



MINISTRY OF THE PRESIDENCY, JUSTICE AND RELATIONS WITH THE  
COURTS

MINISTRY OF YOUTH AND CHILDREN

MINISTRY FOR DIGITAL TRANSFORMATION AND THE CIVIL SERVICE

MINISTRY OF SOCIAL RIGHTS, CONSUMER AFFAIRS AND 2030  
AGENDA

# **PRELIMINARY DRAFT ORGANIC LAW FOR THE PROTECTION OF MINORS IN DIGITAL ENVIRONMENTS**

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## **REGULATORY IMPACT ANALYSIS REPORT**

## EXECUTIVE SUMMARY

<b>Proposing Ministry/Body</b>	<ul style="list-style-type: none"> <li>- Ministry of the Presidency, Justice and Relations with the Courts</li> <li>- Ministry of Youth and Children</li> <li>- Ministry for Digital Transformation and the Civil Service</li> <li>- Ministry of Social Rights, Consumer Affairs and 2030 Agenda</li> </ul>	<b>Date</b>	18 September 2024
<b>Title of Regulation</b>	Preliminary draft Organic Law for the protection of minors in digital environments.		
<b>Type of report</b>	Normal <input checked="" type="checkbox"/> Abridged <input type="checkbox"/>		
<b>TIMELINESS OF THE PROPOSAL</b>			
<b>Situation being regulated</b>	<p>The digitalisation of our society and the universalisation of access to digital media and environments entails significant benefits, but also potential risks.</p> <p>Improper use of these digital media, by minors or by adults in relation to them, can cause significant harm to minors and their families, such as psychological and emotional damage; damage to physical health; disinformation, manipulation and construction of false beliefs; establishment of dangerous or socially inappropriate conduct; inclusion in harmful groups and communities; addictions; or economic damage.</p> <p>It is deemed necessary to adopt a comprehensive set of measures in different areas (consumer protection, education, health, criminal legislation, audiovisual sector, etc.) aimed at better use of these digital media in order to protect minors in the digital environment.</p>		
<b>Goals sought</b>	<p>The Regulation has more general objectives:</p> <p>a) Ensure respect for and compliance with the rights of children and adolescents in the digital environment, especially the rights to privacy, honour and self-image, the secrecy of communications and the protection of personal</p>		

	<p>data and access to age-appropriate content.</p> <p>b) Promote a balanced and responsible use of digital environments in order to ensure the proper development of the personality of minors and to preserve their dignity and fundamental rights.</p> <p>c) Ensure that digital products and services take into account, by design and by default, the best interests of the child and integrate a gender and intersectional perspective.</p> <p>d) Support the development of children's digital skills in the digital environment and the ability to assess online content and detect disinformation and abusive material.</p> <p>e) Promote a safer digital environment and stimulate research in this area.</p> <p>f) Prevent sexual violence in the digital sphere.</p>
<b>Main alternatives considered</b>	<p>The option of doing nothing has been rejected, due to the dysfunctions that are observed in the existing situation and that prompted the Regulation.</p>

## CONTENT

The preliminary draft Law is structured into an expository part and an operative part consisting of six titles, containing 15 articles, one repealing provision and 10 final provisions.

The preliminary title, 'General provisions', incorporates Articles 1 to 3, which define the subject matter of the Regulation, the rights of minors in this area, and the general purposes of the Law, respectively.

Title I, 'Measures in the field of consumer protection', contains Articles 4 and 5 on 'Obligations of manufacturers of data terminal equipment with an internet connection' and 'Regulation of access and activation of random reward mechanics', respectively.

Title II, 'Measures in the field of education', contains Articles 6 and 7 on 'Training activities in nursery, primary, compulsory secondary and post-compulsory secondary education establishments' and 'Regulation of the use of devices in nursery, primary, compulsory secondary and post-compulsory secondary education establishments'.

Title III: 'Measures in the field of protection of victims of gender-based violence and sexual violence', brings together Articles 8 and 9 on 'Victims of gender-based violence or sexual violence' and 'Comprehensive social assistance services', respectively.

Title IV, 'Measures in the field of health', contains Articles 10 and 11 on 'Promotion of health and prevention' and 'Specialised care'.

Title V, 'Measures in the public sector', contains Articles 12 to 15 on 'Participation, information and awareness-raising', 'Promotion of public-private partnerships, co-regulation and standardisation', 'Guaranteeing professional specialisation through training' and 'National Strategy on the protection of children and adolescents in the digital environment', respectively.

The single repealing provision refers to the regulations that are repealed by the adoption of this Organic Law.

The first to sixth final provisions contain, respectively, amendments to Organic Law 6/1985 of 1 July 1985 on the Judiciary; to Organic Law 10/1995 of 23 November 1995, on the Criminal Code; to Law 29/1998 of 13 July 1998, regulating Contentious-Administrative Jurisdiction. to the consolidated text of the General Law for the Protection of Consumers and Users and other complementary laws, approved by Royal Legislative Decree 1/2007 of 16 November 2007. to Organic Law 3/2018 of 5 December 2018 on the protection of personal data and the guarantee of digital rights, and to General Law 13/2022 of 7 July 2022 on Audiovisual Communication.

The seventh final provision sets out the titles of competence that empower the State to dictate the Regulation.

The eighth final provision specifies the precepts that have the nature of Organic and Ordinary Law.

The ninth final provision contains a regulatory empowerment in favour of the

Government and a mandate for the regulatory development of Article 4.

The tenth final provision provides for the entry into force of the Law.

## LEGAL ANALYSIS

### Range of the Regulation:

This is an Organic Law.

However, the first, second and fifth final provisions have the character of an Organic Law. The rest of the precepts have the nature of Ordinary Law.

### Entry into force and effect

This Law shall take effect 20 days after its publication in the 'Official State Gazette'.

By way of exception, the obligations provided for in Article 4 shall enter into force one year after publication of the Law.

### Regulations that are repealed.

Article 13(1) of the Regulation implementing Organic Law 15/1999 of 13 December 1999 on the protection of personal data, approved by Royal Decree 1720/2007 of 21 December 2007, is hereby repealed.

Likewise, any regulations of equal or lower rank that oppose the provisions of this Organic Law are repealed.

## CONFORMITY TO THE CONSTITUTIONAL ORDER ON THE DISTRIBUTION OF RESPONSIBILITIES

This Organic Law is issued on a basic basis under the provisions of Article 149(1) (1) and (13), which confers on the State exclusive competence in the regulation of the basic conditions that guarantee the equality of all Spaniards in the exercise of rights and in the fulfilment of constitutional duties; and the basis and coordination of the general planning of economic activity.

More specifically:

The contents of Title II constitute basic regulations for enacting Article 27 of the Constitution, in accordance with the provisions of Article 149(1)(30) of the Spanish Constitution.

Title IV is provided by virtue of the competence of the State in matters of the basis and general coordination of health, provided for in Article 149(1)(16) of the Spanish Constitution.

The first, second and third final provisions are issued under the competencies in the field of criminal and procedural legislation, which Article 149(1)(6) of the Spanish Constitution attributes to the State.

The fourth final provision is also issued under the competence in matters of civil

law, provided for in Article 149(1)(8) of the Constitution.

In the sixth final provision amending Law 13/2022 of 7 July 2022 on General Audiovisual Communication, the amendments to Articles 42 and 160 thereof are issued in accordance with Article 149(1)(27) of the Spanish Constitution, which confers on the State exclusive competence in relation to the basic regulations of the press, radio and television and, in general, of all social media, without prejudice to the powers of development and enforcement that correspond to the Autonomous Communities. The rest of its contents are enacted under the exclusive competence of the State in matters of telecommunications attributed to it by Article 149(1)(21) of the Spanish Constitution.

## DESCRIPTION OF THE PROCEDURE

<b>Public consultation:</b>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
<b>Public hearing and information</b>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
<b>Reports</b>	The procedure provided for in Article 26 of Law 50/1997 of 27 November 1997 on the Government, and other applicable regulations, shall be followed.

