

# TECHETHOS

FUTURE ○ TECHNOLOGY ○ ETHICS

## Annex 9.8 National legal case study: Digital Extended Reality in Italy

D4.2 Comparative analysis of national legal case  
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## D4.2 National legal case studies: Digital Extended Reality in Italy

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## The TechEthos Project

TechEthos is an EU-funded project that deals with the ethics of the new and emerging technologies anticipated to have a high socio-economic impact. The project involves ten scientific partners and six science engagement organizations and runs from January 2021 to the end of 2023.

TechEthos aims to facilitate “ethics by design”, namely, to bring ethical and societal values into the design and development of new and emerging technologies from the very beginning of the process. The project will produce operational ethics guidelines for three to four technologies for users such as researchers, research ethics committees, and policymakers. To reconcile the needs of research and innovation and the concerns of society, the project will explore the awareness, acceptance, and aspirations of academia, industry, and the general public alike and reflect them in the guidelines.

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## Definitions and abbreviations

Table 1: List of Definitions

Term	Explanation
Digital Extended Reality technologies (XR)	Refers to AI-powered digital technologies (hardware and software) capable of perceiving and processing human sensorial outputs, and allowing extended or mixed virtual scenarios to be tailor-made or “customized” based on the user interest and behaviour (and thus profile, model, predict, discriminate, and influence the user’s behaviour or nudge their choices)

Table 2: List of Abbreviations

Term	Explanation
AGID	Agenzia per l’Italia Digitale (Agency for Digital Italy)
CIE	Carta di Identità Elettronica (Electronic identity Card)
CNS	Carta Nazionale dei Servizi (National Services Card)
DMA	Digital Market Act
DoA	Description of Action
DSA	Digital Service Act
SPID	Sistema Pubblico di Identità Digitale (Public Digital Identity System)
WP	Work Package

## Executive Summary

This report provides a review of the current state of the law and legal responses to Digital Extended Reality in Italy, as evidenced in legislation, regulation, and case law. It focuses on those issues affecting and/or contributing to fundamental human rights and freedoms, socio-economic inequalities, and stimulation of innovation. Most relevant legal domains and regulatory bodies, and their views on the application of existing and proposed regulatory provisions relevant for XR, and significant legal cases are discussed in the report. The on-going discussions on gaps and challenges of these provisions is also provided, to feed into the TechEthos ethical, legal and social analysis and the design of ethics-by design guidelines for extended digital reality technologies.

A summary overview of the main findings and legal issues surrounding XR in Italy is provided in section 5.1.2 of the TechEthos D4.2 Comparative analysis of national legal case studies. This report is primarily aimed at informing the Italian government and Italian policy makers regarding the regulatory challenges of XR in Italy. Furthermore, it provides further background to readers to the specific Italian context of the main points and key regulatory challenges identified in the comparative analysis to which this report is annexed.

This report looked at legal data bases, scientific articles and formal documents– approved and in discussion – produced by the Chamber of Deputies and Senate of the Republic websites, and the Parliamentary Legislative Committees.

Whilst there are no specific laws and policies on digital extended reality technologies in Italy, many existing laws and policies address aspects related to these technologies. These include:

- Human rights law;
- Privacy and Data Protection law;
- Consumer Protection;
- AI Governance;
- Digital Service Data Governance;
- Liability for harms.

In most of the analysed domains, it has been possible to identify specific legal cases that, although not directly related to XR, might be applied to XR technologies.

XR have the potential to impact existing regulatory obligations in many ways, both positive and negative. These technologies have the potential to enhance the enjoyment of human rights, such as when XR are adopted and used for health services. In other situations, however, the use of these technologies may interfere with protected human rights such as issues of freedom of expression and vulnerable population (e.g., children) rights in the use of online platforms.

Regarding human rights, the on-going discussion on the Metaverse concept, highlights several issues related to the regulation of privacy regarding users and their right to anonymity (which might lead to inappropriate uses), the protection of intellectual property rights of real-life physical goods (both public and private), the application of national and international law, and users' security, since verbal and physical sexual harassment, and even rapes, might occur in the Metaverse.

In the privacy and data protection domain, a legal case shows the challenges in classifying and thus regulate biometric data used by XR applications. Other two cases, the Spid (*Public Digital Identity System*) and App IO (*the app of public services*), shows how digital technologies might enable broader and easier access to public services, also for vulnerable parts of the population, with a strict respect of data rights.

In the consumer protection domain, human rights are at the core of the discussion on the new Digital Market Act and Digital Service Act. Issues of right to information and transparency and protection of

minors are under scrutiny. Digital and XR technologies allows new approaches, such as nudging, sludge, dark patterns and sophisticated methods for advertisement on online platforms that are challenging consumer rights and will need further discussions at policy and regulatory level. Moreover, health issues have arisen regarding the use of XR devices which might affect minors such as impaired visual development, as well as psychological issues concerning the non-distinguishing between “reality” and “play”.

In the A.I. Governance domain, although no specific legal case has been provided, however A.I. represents the bedrock to the development of XR technologies, based on the fact that these technologies are powered by A.I.. The Italian Government and Parliament are focused on the development of A.I. technologies, by stressing its importance and discussing the effects on the national legislation of the EU Artificial Intelligence Act.

In the Digital Service Governance domain the issue regarding the protection of human rights is of the utmost importance, due the importance of the Right to information as a mean to foster transparency of public authorities and to guarantee integrity, efficiency, effectiveness, and accountability of public authorities. In the near future, public authorities might adopt XR in order to ensure the principle of acknowledgement concerning administrative and decision-making processes, and to favour democratic participation.

In the Liability of harms domain, the protection of human rights, such as the right to human dignity and the right to self-determination, represents an issue which shall be discussed by policymakers especially when inappropriate conducts are carried out in virtual reality platforms.

A key advantage of rights-based legal frameworks, as the ones discussed in this report, is the *built-in flexibility* to adapt to the challenges posed by new and emerging technologies, including XR, to better protect the rights of individuals against interference. A key question is about the chosen definition will have the effect of determining which will be the applicable basis for future legal regulation.

To conclude, although XR technologies are still object of development, the national legislator, as well as policymakers (at national and EU level) are commencing to understand the legal implications regarding the adoption and exploitation of the several uses of these technologies. At this stage, it is the jurisprudence, more than the legislator, that might provide legal reactions to any extreme (and rare) uses of these technologies (such as issues of crimes in the virtual world). It is clearly an evolving field, and a lot of work has yet to be done.

# 1. Introduction

Digital Extended Reality (XR) technologies present significant legal issues that might impact socio-economic equality and fundamental rights in Italy. This study provides an overview of those legal issues and challenges.

This report analyses relevant laws and policies from the Italian legal system concerning digital extended reality (XR) technologies. For the purpose of the TechEthos project and this national legal case study, we have used the following definition for XR technologies<sup>1</sup>:

**Digital Extended Reality technologies** refers to AI-powered digital technologies (hardware and software) capable of perceiving and processing human sensorial outputs, e.g., voice, gestures, language, movement, emotions, and other elements of human communication, allowing extended or mixed virtual scenarios (e.g., visual, audio, linguistic or haptic) to be tailor-made or “customized” based on the user interest and behaviour (and thus profile, model, predict, discriminate, and influence the user’s behaviour or nudge their choices).<sup>2</sup>

Although there is no comprehensive or dedicated legislation in Italy governing this technology family, many elements of existing laws and policies in Italy would apply to the use of such technologies. This report provides an overview of such aspects.

## 1.1 Purpose and structure of the case study

The objective of this case study is to review the current state of the law on and legal responses to digital extended reality technologies in Italy, as evidenced in policy, legislation, case law, and regulation.

Whilst there are no specific laws and policies on digital extended reality technologies in Italy, many existing laws and policies address aspects related to these technologies. These include human rights law, privacy and data protection law, consumer protection, A.I. governance, digital service governance, and liability for harms.

This study provides an analysis of these norms and of the relevant legal academic discourse, and it is enriched by “*legal cases*”, which do represent the implementation of the abovesaid laws, regulations, and guidelines

This report is part of a series of national legal case studies prepared in the TechEthos project covering three technology families: climate engineering, digital extended reality, and neurotechnologies. A complementary report covers the international and European Union law dimensions of the three technology families. The following table provides an overview of the nine national legal case studies conducted as part of the *Comparative analysis of national legal case studies* (D4.2 of the TechEthos project):

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<sup>1</sup> For more information about the TechEthos technology families and their innovation ecosystems, visit <https://www.techethos.eu/resources/>.

<sup>2</sup> Buchinger E., Kinegger M., Zahradnik G., Bernstein M.J., Porcari A., Gonzalez G., Pimponi D., Buceti G. (2022). In short: Digital Extended Reality. TechEthos Project Factsheet based on TechEthos technology portfolio: Assessment and final selection of economically and ethically high impact technologies, Deliverable 1.2 to the European Commission. Available at: [www.techethos.eu](http://www.techethos.eu).



Table 3: Overview of nine national legal case studies (TechEthos WP4)

Climate Engineering	Neurotechnologies	Digital Extended Reality
Australia	Germany	France
Austria	Ireland	Italy
United Kingdom	United States	United Kingdom

## 1.2 Overview of the Italian legal system

### The Italian form of state and form of government:

Italy is a representative democracy in the form of a parliamentary republic. The Republic, as provided by Article 5 of the Italian Constitution, is "*one and indivisible*", meaning that even though decentralization of powers to local authorities is allowed, the sovereignty powers lie with the State.<sup>3</sup>

The Italian Constitution outlines the system of governance that concerns several bodies. The most important are outlined below:

- The President of the Republic ("*Presidente della Repubblica*"), is the head of State. Its activities directly impact the political climate of the country and therefore, it is not a purely ceremonial position. The President of the Republic is elected by the Parliament in a joint session of its members and represents national unity.<sup>4</sup>
- The Parliament ("*Parlamento*")<sup>5</sup>, vested with the legislative power, represents the legislative body of the State. It is based on a model of "equal bicameralism", meaning that the Parliament is comprised of the Chamber of Deputies (*Camera dei Deputati*) and the Senate of the Republic (*Senato della Repubblica*), which due to the adopted model by the Constituent Fathers, are both independent and entitled the same rights and powers.
- The Government of the Republic ("*Governo della Repubblica*"), which consists of the President of the Council of Ministers ("*Presidente del Consiglio dei Ministri*") and the Ministers ("*Ministri*") which do form the Council of Ministers ("*Consiglio dei Ministri*").<sup>6</sup> The Ministers are divided into two categories – Ministers ("*Ministri*") and Ministers without portfolio ("*Ministri senza portafoglio*").<sup>7</sup> This body represents the executive power.

Italy has adopted a civil law system, meaning that it has comprehensive, continuously updated legal codes (such as civil code, criminal code, civil procedure code, criminal procedure code, navigation code,

<sup>3</sup> Gubitosi, M. Tortora della Corte, A. Colombero, S. Schiaffino, C. (2021) *Legal systems in Italy: overview* (Online). Available at [uk.practicallaw.thomsonreuters.com/](https://uk.practicallaw.thomsonreuters.com/) (Accessed: 16 August 2022)

<sup>4</sup> Constitution of the Italian Republic, Art. 87

[governo.it/it/costituzione-italiana/parte-seconda-ordinamento-della-repubblica/](https://governo.it/it/costituzione-italiana/parte-seconda-ordinamento-della-repubblica/)

<sup>5</sup> Constitution of the Italian Republic, Art. 55

[governo.it/it/costituzione-italiana/parte-seconda-ordinamento-della-repubblica/titolo-i-il-parlamento/](https://governo.it/it/costituzione-italiana/parte-seconda-ordinamento-della-repubblica/titolo-i-il-parlamento/)

<sup>6</sup> Constitution of the Italian Republic, Art. 92

[governo.it/it/costituzione-italiana/parte-seconda-ordinamento-della-repubblica/titolo-iii-il-governo/](https://governo.it/it/costituzione-italiana/parte-seconda-ordinamento-della-repubblica/titolo-iii-il-governo/)

<sup>7</sup> Governo Italiano - Presidenza del Consiglio dei Ministri – Ministri e Sottosegretari (Online) Available at: [governo.it/it/ministri-e-sottosegretari](https://governo.it/it/ministri-e-sottosegretari) (Accessed: 16 August 2022)

industrial property code, etc.) which specify all matters capable of being brought before a court, the applicable procedure, and the appropriate punishment for each offense.<sup>8</sup>

Sources of Italian law, based on their importance according to the hierarchy of legal sources, are: the Constitution, Constitutional Law, EU legislation, international treaties, Legal Acts, Ordinary Laws, Decrees with the force of law, Legislative Decree, Regional Legislation, Governmental Regulations, Local Government Agency Regulations, Custom.<sup>9</sup>

It must be stressed that the hierarchy of sources is also composed of the sources deriving from the accession of Italy to the European Union as well as the ratification of international treaties to which Italy is a party, which are incorporated into domestic law through Acts of the Italian Parliament.

As previously mentioned, the Italian legal system is comprised of various laws and statutes. The Constitution represents the bedrock of the Italian legal system since it provides several principles, which inform all the laws approved by the institutional bodies.

Legal acts which bear relevance regarding the Digital Extended Reality Technologies include the Legislative Decree n. 101/2018 of adaption of the EU Reg. 679/2016 – GDPR<sup>10</sup>, which enacts the European GDPR of 2016<sup>11</sup>.

### The Italian Constitution:

The Italian Constitution (*Costituzione Italiana*), which was approved in December 1947 and entered into force in January 1948, provides all the fundamental principles which do inform the legislative, executive, and judiciary activities. The Italian Constitution sets out the principles according to which laws shall be written (in compliance with the fundamental rights comprised in the Constitution) as well as the procedure of approval and entry into force.

Therefore, the Constitution supplies several fundamental rights which are distributed throughout the text of the Constitution<sup>12</sup>, including but not limited to the right to life to human dignity; self-determination; right to development; moral and legal equality; freedom of expression (including the freedom of the press – freedom of association – freedom of assembly – freedom of religion); right to health; right to justice.

### International and European Union law:

Italy is a party to several international treaties as well as being one of the founding members of the European Economic Community<sup>13</sup> (1957) and is an EU Member State since 1958<sup>14</sup>. Indeed, the Treaty of

<sup>8</sup> Reuben, C. (2017) *Common Law and Civil Law Traditions* (Online). Available at [law.berkeley.edu/wp-content/uploads/2017/11/CommonLawCivilLawTraditions.pdf](http://law.berkeley.edu/wp-content/uploads/2017/11/CommonLawCivilLawTraditions.pdf) (Accessed: 16 August 2022)

<sup>9</sup> Busani, A. *Le fonti del diritto italiano* (Online). Available at [notaio-busani.it/it-IT/diritto-fonti-dirittaitaliano.aspx](http://notaio-busani.it/it-IT/diritto-fonti-dirittaitaliano.aspx) (Accessed: 16 August 2022)

<sup>10</sup> Decreto legislativo 10 agosto 2018, n. 101 "Disposizioni per l'adeguamento della normativa nazionale alle disposizioni del regolamento (UE) 2016/679 del Parlamento europeo e del Consiglio, del 27 aprile 2016, relativo alla protezione delle persone fisiche con riguardo al trattamento dei dati personali, nonché alla libera circolazione di tali dati e che abroga la direttiva 95/46/CE (Regolamento generale sulla protezione dei dati)" (18G00129) [normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2018-08-10;101](http://normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2018-08-10;101)

<sup>11</sup> Privacy Control. *GDPR 679/16 and Legislative Decree of adaptation n. 101/2018* (Online). Available at [privacycontrol.it/en/gdpr-679-16-and-legislative-decree-of-adaptation-n-101-2018/](http://privacycontrol.it/en/gdpr-679-16-and-legislative-decree-of-adaptation-n-101-2018/) (Accessed: 16 August 2022)

<sup>12</sup> The most important of these articles are n° 2, 3, 13, 14, 15, 17, 18, 19, 29, 30, 32, 33, 34, 35, 36, 37, 38, 48, and 49.

<sup>13</sup> European Union. *History of the European Union 1945-59* (Online). Available at [european-union.europa.eu/principles-countries-history/history-eu/1945-59\\_en](http://european-union.europa.eu/principles-countries-history/history-eu/1945-59_en) (Accessed: 16 August 2022)

<sup>14</sup> European Union. *Italy* (Online). Available at [european-union.europa.eu/principles-countries-history/country-profiles/italy\\_en](http://european-union.europa.eu/principles-countries-history/country-profiles/italy_en) (Accessed: 16 August 2022)

Rome (1957) (effective 1 January 1958) gave effect to Italy's membership of the European Economic Community, an organization that was subsequently incorporated into the EU upon its formation through the Maastricht Treaty (effective 1 November 1993).

Therefore, it is subject to European Union laws, including Regulations, Directives, and Decisions<sup>15</sup>.

The Italian Constitution provides, via articles 10 and 11, the recognition and consequently the enactment of both international treaties as well as principles, and European Union treaties and legislation. The Constitution states, on one hand via Article 10, the following principle, "*The Italian legal system conforms to the generally recognized principles of international law.*"<sup>16</sup> On the other hand, Article 11 provides the following principle "*Italy agrees on conditions of equality with other States, to the limitations of sovereignty that may be necessary to a world order ensuring peace and justice among the Nations. Italy promotes and encourages international organizations furthering such end.*"<sup>17</sup> This has been interpreted as the recognition, by Italy, of the United Nations (due to the proximity between the founding of the institution of the United Nations in 1946 and the entry into force of the Italian Constitution in 1948) and the European institutions (European Economic Community and more recently of the European Union).<sup>18</sup>

Due to the importance of the abovementioned principle set out in Article 10 of the Constitution, some of the main United Nations treaties to which Italy is a signatory, and which are relevant to this national legal case study, include the International Covenant on Civil and Political Rights (**ICCPR**), the Convention on the Elimination of All Forms of Discrimination against Women (**CEDAW**), the International Convention on the Elimination of All Forms of Racial Discrimination (**ICERD**), the International Covenant on Economic, Social and Cultural Rights (**ICESCR**), the Convention on the Rights of the Child (**CRC**), and the Convention on the Rights of Persons with Disabilities (**CRPD**).<sup>19</sup> In addition to these international treaties, Italy is a Member State of the Council of Europe since 1949 and ratified the European Convention on Human Rights in 1955.<sup>20</sup>

<sup>15</sup> Consolidated Version of the Treaty on the Functioning of the European Union (OJ C 326/47, 26.10.2012), article 288.

[jus.unitn.it/cocoa/papers/PAPERS%20nd%20PDF/Interaction/Italy-interaction.pdf](https://jus.unitn.it/cocoa/papers/PAPERS%20nd%20PDF/Interaction/Italy-interaction.pdf);

<sup>16</sup> Senato della Repubblica. *Constitution of the Italian Republic* (Online). Available at [senato.it/documenti/repository/istituzione/costituzione\\_inglese.pdf](https://senato.it/documenti/repository/istituzione/costituzione_inglese.pdf) (Accessed: 16 August 2022)

<sup>17</sup> Senato della Repubblica. *Constitution of the Italian Republic* (Online). Available at [senato.it/documenti/repository/istituzione/costituzione\\_inglese.pdf](https://senato.it/documenti/repository/istituzione/costituzione_inglese.pdf) (Accessed: 16 August 2022)

<sup>18</sup> Antonio Mazza. *Art. 11 Costituzione* (Online). Available at [legalars.net/homepage-new/fonti-normative/costituzione-della-repubblica-italiana/art-11-costituzione-spiegazione-del-testo/](https://legalars.net/homepage-new/fonti-normative/costituzione-della-repubblica-italiana/art-11-costituzione-spiegazione-del-testo/) (Accessed: 16 August 2022)

<sup>19</sup> International Covenant on Civil and Political Rights (entered into force 23 March 1976), G.A. Res 2200A (XXI); Convention on the Elimination of All Forms of Discrimination against Women (entered into force 3 September 1981), 1249 U.N.T.S. 13; International Convention on the Elimination of All Forms of Racial Discrimination (entry into force 4 January 1969) G.A. Res. 2106 (XX) (ICERD); International Covenant on Economic, Social and Cultural Rights (entered into force 3 January 1976), G.A. Res 2200A (XXI), 993 U.N.T.S. 3; Convention on the Rights of the Child (entered into force 2 September 1990) GA Res. 44/25, 1577 U.N.T.S. 3; Convention on the Rights of Persons with Disabilities (entered into force 3 May 2008), GA Res. A/61/106.

