipt of the order, are expected to inform the Authority of the follow-up given to the order, as provided for in Article 9(1) of the DSA.
It should be recalled that during the 11 years of application of the Regulation, mere conduit intermediary service providers have traditionally always informed the Authority of the follow-up given to orders issued in the field of copyright protection, although they are not obliged to do so to date.
8. The Italian authorities are kindly invited to explain to what extent and how AGCOM verifies the assessment and documentation submitted by the authorised entities under Article 10(4) of Annex B of the notified draft, concerning the

reported domain names and IP addresses which are reported as predominantly intended to infringe copyright or related rights. In particular, clarification is sought on the nature of the verifications to be carried out by AGCOM under Article 10(5) of Annex B of the notified draft, including whether personal data are processed, and on how the process works in practice, in relation to the automated functioning of the Piracy Shield platform.
As a preliminary point, it should be noted that the provisions of Article 10(4) and (5) of Annex B to the notified draft were already notified to the European Commission in 2023 (see notification procedure No 2023/0123/I) as provided for in Article 9-bis(4-quinquies) and (4-sexies) of the Regulation annexed to Decision No 189/23/CONS.
In view of the above, it should be noted that the aforementioned paragraphs 4 and 5 of Article 10 implement the provisions of Article 2 of the Anti-Piracy Law, which provides that right holders shall submit, under their own responsibility, a request to the Authority to immediately block the DNS resolution of domain names and the routing of network traffic to IP addresses, of additional DNS or IP addresses compared to those previously indicated in the first instance, through which infringements similar to those already considered to exist by the Authority in a precautionary measure occur. In implementation of this provision, the Authority provided, in Article 10(4), that the authorised individual is required to provide, for each IP address and domain name reported, documentary evidence of the relevance of the illicit conduct, and that the domain names and IP addresses reported are mainly intended for the infringement of copyright or related rights in the audiovisual content broadcast live.
In this regard, it is noted that the Authority specified, in the Addendum annexed to the Operating Manual of the Piracy Shield Platform drawn up as part of the technical panel work established pursuant to Article 6 of the Anti-Piracy Law and available to all subjects accredited to the platform, that those reporting, upon accreditation to the platform, are required to provide a technical report containing the description of the methodology of gathering the evidence, as well as the methodology used to gather evidence on the unequivocally unlawful nature of the technical data requested to be blocked (FQDN and IP addresses), which is used in reference to subsequent reports, made via the Piracy Shield platform.
Also following the work of the technical panel, the Authority clarified that the prevalence requirement must be interpreted in the light of the criteria of proportionality and reasonableness, assessing its existence on a case-by-case basis. Those reporting are required to exercise the utmost diligence and rigour in submitting blocking requests and gathering the relevant evidence and to consult the Authority’s offices in advance if they find doubtful cases with reference to the prevalence of illegal activities attributable to domain names and IP addresses that they intend to report via the Piracy Shield platform. It was also pointed out that those reporting are in any case required not to report resources on which there is no certainty of their overriding illegal nature or resources for which it was not possible to carry out all technical analyses aimed at excluding legitimate resource blocks, as well as resources that present a high risk of overblocking, such as, by way of example, content delivery networks, reverse proxies, VPN services, cloud storage services, and similar.
It is also clarified that the technical specifications of the platform, shared with all stakeholders within the technical panel and validated by the National Cybersecurity Agency, provide for mechanisms that minimise the possibility of error in reporting and the consequent blocking of sites that broadcast live events in violation of copyright and related rights. In addition to the uploading of forensic evidence by right holders attesting the current nature of the illicit conduct, in fact, the Piracy Shield platform uploads whitelists of resources that cannot be blocked, such as institutional sites or network resources of operators. The platform processes reports and verifies that they comply with the requirements and conditions set out in the Regulation, automatically validating them if they do so and subsequently making the technical data (FQDN, IP addresses) intended for blocking available to the ISPs. Therefore, the Piracy Shield platform is capable of automatically assessing the compliance and completeness of the alerts in light of the strict requirements laid down by the Regulation and the technical documentation made available to those reporting.
