



4.17. IT – Italy – National legal summary³⁴¹

4.17.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- Decreto Legislativo n. 208/2021 “Attuazione della direttiva (UE) 2018/1808 del Parlamento europeo e del Consiglio, del 14 novembre 2018, recante modifica della direttiva 2010/13/UE, relativa al coordinamento di determinate disposizioni legislative, regolamentari e amministrative degli Stati membri, concernente il testo unico per la fornitura di servizi di media audiovisivi in considerazione dell'evoluzione delle realtà del mercato”.³⁴² (Legislative Decree No. 208/2021 “Implementation of 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 single text for the provision of audiovisual media services, taking account of changing market realities” – AVMS Code).
- *Decreto Legislativo n. 206/2005 “Codice del consumo, a norma dell'articolo 7 della legge 29 luglio 2003, n. 229”*³⁴³ (Legislative Decree No. 206/2005 – “Consumer Code, pursuant to article 7 of Law no. 229 of 29 July 2003” – Consumer Code).
- Decreto Legislativo n. 145/2007 “Attuazione dell'articolo 14 della direttiva 2005/29/CE che modifica la direttiva 84/450/CEE sulla pubblicità ingannevole”³⁴⁴ (Legislative Decree No. 145/2007 “Implementation of Article 14 of Directive 2005/29/EC amending Directive 84/450/EEC on misleading advertising” - Law on misleading advertising).
- Legge n. 125/2001 “Legge quadro in materia di alcol e di problemi alcolcorrelati”³⁴⁵ (Law No. 125/2001 “Law on alcohol and alcohol-related problems”).
- *Decreto Legge n. 87/2018 “Disposizioni urgenti per la dignità dei lavoratori e delle imprese”*³⁴⁶ (Law Decree No. 87/2018 “Urgent measures for the dignity of workers and companies” - Law on dignity of workers and companies).
- Legge n. 249/1997 “Istituzione dell'Autorità per le garanzie nelle comunicazioni e norme sui sistemi delle telecomunicazioni e radiotelevisivo”³⁴⁷ (Law No. 249/1997:

³⁴¹ The factsheet on Italy incorporates feedback received from Francesco Di Giorgi, Digital Services Directorate, AGCOM (*Autorità per le garanzie nelle comunicazioni*), during the checking round with the national regulatory authorities.

³⁴² <https://www.gazzettaufficiale.it/eli/id/2021/12/10/21G00231/sg>.

³⁴³ <https://www.gazzettaufficiale.it/eli/id/2005/10/08/005G0232/sg>.

³⁴⁴ <https://www.gazzettaufficiale.it/eli/id/2007/09/06/007G0160/sg>.

³⁴⁵ <https://www.gazzettaufficiale.it/eli/id/2001/04/18/001G0181/sg>.

³⁴⁶ <https://www.gazzettaufficiale.it/eli/id/2018/07/13/18G00112/sg>.

³⁴⁷ <https://www.gazzettaufficiale.it/eli/id/1997/08/25/097A6686/sg>.



“Establishment of the Italian Communications Authority and rules on telecommunications and radio”).

Secondary legislation:

- *Decreto Ministeriale n. 581/1993 “Regolamento sulle sponsorizzazioni di programmi radiotelevisivi e offerte al pubblico”*³⁴⁸ (Ministerial Decree No. 581/1993 “Regulation on sponsorship of radio-television programs and offerings to the public” - Regulation on sponsorship of radio-television programmes).
- Agcom, All. A, Delibera n. 132/19/CONS recante “Linee guida sulle modalità attuative dell’art. 9 del Decreto Legge 12 luglio 2018, n. 87, recante ‘disposizioni urgenti per la dignità dei lavoratori e delle imprese’, convertito con modificazioni dalla Legge 9 agosto 2018, n. 96”³⁴⁹ (Agcom, Annex A, Resolution No. 132/19/CONS “Guidelines on the implementation measures of art. 9 of Law Decree No. 87 of 12 July 2018 ‘Urgent measures for the dignity of workers and companies’, as converted with amendments by Law No. 96 of 9 August 2018”).

Self and co-regulatory instruments:

- *Codice di Autodisciplina della Comunicazione Commerciale, 68° edizione*³⁵⁰ (Self-regulatory Code on Commercial Communication, 68th edition³⁵¹ - IAP Code).
- Regolamento Digital Chart sulla riconoscibilità della comunicazione commerciale diffusa attraverso internet³⁵² (Digital Chart Regulation on the identifiability of commercial communications disseminated online³⁵³).
- Regolamento sulla pubblicità comportamentale online³⁵⁴ (Regulation on Online Behavioural Advertising).