<sup>20</sup> Convention for the Protection of Human Rights and Fundamental Freedoms (as amended by Protocol No. 11) - Rome, 04.11.1950

[echr.coe.int/Documents/Facts\\_Figures\\_Italy\\_ENG.pdf](https://echr.coe.int/Documents/Facts_Figures_Italy_ENG.pdf)



## Italian court system <sup>21 22</sup>

As previously mentioned, Italy has adopted a civil law system, on which the Italian judicial system is founded. The Italian Constitution provides provisions regarding the judiciary system at Art. 101 – Art. 113.<sup>23</sup>

The function of a judge ("*Giudice*"), as well as that of a public prosecutor ("*pubblico ministero*"), is exercised by members of the judiciary system. The judicial system is based on two functions identified as "*funzione giudicante*", which is the role conferred to the judges, and "*funzione requirente*" (investigators) which is conferred to the magistrates of the public prosecutor's office. Bear in mind that both these functions are exercised by member of the judiciary. The administrative function is carried out by the Ministry of Justice ("*Ministero della Giustizia*"). The judicial function is composed of the following areas:

- *Ordinary civil and criminal*: the jurisdiction is exercised by magistrates belonging to the judicial order (judges and magistrates of the public prosecutor's office).
- *Administrative*: the jurisdiction is exercised by regional administrative courts ("*Tribunali Amministrativi Regionali*" or TAR) and by the Council of State ("*Consiglio di Stato*").
- *Accounting*: the jurisdiction is exercised by the State Auditors' court ("*Corte dei Conti*") and the office of the public prosecutor ("*Procuratore Generale presso la Corte Dei Conti*") is based in the same court.
- *Military*: the jurisdiction is exercised by several courts, such as the military courts ("*tribunali militari*"), the military appeals court ("*corte militare d'appello*"), the surveillance military court ("*tribunale militare di sorveglianza*"). Concerning the military prosecutor, its offices are based at the abovementioned courts, as well as at the Court of Cassation.
- *Taxation*: the jurisdiction is exercised by the Provincial Taxation Commissions ("*Commissioni Tributarie Provinciali*") and the District Taxation Commissions ("*Commissioni Tributarie Regionali*").

A particular mention must be made to the Supreme Court of Cassation which represents the supreme judicial body of the Italian jurisdiction and is the judge of last resort. It must ensure the correct application of the law and its uniform interpretation, together with the unity of the national objective law and the respect for the limits between the different jurisdictions.<sup>24</sup>

In Italy, the Supreme Court is at the top of the ordinary jurisdiction. Among the main functions that are conferred by article 65 of the Fundamental Law on the Judicial System of 30 January 1941 no. 12<sup>25</sup>, certainly there is to ensure "*the exact observance and uniform interpretation of the law, the unity of the national objective law, compliance with the limits of the various jurisdictions.*" One of the key features of its mission is represented by the fact that the Court of Cassation shall not know the facts of a lawsuit unless proved by deeds already obtained in proceedings during the pre-trial stages, and only to the

<sup>21</sup> European Justice. *Organisation of justice – judicial systems* (Online). Available at [e-justice.europa.eu/content\\_judicial\\_systems\\_in\\_member\\_states](https://justice.europa.eu/content_judicial_systems_in_member_states) (Accessed: 16 August 2022)

<sup>22</sup> CSM – Consiglio Superiore della Magistratura. *Italy's judicial system* (Online). Available at [csm.it/en/web/csm-international-corner/high-council-for-the-judiciary/italy-s-judicial-system](https://csm.it/en/web/csm-international-corner/high-council-for-the-judiciary/italy-s-judicial-system) (Accessed: 26 October 2022)

<sup>23</sup> Constitution of the Italian Republic, Art. 101 to Art. 113. [governo.it/it/costituzione-italiana/parte-seconda-ordinamento-della-repubblica/titolo-iv-la-magistratura/2855](https://governo.it/it/costituzione-italiana/parte-seconda-ordinamento-della-repubblica/titolo-iv-la-magistratura/2855)

<sup>24</sup> ELI – European Law Institute. *Corte Suprema di Cassazione* (Online). Available at [europeanlawinstitute.eu/membership/institutional-members/supreme-court-of-italy/](https://europeanlawinstitute.eu/membership/institutional-members/supreme-court-of-italy/) (Accessed: 26 October 2022)

<sup>25</sup> Fundamental Law on the Judicial System - Article 65 [normattiva.it/uri-res/N2Ls?urn:nir:stato:regio.decreto:1941-01-30;12](https://normattiva.it/uri-res/N2Ls?urn:nir:stato:regio.decreto:1941-01-30;12)

extent which is necessary in order to assess the remedies that the law allows to be adopted in order to motivate the file of a petition to the Court.

No special permission is required to file an appeal before the Supreme Court. According to article 111 of the Italian Constitution<sup>26</sup>, every citizen may appeal to the Supreme Court for violation of the law regarding any decision issued by the judicial authority (without issuing any civil or criminal appeal), or against any adopted measure restricting personal freedom. In the event the Court encounters one of the following defects (i.e. the violation of the law or of procedural law, the defects of motivation, the grounds for jurisdiction) it shall be entitled both the power and duty not only to annul the decision issued by the unified court of first instance or by the court of appeals but also to enunciate the principle of law that must be observed by the impugned decision. In general, the lower courts are not to be considered bound by the principles laid down by the Supreme Court, in deciding a different lawsuit. However, they may be considered an influential precedent for the judge. In most cases, the judges operating in the lower courts do comply with decisions issued by the Supreme Court.

To the Court of Cassation are also assigned other tasks, such as, establishing jurisdiction and competence and to perform non-judicial functions relating to elections and referendums for the repeal of laws.

The **Constitutional jurisdiction** is attributed to the Constitutional Court ("*Corte Costituzionale*"). This judicial body according to Article 125 of the Constitution<sup>27</sup>, is composed of fifteen judges, with one-third being nominated by the President of the Republic, one-third by Parliament in a joint sitting, and one-third by the ordinary and administrative supreme courts. Based on Article 134 of the Constitution<sup>28</sup>, adjudicates on the following matters:

- on controversies relating to the constitutional legitimacy of laws and enactments having the force of law, of the State and the Regions;
- on jurisdictional disputes between the powers of the State and those between the State and the Regions and between the Regions;
- on the accusations made against the President of the Republic, by Article 90 of the Constitution.<sup>29</sup>

<sup>26</sup> Constitution of the Italian Republic – Article 111

[senato.it/documenti/repository/istituzione/costituzione\\_inglese.pdf](https://senato.it/documenti/repository/istituzione/costituzione_inglese.pdf)

<sup>27</sup> Senato della Repubblica. Constitution of the Italian Republic (Online). Available at [senato.it/documenti/repository/istituzione/costituzione\\_inglese.pdf](https://senato.it/documenti/repository/istituzione/costituzione_inglese.pdf) (Accessed: 16 August 2022)

<sup>28</sup> Senato della Repubblica. Constitution of the Italian Republic (Online). Available at [senato.it/documenti/repository/istituzione/costituzione\\_inglese.pdf](https://senato.it/documenti/repository/istituzione/costituzione_inglese.pdf) (Accessed: 16 August 2022)

<sup>29</sup> Senato della Repubblica. Constitution of the Italian Republic (Online). Available at [senato.it/documenti/repository/istituzione/costituzione\\_inglese.pdf](https://senato.it/documenti/repository/istituzione/costituzione_inglese.pdf) (Accessed: 16 August 2022)

## 2. XR-specific legal developments

It must be stressed that among the Italian legislative bodies there are no current proposals for dedicated legislation on XR in Italy. Therefore, the report analyses and identifies the legislative requirements regarding the most relevant laws and regulations that could be applied to XR. The subject matter of the report though has not been yet object of national statutes, it is the object of hearings of experts organized by Parliamentary Committees (as shown in the report).

In most of domains analysed it has been possible to identify specific legal cases that, although not directly related to XR, might be applied to XR technologies (or XR technologies might be used to improve and extent the service, such as in the case of SPID, and App IO).

An overview of the most relevant legal domains for XR, and some specific legal cases is provided in the mind map (figure 1). Each legal domain is enriched by significant legal cases and by indication of the most relevant laws and regulation. The arrows show that almost every legal domain, as well as significant legal cases are interconnected. For instance, Artificial Intelligence can be connected to the legal case “Metaverse”. Moreover, Digital Service Data Governance as well as Artificial Intelligence can be related to Privacy and Data Protection.

There are several regulatory bodies dealing with these legal domains, and thus (potentially) concerned with the application of XR technologies. With regard to Privacy and Data Protection, the Regulatory body is the Data Protection Authority. Regarding products safety, the Regulatory bodies are represented by several Ministries such as Ministry for the Economic Development, Ministry of Health, Ministry of Labour, Ministry of Social Policies, Ministry of Internal Affairs, Ministry of Economy and Finance and Ministry of Transports.

A detailed analysis of the legal domains and cases shown in the mind map are provided in the next sections of the report.

LEGEND:

LEGAL DOMAIN      SIGNIFICANT LEGAL CASES      MOST RELEVANT LAWS – REGULATIONS FOR XR

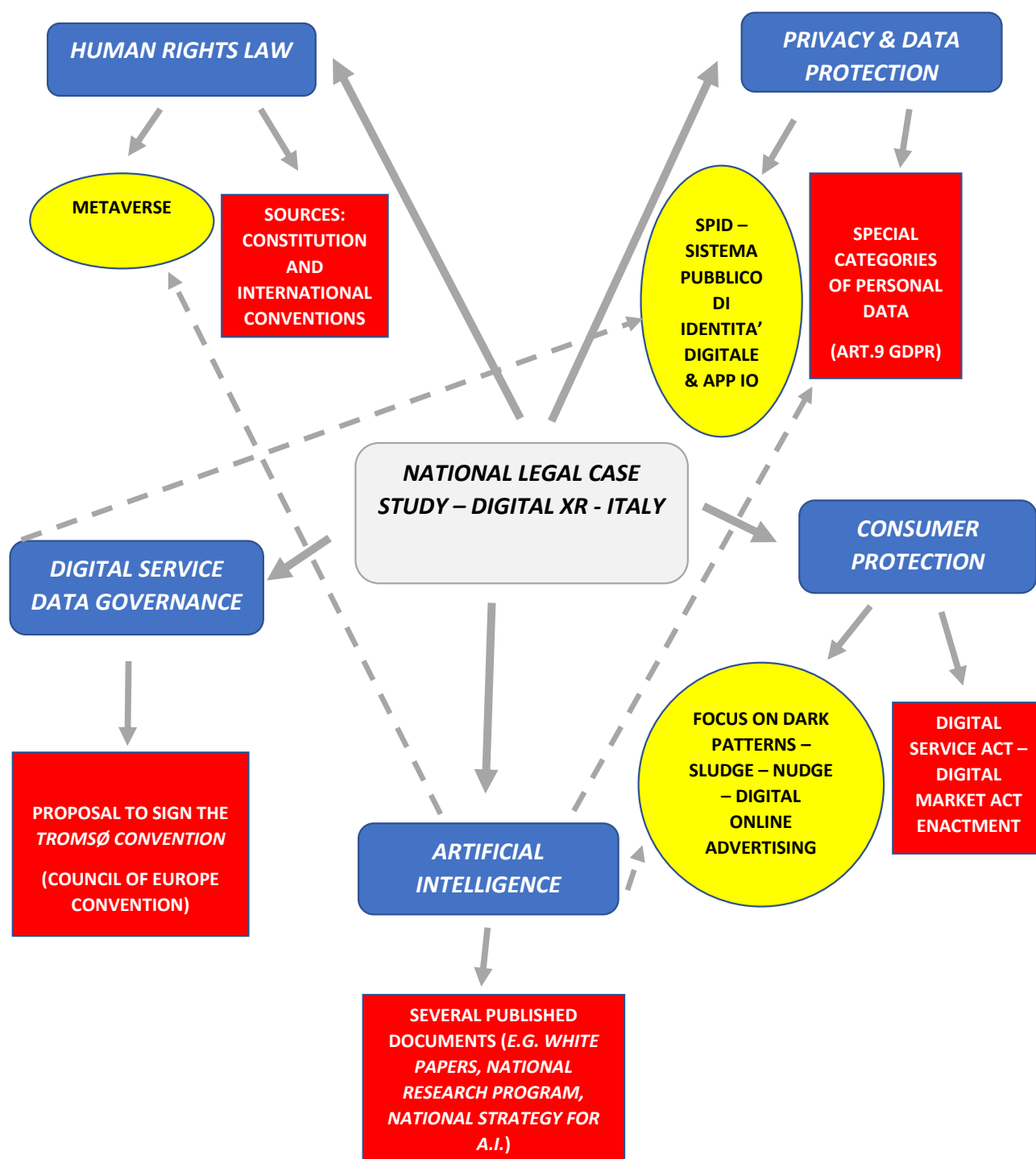


Figure 1: mind map of the legal domains (blue), most relevant laws and regulations (red) and legal cases (yellow) analysed in the report



## 3. Domain-specific legal issues

This section examines the legal implications of digital extended reality technologies in the Italian context with respect to specific legal domains. The legal domains covered include human rights law, privacy and data protection law, consumer protection, A.I. governance, digital service governance, and liability for harms.

The following sections discuss some of the ways that digital extended reality technologies are or may be governed by Italian law and policy within the frameworks of human rights, privacy and data protection, consumer protection, A.I. governance, and digital service governance. Each section begins with a brief introduction to the relevant legal issues and a summary of the Italian legal framework. Specific legal issues within the legal framework are then presented in more detail; each discussion includes specific references to existing (and proposed) law and an explanation of how the law may apply to digital extended reality technologies in Italy. It must be stressed that although no Italian law directly addresses or explicitly mentions digital extended reality technologies, many aspects are subject to the following domains of the Italian legal system.

### 3.1 Human rights law

Digital extended reality technologies have the potential to impact human rights in many ways, both positive and negative. Regarding some rights in particular contexts, these technologies have the potential to enhance the enjoyment of rights, such as when extended digital reality technologies are adopted and used for health services. In other situations, however, the use of these technologies may interfere with protected human rights such as the freedom of expression (e.g. whenever the user of a certain platform – based on XR – might be prevented the exercise of the freedom of expression by other users or as per certain policies adopted by the platform). This section explores what impact digital extended reality technologies may have on various human rights protected in Italian law.

#### 3.1.1 Overview of the law and key elements of XR

The Italian Constitution provides several human rights (HRs). In particular, **Article 2 of the Italian Constitution refers to inviolable rights of the person, both as an individual and in the social groups, where human personality is expressed.**<sup>30</sup> The following HRs are granted in the Constitution (entered into force on January 1st, 1948):

- **"The right to life;**<sup>31</sup>
- **The right to human dignity;**<sup>32</sup>
- **The right to self-determination;**<sup>33</sup>
- **The right to development;**<sup>34</sup>
- **The right to moral and legal equality;**<sup>35</sup>
- **The right to freedom of expression** (included the freedom of the press – freedom of association – freedom of assembly – freedom of religion);<sup>36</sup>

<sup>30</sup> Constitution of the Italian Republic, Article 2.  
[senato.it/documenti/repository/istituzione/costituzione\\_inglese.pdf](https://senato.it/documenti/repository/istituzione/costituzione_inglese.pdf)

<sup>31</sup> Constitution of the Italian Republic, Article 2.

<sup>32</sup> Constitution of the Italian Republic, Article 3.

<sup>33</sup> Constitution of the Italian Republic, Article 2

<sup>34</sup> Constitution of the Italian Republic, Article 3 and 9.

<sup>35</sup> Constitution of the Italian Republic, Article 3

<sup>36</sup> Constitution of the Italian Republic, Article 21.



- The right of participation to decisions which affect everybody and everyone;<sup>37</sup>
- The right to education;<sup>38</sup>
- The right to health;<sup>39</sup>
- The right to justice;<sup>40</sup>
- The right to safeguard of laborers and the recognition of the value of every work;<sup>41</sup>
- The recognition of the essential function performed by in the institution of the family;<sup>42</sup>
- The right to prohibition on torture/cruel inhuman and degrading treatment and slavery;<sup>43</sup>
- The right to rest and leisure;<sup>44</sup>
- Women's rights;<sup>45</sup>
- Children's rights;<sup>46</sup>
- Disability rights".<sup>47</sup>

The articles of the Italian Constitution providing the above-mentioned rights and freedoms, and others (such as the right to justice, right to vote, right to set up political parties, etc.) are **articles 2, 3, 4, 9, 13, 14, 15, 17, 18, 19, 21, 29, 30, 32, 33, 34, 35, 36, 37, 38, 48, 49**. The above-mentioned rights and freedoms represent the bedrock on which the Italian society is founded<sup>48</sup>.

In addition, many human rights are introduced in the legal and judiciary Italian system by international treaties that are not directly applicable in the domestic legal system and must first be transposed into the national system.

The transposition is based on the provision provided by **article 10 and by article 11 of the Constitution**.<sup>49</sup>

- Article 10: "*The Italian legal system conforms to the generally recognized principles of international law. The legal status of foreigners is regulated by law in conformity with international provisions and treaties. A foreigner who, in his home country, is denied the actual exercise of the democratic freedoms guaranteed by the Italian constitution shall be entitled to the right of asylum under the conditions established by law. A foreigner may not be extradited for a political offense.*"
- Article 11: "*Italy rejects war as an instrument of aggression against the freedom of other peoples and as a means for the settlement of international disputes. Italy agrees on conditions of equality with other States, to the limitations of sovereignty that may be necessary to a world order ensuring peace and justice among the Nations. Italy promotes and encourages international organizations having such ends.*"

Therefore, every human rights provision which applies to Italy shall be enacted by Italian authorities such as by the Parliament, judges, and public administration. The Human Rights laws which are enforceable in Italy are the following:

<sup>37</sup> Constitution of the Italian Republic, Articles 17 and 18.

<sup>38</sup> Constitution of the Italian Republic, Articles 33 and 34.

<sup>39</sup> Constitution of the Italian Republic, Article 32.

<sup>40</sup> Constitution of the Italian Republic, Article 24.

<sup>41</sup> Constitution of the Italian Republic, Articles 1- 35 – 36 - 38.

<sup>42</sup> Constitution of the Italian Republic, Articles 29 and 30.

<sup>43</sup> Constitution of the Italian Republic, Article 13.

<sup>44</sup> Constitution of the Italian Republic, Article 36.

<sup>45</sup> Constitution of the Italian Republic, Articles 3 and 37.

<sup>46</sup> Constitution of the Italian Republic, Articles 2 – 3 -30 – 31 – 32 – 33 – 34 - 37.

<sup>47</sup> Constitution of the Italian Republic, Article 2 – 3 – 4 – 24 – 32- 34 - 38.

<sup>48</sup> Andrea Marzorati. *I DIRITTI FONDAMENTALI PREVISTI DALLA COSTITUZIONE* (Online). Available at [marzorati.org/i-diritti-fondamentali-previsti-dalla-costituzione/](http://marzorati.org/i-diritti-fondamentali-previsti-dalla-costituzione/) (Accessed: 18 August 2022)

<sup>49</sup> Constitution of the Italian Republic, Articles 10 and 11.

[senato.it/documenti/repository/istituzione/costituzione\\_inglese.pdf](http://senato.it/documenti/repository/istituzione/costituzione_inglese.pdf)



- United Nations Charter (1945)<sup>50</sup> signed by Italy in 1955.
- Universal Declaration of Human Rights (1948)<sup>51 52</sup>
- European Convention on Human Rights<sup>53</sup> (1950)<sup>54</sup> signed by Italy in 1950 and ratified in 1955.<sup>55</sup>
- Charter of Fundamental Rights of the European Union (2000) which entered into force in December 2009 along with the Treaty of Lisbon.<sup>56</sup>

It shall be noticed that the Italian Parliament has enacted several other international conventions throughout the years, including but not limited to<sup>57</sup>:

- International Convention on the Elimination of All Forms of Racial Discrimination (1966) signed by Italy in 1968 and ratified in 1976.
- International Covenant on Economic, Social and Cultural Rights (1966) signed by Italy in 1967 and ratified in 1978.
- International Covenant on Civil and Political Rights (1966) signed by Italy in 1967 and ratified in 1978.
- Convention on the Elimination of All Forms of Discrimination against Women (1979) signed by Italy in 1980 and ratified in 1985.
- Convention on the Rights of the Child (1989) signed by Italy in 1990 and ratified in 1991.
- Convention on the Rights of Persons with Disabilities (2006) signed by Italy in 2007 and ratified in 2009.

The abovementioned rights - reported in each international act - are enforceable in relation to all kinds of digital extended realities technologies, notwithstanding the fact that these technologies are not explicitly referred to.

The **International Convention on the Elimination of All Forms of Racial Discrimination**, for instance, provides various rights, such as Article 4 in which propaganda and organizations based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or promoting racial

<sup>50</sup> Filippone-Thaulero, S. Aza Mustafa Duran, S. (2006) *MANUALE DEI DIRITTI UMANI Trattati, Convenzioni, Dichiarazioni, Statuti, Protocolli aggiornati al 2004*. 1st edn. Roma: Senato della Repubblica. [senato.it/documenti/repository/commissioni/dirittiumani/manuale.pdf](http://senato.it/documenti/repository/commissioni/dirittiumani/manuale.pdf) (Accessed: 16 August 2022)

<sup>51</sup> Italy was not a UN member until 1955 (December 14<sup>th</sup>).

