

## Newsalert

IP, TMT and Data Protection Department  
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### **The new regulation defining the requirements for an audiovisual work to be recognized as of “original Italian expression”**

Ministerial Decree no. 47 of January 29, 2021, the long-awaited interministerial decree adopted by the Ministry of Cultural Assets and Activities and Tourism (MiBACT) and the Ministry of Economic Development (MiSE), which identifies the new requirements for recognition as a work of “*original Italian expression*” (OIE), has been published in the Official Journal no. 84 of April 8, 2021.

This measure is closely linked to the detailed regulations concerning programming and investment obligations imposed on providers of audiovisual media services (AVMS) laid down in Articles 44 and ff. of the Italian Code on the audiovisual media and radio services (Legislative Decree no. 177/2005 - TUSMAR), as further supplemented by the secondary regulations enacted by the Italian Communications Authority (*Autorità per le Garanzie nelle Comunicazioni* - AGCom).

Article 44 of TUSMAR requires AVMS providers to reserve, each year, a percentage of their broadcasting time for European works of the last five years, including works of Italian original expression wherever produced. This provision also entrusts MiBACT and MiSE with the task of defining which audiovisual works can obtain the qualification of Italian origin expression and refers to some fundamental elements that must be taken into consideration in this regard: culture, history, identity, creativity, or the places that distinguish the work.

In the past, the inter-ministerial decree of February 22, 2013 had already been adopted for the purpose of implementing this regulation and is now repealed by the new Ministerial Decree no. 47/2021. A comparison between these two decrees shows how the previous regulation, in line with the corresponding primary legal provisions, was aimed at allowing the recognition of the OIE qualification only to cinematographic works. The new intervention, instead, extended the possibility of qualifying as original Italian expression also all the other types of audiovisual works (including TV and web works of fiction, animation and documentaries, etc.). The paradigm shift is particularly significant and is aimed at reflecting the clear evolution of the

market and allows broadcasters to include in their broadcasting time dedicated to original Italian works also non "theatrical" works. Moreover, some requirements for the recognition of OIE qualification have remained unchanged, while others have been adapted to the new market context, more than 8 years after the previous intervention on the subject.

In particular, the requirements to be met for being qualified as a OIE work still include the direct sound recording is in Italian or in Italian dialects for at least 50% of the total minutes of the work (in line with the previous discipline, the languages of linguistic minorities resident in the Italian territory are equivalent to Italian, where there is functionality to the narrative needs of the work).

To this requirement is added, for regulatory coordination, also the hypothesis of original cinematographic, television and web works of fiction, animation and documentary that have obtained the recognition of Italian nationality in accordance with the Prime Minister's Decree dated July 11, 2017 and those with predominantly Italian financial participation, which have obtained the recognition of co-production by means of a specific decree of the General Cinema and Audiovisual Directorate of MiBACT.

For the latter, however, it is also required that at least one of the following 2 requirements are met: (i) the production took place on the basis of an agreement between an Italian company and a foreign company that provides for the production of another work in international co-production or international production, of similar and comparable characteristics to the work - in technical, artistic and economic terms - for which the participation of the Italian company is majority, or (ii) the presence of content of original Italian expression for a minimum score of 100 points according to a detailed system of parameters identified in the annex of the Ministerial Decree (with a differentiation when it comes to works of animation).

The achievement of at least 100 points on the basis of these parameters, independently determines also the possibility for a non-cinematographic, television or web work of fiction, animation or documentary to obtain the OIE qualification, with a clear enhancement of this innovative system. Specifically, in line with the founding principles of the rules set forth in the TUSMAR, the criteria at hand take into account the elements of Italian culture, history and identity (in terms of format or screenplay), the Italian creativity and originality (presence of main actors, directors, screenwriters, original soundtrack composers, editors, directors of photography or similar figures who are of Italian nationality), the enhancement of Italian places (setting in Italy or external shooting on Italian territory for more than 50% of the scenes of the work).

Moreover, from a procedural point of view, it is possible to use self-certification to demonstrate compliance, on the one hand, with the conditions required for a certain work to qualify as European (a necessary precondition for the recognition of the OIE qualification) and, on the other, with the requirements provided for by the Ministerial Decree itself. The new Regulation also confirms the previous practice of publishing OIE works in a special list kept by General Cinema and Audiovisual Directorate of MiBACT and published on the relevant institutional website. This publication is expressly qualified by the Ministerial Decree as having the value of publicity notice.

The measure became effective on April 23, 2021. As of that date, it will no longer be possible to submit applications for recognition of the OIE qualification via the online methods previously made available to AVMS providers. A few days after the entry into force of the Ministerial Decree, on April 27, 2021, in line with the practice of transparency, the aforementioned General

Directorate adopted a decree by which the qualification of cinematographic work of original Italian expression was recognized to 19 films whose application for OIE recognition had been submitted under the previous regime. The applications submitted but not yet defined at the date of the coming into force of the new regulation, and therefore not included in the above-mentioned list, can be resubmitted according to the new procedures provided for by Ministerial Decree no. 47/2021.

Applications for the qualification of Italian original expression in accordance with the new regulations may be submitted starting from June 7 (60 days from the publication of the Ministerial Decree in the Official Journal, as provided for in Article 6) and must be drawn up on the basis of a special form that will be made available by the General Cinema and Audiovisuals Directorate of the MiBACT.

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