4.17.2. Definitions and restrictions regarding commercial communications

This section aims at identifying the relevant definitions related to commercial communications stemming from related laws, rules and current practices, as well as ongoing reforms under the transposition and implementation of the revised Audiovisual Media Services Directive (AVMSD). Please note that this review includes definitions which

³⁴⁸ <https://www.gazzettaufficiale.it/eli/id/1994/01/12/094G0011/sg>.

³⁴⁹ <https://www.agcom.it/documents/10179/14467561/Allegato+26-4-2019/7e8dd234-9b83-4e2a-bc5a-f912bc6cdfa2?version=1.0>.

³⁵⁰ Self-Regulatory Code for Commercial Communications of the self-regulatory body Istituto dell’Autodisciplina Pubblicitaria (IAP) <https://www.iap.it/>, available at: <https://www.iap.it/codice-e-altre-fonti/il-codice/>. Further details on IAP are provided in section 4.17.7.1.5 of this factsheet.

³⁵¹ <https://www.iap.it/about/the-code/?lang=en>.

³⁵² <https://www.iap.it/wp-content/uploads/2020/06/Regolamento-Digital-Chart.pdf>.

³⁵³ <https://www.iap.it/wp-content/uploads/2020/06/Digital-Chart-Regulations.pdf>.

³⁵⁴ <https://www.iap.it/wp-content/uploads/2015/11/All-3-Regolamento-OBA.pdf>.



are part of the revised AVMSD, inclusive of audiovisual commercial communications, advertising, surreptitious commercial communications, sponsorship and product placement, but also the definitions of supplementary and/or related concepts, such as the advertiser, sponsor and sponsored content, as well as misleading commercial communication, for the purpose of providing a comprehensive overview.

4.17.2.1. Definitions

Table 43. Definition of the main concepts related to commercial communications

Concept	Existence of a definition
Audiovisual commercial communications	Yes.
Television advertising	Yes.
Advertiser	No.
Surreptitious commercial communication	Yes.
Misleading commercial communication	Yes.
Virtual advertising	No.
Sponsorship	Yes.
Sponsor	Yes.
Sponsored content	No.
Product placement	Yes.
Other: (Specify)	Online behavioural advertising.

Source: Italian response to European Audiovisual Observatory standardised survey

4.17.2.1.1. Audiovisual commercial communications

Article 3 paragraph 1 letter oo) of the AVMS Code defines audiovisual commercial communications by transposing the text of the revised AVMSD verbatim as follow:

Audiovisual commercial communication: images, with or without sound, which are designed to promote, directly or indirectly, the goods, services, or image of a natural or legal person pursuing an economic activity and including, inter alia, television advertising, sponsorship, telepromotion, teleshopping, and product placement, included in or accompanying a programme or user-generated video in return for payment or for similar consideration or for self-promotional purposes.

4.17.2.1.2. Television advertising

Article 3 paragraph 1 letter pp) of the AVMS Code defines television advertising by transposing the text of the revised AVMSD verbatim as follows:



Television advertising: any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment.

4.17.2.1.3. Advertiser

There is no definition of advertiser.

4.17.2.1.4. Surreptitious commercial communication

Article 3 paragraph 1 letter rr) of the AVMS Code defines surreptitious commercial communications³⁵⁵ as follows:

Surreptitious commercial communication means the representation in words or pictures of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the media service provider to serve as advertising and might mislead the public as to its nature.

4.17.2.1.5. Misleading commercial communication

Article 18, paragraph 1, letter d) of the Consumer Code defines commercial practice as any act, omission, course of conduct or representation, or commercial communication, including advertising and marketing, by a trader that is directly connected with the promotion, sale or supply by that trader of a product to consumers. In this respect, Article 21 paragraph 1 of the Consumer Code considers a commercial practice misleading if it contains information which is not true or which, although factually correct, deceives or is likely to deceive the average consumer in respect of particular matters (e.g., the nature of the products, their main characteristics, their price, etc.) and, in any event, if it causes or is likely to cause the consumer to take a transactional decision which he or she would not otherwise have taken. This applies to business-to-consumer relationships.

