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TELECOMS AND MEDIA

Italy



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Telecoms and Media

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COMMUNICATIONS POLICY

Regulatory and institutional structure

Summarise the regulatory framework for the communications sector. Do any foreign ownership restrictions apply to communications services?

The primary legislation governing the communication sector in Italy is Legislative Decree No. 259/2003 (the Electronic Communications Code), which has implemented the EU regulatory framework and regulating the electronic communications networks and services, the authorisation of electronic communications networks and services, the interconnection of electronic networks and user rights, as recently amended by Legislative Decree No. 207/2021 (the Electronic Communications Amending Law), which aims at:

- updating and harmonising the regulation of electronic communications networks and services;
- promoting the efficient, effective and coordinated use of spectrum and the development of very high-capacity networks;
- creating a favourable environment for investment and co-investment in very high-capacity networks;
- facilitating the access of operators into electronic communications markets and promoting competition;
- facilitating the access of users to electronic communications services and strengthening the protections provided for them; and
- defining the competencies of the regulatory and administrative authorities of the sector, and in particular of the Italian Communications Authority, the Ministry of Economic Development and the newly established National Cybersecurity Agency.

Recent Legislative Decree No. 48/2024 contains corrective provisions to the 2003 Electronic Communication Code aiming to simplify the implementation of electronic communication infrastructures and the adaptation to technological innovation.

The main amendments concern:

- the introduction of the definitions of 'Access Point' and 'Mac Address' (media access control address);
- the introduction of the concept of Certified Start of Activity Report (SCIA), to allow a homogeneous recognition of the legal authorisation schemes;
- the introduction of textual amendments to the original provisions regarding the market entry and distribution;
- the introduction of some changes in the area of access to local radio-frequency networks; and
- the introduction of some new rules for the activation of sim cards (including references to numbering resources, blocking of foreign numbers, identification of mobile phone users).
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Legislative Decree No. 70/2003 (the E-commerce Decree) provides for the rules governing liability of internet service providers (namely, access, caching and hosting providers).

Legislative Decree No. 196/2003 (the Data Protection Code), as recently amended, which provides specific rules concerning the protection of personal data processed by operators in the context of provision of electronic communications services, in addition to the provisions laid down in the Regulation (EU) 2016/679 (the General Data Protection Regulation) (GDPR).

Moreover, the Italian Communications Authority (the Authority) issues resolutions as secondary legislation containing detailed rules in the offering of electronic communication services and networks. Indeed, the Authority, established by Law No. 249/1997, is a regulatory agency designed to actively promote the integration between the telecommunication and media markets and to supervise and monitor the markets.

Moreover, the Data Protection Authority issues resolutions containing specific obligations for operators in the storage, processing and use of personal data information.

The Ministry of Economic Development – Communications Department (the Ministry) is in charge, inter alia, of issuing authorisations and allocating the spectrum.

A general authorisation is required to offer electronic communications services in Italy. Such authorisation can be issued only to:

- entities with a permanent establishment in Italy or a country within the European Economic Area;
- member states of the World Trade Organization; and
- countries granting Italian citizens reciprocal rights of access to the relevant telecoms activity (article 11 of the Electronic Communications Amending Law).

Such general authorisation must be obtained for every single service offered, by submitting an application drawn up in accordance with Annex 14 to the Electronic Communications Amending Law, exclusively through the website of the Ministry of Economic Development's SIDFORS platform.

Requests for general authorisations to operate phone centres, internet points, fax and data-processing centre services do not have to be submitted through the SIDFORS portal but directly to the competent territorial inspectorate.

Law stated - 10 May 2024

Authorisation/licensing regime

Describe the authorisation or licensing regime.

Under article 11 of the Electronic Communications Amending Law, an operator that intends to provide electronic communications networks and services or to establish and operate network equipment at a point of presence in Italy shall apply with the Ministry for the issuance of a general authorisation that is required to offer electronic communications services in Italy.

The request must describe the services to be rendered and identification data about the applicant.

Starting from the filing of the relevant request, the operator is immediately entitled to run the activity. However, the Ministry has a 60-day term (from filing) to deny the authorisation. If the Ministry does not respond within this deadline, the authorisation is definitively issued.

General authorisations have a maximum validity of 20 years and may be renewed.

All operators holding a general authorisation are obliged to register with the Register for Communications Operators kept by the Authority.

General authorisations are subject to payment of an annual contribution to the Ministry, whose amount is indicated in the Electronic Communication Code based on the service currently provided by the operator and the relevant extension thereof.

Law stated - 10 May 2024

Flexibility in spectrum use

Do spectrum licences generally specify the permitted use or is permitted use (fully or partly) unrestricted? Is licensed spectrum tradable or assignable?

The spectrum licences specify the permitted spectrum use. Under article 14 of the 2003 Electronic Communications Code, the Ministry prepares the master plan for the use of spectrum licences, while the Authority is in charge of the allocation plan.

The most up-to-date master plan is Ordinary Supplement No. 49, published in Italian Official Gazette No. 244 on 19 October 2018. It provides the principles for the allocation of the frequencies between zero GHz and 3,000GHz to each type of service (eg, fixed, mobile, satellite or radio navigation), the authorities to which the frequencies shall be required (eg, the Ministry of Economic Development and the Ministry of Defence) and the frequency bands and (if any) the international provision applicable. The allocation plan has instead been adopted by the Authority on 7 February 2019 with Resolution No. 39/19/CONS. The revision draft of the master plan was subject to a public consultation, which ended on 31 January 2022, with comments and amendment proposals from administrations, telecommunications service operators, television operators, information and communications technology (ICT) manufacturers, national associations of the radio and television sector, manufacturers of radio equipment, national radio amateurs and private citizens.

Individual rights of spectrum use are granted within the limits set out in the master plan, and any holders of such rights shall be compliant with the spectrum use allocated.

Law stated - 10 May 2024

Ex-ante regulatory obligations

Which communications markets and segments are subject to ex-ante regulation? What remedies may be imposed?

According to EU Recommendation No. 879 of 17 December 2007, the electronic communications sector that is subject to ex-ante regulation can be divided into two groups:

- markets for fixed networks (eg, services for access to new generation networks); and
- markets for interconnection services on fixed and mobile networks (eg, interconnection services on fixed networks).

EU Recommendation No. 710 of 9 October 2014 has modified the number and list of markets that are subject to ex-ante regulation. In particular, the latest Recommendation included fixed and mobile call-termination markets in the list, as well as wholesale broadband access markets.

On 1 November 2022, the EU Digital Markets Act (the DMA) came into force. It regulates the activities of major digital platforms in the EU market and it applies to gatekeepers, namely, companies offering online intermediation services (including search engines, social networks, messaging and video sharing).

The DMA introduces an ex-ante approach whereby specific and circumscribed obligations are imposed on the operators of platforms qualified as gatekeepers.

Law stated - 10 May 2024

Structural or functional separation

Is there a legal basis for requiring structural or functional separation between an operator's network and service activities? Has structural or functional separation been introduced or is it being contemplated?

