



5.17.IT – Italy – National legal summary²²⁸

The provisions of the revised Audiovisual Media Services Directive (AVMSD) related to video-sharing platforms (VSPs) are transposed in the AVMS Code.

5.17.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- Legislative Decree 208/2021, AVMS Code (Testo Unico dei Servizi di Media Audiovisivi e Radiofonici)²²⁹
- Law Decree 28/2020, passed into Law 70/2020 (Misure urgenti per la funzionalità dei sistemi di intercettazioni di conversazioni e comunicazioni, ulteriori misure urgenti in materia di ordinamento penitenziario, nonché disposizioni integrative e di coordinamento in materia di giustizia civile, amministrativa e contabile e misure urgenti per l'introduzione del sistema di allerta Covid-19)²³⁰
- Law 71/2017 (Disposizioni a tutela dei minori per la prevenzione ed il contrasto del fenomeno del cyberbullismo)²³¹

Secondary legislation:

- AGCOM (Autorità per le Garanzie nelle Comunicazioni: Italian Communications Authority) Resolution no. 157/19 (Delibera AGCOM 157/19), containing provisions relating to the respect for human dignity and the principle of non-discrimination and to counteract hate speech ("on hate speech")²³²
- AGCOM Resolution no. 74/19, (Delibera AGCOM 74/19), containing content rating system for audiovisual works intended for the web and videogames²³³ 5.18.2. Definitions and scope

²²⁸ The factsheet on Italy incorporates feedback received from Francesco Sciacchitano from AGCOM (*Autorità per le garanzie nelle comunicazioni*), during the 2021 and 2022 checking rounds with the national media regulatory authorities.

²²⁹ <https://www.gazzettaufficiale.it/eli/id/2021/12/10/21G00231/sg>.

²³⁰ <https://bit.ly/37P00kf>.

²³¹ <https://bit.ly/2YiwcDX>.

²³² <https://www.agcom.it/documents/10179/13511391/Allegato+23-5-2019+1558628852738/5908b34f-8c29-463c-a7b5-7912869ab367?version=1.0>.

²³³ <https://bit.ly/2EcMDKV>.



This section aims at identifying the relevant definitions related to VSPs stemming from the transposition of the revised AVMSD as well as elements of interpretation of the main concepts present in those definitions.

Table 37. Definition of the main concepts related to VSPs

Concept	Existence of a definition
VSP service	Yes.
VSP provider	Yes.
User-generated video	Yes.
“Principal purpose”	No.
“Dissociable section”	No.
“Essential functionality”	No.

Source: Italian response to European Audiovisual Observatory standardised survey

5.17.2.1. VSP service

Article 3 (1) c) of the AVMS Code provides for the definition of VSP service by transposing the wording of the revised AVMSD verbatim:

“Video-sharing platform service”: 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 of a dissociable section thereof or an essential functionality of the service is devoted to providing programmes, user-generated videos, or both, to the general public, for which the video-sharing platform provider does not have editorial responsibility, in order to inform, entertain or educate, by means of electronic communications networks within the meaning of point (a) of Article 2 of Directive 2002/21/EC of the European Parliament and of the Council, of 12 July 2002, and the organisation of which is determined by the video-sharing platform provider, including by automatic means or algorithms in particular by displaying, tagging and sequencing.

5.17.2.2. VSP provider

Article 3 (1) l) of the AVMS Code provides for the definition of VSP provider by transposing the revised AVMSD verbatim:

“Video-sharing platform provider”: the natural or legal person who provides a video-sharing platform service.



5.17.2.3. User-generated video

Article 3 (1) h) of the AVMS Code provides for the definition of user-generated video by transposing the revised AVMSD verbatim:

“User generated video”: a set of moving images with or without sound constituting an individual item, irrespective of its length, that is created by a user and uploaded to a video-sharing platform by that user or any other user.

5.17.2.4. “Principal purpose” or “dissociable section” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, caselaw, etc.) on how to interpret these concepts.

5.17.2.5. “Essential functionality” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, caselaw, etc.) on how to interpret these concepts.

5.17.3. Obligations and measures imposed on VSP providers

The revised AVMSD provides for the extension of its scope to cover VSPs. It introduces obligations on these players to take appropriate measures to protect minors from harmful content which may impair their physical, mental or moral development; to protect the general public from illegal content and content that incites violence or hatred; and to respect certain obligations around commercial communications (Article 28b (1) and (2) of the revised AVMSD). To fulfil these obligations, member states are required to ensure compliance with the measures listed in Article 28b (3) of the revised AVMSD.