Moreover, a definition of misleading advertising is found under Article 2, paragraph 1, letter b) of the Law on misleading advertising which states the following:

Misleading advertising: any advertising that in any way, including overall presentation, deceives or is likely to deceive the natural or legal persons to whom it is addressed or whom it reaches and which, because of its misleading character, may prejudice their economic behaviour or which, for this reason, is likely to harm a competitor.

This also applies to business-to-consumer relationships.

³⁵⁵ Further details are provided in section 4.17.2.1.11. of this factsheet.



A similar definition of misleading commercial communication is established under Article 2 of the IAP Code:

Any statement or representation that is likely to mislead consumers, including through omissions, ambiguities or exaggerations that are not obviously hyperbolic, particularly regarding the characteristics and effects of the product, price, free offers, conditions of sale, distribution, the identity of the depicted persons, prizes or awards.

According to this Article, commercial communications must not be misleading.

4.17.2.1.6. Virtual advertising

There is no definition of virtual advertising.

4.17.2.1.7. Sponsorship

Article 3 paragraph 1 letter ss) of the AVMS Code defines sponsorship by transposing the text of the revised AVMSD verbatim as follows:

Sponsorship: any contribution made by public or private undertakings or natural persons not engaged in providing audiovisual media services or video-sharing platform services or in producing audiovisual works to the financing of audiovisual media services, video-sharing platform services, user-generated videos or programmes with a view to promoting their name, trademark, image, activities or products.

4.17.2.1.8. Sponsor

Article 2, paragraph 2 of the Regulation on sponsorship of radio-television programs defines a sponsor as: "any given subject who has sponsored the radio or television program".

4.17.2.1.9. Sponsored content

There is no definition of sponsored content.

4.17.2.1.10. Product placement

Article 3 paragraph 1 letter uu) of the AVMS Code defines product placement as follows:

Any form of audiovisual commercial communication consisting of the inclusion of, or reference to, a product, a service, or the trademark thereof so that it is featured within a programme or a user-generated video in return for payment or for similar consideration.



4.17.2.1.11. Other definitions

As part of its mission to control online behavioural advertising, the IAP defines this type of advertising as:

The collection of data on the online browsing activities of a given device, over time and on different websites, which are not under the direct or indirect control of the subject undertaking such data collection activity, carried out with the aim of identifying segments of interest in order to send online advertising to that terminal/device in accordance with the interests manifested through the web.

4.17.2.2. Restrictions regarding commercial communications

The revised AVMSD introduces obligations for video-sharing platforms (VSPs) to, *inter alia*, respect certain requirements regarding commercial communications and this section aims at updating the information relative to these obligations and measures imposed under national legislation on media service providers, including VSP providers related to commercial communications.

As a general remark, it should be noted that according to Article 42 paragraph 2 of the AVMS Code, VSPs subject to Italian jurisdiction must comply with the provisions of Article 43 of the said Code, which contains general requirements regarding commercial communications: "The providers of VSPs subject to Italian jurisdiction are required to comply with the requirements of Article 43."

The AVMS Code attributes to the Italian Communications Authority Agcom³⁵⁶ the power to ensure that:

the suppliers of platforms for sharing videos adopt adequate measures to comply with the requirements of article 43 in relation to audiovisual commercial communications not commercially promoted, sold or organised by them.

This provision, although not explicitly specified in the law, should apply to audiovisual commercial communications marketed, sold or arranged by VSPs. Further details regarding the specific restrictions stemming from Article 43 of the AVMS Code are presented below in this section.

It should also be pointed out that Article 43 of the AVMS Code lays the ground for the establishment of self- and co-regulation with regard to, *inter alia*, adoption and implementation of codes of conduct concerning audiovisual commercial communications relating to alcoholic beverages and inappropriate audiovisual commercial communications for children, food products including supplements, or beverages containing nutrients and substances with a nutritional or physiological effect, in particular those such as fat, trans-fatty acids, sugar, sodium or salt, excessive intakes of which in the general diet are not recommended.

³⁵⁶ Autorità per le Garanzie nelle Comunicazioni <https://www.agcom.it/>.



4.17.2.2.1. Audiovisual commercial communications for alcoholic beverages and tobacco and tobacco-related products, including electronic cigarettes and refill containers

Article 43 paragraph 1 letter d) of the AVMS Code prescribes a general ban on audiovisual commercial communications for cigarettes and other tobacco and nicotine products, including electronic cigarettes and refill containers, and even for communications with indirect references or elements that characterise tobacco products or companies whose main activity consists in the production or sale of such products. With regard to alcoholic beverages, Article 43 paragraph 1 letter e) of the AVMS Code requires that audiovisual commercial communications relating to alcoholic beverages should not be aimed at minors and should not encourage excessive consumption of such beverages.