<sup>52</sup> Ufficio comunicazione istituzionale e dell'Ufficio delle informazioni parlamentari, dell'archivio e delle pubblicazioni del Senato (2018) *DICHIARAZIONE UNIVERSALE DEI DIRITTI UMANI*. 1st edn. Roma: Senato della Repubblica. (Online). Available at [senato.it/application/xmanager/projects/leg18/file/DICHIARAZIONE\\_diritti\\_umani\\_4lingue.pdf](http://senato.it/application/xmanager/projects/leg18/file/DICHIARAZIONE_diritti_umani_4lingue.pdf) (Accessed: 18 August 2022)

<sup>53</sup> The Convention for the Protection of Human Rights and Fundamental Freedoms.

<sup>54</sup> Italy joined the Council of Europe on 5 May 1949. It is a founder member of the Organization. Council of Europe. *Italy // 46 States, one Europe* (Online). Available at [coe.int/en/web/portal/italy](http://coe.int/en/web/portal/italy) (Accessed: 18 August 2022)

<sup>55</sup> Centro studi per la pace. *CEDU e Protocolli Addizionali* (Online). Available at [studiperlapace.it/view\\_news](http://studiperlapace.it/view_news) (Accessed: 18 August 2022)

<sup>56</sup> Citizens Information. (2021) *Charter of Fundamental Rights* (Online). Available at [citizensinformation.ie](http://citizensinformation.ie) (Accessed: 18 August 2022)

<sup>57</sup> International Covenant on Civil and Political Rights (entered into force 23 March 1976), G.A. Res 2200A (XXI); Convention on the Elimination of All Forms of Discrimination against Women (entered into force 3 September 1981), 1249 U.N.T.S. 13; International Convention on the Elimination of All Forms of Racial Discrimination (entry into force 4 January 1969) G.A. Res. 2106 (XX) (ICERD); International Covenant on Economic, Social and Cultural Rights (entered into force 3 January 1976), G.A. Res 2200A (XXI), 993 U.N.T.S. 3; Convention on the Rights of the Child (entered into force 2 September 1990) GA Res. 44/25, 1577 U.N.T.S. 3; Convention on the Rights of Persons with Disabilities (entered into force 3 May 2008), GA Res. A/61/106.

hatred and discrimination are condemned and deemed punishable by law;<sup>58</sup> and Article 5 according to which the right to freedom of thought, conscience, and religion, opinion and expression shall be enjoyed by everyone and safeguarded without distinction as to race, color, or national or ethnic origin, to equality before the law.<sup>59</sup>

Under Article 15 of the **International Covenant on Economic, Social, and Cultural Rights** everyone is granted the right to enjoy scientific progress, its benefits, and its applications,<sup>60</sup> including in relation to XR.

The Italian Parliament has ratified and given execution to the abovementioned Convention, by approving the Law n. 881 – 25.10.1977.<sup>61</sup>

The **International Covenant on Civil and Political Rights** provides principles as reported in Article 19, in which it is declared the right for everyone to hold opinions without any kind of interference, have the right to freedom of expression, which shall concern the freedom to seek, receive and impart information and ideas of all kinds...via any chosen media; and Article 20 where it is stressed the prohibition of any kind of advocacy that represents a form of incitement to discrimination, hostility or violence based on hate regarding national, racial or religious justification.<sup>62</sup>

The Italian Parliament has ratified and given execution to the abovementioned Convention, by approving the Law n. 881 – 25.10.1977.<sup>63</sup>

Potential freedom of expression challenges in relation to XR include for instance the adoption – made by platforms implementing XR - of any kind of policy which do prevent users' exercise of freedom of expression (related to lawful content) or provides the non-intervention or adoption of measures to contrast unlawful acts which do limit the freedom of expression.

The **Convention on the Elimination of All Forms of Discrimination against Women** as well as the previous mentioned international legal acts, provides - according to Article 3 - the protection of human rights and fundamental freedoms, based on the assumption of equality between men and women, to ensure the full development and advancement of the latter.<sup>64</sup>

<sup>58</sup> International Convention on the Elimination of All Forms of Racial Discrimination (entry into force 4 January 1969) G.A. Res. 2106 (XX), Art.4(a).

[ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial](https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial)

<sup>59</sup> International Convention on the Elimination of All Forms of Racial Discrimination (entry into force 4 January 1969) G.A. Res. 2106 (XX), Art.4(a).

[ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial](https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial)

<sup>60</sup> International Covenant on Economic, Social and Cultural Rights (entry into force 3 January 1976) G.A. Res. 2200A (XXI)

[ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights](https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights)

<sup>61</sup> LEGGE 25 ottobre 1977, n. 881 "Ratifica ed esecuzione del patto internazionale relativo ai diritti economici, sociali e culturali, nonché del patto internazionale relativo ai diritti civili e politici, con protocollo facoltativo, adottati e aperti alla firma a New York rispettivamente il 16 e il 19 dicembre 1966" (GU n.333 del 07-12-1977 - Suppl. Ordinario)

[normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1977-10-25:881](https://normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1977-10-25:881)

<sup>62</sup> International Covenant on Civil and Political Rights (23 March 1976) G.A. Res. 2200A (XXI)

[ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights](https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights)

<sup>63</sup> LEGGE 25 ottobre 1977, n. 881 "Ratifica ed esecuzione del patto internazionale relativo ai diritti economici, sociali e culturali, nonché del patto internazionale relativo ai diritti civili e politici, con protocollo facoltativo, adottati e aperti alla firma a New York rispettivamente il 16 e il 19 dicembre 1966" (GU n.333 del 07-12-1977 - Suppl. Ordinario)

[normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1977-10-25:881](https://normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1977-10-25:881)

<sup>64</sup> Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979 (3 September 1981)

The Italian Parliament has ratified and given execution to the abovementioned Convention, by approving the Law n. 135 - 14.3.1985.<sup>65</sup>

In relation to XR, the provision provided by the abovementioned Article 3 shall be enacted by platforms in order to safeguard women's rights to equality. Thus, on one hand platforms shall adopt policies according to which no kind of gender - discriminatory related act will be tolerated, and on the other, sanctions shall be issued to users.

Concerning the **Convention on the Rights of the Child**, the Articles to be taken into consideration are:

- Article 6 where it is declared that every child is granted the right to life;
- Article 12 in which it shall be assured to the child – capable of forming his or her own views – to freely express them regarding all matters affecting the child;
- Article 13 where the child shall be granted the right to freedom of expression which shall concern the freedom to seek, receive and impart information and ideas of all kinds...via any chosen media by the child;
- The right of the child as per Article 14 to freedom of thought, conscience and religion shall be observed;
- Article 16 according to which no child shall be the subject to neither any unlawful interference concerning privacy, correspondence, nor unlawful attacks regarding honor and reputation. Therefore, the child shall be protected against any of these interferences or attacks.
- Article 17 stresses the importance of mass media and ensures that the child has access to information and material provided which shall promote social, spiritual, moral well-being, physical and mental health;
- Finally, Article 24 establishes the right of the child to enjoy and to be guaranteed the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.<sup>66</sup>

The Italian Parliament has ratified and given execution to the abovementioned Convention, by approving the Law n. 176 - 12.6.1991.<sup>67</sup>

In relation to XR, children's rights shall be granted and safeguarded by XR platforms due to the delicacy of the subject and to their right to information and to protection against interferences concerning privacy, honor, and reputation. Children shall be granted access to XR technologies since they can intelligently entertain, educate, or unleash creative forces in healthy moderation and with the right choice of VR apps and XR platforms.

The **Convention on the Rights of Persons with Disabilities** (CRPD) provides principles contained in several articles. These articles are also relevant to XR due to the fact that technologies shall be meant accessible to everybody – notwithstanding physical or mental disabilities. Therefore, XR platforms shall guarantee access to those subjects – without any kind of discrimination based on gender and on disability – throughout the adoption and implementation of suitable measures, and XR apps shall be designed in order to be used by person with disabilities.

[ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women](https://ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women)

<sup>65</sup> LEGGE 14 marzo 1985, n. 132 "Ratifica ed esecuzione della convenzione sull'eliminazione di ogni forma di discriminazione nei confronti della donna, adottata a New York il 18 dicembre 1979" (GU n.89 del 15-04-1985 - Suppl. Ordinario) [normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1985-03-14;132!vig=2022-10-13](https://normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1985-03-14;132!vig=2022-10-13).

<sup>66</sup> Convention on the Rights of the Child (entry into force 2 September 1990) G.A. Res. 44/25 of 20 November 1989.

[unicef.org/child-rights-convention/convention-text#](https://unicef.org/child-rights-convention/convention-text#)

<sup>67</sup> LEGGE 27 maggio 1991, n. 176 "Ratifica ed esecuzione della convenzione sui diritti del fanciullo, fatta a New York il 20 novembre 1989" (GU n.135 del 11-06-1991 - Suppl. Ordinario n. 35) [normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1991-05-27;176!vig=2022-10-13](https://normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1991-05-27;176!vig=2022-10-13)



This principle is declined in general in Article 5 entitled “Equality and non-discrimination”. According to this article, it is recognized that all persons are equal before and under the law and are entitled without any discrimination to equal protection and equal benefit of the law.<sup>68</sup> Any kind of discrimination, based on disability, shall be prohibited.<sup>69</sup> It shall be granted to persons with disabilities equal and effective legal protection against discrimination on all grounds.

The principle is further recognised and specified in Article 6 that states that both women and girls affected by disabilities shall be granted the right to enjoy all human rights and fundamental freedoms.<sup>70</sup> Appropriate measures shall be taken to ensure the full development, advancement, and empowerment of women, in order to guarantee the exercise and enjoyment of human rights and fundamental freedoms.<sup>71</sup> The rights of children with disabilities are specifically addressed in Article 7, which provides that they shall have the right to express their views freely about matters regarding them.<sup>72</sup>

In relation to accessibility, the CRPD provides that persons with disabilities shall be guaranteed the right to live independently and participate fully in all aspects of life.<sup>73</sup> This means that no one shall be discriminated against by not being able to access the physical environment, transportation, information, and communications (such as information and communications technologies and systems).<sup>74</sup> Therefore, barriers representing obstacles to accessibility, in particular to the Internet and other means of communication (e.g. internet platforms) shall be removed. Related to the previous article, Article 21 requires that State Parties “take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice” (e.g., technologies which are classified as appropriate to different kinds of disabilities in a promptly without additional cost).<sup>75</sup> This extends to encouraging private entities that provide services to the public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities.<sup>76</sup> Finally, Article 22 guarantees the right of respect for privacy, as protected by the law.<sup>77</sup> As with any other person, this right shall not be jeopardized or harmed.<sup>78</sup>

The Italian Parliament has ratified and given execution to the abovementioned Convention, by approving the Law n. 18 - 23.3.2009.<sup>79</sup>

According to the analysis of this domain (i.e safeguarding of human rights in general and in particular on online platforms), the Italian Parliament, in particular the Senate, established, on one hand, the

<sup>68</sup> Convention on the Rights of Persons with Disabilities (entered into force 3 May 2008), GA Res. A/61/106, Art.5(1).

[un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_RES\\_61\\_106.pdf](https://un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_61_106.pdf)

<sup>69</sup> Convention on the Rights of Persons with Disabilities (entered into force 3 May 2008), GA Res. A/61/106, Art.5(2).

<sup>70</sup> Convention on the Rights of Persons with Disabilities (entered into force 3 May 2008), GA Res. A/61/106, Art.6(1).

<sup>71</sup> Convention on the Rights of Persons with Disabilities (entered into force 3 May 2008), GA Res. A/61/106, Art.6(2).

<sup>72</sup> Convention on the Rights of Persons with Disabilities, GA Res. A/61/106, Art.7(3).

<sup>73</sup> Convention on the Rights of Persons with Disabilities, GA Res. A/61/106, Art.9.

<sup>74</sup> Convention on the Rights of Persons with Disabilities, GA Res. A/61/106, Art.9(1)(a)-(b).

<sup>75</sup> Convention on the Rights of Persons with Disabilities, GA Res. A/61/106, Art.21(a)-(e).

<sup>76</sup> Convention on the Rights of Persons with Disabilities, GA Res. A/61/106, Art.21(c).

<sup>77</sup> Convention on the Rights of Persons with Disabilities, GA Res. A/61/106, Art.22(1).

<sup>78</sup> Convention on the Rights of Persons with Disabilities, GA Res. A/61/106, Art.22(1).

<sup>79</sup> LEGGE 3 marzo 2009, n. 18 “Ratifica ed esecuzione della Convenzione delle Nazioni Unite sui diritti delle persone con disabilità, con Protocollo opzionale, fatta a New York il 13 dicembre 2006 e istituzione dell’Osservatorio nazionale sulla condizione delle persone con disabilità” (GU n.61 del 14-03-2009) [normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2009-03-03;18](http://normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2009-03-03;18)





“Extraordinary Committee regarding intolerance, racism, antisemitism, incitement to hate and violence” as a Supervisory Body entitled to verify the enforcement and the safeguarding of principles and values provided by the Constitution and the international laws regarding human rights. On the other, it established the Permanent Committees named Constitutional Affairs Committee. It would be advantageous if sooner than later the activity performed by both bodies will shape online platforms’ policies dealing with human rights and how these shall be safeguarded and enforced.

Consequently, by the fact that human rights shall be enforced, it is envisaged to approve and enforce regulations also providing some sort of “fines” (such as disabling accounts whom authors resorts systematically to hate speech, racism, violence, gender-based violence, etc.) in the event of violation attributable to digital extended reality technologies.

Regarding hate speech, the “Extraordinary Committee regarding intolerance, racism, antisemitism, incitement to hate and violence”, has published a report concerning the phenomenon of online hate incitement.<sup>80</sup> Moreover, the above-mentioned Extraordinary Committee gathered the views from the Vice President of the Italian Data Protection Authority regarding the phenomenon of online hate incitement in February 2022. One of the discussed topics concerned the role of platforms in contrasting online hate speech.<sup>81</sup> <sup>82</sup> It must be stressed that the Vice President of the Italian Data Protection Authority has not provided any solution to the phenomenon of online hate speech but has moved a critic to the DSA Proposal since in the entire Proposal, the EU legislator has not provided any definition to the word “hate”, but only references to the “European Commission Conduct Code on countering illegal hate speech online” (recalled at page 4 and 6 of the Report regarding the DSA Proposal)<sup>83</sup> and to the Whereas of the DSA Proposal (n° 12, 57 and 69)<sup>84</sup>.

The main “focal points” expressed in this domain are the following:

- human rights are recognized and safeguarded both by the Constitution and by national laws (ratification and execution of the abovementioned international conventions);
- the international acts, as well as Conventions, regulating human rights, state that these rights shall be enforceable. Although there is not reported any kind of referral to digital extended reality technologies, it is plausible to think that these rights are enforceable also in this context.

<sup>80</sup> Commissione straordinaria per il contrasto dei fenomeni di intolleranza, razzismo, antisemitismo e istigazione all'odio e alla violenza (2022). *ANALISI COMPARATIVA SUL FENOMENO DELL'ISTIGAZIONE ALL'ODIO ONLINE* (Online). Available at

[senato.it/documenti/repository/commissioni/antidiscriminazioni18/22020614 - RIE - Analisi comparativa sul fenomeno dell'istigazione all'odio online.pdf](https://senato.it/documenti/repository/commissioni/antidiscriminazioni18/22020614 - RIE - Analisi comparativa sul fenomeno dell'istigazione all'odio online.pdf)

<sup>81</sup> Garante Protezione dei Dati Personali (2022). *Senato della Repubblica - Commissione straordinaria intolleranza, razzismo, antisemitismo, istigazione all'odio e alla violenza Audizione del Vice Presidente del Garante per la protezione dei dati personali, prof.ssa Ginevra Cerrina Feroni, sul fenomeno dei discorsi d'odio* (Online). Available at [garanteprivacy.it/home/docweb/-/docweb-display/docweb/9746273](https://garanteprivacy.it/home/docweb/-/docweb-display/docweb/9746273) (Accessed: 24 August 2022)

<sup>82</sup> Commissione intolleranza, razzismo, antisemitismo e istigazione all'odio e alla violenza. Ultima seduta. (Online). Available at: [senato.it/26301?seduta=296589](https://senato.it/26301?seduta=296589) (Accessed: 16 August 2022)

<sup>83</sup> European Commission (2020). *Commission publishes EU Code of Conduct on countering illegal hate speech online continues to deliver results* (Online). Available at [ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_1134](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1134) (Accessed: 16 August 2022)

<sup>84</sup> Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC [eur-lex.europa.eu/legal-content/en/TXT/?uri=COM%3A2020%3A825%3AFIN](https://eur-lex.europa.eu/legal-content/en/TXT/?uri=COM%3A2020%3A825%3AFIN)



### 3.1.2 Significant implications and legal cases

The Italian Parliament – the Constitutional Affairs Committee - is discussing the topic of human rights protected by the Italian Constitution and law in relation to the Metaverse.<sup>85</sup> The Committee has only – up to today – proceeded in collecting information via experts' auditions. Among the interviewed several were university professors, as well as researchers, involved in the study of Artificial Intelligence, and/or experts on Constitutional Law. as well as founders, CEOs and Security Officers, of tech and communication companies.

Five main legal issues emerged from the hearings:

- The first issue deals with privacy regulation, as physical devices (e.g. helmets and visors) gather a huge amount of data such as sounds, expressions and emotions of the users. Moreover, it is noted by experts that the right to anonymity given to avatars in the metaverse could lead to inappropriate uses.
- The second issue is about the nature of avatars and how they are controlled by users. Experts agree that avatars shall be unique and recognizable as users' alter ego (so-called interoperability).
- The third issue concerns protection of real-life physical goods reproduced in the Metaverse. Illegal copies can affect public goods (such as the Coliseum) or private assets (such as a bag in copyright lawsuit *Hermès v Mason Rothschild*<sup>86</sup>).
- The fourth issue concerns governance on the application of national and international law in the metaverse. In order to effectively enforce legal provisions, States shall cooperate to govern the metaverse. For instance, international courts can rule over violations. Two other important aspects concerning the role of the State in the metaverse are tax rules and the possibility for users to be considered citizens, enjoying the same constitutional rights as in real life.
- The fifth issue concerns users' security, since verbal and physical sexual harassment, and even rapes, might occur in the Metaverse. The impact on victims of such incidents can be equivalent to the effects of such events happening in real life<sup>87</sup>. It is worth considering that no one shall feel at risk or not safe for the purpose of large-scale use of the metaverse.

## 3.2 Privacy and data protection law

### 3.2.1 Overview of the law and key elements of XR

Following the adoption of the GDPR in 2016,<sup>88</sup> the EU Member States were granted two years to harmonize their national legislation in accordance with the principles provided by the GDPR. Because the GDPR is a Regulation and not a Directive, its provisions became binding upon all EU Member States

<sup>85</sup> To hear the full audition – in italian – please visit the following website. Available at: [radiatoradiale.it/scheda/666823/commissione-affari-costituzionali-del-senato-della-repubblica](https://radiatoradiale.it/scheda/666823/commissione-affari-costituzionali-del-senato-della-repubblica) (Accessed: 18 August 2022)

<sup>86</sup> UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK - HERMÈS INTERNATIONAL and HERMÈS OF PARIS, INC., vs MARTIN ROTHSCHILD (Online). Available at: [law.justia.com/cases/federal/district-courts/new-york/nysdce/1:2022cv00384/573363/61/](https://law.justia.com/cases/federal/district-courts/new-york/nysdce/1:2022cv00384/573363/61/) (Accessed: 18 August 2022)

<sup>87</sup> Sum of us. (2022) *Metaverse: another cesspool of toxic content* (Online) Available at: [sumofus.org/images/Metaverse\\_report\\_May\\_2022.pdf](https://sumofus.org/images/Metaverse_report_May_2022.pdf) (Accessed: 18 August 2022)

<sup>88</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regards to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119. [eur-lex.europa.eu/eli/req/2016/679/oj](https://eur-lex.europa.eu/eli/req/2016/679/oj)

following entry into effect on 25<sup>th</sup> May 2018. The Italian Government – as per the Law n. 163/2017<sup>89</sup> - enacted those principles by approving the Legislative Decree n. 101/2018<sup>90</sup> and amending the previously adopted Privacy Code<sup>91</sup> (Legislative Decree n. 196/2003 which enacted the principles provided by Directive 95/46/CE<sup>92</sup>, repealed by the GDPR).

For the sake of clarity, it must be stressed that the Italian Parliament “suggested” a “soft” entry into force of the GDPR in the national legal system.<sup>93</sup> This, however, would have been in contrast with the provision provided by article 99 (“*This Regulation shall be binding in its entirety and directly applicable in all Member States.*”)<sup>94</sup>.