Under article 17 of the Electronic Communications Amending Law, companies with exclusive or special rights for public communication network installation or communication services provision – in Italy or even abroad – shall provide networks or electronic communication services accessible to the public only through their subsidiaries or affiliated companies (eg, structural separation). This limitation does not apply to companies that generate an annual turnover of less than €50 million with the provision of electronic communication networks or services in the European Union.

Functional separation is instead provided by article 88 of the Electronic Communications Amending Law as an exceptional measure to be implemented if the Authority assesses that other available remedies have failed to achieve effective competition. If the Authority intends to impose a functional separation, it shall notify its proposal to the European Commission, explaining the grounds of such proposal.

Law stated - 10 May 2024

Universal service obligations and financing

Outline any universal service obligations. How is provision of these services financed?

The services that must be made available to end users and must be provided by all operators as universal service obligations are:

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access to end users from a fixed workstation (article 96 of the Electronic Communications Amending Law); and

- special measures for disabled and low-income users (article 95 of the Electronic Communications Amending Law).

The Authority identifies one or more undertakings in charge of providing the universal service at an accessible price.

If the Authority finds that the provision of the universal services by the identified undertaking results in an unfair burden to the latter upon the undertaking's request, it will share the net costs deriving from the provision of the universal services among providers of electronic communications networks and services using the ad hoc fund established by the Ministry (article 98-ter of the Electronic Communications Amending Law).

Law stated - 10 May 2024

Number allocation and portability

Describe the number allocation scheme and number portability regime in your jurisdiction.

With Resolution No. 274/07/CONS (article 6 et seq), the Authority has set the standards for activation and migration of fixed number procedures and pure number portability (it will take place without being accompanied by the transfer of physical access resources).

Under article 98-octies decies of the Electronic Communications Amending Law, users have the right to change operator for mobile phone, voice and data services, while keeping their own mobile number (mobile number portability). The relevant inter-operator procedures are regulated by Resolution No. 339/18/CONS. The user is not actively involved in the transfer procedure. It is simply requested to subscribe to an offer with a new operator and communicate to the latter the transfer code. Thus, the user shall not even communicate the withdrawal to the former operator as the new operator is in charge of dealing with the transfer procedure, including liaising with the former operator to terminate the user's contractual relationship.

With Resolution No. 86/21/CIR, the Authority introduced new verification obligations for the operator involved in the portability procedure to avoid the risk of fraud with SIM card replacement (called SIM Swap) against consumers. Such obligations came into force on 14 November 2022.

Law stated - 10 May 2024

Customer terms and conditions

Are customer terms and conditions in the communications sector subject to specific rules?

Consumers are generally protected by Italian Legislative Decree No. 206/2005 (the Consumer Code) both from a contractual point of view (including off-premises agreements)

and against unfair business-to-consumer commercial practices (including teleselling practices).

Specific rules are further provided by the E-commerce Decree (implementing EU Directive 2000/31/EC) on information society services and electronic commerce, which, among others, includes specific provisions on the information to be provided to consumers when dealing with electronic agreements.

Also, the Electronic Communications Code provides for specific terms and conditions to be included in communications contracts, such as the services provided, the minimum service level, and the procedures used by the company for measuring network traffic.

EU Directive 2019/2161 (Omnibus Directive) was implemented in Italy on 18 March 2023 with Legislative Decree No. 26/2023, which entered into force on 2 April 2023, introducing new consumer protection measures in the Consumer Code including, inter alia, higher penalties for companies and widening the cases of unfair commercial practices. In particular, with specific reference to e-commerce, the legislation introduced by Legislative Decree No. 26/2023 imposes the obligation to:

- clearly indicate, in marketplaces, the entity – professional or private – that offers products for sale, bearing in mind that, in the case of private individuals, consumer protection rules will not apply;
- to inform about the main parameters governing the classification of products, whenever the possibility of searching for products offered by different professionals is offered (this obligation, however, does not apply to providers of online search engines); and
- to ensure the reliability of product reviews.

Law stated - 10 May 2024

Net neutrality

Are there limits on an internet service provider's freedom to control or prioritise the type or source of data that it delivers? Are there any other specific regulations or guidelines on net neutrality?

Net neutrality is regarded as a fundamental principle recognised by the Authority to ensure democratic internet service provision. Net neutrality is regulated by Regulation (EU) 2015/2120, and in Italy, the competent Authority issued specific Resolution No. 348/18/CONS concerning the net-neutrality regulation. Several legislative discussions have resulted in the Declaration of Internet Rights of 14 July 2015 approved by the Italian parliament, a document consisting of 14 sections and conceived as a guideline to drive an evolutionary interpretation of the existing provisions and to serve for any legislative developments.

Article 4 of Law No. 167/2017, raised the maximum penalty that can be imposed by the Authority, in the case of a violation of net neutrality, to a limit of €2.5 million.

In compliance with the Body of European Regulators for Electronic Communications' guidelines, the Authority published the 2022 Report including the activities carried out concerning net neutrality. The report reveals that many inspective and monitoring actions

have been taken on the commercial practices adopted for the provision of telematics services on the Italian market, by gaining information both directly from the major internet service providers and through hearings with the interested persons.

The resolution concerning the abolition of net neutrality in the United States, taken by the Federal Communications Commission on 14 December 2017, does not seem to have influenced the activity of the Italian legislator yet. On the other hand, the advent of 5G connectivity may be a game-changer as it will be necessary to understand if the innovative capacity of the network is inextricably linked to its free accessibility or not.

Law stated - 10 May 2024

Platform regulation

Is there specific legislation or regulation in place, and have there been any enforcement initiatives relating to digital platforms?

No specific legislation or regulations have yet been enacted in Italy concerning digital platforms. However, preparatory works for a law project have been carried out in recent years and a draft law concerning the regulation of digital platforms for the sharing economy was presented to the Italian Chamber of Deputies on 27 January 2016. The draft law began its parliamentary procedure in January 2016, denominated as Act 3564 on 'Discipline of digital platforms for the sharing of goods and services and provisions for the promotion of the sharing economy' and is still under examination by the competent parliamentary commission.

In any case, the following legislation may apply to various aspects of the digital platforms:

- the e-commerce regulation provided by the E-commerce Decree;
- the Consumer Code and the data protection rules provided by the GDPR; and
- the Data Protection Code.

Moreover, the Italian Competition Law (Law No. 118/2022) introduced a new provision specifically referred to digital platforms consisting in a relative presumption of economic dependence in the event that an enterprise uses the intermediation services provided by a digital platform that plays a decisive role in reaching end users or suppliers, including in terms of network effects or data availability.

In addition, Regulation (EU) 2019/1150, in force in EU member states since July 2020, outlines the relationship between business users of online intermediation services (marketplaces) and search engines.

The purpose of this Regulation is to guarantee greater transparency in the contractual terms applied to business users by, among others, the big players of the network. The target of the Regulation is the relationship of dependence that business users have on these large online players to offer their goods and services to consumers, which indirectly affects consumers who may not be able to enjoy balanced offers. The Regulation is directly applicable in EU member states and, so far, Italy has issued no specific rules regarding its implementation. By 13 January 2022, and subsequently every three years thereafter, the European Commission

shall evaluate this Regulation and report to the European Parliament, the European Council and the European Economic and Social Committee.