Other requirements may apply to audiovisual commercial communications on VSPs, such as Article 13 of the Law on alcohol and alcohol-related problems, which contains certain restrictions on the advertising of alcoholic beverages (e.g., it may not attribute to the beverages therapeutic effects or properties, may not contain images that portray the consumption of alcohol in a positive light, etc.).

At a self-regulatory level, rules on alcohol advertising are also set out in Article 22 of the Self-Regulatory Code on Commercial Communications. Although this provision is included in a self-regulatory code, the Italian legislator has made it mandatory for all types of advertising and for all operators. Article 22 specifies that advertising for alcoholic beverages must not contradict the obligation to represent styles of drinking behaviour that project moderation, health and responsibility. Specifically, advertising must not:

- (i) encourage the excessive, uncontrolled, and therefore dangerous use of alcoholic beverages;*
- (ii) portray images of alcohol dependency or suggest that the consumption of alcohol can solve personal problems;*
- (iii) address or refer, even indirectly, to minors, or represent minors drinking alcohol;*
- (iv) associate alcoholic consumption with driving;*
- (v) lead the public to believe that the consumption of alcoholic beverages increases mental lucidity and physical and sexual capability, or that abstention from these beverages produces physical, psychological and social inferiority;*
- (vi) represent sobriety and abstention from alcohol as negative values; (vii) lead the public to neglect the more sensible manners of consumption in relation to the characteristics of each alcoholic product and to each individual;*
- (viii) use the high alcoholic volume as the principal theme of the advertisement.*

4.17.2.2.2. Audiovisual commercial communications for medicinal products and medical treatment available only on prescription in the member state

Article 43 paragraph 1 letter f) of the AVMS Code prohibits audiovisual commercial communications relating to medicinal products and medicinal treatments available only on prescription in Italy.



4.17.2.2.3. Surreptitious audiovisual commercial communications

Surreptitious audiovisual commercial communications are prohibited according to Article 43 paragraph 1 letter a) of the AVMS Code:

Article 43

...

(a) audiovisual commercial communications shall be readily recognisable as such and surreptitious audiovisual commercial communications shall be prohibited

4.17.2.2.4. Subliminal techniques in commercial communications

The use of subliminal techniques in audiovisual commercial communications is prohibited under Article 43 paragraph 1 letter b) of the AVMS Code:

Article 43

...

(b) audiovisual commercial communications shall not use subliminal techniques and must maintain a sound level no higher than the ordinary sound level of the programmes

4.17.2.2.5. Prejudice with regard to human dignity

According to Article 43 paragraph 1 letter c) of the AVMS Code, audiovisual commercial communications must not prejudice respect for human dignity:

Article 43

...

*(c) audiovisual commercial communications shall not
1) prejudice respect for human dignity*

4.17.2.2.6. Inclusion or promotion of any discrimination (on the grounds of e.g., sex, racial or ethnic origin, nationality, religion, etc.)

Article 43 paragraph 1 letter c) (2) of the AVMS Code prohibits commercial communications that entail or promote any discrimination based on the following grounds: “sex, race, ethnicity, nationality, religion or personal convictions, disabilities, age or sexual orientation”.

4.17.2.2.7. Encouragement of behaviour prejudicial to health or safety

Encouraging behaviour prejudicial to health or safety is prohibited in audiovisual commercial communications under Article 43 paragraph 1 letter c) (3) of the AVMS Code.



4.17.2.2.8. Encouragement of behaviour grossly prejudicial to the protection of the environment

Encouraging behaviour grossly prejudicial to the protection of the environment is prohibited in audiovisual commercial communications under Article 43 paragraph 1 letter c) (4) of the AVMS Code.

4.17.2.2.9. Causing physical, mental or moral detriment to minors

Requirements pertaining to the protection of minors in relation to commercial communication are laid down in Article 43 paragraph 1 letter g) of the AVMS Code which requires that audiovisual commercial communications do not cause physical, mental or moral detriment to minors. In this vein, such communications should not encourage minors from buying or leasing a product or service by exploiting their inexperience or incredulity, nor should they encourage minors to persuade their parents or others to buy the goods and services advertised, exploit the particular trust that minors have in their parents, teachers or other persons, or portray minors in dangerous situations.