The authorities which are engaged in Data Protection, the enforcement of the right to privacy, the right to consent, and the protection of minors (regarding personal data) include the Italian Data Protection Authority, as well as the Italian Parliament (based on its activity of address and supervision of the Government’s activity)<sup>95</sup> and Government, which oversees the enforcement of the provisions provided by both European and National Legislation in the legal system. The abovementioned role played both by the Italian Parliament and by the Government are of the utmost importance since the European Legislation, regulating the right to Privacy and Data Protection, shall be enforced in each EU Member State through the national legislation which enacts its provisions (*however in and on itself directly applicable in all Member States*). In Italy, as seen above, the GDPR has been enacted through the Legislative Decree n. 101/18 approved by the Government as per the Law n. 163/2017.

The Italian Parliament by approving the Legislative Decree no. 101/18 (which enacts the GDPR provisions), has introduced in the Personal Data Protection Code (Legislative Decree no. 196/2003) the provisions provided by the said EU Regulation and enacted by the Legislative Decree no. 101/18.

At the same time, it has decided to not introduce in the Personal Data Protection Code any provision regarding the data subject’s consent and the privacy policy (*with some exceptions regarding provisions regulating minors, students, the processing of genetic data, biometric data, and data concerning health*).

Concerning the previous version of the Personal Data Protection Code (ante GDPR), the Legislative Decree n. 101/18 affected its provisions, particularly with regard to sanctions, data subject’s rights, the use of data collected in violation of the provisions provided by the GDPR, the process by which the

<sup>89</sup> Delega al Governo per il recepimento delle direttive europee e l’attuazione di altri atti dell’Unione europea - Legge di delegazione europea 2016-2017 (17G00177) [normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2017-10-25;163](https://normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2017-10-25;163)

<sup>90</sup> Privacy Control. GDPR 679/16 and Legislative Decree of adaptation n. 101/2018 (Online). Available at: [privacycontrol.it/en/gdpr-679-16-and-legislative-decree-of-adaptation-n-101-2018/](https://privacycontrol.it/en/gdpr-679-16-and-legislative-decree-of-adaptation-n-101-2018/) (Accessed: 25 August 2022)

<sup>91</sup> PERSONAL DATA PROTECTION CODE Containing provisions to adapt the national legislation to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC [gdpd.it/documents/10160/0/PERSONAL+DATA+PROTECTION+CODE.pdf](https://gdpd.it/documents/10160/0/PERSONAL+DATA+PROTECTION+CODE.pdf)

<sup>92</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31995L0046](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31995L0046)

<sup>93</sup> Costa, P. (2018) *GDPR: con il decreto legislativo 101/2018 la privacy italiana si adegua* (Online). Available at [spindox.it/it/blog/gdpr-decreto-legislativo-101-2018-privacy/#gref](https://spindox.it/it/blog/gdpr-decreto-legislativo-101-2018-privacy/#gref) (Accessed: 25 August 2022)

<sup>94</sup> Costa, P. (2018) *GDPR: con il decreto legislativo 101/2018 la privacy italiana si adegua* (Online). Available at [spindox.it/it/blog/gdpr-decreto-legislativo-101-2018-privacy/#gref](https://spindox.it/it/blog/gdpr-decreto-legislativo-101-2018-privacy/#gref) (Accessed: 25 August 2022)

<sup>95</sup> Camera dei Deputati. *L’attività di indirizzo e di controllo* (Online). Available at [legislature.camera.it/cost\\_req\\_funz/671/673/documentotesto.asp](https://legislature.camera.it/cost_req_funz/671/673/documentotesto.asp) (Accessed : 25 August 2022)





provisions provided by the GDPR concerning the information society service and minors are implemented, etc.<sup>96 97</sup>

Data subjects' consent, as well as the privacy policy, shall abide by the specific provisions regarding minors as provided by article 8 of the GDPR. In this case, the Italian legislator has reduced the minimum age, for the allowance of the release of the consent concerning the offer of information society services, from 16 (GDPR) to 14. The provision provided in article 2 (5) of the Personal Data Protection Code. It must be stressed that the European Legislator decided to leave to Member States which minimum age shall apply (however, it shall not be under 13).<sup>98 99</sup>

Regarding the processing of genetic data, biometric data, and data concerning health, these data are classified as "special", and the processing activity is regulated under article 9 of the GDPR "Processing of special categories of personal data". Based on this provision, the processing shall be prohibited in the event the collected personal data reveal "racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership" and/or the type of data being processed is "genetic data, biometric data to uniquely identify a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation".<sup>100</sup> Indeed, the basic human rights and fundamental freedoms granted to people are safeguarded.

The Legislator has, however, provided due exceptions to article 9 of the GDPR,<sup>101</sup> including that *"the data subject has given explicit consent to the processing of those personal data for one or more specified purposes; the processing relates to personal data which are manifestly made public by the data subject; the processing is necessary for preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services; the processing is necessary for reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or ensuring high standards of quality and safety of health care and medicinal products or medical devices; and processing is*

<sup>96</sup> Bolognesi, M. (2018) *Le principali novità introdotte dal Decreto n. 101 del 10 Agosto del 2018 rispetto agli obblighi previsti dal GDPR 2016/679 e Dlgs 196/03* (Online). Available at: [ictsecuritymagazine.com/articoli/le-principali-novita-introdotte-dal-decreto-n-101-del-10-agosto-del-2018-](http://ictsecuritymagazine.com/articoli/le-principali-novita-introdotte-dal-decreto-n-101-del-10-agosto-del-2018-) (Accessed: 25 August 2022)

<sup>97</sup> Giampaolino, C.F. et al. (2018) *L'ITALIA SI ADEGUA AL GDPR* (Online). Available at: [cliffordchance.com/content/dam/cliffordchance/briefings/2018/09/litalia-si-adequa-al-gdpr.pdf](http://cliffordchance.com/content/dam/cliffordchance/briefings/2018/09/litalia-si-adequa-al-gdpr.pdf) (Accessed: 25 August 2022)

<sup>98</sup> Bolognesi, M. (2018) *Le principali novità introdotte dal Decreto n. 101 del 10 Agosto del 2018 rispetto agli obblighi previsti dal GDPR 2016/679 e Dlgs 196/03* (Online). Available at: [ictsecuritymagazine.com/articoli/le-principali-novita-introdotte-dal-decreto-n-101-del-10-agosto-del-2018](http://ictsecuritymagazine.com/articoli/le-principali-novita-introdotte-dal-decreto-n-101-del-10-agosto-del-2018) (Accessed: 25 August 2022)

<sup>99</sup> Giampaolino, C.F. et al. (2018) *L'ITALIA SI ADEGUA AL GDPR* (Online). Available at: [cliffordchance.com/content/dam/cliffordchance/briefings/2018/09/litalia-si-adequa-al-gdpr.pdf](http://cliffordchance.com/content/dam/cliffordchance/briefings/2018/09/litalia-si-adequa-al-gdpr.pdf) (Accessed: 25 August 2022)

<sup>100</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regards to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119, Art.9(1). [eur-lex.europa.eu/eli/reg/2016/679/oj](http://eur-lex.europa.eu/eli/reg/2016/679/oj)

<sup>101</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regards to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119, Art.9(2). [eur-lex.europa.eu/eli/reg/2016/679/oj](http://eur-lex.europa.eu/eli/reg/2016/679/oj)



*necessary for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes.”<sup>102 103</sup>*

The European legislator, due to the nature of these data, has provided that in the event Member States may decide to introduce or to maintain further conditions, including limitations, concerning the processing of genetic data, biometric data, or data concerning health (as per Article 9, paragraph 4).<sup>104</sup>  
105

Therefore, the Italian legislator, based on the above-mentioned paragraph 4 of article 9 GDPR, has provided in the Legislative Decree n. 101/18 the approval by the Italian Data Protection Authority of safety measures to process these data. These safety measures shall be updated every two years.<sup>106</sup> The measures provide simplified processes regarding the release of the consent, whenever requested. The legislator has prohibited the dissemination of the concerned personal data.<sup>107</sup> The effect produced by this provision is that it is not allowed, for whoever collects the data, to acknowledge undetermined subjects about such data, or for making them available or for consultation. The Legislative Decree n. 101/18 allows the use of biometric data to implement procedures within technical and organizational measures - regarding restricted access to personal data – for the protection of personal data, which controllers shall implement as provided by article 32 of the GDPR (“Security of processing”).<sup>108 109</sup>

Therefore, the release of consent, as well as the privacy policy are regulated by the principles of the GDPR. Moreover, the collection and storage of personal data are regulated by the principles provided by the GDPR.<sup>110</sup>

Due to the importance of the personal data collected and stored by Digital Extended Reality devices (such as genetic and biometric data related to the user), the abovementioned articles provided by the GDPR, and enacted by the Italian Legislation, represent the “gatekeeper” to the use of those data. Specifically, the use of XR technology, implies several activities during the immersive experience, which

<sup>102</sup> Bolognesi, M. (2018) Le principali novità introdotte dal Decreto n. 101 del 10 Agosto del 2018 rispetto agli obblighi previsti dal GDPR 2016/679 e Dlgs 196/03 (Online). Available at: [ictsecuritymagazine.com/articoli/le-principali-novita-introdotte-dal-decreto-n-101-del-10-agosto-del-2018](http://ictsecuritymagazine.com/articoli/le-principali-novita-introdotte-dal-decreto-n-101-del-10-agosto-del-2018) (Accessed: 25 August 2022)

<sup>103</sup> Giampaolino, C.F. et al. (2018) *L'ITALIA SI ADEGUA AL GDPR* (Online). Available at: [cliffordchance.com/content/dam/cliffordchance/briefings/2018/09/litalia-si-adequa-al-gdpr.pdf](http://cliffordchance.com/content/dam/cliffordchance/briefings/2018/09/litalia-si-adequa-al-gdpr.pdf) (Accessed: 25 August 2022)

<sup>104</sup> Bolognesi, M. (2018) Le principali novità introdotte dal Decreto n. 101 del 10 Agosto del 2018 rispetto agli obblighi previsti dal GDPR 2016/679 e Dlgs 196/03 (Online). Available at: [ictsecuritymagazine.com/articoli/le-principali-novita-introdotte-dal-decreto-n-101-del-10-agosto-del-2018](http://ictsecuritymagazine.com/articoli/le-principali-novita-introdotte-dal-decreto-n-101-del-10-agosto-del-2018) (Accessed: 25 August 2022)

<sup>105</sup> Giampaolino, C.F. et al. (2018) *L'ITALIA SI ADEGUA AL GDPR* (Online). Available at: [cliffordchance.com/content/dam/cliffordchance/briefings/2018/09/litalia-si-adequa-al-gdpr.pdf](http://cliffordchance.com/content/dam/cliffordchance/briefings/2018/09/litalia-si-adequa-al-gdpr.pdf) (Accessed: 25 August 2022)

<sup>106</sup> Decreto Legislativo n. 101/18, Art. 2 (2).  
[normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2018-08-10;101](http://normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2018-08-10;101)

<sup>107</sup> Legislative Decree n. 101/18, Art. 2(7), paragraph 8.  
[normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2018-08-10;101](http://normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2018-08-10;101)

<sup>108</sup> Bolognesi, M. (2018) Le principali novità introdotte dal Decreto n. 101 del 10 Agosto del 2018 rispetto agli obblighi previsti dal GDPR 2016/679 e Dlgs 196/03 (Online). Available at: [ictsecuritymagazine.com/articoli/le-principali-novita-introdotte-dal-decreto-n-101-del-10-agosto-del-2018](http://ictsecuritymagazine.com/articoli/le-principali-novita-introdotte-dal-decreto-n-101-del-10-agosto-del-2018) (Accessed: 25 August 2022)

<sup>109</sup> Giampaolino, C.F. et al. (2018) *L'ITALIA SI ADEGUA AL GDPR* (Online). Available at: [cliffordchance.com/content/dam/cliffordchance/briefings/2018/09/litalia-si-adequa-al-gdpr.pdf](http://cliffordchance.com/content/dam/cliffordchance/briefings/2018/09/litalia-si-adequa-al-gdpr.pdf) (Accessed: 25 August 2022)

<sup>110</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)  
[eur-lex.europa.eu/eli/req/2016/679/oj](http://eur-lex.europa.eu/eli/req/2016/679/oj)

all rely on the body and behavioral reactions of users. These activities regard the analyses of user's heart rate, eye movements, body gestures, etc. Therefore, the collected data concern special "data", such as biometric and health related.<sup>111</sup>

In conclusion, it is important to highlight the "*focal points*" reported in the domain, which are:

- the enactment of the principles expressed by the GDPR in the Italian legislation and the role of the authorities in the enforcement of the provisions (both European and national);
- the importance conferred to special categories of personal data which shall be safeguarded due to their particular nature.

### 3.2.2 Significant implications and legal cases

#### Clearview A.I. case (decision adopted by the Italian Data Protection Authority)

Concerning the collecting and storing of personal data, the Italian Data Protection Authority, in February 2022, issued an injunction against Clearview AI. The reason for the issue of the injunction is the unlawful collection and processing of personal data by Clearview AI through facial recognition software (used by police authorities). The collected personal data were further treated as "*biometric data*", which as provided by paragraph 9 of the GDPR, are strictly protected.<sup>112</sup>

This abovementioned case, although not directly related to XR technologies, might be adopted in the future as an example on how not to use "*special*" categories of data (such as biometric data), which are adopted in XR Technologies (as reported above regarding immersive technologies). In the near future, XR technologies will continue to develop, therefore it is mandatory that platforms, adopting such technologies, abide to the provisions provided by law.

#### SPID and App IO

Recently, the Italian public has been using applications to access and benefit from services provided by the public administrations, such as accessing personal records, paying taxes, receiving notice of payment, registering for a public competition, accessing health services, etc. The introduction of these electronic instruments, and their compulsory use, have represented some sort of innovative ground-breaking case of the Italian Government and Public Administration.

The promotion and use of such instruments by public institutions shall be contextualized in pursuit of enhancing accessibility to public administration services as well as to implement the digital ID system.

The three best-known applications are "Spid"<sup>113</sup>, "PagoPA"<sup>114</sup> and "App IO"<sup>115</sup>.

The acronym Spid stands for "Sistema Pubblico di Identità Digitale" (*Public Digital Identity System*) which allows citizens to access the online services of Public Administrations and participating private institutes with a single Digital Identity.<sup>116</sup>

<sup>111</sup> Paule, L. (2021) *Data in the XR industry: why do we need it?* (Online). Available at: [blog.laval-virtual.com/en/data-in-the-xr-industry-why-do-we-need-it/](https://blog.laval-virtual.com/en/data-in-the-xr-industry-why-do-we-need-it/) (Accessed: 25 August 2022)

<sup>112</sup> Ordinanza ingiunzione nei confronti di Clearview AI - 10 febbraio 2022 [9751362] (Online) Available at: [garanteprivacy.it/web/quest/home/docweb/-/docweb-display/docweb/9751362](https://garanteprivacy.it/web/quest/home/docweb/-/docweb-display/docweb/9751362) (Accessed: 25 August 2022)

<sup>113</sup> Spid – Public Digital Identity System [spid.gov.it/en/](https://spid.gov.it/en/)

<sup>114</sup> PagoPA [pagopa.gov.it/](https://pagopa.gov.it/)

<sup>115</sup> Dipartimento per la Trasformazione Digitale - Cittadinanza digitale - App IO [innovazione.gov.it/progetti/app-io-cittadinanza-digitale/](https://innovazione.gov.it/progetti/app-io-cittadinanza-digitale/)

<sup>116</sup> AGID - Spid – Public Digital Identity System [agid.gov.it/en/platforms/spid](https://agid.gov.it/en/platforms/spid)

It is free of charge and citizens can get SPID through a series of private companies under agreements (known as *Identity Providers*). Once the verification procedure is completed, which certifies the identity of the applicant, the system releases a set of credentials that can be used on all the websites (called *Service Providers*).

Since October 1<sup>st</sup>, 2021<sup>117 118</sup> all Italian citizens (as well as foreigners residing in Italy – only using SPID) must access Public Administration and participating private institutes services via SPID, CNS (National Services Card – Carta Nazionale dei Servizi)<sup>119 120 121</sup>, CIE (Carta d'Identità Elettronica – Electronic Identity Card)<sup>122 123</sup>.

PagoPA represents the national platform that allows the user to choose how to pay taxes, or fees towards Public Administrations and other participating private institutes and providers of services. The service is provided by App IO.

App IO represents an important step toward the implementation of the national innovation strategy (*Italia Digitale 2026*) set by the Government (the Ministry of Digital Transition), to fulfill the obligations provided by the National Recovery and Resilience Plan (PNRR).<sup>124 125</sup> It is used to submit petitions, declarations, and self-declarations to Public Administrations.<sup>126</sup>

Through this application, the user will receive messages, notices, and communications from any public administration. To receive notifications via push on the smartphone, to receive updates via e-mail or directly through the app, to be updated about due dates, and to pay tributes.<sup>127</sup>

<sup>117</sup> Cherchi, A. (2021) *Spid, Cie o Cns: obbligo dal 1° ottobre per i servizi della Pa* (Online). Available at: [ilsole24ore.com/art/spid-cie-o-cns-obbligo-1-ottobre-i-servizi-pa-AEIPcCl?refresh\\_ce=1](https://ilsole24ore.com/art/spid-cie-o-cns-obbligo-1-ottobre-i-servizi-pa-AEIPcCl?refresh_ce=1) (Accessed: 25 August 2022)

<sup>118</sup> Namirial S.p.A. (2022) *Come attivare lo SPID per anziani e per persone con disabilità* (Online). Available at: [focus.namirial.it/spid-per-anziani/](https://focus.namirial.it/spid-per-anziani/) (Accessed: 25 August 2022)

<sup>119</sup> CNS – Carta Nazionale dei Servizi (National Service Charter) is an instrument whose purpose is to identify with certainty the citizen operating online (since it contains data to authenticate the user). It consists of a USB key or a smart card, bearing a microchip and contactless technology, which allows access and benefits from the online services provided by public administrations (such as INAIL, INPS, Agenzia delle Entrate, etc.). It is used to obtain documents and information or to access funding. With the CNS, unlike SPID, it is possible to digitally sign documents.

<sup>120</sup> Pisanu, N. (2021) *CNS: cos'è e come utilizzare la Carta nazionale dei servizi* (Online). Available at: [agendadigitale.eu/documenti/cns-cos-e-come-utilizzare-la-carta-nazionale-dei-servizi-guida-completa-2019/](https://agendadigitale.eu/documenti/cns-cos-e-come-utilizzare-la-carta-nazionale-dei-servizi-guida-completa-2019/) (Accessed: 25 August 2022)

<sup>121</sup> Ministero dell'Interno – Prefettura di Firenze (2021) *NATIONAL SERVICE CARD (CNS) AND DIGITAL SIGNATURE - CARTA NAZIONALE DEI SERVIZI* (Online). Available at: [immigrazione.regione.toscana.it/?q=schedemultilingue-CNS-EN-6227](https://immigrazione.regione.toscana.it/?q=schedemultilingue-CNS-EN-6227) (Accessed: 25 August 2022)

<sup>122</sup> CIE- Carta d'Identità Elettronica - is the identity document of Italian citizens issued by the Ministry of the Interior. Thanks to highly advanced security and anti-counterfeiting elements, it grants the holder's identity verification and the access to online services of Public Administration, during administrative procedures at public offices or in any situation that requires identity verification, both in Italy and in many EU countries.

<sup>123</sup> Ministero dell'Interno *Electronic Identity Card (CIE)* (Online). Available at: [cartaidentita.interno.gov.it/en/cie/electronic-identity-card](https://cartaidentita.interno.gov.it/en/cie/electronic-identity-card) (Accessed: 25 August 2022)

<sup>124</sup> Dipartimento per la trasformazione digitale (2022) *Digitalizzazione della PA* (Online). Available at: [innovazione.gov.it/italia-digitale-2026/il-piano/digitalizzazione-della-pa/](https://innovazione.gov.it/italia-digitale-2026/il-piano/digitalizzazione-della-pa/) (Accessed: 25 August 2022)

<sup>125</sup> Governo Italiano – Presidenza del Consiglio dei Ministri (2021) *PNRR: digitalizzazione, innovazione, competitività, cultura e turismo* (Online). Available at: [governo.it/it/approfondimento/digitalizzazione-innovazione-competitivita-e-cultura/16701](https://governo.it/it/approfondimento/digitalizzazione-innovazione-competitivita-e-cultura/16701) (Accessed: 25 August 2022)

<sup>126</sup> Maggioli – La PA digitale *Guida alle lettura del decreto semplificazioni* (Online). Available at: [lapadigitale.it/decreto-semplificazioni/](https://lapadigitale.it/decreto-semplificazioni/) (Accessed: 25 August 2022)

<sup>127</sup> Longo, A. Ruggiero G. (2022) *L'app IO dei servizi pubblici in Italia: come si usa e il suo senso strategico* (Online). Available at: [agendadigitale.eu/cittadinanza-digitale/lapp-io-pronta-al-lancio-cosi-i-servizi-pubblici-saranno-a-portata-di-smartphone/](https://agendadigitale.eu/cittadinanza-digitale/lapp-io-pronta-al-lancio-cosi-i-servizi-pubblici-saranno-a-portata-di-smartphone/) (Accessed: 25 August 2022)

The theme of accessibility to mobile apps and websites has been regulated by the EU Directive 2102/2016 “Directive on accessibility of the websites and mobile applications of public sector bodies”<sup>128</sup>, enacted by the Legislative Decree 106/2018<sup>129</sup>. The Italian legal system features several laws in which it is ensured the right to access to the services provided by Public Administrations, such as Decree n. 76/2020 “Simplification and Digital Innovation Decree”. This Decree provides that Public Administrations shall, through the App IO, make their webservices accessible (except for technical issues certified by PagoPA S.p.A.).