This section aims at identifying the obligations and measures imposed on VSP providers under national legislation in order to ensure their compliance with those obligations.

When available, this section also provides other additional relevant information about the measures and concepts at stake.

5.17.3.1. General provisions

With regard to content inciting violence and hatred, there is no specific definition under the relevant provisions of the AVMSD Code. The wording is likely to be interpreted in light of relevant Criminal Code provisions (e.g., Article 604-bis of the Italian Criminal Code, which



criminalises incitement to commit crimes for racial, ethnic and religious reasons, i.e. hate speech).

Under Article 42 (1) b) – c) of the AVMS Code, VSPs subject to the Italian jurisdiction, must adopt adequate measures to protect:

b) the general public from programmes, user-generated videos and audiovisual commercial communications containing incitement to violence or hatred directed against a group of persons or a member of a group based on any of the grounds referred to in Article 21 of the Charter of fundamental rights of the European Union;

c) 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 the law in force in the Member states of the European Union, with particular reference to public provocation to commit a terrorist offence as set out in Article 5 of Directive (EU) 2017/541, offences concerning child pornography as set out in Article 5(4) of Directive 2011/93/EU of the European Parliament and of the Council and offences concerning racism and xenophobia as set out in Article 1 of Framework Decision 2008/913/JHA.

5.17.3.2. Adapting terms and conditions of the VSP service to include those obligations – Article 28b (3) (a) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services in respecting the obligations stemming from the aforementioned general requirements, Article 42 (7) a) of the AVMSD Code provides that:

Video-sharing platform providers must include the requirements laid down under paragraph 1 (see above) in the terms and conditions of the video-sharing platform services, the acceptance of which by users constitutes a condition to access the services.

5.17.3.3. Adapting terms and conditions to include obligations regarding commercial communications that are not marketed, sold or arranged by the VSP provider – Article 28b (3) (b) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the requirements set out for audiovisual commercial communications that are not marketed, sold or arranged by the VSP providers, Article 42 (7) b) of the AVMS Code stipulates the following:

Video-sharing platform providers must include and apply in the terms and conditions of the video-sharing platform services the requirements set out in Article 9(1) of the AVMS Directive for audiovisual commercial communications that are not marketed, sold or arranged by the video-sharing platform providers.



5.17.3.4. Having a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications – Article 28b (3) (c) AVMSD

Regarding the measure consisting in having a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications as far as they know or can be reasonably expected to know, Article 42 (7) c) of the AVMS Code provides for this obligation:

Video-sharing platform providers must establish a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications as far as they know or can be reasonably expected to know.

5.17.3.5. Establishing and operating transparent and user-friendly mechanisms for users to report or flag content – Article 28b (3) (d) AVMSD

Regarding the measure consisting in establishing and operating transparent and user-friendly mechanisms for users of a video-sharing platform to report or flag the content to the VSP provider, under Article 42 (7) d) of the AVMS Code, VSPs must establish transparent and user-friendly mechanisms for users of a video-sharing platform to report or flag to the video-sharing platform provider concerned the content referred to in paragraph 1 uploaded on its platform.

In addition, Article 9(3), Exhibit B of AGCOM Resolution 157/19/CONS on hate speech obliges VSP providers to submit to the Italian Communications Authority AGCOM a quarterly report on the monitoring activities carried out for detecting items of content constituting hate speech, including a description of the operating methods and verification systems implemented.

5.17.3.6. Establishing and operating systems through which VSP providers explain to users what effect has been given to reporting and flagging – Article 28 (b) (3) (e) AVMSD

Regarding the measure consisting in establishing and operating systems through which video-sharing platform providers explain to users of VSPs what effect has been given to their reporting and flagging initiatives, Article 42 (7) e) of the AVMS Code provides for this obligation:

Video-sharing platform providers must establish systems through which video-sharing platform providers explain to users of such platforms what effect has been given to the reporting and flagging referred to in letter d).



5.17.3.7. Establishing and operating age verification systems for users with respect to content which may impair the physical, mental or moral development of minors – Article 28b (3) (f) AVMSD

Regarding the measure consisting in establishing and operating age verification systems for users of VSPs with respect to content which may impair the physical, mental or moral development of minors, Article 42 (7) f) of the AVMS Code requires VSPs to establish, in compliance with the applicable rules on the protection of personal data, age verification systems for users of video-sharing platforms with respect to content which may impair the physical, mental or moral development of minors.