4.17.2.2.10. Other

As mentioned in section 4.17.2.1.11. of this factsheet, the IAP is in charge also of monitoring online behavioural advertising, notably by ensuring compliance with the following principles of the Regulation on Online Behavioural Advertising:

- Transparency obligations, which include the obligation to adopt a proper icon issued by the European Interactive Digital Advertising Alliance - EDAA³⁵⁷;
- Users must be able to express a choice and to consent to such advertising practices;
- Online behavioural advertising segments may not be created for advertisements directed at minors under the age of 12.

Marketing in general and profiling is also regulated under the applicable European and Italian legal framework on privacy and the protection of personal data, including Regulation (EU) No. 2016/679 (General Data Protection Regulation).³⁵⁸

In addition, restrictions apply to commercial communications about gambling and are detailed under section 4.17.6. of this factsheet.

³⁵⁷ <https://edaa.eu/>

³⁵⁸ <https://eur-lex.europa.eu/eli/reg/2016/679/oj?locale=en>



4.17.3. Sponsorship and product placement

Certain obligations stem from the revised AVMSD vis-à-vis sponsorship and product placement and this part aims at identifying the rules and practices pertaining to these two specific categories of commercial communications.

4.17.3.1. Sponsorship

There are no specific rules pertaining to sponsorship for VSPs in Italy.

4.17.3.2. Product placement

There are no specific rules pertaining to product placement for VSPs in Italy.

4.17.4. Obligations regarding (v)blogs and (v)blogging

Generally, (v)blogs published online by users or influencers are not considered audiovisual media services and, therefore, they are not subject to the rules of the AVMS Code. This is because (v)blogs do not fall within the definition of an audiovisual media service provided under Article 3(1)(a)-(b) of the AVMS Code, since Article 3(1)(a)-(b) of the AVMS Code defines audiovisual media services according to the following principles:

(a) a service as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union, where the principal purpose of the service or a dissociable section thereof is devoted to providing programmes, under the editorial responsibility of a media service provider, to the general public, in order to inform, entertain or educate, by means of electronic communications networks within the meaning of Article 2(1) of Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018;

(b) Audiovisual media service, within the meaning of point a), means a television broadcast as defined under point p) [of the AVMS Code] or an on-demand audiovisual media service as defined under point q) [of the AVMS Code] or an audiovisual commercial communication.

However, (v)blogs are subject to the general rules provided by the Consumer Code for the protection of consumers (e.g., prohibition of misleading commercial practices) and to the specific rules established by the Italian advertising self-regulatory body in the Digital Chart Regulation on the identifiability of commercial communications disseminated online. More specifically, under Article 3 of the Digital Chart Regulation, in cases where a (v)log produced or disseminated online is:

- of a commercial nature: written warnings should be included in the description of the video and in the initial scenes in such a way as to be immediately noticeable and to make the promotional purpose clear.



- not resulting from a commission but limited to a casual relationship between the author of the video and the advertiser with the latter occasionally sending its products free of charge or for a modest value: if the products in question are mentioned or framed in the video, then the video must contain an introductory disclaimer, either verbal or written, informing that the product has been sent or offered at a discount by the advertiser, who is obliged to inform the author of the video of the existence of this disclaimer.

4.17.5. Other relevant information

It should be noted that Article 41, paragraph 7 of the AVMS Code provides Agcom's powers with regard to commercial communications broadcast by VSPs operating in Italy but subject to the jurisdiction of another member state. In particular, the said provisions provide that:

free circulation of programs, user-generated videos and audiovisual commercial communications conveyed by a video-sharing platform whose supplier is established in another member state and directed to the Italian public may be limited

The said limitations are provided for the following purposes: a) the protection of minors from content that may harm their physical, mental or moral development (pursuant to Article 38, paragraph 1; b) the fight against incitement to racial, sexual, religious or ethnic hatred, as well as against the violation of human dignity and c) the protection of consumers, including investors.³⁵⁹

4.17.6. Content-related rules regarding commercial communications for VSP providers

While certain restrictions regarding the content of commercial communications stem from the revised AVMSD and relate to issues connected to the protection of minors and restrictions on the advertising of certain products and services, this part deals with less explored notions, such as rules pertaining to gambling, environmental claims vis-à-vis products and services, etc.