On 27 October 2022, the DMA was published in the EU's Official Gazette. The DMA regulates the activities of major digital platforms in the EU market, and It applies to gatekeepers, namely, companies offering online intermediation services (including search engines, social networks, messaging and video sharing). Eligible gatekeepers are suppliers that:

- have a size that has an impact on the internal market (assessed on the basis of turnover and capitalisation thresholds);
- are in control of important access for business users to end consumers; and
- have an established and durable position.

The designation as gatekeepers is made by the EU Commission, following a notification from the companies concerned, or acting ex officio. Under the DMA, specific and circumscribed obligations are imposed on the operators of platforms qualified as gatekeepers.

Law stated - 10 May 2024

Next-Generation-Access (NGA) networks

Are there specific regulatory obligations applicable to NGA networks? Is there a government financial scheme to promote basic broadband or NGA broadband penetration?

Since 2015, Italy has been executing the ultra-broadband strategic plan (UBP) to develop an ultra-broadband network across all Italian territory and create a public telecommunications infrastructure in coherence with the purposes of the European Digital Agenda. The Italian Ministry of Economic Development acts through its in-house company (Infratel Italia Spa) whose mission is to implement the infrastructure development schemes throughout the country, with a particular focus on the development of an ultra-broadband network and Wi-Fi public-services connection.

The UBP is part of the wider Italian Ultra-Broadband Strategy – approved by the government in March 2015 – which intends to reduce the existing market and infrastructure gap through the creation of conditions that are more favourable to the integrated development of fixed and mobile telecommunications infrastructure. Such strategy represents the reference national framework for any public initiative supporting the development of ultra-broadband networks in Italy.

The strategy is implemented through state aid (national and EU funds alike), approved by the European Commission. Moreover, on 11 February 2016, the Council of Ministers and the Conference of the Regions approved the 'Framework agreement on the developing of the NGA as European target 2020', allocating €3 billion to the project, subdividing the funds to the regions, according to their population, and strengthening the management of the project.

The intervention is intended to build a publicly owned network that will be made available to all operators willing to provide services in favour of the population and undertakings.

Law stated - 10 May 2024

Data protection

Is there a specific data protection regime applicable to the communications sector?

The provisions applicable to the communications sector are contained in the Data Protection Code and the resolutions of the Data Protection Authority. In particular, articles 121 to 132, a quarter of the Data Protection Code, apply to the processing of personal data connected to the provision of electronic communication services accessible to the public on public communications networks.

The retention of data in the terminal equipment of a user or the access to information already stored is permitted only on the condition that the user has given his or her consent after being informed in a simplified manner. This does not prohibit any technical archiving or access to information that has already been archived if it is solely aimed at transmitting a communication over an electronic communication network, or as strictly necessary for the provider of an information society service explicitly requested by the user to provide this service. Traffic data concerning users processed by the provider of a public communications network or an electronic communication service accessible to the public are erased or anonymised when they are no longer necessary for the transmission of electronic communications.

The provider of an electronic communications service accessible to the public may process user data to the extent and for the duration necessary for the marketing of electronic communication services or the provision of value-added services, only if the user to whom the data relates has previously expressed their consent, which is, however, revocable at any time.

The processing of personal data relating to traffic is only allowed for subjects authorised to process and operate under the direct authority of the provider of the electronic communication service accessible to the public or, as the case may be, of the provider of the public communications network that deals with billing or traffic management, analysis on behalf of customers, fraud detection or the marketing of electronic communication services.

If calling line identification is available, the service provider of electronic communication accessible to the public assures the calling user the possibility of preventing, free of charge and through a simple function, the presentation of the calling line identification, call by call.

Location data other than traffic data referring to users can be processed only if anonymised or if the user has previously expressed his or her consent, and is revocable at any time.

Without prejudice to the provisions of articles 8 and 21 of the E-commerce Decree, the use of automated call or call communication systems without the intervention of an operator for sending advertising material or direct sales or for carrying out market research or commercial communication is permitted only with the user's consent.

Furthermore, the provisions of the GDPR (articles 15 et seq) shall be integrated into the processing of data, including a data-protection impact assessment (article 35).

Concerning the security of the processing, article 32 of the GDPR shall apply, and therefore, providers of a publicly available electronic communications service shall, also through other entities entrusted with the provision of the service, implement technical and organisational measures appropriate to the risk involved.

The latter measures shall ensure that traffic and location data and other personal data stored or otherwise transmitted are protected against accidental or unlawful destruction, loss, alteration, or unauthorised disclosure of, as well as ensure the implementation of a security policy. Where the security of the service or personal data also requires the adoption of security measures to be taken concerning the network, the provider of the publicly available electronic communications service shall take such measures jointly with the provider of the network. In the event of failure to reach an agreement, at the request of one of the providers, the dispute shall be settled by the Communications Authority.

Furthermore, the provider of a publicly available electronic communications service shall inform the subscribers and, where possible, users, using clear, appropriate and adequate language concerning the category and age group of the subscriber, with particular attention in the case of minors, if there is a particular risk of a breach of network security, indicating, when the risk is outside the scope of the measures to be taken by the provider described above, all possible remedies and the relative presumable costs. Similar information shall be provided to the Data Protection Authority and the Communications Authority.

At the end of March 2022, Italian Presidential Decree No. 26/2022 on the public register of oppositions (RPO) was published and repealed the Italian Presidential Decree No. 178/2010.

The RPO is a public registry where the contracting parties (those with a contract with a telco operator) are entitled to register their numbers to avoid being contacted for marketing purposes.

Pursuant to the Italian Presidential Decree No. 26/2022, it is possible to also include in the RPO the mobile phone numbers of the contracting parties or data subjects.

Therefore, the entity that is willing to run telemarketing activities shall consult the RPO before starting such activities and shall provide the list of the telephone numbers that it intends to contact.

Once registered before the RPO, the entity shall consult the RPO itself by accessing the relevant website.

Within the following 24 hours, the RPO shall return to the relevant entity with an updated and cleared list of telephone numbers that shall not be contactable.

The list is valid for 15 days only, to enable a continuous update of the RPO.

It is noteworthy that with the registration before the RPO, the consent of the contracting party shall be deemed withdrawn.

In any case, the contracting party can withdraw the right to object only against one or certain operators or companies.

With a decision dated 9 March 2023, the Data Protection Authority approved the Code of Conduct for telemarketing and teleselling activities (the Code) promoted by associations of principals, call centres, telemarketers, list providers and consumer associations. The Code will become effective once the accreditation phase of the Monitoring Body (MoB) has been completed and is subsequently published in the Italian Official Gazette. The MoB is an independent body charged with verifying adherents' compliance with the Code of Conduct and with handling the resolution of complaints.

The companies that adhere to the Code will undertake to adopt specific measures to guarantee the correctness and legitimacy of data processing carried out throughout the telemarketing chain, such as the collection of specific consents for individual purposes (marketing, profiling, etc), giving specific and precise information to the persons contacted on the purposes for which their data are used, and ensuring the full exercise of the rights provided for by the privacy legislation.