However, if the data is uploaded incorrectly, the data is not processed and an error is reported immediately in the reporter interface. Furthermore, the reporter can withdraw a report made in error within the following 24 hours.
The Authority, on the other hand, intervenes with a substantive assessment of the proportionality and appropriateness of the measure in the event of a complaint that may be lodged, within five days of blocking and/or ordering, by any person with a qualified interest. In the event of a complaint, the Authority shall initiate a procedure in which all interested parties may submit rebuttal arguments. In this case, following the outcome of the investigation carried out, the Authority may confirm or withdraw the previously implemented measure.
In addition, we would point out that the Authority has made available on its website a search engine that makes it possible to verify whether a given IP address has been blocked through Piracy Shield, thus ensuring compliance with the principle of transparency of administrative action.

With regard to the processing of personal data, it should first be noted that Agcom is the competent authority to protect online copyright pursuant to the law establishing it and the law on copyright and, in this capacity, it has regulated the procedures referred to in the Regulation subject to notification to execute the dynamic injunctions provided for by the Anti-Piracy Law and the aforementioned Recommendation of the European Commission. That being said, in light of recital 30 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), the IP address is personal data to the extent that it allows, even indirectly, the identification of a natural person. The terms limits within which a given IP address can be considered personal data have been clarified by the Court of Justice of the European Union with the ruling in Case C 582/14, which predates the GDPR but is still applicable. In particular, the CJEU has specified that there is processing in so far as the administration that processes the IP address may have access to other information, including from third parties which, combined with the IP address at its disposal, enable it to identify a natural person. In any case, in the course of the checks carried out by the Authority on the IP addresses subject to reporting, no processing of personal data is carried out insofar as the Authority does not identify (and has no interest in doing so in relation to the functions carried out) the natural persons who own the computer from which a website is consulted, nor those who could use that computer.
9. The Italian authorities are kindly invited to clarify the relevant parties that can make use of the Piracy Shield platform and on what criteria access is granted to them.
Currently, the Piracy Shield platform can be used by right holders of audiovisual works relating to live sports events and similar.
Decision No 47/25/CONS, which is the subject of the notification, aims to extend the subjective scope of intervention to all right holders of live broadcast content, first releases of cinematographic and audiovisual works or entertainment programmes, audiovisual content, including sports content, or other similar intellectual works, sports events as well as events of social interest or of great public interest within the meaning of Article 33(3) of Legislative Decree No 208 of 8 November 2021, as provided for by the Anti-Piracy Law, who will be entitled to submit an application to the Authority for infringements concerning live broadcast audiovisual content and, consequently, to register on the Piracy Shield platform.
The recipients of blocking communications, on the other hand, are mere conduit service providers as well as those identified by Article 2 of the Anti-Piracy Law, i.e. ‘providers of network access services, including providers of publicly available VPN and DNS services, wherever resident and wherever located, search engine operators and information society service providers involved in any way in the accessibility of the illegal website or services’. In this regard, Resolution No 47/25/CONS clarifies that, where the conditions are met, communications relating to infringements — referred to in Article 10 of the Regulation under consultation — are also sent via the Piracy Shield platform to the addresses of contact points and legal representatives indicated by information society service providers not established in Italy pursuant to Articles 11 and 13 of the DSA, thus ensuring the transmission of communications also to those providers that, although subject to the legal obligation, are not accredited to the Piracy Shield platform.
The preparatory phase for access to the platform provides, in fact, for an accreditation procedure, both by the those reporting and by the service providers (ISPs and the other subjects identified by law), following which it is possible to obtain the credentials for access to the platform itself.
Accreditation is allowed both with personal SPID and with CIE, CNS and eIDAS. The data must be entered on an ad hoc platform called APS — Piracy Shield Accreditation (accessible on the website https://aps.agcom.it/aps/login.htm). The individual to be accredited will be the legal representative of the company who will have the opportunity to delegate a trusted individual for the formal accreditation procedures. The form to be filled out during the accreditation phase includes a space dedicated to the contacts of a contact person authorised to operate on the Piracy Shield platform and to interface with Agcom. ISPs are also required to indicate in the form the MIMIT (Ministry of Enterprise and Made in Italy) authorisation number and the registration number in the RCO (Register of Communication Operators). Following the accreditation phase, which will be validated by the Authority, credentials will be issued to access the platform. For the purposes of validation, the Authority shall examine the documentation produced by the applicant, both with regard to right holders and with regard to ISPs. Access to the platform requires each person reporting and ISP/information society service provider to set up a site-to-site VPN connection to reach the Piracy Shield platform.