## IMPACT ANALYSIS

<b>Economic and budgetary impact</b>	Overall economic impact	The Regulation does not have significant effects on the economy.
	With regard to competition	<input checked="" type="checkbox"/> the Regulation has no significant impact on competition <input type="checkbox"/> the Regulation has a positive impact on competition <input type="checkbox"/> the Regulation has a negative impact on competition
	From the point of view of budgets, the	<input checked="" type="checkbox"/> Involves an expense

	<p>Regulation:</p> <p><input checked="" type="checkbox"/> Affects State Administration budgets.</p> <p><input checked="" type="checkbox"/> Affects the budgets of other territorial administrations</p>	<p><input type="checkbox"/> Involves revenue</p> <p><input type="checkbox"/> Involves a decrease in expenditure.</p>
	<p>From the point of view of administrative burdens, the Regulation</p>	<p><input type="checkbox"/> Entails a reduction in administrative burdens.</p> <p><input type="checkbox"/> Incorporates new administrative burdens.</p> <p><input checked="" type="checkbox"/> Does not affect administrative burdens.</p>
<p><b>Gender impact</b></p>	<p>The Regulation has an impact that is</p>	<p>Negative <input type="checkbox"/></p> <p>Neutral <input type="checkbox"/></p> <p>Positive <input checked="" type="checkbox"/></p>
<p><b>Other impacts considered</b></p>	<p>Impact on children and adolescents</p> <p>Impact on equal opportunities, non-discrimination and universal accessibility for persons with disabilities</p> <p>IMPACT ON FAMILIES</p>	<p>Negative <input type="checkbox"/></p> <p>Neutral <input type="checkbox"/></p> <p>Positive <input checked="" type="checkbox"/></p>
<p><b>OTHER CONSIDERATIONS</b></p>		
<p>The Annual Regulatory Plan of the General State Administration for 2024 does not foresee that the Regulation will be subject to <i>ex post</i> evaluation.</p>		

## 1. DESIRABILITY OF THE REGULATION

### 1.1. Motivation

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#### A) General situation

The development of technology is a constant in our society that generates significant transformations with consequences in various areas of our lives. Particularly relevant is the effect of digitalisation on the personal and social development of minors, which is why it is crucial to have tools and mechanisms to protect and guarantee rights in digital environments.

The accessibility and globalisation of digital environments allow minors to use these means for the development and exercise of fundamental rights, such as the right to information and freedom of expression, and, in turn, constitute a means of political, social and cultural participation at the local, national and even international levels.

Alongside the benefits of the digitalisation processes and universal access to digital environments, it is worth noting the risks and harms that can result from their inappropriate use. The digital environment may include gender stereotyping, discriminatory or violent messages and content, as well as false information or information about unhealthy, illegal or harmful behaviour or consumption habits. This information is available to children and adolescents through multiple sources.

Among the risks and harms associated with inappropriate use of digital media and devices, it is worth highlighting the appearance of health issues – physical, psychological and emotional, difficulties with social interaction, or problems in cognitive development. However, in addition to these health risks, there are others related to the use of data and privacy of minors, the progressive desensitisation to acts of violence, cyberbullying, and the increase in cases of exploitation and abuse of minors.

Access to inappropriate content can lead to multiple consequences in childhood and adolescence, as many as varieties of inappropriate content can be considered. In particular, as is apparent from the Safer Internet for Kids initiative (is4k.es) of the National Institute of Cybersecurity (INCIBE), among the potential harms for minors are the following:

- Psychological and emotional damage. Minors have developing maturity and self-esteem, meaning they are more vulnerable emotionally if they encounter information that they are not able to take on, or facing which they do not know how to react, such as pornographic or violent content. These can be too complex and even disturbing.
- Disinformation, manipulation and construction of false beliefs. Untruthful and inaccurate content can confuse minors, and is especially dangerous when dealing with health and safety issues.



- Establishment of dangerous or socially inappropriate behaviours. Minors can assume certain concepts as true and positive, and adopt them in the form of harmful behaviours or values: sexism, male chauvinism, homophobia, racism, etc.
- Damage to physical health. Some content aims to promote eating disorders (anorexia and bulimia), or self-harm behaviours or drug use. Others may encourage minors to engage in activities potentially dangerous to their health, such as some viral videos or chains.
- Inclusion in harmful groups and communities. Access to certain content can take the minor closer to extremist, violent or racist groups, as well as sects of an ideological or religious nature, radical political groups, etc. The emotional factor is significant when dealing with this information that can be harmful or malicious, since low self-esteem, or that which is still developing, increases the vulnerability of the child.
- Addictions. Addictions. Access to inappropriate content regarding alcohol, tobacco and other drugs, sex and gambling can promote addiction disorders, since minors might not have sufficient critical capacity to manage the risks associated with this type of activity.
- Economic expenses. Scams or deception attempts aimed at defrauding users to obtain their money or data can lead to direct economic losses, as is the case for example with Premium SMS subscriptions. In addition, minors are more vulnerable when interpreting and managing the excessive advertising to which they are exposed on the Internet, since it can generate in them the need to consume impulsively, as happens with purchases in games and applications. Likewise, the content of the advertisements is not always, in itself, suitable for them.

In this regard, to address the various risks currently posed by the development of technology, innovation and digitalisation from the Ministry of Youth and Children, a Committee of experts was created in order to reach a consensus among people of recognised prestige in different sectors, and adopt the necessary measures to ensure the protection of minors in these environments. These measures are aimed at all relevant actors in the sector, both in the Public Administration and in the private sector.

The Resolution of 1 February 2024 of the Undersecretariat for Youth and Children publishes the Agreement of the Council of Ministers of 30 January 2024, establishing a Committee of Experts for the Development of a Safe Digital Environment for Youth and Children.

The main duty of the Committee of Experts is to issue a report that analyses good practices in this area, points out the main risks and dangers that children and young people may face in the digital environment, and formulates recommendations and actions to be implemented.

The working methodology adopted by the Committee has consisted of the creation of different working groups, divided according to the sectors that have been deemed essential in terms of the significant impact of these on the development of children and adolescents. In particular, the following working groups have been set up: Health, Rights, Education, Privacy, Pornography,

violence and sexual abuse, Industry and consumption, Participation of children and adolescents.

Through these groups, multiple proposals and measures have been worked on in the different areas mentioned in order to produce a holistic report that addresses this situation from different perspectives.

With regard to the composition of the Committee, in addition to seeking proposals from other ministerial departments, parliamentary groups and the Ombudsman, persons representing the Children's Observatory, the Spanish Observatory on Racism and Xenophobia, the State Council for the Participation of Children and Adolescents, the Youth Council, the Young Digital Advisory Council, the Spanish Agency for Data Protection, the State School Council, the National Institute of Cybersecurity (INCIBE), the National Commission on Markets and Competition and the Council of Consumers and Users participated. It also has representation from the confederations of associations of parents of students and third sector entities and organisations at the state level. Further participating are specialists in the areas of paediatrics, psychology, gender equality, mental health protection, the technological area of digitalisation and cybersecurity, as well as lawyers specialised in guaranteeing the rights of children and youth.

In this vein, but from another, strictly normative, perspective, it is necessary to advance the protection of children, adolescents and youth to generate an increasingly safe digital environment, aimed at guaranteeing their integral development, avoiding the risks and dangers that have been pointed out both from scientific and educational fields and from the entities and associations for the protection of children and youth. Likewise, digital training should be promoted, in order to teach children and young people to be aware and safe users of technology, as well as psychological aspects taking into account the emotional and cognitive impact of online experiences.

## **B) Particular motivation of the main measures**

Based on the above, the Regulation incorporates a set of measures that in their overall sense respond to the need to: (i) improve the information available to minors and their families on the benefits and risks of the use of digital devices by minors; (ii) improve the performance of health services, in their dual preventative and care aspects, in their attention to health problems arising from the exposure of minors to digital media and environments; and (iii) enhance the effectiveness of restrictions and control mechanisms to prevent access by minors to content that would not be appropriate for their personal development.

While the reasons given above make it possible to explain the basic reasons justifying the measures taken, a more specific statement of reasons for the main individual measures is given below in order to better explain their appropriateness:

### **1) Obligations of manufacturers of data terminal equipment with an internet connection**

Given the concern regarding the inappropriate use of digital devices due to their health consequences or the possible access to content that may be harmful to minors, it is deemed necessary to guarantee the protection of children and adolescents with effective measures. For this reason, it has been deemed appropriate to incorporate adequate protection systems and tools by default from the manufacturing process of the devices.

On the one hand, measures are considered necessary for preventing access to inappropriate content and encouraging the responsible use of digital environments, and on the other hand, measures aimed at developing tools and mechanisms that prevent minors from accessing content which is illegal, expressly prohibited for minors, or inappropriate, with the ultimate aim of promoting the development of positive and safe digital environments.

Therefore, obligations are incorporated for manufacturers of data terminal equipment in relation to the relevant information to be provided in this regard, as well as the implementation in operating systems of parental control systems by default.

### **2) Obligation to verify age by companies offering goods or services intended for adults, whether because of their sexual or violent content or because they pose a risk to physical health or personality development**

The Regulation particularly emphasises the obligation on the business side to ensure that the consumer and user is of legal age before contracting goods or services, whether their own or those of third parties, internal or external, intended for persons of legal age, whether because of their sexual or violent content or because they pose a risk to physical health or personality development.

At this point, it is necessary to reinforce the control over minors procuring products or services intended for adults, whether because of their sexual or violent content or because they pose a risk to their physical health or personality development.

While age verification is more entrenched in the field of face-to-face contracting, this is not the case in the digital sphere, where minors can often access goods or services aimed at adults without any problem.

### **3) Prohibition of access to or activation of random reward mechanics by minors**

As a more specific situation, consumption with harmful potential includes random reward mechanics ('loot boxes'), which are part of certain video games and which, without proper access control in their activation, may pose a risk to vulnerable people, especially the younger ones at whom they are aimed and who are the main consumers of this type of products and services.

