

GattiPavesiBianchiLudovici



TMT, INTELLECTUAL PROPERTY & DATA PROTECTION

AGCOM PUBLISHES FIRST TWO IMPLEMENTING REGULATION OF THE DIGITAL SERVICES ACT (DSA)

Regulation (EU) 2022/2065 (the so-called “*Digital Services Act*” or “*DSA*”) regulates digital services and online platforms, outlining rules for platform liability.

On August 2, 2024, the Italian Communications Authority (“**AGCom**” or “**Authority**”), in its capacity as the competent authority for Italy (the so-called Digital Services Coordinator), published two regulations that constitute the Authority's first measures to implement the DSA, specifically Articles 21 and 22. These regulations focus on the certification of alternative dispute resolution bodies and the status of trusted flaggers.

1. Certified alternative dispute resolution settlement bodies.

The DSA provides that users of online platforms may engage with certified bodies to request resolution of disputes related to the moderation of content posted or made available on online platforms. Such issues may involve, for example, removal of information, suspension of accounts, or restriction of monetization features.

With **Resolution 282/24/CONS** AGCom adopted the regulation governing the procedure for the certification of out-of-court dispute resolution bodies (also referred to as ADR - Alternative Dispute Resolution - bodies) that can be reached by recipients of digital services, as well as AGCom's competences of supervision and monitoring tasks on these entities.

Role of AGCom: the Authority oversees the certification of ADR bodies and shall publish the list of the certified ADR bodies. Certification is granted to bodies that demonstrate impartiality and independence requirements, assessed considering both organizational and financial aspects. In addition, the Authority shall monitor that ADR bodies continuously meet the requirements of the DSA and, where appropriate, revokes certifications.

Requirements to obtain a certification: ADR bodies must ensure:

- i. *impartiality and independence:* they must operate free of influence from online platform providers and service recipients. Accordingly, detailed information shall be provided on the organizational structure, selection and appointment processes for the relevant decision makers, as well as on policies for managing conflicts of interest. In addition, the remuneration of the body's members should not depend on the outcome of disputes handled;
- ii. *specific expertise:* decision-makers must have certified experience or training specific to dispute resolution, with appropriate cultural knowledge related to the context in which they operate and language proficiency in at least one official language of the European Union. Specific expertise must enable them to resolve disputes in one or more specific areas related to illegal content, as defined in the DSA, or the application and enforcement of the general terms and conditions of one or more types of online platforms;
- iii. *transparent and efficient procedure:* dispute resolution procedures must ensure transparency, clarity and fairness, with a responsive decision-making system. Decisions should be made within 90 days, with a possible extension to 180 days for more complex cases. Information provided on the decision-making model should clearly indicate who will be involved in the process (e.g., subject matter experts) and whether the final decision will be made by an individual or a group of decision makers. The fees charged by ADR bodies should be reasonable;
- iv. *accessibility and use of technology:* out-of-court dispute resolution procedures should be easily accessible through electronic communication technologies and should enable resolution to be initiated and continued (also through the submission of documents) entirely online.

Certification procedure: the application for certification as an ADR under Article 21 of the DSA may be submitted by any entity established in Italy. Specifically, applications for certification must be submitted to AGCom in electronic form and shall include complete information about the applicant body, its area of expertise, the languages in which it operates and evidence that it meets the prescribed requirements. Certification is valid for a maximum of five years, with the possibility of renewal.

Report of certified ADR bodies: at least annually, ADR bodies shall report to the Authority a set of information on their activities, including the number of dispute settlement requests received, outcome, average time to resolution, and shortcoming and difficulties encountered.

Transparency and public information: in addition to notifying the applicant, AGCom will publish the certification decision on its website. This will ensure transparency of the certification process and allow anyone to check which bodies have been recognized as certified ADR bodies under the DSA. In addition, the Authority, in its capacity as Coordinator of Digital Services in Italy, is required to forward to the relevant offices of the European Commission copies of all certifications issued and revocation measures taken.

2. Trusted flaggers

“Trusted flaggers” are entities that work in specific areas of expertise, identifying and reporting illegal content found online. Such reports shall be assessed with priority by online platform providers, who must process them swiftly. Trusted flaggers can be public entities, such as internet referral units of national law enforcement authorities or Europol for terrorist content; or non-governmental organizations (NGOs); or bodies that are private or semi-public (e.g., trade associations, consortia, federations, trade, professional or industrial associations, professional bodies, trade unions, consumer associations, human rights, environmental or animal protection organizations).

With **Resolution 283/24/CONS** AGCom established the procedure to award the status of trusted flaggers and regulated the performance, again, of its own supervision and monitoring tasks on such entities.

Qualification requirements: in order to qualify as a trusted flagger, the following requirements must be met:

- (i) *expertise*: entities must have a proven track record of detecting illegal content online. Expertise must be proven in the legal, technical or scientific, digital and linguistic areas;
- (ii) *independence*: independence from online platform providers is required to ensure that reporting is objective and impartial. Entities must demonstrate that they are not financially dependent on online platforms by making their funding sources transparent. In addition, the independence assessment includes an analysis of the entity's membership, potential links to online platforms, and internal decision-making structures to rule out conflicts of interest;
- (iii) *quality of reporting*: reports must be submitted with diligence and they should be accurate and objective. This means that applicants must demonstrate that they have sufficient human, technical and financial resources to carry out reporting activities. In addition, they must use multiple sources to ensure the accuracy and objectivity of reporting and have internal procedures for reassessment, in case of mistakes.

Areas of expertise: the areas covered by trusted flaggers are broad and include, among others: harmful products and services, privacy violations, hate speech, intellectual property rights infringements, election misinformation, online bullying, pornographic content, child endangerment, public safety, scams, self-harm, animal crimes, and acts of violence

Application procedure: applications to obtain trusted flagger status must be submitted using the form available on the AGCom website, to be sent via Certified Electronic Mail (*posta elettronica certificata* or “PEC”) or through an online procedure. Trusted flaggers’ qualification is granted for a three-year period, renewable for an additional three years. As in relation to ADR entities, the Authority will evaluate each application to ensure that the applicant meets all the requirements of Article 22 of the DSA and will monitor the maintenance of the requirements, where appropriate, revoking the status of trusted flaggers.

Trusted flaggers report: trusted flaggers are required to prepare and submit annually to AGCom a detailed report of the notifications sent, including the number and classification of notified content, actions taken by providers, and measures taken to maintain independence in decision-making,

finances, and personnel. The report should be forwarded to the Authority and published on the trusted flagger's website.

Transparency and public information: the Authority will publish on its website the updated list of trusted flaggers, as well as those whose status has been suspended or revoked, with the relevant areas of expertise and the dates when the status was granted, suspended or revoked, in addition to notifying the European Commission and the European Board for Digital Services of the names of trusted flaggers suspended or revoked.

The adoption of procedures to certify ADR bodies and trusted flaggers, consistently with the requirements and purposes dictated by the DSA, and the monitoring of the activities performed and compliance with such requirements will be crucial to ensure the effective national enforcement of the European rules in order to achieve the ambitious goals of regulating digital services and platform responsibilities.

Gatti Pavesi Bianchi Ludovici is available for any further information or support needed to comply with the applicable regulation.

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