With regard to accessibility to mobile applications, AGID – Agency for Digital Italy has published new guidelines concerning the accessibility to IT instruments (such as App IO, and PagoPa).<sup>130 131</sup> These guidelines shall be complied with by platforms to allow people with disabilities to access IT instruments (especially mobile apps) provided by Public Administrations and other participating private institutes, and providers of services. In particular, the guidelines shall provide the “*technical requirements for accessibility to IT instruments; the adoption of technical methodologies to verify the accessibility to IT instruments; the model for the declaration of accessibility; the adoption of evaluation and monitoring methodology with regard to the compliance to the provisions regulating accessibility by IT instruments (such as websites and mobile apps); the circumstances by which the providers might reasonably (as per EU Directive 2102/2016 article 5)*”<sup>132</sup> limit the accessibility to websites or mobile apps.”<sup>133</sup>

The guidelines, which entered into force on January 10<sup>th</sup>, 2020, enact the technical features provided by article 11 (“*Requisiti tecnici*”), Law n. 4/2004<sup>134</sup> as well as the EU Directive n. 2102/2016<sup>135</sup>.

The abovementioned Article 11, recall the principle provided by the Law n. 4/2004 in Art. 3 (2) “General principles for accessibility” (“*Principi generali per l’accessibilità*”)<sup>136</sup>.

Ensuring accessibility through the above-mentioned apps has however presented an issue. As per **SPID**, since all the information provided to the Public Digital Identity System are strictly personal, it has become an issue on how to allow elderly people (which represents a large proportion of the Italian population), to access apps in order to benefit from the services provided by the Public Administration (as seen before). Therefore, regarding those unable to use autonomously online services (such as elderly

<sup>128</sup> DIRECTIVE (EU) 2016/2102 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies

[eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016L2102&from=IT](http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016L2102&from=IT)

<sup>129</sup> DECRETO LEGISLATIVO 10 agosto 2018, n. 106 (Attuazione della direttiva (UE) 2016/2102 relativa all’accessibilità dei siti web e delle applicazioni mobili degli enti pubblici). (18G00133) (GU n.211 del 11-09-2018)

[normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2018-08-10;106!vig=2021-11-04](http://normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2018-08-10;106!vig=2021-11-04)

<sup>130</sup> AGID - Docs Italia *Linee guida sull’accessibilità degli strumenti informatici* (Online). Available at: [docs.italia.it/AgID/documenti-in-consultazione/lq-accessibilita-docs/it/stabile/index.html](http://docs.italia.it/AgID/documenti-in-consultazione/lq-accessibilita-docs/it/stabile/index.html) (Accessed: 25 August 2022)

<sup>131</sup> AGID (2021) *Linee guida accessibilità – PA* (Online). Available at: [agid.gov.it/it/design-servizi/accessibilita/linee-guida-accessibilita-pa](http://agid.gov.it/it/design-servizi/accessibilita/linee-guida-accessibilita-pa) (Accessed: 25 August 2022)

<sup>132</sup> DIRECTIVE (EU) 2016/2102 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies

[eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016L2102&from=IT](http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016L2102&from=IT)

<sup>133</sup> AGID (2021) *Linee guida accessibilità – PA* (Online). Available at: [agid.gov.it/it/design-servizi/accessibilita/linee-guida-accessibilita-pa](http://agid.gov.it/it/design-servizi/accessibilita/linee-guida-accessibilita-pa) (Accessed: 25 August 2022)

<sup>134</sup> LEGGE 9 gennaio 2004, n. 4 (Disposizioni per favorire e semplificare l’accesso degli utenti e, in particolare, delle persone con disabilità agli strumenti informatici). (GU n.13 del 17-01-2004)

[normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2004-01-09;4!vig=](http://normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2004-01-09;4!vig=)

<sup>135</sup> DIRECTIVE (EU) 2016/2102 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies

[eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016L2102&from=IT](http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016L2102&from=IT)

<sup>136</sup> Legge 9 gennaio 2004, n. 4 - *Disposizioni per favorire e semplificare l’accesso degli utenti e, in particolare, delle persone con disabilità agli strumenti informatici.*

[normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2004-01-09;4!vig=2022-10-19](http://normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2004-01-09;4!vig=2022-10-19)





and disabled people), since August 16<sup>th</sup>, 2021, it is possible to designate a trusted person to exercise their rights towards INPS (National Social Security Institute). To safeguard the citizens' and foreigners' rights to access, article 64 (3) of the Digital Administrative Code<sup>137</sup> provides the regulation of the Proxy Management System ("*Sistema di Gestione delle Deleghe*" - SGD) for which the Minister of the Council of Ministers in charge of the technological innovation and the digital transition is responsible. The above-mentioned proxy can be requested by legal guardians, curators, and court-appointed guardians.<sup>138</sup>

Concerning the protection of disclosed personal data to identity providers, these won't be used for commercial purposes. Identity Providers cannot use the user's personal data or transfer them to third parties without the user's authorization. The system provides a distinction, at the time of registration, between the necessary data to obtain the SPID digital identity and the information - not mandatory - that the identity provider may possibly request. Compliance with data protection rules is supervised by AgID and by the Italian Data Protection Authority<sup>139</sup>.

As per **App IO** (the app of public services), the main goal, which developers intend to achieve, is to guarantee citizens full accessibility to the services provided by Public Administrations. To ensure the right to access to citizens affected by disabilities, the user interface has been designed to comply with specific requirements demanded by partially sighted citizens. Furthermore, developers are planning to adopt supporting tools, such as TalkBack or VoiceOver provided by operating systems.<sup>140</sup>

For what it concerns Privacy issues, the app has been developed in compliance with the security guidelines provided by the ICT three-year Plan. Moreover, the design and development of the app have been based on the principles and provisions provided by the GDPR and the Italian Data Protection Code. The Public Administrations are responsible for the collection and storage of all the disclosed personal data which are deemed necessary for the pursuit of their institutional purpose.<sup>141</sup>

It is important to stress that currently these two apps do not adopt XR technologies. However, since XR are being developed, it is possible that the two abovementioned apps might adopt the technology, especially regarding the collecting and processing of biometric data (which are already specified in ID cards – both electronic and analogic).

## 3.3 Consumer Protection

### 3.3.1 Overview of the law and key elements of XR

It is important to remember that the Italian Parliament has approved the Legislative Decree n. 206, dated 6 September 2005 which came into force on 23 October 2005.<sup>142</sup> The Legislative Decree provides a consolidated Act called "Codice del Consumo" (Consumer Code) which collects all EU consumer protection legislation. The purpose of the approval of this Code, is to bring together and coordinate all existing consumer protection provisions.<sup>143</sup>

<sup>137</sup> DECRETO LEGISLATIVO 7 marzo 2005, n. 82 Codice dell'amministrazione digitale (GU n.112 del 16-05-2005 - Suppl. Ordinario n. 93)

[normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2005-03-07:82](https://normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2005-03-07:82)

<sup>138</sup> Namirial S.p.A. (2022) *Come attivare lo SPID per anziani e per persone con disabilità* (Online). Available at [focus.namirial.it/spid-per-anziani/](https://focus.namirial.it/spid-per-anziani/) (Accessed: 25 August 2022)

<sup>139</sup> Spid – Public Digital Identity System FAQ – *Frequently Asked Questions?* (Online). Available at: [spid.gov.it/en/frequently-asked-questions/](https://spid.gov.it/en/frequently-asked-questions/) (Accessed: 25 August 2022)

<sup>140</sup> App IO – FAQ *Accessibilità* (Online). Available at: [io.italia.it/fag/#n5\\_1](https://io.italia.it/fag/#n5_1) (Accessed: 25 August 2022)

<sup>141</sup> App IO – FAQ *Sicurezza e Privacy* (Online). Available at: [io.italia.it/fag/#n7\\_2](https://io.italia.it/fag/#n7_2) (Accessed: 25 August 2022)

<sup>142</sup> D.lgs 206/2005 - Codice del Consumo  
[normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2005-09-06:206](https://normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2005-09-06:206)

<sup>143</sup> Unione Nazionale dei Consumatori. *Codice del Consumo – Conosci i tuoi diritti* (Online). Available at: [codicedelconsumo.it/english-version/](https://codicedelconsumo.it/english-version/) (Accessed: 27 October 2022)



Therefore, it represents the single Act which covers and consolidates all the different stages in the consumer dealings, from advertising to correct information, from consumer contracts in general to product safety, access to justice and consumer organizations.<sup>144</sup>

Recently, it has been subject to important legislative amendments made to the sale of goods Directive (*Articles 128 to 135-septies of the Consumer Code*)<sup>145</sup> and to the supply of digital content and digital services Directive (*Articles 135-octies to 135-vicies of the Consumer Code*)<sup>146</sup>. These amendments are aimed at transposing European rules envisaging stricter consumer protection, with particular attention being made to those concerning the supply of digital content and those in Directive (EU) 2019/771 (*Sale of goods Directive*)<sup>147</sup> and Directive (EU) 2019/770 (*Digital content and digital services Directive*)<sup>148</sup>.

With regard to the latter, the Regulation of the supply of digital content and services has been reformed by Legislative Decree no. 173/2021<sup>149</sup> implementing Directive (EU) 2019/770<sup>150</sup> in Italy, whose provisions apply to the supply of digital content or digital services occurring from 1 January 2022. The right of redress and the rules on the modification of the digital content or service, which only apply to contracts concluded as from that date, are exempted from the application of the Directive. The new amendments highlight that if the contract concerns a continuous supply service or in accordance with the expectations that the consumer may have built up (in line with the customs of the sector and the goods received), the updates to the provided digital contents or services, must be provided throughout the entire duration of the contract.<sup>151</sup>

With regard to the Digital Market Act and the Digital Service Act, the IX Committee - "Transport, Post and Telecommunications" – of the **Chamber of Deputies**, has examined the Proposal for a *REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON CONTESTABLE AND FAIR MARKETS IN THE DIGITAL SECTOR* (Digital Markets Act)<sup>152</sup>, as well as the Proposal for a *REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON A SINGLE MARKET FOR DIGITAL SERVICES* (Digital Services Act) amending the Directive 2000/31/EC<sup>153</sup>. In addition, the 14th "European Union" (*Politiche dell'Unione*

<sup>144</sup> Unione Nazionale dei Consumatori. *Codice del Consumo – Conosci I tuoi diritti* (Online). Available at: [codicedelconsumo.it/english-version/](https://codicedelconsumo.it/english-version/) (Accessed: 27 October 2022)

<sup>145</sup> D.lgs 206/2005 - Codice del Consumo – Articles 128 to 135 (7) [normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2005-09-06;206](https://normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2005-09-06;206)

<sup>146</sup> D.lgs 206/2005 - Codice del Consumo – Articles 135 (8) to 135 (20) [normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2005-09-06;206](https://normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2005-09-06;206)

<sup>147</sup> Directive (EU) 2019/771 - *Sale of goods Directive* [eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32019L0770](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32019L0770)

<sup>148</sup> Directive (EU) 2019/770 - *Digital content and digital services Directive* [eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32019L0771](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32019L0771)

<sup>149</sup> Decreto Legislativo n. 173/2021 - Attuazione della direttiva (UE) 2019/770 del Parlamento europeo e del Consiglio, del 20 maggio 2019, relativa a determinati aspetti dei contratti di fornitura di contenuto digitale e di servizi digitali.

[gazzettaufficiale.it/atto/stampa/serie\\_generale/originario](https://gazzettaufficiale.it/atto/stampa/serie_generale/originario)

<sup>150</sup> Directive (EU) 2019/770 - *Digital content and digital services Directive* [eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32019L0771](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32019L0771)

<sup>151</sup> Ferrari, M. (2021) *Codice del Consumo: le modifiche alla disciplina sulla vendita di beni* (Online). Available at: [altalex.com/documents/news/2021/12/03/codice-del-consumo-le-modifiche-alla-disciplina-sulla-vendita-di-beni](https://altalex.com/documents/news/2021/12/03/codice-del-consumo-le-modifiche-alla-disciplina-sulla-vendita-di-beni) (Accessed: 27 October 2022)

<sup>152</sup> Camera dei Deputati - Atto numero: COM (2020) 842 "Proposta di REGOLAMENTO DEL PARLAMENTO EUROPEO E DEL CONSIGLIO relativo a mercati equi e contendibili nel settore digitale (legge sui mercati digitali)" (Online). Available at: [camera.it/leg18/1227?sezione=documenti&tipoDoc=lavori\\_attive&t=3&file=leg.18.COM.2020.842](https://camera.it/leg18/1227?sezione=documenti&tipoDoc=lavori_attive&t=3&file=leg.18.COM.2020.842) (Accessed: 29 August 2022)

<sup>153</sup> Camera dei Deputati - Atto numero: COM (2020) 825 "Proposta di REGOLAMENTO DEL PARLAMENTO EUROPEO E DEL CONSIGLIO relativo a un mercato unico dei servizi digitali (legge sui servizi digitali) e che modifica la direttiva 2000/31/CE" (Online). Available at: [camera.it/leg18/1227?sezione=documenti&tipoDoc=lavori\\_attive&t=3&file=leg.18.COM.2020.825](https://camera.it/leg18/1227?sezione=documenti&tipoDoc=lavori_attive&t=3&file=leg.18.COM.2020.825) (Accessed: 29 August 2022)



*Europea*) has requested an opinion regarding the compliance of the Proposal with the EU principle of subsidiarity.<sup>154</sup> All assignments were decided in February 2021. Both Proposals have been published together by the EU Commission.

In order to allow the MPs to understand the scope of the Proposal, two reports, one summarizing the DSA Proposal and the other one the DMA Proposal, have been published by the Chamber of Deputies. On one hand the report regarding the Digital Services Act – DSA – is the Dossier n. 51, published on May 12th, 2021 (Camera dei Deputati, 2021c)<sup>155</sup>, and the other the report regarding the Digital Market Act – DMA – is the Dossier n. 52, published on May 18th, 2021 (Camera dei Deputati, 2021a)<sup>156</sup>. Moreover, each of these reports contains a section entitled “Government evaluations”, in which the Government’s opinion about the DMA and the DSA are reported.

Concerning the **DSA report**, the Italian Government agrees with the scope of the proposal, especially about the role of platforms to provide a safer environment for users. Therefore, the DSA shall adopt a mechanism, until now not provided, for the safeguarding of citizens’ fundamental rights and democratic principles. Furthermore, it is paramount the adoption of fines to ensure the protection of the abovementioned rights as well as principles.

It is the Government’s opinion that it is important to stress the reference to the rights provided in the Charter of Fundamental Rights of the European Union (especially regarding the protection of Intellectual property Rights – article 17)<sup>157</sup>, as well as the urgency to clarify the relationship between the principles provided by the DSA and the principles provided by sector-based regulations. At last, the Government expresses its preliminary favour for the Proposal. It is paramount to stress that both these legislative acts focus on creating a safer online place for users by safeguarding the Right to transparency (Right to information) and the Protection of minors.

Concerning the first issue (*Right to information – transparency*), the EU legislator provided new transparency obligations for platforms, which will allow users to be better informed about how content is recommended to them (recommender systems) and to choose at least one option not based on profiling. The latter issue (*Protection of minors*) regards the obligation for platforms to be accessible to minors by adopting specific measures to protect them, including by fully banning targeted advertising. Since the two legislative acts have not yet entered into force (DMA will enter into force in 2023 and the DSA will apply fifteen months or from January 1<sup>st</sup>, 2024) neither the Italian Government nor the Parliament has yet assigned to any authority the task to supervise the enforcement of the provisions provided by both acts.

<sup>154</sup> Camera dei Deputati - Atto numero: COM (2020) 825 "Proposta di REGOLAMENTO DEL PARLAMENTO EUROPEO E DEL CONSIGLIO relativo a un mercato unico dei servizi digitali (legge sui servizi digitali) e che modifica la direttiva 2000/31/CE" (Online). Available at:

[camera.it/leg18/1227?sezione=documenti&tipoDoc=lavori\\_attiue&t=1&file=leg.18.COM.2020.825](https://camera.it/leg18/1227?sezione=documenti&tipoDoc=lavori_attiue&t=1&file=leg.18.COM.2020.825) (Accessed: 29 August 2022)

<sup>155</sup> Camera dei Deputati – Ufficio rapporti con l’Unione Europea XVIII Legislatura (2021) Legge sui servizi digitali (Digital services act) Dossier n° 51 - 12 maggio 2021 (Online). Available at: [documenti.camera.it/leg18/dossier/pdf/ES051.pdf?\\_1663826017878](https://documenti.camera.it/leg18/dossier/pdf/ES051.pdf?_1663826017878) (Accessed: 29 August 2022)

<sup>156</sup> Camera dei Deputati – Ufficio rapporti con l’Unione Europea XVIII Legislatura (2021) Legge sui mercati digitali (Digital markets act) Dossier n° 52- 12 maggio 2021 (Online). Available at: [documenti.camera.it/Leg18/Dossier/Pdf/ES052.Pdf](https://documenti.camera.it/Leg18/Dossier/Pdf/ES052.Pdf) (Accessed: 29 August 2022)

<sup>157</sup> CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION (2000/C 364/01) [europarl.europa.eu/charter/pdf/text\\_en.pdf](https://europarl.europa.eu/charter/pdf/text_en.pdf)





The procedure of examination of both proposals was eventually finished, and the IX Committee of the Chamber of Deputies approved the final document proposed by the supervisor (*Allegato 4<sup>158</sup>*)<sup>159</sup> about the DSA Proposal. The final document reports the scope of the DSA, which is to strengthen the common digital service market and provide, to all types of enterprises, more legal clarity as well as fair competition conditions (*level playing field*). The Committee expressed its own opinion, stating that there is suitable coordination between the EU legislation (*horizontal regime*) and the specific legislations (*lex specialis*). Specifically, it reports the following observations:

- It is deemed necessary to clarify the mechanism of harmonization with the “Copyright Directive” (2019/790/CE) as well as with the “SMAV” (*Audiovisual and Media Services* - 2018/1808/CE) especially in consideration of platforms’ obligations towards minors and to guarantee consumers’ rights as well as the protection of Intellectual Property in accordance with the EU principle “*know your business customer*”
- It is necessary to modernize and update the three categories (*mere conduit, caching and hosting*), to which the providers’ conduct can be attributed, as well as more flexibility toward *cloud services providers*; update the definition of “illegal content” by EU Member States (with this regard it is proposed a EU common legal framework concerning both the definitions of “notice” and “take down” and the provision of standard procedures based on given time and guarantees
- There is a need to take into consideration the possibility of introducing for major platforms proactive obligations balanced by the respect of the freedom of speech and information which are safeguarded by the Charter of Fundamental Rights of the European Union. Therefore, it might be appropriate considering the introduction of an obligation for platforms to inform users about the unlawfulness and dangerousness of content.
- The provisions provided by the codes of conduct shall be deemed as the starting point for the approval of best practices concerning the phenomenon of disinformation. The said provisions might be completed by the directions indicated by the EU Commission.
- The EU Commission shall adopt measures to attenuate systemic risks and support the adoption of good conduct codes regarding online advertisement, especially sensationalist and viral content advertisement; the importance of the traceability of providers as well as the adoption of a mechanism to control the effective removal of illegal content.
- It shall be taken into consideration the adoption of procedures to extra-EU based providers to abide with the procedures provided by law which do apply to EU based providers, due to the lack of effective enforcement in the event of a breach of the law.
- It is important to clarify and to distinguish the roles and to guarantee coordination between national authorities, Digital services coordinator, and the European Commission, especially about the supervision regime and the enforcement activity towards major platforms. It is fundamental which national body shall be chosen to exercise the functions of Digital Services Coordinator to supervise the effective application of the regulation at a national level.<sup>160</sup>

Regarding the **DMA report**, it is important to highlight the Government’s opinion and specifically its concerns about:

- The role of National Authorities which would be reduced to advisory and non-binding.
- The designation of the gatekeeper.