Random reward mechanics are virtual objects or processes of any kind, the activation of which offers the player the opportunity to obtain, on a random basis, virtual rewards or prizes that can be used in those digital environments.

As the scientific literature has demonstrated, the evident functional identity of some of the modalities under which these random reward mechanics are presented with traditional gambling also brings with it the negative consequences associated with the latter, such as the emergence of thoughtless, compulsive and, ultimately, pathological consumption behaviours. All of this is based on the mechanics of psychological activation that can be triggered by participating in this activity, which has serious economic, material and emotional repercussions, both for the people who suffer from it and for their personal, social and family environment.

In the case of minors, contact with these random reward mechanics is likely to constitute their first encounter with a product or functionality in the mechanics of operation of which chance plays a predominant role, and which bears the aforementioned similarity, both from the structural point of view and from the marketing techniques used for its commercialisation, with certain modalities specific to regulated gambling.

In this regard, it is impossible to ignore the study 'Loot boxes in online games and their effect on consumers, in particular young consumers'<sup>1</sup>, commissioned by the Committee on the Internal Market and Consumer Protection of the European Parliament, which draws attention to the different risks associated with loot box mechanics depending on the stage of development of children, and according to which these would be the main risk factors in the development of children and adolescents (page 29 of the report):

'As regards risk factors in children:

- Research suggests children are less able to separate costs<sup>2</sup>, to which it should be added that they present a higher risk of problematic gambling behaviour than adults when presented with virtual currencies<sup>3</sup>.
- Children have been found to have problems understanding and taking into account probabilities<sup>4</sup>. This could make it particularly difficult for them to understand the probabilities of obtaining the different items existing in a random reward mechanic, as well as predicting their outcome and value<sup>5</sup>.

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<sup>1</sup> [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/652727/IPOL\\_STU\(2020\)652727\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/652727/IPOL_STU(2020)652727_EN.pdf).

<sup>2</sup> King, D. L., & Delfabbro, P. H. (2020), The convergence of gambling and monetised gaming activities. *Current Opinion in Behavioral Sciences* 2020, 31, pp. 32-36.

<sup>3</sup> Zendle, D., Meyer, R., & Over, H. (2019). Adolescents and loot boxes: links with problem gambling and motivations for purchase. *Royal Society Open Science*, 6(6), 190049. Zendle, D., Meyer, R., & Over, H. (2019). Adolescents and loot boxes: links with problem gambling and motivations for purchase. *Royal Society Open Science*, 6(6), 190049.

<sup>4</sup> Sunstein, C. R. (2002), Probability neglect: emotions, worst cases, and law. *The Yale Law Journal*, 112(1), pp. 61-107.

<sup>5</sup> Regarding the degree of difficulty that some forms of presentation of the probabilities of occurrence of rewards in some random mechanics can present, see the study 'Insert coin',

- Finally, with regard to psychosocial effects, children have a higher risk of developing habits in relation to certain stimuli. The research states that video games that contain frequent (or repeated) reward mechanics, such as those that appear in random reward mechanics, accustom children to a continuous input of new and exciting stimuli, and thus contribute to hyperactivity and symptoms of inattention<sup>6</sup>.

Regarding developmental risk factors for adolescents:

- Another aspect of development to take into account in the case of both children and adolescents is impulse control. The ability to exercise control over decisions is not yet fully developed in minors, and is associated with greater vulnerability to problematic gambling<sup>7</sup>. This goes back to the investigation concerning 'delayed gratification'. Children of nursery age have been found to have greater difficulty with resisting immediate rewards compared to future rewards<sup>8</sup>.

The full ability to control impulse and postpone rewards develops only in adolescence, and 'ego depletion', a state in which energy for self-control is impaired, has been found mainly in people under the age of 25<sup>9</sup>. Faced with a potential reward in a loot box, children and adolescents are less likely to delay gratification and wait to obtain this digital product through the game activity itself; it is more likely that this state of ego depletion occurs in them, in which they lack willpower, and thus present a greater propensity to spend money.

- Finally, it has been demonstrated that the association between spending money on random reward mechanics and the display of signs of problematic gambling is more pronounced in adolescents. Thus, a survey among adolescents revealed a relationship with effects of medium and large size for adolescents aged between 16 and 18 years<sup>10</sup>.

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section 3.3 'The problem of probability disclosure', conducted by the Norwegian Consumer Council and available at <https://www.forbrukerradet.no/report-on-loot-boxes-insert-coin/>

<sup>6</sup> To consult some of the references:

- Gentile, D., Swing, E., Lim, C., & Khoo, A. (2012), Video game playing, attention problems, and impulsiveness: Evidence of bidirectional causality. *Psychology of Popular Media and Culture*, 1.
- Lobel, A., Engels, R. C., Stone, L. L., Burk, W. J., & Granic, I. (2017), Video gaming and children's psychosocial wellbeing: A longitudinal study. *Journal of youth and adolescence*, 46(4), pp. 884-897.

<sup>7</sup> Lussier, I. D., Derevensky, J., Gupta, R., & Vitaro, F. (2014), Risk, compensatory, protective, and vulnerability factors related to youth gambling problems. *Psychology of Addictive Behaviors*, 28(2).

<sup>8</sup> Mischel, W., Shoda, Y., & Rodriguez, M. I. (1989), Delay of gratification in children. *Science*, 244(4907), pp. 933-938.

<sup>9</sup> Dahm, T., Neshat-Doost, H. T., Golden, A. M., Horn, E., Hagger, M., & Dalgleish, T. (2011), Age shall not weary us: Deleterious effects of self-regulation depletion are specific to younger adults. *PloS one*, 6(10).

<sup>10</sup> Zendle, D., Meyer, R., & Over, H. (2019). Adolescents and loot boxes: links with problem gambling and motivations for purchase. *Royal Society Open Science*, 6(6), 190049.

Likewise, it should be noted that in the Study on the prevalence of gambling 2022-2023, prepared by the Directorate-General for the Regulation of Gambling, 2.45 % of the people interviewed (resident population aged 15 or over with a total of 18 711 interviews) reported having spent money on loot boxes playing video games, mainly online players, men and in the younger age groups, revealing that people who do not have symptoms of problematic gambling buy much fewer loot boxes (2.19 %) than those who do (20.59 %)<sup>11</sup>. Results that are aligned with the empirical evidence of the existence of associative links between the expenditure on loot boxes and the level of intensity of the possible problems with gambling of those same participants by contrasting, among other issues, that the amount of money used in the purchase of loot boxes is directly proportional to the degree of severity in the disorder in the gambling behaviour of those players who participate in both environments<sup>12</sup>. In this same sense, it is already known that the probability of presenting a gambling disorder is 4.4 times higher for buyers of loot boxes than for those participants in video games who do not buy this type of product<sup>13</sup>.

In view of the above, it is deemed necessary to provide for a general ban on minors accessing or activating random reward mechanics.

It is clarified that the aforementioned ban does not operate in a general way, but applies only to random reward mechanics that have a set of characters making them more assimilable to certain gambling products. Consequently, not all processes, functionalities or products associated with interactive leisure software products integrating chance as an essential element of their structural configuration are subject to this regulation. In addition to the payment of a price for the activation and the presence of the chance element, the Law includes under its scope only those random mechanics that grant rewards consisting of a virtual object that can be exchanged for money or other virtual objects.

#### **4) Raising the age of consent for the processing of personal data from 14 to 16 years old**

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) provides in its Article 8(1) that where consent is the legal basis for the processing of data in information society services, such consent may be granted by a minor if he or she is at least 16 years of age, with the consent of the holder of parental authority or guardianship over the minor being necessary for younger ages.

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<sup>11</sup> Accessible prevalence study at <https://www.ordenacionjuego.es/en/estudio-prevalencia>

<sup>12</sup> Among others (ut supra) Zendle, D., & Cairns, P. (2018); Li, W., Mills, D., & Nower, L. (2019); Wardle, H., & Zendle, D. (2021). Spicer, S. G., Nicklin, L. L., Uther, M., Lloyd, J., Lloyd, H., & Close, J. (2021).

<sup>13</sup> Wardle, H., & Zendle, D. (2020). Loot boxes, gambling, and problem gambling among young people: Results from a cross-sectional online survey. *Cyberpsychology, Behavior, And Social Networking*, 24(4), 267-274. <https://doi.org/10.1089/cyber.2020.0299>.

The General Data Protection Regulation allows countries to reduce the previous limit from 16 years to a minimum of 13 years.

Following these criteria, currently in Spain, Article 7 of Organic Law 3/2018 of 5 December 2018 on the Protection of Personal Data and guarantee of digital rights establishes the age of consent of the minor for the processing of personal data at 14 years

However, for the following reasons, it is deemed appropriate to raise this minimum age threshold for consent to 16 years.

First, it is taken into account that the evolution of digital technology requires a certain maturity in the use of digital services, platforms, systems and content. In particular, its early use may be inappropriate if the serious harm that it can potentially cause is taken into account, in particular in the field of physical, mental, psychosocial and sexual health, as has been revealed by studies and reports prepared by different institutions and prestigious entities working in this field.