³⁵⁹ As this provision is not stipulated by the revised AVMSD, Italy has notified this provision to the European Commission (n.2021/676) before its entry into force without exceptions being raised by the European Commission. More details are available at:

<https://ec.europa.eu/growth/tools-databases/tris/it/search/?trisaction=search.detail&year=2021&num=676>.



4.17.6.1. Advertising of, or on behalf of, associations that are wholly or mainly concerned with religion, faith and other belief systems

In addition to the general prohibition on advertising prejudicing human dignity and promoting any discrimination provided in sections 4.17.2.2.5. and 4.17.2.2.6 of this factsheet, under Article 10 of the IAP Code, commercial communications must not offend the moral, civil and religious beliefs of individuals. In addition, they must also respect the dignity of the individuals in all its forms and expressions and must avoid any discrimination.

4.17.6.2. Gambling, betting, betting tipsters, etc.

With regard to gambling, as a general principle, any form of gambling in audiovisual commercial communications is prohibited under Article 43 paragraph 1 letter h) of the AVMS Code. Moreover, Article 9 of the Law on dignity of workers and companies introduced a general ban on any form of advertising, also indirectly, related to gambling, carried out in any way and on any medium, except for national lotteries with deferred drawing, local lotteries and the logos on safe and responsible gaming of the Customs and Monopolies Agency. This Law Decree No. 87/2018 did not repeal the pre-existing regulations on gambling advertising (e.g., some provisions of Law Decree No. 158/2012³⁶⁰ and of Law No. 208/2015³⁶¹) which provide, *inter alia*, for several restrictions on gambling advertising based on its content (e.g., content addressed to minors or instigating the game). In addition, promoting illegal gambling (i.e., gambling carried out without a proper license) is a crime pursuant to Article 4 of Law No. 401/1989.

Nevertheless, some exceptions to application of the ban on advertising of gambling were introduced by Articles 5 and 7 of AGCOM Resolution No. 132/19/CONS, which allow for instance specific promotional and/or informative activities related to gambling.³⁶² More precisely, specific promotional and/or informative activities related to gambling are allowed, such as the use of the gambling brand's distinctive signs, only when they strictly identify the space where the gambling services are carried out (for example mere signs or domain names of online websites); communications limited to the characteristics of the gambling products and services, only where issued in the context in which the gambling services are offered; the free indexing services provided by search engines or marketplaces, that enable the gambling brand to have a better position in the user's search results.

Law on dignity of workers and companies, Article 9, paragraph 2, provides for the possibility of sanctioning various recipients (client, the owner of the vehicle or site of diffusion or destination and the organiser) in case of breaches of relevant provisions, in addition to the applicable financial sanctions, as follows:

³⁶⁰ www.gazzettaufficiale.it/eli/id/2012/09/13/012G0180/sq.

³⁶¹ www.gazzettaufficiale.it/eli/id/2015/12/30/15G00222/sq.

³⁶² E.g. the use of the gambling brand's distinctive signs, only when they strictly identify the space where the games services are offered - e.g. simple signs or domain names of online websites; communications limited to the characteristics of the gambling products and services, only when issued in the context in which the gambling services are offered; the free indexing services provided by search engines or marketplaces, that enable the gambling brand to have a better position in the user's search results, etc. Ibid.



Non-compliance with the provisions referred to in paragraph 1 involves the client, the owner of the medium or the dissemination site or of destination and the organiser of the show, event or activity, pursuant to law no. 689 of 24 November 1981, the application of a commensurate administrative fine in the amount of 20% of the value of the sponsorship or advertising and in any case not less than 50 000 euros for each violation.

The aforementioned provision has allowed Agcom to sanction the creator of channels containing advertising videos of online games with cash winnings (Spike) and YouTube as the holder of a specific partnership contract with the creator (for *culpa in vigilando*, i.e., for not blocking the dissemination of such videos) in August 2022 for a violation of the ban on advertising gambling with cash winnings. The sanction was inclusive of a financial penalty of €750 000, as well as the notice and takedown order for 635 videos and, for the first time, the notice and stay-down order for similar content from the same creator.³⁶³

4.17.6.3. Environmental or “green” claims for products

At the time of preparing this factsheet, there are no law provisions specifically regulating the environmental and sustainability matter, including “green” claims. However, Article 12 of the IAP Code states that commercial communications claiming or suggesting environmental or ecological benefits must be based on truthful, relevant, and scientifically verifiable data. Such communications must clearly indicate to which aspect of the product or activity being advertised the claimed benefits relate.