In addition, Article 7-bis of Law Decree 28/2020, passed into Law 70/2020, stipulates that the agreements for the provision of electronic communication services must include as pre-activated services the adoption of parental control measures or measures for the filtering of inappropriate content for minors and the blocking of content for adults only. Such services are provided free of charge and can be disabled at any time upon request of the subscriber to the agreement. Electronic communication service providers must adopt measures to promote consumers' awareness of these services and to allow them to take properly informed decisions.

Article 10, Exhibit A of AGCOM Resolution 74/19/CONS, establishing a rating system for audiovisual works intended for the web and videogames, and guidelines adopted require operators providing audiovisual media services via the Internet as well as hosting providers to take the appropriate technical measures to restrict or prevent the circulation of content in accordance with the categorisation thereof. Such measures include, among others: technical identification devices suitable for recognition by parental control mechanisms; technical devices creating barriers to entry; time restrictions on the transmission of content; implementation of security software; age verification systems.

5.17.3.8. Establishing and operating easy-to-use systems allowing users to rate the content – Article 28b (3) (g) AVMSD

Regarding the measure consisting in establishing and operating easy-to-use systems allowing users of VSPs to rate the content, Article 42 (7) g) of the AVMS Code provides for this obligation.

5.17.3.9. Providing for parental control systems that are under the control of the end-user with respect to content which may impair the physical, mental or moral development of minors – Article 28b (3) (h) AVMSD

Regarding the measure consisting in providing for parental control systems that are under the control of the end-user with respect to content which may impair the physical, mental



or moral development of minors, Article 42 (7) h) of the AVMS Code provides for this obligation.

Article 7-bis of Law Decree 28/2020, passed into Law 70/2020, stipulates that agreements for the provision of electronic communication services must include as pre-activated services the adoption of parental control measures or measures for the filtering of inappropriate content for minors and the blocking of content for adults only. Such services are provided free of charge and can be disabled at any time upon request of the subscriber to the agreement. Electronic communication service providers adopt measures to promote consumers' awareness of these services and to allow them to take properly informed decisions.

Article 10, Exhibit A of AGCOM Resolution 74/19/CONS, establishing a rating system for audiovisual works intended for the web and videogames, and guidelines adopted require operators providing audiovisual media services via electronic communication services as well as hosting providers to take the appropriate technical measures to restrict or prevent the circulation of content in accordance with the categorisation thereof. Such measures include, among others: technical identification devices suitable for recognition by parental control mechanisms; technical devices creating barriers to entry; time restrictions on the transmission of content; implementation of security software; age verification systems.

5.17.3.10. Establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints – Article 28b (3) (i) AVMSD

Regarding the measure consisting in establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints to the video-sharing platform provider in relation to the implementation of the measures, Article 42 (7) i) provides for this obligation:

Video-sharing platform providers must establish transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints to the video-sharing platform provider in relation to the implementation of the measures referred to in points (d) to (h).

5.17.3.11. Providing for effective media literacy measures and tools and raising users' awareness of those measures and tools – Article 28b (3) (j) AVMSD

Regarding the measure consisting in providing for effective media literacy measures and tools and raising users' awareness of those measures and tools, this obligation is provided by Article 42 (7) l) of the AVMS Code.

Art. 9(3), Exhibit B of AGCOM Resolution 157/19/CONS on hate speech states that VSP providers are invited to promote campaigns and initiatives on issues of social inclusion



and cohesion, as well as the promotion of diversity and fundamental human rights, with a view to preventing and countering online discrimination.

5.17.3.12. Forbidding the processing of personal data of minors for commercial purposes – Article 28b (3) AVMSD

Regarding the processing of personal data of minors collected or otherwise generated by VSP providers for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising, Article 42 (8) of the AVMS Code stipulates the following:

Personal data of minors collected or generated by providers of video-sharing platform services are not processed for commercial purposes.

5.17.3.13. Other relevant provisions related to the protection of minors

AGCOM Resolutions 52/13/CSP and 51/13/CSP set out, respectively, the criteria for the classification of programmes which might seriously impair the physical, mental or moral development of minors, and the technical measures to be taken to preclude minors from seeing or hearing programmes made available by on-demand media service providers which might seriously impair their physical, mental or moral development. Also, AGCOM Resolution 74/19/CONS establishes the criteria to categorise audiovisual works delivered via the web in order to protect minors from inappropriate content.

Law 71/2017 against cyberbullying stipulates that minors aged between 14 and 18 as well as the parents of or persons having parental rights over minors who have suffered from acts defined as cyberbullying are entitled to submit a complaint to the owners of websites and social media to block and remove any personal data circulated over the Internet (even if these acts constitute the crime of illegal processing of personal data under Italian Law). In the event that the requested party fails to take the complaint into account within 24 hours and to take the necessary measures within 48 hours, the party which submitted the complaint is entitled to file a similar request with the Data Protection Authority, which shall adopt any necessary measures within the following 48 hours.