Law stated - 10 May 2024

Cybersecurity

Is there specific legislation or regulation in place concerning cybersecurity or network security in your jurisdiction?

An essential moment in the evolution of cyber-security regulation in Italy was the implementation of Directive (EU) 2016/114 on the Security of Network and Information Systems (the NIS Directive), through the issuing of Legislative Decree No. 65/2018, through which relevant innovations were introduced. The peak position of the prime minister's office was confirmed, as well as his or her leading role. A new centralised cyber incident collection system was set up through the Computer Security Incident Response Team (CSIRT). Furthermore, the Department of Security Intelligence (DIS) will act as the network and information system's single point of contact. Along with this, on 19 September 2019, the Italian Council of Ministers approved new Decree-Law No. 105/2019. The Decree-Law was then converted into a fully enforceable law by parliament with Law No. 133/2019. This Law aims to guarantee a high level of safety for the networks, the information systems and the informatics services of the public administration, institutions and private entities that rely on the implementation of an essential function or the provision of an essential service for the country.

Moreover, one of the relevant goals of this Law was set by the NIS Directive itself, which provided for the competent authorities to identify essential services operators and to define minimum security measures, later set by the Agency for Digital Italy. The purpose, fully implemented by the present Law, with the creation of the Cybersecurity Perimeter (the Perimeter), leading to the identification and protection of those essential services and functions providers, was to create an armour around such operators, both private and public entities, to shield Italy from possible attacks and an ensuing national crisis (preventing attacks and setting the ground to solve them as easily as possible).

In particular, five implementing decrees are provided to fully implement the architecture of the Perimeter. The first implementing decree was fully effective from 5 November 2020 (Presidential Decree No. 131/2020) and defines the criteria for identifying the entities included in the Perimeter and the obligations imposed on them to safeguard national security. The list of entities included in the Perimeter has already been drawn up, with about 100 entities involved, but was not published for national security reasons.

Nonetheless, the sectors in which to identify, as a matter of priority, public and private entities carrying out functions with a significant impact on national security include, among others, telecommunications, digital services and critical technologies.

Furthermore, Presidential Decree No. 131/2020 imposes several obligations on the entities within the Perimeter to ensure a high level of security.

First, entities must prepare, and annually update, the list of their ICT assets and must then identify the ICT assets needed to perform the essential function or service, to:

- assess the impact of an incident on the ICT asset, in terms of its operability and the compromise of data availability, integrity or confidentiality; and
- assess dependencies with other networks, information systems, IT services or physical infrastructures belonging to other subjects.

Finally, entities must identify the ICT assets that, in the event of an incident, would cause the total interruption of the essential function or service.

The second implementing decree on notifications of incidents affecting networks, information systems and information services, as well as security measures, which is expected to be published soon as it is already provided for by the Decree of 29 January 2021, regarding the one-hour window for reporting a serious computer incident to the CSIRT and DIS by the entities belonging to the Perimeter. Concerning the Decree of 29 January 2021, the latter identifies the procedures, modalities and terms by which the National Assessment and Certification Centre (CVCN) and the Assessment Centres of the Ministries of Interior and Defence (CV) carry out assessments on the acquisition, by the entities included in the Perimeter, of ICT technologies and software – including 5G technology – that could present vulnerabilities and therefore expose them to cyber risks.

The latter decree provides that, before the launch of award procedures or the conclusion of supply contracts, entities included in the Perimeter must notify the CVCN or the CV. Subsequently, the procedure is divided into three phases:

- preliminary assessments;
- preparation for the execution of tests; and
- execution of hardware and software tests.

The third implementing Decree, fully effective from 8 May 2021 (Presidential Decree No. 54/2021 of 5 February 2021), focuses on the procedures and terms for assessments by the CVCN and the CVs on products being acquired by entities included in the Perimeter.

The latter Decree also establishes the criteria for identifying the supply objects falling within the categories to which the assessment procedure applies.

Indeed, the categories of ICT goods, systems and services subject to the assessment by the CVCN or the VCs are identified based on the execution or performance of the following functions:

- switching or protection against intrusion and detection of cyber threats in a network, including the application of security policies;
- command, control and implementation in an industrial control network;
- monitoring and configuration control of an electronic communication network;
- network security concerning the availability, authenticity, integrity or confidentiality of services offered or data stored, transmitted or processed;
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authentication and allocation of the resources of an electronic communication network; and

- implementation of an IT service through the configuration of an existing software program or the development, in part or in full, of a new software program, constituting the application part relevant to the provision of the IT service itself.

The categories will then be detailed in a further decree of the President of the Council of Ministers, still to be enacted.

The entities included in the Perimeter will notify the commencement of a technology acquisition procedure together with a risk assessment.

The last two implementing decrees are still expected to be approved and published. The fourth implementing decree will identify the categories of networks, information systems and IT services for which it will be necessary to notify the CVCN, in the case of entrusting the provision of goods or services to third parties. The fifth implementing decree will define the criteria for the accreditation of laboratories responsible for verifying the security conditions in the procurement of products, processes and services for networks, information systems and IT services.

Another important piece of the framework is Legislative Decree No. 123/2022 that, by implementing the Regulation (EU) 2018/881, identified the National Cybersecurity Agency as the relevant authority in matters concerning cybersecurity and introduced a certification mechanism based on systems' reliability. As part of this framework, in June and October 2022, powers and functions related to cybersecurity were respectively transferred from the Ministry and Agency for Digital Italy to CAN.

Moreover, the GDPR's provisions on privacy by design and default must be considered when dealing with cybersecurity, as telecom operators must comply with such obligations even before implementing a new product or service.

On 27 December 2022, Directive (EU) 2022/2555 (the NIS2 Directive), which updates and succeeds the NIS Directive, was published in the EU's Official Gazette. This Directive must be implemented before October 2024.

The main innovation of the NIS2 Directive is its wide area of application, which is extended to companies operating in further sectors such as, inter alia:

- cloud computing;
- data centres;
- content delivery network providers;
- electronic communication services; and
- electronic communication networks.

The companies concerned shall implement an appropriate risk assessment process for the management of potentially malicious cyber events.

The NIS2 Directive also envisages new stringent reporting requirements in the event of a cyber incident to be fulfilled by notifying the CSIRT of all incidents likely to cause impacts of a 'significant' nature.

Differently from the past, where reporting had to be done 'without undue delay' (see the NIS Directive), the NIS2 Directive provides for a more circumscribed, comprehensive and timely reporting process. In this sense, it provides for:

- an early warning period of within 24 hours from the knowledge of the incident (the sending of the 'early warning');
- a notification within 72 hours of knowledge of the incident, updating – if necessary – the information in the early warning; and
- a final report within one month from the transmission of the notification, completing the reporting process.

From a sanctioning point of view, the NIS2 Directive finally empowers EU member states to lay down rules on sanctions in their national implementing legislation. These penalties must be 'effective, proportionate and dissuasive' and may be up to €10 million or a maximum of at least 2 per cent of the total annual worldwide company's turnover.

