

[IT] AGCOM adopts a regulation on video-sharing platforms

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The Italian Communications Authority (AGCOM), with Resolution No. 298/23/CONS of 22 November 2023, has adopted, following the public consultation initiated with Resolution No. 76/23/CONS (see IRIS 2023-5:1/5), a regulation that establishes rules aimed at protecting minors and consumers from harmful content disseminated on digital video-sharing platforms (VSPs).

The regulation, which will come into effect on 8 January 2024, defines the procedures through which AGCOM can restrict the circulation of content intended for the Italian public, issuing an order to the hosting platforms requiring them to remove one or more videos, even if these platforms are established in another member state.

In order to determine whether a programme, user-generated video, or audiovisual commercial communication disseminated by a provider established in another member state is directed at the Italian public, at least one of the following criteria must be satisfied: (1) predominant use of the Italian language, (2) reaching a significant average number of unique monthly users in the Italian territory, and/or (3) the VSP achieving revenues in Italy, even if accounted for in the financial statements of companies based abroad.

The regulation, in line with Article 3, paragraphs 4 and 5 of the E-Commerce Directive (2000/31/EC), has established two different intervention methods.

In particular, the first scenario stipulates that AGCOM, either on its own initiative or upon user notification, after ascertaining the presence of one or more videos intended for the Italian public on a VSP that (1) may harm the physical, psychological, or moral development of minors, (2) may incite racial, sexual, religious, or ethnic hatred, or offend human dignity, or (3) do not adequately protect consumers, informs the competent national authority of the member state in which the platform is established or considered. This communication occurs by activating the relevant cooperation procedures between member states through the Internal Market Information system (as per EU Regulation No. 1024/2012), also utilising the relevant indications provided by the Memorandum of Understanding of the ERGA. In this case, the competent authority has seven days to intervene. In cases where there is no action by the member state within the

seven-day period or if no communication is received from the competent national authority within the specified cooperation procedures, or if the action taken appears inadequate, AGCOM may issue the order directly to the platform.

The second intervention method is immediate and direct, applying to cases where AGCOM observes that one or more videos intended for the Italian public contain content that could lead to a situation of urgency due to the risk of serious, imminent, and irreparable harm to users' rights due to the disseminated content. In such cases, AGCOM can immediately issue the order to inhibit access to said content to the platform, which must comply within three days. Any measures taken are promptly communicated, within no more than three days from the notification, to the European Commission and the competent administrative authority in the member state where the provider is established or considered to be established, along with the reasons for the urgency and to all Digital Service Coordinators under Article 9, paragraph 4, of the DSA.

Delibera n. 298/23/CONS "Regolamento recante attuazione dell'art. 41, comma 9, del decreto legislativo 8 novembre 2021, n. 208 in materia di programmi, video generati dagli utenti ovvero comunicazioni commerciali audiovisive diretti al pubblico italiano e veicolati da una piattaforma per la condivisione di video il cui fornitore è stabilito in un altro stato membro"

https://www.agcom.it/documentazione/documento?p_p_auth=fLw7zRht&p_p_id=101_INSTANCE_FnOw5IVOIXoE&p_p_lifecycle=0&p_p_col_id=column-1&p_p_col_count=1&101_INSTANCE_FnOw5IVOIXoE_struts_action=%2Fasset_publisher%2Fview_content&101_INSTANCE_FnOw5IVOIXoE_assetEntryId=32597765&101_INSTANCE_FnOw5IVOIXoE_type=document

Resolution No. 298/23/CONS "Regulation implementing Article 41(9) of Legislative Decree No. 208 of 8 November 2021 concerning programmes, user-generated videos or audiovisual commercial communications directed at the Italian public and conveyed by a video-sharing platform whose provider is established in another Member State".