Under Article 144-bis of the Italian Data Protection Code, whoever, including children above fourteen years of age, has reason to believe that audio recordings, images, videos or any other IT document with sexually explicit contents relating to them and intended to be kept private are likely to be sent, delivered, transferred, published or disseminated by way of digital platforms without their consent may report this danger to the Italian Data Protection Authority. The Italian Data Protection Authority shall decide under the terms of Sections 143 and 144 of the Italian Data Protection Code within forty-eight hours of receiving the said report.

Under Article 7-bis, Law Decree No. 28/2020 agreements for the provision of electronic communication services pursuant to Legislative Decree no. 259/2003 must



include as pre-activated services the adoption of parental control measures or measures for the filtering of inappropriate contents for minors and the blocking of content for adults only. Such services are provided free of charges and can be disabled at any time upon request of the subscriber of the agreement. Electronic communication service providers adopt measures to promote consumers' awareness about these services and to allow them to take properly informed decisions.

5.17.3.14. Other relevant provisions related to commercial communications which may impair the physical, mental or moral development of minors

Under Article 42 (2) of the AVMS Code, VSPs subject to Italian jurisdiction must comply with the general rules set forth under Article 43 of the AVMS Code (although it is not spelled out in the law, consistently with the AVMS Directive this provision should apply with respect to audiovisual commercial communications that are marketed, sold or arranged by VSPs). In addition, VSPs shall take appropriate measures to comply with the requirements set out in Article 43 of the AVMS Code with respect to audiovisual commercial communications that are not marketed, sold or arranged by them.

Under, Article 43 (1) g) of the AVMS Code, audiovisual commercial communications must not be detrimental to the physical, mental or moral development of minors. Such communications should not encourage minors to buy or lease a product or service by exploiting their inexperience or incredulity, nor shall they be encouraged to persuade their parents or others to buy the goods or services advertised, nor shall they exploit the particular trust that minors have in their parents, teachers or other persons, nor should they portray minors that are in dangerous situations.

5.17.3.15. Other relevant provisions related to minors' exposure to advertising for alcohol products and HFSS foods (high fat, sugar and salt foods) in commercial communications:

Under Article 43 (1) e) of the AVMS Code, audiovisual commercial communications for alcoholic beverages should not be expressly directed at minors nor shall they encourage an excessive consumption of such beverages.

In addition, Article 43 (4) of the AVMS Code provides that the Ministry of Economic Development, in agreement with AGCOM and the Ministry of Health, encourages media service providers to develop codes of conduct regarding inappropriate audiovisual commercial communications accompanying or included in programmes aimed at children, regarding alcoholic beverages and HFSS food.

Furthermore, certain general rules on commercial communications apply to (i) VSPs with respect to audiovisual commercial communications that are marketed, sold or arranged by them, and (ii) third parties who marketed, sold or arranged commercial communications disseminated through VSPs. These general rules include Article 13 of Law



No. 125/2001 which, among others, focuses on minors' protection by avoiding alcohol advertising in spaces/communication means targeted to minors or predominantly addressed to minors, therefore alcohol advertising on websites/contents/pages addressed to minors or which are popular amongst minors must be avoided.

Rules on alcohol advertising are set forth also by Article 22 of the Self-Regulatory Code on Commercial Communications, issued by the Italian Self-Regulatory Advertising Body. Although this provision is included within a self-regulatory code, the Italian legislator made it binding for any kind of advertising and all operators. With specific reference to minors, Article 22 specifically establishes that advertising must not address or refer, even indirectly, to minors, or represent minors drinking alcohol.

5.17.3.16. Other relevant information

N/A.

5.17.4. Practicability of the measures imposed on VSP providers

Article 28b (3) of the revised AVMS Directive does not only provide for the list of measures which are detailed under the previous section. Paying attention to the principle of proportionality, it also states that the measures imposed on VSP providers should be practicable and proportionate and take into account criteria such as the size of the VSP service and the nature of the service, as well as the nature of the content. This section aims at identifying how this is implemented in the national legislation.

The legislation does not provide for such criteria, which are likely to be implemented through AGCOM regulations.