<sup>158</sup> The final document is reported in the BOLLETTINO DELLE GIUNTE E DELLE COMMISSIONI PARLAMENTARI Trasporti, poste e telecomunicazioni (IX) ALLEGATO published on June 23, 2021 n. 611.

<sup>159</sup> Camera dei Deputati XVIII Legislatura (2021) BOLLETTINO DELLE GIUNTE E DELLE COMMISSIONI PARLAMENTARI Trasporti, poste e telecomunicazioni (IX) (Online). Available at: [camera.it/leg18/824?tipo=A&anno=2021&mese=06&giorno=23&view=&commissione=09#](https://camera.it/leg18/824?tipo=A&anno=2021&mese=06&giorno=23&view=&commissione=09#) (Accessed: 29 August 2022)

<sup>160</sup> Camera dei Deputati XVIII Legislatura (2021) BOLLETTINO DELLE GIUNTE E DELLE COMMISSIONI PARLAMENTARI Trasporti, poste e telecomunicazioni (IX) (Online). Available at: [camera.it/leg18/824?tipo=A&anno=2021&mese=06&giorno=23&view=&commissione=09#](https://camera.it/leg18/824?tipo=A&anno=2021&mese=06&giorno=23&view=&commissione=09#) (Accessed: 29 August 2022)

- The definition of the obligations provided by the regulation which do apply to all kinds of gatekeepers.
- Too much power granted to the Commission regarding the issue of delegated acts.
- The proposed DMA provides a concentration of power, regarding the regulation power concerning discretionary scopes, in the hands of the Commission in despite of national governments.
- The excessive discretion granted to the Commission regarding the designation of gatekeepers in the event these do not fulfil the minimum quantitative threshold provided by the regulation, as well as cases in which gatekeepers are exempted from fulfilling certain types of obligations and prohibitions referred to certain events as provided by the Regulation.

As per the DSA, the Committee approved on June 23, 2021, the final document proposed by the supervisor (*Allegato 5*)<sup>161</sup> regarding the DMA Proposal. This final document highlights the purpose of the DMA Proposal, which is to guarantee fair competition conditions and the contestability of the digital market as well as about services provided by the platforms, bearing in mind that the digital economy is expanding and that the digital platforms have assumed the role of “gatekeepers” of the said market. It also highlights the difference, in terms of *governance*, between the two Proposals. Indeed, the DSA proposes a model of governance based on the advisory role attributed to a body composed of the representatives of competent national authorities. The Advisory Committee for digital markets has been provided by the EU Regulation n. 182/2011<sup>162</sup>.

On the other hand, the DMA proposes a “centralized” governance model, based on the role attributed to the Commission to enforce the Proposal via the approval of delegated acts as well as execution acts.

The IX Committee of the Chamber of Deputies has however expressed the necessity to define a more complex model of governance based on reinforcement of the cooperation between the Commission and the Member States (represented by the national authorities). The above-mentioned IX Committee has expressed the following observations reported in the final document of approval of the DMA Proposal:

- It is deemed necessary to strengthen the cooperation between the Commission and the Member States and consequently the involvement of the national authorities, in order to guarantee a more congruent and effective application of the instruments provided by the Proposal;
- The EU Commission shall adopt specific criteria concerning the selection process of *gatekeepers*; provide the definition of “*final recipient of the service*” and “*active business recipients*”;
- It shall be evaluated whether it is deemed necessary to make explicit the coordination between the new regime and the European and national competition law;
- It is deemed appropriate to make explicit the coordination between the new regime and data protection law (in consideration of the fact that some provisions of the Proposal complete the applicable data protection legislation);
- It should be taken into consideration the opportunity given by more cooperation between the Commission and the Member States in order to be aware of the different subjects involved as well as the development of the digital market (the purpose is to adopt the appropriate measures to enforce the provisions provided);
- It should be evaluated the opportunity to determine the criteria regarding the adoption of the delegated acts to update gatekeepers’ obligations;

<sup>161</sup> Camera dei Deputati XVIII Legislatura (2021) BOLLETTINO DELLE GIUNTE E DELLE COMMISSIONI PARLAMENTARI Trasporti, poste e telecomunicazioni (IX) (Online). Available at: [camera.it/leg18/824?tipo=A&anno=2021&mese=06&giorno=23&view=&commissione=09](https://camera.it/leg18/824?tipo=A&anno=2021&mese=06&giorno=23&view=&commissione=09) (Accessed: 29 August 2022)

<sup>162</sup> REGULATION (EU) No 182/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission’s exercise of implementing powers.  
[eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32011R0182&from=IT](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32011R0182&from=IT)

- It is suggested to adopt measures to amend or repeal the adopted provisions.<sup>163</sup>

During the examination of the two Proposals conducted by the IX Committee, several experts were engaged with, such as Facebook (Meta) Italy and Google (Alphabet) Italian representatives; the President of the Italian Authority for Communications Guarantees (AGCOM)<sup>164</sup>; the President of the Italian Competition Authority (AGCM)<sup>165</sup>, as well as the Italian Data Protection Authority, represented by its President<sup>166</sup>.

As for the **Senate of the Republic** the Research Service (*Servizio Studi*) of the Chamber of deputy has provided, regarding the two abovementioned Proposals, a dossier (DMA – Dossier n. 22<sup>167</sup> and DSA – Dossier n. 21<sup>168 169</sup>). In both dossiers, the Research Service has summarized the content of the two Proposals (structured in two sections: “*Legislative Background*” and “*Summary of the proposed measures*”).

The processing of analysing the Digital Service Act<sup>170</sup>, as well as the Digital Market Act<sup>171</sup>, has been assigned also to other several Permanent Committees, such as the 3rd “Foreign Affairs and Immigration” (*Affari esteri e emigrazione*), the 10th “Industry, Trade and Tourism” (*Industria, Commercio, Turismo*), the 14th “European Union” (*Politiche dell’Unione Europea*) and the 8th “Public work and Communications” (*Lavori pubblici, comunicazioni*). All assignments have been decided in February 2021. These Committees have to give their observations and proposals to the IX Committees.

<sup>163</sup> Camera dei Deputati XVIII Legislatura (2021) BOLLETTINO DELLE GIUNTE E DELLE COMMISSIONI PARLAMENTARI Trasporti, poste e telecomunicazioni (IX) (Online). Available at: [camera.it/leg18/824?tipo=A&anno=2021&mese=06&giorno=23&view=&commissione=09#](https://camera.it/leg18/824?tipo=A&anno=2021&mese=06&giorno=23&view=&commissione=09#) (Accessed: 29 August 2022)

<sup>164</sup> Camera dei Deputati XVIII Legislatura (2021) BOLLETTINO DELLE GIUNTE E DELLE COMMISSIONI PARLAMENTARI Trasporti, poste e telecomunicazioni (IX) (Online). Available at: [camera.it/leg18/824?tipo=C&anno=2021&mese=06&giorno=16&view=&commissione=09&pagina=#](https://camera.it/leg18/824?tipo=C&anno=2021&mese=06&giorno=16&view=&commissione=09&pagina=#) (Accessed: 29 August 2022)

<sup>165</sup> Camera dei Deputati XVIII Legislatura (2021) BOLLETTINO DELLE GIUNTE E DELLE COMMISSIONI PARLAMENTARI Trasporti, poste e telecomunicazioni (IX) (Online). Available at: [camera.it/leg18/824?tipo=C&anno=2021&mese=06&giorno=16&view=&commissione=09&pagina=#](https://camera.it/leg18/824?tipo=C&anno=2021&mese=06&giorno=16&view=&commissione=09&pagina=#) (Accessed: 29 August 2022)

<sup>166</sup> Camera dei Deputati XVIII Legislatura (2021) BOLLETTINO DELLE GIUNTE E DELLE COMMISSIONI PARLAMENTARI Trasporti, poste e telecomunicazioni (IX) (Online). Available at: [camera.it/leg18/824?tipo=C&anno=2021&mese=06&giorno=23&view=&commissione=09&pagina=#](https://camera.it/leg18/824?tipo=C&anno=2021&mese=06&giorno=23&view=&commissione=09&pagina=#) (Accessed: 29 August 2022)

<sup>167</sup> Senato della Repubblica XVIII Legislatura Dossier n. 22 Elementi di valutazione sui progetti di atti legislativi dell’UE *Proposta di regolamento del Parlamento europeo e del Consiglio relativo ai mercati equi e contendibili nel settore digitale (legge sui mercati digitali)* COM(2020)842 (Online). Available at: [senato.it/japp/bgt/showdoc/18/DOSSIER/0/1208870/index.html](https://senato.it/japp/bgt/showdoc/18/DOSSIER/0/1208870/index.html) (Accessed: 29 August 2022)

<sup>168</sup> Senato della Repubblica XVIII Legislatura Dossier n. 22 Elementi di valutazione sui progetti di atti legislativi dell’UE *Proposta di regolamento del Parlamento europeo e del Consiglio relativo ai mercati equi e contendibili nel settore digitale (legge sui mercati digitali)* COM(2020)842 (Online). Available at: [senato.it/japp/bgt/showdoc/18/DOSSIER/0/1208868](https://senato.it/japp/bgt/showdoc/18/DOSSIER/0/1208868) (Accessed: 29 August 2022)

<sup>169</sup> Servizi Studi del Senato (2021) Elementi di valutazione sui progetti di atti legislativi dell’UE N. 21 *ELEMENTI PER LA VALUTAZIONE DEL RISPETTO DEL PRINCIPIO DI SUSSIDIARIETÀ E DI PROPORZIONALITÀ* (Online). Available at: [senato.it/service/PDF/PDFServer/BGT/01208868.pdf](https://senato.it/service/PDF/PDFServer/BGT/01208868.pdf) (Accessed: 29 August 2022)

<sup>170</sup> Senato della Repubblica XVIII Legislatura Atto dell’Unione europea n. COM(2020) 825 definitivo (Online). Available at: [senato.it/leg/18/BGT/Schede/docnonleg/41925.htm](https://senato.it/leg/18/BGT/Schede/docnonleg/41925.htm) (Accessed: 29 August 2022)

<sup>171</sup> Senato della Repubblica XVIII Legislatura Atto dell’Unione europea n. COM(2020) 825 definitivo (Online). Available at: [senato.it/leg/18/BGT/Schede/docnonleg/41926.htm](https://senato.it/leg/18/BGT/Schede/docnonleg/41926.htm) (Accessed: 29 August 2022)



Also, at the Senate of the republic regarding to the DSA, in the Dossier n. 89<sup>172</sup> provided by the Research Service the Government has expressed its position. It agrees with the purpose to provide specific obligations which shall be abided by digital platforms. Besides, it agrees with the innovative approach set by the DSA, shaped by the recognition of the supranational feature of the platforms and the adoption of a Regulation in lieu of a Directive. The first is deemed more suitable to facilitate the harmonization of the obligations set for the platforms, notwithstanding the establishment country.

The Government has not expressed any opinion regarding the DMA.

In conclusion, the “*focal points*” highlighted in this domain are the following:

#### Concerning the DSA Proposal:

- The observations published by the Italian Government, especially concerning the rights provided in the Charter of Fundamental Rights of the European Union as well as the urgency to clarify the relationship between the principles provided by the DSA and the principles provided by the sector-based regulations;
- To clarify the mechanism of harmonization with the “Copyright Directive” (2019/790/CE) as well as with the “SMAV” (Audiovisual and Media Services - 2018/1808/CE).

#### Concerning the DMA Proposal:

- The Government’s opinion, and specifically its concerns about the Proposal such as the role of National Authorities which would be reduced to advisory and non-binding, the designation of the gatekeeper, the definition of the obligations provided by the regulation which do apply to all kinds of gatekeeper, the excessive power granted to the Commission regarding the issue of delegated acts.
- It is deemed necessary to strengthen the cooperation between the Commission and the Member States and consequently the involvement of the national authorities;
- The EU Commission shall adopt specific criteria concerning the selection process of gatekeepers; define “final recipient of the service” and “active business recipients”;
- It should be evaluated the opportunity to determine the criteria regarding the adoption of the delegated acts to update gatekeepers’ obligations.

### 3.3.2 Significant implications and legal cases

The adoption of new technologies and innovation is challenging the implementation and update of national legislation. We briefly analyse in this section the significant implications on consumer regulations of innovative approaches such dark patterns, nudging, dark nudges, sludge, and digital online advertising.

The use of “*dark patterns*”, consists of the adoption of manipulative design choices that significantly distort the behavior of the average user.<sup>173</sup> These techniques can be divided into two categories; the first one concerns patterns which are practices designed in good faith without the intention to undermine consumers, nor are justified in specific circumstances.<sup>174</sup> The second one, on the other hand, consists of psychological tricks, deceit, and manipulation which are deceptive design practices that should be prohibited.

<sup>172</sup> Servizio Studi del Senato della Repubblica XVIII Legislatura Dossier n. 89 Nota su atti dell'Unione europea. *La proposta di legge sui servizi digitali (Digital Services Act - DSA)* (Online). Available at: [senato.it/japp/bqt/showdoc/18/DOSSIER/0/1315079/](https://senato.it/japp/bqt/showdoc/18/DOSSIER/0/1315079/) (Accessed: 29 August 2022)

<sup>173</sup> De Posson, V. (2022) *Dark Patterns: Four Key Principles the EU Must Get Right* (Online). Available at: [project-disco.org/european-union/052522-dark-patterns-four-key-principles-the-eu-must-get-right/](https://project-disco.org/european-union/052522-dark-patterns-four-key-principles-the-eu-must-get-right/) (Accessed: 29 August 2022)

<sup>174</sup> For instance, requests for location access that allow users to update their preferences or awareness tools aimed at improving safety and privacy.

Policymakers, such as the Italian legislator, shall distinguish between the two abovementioned patterns, and ban “dark patterns” (which do not have a legitimate purpose under any circumstances). Currently underway there no legislative/ policy proposals with regard to dark patterns. It shall be borne in mind that in the event the legislator adopts a vague definition, as well as concept, of “pattern”, this would simply end up creating a lot of confusion and legal uncertainty. The EU Commission as well as data protection regulators, have/are expected to issued/issue three separate guidelines on dark patterns (specifically the European Commission guidelines on consumer protection rules<sup>175</sup>, new comprehensive guidelines on the General Data Protection Regulation from the European Data Protection Board (EDPB)<sup>176</sup> adopted on March 14<sup>th</sup>, 2022<sup>177</sup> and the Commission guidelines on the Digital Services Act).<sup>178</sup>

However, the EU legislator has proposed that platforms shall abide to the obligation to ban dark patterns.<sup>179</sup> The main target to achieve is represented by the following statement “*With the DSA, cancelling a subscription for a service should become easy as subscribing to it*”.<sup>180 181</sup> Indeed, one of the members of the Italian Data Protection Authority<sup>182</sup>, has declared that dark patterns represent “*one of the most dangerous menaces for privacy*”<sup>183</sup>. Therefore, it is reasonable to expect a major supervision by the Authority concerning the use of dark patterns by platforms, thanks also to the approval of the abovementioned guidelines on the General Data Protection Regulation from the European Data Protection Board (EDPB).

The protection of minors and women online through the adoption of “*nudging*”<sup>184</sup> techniques by platforms, seems to be a promising alternative intervention to make internet users more privacy

<sup>175</sup> Commission Notice – Guidance on the interpretation and application of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market. (Online). Available at : [eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021XC1229%2805%29&qid=1640961745514](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021XC1229%2805%29&qid=1640961745514) (Accessed: 29 August 2022)

<sup>176</sup> EDPB – European Data Protection Board (2022) Guidelines 3/2022 on Dark patterns in social media platform interfaces : How to recognise and avoid them (Online). Available at : [edpb.europa.eu/our-work-tools/documents/public-consultations/2022/guidelines-32022-dark-patterns-social-media\\_en](https://edpb.europa.eu/our-work-tools/documents/public-consultations/2022/guidelines-32022-dark-patterns-social-media_en) (Accessed: 29 August 2022)

<sup>177</sup> EDPB – European Data Protection Board (2022) *Guidelines 3/2022 on Dark patterns in social media platform interfaces: How to recognise and avoid them* (Online). Available at : [edpb.europa.eu/system/files/2022-03/edpb\\_03\\_2022\\_guidelines\\_on\\_dark\\_patterns\\_in\\_social\\_media\\_platform\\_interfaces\\_en.pdf](https://edpb.europa.eu/system/files/2022-03/edpb_03_2022_guidelines_on_dark_patterns_in_social_media_platform_interfaces_en.pdf) (Accessed: 29 August 2022)

<sup>178</sup> De Posson, V. (2022) *Dark Patterns: Four Key Principles the EU Must Get Right* (Online). Available at: [project-disco.org/european-union/052522-dark-patterns-four-key-principles-the-eu-must-get-right](https://project-disco.org/european-union/052522-dark-patterns-four-key-principles-the-eu-must-get-right) (Accessed: 29 August 2022)

<sup>179</sup> European Commission (2022) *Questions and Answers: Digital Services Act* (Online). Available at: [ec.europa.eu/commission/presscorner/detail/en/QANDA\\_20\\_2348](https://ec.europa.eu/commission/presscorner/detail/en/QANDA_20_2348) (Accessed: 29 August 2022)

<sup>180</sup> Vosloo, S. (2022) *EU Digital Services Act: How it will make the internet safer for children* (Online). Available at: [weforum.org/agenda/2022/06/eu-digital-service-act-how-it-will-secure-children-online/](https://weforum.org/agenda/2022/06/eu-digital-service-act-how-it-will-secure-children-online/) (Accessed: 29 August 2022)

<sup>181</sup> European Parliament (2022) *Digital Services Act: agreement for a transparent and safe online environment* (Online). Available at: [europarl.europa.eu/news/en/press-room/20220412IPR27111/digital-services-act-agreement-for-a-transparent-and-safe-online-environment](https://europarl.europa.eu/news/en/press-room/20220412IPR27111/digital-services-act-agreement-for-a-transparent-and-safe-online-environment) (Accessed: 29 August 2022)

<sup>182</sup> Garante della Privacy - Guido Scorza - Componente del Garante per la protezione dei dati personali (Online). Available at: [garanteprivacy.it/home/trasparenza/organizzazione/organi-di-indirizzo-politico-amministrativo/il-collegio/guido-scorza](https://garanteprivacy.it/home/trasparenza/organizzazione/organi-di-indirizzo-politico-amministrativo/il-collegio/guido-scorza) (Accessed: 29 August 2022)

<sup>183</sup> Scorza, G. (2022) *Dark Pattern, Scorza: “Una delle minacce più pericolose per la privacy”* (Online). Available at: [agendadigitale.eu/sicurezza/privacy/dark-pattern-scorza-una-delle-minacce-piu-pericolose-per-la-privacy/](https://agendadigitale.eu/sicurezza/privacy/dark-pattern-scorza-una-delle-minacce-piu-pericolose-per-la-privacy/) (Accessed: 29 August 2022)

<sup>184</sup> Term coined by Richard Thaler - professor of Behavioral Science and Economics at the University of Chicago. [behavioraleconomics.com/resources/mini-encyclopedia-of-be/nudge/](https://behavioraleconomics.com/resources/mini-encyclopedia-of-be/nudge/)



sensitive. At the same time, nudging faces sharp criticism, suggesting it violates various ethical values (such as personal autonomy, human dignity, sustainable well-being, and privacy).<sup>185</sup>

Users as well as the legislator shall be aware of the adoption of “dark nudges” and “sludge”<sup>186</sup>. The two techniques both aim to change consumer behavior against their best interests, but “sludge” uses cognitive biases to make behavior change more difficult.<sup>187</sup>

The regulation of “digital advertising”, which is regulated in the DSA, as well in the DMA, through the introduction of two new restrictions concerning targeted advertising on online platforms. The first one bans targeted advertising of minors based on profiling techniques.<sup>188</sup> Indeed, platforms accessible to minors will have to take specific measures to protect them, including by fully banning targeted advertising.<sup>189</sup>

The second one bans targeted advertising based on profiling by analyzing special categories of personal data, such as sexual orientation, religious beliefs, or ethnicity.<sup>190</sup> Indeed, users will have better control over how their personal data are used, specifically with regard to targeted advertising based on the process of sensitive data.<sup>191</sup>

Why might they be particularly harmful in XR? Nowadays, XR are being adopted by platforms which among users are minors (i.e. learning platforms) as well as platforms providing online games. Minors do interact with such platforms and therefore, there is a risk of implementation in the development and design of these patterns.