Furthermore, the Italian Competition Authority³⁶⁴ has enforced the general provisions on unfair commercial practices of the Consumer Code to sanction the use of environmental claims that, for instance, provided misleading information on the actual scope of the claim, or were not strongly substantiated.

4.17.6.4. Other

N/A.

4.17.7. Self- and co-regulation and enforcement

This section aims at identifying the legal framework and practice for self- or co-regulatory schemes and measures regarding commercial communications on VSPs, including the

³⁶³ Agcom Resolution no.288 / 22/CONS, available at:

https://www.agcom.it/documentazione/documento?p_p_auth=fLw7zRht&p_p_id=101_INSTANCE_FnOw5lVOIXoE&p_p_lifecycle=0&p_p_col_id=column-1&p_p_col_count=1&_101_INSTANCE_FnOw5lVOIXoE_struts_action=%2Fasset_publisher%2Fview_content&_101_INSTANCE_FnOw5lVOIXoE_assetEntryId=27603176&_101_INSTANCE_FnOw5lVOIXoE_type=document.

³⁶⁴ Autorità garante della Concorrenza e del Mercato, <https://www.agcm.it/>.



identification of the body or bodies in charge of self- and co-regulation and enforcement powers with regard to commercial communications and VSPs, as well as the scope of their activities with regard to commercial communications and VSPs.

4.17.7.1. Self- and co-regulatory bodies

4.17.7.1.1. Context of establishment and legal background

Under Article 42 paragraph 3 of the AVMS Code, Agcom, upon consulting the committee for the application of the self-regulatory code on media and minors, must promote forms of co-regulation and self-regulation through the adoption of codes of conduct, in accordance with the provisions set forth under Articles 4a and 28b of the AVMS Directive. In addition, as per Article 42 paragraph 5 of the AVMS Code and upon consulting with the Italian Childhood and Adolescence Authority and the above-mentioned committee, it must, by means of its own resolution, adopt specific guidelines in which it sets out the principles which should inspire the codes of conduct referred to above.

4.17.7.1.2. Stakeholders involved

Agcom is an independent administrative authority with regulatory and enforcement powers in the field of telecommunications, audiovisual media services, editorial and postal services. Law No. 249/1997 defines its role and structure as well as its general competences. Based on this legal framework, a variety of provisions under Italian law vest Agcom with specific powers to regulate certain content.

Other relevant stakeholders in Italy are:

- The committee for the application of the self-regulatory code on media and minors (Comitato per l'applicazione del Codice di autoregolamentazione media e minori)
- Italian Childhood and Adolescence Authority (Autorità garante per l'infanzia e l'adolescenza)
- The Institute for Advertising Self-Regulation (Istituto dell'Autodisciplina Pubblicitaria)³⁶⁵

Providers of VSP services defined under Article 3, para. 1, letter l), AVMS Code, as the natural or legal person that provides a VSP service

4.17.7.1.3. Scope and objectives

Article 42 of the AVMS Code provides that the different codes of conduct promoted by Agcom should meet the following objectives:

³⁶⁵ <https://www.iap.it/>.



- identify measures aimed at effectively reducing the exposure of minors under the age of 12 to audiovisual commercial communications relating to food products, including supplements, or beverages containing nutrients and substances with a nutritional or physiological effect, such as, in particular, fats, trans-fatty acids, sugars, sodium and salt, the excessive intake of which in the general diet is not recommended. The codes must also ensure that audiovisual commercial communications do not accentuate the positive quality of the nutritional aspects of such foods and beverages. (Article 42 paragraph 4)
- identify measures aimed at protecting (i) minors from content which may impair their physical, mental or moral development; (ii) the general public from content containing incitement to racial, sexual, religious or ethnic hatred, as well as against the violation of human dignity; and (iii) the general public from programmes, user-generated videos and audiovisual commercial communications containing content the dissemination of which constitutes an activity which is a criminal offence under Union law, namely public provocation to commit a terrorist offence, offences concerning child pornography and offences concerning racism and xenophobia (Article 42 paragraph 3)
- identify appropriate measures to comply with the rules on advertising set forth by Article 43 AVMS Code (Article 42 paragraph 3)

Furthermore, under Article 42 paragraph 9 of the AVMS Code, Agcom must also adopt procedures for alternative dispute resolutions between users and VSPs.

The scope of the IAP Code also includes inappropriate ACCs for alcoholic beverages and ACCs which encourage behaviours grossly prejudicial to the protection of the environment.

