

[IT] Public consultation launched on AGCOM regulation on promotion of European audiovisual works

IRIS 2018-7:1/23

*Ernesto Apa & Marco Bassini
Portolano Cavallo & Bocconi University*

On 9 May 2018, by resolution no. 184/18/CONS, the Italian Communication Authority (AGCOM) launched a public consultation on the draft regulation governing the promotion of European audiovisual works and works of producers that are independent of broadcasters (so called “independent producers”). The draft regulation was adopted in accordance with the delegation of legislative powers provided by Article 44-quinquies of Legislative Decree no. 177 of 31 July 2005 (“TUSMAR”), introduced by the recently approved Legislative Decree no. 204 of 7 December 2017 as part of the “Franceschini Reform” (see IRIS 2018-2/24).

The draft regulation sets out, first of all, a definition of “European independent producers”. In order for a producer to fall within this scope, two requirements have to be met: (i) the exercise of audiovisual production, and (ii) the lack of any relationship (including control or affiliation) with audiovisual media service providers subject to Italian jurisdiction. Furthermore, one of the following conditions must be fulfilled: (i) no more than 90% of the production may be allocated to the same provider of audiovisual media services, or (ii) the producer must be a secondary rights holder. The 90% threshold is calculated according to the overall amount of the revenues obtained by the producer as remuneration for the services offered to audiovisual media service providers.

Article 4 and Article 5 respectively regulate the content quotas and investments quotas applicable to broadcasters. As regards content quotas, Article 4 reflects the content of Article 44-bis of TUSMAR: on the one hand, it provides a gradual increase of the relevant quotas (53% for 2019, 56% for 2020, and 60% from 2021); on the other hand, it establishes a sub-quota in respect of Italian original works, corresponding to 1/2 of the transmission time established in respect of the public service broadcaster and 1/3 of the transmission time established in respect of private broadcasters from 2019 onwards. In addition to the above, national broadcasters shall reserve, on a weekly basis, 6% of “prime time” to cinema, fiction, animation and/or original documentaries of Italian original expression, regardless of where they were produced. The percentage is raised to 12% for the public service broadcaster. “Prime time” is defined as the timeframe encompassing programmes starting or finishing between 18h and 23h.

With respect to investment quotas, Article 5 of the draft regulation confirms that 10% of annual net revenues has been reserved by commercial broadcasters for the pre-purchase, purchase or production of EU works for 2018; that threshold is increased to 12.5% for 2019 (10.4% of which for independent producers) and of 15% from 2020 onwards (12.5% of which for independent producers). Moreover, broadcasters are required to reserve for the pre-purchase, purchase or production of cinematographic works of Italian original expression (regardless of where they were produced) by independent producers a percentage of 3.2% of annual net revenues; that figure is increased to 3.5% for 2019, to 4% for 2020 and to 4.5% from 2021 onwards.

Article 6 regulates on-demand service providers. The draft regulation confirms that a quota amounting to 30% of the catalogue has to be reserved for EU recent works and a sub-quota of 50% of the same for content of Italian original expression (regardless of where it was produced).

An investment quota of 20% of annual net revenues in Italy has to be reserved for EU works of independent producers, particularly recent ones (i.e. released in the last five years), while a sub-quota of not less than half of that percentage is provided for works of Italian original expression (regardless of where it was produced). In accordance with the recently enacted legislation, the draft regulation also specifies that from January 2019 the said quota shall be binding on providers that have editorial responsibility for output targeting Italian consumers, even if such providers are based abroad.

Broadcasters and on-demand service providers are entitled to obtain derogations from the obligations noted above if special conditions are met (e.g. they did not make any profit in the last two years through the relevant audiovisual media services).

Consultazione pubblica sullo schema di regolamento in materia di obblighi di programmazione e investimento a favore di opere europee e di opere di produttori indipendenti

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Regulation governing the promotion of European audiovisual works and works of independent producers - Delibera n. 184/18/CONS, 11 April 2018 (published 9 May 2018)