When a breach of the above-mentioned requirements is established, the NIS2 Directive also provides that the competent authorities have the power to suspend the company's business activity.

Law stated - 10 May 2024

Big data

Is there specific legislation or regulation in place, and have there been any enforcement initiatives in your jurisdiction, addressing the legal challenges raised by big data?

There are no specific rules on big data in Italy.

However, big data often includes personal data and, in many cases, it is not possible to separate these data from non-personal data; therefore, as highlighted by the Data Protection Authority in the fact-finding survey on Big Data of February 2020, the privacy risks derived from the use of big data are different:

- the processing of personal data outside the purposes for which it was collected;
- the use of incorrect or outdated information;
- discrimination or prejudice against certain individuals or groups resulting from the application of certain profiling algorithms; and
- the processing of personal data above what is necessary to process them.

Law stated - 10 May 2024

Data localisation

Are there any laws or regulations that require data to be stored locally in the jurisdiction?

Under Italian law, there are no specific provisions that expressly require that any kind of data shall be strictly retained within Italy's national borders.

However, certain limitations may apply concerning specific types of data.

By way of example, under article 39 of Presidential Decree No. 633/1972 (relating to the value added tax applicable to the sale of goods and services), any accounting document shall be retained through electronic archives and stored in a foreign country only to the extent that there are reciprocal assistance rights.

The GDPR imposes on the data controller, established outside the European Union, but using instruments located in the national territory, the obligation to appoint a local representative, which will be subject to national legislation and responsible for data processing on the territory.

Under articles 44 to 49 of the GDPR, the transfer of data from a data controller established in one of the EU member states to a controller of a third country or an international organisation is allowed if the European Commission has decided that the third country or international organisation ensures an adequate level of data protection or under one of the appropriate safeguards apply.

Law stated - 10 May 2024

Key trends and expected changes

Summarise the key emerging trends and hot topics in communications regulation in your jurisdiction.

The Metaverse represents a new dimension of our era that is not yet entirely regulated. However, the regulation of a system in which physical, augmented and virtual reality converge, allowing users to interact with a computer-generated environment, is not easy to manage. With the implementation of Directive (EU) 2019/770, which refers to contracts for the supply of digital content and services, digital content is subject to stricter regulation to ensure the conformity of the digital content with the contract and the supplier's public statements. Furthermore, the metaverse represents a marketplace as various types of trade takes place within such dimension and is the reason Regulation (EU) 2019/1150 was issued to promote fairness and transparency for commercial users of online intermediary services. This Regulation governs the relationship between the owners of platforms and business users who provide consumers with goods and services. In addition to these rules, the Omnibus Directive has been implemented in Italy with Legislative Decree No. 26/2023, which entered into force on 2 April 2023 and it provides for certain relevant amendments and integration to the Italian Consumer Code, in particular providing – among other changes – for new information requirements on distance contracts, new conducts that could amount to misleading omission or practice, new sanction regime and also specific additional information requirements for contract concluded on online marketplaces.

Last year, within the context of artificial intelligence (AI), the Authority took measures against ChatGPT (the AI platform developed by OpenAI). Specifically, on 30 March 2023, the Authority ordered, with immediate effect, the temporary limitation on the processing of Italian users' data. The Authority highlighted the lack of:

- information to users and data subjects;

- legal basis for the mass collection and processing of personal data to train the algorithms of ChatGPT; and
- age verification that exposes children to receiving inappropriate answers (even if the service is aimed at users above 13 years of age).

The Authority also flagged that the information made available by ChatGPT was sometimes inaccurate. The Authority required OpenAI to provide within 20 days the evidence of the measures taken to implement what is requested and to provide any information deemed useful to justify the above violations, failing which OpenAI might be fined up to €20 million or up to 4 per cent of its annual global turnover.

Thereafter, on 13 April 2023, the European Data Protection Board (EDPB) launched a dedicated task force on ChatGPT ‘to foster cooperation and to exchange information on possible enforcement actions conducted by data protection authorities’.

On 28 April 2023, in the formal press release of the Authority, the latter announced that OpenAI sent it a letter describing the measures implemented to comply with the order issued by the Authority on 11 April 2023. In particular, OpenAI expanded the information to European users and non-users, it amended and clarified several mechanisms and deployed amenable solutions to enable users and non-users to exercise their rights. Based on these improvements, OpenAI reinstated access to ChatGPT for Italian users. The Authority acknowledges the improvements taken by OpenAI to reconcile technological advancements with respect for the rights of individuals and the Authority hopes that OpenAI will continue its efforts to comply with GDPR provisions. In any case, the Authority confirms that its investigation continues also with the task force set up by the EDPB.

On 29 January 2024, the Italian Data Protection Authority (Garante) notified breaches of data protection law to OpenAI. Following the temporary ban on processing imposed on OpenAI by the Garante on 30 March 2023, and based on the outcome of its fact-finding activity, the Italian DPA concluded that the available evidence pointed to the existence of breaches of the provisions contained in the EU GDPR. The Italian Garante will take account of the work in progress within the ad-hoc task force set up by the EDPB in its final determination on the case.

Moreover, on 8 March 2024, the Garante opened an investigation into the US company that in recent weeks has announced the launch of a new AI model, which, according to the announcement, is able to create dynamic, realistic and imaginative scenes from short text instructions.

The Garante recently concluded the public consultation on data scraping. It focused specifically on the use of this technique by companies developing generative artificial intelligence systems for purposes of training related algorithms. As of today, the Garante has not published, even informally, any paper or guidelines on the topic.

Another relevant topic in communications regulation is one related to the development of ultra-broadband, which is also an essential prerequisite for the development of 5G. Decree-Law No. 22 of 1 March 2021 established the Inter-Ministerial Committee for Digital Transition chaired by the Minister for Technological Innovation and Digital Transition, which coordinates the governance of Italy’s ultra-broadband strategy Towards the Gigabit Society, approved on 25 May 2021. The strategy consists of various interventions, including the Italian 5G plan (for which €2,020 million of National Recovery and Resilience Plan resources

have been allocated). Furthermore, with Resolution No. 67/22/CONS of 3 March 2022, the Communications Regulator adopted the 'Guidelines to identify the conditions of wholesale access to ultra-broadband networks receiving public contribution – integration for 5G networks', which are regulated by:

- general conditions;
- the minimum set of wholesale services to be provided by the beneficiary of the financed network;
- the pricing of those services; and
- the approval procedure of prices.

A recent Italian legislative innovation is the approval by the Italian Council of Ministers of a scheme of a draft bill for the introduction of provisions in the area of artificial intelligence (AI scheme). This AI scheme has a complementary function to the EU AI Act, approved by the European Parliament on 13 March 2024. It sets out several principles on research, experimentation, development, adoption and application of artificial intelligence systems and models. It promotes a correct, transparent and conscious use, in an anthropocentric dimension, of AI, to capture its opportunities. It ensures supervision of the economic and social risks and the impact on the fundamental rights of AI. The activities carried out for national security purposes, national cybersecurity as well as those carried out for armed forces' defence purposes and by the police forces are excluded from the scope of application of the scheme. The next step will be to wait whether this AI scheme will be converted into a final law and what changes, if any, will be made.