5.17.5. Regulation and enforcement

This section aims at identifying which body is in charge of regulatory and enforcement powers with regards to VSPs, as well as the scope of its activities with regards to such platforms. These relate to registration/notification systems of VSPs with the relevant national regulatory bodies, as well as with the development of self- or co-regulatory codes and schemes (as encouraged by Article 4a of the AVMS Directive), provisions related to out-of-court redress mechanisms for the settlement of disputes between users and VSP providers (as envisaged by Article 28(b)7 of the AVMS Directive) and provisions related to how users can assert their rights before a court in relation to VSP providers (as required by Article 28(b)8 of the AVMS Directive).



5.17.5.1. Regulatory body

The competent regulatory body is the Italian Communications Authority AGCOM.²³⁴

5.17.5.2. Existence of a registration/notification system

Under Article 41 (10) of the AVMS Code, AGCOM establishes and maintains an up-to-date list of the video-sharing platform providers established in Italy, or deemed to be operating on the national territory.

In addition, video-sharing platform providers will be obliged to enroll with the Register of Communications Operators (*Registro degli operatori di comunicazione – ROC*) in line with relevant legislation. However, AGCOM has yet to adopt the implementing resolution to enact such new obligation.

5.17.5.3. Compliance, enforcement and sanctioning powers

AGCOM is entrusted with regulatory and enforcement powers. Under Article 67 (9) of the AVMS Code, in case of infringement of the provisions set forth under Article 42 by the VSPs, AGCOM applies a pecuniary administrative sanction ranging between EUR 30,000 and EUR 600,000 or up to 1% of the annual turnover if the value of such percentage exceeds 600,000 euros of the turnover achieved in the last financial year closed prior to the notification of the dispute.

5.17.5.4. Development of self- or co-regulatory codes or schemes

Self- or co-regulatory codes have not yet been established. However, under Article 42 (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. The self-regulatory code of conduct on “Media and minors” from 2002 establishes in detail rules of conduct for broadcasters with a view to ensuring a high level of protection of minors.

In addition, under Article 42 (5) of the AVMS Code, AGCOM - upon consulting the Italian Childhood and Adolescence Authority and the Committee for the application of the Self-regulatory code on media and minors - through its own resolution, must adopt specific guidelines by which it outlines the principles which shall inform the codes of conduct referred to above.

²³⁴ <https://www.agcom.it>.



5.17.5.5. Out-of-court redress mechanisms for users

Pursuant to Article 42 (9) of the AVMS Code, out-of-court mechanisms for the extrajudicial resolution of disputes between users and VSPs are to be established through an ad hoc regulation to be adopted by AGCOM within 180 days of the entry into force of the AVMS Code.

5.17.5.6. Rights before a court for users

Article 42 (9) of the AVMS Code establishes that users can assert their rights before a court in relation to video-sharing platform providers.

5.17.6. Studies, reports and research

- AGCOM Resolution no. 44/21, launching a fact-finding survey relating to the services offered on the online platforms, (*Delibera AGCOM 44/21/CONS - Avvio di una indagine conoscitiva relativa ai servizi offerti sulle piattaforme online*), 2021.²³⁵
- AGCOM study: *Audizione del presidente dell'autorità per le garanzie nelle comunicazioni Angelo Marcello Cardani – Esame del disegno di delegazione europea, 2020* – Hearing of the President of the Italian Communications Authority, Mr. Angelo Marcello Cardani – Examination of the Bill containing 'European Law'.²³⁶
- *Confindustria Radio Televisioni, Legge delegazione europea 2019 (AS 1721). Prime osservazioni Confindustria Radio Televisioni Senato – XIV Commissione (Politiche dell'Unione Europea), 2020* – European Law 2019 (Bill 1721). First observations by Confindustria Radio Televisioni – Senate of the Republic, XIV Committee (European Affairs), 2020.²³⁷
- ANICA - *Associazione Nazionale Industrie Cinematografiche Audiovisive e Multimediali, Legge di delegazione europea n. 1721 Direttive oggetto di osservazioni, 2020* – Bill for European Law no. 1721 – Notes on the relevant directives, 2020.²³⁸
- I-COM, *AVMSD Refit or Reform? Audio Visual Media Services in the Digital Era, 2016*.²³⁹

²³⁵

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=21747443&_101_INSTANCE_FnOw5lVOIXoE_type=document.

²³⁶ <https://bit.ly/31eZDbW>.

²³⁷ <https://bit.ly/3iZ5x6K>.

²³⁸ <https://bit.ly/34ozWau>.

²³⁹ <https://bit.ly/2Eo4OVy>.



5.17.7. Data compilation

This factsheet is based on data compiled by Ernesto Apa, Partner and Filippo Frigerio and Eugenio Foco, Associates in the law firm Portolano Cavallo.