Minors interact with said platforms by wearing VR goggles. It must be stressed that this device is not designed for minors but primarily for adults and their use by minors is prohibited by manufacturers.<sup>192</sup> Indeed, Meta cites a minimum age of 13 for the use of its VR technology and services, in compliance with global child protection regulations and the U.S. COPPA privacy law, which protects the online privacy of children under the age of 13.<sup>193</sup> However, this age restriction is unlikely to stop any child from dabbling in virtual reality is well known to anyone who visits popular VR social apps like Rec Room and VRChat or plays online games from time to time. Here, minors are often in the majority and easily

<sup>185</sup> Veretilnykova, M. Dogruel, L. (2021) *Nudging Children and Adolescents toward Online Privacy: An Ethical Perspective* Journal of Media Ethics 36(2):1-13 (Online). Available at: [researchgate.net/publication/352404995\\_Nudging\\_Children\\_and\\_Adolescents\\_toward\\_Online\\_Privacy\\_An\\_Ethical\\_Perspective](https://researchgate.net/publication/352404995_Nudging_Children_and_Adolescents_toward_Online_Privacy_An_Ethical_Perspective) DOI:10.1080/23736992.2021.1939031 (Accessed: 30 September 2022)

<sup>186</sup> Term coined by Richard Thaler - professor of Behavioral Science and Economics at the University of Chicago. [turtl.co/blog/sludge-cognitive-barrier/](https://turtl.co/blog/sludge-cognitive-barrier/)

<sup>187</sup> Pettigrew, M. Maani, N. Pettigrew, L. et al. (2020) *Dark Nudges and Sludge in Big Alcohol: Behavioral Economics, Cognitive Biases, and Alcohol Industry Corporate Social Responsibility* the Milbank Quarterly (Online). Available at: [pubmed.ncbi.nlm.nih.gov/32930429/](https://pubmed.ncbi.nlm.nih.gov/32930429/) DOI: 10.1111/1468-0009.12475 (Accessed: 30 September 2022)

<sup>188</sup> European Commission (2022) Questions and Answers: Digital Services Act (Online). Available at: [ec.europa.eu/commission/presscorner/detail/en/QANDA\\_20\\_2348](https://ec.europa.eu/commission/presscorner/detail/en/QANDA_20_2348) (Accessed : 29 August 2022)

<sup>189</sup> European Parliament (2022) Digital Services Act: agreement for a transparent and safe online environment (Online). Available at: [europarl.europa.eu/news/en/press-room/20220412IPR27111/digital-services-act-agreement-for-a-transparent-and-safe-online-environment](https://europarl.europa.eu/news/en/press-room/20220412IPR27111/digital-services-act-agreement-for-a-transparent-and-safe-online-environment) (Accessed: 29 August 2022)

<sup>190</sup> European Commission (2022) Questions and Answers: Digital Services Act (Online). Available at: [ec.europa.eu/commission/presscorner/detail/en/QANDA\\_20\\_2348](https://ec.europa.eu/commission/presscorner/detail/en/QANDA_20_2348) (Accessed: 29 August 2022)

<sup>191</sup> European Parliament (2022) Digital Services Act: agreement for a transparent and safe online environment (Online). Available at [europarl.europa.eu/news/en/press-room/20220412IPR27111/digital-services-act-agreement-for-a-transparent-and-safe-online-environment](https://europarl.europa.eu/news/en/press-room/20220412IPR27111/digital-services-act-agreement-for-a-transparent-and-safe-online-environment) (Accessed: 29 August 2022)

<sup>192</sup> Bezmalinovic, T, (2022) *Children and Virtual Reality: Do they need more protection?* (Online). Available at: [mixed-news.com/en/children-and-virtual-reality-do-they-need-more-protection/](https://mixed-news.com/en/children-and-virtual-reality-do-they-need-more-protection/) (Accessed: 30 September 2022)

<sup>193</sup> Federal Trade Commission - Children's Online Privacy Protection Rule ("COPPA") 16 CFR Part 312 [ftc.gov/leqal-library/browse/rules/childrens-online-privacy-protection-rule-coppa](https://ftc.gov/leqal-library/browse/rules/childrens-online-privacy-protection-rule-coppa)



recognized by their voice. Not so many medical studies have been conducted with regard to whether and how virtual reality affects children. The lack of medical studies and hence, the uncertainty in the research, does not mean that VR does not involve risks for children. Indeed, there are two kind of risks that might affect children. One regards the question whether excessive and prolonged VR consumption could impair visual development.<sup>194</sup> <sup>195</sup>The other regards the psychological effects, where the question that arises is if the child spending a lot of time in VR, could be more likely to have trouble distinguishing between reality and play.<sup>196</sup>

It must be stressed that virtual reality is more effective at mimicking human perception and faking "reality." If this were the case, then unsuitable content would possibly be even more disturbing for children than it would be on a monitor or smartphone.

Up to today none of these issues/gaps/challenges have been discussed in detail by the legislator, neither as a bill nor as in a declaration or report.

## 3.4 A.I. Governance

### 3.4.1 Overview of the law and key elements of XR

The Committees of the **Chamber of Deputies** (Camera dei Deputati, 2021a)<sup>197</sup> – n. IX "Transport, Postal Services and Telecommunications" (*Trasporti, Poste e Telecomunicazioni*) and n. X "Productive Activities, Trade and Tourism" (*Attività Produttive, Commercio e Turismo*), as well as n. XIV "European Union" (*Politiche dell'Unione Europea*) – has examined the Proposal for a "REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL LAYING DOWN HARMONISED RULES ON ARTIFICIAL INTELLIGENCE (ARTIFICIAL INTELLIGENCE ACT) AND AMENDING CERTAIN UNION LEGISLATIVE ACTS"<sup>198</sup>. The examination began in November 2021 and ended in March (about the reunited Committees n. IX and X) and in April (about the Committees n. XIV) 2022.<sup>199</sup>

The 14<sup>th</sup> Committee "European Union" (*Politiche dell'Unione Europea*) has requested an opinion regarding the compliance of the Proposal with the EU principle of subsidiarity. For the MPs to

<sup>194</sup> Miehlbradt, J, Cuturi, L.F. Zanchi, S. *et al.* (2021) *Immersive virtual reality interferes with default head-trunk coordination strategies in young children* Article number: 17959 Scientific Reports (Online) Available at: [nature.com/articles/s41598-021-96866-8](https://www.nature.com/articles/s41598-021-96866-8) (Accessed: 30 September 2022)

<sup>195</sup> Tychsen, L. Foeller, P. (2020) *Effects of Immersive Virtual Reality Headset Viewing on Young Children: Visuomotor Function, Postural Stability, and Motion Sickness*, Am J Ophthalmol, January, Available at: [pubmed.ncbi.nlm.nih.gov/31377280/](https://pubmed.ncbi.nlm.nih.gov/31377280/) DOI: 10.1016/j.ajo.2019.07.020 (Accessed: 30 September 2022)

<sup>196</sup> Bezmalinovic, T, (2022) *Children and Virtual Reality: Do they need more protection?* (Online). Available at: [mixed-news.com/en/children-and-virtual-reality-do-they-need-more-protection/](https://mixed-news.com/en/children-and-virtual-reality-do-they-need-more-protection/) (Accessed: 30 September 2022)

<sup>197</sup> Camera dei Deputati XVIII Legislatura (2021) *Proposta di REGOLAMENTO DEL PARLAMENTO EUROPEO E DEL CONSIGLIO CHE STABILISCE REGOLE ARMONIZZATE SULL'INTELLIGENZA ARTIFICIALE (LEGGE SULL'INTELLIGENZA ARTIFICIALE) E MODIFICA ALCUNI ATTI LEGISLATIVI DELL'UNIONE* (Online). Available at: [documenti.camera.it/apps/CommonServices/getDocumento.ashx](https://documenti.camera.it/apps/CommonServices/getDocumento.ashx) (Accessed: 30 September 2022)

<sup>198</sup> REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL LAYING DOWN HARMONISED RULES ON ARTIFICIAL INTELLIGENCE (ARTIFICIAL INTELLIGENCE ACT) AND AMENDING CERTAIN UNION LEGISLATIVE ACTS

[eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52021PC0206&from=IT](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52021PC0206&from=IT)

<sup>199</sup> Camera dei Deputati XVIII Legislatura (2021) *Proposta di REGOLAMENTO DEL PARLAMENTO EUROPEO E DEL CONSIGLIO CHE STABILISCE REGOLE ARMONIZZATE SULL'INTELLIGENZA ARTIFICIALE (LEGGE SULL'INTELLIGENZA ARTIFICIALE) E MODIFICA ALCUNI ATTI LEGISLATIVI DELL'UNIONE* (Online) Available at: [documenti.camera.it/apps/CommonServices/getDocumento.ashx](https://documenti.camera.it/apps/CommonServices/getDocumento.ashx) (Accessed: 31 August 2022)



understand the scope of the Proposal, a report (Camera dei Deputati, 2021d)<sup>200</sup> has been published. It, on one hand, summarizes the principles provided in the EU Proposal, and on the other remarks on the fact that Italy has been actively engaged with this topic. Starting in 2018, various papers and documents have been produced, including a White Paper entitled “The A.I. at the service of citizens” (*Agenzia per l'Italia Digitale*)<sup>201</sup>, published by AGID – Agency for Digital Italy; the document “A.I. for future Italy”<sup>202</sup>, written and published in May 2020 and published by Consorzio CINI (*Consorzio Interuniversitario Nazionale per Informatica*) – Interuniversity Consortium on Computer Science; the National Research Program 2021 – 2027<sup>203</sup>, published by the Ministry of University and Research; the document entitled “National Strategy for Artificial Intelligence”<sup>204</sup>, published on September 2020 by the Italian Ministry of Economic Development. In this last document, the Government identifies 6 priorities:

- A.I. for competitive enterprises
- A.I. for a more modern Public Administration
- A.I. for more informed citizens
- The creation of professionals who are competent in different fields
- Regulate the use of data
- Propose a program regarding the investment of resources and governance.

The Authorities assigned the task to supervise the correct implementation of the A.I. Regulation in Italy is the AGID - Agency for Digital Italy - which has previously published the White Paper entitled “The A.I. at the service of citizens”, as reported above. During the examination of the Proposal, the reunited Committees n. IX and X, have interviewed the representatives of Anitec – Assinform (*Italian Association for Information and Communication Technology – ICT*)<sup>205</sup>, the MEP - draftsman of the Proposal of Regulation<sup>206</sup>; several experts<sup>207 208</sup>; the Minister for Technological Innovation and Digital Transition<sup>209</sup>;

<sup>200</sup> Camera dei Deputati – Ufficio rapporti con l’Unione Europea XVIII Legislatura (2021) Legge sull’Intelligenza Artificiale Dossier n° 57- 12 novembre 2021 (Online). Available at : [documenti.camera.it/leg18/dossier/pdf/ES057.pdf?\\_1647278357058](https://documenti.camera.it/leg18/dossier/pdf/ES057.pdf?_1647278357058) (Accessed: 31 August 2022)

<sup>201</sup> AGID (2018) *L’Intelligenza Artificiale al servizio del cittadino: sfide e opportunità* (Online). Available at: [agid.gov.it/it/agenzia/stampa-e-comunicazione/notizie/2018/03/21/l'intelligenza-artificiale-al-servizio-del-cittadino-sfide-opportunita](https://agid.gov.it/it/agenzia/stampa-e-comunicazione/notizie/2018/03/21/l'intelligenza-artificiale-al-servizio-del-cittadino-sfide-opportunita) (Accessed: 31 August 2022)

<sup>202</sup> CINI – Consorzio Interuniversitario nazionale per l’informatica - Laboratorio Nazionale di Artificial Intelligence and Intelligent Systems “AI for FUTURE ITALY” (Online). Available at: [consorzio-cini.it/index.php/it/labaiis-home/labaiis-bandi/1659-ai-for-future-italy](https://consorzio-cini.it/index.php/it/labaiis-home/labaiis-bandi/1659-ai-for-future-italy) (Accessed: 31 August 2022)

<sup>203</sup> MUR – Ministero dell’Università e della Ricerca (2020) Programma nazionale per la ricerca 2021-2027 (Online) Available at : [mur.gov.it/sites/default/files/2021-01/Pnr2021-27.pdf](https://mur.gov.it/sites/default/files/2021-01/Pnr2021-27.pdf) (Accessed: 31 August 2022)

<sup>204</sup> MISE – Ministero dello Sviluppo Economico (2020) Strategia Nazionale per l’Intelligenza Artificiale (Online) Available at: [mise.gov.it/images/stories/documenti/Strategia\\_Nazionale\\_AI\\_2020.pdf](https://mise.gov.it/images/stories/documenti/Strategia_Nazionale_AI_2020.pdf) (Accessed: 31 August 2022)

<sup>205</sup> Annitec – Assinform [anitec-assinform.it/](https://anitec-assinform.it/)

<sup>206</sup> Camera dei Deputati XVIII Legislatura (2022) BOLLETTINO DELLE GIUNTE E DELLE COMMISSIONI PARLAMENTARI Commissioni Riunite (IX e X) – Audizioni (Online). Available at: [documenti.camera.it/leg18/resoconti/commissioni/bollettini/html/2022/01/13/0910/comunic.htm#](https://documenti.camera.it/leg18/resoconti/commissioni/bollettini/html/2022/01/13/0910/comunic.htm#) (Accessed: 31 August 2022)

<sup>207</sup> Camera dei Deputati XVIII Legislatura (2022) BOLLETTINO DELLE GIUNTE E DELLE COMMISSIONI PARLAMENTARI Commissioni Riunite (IX e X) – Audizioni (Online). Available at: [documenti.camera.it/leg18/resoconti/commissioni/bollettini/html/2022/02/08/0910/comunic.htm#](https://documenti.camera.it/leg18/resoconti/commissioni/bollettini/html/2022/02/08/0910/comunic.htm#) (Accessed: 31 August 2022)

<sup>208</sup> Camera dei Deputati XVIII Legislatura (2022) BOLLETTINO DELLE GIUNTE E DELLE COMMISSIONI PARLAMENTARI Commissioni Riunite (IX e X) – Audizioni (Online). Available at: [documenti.camera.it/leg18/resoconti/commissioni/bollettini/html/2022/03/02/0910/comunic.htm#](https://documenti.camera.it/leg18/resoconti/commissioni/bollettini/html/2022/03/02/0910/comunic.htm#) (Accessed: 31 August 2022)

<sup>209</sup> Camera dei Deputati XVIII Legislatura (2022) BOLLETTINO DELLE GIUNTE E DELLE COMMISSIONI PARLAMENTARI Commissioni Riunite (IX e X) – Audizioni (Online). Available at: [documenti.camera.it/leg18/resoconti/commissioni/bollettini/html/2022/03/09/0910/comunic.htm#](https://documenti.camera.it/leg18/resoconti/commissioni/bollettini/html/2022/03/09/0910/comunic.htm#) (Accessed: 31 August 2022)



labour union representatives<sup>210</sup>. On April 13<sup>th</sup>, 2022, the reunited Committees n. IX and X approved the final version of the document.<sup>211</sup> The XIV Committees – European Union has approved the proposal reporting the supervisor’s favourable opinion to the approval of the Proposal<sup>212</sup> on March 29<sup>th</sup>, 2022.

Also at the **Senate of the Republic**, the examination of the Proposal was assigned, on June 8<sup>th</sup>, 2021, to the following permanent committees: the XIV “European Union” (*Politiche dell’Unione Europea*) and the n. X “Industry, Trade and Tourism” (*Industria, commercio e turismo*)<sup>213</sup>. The XIV Committee proceeded to examine the Proposal in two working sessions on July 6<sup>th</sup>, 2021,<sup>214</sup> and on July 28<sup>th</sup>, 2021<sup>215</sup>, where it received favourable approval concerning compliance with the EU principle of subsidiarity and proportionality.

In conclusion, the “*focal points*” highlighted in this domain are the following:

- the Italian Government, National Authorities, and as well as other public/private subjects have published documents, and reports concerning A.I. in which it can be inferred the importance of this topic;
- both the Chamber of Deputies as well as the Senate of the Republic (their Committees) are discussing and examining the Proposal.

## 3.5 Digital Service Governance

### 3.5.1 Overview of the law and key elements of XR

On November 25<sup>th</sup>, 2020, the EU Commission has approved the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on European data governance (*Data Governance*

<sup>210</sup> Camera dei Deputati XVIII Legislatura (2022) BOLLETTINO DELLE GIUNTE E DELLE COMMISSIONI PARLAMENTARI Commissioni Riunite (IX e X) – Audizioni (Online). Available at: [documenti.camera.it/leg18/resoconti/commissioni/bollettini/html/2022/03/16/0910/comunic.htm#](https://documenti.camera.it/leg18/resoconti/commissioni/bollettini/html/2022/03/16/0910/comunic.htm#) (Accessed: 31 August 2022)

<sup>211</sup> Camera dei Deputati XVIII Legislatura (2022) BOLLETTINO DELLE GIUNTE E DELLE COMMISSIONI PARLAMENTARI Commissioni Riunite (IX e X) – Audizioni (Online). Available at: [documenti.camera.it/leg18/resoconti/commissioni/bollettini/html/2022/04/13/0910/comunic.htm#](https://documenti.camera.it/leg18/resoconti/commissioni/bollettini/html/2022/04/13/0910/comunic.htm#) (Accessed: 31 August 2022)

<sup>212</sup> Camera dei Deputati XVIII Legislatura (2022) BOLLETTINO DELLE GIUNTE E DELLE COMMISSIONI PARLAMENTARI Commissioni Riunite (IX e X) – Audizioni (Online). Available at: [documenti.camera.it/leg18/resoconti/commissioni/bollettini/html/2022/03/29/14/comunic.htm#](https://documenti.camera.it/leg18/resoconti/commissioni/bollettini/html/2022/03/29/14/comunic.htm#) (Accessed: 31 August 2022)

<sup>213</sup> Senato della Repubblica XVIII Legislatura Atto dell’Unione europea n. COM(2021) 206 definitivo (Online). Available at: [senato.it/leg/18/BGT/Schede/docnonleg/42623.htm](https://senato.it/leg/18/BGT/Schede/docnonleg/42623.htm) (Accessed: 31 August 2022)

<sup>214</sup> Senato della Repubblica – XVIII Legislatura - 14<sup>a</sup> Commissione permanente (2021) ESAME DI PROGETTI DI ATTI LEGISLATIVI DELL’UNIONE EUROPEA Proposta di decisione del Parlamento europeo e del Consiglio relativa alla partecipazione dell’Unione al partenariato europeo sulla metrologia avviato congiuntamente da più Stati membri (n. COM(2021) 89 definitivo) (Online). Available at: [senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=SommComm&leg=18&id=1300906&part=doc](https://senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=SommComm&leg=18&id=1300906&part=doc) (Accessed: 31 August 2022)

<sup>215</sup> Senato della Repubblica – XVIII Legislatura - 14<sup>a</sup> Commissione permanente (2021) ESAME DI PROGETTI DI ATTI LEGISLATIVI DELL’UNIONE EUROPEA Proposta di Regolamento del Parlamento europeo e del Consiglio sui prodotti macchina (n. COM(2021) 202 definitivo) (Online). Available at: [senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=SommComm&leg=18&id=1306123&part=doc](https://senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=SommComm&leg=18&id=1306123&part=doc) (Accessed: 31 August 2022)

Act)<sup>216</sup>. At the time of writing, the Italian Parliament - in particular its Committees – has not yet begun the examination of the proposal. The provisions provided in the Proposal shall **enter into force 15 months after its approval**.

Though the examination of the proposal has not yet begun, the abovementioned “*Extraordinary Committee regarding intolerance, racism, antisemitism, incitement to hate and violence*”, has approved – unanimously – a resolution regarding the Council of Europe Convention on Access to Official Documents - CETS No. 205 – June 18th, 2009, and entry into force on December 1st, 2020 (*Tromsø Convention*).<sup>217218</sup> This resolution commits the Government to promote, evaluate the opportunity, adhere to the **Tromsø Convention**,<sup>219</sup> and further implement its ratification to adopt the provided high standard. This Convention has not yet been signed by Italy.

The above-mentioned resolution is part of the more general theme of the Right to transparency (*Right to information*) which is paramount concerning the relationship between citizens and public institutions, as well as the role played by online platforms in promoting equality, the fight against discrimination, etc.

The Convention provides a series of provisions that, based on national legislations regarding the field of access to official documents, lays on three main principles:

- Transparency of public authorities;<sup>220</sup>
- Helps the public to form an opinion on the state of society and on public authorities;<sup>221</sup>
- Fosters the integrity, efficiency, effectiveness, and accountability of public authorities, so helping affirm their legitimacy.<sup>222</sup>

Since the Convention has not been yet signed by Italy, there is no national authority which has been assigned the task of supervising the implementation of the provisions.