Reports reflecting the impact of inappropriate use of digital technology services by children include:

1. The Cyber Guardians report 'Internet use and mental illness in children and adolescents in Spain 1997-2021' [*Uso de internet y enfermedad mental en niños y adolescentes en España 1997 – 2021*] refers to the work of Professor Jonathan Haidt, a social psychologist at New York University, who has investigated the profound mental health crisis among young people and whose central idea is that social networks are a main driver of the global epidemic of illness among children and adolescents, and considers the following two measures, among others, to be key to alleviating the negative effects of the crisis: (i) delaying the opening of accounts on social networking platforms, (ii) raising the age of majority on the Internet to 16.

The report also notes that the costs of hospitalisations primarily related to mental illness in children and adolescents under 20 years of age have increased progressively since 1999, from EUR 12.3 million to EUR 66.5 million in 2021. Broken down by age ranges, it is found that for the first time in the historical series, at the end of 2021 girls aged 11 to 15 years surpass boys aged 16 to 20 in mental illness, and equal girls aged 16 to 20.

2. UNICEF, in its report 'Impact of technology on adolescence', states that 31.5 % use the Internet for more than 5 hours a day on weekdays, which rises to 49.6 % at weekends; 58.4 % sleep with their mobile phone, and 21.6 % go online after midnight. Use that exposes them to risks such as cyberbullying, extortion or access to age-inappropriate content.
3. In the report on the 'Impact of increased use of the Internet and social media on the mental health of young people and adolescents' [*Impacto del aumento del uso de Internet y las redes sociales en la salud mental de jóvenes y adolescentes*], from Red.es and the National Observatory of Technology and Society (ONTSI), it is shown that while 11.3% of 15-24 year olds are at high risk of compulsive use of digital services, this threat increases to 33% of 12-16 year olds.

4. The working group promoted by the AEPD 'Minors, digital health and privacy', was in favour of raising the age of consent from 14 to 16 years.

Second, it is taken into account that the new threshold that is established is the one mostly applied by the countries of the European Union, as reflected in the following comparative table:

Age	No of countries	Countries
16	10	Croatia, Germany, Hungary, Ireland, Luxembourg, The Netherlands, Poland, Romania, Slovakia and Slovenia
13	8	Belgium, Denmark, Estonia, Finland, Latvia, Malta, Portugal, Sweden
14	6	Austria, Bulgaria, Cyprus, Italy, Lithuania, Spain
15	3	Czechia, France, Greece

Finally, it is noted that this amendment equates this area with the age threshold required in other areas.

#### **5) Measures concerning providers of audiovisual media services and video-sharing platform services**

Depending on its importance as a means of access by minors to content potentially inappropriate for their age, it has been deemed appropriate to introduce certain amendments in the regime applicable to providers of audiovisual media services and video-sharing platform services, laid down in Law 13/2022 of 7 July 2022 on General Audiovisual Media.

First of all, Article 3 is amended to add two new sections, with the aim of establishing obligations relating to the protection of minors and prohibitions relating to commercial communications, which in turn include the protection of minors for foreign providers that specifically direct their services to the Spanish market, but are not established either in the European Union or in the European Economic Area. This is compatible with the Audiovisual Media Services Directive (AVMSD) which leaves Member States free with regard to this type of audiovisual media service providers, and in the case of video-sharing platform (VTP) service providers, recommends their inclusion. The purpose of the proposal is that, in the most serious cases, for example, websites with pornographic content without adequate age verification systems, whether or not they have editorial responsibility for such content, the competent audiovisual authority may take the necessary measures for the protection of youth and children, including, where appropriate, the possibility of blocking such foreign services.

Second, it was deemed appropriate to amend Article 89 on measures for the protection of users and minors from certain audiovisual content, in order to strengthen the measures currently in place to prevent minors from being



exposed to content inappropriate to their age. In particular, it provides that age verification systems to reduce minors' access to damaging or harmful audiovisual content should ensure security, privacy and data protection, in particular in terms of data minimisation and purpose limitation.

In relation to the above, the future European Digital Identity Wallet (EUDI Wallet), which all Member States are required to provide by November 2026, pursuant to Regulation (EU) 2024/1183 of the European Parliament and of the Council of 11 April 2024 amending Regulation (EU) No 910/2014 as regards establishing the European Digital Identity Framework (commonly known as eIDAS2), is a benchmark for the highest standards of security, privacy and data protection, which will allow European citizens to access public and private services, with full control over the data they share with third parties. In particular, one of the possible use cases of the EUDI Wallet is age verification. In this sense, the age verification systems established in compliance with the regulations should be inspired by the aforementioned security, privacy and data protection standards of the future EUDI Wallet.

Spain is part of the European task force that is leading pilot projects on age verification tools to protect children from adult content on the internet. The tool being designed consists of a mobile application based on the credential model of Regulation (EU) 2024/1183 of the European Parliament and of the Council of 11 April 2024 amending Regulation (EU) No 910/2014 as regards establishing the European Digital Identity Framework, which in turn is aligned with the technical specifications of the European Digital Identity Wallet.

Third, Article 93(4) is also amended, which provides that failure to comply with the obligations laid down in Article 89(1)(e) will constitute the offence referred to in Article 157(8), without prejudice to any criminal liability that may arise from such action. In this regard, a provision is included to expressly provide that the National Commission on Markets and Competition may adopt the measures provided for in Articles 8 and 11 of Law 34/2002 of 11 July 2002, in accordance with the provisions of those Articles.

Fourth, for the same purpose of protecting minors, it has been considered necessary to amend Article 94(1), concerning the obligations of users of particular relevance who use video-sharing services through a platform, in order to clarify its scope and extend its content according to the actual characteristics of the services they provide.

These services, which, in many areas, are grouped under the concept of 'vloggers', 'influencers' or 'opinion makers', are relevant in the audiovisual market from the point of view of advertising and consumer investment, especially among the younger public.

According to the Law, users of video-sharing platform services who simultaneously meet the following requirements are considered users of particular relevance: (i) the service provided entails an economic activity by which its owner derives significant revenue from its activity in the video-sharing platform services; (ii) the user of particular relevance is editorially responsible for the audiovisual content made available to the public in its service. (iii) the service provided is intended for a significant share of the general public and can have a clear impact on this. (iv) the function of the service is to inform, entertain

or educate, and the main objective of the service is the distribution of audiovisual content. and (v) the service is offered through electronic communication networks and is established in Spain.

Royal Decree 444/2024 of 30 April 2024, which regulates the requirements for being considered a user of particular relevance of video-sharing services through a platform, in development of Article 94 of General Law 13/2022 of 7 July 2022 on Audiovisual Media, provides that in order to be considered a user of particular relevance, the following three requirements must be met cumulatively. First of all, an amount greater than EUR 300 000 gross per year must be earned. Second, the service must reach a number of followers equal to or greater than 1 000 000 on a single video-sharing platform service; or a number of followers equal to or greater than 2 000 000, in aggregate, taking into account all video-sharing platform services on which the user carries out their activity. Finally, in the set of video-sharing platform services on which the user operates, the user must have published or shared a number of videos equal to or greater than 24 in the previous calendar year, regardless of their duration.

Currently, Article 94 of the Law imposes a series of obligations on users of particular relevance aimed at reducing the exposure of users of video-sharing platform services to damaging or harmful content, and in particular with respect to the obligations of protection of minors, they were assimilated to on-demand audiovisual media services.

Since the adoption of Law 13/2022 of 7 July 2022, new video-sharing services have appeared through a platform that can no longer be deemed comparable to on-demand services, since users of particular relevance offer live audiovisual content, much more similar to linear audiovisual media services. Therefore, in order to ensure adequate protection of minors from exposure to damaging or harmful content, it is deemed appropriate to amend the regime established in Article 94(1) and extend to users of particular relevance compliance with the obligations for the protection of minors from harmful content laid down in Article 99(2) and (3) depending on whether the type of service they offer can be considered linear or on-demand.

Likewise, the reform aims to increase legal certainty since the changes introduced seek to clarify, among other aspects, that users of particular relevance must qualify the content they generate and upload to video-sharing services through a platform.

Furthermore, Article 99(3) and (4) are amended in order to clarify that content harmful to minors in conditional-access and on-demand linear television audiovisual media services is subject to the strictest measures as laid down in Article 6a of the Audiovisual Media Services Directive. This would not only make it possible to control the audiovisual media services established in Spain, but would also make it possible to monitor whether foreign audiovisual media service providers specifically targeting the Spanish market incorporate such measures, providing the CNMC with tools to act and, if not, to block such services. This proposal would also allow the CNMC to act against third-country providers. In the same vein, Article 155(2) is also amended.

