

## Message 104

Communication from the Commission - TRIS/(2017) 01588  
Directive (EU) 2015/1535  
Translation of the message 103  
Notification: 2017/0127/D

Forwarding of the observations of a Member State (Italy) (article 5, paragraph 2, of Directive (EU) 2015/1535).  
These observations do not have the effect of extending the standstill period.

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(MSG: 201701588.EN)

1. MSG 104 IND 2017 0127 D EN 28-06-2017 26-06-2017 COM 5.2 28-06-2017

2. Italy

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4. 2017/0127/D - SERV60

5. article 5, paragraph 2, of Directive (EU) 2015/1535

6. In relation to Notification 2017/0127/D on the draft 'Act improving law enforcement on social networks [Netzdurchführungsgesetz – NetzDG]', the Italian Postal and Communications Police and the Italian Communications Authority submitted the following comments.

Overall the proposed legislation is acceptable, provided the rules of the Budapest Convention on Cybercrime are reiterated in the preamble, requiring evidence to be sent to law enforcement agencies and judicial authorities to be preserved when illegal contents are deleted.

The draft notified by Germany under Directive (EU) 2015/1535, introducing legal requirements for social networks is welcomed by the competent offices of the Italian Communications Authority.

The rationale of the Act is to encourage social networks (the definition of which remains unexplored by European lawmakers thus far) to process complaints concerning hate crimes and other content-related criminal offences faster and more effectively in order to ensure illegal content is removed promptly. Moreover, Italian lawmakers also recently started to explore the possibility of introducing public enforcement tools, for instance in relation to fake news.

Against this background, the German draft legislation is deemed especially interesting, also in light of the fact that it is the first attempt of its kind in Europe. We agree that relying on spontaneous, voluntary action by stakeholders would be insufficient.

Also of undoubted value is the attempt to provide a first legal definition of 'social networks', as 'telemedia service providers which, for profit-making purposes, operate internet platforms that enable users to exchange and share any content with other users or to make such content available to the public (social networks)'. In this respect, we agree with the choice to limit the subjective scope of application only to social networks in a position to influence public opinion, by introducing a minimum threshold of active users and by excluding journalistic platforms from the definition above.

However, we believe German lawmakers could provide a clearer definition which highlights, among the identifying features of social networks, the fact that said social interaction and sharing services are provided free of charge, thereby setting them apart from Information Society services, which do instead require payment of a fee (cf. Article 1.1(b) of Directive (EU) 2015/1535). From this point of view, the current scope of application is deemed too general

in certain areas, even though the punishable offences help understand the potential targets of deletion orders and the related administrative measures.

In terms of the sanctions, the fine of up to 5 million euros is considered a suitable deterrent from breaching the obligations imposed.

In conclusion, the proposed measures are not deemed to create obstacles to the free movement of goods and the free provision of Information Society services. In fact, they introduce a specific obligation applicable to a target group which is currently exempt from specific liabilities under Directive 2000/31/EC.

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