However, Italy has ratified in 2009 the UN Convention against Corruption (signed in 2003)<sup>223 224</sup> known as the *Merida Convention*, by which it is restated the necessity to provide along criminal sanctions

<sup>216</sup> Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on European data governance (Data Governance Act)

[eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52020PC0767](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52020PC0767)

<sup>217</sup> Senato della Repubblica XVIII Legislatura - Procedura : Affari Assegnati - Affare concernente il tema del diritto alla conoscenza (n. 1181) (Online) Available at:

[senato.it/leg/18/BGT/Schede/ProcANL/ProcANLScheda48041.htm](https://senato.it/leg/18/BGT/Schede/ProcANL/ProcANLScheda48041.htm) (Accessed: 31 August 2022)

<sup>218</sup> Deemed as the first international legal instrument, which binds the recognition of the general right to access public authorities’ documents. It provides the development of principles and measures in order to guarantee its effective implementation in a democratic and pluralist society.

<sup>219</sup> Council of Europe Convention on Access to Official Documents Tromsø, 18.VI.2009

[rm.coe.int/1680084826](https://rm.coe.int/1680084826)

<sup>220</sup> Council of Europe Convention on Access to Official Documents Tromsø, 18.VI.2009 - Preamble

[rm.coe.int/1680084826](https://rm.coe.int/1680084826)

<sup>221</sup> Council of Europe Convention on Access to Official Documents Tromsø, 18.VI.2009 - Preamble

[rm.coe.int/1680084826](https://rm.coe.int/1680084826)

<sup>222</sup> Council of Europe Convention on Access to Official Documents Tromsø, 18.VI.2009 - Preamble

[rm.coe.int/1680084826](https://rm.coe.int/1680084826)

<sup>223</sup> UNITED NATIONS CONVENTION AGAINST CORRUPTION G.A. Res. 58/4 (entry into force 14 December 2005)

[unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026\\_E.pdf](https://unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf)

<sup>224</sup> UNITED NATIONS CONVENTION AGAINST CORRUPTION G.A. Res. 58/4 (entry into force 14 December 2005)

[unodc.org/unodc/en/corruption/ratification-status.html](https://unodc.org/unodc/en/corruption/ratification-status.html) (Accessed: 31 August 2022)



against corruption events, also administrative preventive policies based on the principle of transparency.<sup>225</sup>

As per the national legislation the Italian Parliament has approved the legislation on the access to official documents (Law n° 241/1990, Legislative Decree n° 33/2013 – civic access - and Legislative Decree n° 97/2016 – “Freedom of Information Act” known as FOIA). The national authority supervising the compliance of Public Administrations to the provisions provided by these laws, is the Committee for the access to administrative documents (*“Commissione per l’accesso ai documenti amministrativi”*)<sup>226</sup>.

The resolution approved by the above-mentioned Extraordinary Committee regarding intolerance, racism, antisemitism, incitement to hate, and violence, commits the Government to the following targets<sup>227</sup>:

- *“to guarantee the dissemination of the “culture of transparency and participation”, by the implementation of the provisions fostering – first of all – a parliamentary and public discussion, capable of representing an instrument that contributes to an effective acknowledgment and democratic supervision”;*<sup>228</sup>
- *“to adopt as a guiding principle, concerning its mission, the “principle of acknowledgment” as a right to which citizens are entitled, regarding the acknowledgment of administrative and decision-making processes, to fulfil the more suitable democratic participation, according to the state of law and the most important international human rights law”;*<sup>229</sup>
- *“to foster the publicity of information regarding sectors of the utmost importance for a public interest, such as compliance with human rights, the promotion of equals, and the contrast of every kind of discrimination based on ethnic and national origin, religion, age, sex, gender, sexual orientation, gender identity, and disability, to contrast corruption, safeguard of the environment, social accountability, management of employee, equal opportunities concerning the board of directors with regard to age, gender, level of education and professional experience, as provided by the Directive 2014/95/UE of the European Parliament and the Council, on October 22<sup>nd</sup>, 2014”;*<sup>230</sup>
- *“to foster the fulfilment of an observatory to control the information of the major television channels and radio stations and their interaction with the most used social network platforms”;*<sup>231</sup>
- *“to publish the structure of the ownership and the funding of media, to enact the recommendations of the Council of Europe, and to request full transparency in the stipulation and execution of the*

<sup>225</sup> Senato della Repubblica XVIII Legislatura (2022) RISOLUZIONE DELLA COMMISSIONE STRAORDINARIA PER LA TUTELA E LA PROMOZIONE DEI DIRITTI UMANI (Online). Available at: [senato.it/service/PDF/PDFServer/BGT/1355459.pdf](https://senato.it/service/PDF/PDFServer/BGT/1355459.pdf) (Accessed: 31 August 2022)

<sup>226</sup> Presidenza del Consiglio dei Ministri – Commissione per l’accesso ai documenti amministrativi – Il diritto di accesso ai documenti amministrativi (Online). Available at: [commissioneaccesso.it/it/](https://commissioneaccesso.it/it/) (Accessed: 31 August 2022)

<sup>227</sup> Senato della Repubblica XVIII Legislatura (2022) RISOLUZIONE DELLA COMMISSIONE STRAORDINARIA PER LA TUTELA E LA PROMOZIONE DEI DIRITTI UMANI (Online). Available at: [senato.it/service/PDF/PDFServer/BGT/1355459.pdf](https://senato.it/service/PDF/PDFServer/BGT/1355459.pdf) (Accessed: 31 August 2022)

<sup>228</sup> Senato della Repubblica XVIII Legislatura (2022) RISOLUZIONE DELLA COMMISSIONE STRAORDINARIA PER LA TUTELA E LA PROMOZIONE DEI DIRITTI UMANI (Online). Available at: [senato.it/service/PDF/PDFServer/BGT/1355459.pdf](https://senato.it/service/PDF/PDFServer/BGT/1355459.pdf) (Accessed: 31 August 2022)

<sup>229</sup> Senato della Repubblica XVIII Legislatura (2022) RISOLUZIONE DELLA COMMISSIONE STRAORDINARIA PER LA TUTELA E LA PROMOZIONE DEI DIRITTI UMANI (Online). Available at: [senato.it/service/PDF/PDFServer/BGT/1355459.pdf](https://senato.it/service/PDF/PDFServer/BGT/1355459.pdf) (Accessed: 31 August 2022)

<sup>230</sup> Senato della Repubblica XVIII Legislatura (2022) RISOLUZIONE DELLA COMMISSIONE STRAORDINARIA PER LA TUTELA E LA PROMOZIONE DEI DIRITTI UMANI (Online). Available at: [senato.it/service/PDF/PDFServer/BGT/1355459.pdf](https://senato.it/service/PDF/PDFServer/BGT/1355459.pdf) (Accessed: 31 August 2022)

<sup>231</sup> Senato della Repubblica XVIII Legislatura (2022) RISOLUZIONE DELLA COMMISSIONE STRAORDINARIA PER LA TUTELA E LA PROMOZIONE DEI DIRITTI UMANI (Online). Available at: [senato.it/service/PDF/PDFServer/BGT/1355459.pdf](https://senato.it/service/PDF/PDFServer/BGT/1355459.pdf) (Accessed: 31 August 2022)



*exchange of information agreements, which such media reach with counterparts and with third parties”;*<sup>232</sup>

- *“to foster a regulation concerning the transparency of the lobby activities, according to the recommendation CM/Rec (2017) Committee of Ministers of the Council of Europe<sup>233</sup> concerning the regulation of the activities performed by lobbies during the public decision-making process”;*<sup>234</sup>
- *“to promote, evaluate the opportunity, the participation in and the ratification of Italy to the Tromsø Convention, adopting the highest standards as described”;*<sup>235</sup>
- *“to foster, together with other Countries representative of all geopolitical and regional areas, initiatives within the UN which conduct the Organization and the Member States to commence the activity of codification – at a universal level - of the human rights to acknowledgment”.*<sup>236</sup>

It would represent an important decision made by the Italian Parliament if the Tromsø Convention will be signed. The signature of this Convention will represent a step forward for Italy to adopt policies and promote the principles provided therein in order to be part of a process of harmonization at a worldwide level. It shall be stressed, however, as reported above, in the Italian legal system several laws do provide policies guarding fundamental rights and the transparency of public authorities.

With regard to its application to XR technologies, the provided provisions might find application in the event that XR will be adopted to ensure the principle of acknowledgement concerning administrative and decision-making processes, and to fulfil the more suitable democratic participation, according to the state of law and the most important international human rights law.

In conclusion, the “*focal points*” highlighted in this domain are the following:

- it is highlighted the importance to adhere to the Tromsø Convention, and further implementing of its ratification to adopt the provided high standard.
- the Extraordinary Committee regarding intolerance, racism, antisemitism, incitement to hate, and violence, commits the Government to achieve several targets, such as guaranteeing the dissemination of the “*culture of transparency and participation*”, the adoption of the “*principle of acknowledgment*” as a right to which citizens are entitled, regarding the acknowledgment of administrative and decision-making processes.
- to foster the publicity of information regarding sectors of the utmost importance for a public interest, such as compliance with human rights, the promotion of equals, and the contrast of every kind of discrimination.

<sup>232</sup> Senato della Repubblica XVIII Legislatura (2022) RISOLUZIONE DELLA COMMISSIONE STRAORDINARIA PER LA TUTELA E LA PROMOZIONE DEI DIRITTI UMANI (Online). Available at: [senato.it/service/PDF/PDFServer/BGT/1355459.pdf](https://senato.it/service/PDF/PDFServer/BGT/1355459.pdf) (Accessed: 31 August 2022)

<sup>233</sup> Council of Europe – Committee of Ministers (2017) Recommendation CM/Rec(2017)4 of the Committee of Ministers to member States on youth work (Online). Available at: [rm.coe.int/1680717e78](https://rm.coe.int/1680717e78) (Accessed: 31 August 2022)

<sup>234</sup> Senato della Repubblica XVIII Legislatura (2022) RISOLUZIONE DELLA COMMISSIONE STRAORDINARIA PER LA TUTELA E LA PROMOZIONE DEI DIRITTI UMANI (Online). Available at: [senato.it/service/PDF/PDFServer/BGT/1355459.pdf](https://senato.it/service/PDF/PDFServer/BGT/1355459.pdf) (Accessed: 31 August 2022)

<sup>235</sup> Senato della Repubblica XVIII Legislatura (2022) RISOLUZIONE DELLA COMMISSIONE STRAORDINARIA PER LA TUTELA E LA PROMOZIONE DEI DIRITTI UMANI (Online). Available at: [senato.it/service/PDF/PDFServer/BGT/1355459.pdf](https://senato.it/service/PDF/PDFServer/BGT/1355459.pdf) (Accessed: 31 August 2022)

<sup>236</sup> Senato della Repubblica XVIII Legislatura (2022) RISOLUZIONE DELLA COMMISSIONE STRAORDINARIA PER LA TUTELA E LA PROMOZIONE DEI DIRITTI UMANI (Online). Available at: [senato.it/service/PDF/PDFServer/BGT/1355459.pdf](https://senato.it/service/PDF/PDFServer/BGT/1355459.pdf) (Accessed: 31 August 2022)



## 3.6 Liability for harms

### 3.6.1 Overview of the law and key elements of XR

As per the topic regarding liability for harms under contract law, tort and criminal, the following articles are to be considered: in the Italian civil code, articles 1218<sup>237</sup> and 2043<sup>238</sup> rule contract and tort liability respectively. Contract liability concerns the violation of a legal constraint, while tort liability concerns harms to others. Criminal liability is mentioned at the art. 27 of the Italian Constitution<sup>239</sup>, stating that criminal liability is personal. Article 42<sup>240</sup> of the criminal code describes the subjective elements of the crime, to assess the guilt of a person.

A case of sexual assault can be useful to understand how to deal with criminal liability in the digital XR context. The fact occurred on Horizon Worlds, the digital platform belonging to the Meta company. The Italian website *StudioCataldi.it*<sup>241</sup> explains that the lack of a real physical contact prevents bringing the case back into the context of sexual violence disciplined and punished by art. 609-bis of the criminal code<sup>242</sup>. Furthermore, the Italian legal system does not provide an autonomous crime of sexual harassment. Nevertheless, art. 660<sup>243</sup> of the criminal code punishes the crime of harassment of the person, understood as the behaviour with which, in a place open to the public, harassment or disturbance is caused to others for reasons worthy of reproach. Jurisprudence, Court of Cassation, has tried to elaborate the specific figure of sexual harassment, which, even in the absence of the material act of physical contact typical of sexual violence, is substantiated in vulgar expressions of a sexual nature or in acts of invasive and insistent courtship. This figure should be sufficient to punish those behaviours carried out by means of electronic devices in the context of virtual environments.

In conclusion, the “*focal point*” highlighted in this domain is the following:

- The Italian legislation provides several provisions with regard to civil, tort and criminal liability respectively in the civil code and in the criminal code;
- Currently, as seen, it is the jurisprudence, more than the legislator, involved in the attempt to provide legal reactions to crimes committed in the virtual world (e.g. Metaverse).

<sup>237</sup> Italian Civil Code, Artiche 1218 “Responsabilità del debitore”  
[normattiva.it/uri-res/N2Ls?urn:nir:stato:regio.decreto:1942-03-16;262](http://normattiva.it/uri-res/N2Ls?urn:nir:stato:regio.decreto:1942-03-16;262)

<sup>238</sup> Italian Civil Code, Article 2043 “Risarcimento per fatto illecito”  
[normattiva.it/uri-res/N2Ls?urn:nir:stato:regio.decreto:1942-03-16;262](http://normattiva.it/uri-res/N2Ls?urn:nir:stato:regio.decreto:1942-03-16;262)

<sup>239</sup> Constitution of the Italian Republic, Article 27  
[senato.it/documenti/repository/istituzione/costituzione\\_inglese.pdf](http://senato.it/documenti/repository/istituzione/costituzione_inglese.pdf)

<sup>240</sup> Italian Criminal Code, Article 42 “Responsabilità per dolo o per colpa o per delitto preterintenzionale. Responsabilità obiettiva”

[normattiva.it/uri-res/N2Ls?urn:nir:stato:regio.decreto:1930-10-19;1398](http://normattiva.it/uri-res/N2Ls?urn:nir:stato:regio.decreto:1930-10-19;1398)

<sup>241</sup> Sicolo, M. (2022) *Molestie sessuali nel Metaverso: sono reato?* (Online). Available at: [studiocataldi.it/articoli/44610-molestie-sessuali-nel-metaverso-sono-reato.asp](http://studiocataldi.it/articoli/44610-molestie-sessuali-nel-metaverso-sono-reato.asp) (Accessed: 30 September 2022)

<sup>242</sup> Italian Criminal Code, Article 609 (2) “Violenza sessuale”  
[normattiva.it/uri-res/N2Ls?urn:nir:stato:regio.decreto:1930-10-19;1398](http://normattiva.it/uri-res/N2Ls?urn:nir:stato:regio.decreto:1930-10-19;1398)

<sup>243</sup> Italian Criminal Code, Article 660 “Molestia o disturbo alle persone”  
[normattiva.it/uri-res/N2Ls?urn:nir:stato:regio.decreto:1930-10-19;1398](http://normattiva.it/uri-res/N2Ls?urn:nir:stato:regio.decreto:1930-10-19;1398)

## 4. Overview of gaps and challenges

In this section is included a recap of all the “*focal points*” reported at the end of each domain specific legal issues relevant at national level.

- Human rights are recognized and safeguarded both by the Constitution and by national laws.
- The international acts, as well as Conventions, regulating human rights, state that these rights shall be enforceable. Although there is not reported any kind of referral to digital extended reality technologies, it is plausible to think that these rights are enforceable also in the extended digital reality.
- The enactment of the principles expressed by the GDPR in the Italian legislation and the role of the authorities in the enforcement of the provisions (both European and national).
- The importance conferred to special categories of personal data which shall be safeguarded due to their particular nature.
- The observations published by the Italian Government, especially concerning the rights provided in the Charter of Fundamental Rights of the European Union as well as the urgency to clarify the relationship between the principles provided by the DSA and the principles provided by the sector-based regulations.
- The demands to clarify the mechanism of harmonization with the “Copyright Directive” (2019/790/CE) as well as with the “SMAV” (Audiovisual and Media Services - 2018/1808/CE).
- The Government’s opinion, and specifically its concerns about the Proposal such as the role of National Authorities which would be reduced to advisory and non-binding, the designation of the gatekeeper, the definition of the obligations provided by the regulation which do apply to all kinds of gatekeeper, the excessive power granted to the Commission regarding the issue of delegated acts.
- It is deemed necessary to strengthen the cooperation between the Commission and the Member States and consequently the involvement of the national authorities.
- The EU Commission shall adopt specific criteria concerning the selection process of gatekeepers; define “final recipient of the service” and “active business recipients”.
- It should be evaluated the opportunity to determine the criteria regarding the adoption of the delegated acts to update gatekeepers’ obligations.
- The Italian Government, National Authorities, and as well as other public/private subjects have published documents, and reports concerning A.I. in which it can be inferred the importance of this topic.



- It is highlighted the importance to adhere to the Tromsø Convention, and further implementation by way of its ratification to adopt the provided high standard.
- The Extraordinary Committee regarding intolerance, racism, antisemitism, incitement to hate, and violence, commits the Government to achieve several targets, such as guaranteeing the dissemination of the “*culture of transparency and participation*”, the adoption of the “*principle of acknowledgment*” as a right to which citizens are entitled, regarding the acknowledgment of administrative and decision-making processes.
- To foster the publicity of information regarding sectors of the utmost importance for a public interest, such as compliance with human rights, the promotion of equals, and the contrast of every kind of discrimination.
- The Italian legislation provides several provisions with regard to civil, tort and criminal liability respectively in the civil cod and in the criminal code;
- Currently, as seen, it is the jurisprudence, more than the legislator, involved in the attempt to provide legal reactions to crimes committed in the virtual world (e.g. Metaverse).

The report features *significant legal cases* which are the object of in-depth analyses by the legislator and policymakers (such as Spid App and AppIO, dark patterns, nudging, etc.) and others which are the focus of current debates and are likely to be the focus of future discussions (such as the Metaverse and its implications).

## 5. Conclusion

XR technologies present multiple and complex legal issues and challenges with wide-ranging socio-economic and human rights implications.

As with the international and EU law landscape, in the Italian legal system there is no dedicated legislation with direct application to XR. As reported throughout the report, the Italian constitutional bodies are discussing the implications of XR technologies, although no law has yet been approved by the Parliament.

XR technologies, although not explicitly regulated at a national level, nor at an international or European level, are nonetheless subject to various domain-specific legal frameworks, including human rights law (see Section 3.1) privacy and data protection law (see Section 3.2), and consumer rights law (see Section 3.3). Further legislative measures at the EU level are also expected, with each of the e-Privacy Regulation, the AI Act, the Digital Services Act, the Data Act, and the Data Governance Act at varying stages of the legislative schedule and all likely to impact upon the regulation of XR technologies. All these upcoming legislative measures will directly apply to the Italian Legislation (such as EU Regulations), or adapted to the national legal system (in the case of Directives). Nonetheless, these legislative measures are objects of discussions by Parliamentary Committees, as reported in Sections 3.3 (Consumer Protection), 3.4 (A.I. Governance), and 3.5 (Digital Service Governance).

Even in the absence of additional regulatory measures, a key advantage of rights-based legal frameworks is the *built-in flexibility* to adapt to the challenges posed by new and emerging technologies, including XR, to better protect the rights of individuals against interference.

It must be stressed that certain human rights frameworks, for instance, are treated as “*living instruments*”, in accordance with which they are constantly evolving to address new challenges, whether it be through expanded judicial interpretations of existing rights, or the introduction of new rights to supplement existing protections.<sup>244</sup> Such a feature assumes certain importance for XR technologies, due to the fact of representing an *emerging technology*.

The main question that shall be asked is how to define XR technologies. The chosen definition will have the effect of determining which will be the applicable basis for future legal regulation, with regard to privacy and data protection (not only limited to collection and storage of personal data but the process of “special” category personal data – biometric and genetic), human rights (such as the right to freedom of thought and freedom from discrimination), consumer protection (concerning, for instance, the role of major platforms in assuring the right to information, the protection of minors and women as well as the right to safety), and digital service governance (concerning the relationship established between Public Administration and citizens with regard to the Right to transparency, the role of lobbying during the public decision-making process, and above all the public’s confidence in public authorities).

<sup>244</sup> The doctrine which refers to “*living instrument*” is derived from the jurisprudence of the European Court of Human Rights (ECtHR) and applies specifically to the European Convention on Human Rights (ECHR), which Italy signed (1950) and ratified (1955) as one of the founding members of the Council of Europe (1949).

Overall, this analysis of the Italian law and policy in relation to XR has highlighted how the discussion is in progress, though in its early stages, and it is based on the question of how to regulate such technologies, obviously bearing in mind primarily the EU legislation as well as international acts.

**In conclusion of this report, at present, there is no proposal to comprehensively regulate XR at the Italian national level, although initial discussions are in progress, especially in the light of specific cases - object of debate from a legal point of view – which do represent opportunities and challenges, such as the Metaverse.**

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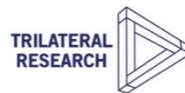
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