Finally, it has been deemed appropriate to adopt three measures to complement the previous ones, which strengthen the stimulus for compliance and the capacity of the audiovisual supervisory authority to act:

First, in order to improve the effectiveness of the reporting channels established by the audiovisual supervisory authority, Article 42 is amended so that audiovisual media service providers and video-sharing platform service providers include on their corporate websites an easily recognisable and accessible link to the website of that authority. Likewise, this obligation is extended in a similar way to users of particular relevance who use video-sharing platform services

Second, ancillary sanctions are defined as, on the one hand, the cessation of the provision of the service and the loss of the status of provider acquired through prior notification, for a maximum period of one year, when the very serious infringement provided for in Article 157(13) and (14) has been committed, and, on the other hand, the cessation of the provision of the service by the provider of the video exchange service through a platform, for a maximum period of one year, when the provider has committed the very serious infringement provided for in Article 157(8), consisting of failure to comply with its obligation to establish and operate age verification systems for users with respect to content that may harm the physical, mental or moral development of minors, which, in any case, prevent access by minors to the most harmful audiovisual content, such as gratuitous violence or pornography.

Third, Article 164(1) is amended to add, as provisional measures in penalty proceedings, in the case of very serious infringements referred to in Article 157(8) and (14), the measures provided for in Articles 8 and 11 of Law 34/2002 of 11 July 2002, in accordance with the provisions of those Articles, including the suspension of the offending service and the removal of data.

## **6) Measures in the field of education**

The current educational legislation promotes the use of new technologies in teaching, contributes to the improvement of students' digital skills, and assumes the need for the digitalisation in education to be accompanied by economic, social and gender inclusiveness in access to technologies, and safe and respectful use of digital media with constitutional values and rights.

The growing concern to avoid the risks of inappropriate use of information and communication technologies and the social debate surrounding these situations has attracted the attention of educational administrations. Thus, in 2024, the Ministry and the Autonomous Communities shared views on ways to address these issues, and the State School Council approved a proposal to regulate the use of mobile telephones in schools during school hours. It is a series of recommendations and conclusions, such as zero use of mobile telephones in both early childhood education and primary education, and that these devices remain off during school hours in secondary education, and can be used in the event that the teacher considers it necessary for a specific educational activity. In any case, exceptions are provided for health, safety or special needs reasons.

In its handling of the issues detected, this Law responds to the need to improve training in this matter for both students and teaching staff.

On the one hand, it provides for promoting actions to improve the digital competences of students, in order to ensure their full integration into digital society and learning to use digital technologies for learning, work and participation in society, as well as interaction with them, safely, sustainably, critically and responsibly. These provisions are in line with the pedagogical principles developed by Organic Law 2/2006 of 3 May 2006 on Education, one of which is precisely the cross-sectional development of digital competence, and are also linked to Article 5 of Organic Law 1/1996 of 15 January 1996 in relation to the right to information, and Article 33 of Organic Law 8/2021 of 4 June 2021 on training in the field of rights, security and digital responsibility.

On the other hand, the fundamental role of teachers in the process of acquiring digital competences by students and in detecting risks is recognised, and it is therefore deemed necessary that planning the continuous training of teachers incorporates training activities that provide teachers with strategies for handling, among other aspects, of security and elements related to digital citizenship, privacy and intellectual property, taking as a reference the areas and competences established in the Framework of Reference of the Digital Teaching Competence and the existing regulation in terms of comprehensive protection of children and adolescents against violence, protection of personal data and guarantee of digital rights.

Finally, in a more specific way regarding the problem mentioned above about the use of digital devices in educational centres, it is deemed appropriate that these centres, in accordance with the provisions approved for this purpose by the educational administrations, regulate as part of their rules of operation and coexistence the use of mobile and digital devices in classrooms, in extracurricular activities and in places and rest times that take place under their supervision.

## **7) Measures in the field of protecting victims of gender-based violence and sexual violence**

The proposals incorporated in this Regulation are intended to avoid any interpretative doubt concerning the full applicability to these victims of the regime provided for in Organic Law 1/2004 of 28 December 2004 on Comprehensive Protection Measures against Gender-based Violence and Organic Law 10/2022 of 6 September 2022, respectively.

These references are also in line with Article 14 of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, adopted in Lanzarote on 25 October 2007, and Article 26 of the Council of Europe Convention on preventing and combating violence against women and domestic violence, adopted in Istanbul on 11 May 2011, which respectively provide as follows:

*'Article 14. Assistance to victims.*

1. Each Party shall **take the necessary** legislative or other **measures to assist victims, in the short and long term, in their physical and psycho-social recovery.** Measures taken pursuant to this paragraph shall take due account of the child's views, needs and concerns.

2. Each Party shall take measures, under the conditions provided for by its internal law, to cooperate with non-governmental organisations, other relevant organisations or other elements of civil society engaged in assistance to victims.

3. When the parents or persons who have care of the child are involved in his or her sexual exploitation or sexual abuse, the intervention procedures taken in application of Article 11, paragraph 1, shall include:

- the possibility of removing the alleged perpetrator;
- the possibility of removing the victim from his or her family environment. The conditions and duration of such removal shall be determined in accordance with the best interests of the child.

4. Each Party shall take the necessary legislative or other measures to ensure that the persons who are close to the victim may benefit, where appropriate, from therapeutic assistance, notably emergency psychological care.'

#### *'Article 26. Protection and support for child witnesses*

1. Parties shall take the necessary legislative or other measures to ensure that in the provision of **protection and support services to victims, due account is taken of the rights and needs of child witnesses of all forms of violence** covered by the scope of this Convention.

2. Measures taken pursuant to this article shall include age-appropriate psychosocial counselling for child witnesses of all forms of violence covered by the scope of this Convention and shall give due regard to the best interests of the child.'

In turn, in this area of the Regulation it is deemed essential that minors who need it and, in particular, those who suffer an addiction without substance (social networks, pornography, etc.), as well as those who are victims of gender-based violence or sexual violence, have recognised access to information and guidance services and, where appropriate, immediate psychosocial care, free legal advice, reception and psychological and social assistance for victims of gender-based violence and sexual violence, including 24-hour centres and the Barnahus system.

Moreover, it is considered imperative to consider these services as essential, as the safety, health and well-being of the affected population, who are particularly vulnerable, depend on them.

## **8) Measures in the field of health**

The impact on the health of children and adolescents due to the inappropriate use of digital technologies and environments is increasingly worrying for families, educators and health professionals. Although there are numerous studies, their results are sometimes contradictory or inconclusive, despite evidence existing that spending excessive time in front of screens and exposure to inappropriate content can affect mental health, and increase the risk of anxiety, depression, addiction, self-esteem issues, sleep disorders, problems in language development and social skills, as well as the ability to concentrate and solve problems.

Evidence has also been found that adolescents with high exposure to digital media and environments might be more likely to develop symptoms of attention deficit hyperactivity disorder. In addition, children may be exposed to hate speech, violence and content that incites self-harm or suicide, or that has a negative impact on their emotional and psychological well-being.

Further, excessive time in front of screens contributes to a sedentary lifestyle and therefore to musculoskeletal disorders, childhood obesity and the issues derived therefrom, such as cardiovascular and endocrine diseases. In addition, exposure to screens can affect visual health with blurred vision, dry eyes and headaches.

It is therefore necessary to establish health measures for the prevention of health problems arising from the inappropriate use of digital technologies and environments and to promote healthy habits of use.

To this end, based on the principle of health in all policies, this Law promotes the health dimension being incorporated into the studies promoted by public administrations on the use of digital technologies and environments by minors, with the aim of increasing knowledge about the health effects derived from these uses and general scientific evidence.

The development by health administrations of guidelines for the prevention and promotion of health in the use of these technologies by the child and adolescent population is furthermore promoted. This Law also incorporates individual and community actions in child and adolescent health prevention and promotion programmes that are being undertaken from primary care, for the early detection of specific issues related to digital technologies and environments, as well as the establishment of coordinated programmes with other public administrations, for the integral approach, treatment and rehabilitation, with a biopsychosocial perspective.

Finally, specialised health care is promoted for minors with addictive behaviours without substance.

## **9) Judicial review of administrative measures to suspend the provision of an information society service or to withdraw data**

The protection of minors in digital environments may, as a last resort, require the suspension of an information society service offering unlimited access to content that seriously harms the physical, mental and moral development of

minors. In general, Article 8(1) of Law 34/2002 of 11 July 2002 on information society services and electronic commerce, allows the competent bodies for its protection to adopt the necessary measures to suspend the provision of an information society service or withdraw the data it offers when this is or could be detrimental to the legal interests it expresses, among which is, as set out in its paragraph (d), the protection of youth and children.

Since these restrictive measures may affect fundamental rights such as freedom of expression or the right to information, which enjoy constitutional protection, an order for the suspension of a service or the removal of content must have the corresponding judicial authorisation.

Nevertheless, the Judgment of the Supreme Court 1231/2022 of 3 October 2022 warned the legislature of the existence of a loophole in this regard in our procedural legislation, where a procedure is only provided for requesting judicial authorisation of the measure when it comes to the safeguarding of intellectual property rights and thus requested by the Second Section of the Commission on Intellectual Property, with the omission of the other cases provided for in Article 8(1) of Law 34/2002 of 11 July 2002, including the protection of youth and children, which empower the competent authorities by reason of the matter to adopt, with judicial authorisation, this type of measure. The same loophole is observed for the acts adopted for the limitation of access to an intermediary service provided for in Article 51(3)(b) of Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act).