4.17.7.1.4. Code(s) of conduct

The IAP Code is binding only on voluntary basis, i.e., for those companies investing in communications, agencies, consultants, media and other subjects which choose to adhere to the IAP Code or to sign an advertising contract with an adhering party. However, under a practical standpoint, many Italian operators adhere to the IAP Code and include an acceptance clause of the IAP Code in their advertising contracts, asking the other contracting parties to comply with the IAP Code and self-regulatory policies. Moreover, although the IAP Code is binding on a voluntary basis, according to case law of the Italian Court of Cassation, the breach of its rules (also by companies which did not adhere to it) may be deemed as constituting unfair competition under Article 2598 of the Italian Civil Code, as behaviour which does not meet market standards of professional ethics.



4.17.7.1.5. Role of the (self-)regulatory bodies

4.17.7.1.6. The IAP was established more than 50 years ago with the aim of outlining the parameters to ensure “honest, truthful and fair” commercial communications to protect consumers and fair competition among companies. With this mission, the IAP issued the IAP Code. Period of activity (if limited)

N/A.

4.17.7.1.7. Role of the regulatory authority in a co-regulatory system

Agcom, plays a major role in the co-regulatory system: it approves stakeholders’ codes of conduct and monitors their implementation.

4.17.7.1.7.1. Regulatory body

Under Article 42 paragraph 3 of the AVMS Code, Agcom must verify the conformity of the codes of conduct with the law and Agcom's regulations.

4.17.7.1.7.2. Co-regulatory scheme

Under Article 42 paragraph 3 of the AVMS Code, Agcom must promulgate the codes of conduct by its own resolution, also monitoring their implementation.

4.17.7.1.7.3. Relationship and roles of stakeholders

Article 42 paragraph 3 of the AVMS Code refers to Article 4a of the AVMS Directive according to which the regulatory body (Agcom) may foster codes of conduct drawn up by stakeholders.

4.17.7.2. Monitoring/evaluation, compliance and sanctioning powers

Under Article 42 paragraph 3 of the AVMS Code, Agcom must also adopt the monitoring procedure for the follow-up and periodic evaluation of the compliance with codes of conduct, in accordance with the principles of transparency, non-discrimination and proportionality.

Also, Article 67, paragraph 9, provides sanctioning powers to Agcom, which is obliged to apply, on the basis of principles of proportionality, adequacy and compliance with the cross-examination:

a pecuniary administrative sanction from 30 000 euros to 600 000 euros, or up to one percent of the annual turnover, when the value of this percentage is higher than 600 000 euros of the turnover achieved in the last financial year closed prior to notification of the dispute.



4.17.8. Cross-sector and cross-border collaboration

N/A.

4.17.9. Update on plans and practices related to new obligations of VSPs

In the context of the implementation of the AVMS Directive, Agcom will also issue several regulations in connection with VSPs, among others those on:

- implementing provisions on the limitation of the free circulation of programs, user-generated videos and audiovisual commercial communications conveyed by a VSP whose provider is established in another member state and directed to the Italian public to protect (i) minors from content which may impair their physical, mental or moral development; (ii) the general public from content containing incitement to racial, sexual, religious or ethnic hatred, as well as against the violation of human dignity; and (iii) consumers (set out in Articles 28a of the AVMS Directive), pursuant to the new Article 41 AVMS Code;
- procedures for alternative dispute resolutions between users and VSPs (set out in Articles 28b of the AVMS Directive), pursuant to the new Article 42 AVMS Code; and
- appropriate guidelines for the codes of conduct to be adopted by VSPs (set out in Articles 28b of the AVMS Directive), pursuant to the new Article 42 AVMS Code.

4.17.10. Studies, reports and research

With Resolution No. 44/21/CONS, on 4 February 2021, Agcom launched a survey³⁶⁶ on the services offered by online platforms aiming, among other things, to carry out a classification of online platforms and related services; to identify the issues raised by online platforms and their effect on information/democracy; to recognise the existing regulatory framework; and to analyse and compare best practices of other countries. The results of this survey have not yet been published.

³⁶⁶<https://www.agcom.it/documents/10179/21649104/Delibera+44-21-CONS/2ed0f672-ed0a-4b8a-8d0b-108e104f2dcf?version=1.0>.



4.17.11. Data compilation

This factsheet is based on data compiled by Ernesto Apa, lawyer and partner at Portolano Cavallo, and Fabiana Bisceglia and Eugenio Foco, lawyers at Portolano Cavallo.