Law stated - 10 May 2024

MEDIA

Regulatory and institutional structure

Summarise the regulatory framework for the media sector in your jurisdiction.

Audio-visual media sectors are mainly governed by Legislative Decree No. 208/2021, namely, the Consolidated Law on Audio-visual Media Services (AVMS Code), which has implemented the Audio-Visual Media Service Directive (Directive (EU) 2018/1808 amending Directive (EU) 2010/13/EU (AVMS Directive) in Italy.

Decree No. 208 of 8 November 2021 reorganised the provisions of the Consolidated Audiovisual Media Act (CAMA), referred to in Legislative Decree No. 177 of 31 July 2005.

One of the aims of Decree No. 208/2021 is to adopt the national plan for the allocation of radio frequencies in analogue technique, taking into account the degree of development of radio broadcasting in digital technique.

Additionally, the main subject matter of Decree No. 208/2021 is the provisions on audiovisual media services, such as:

- the transmission of:

- television programmes, both linear and on-demand;
- radio programmes; and
- data programmes, including those with conditional access; and
- the provision of associated interactive services and conditional access services on any broadcasting platform, including audiovisual commercial communications and video-sharing platform services.

Decree No. 208/2021 applies to audiovisual and radio media service providers and radio concessionaires operating in Italy, which are those that:

- have their head office in Italy and editorial decisions on the audiovisual media service are taken in Italy;
- have their head office in Italy and editorial decisions on the audiovisual media service provided are taken in another EU member state or a third country, if a significant part of the persons employed in the performance of the audiovisual or radio media service activity linked to the programmes operate within Italian territory;
- despite having its head office in another EU member state or a third country, editorial decisions on the audiovisual media service provided are taken in Italy and a significant part of the persons employed in the performance of the audiovisual or radio media service activity are linked to the programmes operate within Italian territory;
- a significant part of the workforce involved in the pursuit of the audiovisual media service activity relating to the programmes operates both in Italy and in another EU member state if its head office is in Italy; and
- if it started its activity in Italy in compliance with the national legal system, maintaining over time a stable and effective link with the Italian economy.

To the already-existing prohibitions against incitement to hate and violence, the prohibition to commit public provocation to terrorist offences has been added. Moreover, Decree No. 208/2021 aims to ensure adequate protection of human dignity and minors in relation to audiovisual content and commercial communications by sharing platforms.

Legislative Decree No. 44/2010 has simplified the provision of linear services, regulated the provision of non-linear services (eg, download and on-demand services), and introduced some limits concerning advertisement crowding, as well as specific dispositions for the protection of European works.

Legislative Decree No. 181/2021, which has implemented Directive (EU) 789/2019 and amended certain rules concerning television rebroadcasting rights.

Legislative Decree No. 177/2021, which has implemented the Directive (EU) 790/2019 on copyright and related rights in the Digital Single Market.

The two main institutional bodies in Italy for the media sector are the Italian Communications Authority (the Authority) and the Ministry of Economic Development – Communications Department (the Ministry). The Authority is vested in all powers and responsibility for development and policymaking activities in connection with the provision of radio and audiovisual services. The Ministry has the power, among others, to grant licences, general authorisations and spectrum.

Ownership restrictions

Do any foreign ownership restrictions apply to media services? Is the ownership or control of broadcasters otherwise restricted? Are there any regulations in relation to the cross-ownership of media companies, including radio, television and newspapers?

CAMA was aimed at protecting the media market as well as ensuring pluralism in the provision of relevant audiovisual services through the implementation of certain ownership restrictions for broadcasters. Article 51 of Decree No. 208/2001 replaces article 43 of CAMA and contains the provisions related to the protection of pluralism fixing certain thresholds of incomes, and taking into account the changed market conditions with the increasing presence of multinational platforms. Such restrictions should be applied regardless of the nationality of the broadcasters.

In its judgment of 3 September 2020 in *Vivendi SA v Autorità per le Garanzie nelle Comunicazioni* (Case C-719/18), the Court of Justice of the European Union (CJEU) found article 43 of CAMA contrary to EU law, because, although it is based on the general interest of protecting pluralism in the media, it entails a restriction of the freedom of establishment within the meaning of article 49 of the Treaty on the Functioning of the European Union.

To be compliant with the principles of such judgment, Decree No. 208/2021 provides an obligation for the companies to notify when thresholds are exceeded and a consequent detailed investigation carried out by the Authority to verify the impairment of pluralism as set out in the provisions.

Concerning the cross-ownership of media companies, article 51, paragraph 3(c) of Decree No. 208/2021 provides for companies whose revenues exceed 8 per cent of the total revenues of the integrated system of communications and that, at the same time, have or acquire stakeholdings in companies publishing daily newspapers, except for companies publishing daily newspapers distributed exclusively by electronic means, to formally notify the Authority, within 15 days from the deed transferring ownership or from the conclusion of the preliminary agreement between the parties of such context that constitute indications of a position of significant market power potentially detrimental to pluralism. The Authority is in charge of issuing the authorisation for the transaction.

A further restriction concerns the acquisition by EU and non-EU parties of participation in media companies. Indeed, the golden power discipline also applies to such transactions (namely, foreign direct investment). The golden power regulation (Law Decree No. 21/2012) is a set of rules according to which the Italian government may exercise some veto rights in relation to certain corporate resolutions and (or) to share purchase agreements in specific economic sectors or for assets of specific sectors.

Licensing requirements

What are the licensing requirements for broadcasting, including the fees payable and the timescale for the necessary authorisations?

Under Decision No. 353/11/CONS of the Authority relating to the licensing of digital terrestrial radio and television broadcasting (the DTT Regulation), digital terrestrial television (DTT) network operators must have a general authorisation to operate a DTT network issued by the Ministry and must obtain the right to use the relevant radio frequency spectrum. The DTT Regulation provides for various requirements for DTT network operators, including the number of programmes to be broadcast, coverage requirements and, in particular circumstances, must-carry obligations.

Service providers must apply for a general authorisation before providing their services.

The broadcasting authorisation is issued by the Ministry for a maximum of 12 years, renewable for a successive period of equal duration upon request to be sent 30 days before the expiry date. Applications may be filed only by entities established in Italy, other EEA states or other countries applying reciprocal treatment to Italians willing to operate as broadcasters in such countries. No authorisation is required for the retransmission of programmes by broadcasters established and legitimately operating in countries that are signatories of the European Convention on Transfrontier Television. The Ministry decides within 60 days of the application.

Licences can be transferred to a third party if the latter meets the requirements provided by the Authority's resolution governing the licence. The new licensee must communicate the transfer of the licence to the competent authority, which either authorises the assignment or communicates its own denial, based on the assignee's lack of compliance with requirements provided by the law (eg, if the assignee is based in a non-EU country that does not apply reciprocity, namely, where an Italian company could not hold an equivalent licence).