In order to fill this legal loophole, the first and third final provisions of this Law respectively amend Organic Law 6/1985 of 1 July 1985 on the Judiciary and Law 29/1998 of 13 July 1998 regulating Contentious-Administrative Jurisdiction.

Specifically, Article 90 of Organic Law 6/1985 of 1 July 1985 and Article 9(2) of Law 29/1998 of 13 July 1988 are amended in order to confer on the Central Administrative Courts the power to license the enforcement of acts adopted by the competent administrative bodies in this area to suspend the provision of information society services or to remove content that infringes any of the legal rights listed in Article 8 of Law 34/2002 of 11 July 2002, not only intellectual property, as well as for the execution of those adopted for the suspension of access to an intermediary by a digital services coordinator on the basis of Article 51(3)(b) of the Digital Services Regulation.

Article 122 bis of Law 29/1998 of 13 July 1998 is also amended so that the judicial authorisation procedure for the execution of these measures is generalised for all protected legal assets, not only to safeguard intellectual property.

Within the scope of the supervisory powers conferred on the CNMC by Law 13/2022, it is also provided that the CNMC may also request judicial authorisation in case of non-compliance with the obligation to establish and operate age verification systems, in accordance with the provisions of Articles 93(4) and 164(1) of the aforementioned Law.

## 10) Amendment to the Criminal Code

The reduction of the risk associated with the use of digital technologies by minors also necessitates the reform of the Criminal Code.

Certain technological crimes aimed at the protection of minors have been covered by the latest reforms of the Criminal Code, mainly that produced by the sixth final provision of Organic Law 8/2021 of 4 June 2021 on comprehensive protection of children and adolescents from violence, where for the first time there is talk of digital violence. This reform has punished the distribution or public dissemination via the Internet, telephone or any other information or communication technology of content specifically intended to promote, encourage or incite suicide, self-harm or behaviour related to eating disorders or sexual aggression against minors. Also explicitly stated in different precepts of the Criminal Code is blocking or removing websites, web portals or applications containing or disseminating child pornography, encouraging hatred of groups, or extolling or justifying terrorism (Articles 189(8), 510(6) and 578(4) of the Criminal Code); and, in the same way, Organic Law 13/2015 of 5 October 2015 amending the Code of Criminal Procedure to reinforce procedural safeguards and regulate technological research measures, incorporated Articles 588a bis et seq. on the investigation of criminal offences committed through computer tools or any other information or communication technology or communication services.

However, there are other situations directly related to the safe access of minors to the Internet, which have to do not only with the modification or creation of figures specifically aimed at the guardianship of minors, but also with the problems arising from a lack of adaptation of the current Regulation to new technological advances.

It is therefore necessary to introduce certain changes in the Criminal Code that advance in their adaptation to the new forms of crime and that, without forgetting the limiting principles of *ius puniendi* of the State, allow effective protection against the new technological crimes to be exercised.

In line with this objective, it has been deemed appropriate to incorporate four types of modifications, which are articulated in the second final provision.

First, it has been deemed necessary to incorporate the penalty of removal from virtual environments, for better compliance with general and special prevention in the field of technological crimes. Specifically, Articles 33, 39, 40, 45, 48, 56, 70 and 83 of the Criminal Code are amended to incorporate the penalty of prohibition of access or communication through social networks, forums, communication platforms or any other place in the virtual space, when the crime is committed within it.

In this way, the content of the penalty is linked to the nature of the crime, and greater protection of victims is established, avoiding the repetition of punishable conduct.

The need for this is also evident from Supreme Court Ruling 547/2022 of 2 June 2022, which accepts that it is possible to impose the penalty of prohibiting the accused from going to the place of the crime, which is a virtual site. The high court confirms in this resolution what was already announced in doctrine: in



technological crimes, a distinction must be made between the means of commission and the place of commission. In this regard, it states that '*(M)ore recent experience teaches that social networks are not only the instrument for the commission of some crimes of a very different nature. They can also be the scenario in which the crime is committed, either throughout its undertaking or in the execution of only some of the elements of the type*'.

Faced with the substantial increase in virtual crime, social networks are a place where crimes are frequently committed or where the execution of acts initiated or partially executed is prolonged and the introduction of the penalty of *prohibition of access or communication through social networks, forums, communication platforms or any other place in the virtual space* gives an effective answer to rising cybercrime, by preventing the repetition of punishable behaviour in virtual spaces and improving the protection of victims by preventing their secondary victimisation. Its express incorporation into the Criminal Code makes its application more in line with the principles of legality and criminal classification, and its provision is also made in terms appropriate to the principle of proportionality, since its extension must be specified on a case-by-case basis by means of a duly reasoned judicial decision, which must allow the convicted person access to other networks or virtual spaces not directly related to the offence committed.

Second, it specifically addresses the criminal-law treatment of so-called *deepfakes*, that is to say technologically manipulated and extremely realistic images or voices. To this end, a new article 173 bis is incorporated which punishes those who, without the consent of the person concerned and with the intention of undermining their moral integrity, disseminate, exhibit or transfer their body image or voice audio generated, modified or recreated by means of automated systems, software, algorithms, artificial intelligence or any other technology, in such a way that it appears real, simulating situations of sexual or seriously degrading content.

In addition to the fact that deepfakes are generally disseminated in cyberspace, with the potential for permanence that this implies, as has been noted with respect to technological content crimes, there is an increase in harmfulness in relation to other forms of attack due to the enormous difficulty of distinguishing between false and real content due to the accuracy of new technologies and the greater degree of veracity we maintain with respect to audiovisual materials on written materials.

Technically, the dissemination of deepfakes of sexual content (so-called *pornographic deepfakes*) or especially humiliating deepfakes is chosen as a sanction for crimes against moral integrity because, by virtue of the principle of conjunction, the cases of damage to moral integrity and also attacks against honour would be covered, as it is necessary to take into account not only the affectation of self-esteem and hetero-esteem, but also the objectification and instrumentalisation of the passive subject, generally women and girls, children and young people who are treated as objects of consumption. We must also remember that the motivation to carry out these actions is not always identified with the *animus iniuriandi*, as the fact may be due to other reasons, such as the motive of profit, if such images are used in pornographic content pages or applications.

Third, given that the law's specific objective is to protect the interests of children and adolescents, and that there is great concern regarding minors' access to pornographic content that may affect their development in the affective-sexual sphere, the modification of Article 186 of the Penal Code is envisaged, with the aim of improving the protection of the legal right to sexual freedom of minors.

As currently drafted, Article 186 of the Criminal Code punishes those who 'by direct means' sell, display or disseminate pornographic material to minors and persons with disabilities in need of special protection. Such wording does not sufficiently protect these groups' legal principle of sexual intangibility against the indiscriminate availability of this type of material in media in which it will knowingly be accessible to them. Reforming this provision is consequently addressed, which has a particular impact on the area of minors. With the new wording incorporated, it is possible to punish cases in which pornographic material is made available to an indiscriminate group of users, among which there is a clear representation that there will be minors. To this end, a specific reinforced intent is also considered. For the conduct to be punishable, it is not enough for it to be committed deliberately in terms of the objective fact of the transmission or dissemination of the material, but there must be a clear awareness that among the receiving public there are minors or persons in need of special protection, and that the consumption by these subjects of this kind of material affects their process of sexual maturation.

And fourth, in line with the aforementioned objective, and taking into consideration the incidence of cases of masking one's own identity in this area, it has also been considered appropriate to establish aggravated offences in Articles 181, 182, 183, 185, 186, 188 and 189, which have to do with the use of false identities through technology, which facilitate the commission of crimes against minors.

## **1.2. Goals and objectives pursued**

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The main purpose of the Law is to provide safe digital environments for children and adolescents, with full protection of their rights and freedoms, while encouraging the proper and respectful use of new technologies.

More specifically, the objectives of the Law are:

- a) Ensure respect for and compliance with the rights of children and adolescents in the digital environment, especially the rights to privacy, honour and self-image, the secrecy of communications and the protection of personal data and access to age-appropriate content.
- b) Promote a balanced and responsible use of digital environments in order to ensure the proper development of the personality of minors and to preserve their dignity and fundamental rights.
- c) Ensure that digital products and services take into account, by design and by default, the best interests of the child and integrate a gender and intersectional perspective.
- d) Support the development of children's digital skills in the digital environment and the ability to assess online content and detect disinformation and abusive material.
- e) Promote a safer digital environment and stimulate research in this area, taking into account the need for data disaggregated by sex.
- f) Prevent sexual violence in the digital sphere, which includes the dissemination of acts of sexual violence through technological means, non-consensual pornography and sexual extortion, including advocacy of these behaviours.

## **1.3. Analysis of alternatives**

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As regards the possible alternative solutions, the so-called 'zero alternative', i.e. regulatory inactivity, has been assessed first, on the premise (as set out in the Methodological Guide for preparing the MAIN) that the 'do nothing' option is in any case an alternative that must be considered, since it allows reference to be made to the effects envisaged for the case of inactivity of the public authorities.