10. The Italian authorities are kindly invited to explain the reason for the six-month timeframe applicable before the release of blocked IP addresses, as provided for in Article 10(11) of Annex B of the notified draft.
The six-month period is provided for by the new paragraph 7-bis of Article 2 of the Anti-Piracy Law, introduced by the

Omnibus Decree, which provides that 'The Authority, in order to ensure the most efficient start of the operation of the platform and the effective execution of inhibition orders, sets, limited to the first year of operation of the platform, maximum quantitative limits of IP addresses and of Fully Qualified Domain Name (FQDN) which may be blocked at the same time. After the first year of operation of the platform, no quantitative limit shall be permitted. The Authority, in order to ensure the proper functioning of the process of obscuring FQDNs and IP addresses, on the basis of reaching the maximum capacity of the blocking systems implemented by Internet Service Providers (ISPs) according to the technical specifications already defined or also on the basis of reporting the subjects referred to in paragraph 4, orders to rehabilitate the DNS resolution of domain names and to unblock the routing of network traffic to IP addresses blocked for at least six months, by publishing the updated list of IP addresses and DNS domain names on the single technological platform with automated operation, referred to in Article 6(2)'.
In this regard, it should be recalled that, in the context of notification procedure No 2023/0123/I, the Commission asked the Authority to clarify whether the injunction was limited in time due to the duration of the sporting event that it was intended to protect. This is because the first draft of Article 9-bis (4-quater) provided that the addressees of the measure had to disable access to all the other websites/electronic addresses through which infringements subsequent to the precautionary order took place, with a block limited to the transmission time of the sporting event concerned. However, as also clarified in the replies sent to the Commission, during the public consultation, most respondents expressed doubts about the aforementioned provision for several reasons. Firstly, it has been emphasised that such provision could constitute a step backwards from the blocking ordered by the Judicial Authority, which is permanent. In addition, the temporary nature of the blocking could create operational problems, making the management of alerts for holders and blocking for ISPs much more complex. Finally, in light of the proven illegality of the sites subject to disabling, which is set out as a prerequisite for blocking in paragraph 4-quinquies of Article 9-bis, this provision would be unjustified and would risk making the measure adopted ineffective. The Authority therefore communicated to the Commission that it would evaluate the elimination of this provision,it is considering eliminating this provision, in order to make permanent the disabling of access to the sites, via which copyright and related infringements occur, including in light of the possibility of appeal, provided for in paragraph 5 of Article 9-bis, for the recipients of the order. In the final text annexed to Decision No 189/23/CONS (sent to the Commission at the end of the notification procedure), in fact, the temporary nature of the block was not confirmed, also in light of the provisions of Law No 93/2023, which did not provide for a temporary block.
On this point, it should be noted that certain service providers, already in 2022 during the consultation, brought up the need for blocked IP addresses, after a certain period of time, to be unblocked when reallocated to lawful uses. In this regard, it should be noted that the Authority, in the context of the technical panel established under the Anti-Piracy Law, accepted the maximum limits relating to the resources to be blocked as requested by the ISPs on the basis of technical reasons represented by them on several occasions. With particular reference to the FQDNs, the maximum size set by the ISPs was reached in the first six months of operation of the platform and the compromise of the effectiveness of the Piracy Shield platform was avoided by unlocking, at the request of those reporting, resources that were no longer active.
In light of the above, in the amendments made by the Omnibus Decree to the Anti-Piracy Law, the legislator considered that it could provide for a mechanism to unblock resources, not only at the request of the reporters but also on behalf of the Authority, after a period of time considered sufficient to prevent piracy organisations from perpetrating the offence. The release of obscured resources will therefore take place after the end of the six-month period and in relation to the capacity of the platform, based on the exceeding of the limits imposed by the ISPs, which must be extended according to a step-by-step path defined within the technical panel.

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