In addition, any change of control of the licensee and any assignment of licence must be notified to the Authority. Authority, before authorising the deal, assesses whether the transfer may lead to the creation of a dominant position in the relevant market, which could adversely affect pluralism.

Each broadcaster shall pay a one-off fee of €7,000.

The six-year renewable authorisation procedure for satellite broadcasters (including pay-TV channels) is provided by Decision No. 127/00/CONS of the Authority. The Authority has 60 days to decide on any application for satellite broadcasting or cable transmission.

The satellite broadcasting and cable distribution of television programmes are subject to a one-off fee of €6,027.

Law stated - 10 May 2024

Foreign programmes and local content requirements

Are there any regulations concerning the broadcasting of foreign-produced programmes? Do the rules require a minimum amount of local content? What types of media fall outside this regime?

The broadcasting of European programmes is regulated by article 53 et seq of Decree No. 208/2021.

Linear audiovisual media service providers shall reserve for European programmes a majority proportion of their transmission time. The time used for news, sports events, games, advertising, teletext and teleshopping services shall not be taken into account.

A sub-quota of the quota envisaged for European programmes is reserved for original Italian programmes, wherever they are produced, to the extent of at least half for the concessionaire of the public radio, television and multimedia service and at least one-third for other providers of linear audiovisual media services.

In the time slot from 6pm to 11pm, the concessionaire of the public radio, television and multimedia service reserves at least 12 per cent of broadcasting time, excluding the time allocated to news, sports events, television games, advertising, teletext and teleshopping services, for cinematographic and audiovisual works of fiction, animation, original documentaries of Italian origin, wherever produced.

Concerning foreign programmes, article 26 of Decree No. 208/2021 sets out that the authorisation released to the local broadcaster association includes the right to transmit in Italy foreign companies' programmes for a maximum of 12 hours per day. In the case of interconnection with satellite channels or foreign television broadcasters, this shall not take more than 50 per cent of the maximum time provided for the interconnection.

Law stated - 10 May 2024

Advertising

How is broadcast media advertising regulated? Is online advertising subject to the same regulation?

Article 43 et seq of Decree No. 208/2021 regulates broadcast media advertising.

As a general rule, the advertising shall not be hidden or subliminal and shall maintain a sound level not exceeding that of the programmes. Moreover, the advertising shall be respectful of human dignity and diversity and shall not encourage behaviour that is harmful to the safety and protection of the environment. There are specific items for which advertising is forbidden, such as cigarettes, medicines and gambling, and also specific protection for minors.

Pursuant to article 44, the advertising shall be clearly identifiable and recognisable from the editorial content. News, feature films and films for television (excluding series, serials and documentaries) shall be interrupted by spots no more than every 30 minutes.

The broadcasting of advertising messages by the concessionaire of the public radio, television and multimedia service, with reference to each individual channel, may not exceed 7 per cent, and from 1 January 2023, the limit is set at 6 per cent, in the time slot between 6am and 6pm and in the time slot between 6pm and midnight, and 12 per cent in each hour. The advertising slots of pay-TV broadcasters shall not exceed a daily threshold of 15 per cent.

Regarding radio advertisements carried out by non-public broadcasters, the hourly threshold is equal to 20 per cent for national broadcasting, 25 per cent for local broadcasting and 10 per cent for national or local broadcasting by European broadcasters.

Online advertising is regulated by Legislative Decree No. 206/2005 (the Consumer Code) and Legislative Decree No. 70/2003 (the E-commerce Decree). The Consumer Code specifically prohibits unfair trade practices, as well as misleading and aggressive marketing practices, while electronic commerce, identifies some information that the information society service provider must provide as well as the minimum requirements that any advertisement operator and any person making an online advertisement must comply with. EU Directive 2019/2161 (Omnibus Directive) has been recently implemented in Italy with the Legislative Decree No. 26/2023, which entered into force on 2 April 2023 and which provides for certain relevant amendments and integration to the Consumer Code, in particular providing – among other changes – for new information requirements on distance contracts, new conducts that could amount to misleading omission or practice, new sanction regime and also specific additional information requirements for the contract concluded on online marketplaces.

It is provided that – in addition to the information requirements laid down for specific goods and services – commercial communications that are part of or constitute an information society service, must include, from the first time they are sent, clearly and unambiguously, a specific statement aimed at highlighting that:

- it is a commercial communication;
- the natural or legal person on whose behalf the commercial communication is made;
- it is a promotional offer such as discounts, premiums or gifts and the conditions for accessing it; and
- it is a promotional competition or game, if allowed, and the conditions for participation.

Law stated - 10 May 2024

Must-carry obligations

Are there regulations specifying a basic package of programmes that must be carried by operators' broadcasting distribution networks? Is there a mechanism for financing the costs of such obligations?

No regulations specify a basic package of programmes that must be carried by operators' broadcasting distribution networks. However, under article 13, paragraph 4 of Decree No. 208/2021, broadcasters providing content of 'particular value' shall have privileged access to the digital broadcasting network. Under Resolution No. 253/2004, contents of 'particular value' at the national or a local level are those containing, inter alia, a high educational value, news and facts, socio-economic, cultural and political context, and improvement of the relationship between the citizen and the public administration.

No particular mechanism is provided to finance this kind of obligation.

Law stated - 10 May 2024

Regulation of new media content

Is new media content and its delivery regulated differently from traditional broadcast media? How?

Italian Legislative Decree No. 44/2010, deriving from EU Directive 2007/65/EC, has modified, inter alia, the provision of the audiovisual non-linear services (video on demand). It has introduced a minimum legal standard applicable to audiovisual linear services as well as to audiovisual non-linear services (eg, concerning the protection of minors and prohibition of hidden advertising). However, some specific provisions shall not apply to audiovisual non-linear services. The main example concerns advertising. Because the audience may easily avoid advertising, the daily threshold for the audiovisual non-linear advertising spots does not apply. Also, broadcasters may freely choose where to insert advertising spots.

Decree No. 208/2021, moreover, has implemented a specific regulation for video-sharing platform services. Pursuant to article 41, paragraph 7 of Decree No. 208/2021, the supervisory authority (the Communications Regulator) may restrict the free circulation of user-generated programmes and videos that are conveyed by a video-sharing platform whose provider is located in an EU member state and are directed to the Italian public, to protect the freedom of expression, prevent discrimination and hate speech.

Furthermore, Decree No. 208/2021 provides that all the providers of media services (including those through video-sharing platforms) have to comply with the provisions for the protection of minors laid down in the Media and Minors Self-Regulation Code.

Law stated - 10 May 2024

Digital switchover

When is the switchover from analogue to digital broadcasting required or when did it occur? How will radio frequencies freed up by the switchover be reallocated?

The switchover procedure in Italy started in October 2008. The complete switchover from analogue to digital television in Italy occurred on 4 July 2012.

The rules and procedure for the reallocation of radio frequencies freed up by the switchover were contained in Resolution No. 550/12/CONS of the Authority. The television frequencies have been reallocated through the principle of the 'higher economic offer'. In particular, the resolution provided for the allocation of 21 national multiplexes, which enable various signals to be combined into a common flow of data and the transmission of several digital terrestrial television services simultaneously. It was, in addition, provided that, at the end of the selection procedure, no operator could obtain more than five national multiplexes.