This option has been rejected due to the dysfunctions that are observed in the existing situation, previously described, and that motivate the Regulation.

Second, with regard to the distinction between regulatory and non-regulatory alternatives, it should be borne in mind that the Regulation is characterised by its comprehensive approach, which leads it to incorporate a varied list of measures of a heterogeneous nature: some of them have regulatory content in the strict sense, because they affect the legal situations of citizens and companies, which implies the need for their implementation in a law. Other measures, however, have lower regulatory content, and although they could have been adopted through non-regulatory instruments, their affirmation in the Law has been opted for, conceived mainly as mandates addressed to public administrations, whose affirmation in a law has been considered opportune in order to provide greater legal certainty the aims and objectives pursued.

#### **1.4. Adherence to the principles of sound regulation**

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In drafting this Organic Law, the principles of sound regulation referred to in Article 129 of Law 39/2015 of 1 October 2015 on the Common Administrative Procedure of Public Administrations have been observed, that is, the principles of necessity, effectiveness, proportionality, legal certainty, transparency and efficiency.

With regard to the principles of necessity and effectiveness, the foregoing points to the need for each of the measures adopted, which are deemed to contribute effectively to improving the protection of minors in the digital environment.

Although the measures for the protection of minors established by the Regulation have for the most part a positive content, reinforcing their rights in the digital field, it also entails the imposition of some new obligations, particularly for companies providing digital devices, services and content. In accordance with the principle of proportionality, care has been taken to ensure that the scope and content of these obligations are essential to ensure the protection of minors. This same principle of proportionality inspires the configuration of the reforms of the Criminal Code, as explained above.

The Law also meets the requirements of legal certainty because, on the one hand, it seeks to clearly define the measures it incorporates, and on the other, some of them are specifically aimed at improving the precision, clarity and completeness of our current legislation.

In accordance with the principle of transparency, the procedure for drawing up the Regulation has made it possible for potential recipients to participate. Likewise, the Regulation defines the objectives of the measures that it incorporates and both its expository part and the report of the normative impact analysis contain an explanation of the reasons that justify them. From this same perspective, it is lastly noteworthy that some of the measures it contains are specifically aimed at enhancing transparency in this area, and therefore imposed on public administrations is the duty to promote the consultation and participation of minors in the adoption of measures that can guarantee their rights in the digital field, as well as the use of clear language, so that public administrations and entities of the private sector use language accessible to minors in the communications addressed to them and in the information to which they have access.

Pursuant to the principle of efficiency, the Law does not incorporate new administrative burdens and seeks to rationalise public spending to the extent that its compliance will be met with the resources that are indispensable, and promotes coordination and collaboration between public administrations in the adoption and implementation of measures involving several of them, which is understood to result in a more effective and efficient application of public resources.

## **1.5. Annual Regulatory Plan**

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The proposal is included in the Annual Regulatory Plan of the General State Administration for 2024, adopted by Agreement of the Council of Ministers of 26 March 2024, under the name 'LAW FOR THE PROTECTION OF MINORS IN DIGITAL ENVIRONMENTS'.

## **2. CONTENT**

The Regulation is structured into an expository part and an operative part, consisting of six titles, containing 15 articles, one repealing provision and 10 final provisions.

### **2.1. PRELIMINARY TITLE (General provisions)**

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The preliminary title, 'General provisions', incorporates Articles 1 to 3, which define the subject matter of the Regulation, the rights of minors in this area, and the general purposes of the Law, respectively.

Since the purposes of the Law are those previously referred to in section 1.2, the content of Article 2, which defines the rights to be effectively protected against digital content that may impair development, is now outlined more particularly; to receive sufficient and necessary information in age-appropriate form and language on the use of technologies, as well as on the rights and the risks associated with the digital environment; access to information, freedom of expression, and to be heard; and equal and effective access to devices, connection and training for using digital tools.

### **2.2. Title I (Measures in the field of consumer protection)**

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Title I, 'Measures in the field of consumer protection', contains Articles 4 and 5 on 'Obligations of manufacturers of data terminal equipment with an internet connection' and 'Regulation of access and activation of random reward mechanics', respectively.

Article 4 imposes two new obligations on manufacturers of data terminal equipment that have the ability to connect to the Internet and that through that connection can access content harmful to minors, such as mobile phones, electronic tablets or computers for personal use, among others.

Firstly, there is an information obligation, according to which manufacturers of the products in question must provide information on their products. at least on the packaging and in the instruction book, user manual or user guide of the equipment, which warns, in accessible, inclusive and appropriate language for all ages, of the risks arising from access to content harmful to the health and physical, mental and moral development of minors. They shall also provide information on data protection measures and risks related to privacy and security; the recommended time of use of the products and services, appropriate to the user's age; parental control systems; the risks to cognitive and emotional development and to sleep quality from prolonged use of such services.

The ninth final provision of the Regulation refers to a subsequent regulatory development to determine the information to be provided, the format in which it must be provided, and a specification of the risks to be reported.

In addition, there is an obligation for manufacturers to ensure that terminal equipment includes parental control functionality in their operating system that allows its users to restrict or control minors' access to services, applications and content harmful to them, the activation of which must occur by default at the time of the initial configuration of the terminal equipment. The inclusion of the functionality, its activation, configuration and update will be free for the user.

Article 5 provides for a general prohibition of minors accessing or activating random reward mechanics, meaning any virtual functionality the activation of which is performed with legal tender or through a virtual object, such as a code, key, in-game currency, cryptocurrency or other element, acquired with money directly or indirectly; where the result of such activation is uncertain and consists of obtaining a virtual object that can be exchanged for money or other virtual objects.

In order to guarantee the effectiveness of this prohibition, it is established that the offer of random reward mechanics can only be made when there are user age-verification systems that prevent minors accessing or activating this content. Such systems shall ensure security, privacy and data protection, in particular in terms of data minimisation and purpose limitation.

### **2.3. Title II (Measures in the field of education)**

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Title II, 'Measures in the field of education)', contains Articles 6 and 7.

Article 6 on 'Training activities in nursery, primary, compulsory secondary and post-compulsory secondary schools' entrusts education administrations with improving the training of pupils and teachers in this field. To this end, it provides that they promote in the stated centres, regardless of their ownership, the undertaking of activities aimed at improving digital skills in order to ensure the full integration of students in digital society and learning to use digital technologies for learning, work and participation in society, as well as interaction with them, safely, healthily, sustainably, critically and responsibly.

With the same objective, it is provided that the educational administrations shall include, in their planning of the continuous training of teachers, training activities that provide teachers with strategies to impact, inter alia, on security (including digital well-being and cybersecurity-related skills) and on issues related to digital citizenship, privacy and intellectual property.

Article 7, entitled 'Regulation of the use of devices in nursery, primary, and compulsory secondary and post-compulsory secondary education establishments', entrusts schools with the regulation, in accordance with the provisions approved for this purpose by the educational administrations, of the use of mobile and digital devices in classrooms, in extracurricular activities and in places and rest periods that take place under their supervision.

## **2.4. Title III (Measures in the field of health)**

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Title III provides for measures in the field of protecting victims of gender-based violence and sexual violence.

Article 8 thus establishes that victims of gender-based violence or sexual violence facilitated by digital environments will have the status of victims for the purposes of Organic Law 1/2004 of 28 December 2004 on Comprehensive Protection Measures against Gender-based Violence, and Organic Law 10/2022 of 6 September 2022 on comprehensive guarantee of sexual freedom, respectively.

These equivalences are consistent with Article 14 of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, adopted in Lanzarote on 25 October 2007, and Article 26 of the Council of Europe Convention on preventing and combating violence against women and domestic violence, adopted in Istanbul on 11 May 2011.

Article 9 guarantees that minors have the right to access information and guidance services and, where appropriate, immediate psychosocial care and legal advice, by telephone and online, 24 hours a day, every day of the year.

Similarly, the right to access reception services and psychological and social assistance for victims of gender-based violence and sexual violence and 24-hour crisis centres is recognised.

Moreover, it is considered imperative to consider these services as essential, as the safety, health and well-being of the affected population, who are particularly vulnerable, depend on them.

## **2.5. Title IV (Measures in the field of health)**

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Title IV, 'Measures in the field of health', incorporates Articles 10 and 11 with measures aimed at the prevention of risks associated with the use of new technologies by children and adolescents and the specialised attention to addictive behaviours in this area.

Specifically, Article 10 'Prevention and promotion of health' provides that public administrations promoting studies on the use of information and communication technologies by minors will take into account the principle of 'health in all policies', providing information disaggregated by age, sex and other health determinants. It also provides that programmes for the prevention and promotion of children's and young people's health include measures to identify problematic uses of these technologies and the early detection of changes in behaviour or physical, mental and emotional health problems resulting from inappropriate use; the inclusion of non-substance addictions related to the use of digital media among actions to prevent addictive disorders; the training of health professionals attending to this population; and the coordination of all public administrations and actors involved.