With two decisions dated 26 July 2017 (*Europa Way* and *Persidera*), the CJEU has ruled that the Italian switchover from analogue to digital terrestrial television was violating EU laws by failing to allocate one multiplex for each analogue channel.

Moreover, Italy had set a deadline of 30 June 2022 for the transition imposing that all TVs must gradually leave the frequencies allocated to telephone companies and can abandon Mpeg-2 video encoding and, to save bandwidth, broadcast their programmes in Mpeg-4 encoding. This procedure has been completed on 21 December 2022 through the permanent switch-off of the Mpeg-2 video encoding system.

Subsequently, the switchover to the new digital terrestrial television would get underway with the second phase during 2024, when all Italian regions will switch from DVB T to DVB T2, the second-generation digital TV standard.

Law stated - 10 May 2024

Digital formats

Does regulation restrict how broadcasters can use their spectrum?

No specific regulations restrict the use of spectrum by broadcasters.

As a general principle, broadcasters shall ensure efficient use of the radio spectrum (article 50 of Decree No. 208/2021).

This means that they shall minimise the environmental impact, avoid risks to human health, and ensure that there is no interference with other broadcasters' spectrum.

Law stated - 10 May 2024

Media plurality

Is there any process for assessing or regulating media plurality (or a similar concept) in your jurisdiction? May the authorities require companies to take any steps as a result of such an assessment?

Under article 5, paragraph 1 of Decree No. 208/2021, the Italian media services system shall promote media plurality, forbidding the creation or maintenance of positions against pluralism and ensuring the transparency of broadcasters' corporate assets (eg, establishing that the same person, or persons in a relationship of control or connection between them, may not at the same time be authorised to provide digital radio media services at the national and local level). Article 51 sets out the principle that it is forbidden to create dominant positions detrimental to pluralism and it also specifies the rules for the assessment by the Authority.

Moreover, in the case of transfer of a licence, any change of control of the licensee and any assignment of licence must be notified to the Authority. The Authority, before authorising the deal, assesses whether the transfer may lead to the creation of a dominant position in the relevant market, which could adversely affect pluralism.

Law stated - 10 May 2024

Key trends and expected changes

Provide a summary of key emerging trends and hot topics in media regulation in your country.

The EU Digital Services Act (DSA) aims to protect users online and to ensure freedom of expression. The major providers of such platforms shall be obliged to evaluate risks within their systems for public interests, fundamental rights, safety and public health. The DSA shall

apply to all online intermediaries operating in the European Union, introducing graduated obligations based on the nature of the services and proportionate to the number of users, for balancing user protection with market and innovation needs.

Law stated - 10 May 2024

REGULATORY AGENCIES AND COMPETITION LAW

Regulatory agencies

Which body or bodies regulate the communications and media sectors? Is the communications regulator separate from the broadcasting or antitrust regulator? Are there mechanisms to avoid conflicting jurisdiction? Is there a specific mechanism to ensure the consistent application of competition and sectoral regulation?

The main regulators that have a role in the regulation of telecoms and audio-visual media distribution are the following.

- The Italian Communications Authority (the Authority) is the regulator and watchdog in charge of audio-visual media and electronic communications services. The Authority grants licences and authorisations for public broadcasting, regulates the relationship between telecoms companies and settles disputes between operators or between operators and end users. The Authority is also in charge of preventing online copyright infringements and it has been appointed as the national supervisory authority under Law Decree No. 123/2023 implementing Regulation (EU) 2022/2065 (the Digital Services Act) and the P2B Regulation (Regulation (EU) 2019/1150) in Italy.
- The Ministry of Enterprises and Made in Italy (the Ministry), which deals with electronic communications and audio-visual media, including, among others, allocating frequencies, the monitoring and control of the national radio spectrum, and managing the infrastructure programme for broadband. The Ministry is also in charge of the general authorisations for electronic communications networks and services, and issues the authorisations to operate digital terrestrial TV channels.

While the Authority regulates both the communications and the broadcasting sector, the antitrust regulation pertains to the Italian Competition Authority (ICA). The ICA has exclusive competence over the enforcement of Italian competition rules in the telecoms and broadcasting sectors. The Authority and the ICA entered into an agreement on 22 December 2016 for defining the modalities of their cooperation.

Moreover, the Data Protection Authority is the authority responsible for supervising the compliance of telecom operators with Legislative Decree No. 196/2003 (the Data Protection Code).

Last, the Italian National Cybersecurity Agency (ACN), is a government authority in charge of protecting national interests in the field of cybersecurity. Among other things, the ACN is entrusted with specific competencies in relation to the security of electronic communication networks.

Law stated - 10 May 2024

Appeal procedure

How can decisions of the regulators be challenged and on what bases?

Any act, decision or resolution of the Authority or the ICA may be appealed, also regarding the merit of facts, to the Regional Administrative Court of Lazio by any individual or legal entity that has been directly affected by such act, decision or resolution. The Regional Administrative Court of Lazio's judgment may be appealed to the Council of State.

Law stated - 10 May 2024

Competition law developments

Describe the main competition law trends and key merger and antitrust decisions in the communications and media sectors in your jurisdiction over the past year.

In general, the attention from the ICA towards competition issues that may arise from non-compliance with personal data protection regulations to determine the anti-competitive nature of a certain practice is growing. In the past year, Italy has seen several key decisions in the communications and media sectors regarding competition law.

- Telecom Italia SpA was fined €2.1 million for automatically activating a paid additional service for its prepaid SIM card customers without their prior consent, violating article 65 of Legislative Decree No. 206/2005 (the Consumer Code). The company only allowed users to maintain their original offer by explicitly refusing the additional service within a specified time frame, exploiting customer inertia to increase revenue.
- Wind Tre SpA was investigated for its unclear communication regarding tariff plan changes. The company sent two SMS messages 24 hours apart, each offering different options for tariff changes and additional services. The ICA accepted Wind Tre's commitment to future unilateral price or content changes with a single message, and to provide additional gigabytes to all users who experienced a tariff increase but did not opt-in to the new offer.
- The ICA also investigated HIYA Inc for alleged unfair terms in its service terms for an app that identifies calls and blocks unwanted numbers. The company committed to modifying the presentation and content of its terms of service, which the ICA deemed suitable to ensure easy access to the app's terms and to overcome the alleged unfairness.
- SWL Web Marketing SL was fined €10,000 for selling non-genuine reviews to promote visibility, products, or services, which could influence consumer choices.
- De Pretto Eventi Store Srls was investigated for applying a 1.9 per cent additional commission for purchases made on its website using credit or debit cards or innovative payment systems. The company committed to not apply any more credit card surcharges or any other price increase related to the use of a specific payment instrument and to refund consumers for the surcharge within a reasonable time frame.
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In November 2023, the ICA initiated a proceeding against influencer Asia Valente and Meta for alleged hidden advertising and the use of fake followers on Instagram, which could alter the perception of the influencer's popularity and influence purchasing decisions.

Law stated - 10 May 2024