Article 11 'Specialised care' entrusts health administrations with promoting the establishment of specific healthcare procedures for minors with addictive behaviours without substance in the specialised mental health care network, both in the Addictive Behaviour Care Units and in children's mental health centres.

## **2.6. Title V (Measures in the public sector)**

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Title V, 'Measures in the public sector', contains Articles 12 to 15, with a heterogeneous set of measures in this area;

Article 12, entitled 'Participation, information and awareness-raising', provides, inter alia, for public administrations to involve minors in adopting measures to guarantee their rights in the digital sphere; carrying out information actions on the rights of minors in the digital environment and the risks associated therewith; and conducting studies and research on the prevalence of harassment and violence in their different domains in digital environments.

Article 13, entitled 'Promotion of public-private partnerships, co-regulation and standardisation', provides that the Ministry for Digital Transformation and the Civil Service is to encourage providers of internet access services from a fixed location to adopt a code of conduct establishing the secure configuration mechanisms and parameters that they undertake to apply providing their services in publicly accessible places where public services are provided and where their internet access services are used (such as schools, institutes, libraries, civic centres, public offices, health centres, among others), in order to prevent access to inappropriate content by minors.

For its part, Article 14 guarantees the professional specialisation at all levels of the Administration of all personnel working in direct contact with minors.

To that end, the provision mandates the Government, in collaboration with the Autonomous Communities, to develop a framework programme for training and retraining these professional sectors that covers, in addition to the specific aspects related to each sector, gender stereotypes, trauma and its effects, and responsibility in reducing secondary victimisation.

Article 15, entitled 'National strategy on the protection of children and adolescents in the digital environment', provides for this new 3-year planning instrument to be drawn up by the Government in collaboration with the Autonomous Communities, the cities of Ceuta and Melilla, and local authorities.

## **2.7. Repealing provision.**

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The single repealing provision specifies the regulations to be repealed (see its description and analysis in section 3.5 of this report).



## 2.8. Final provisions

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The **first final provision** amends Article 90 of Organic Law 6/1985 of 1 July 1985 on the Judiciary, in order to confer on the Central Administrative Courts the power to authorise the execution of acts adopted by the competent administrative bodies to adopt the decision to interrupt the provision of information society services or to remove content that violates any of the legal goods listed in Article 8 of Law 34/2002, of 11 July 2002, as well as for the execution of those adopted for the suspension of access to an intermediary by a digital services coordinator based on Article 51(3)(b) of the Digital Services Regulation.

The Central Administrative Courts are also assigned the power to authorise the actions to be carried out by the competent audiovisual authority, in accordance with Articles 93(4) and 164(1) of General Law 13/2022 of 7 July 2022 on Audiovisual Communication, in the event of non-compliance by the service provider with the use of an age verification tool.

The **second final provision** contains the following amendments to Organic Law 10/1995 of 23 November 1995 on the Criminal Code:

- (i) The penalty of exclusion from virtual environments is incorporated: Articles 33, 39, 40, 45, 48, 56, 70 and 83 of the Criminal Code are amended to incorporate the penalty of prohibition of access or communication through social networks, forums, communication platforms or any other place in the virtual space, when the crime is committed within it.
- (ii) It addresses the criminal treatment of so-called deepfaking, that is to say technologically manipulated and extremely realistic images or voices: a new article 173 bis is incorporated which punishes those who, without the consent of the person concerned and with the intention of undermining their moral integrity, disseminate, exhibit or transfer their body image or voice audio generated, modified or recreated by means of automated systems, software, algorithms, artificial intelligence or any other technology, in such a way that it appears real, simulating situations of sexual or seriously degrading content.
- (iii) Article 186 is amended, with the aim of improving the protection of minors' legal principle of sexual freedom in cases of dissemination of pornographic material between minors. With the new wording incorporated, it is possible to punish cases in which pornographic material is made available to an indiscriminate group of users, among which there is a clear representation that there will be minors. For this, a reinforced specific intent is required, consisting of the clear awareness that among the receiving public there are minors or persons in need of special protection, and that the consumption by these subjects of this kind of material affects their process of sexual maturation.
- (iv) Different aggravated offences are introduced for the use of false identities through technology with the aim of facilitating the commission of crimes against minors: Articles 181, 182, 183, 185, 186, 188 and 189 are modified, so that, with regard to the offences provided for in each of them,

*when to facilitate the execution of the conduct the person responsible has used a fictitious or imaginary identity, or has attributed an age, sex or other personal conditions different from their own, the penalty will be imposed in the upper half of the sentence.*

The **third final provision** amends Law 29/1998 of 13 July 1998 regulating Contentious-Administrative Jurisdiction. This amendment is complementary to that provided for in Article 90 of Organic Law 6/1985 of 1 July 1985 on the Judiciary. Specifically, with the same content, Article 9(2) is amended in order to recognise in the contentious-administrative order the new allocation of the Central Administrative Courts to authorize the execution of the acts adopted by the competent administrative bodies to adopt the decision to suspend the provision of information society services or to remove content that violates any of the legal goods listed in Article 8 of Law 34/2002 of 11 July 2002, as well as for the execution of those adopted for the suspension of access to an intermediary by a digital services coordinator based on Article 51(3)(b) of the Digital Services Regulation; and the authorisation of the actions to be carried out by the competent audiovisual authority in accordance with Article 93(4) of Law 13/2022 of 7 July 2022.

In addition, Article 122 bis is amended so that the judicial authorisation procedure for the execution of these measures is generalized for all legal goods protected by Article 8 of Law 34/2002 of 11 July 2002, and other measures indicated, and not only to safeguard intellectual property, as is currently the case.

The **fourth final provision** modifies the consolidated text of the General Law for the Defence of Consumers and Users and other complementary laws, approved by Royal Legislative Decree 1/2007 of 16 November 2007.

The amendments have the following content:

- (i) Article 8 is amended to incorporate the protection of minors, as vulnerable consumers, in relation to digital goods or services.
- (ii) Emphasis is placed on the obligation of the business party to ensure that the consumer and user is of legal age before contracting goods or services, whether their own or those of third parties, internal or external, intended for persons of legal age, whether because of their sexual or violent content or because they pose a risk to physical health or personality development.  
To this end, Articles 62(1) and 98(2) on consumer and user contracts and distance contracts are amended.
- (iii) Articles 47 and 48 are amended in order to make non-compliance by the employer with this age verification obligation an offence in the field of consumer and user protection.

The **fifth final provision** amends Article 7 of Organic Law 3/2018 of 5 December 2018 on the protection of personal data and the guarantee of digital

rights, raising the minimum age for consent to the processing of personal data from 14 to 16 years.

In addition, the wording of Article 12(6) is amended accordingly, stating that the holders of parental authority may exercise on behalf of children under the age of 16 (currently 14) the rights of access, rectification, cancellation, opposition or any others that may correspond thereto.

The **sixth final provision** incorporates amendments to Law 13/2022 of 7 July 2022 on General Audiovisual Media, with the following content:

- (i) Article 3 is amended to add two new sections, with the aim of establishing obligations relating to the protection of minors and prohibitions relating to commercial communications for foreign providers who specifically direct their services to the Spanish market, but are not established either in the European Union or in the European Economic Area.
- (ii) Article 42 is amended so that audiovisual media service providers and video-sharing platform service providers include on their corporate websites an easily recognisable and accessible link to the website of the audiovisual supervisory authority. Likewise, this obligation is extended in a similar way to users of particular relevance who use video-sharing platform services
- (iii) Paragraphs (e) and (f) of Article 89(1), on measures for the protection of users and minors from certain audiovisual content, are amended in order to strengthen the measures currently in place to prevent minors from being exposed to content inappropriate to their age.

Specifically, the new wording of paragraph (e) provides that age verification systems shall ensure security, privacy and data protection, in particular in terms of data minimisation and purpose limitation.

Paragraph (f) specifies the imposition on the provider of parental control systems controlled by the end user with respect to content that may impair the physical, mental or moral development of minors.

- (iv) Article 93(4), which provides that failure to comply with the obligations to establish age verification systems constitutes a very serious infringement, is amended. In this regard, a provision is included to establish that the National Commission on Markets and Competition may adopt the measures provided for in Articles 8 and 11 of Law 34/2002 of 11 July 2002.
- (v) Article 94(1), concerning the obligations of users of particular relevance using video-sharing platform services, is amended to extend to this group the obligations for the protection of minors from harmful content provided for in Article 99(2) and (3) depending on whether the type of service they offer can be considered linear or on-demand.

- (vi) Article 99(3) and (4) are amended, in order to add the obligation for providers of television audiovisual media services, both linear conditional access and on demand, to establish and operate age-verification systems for users with regard to content harmful to minors.
- (vii) Article 155(2) is amended to include, in the list of providers for which the National Commission on Markets and Competition has supervisory and control powers and sanctioning powers, television audiovisual media service providers and video-sharing platform service providers established in a country that is not a member of the European Union or the European Economic Area that direct their services specifically to the Spanish market.
- (viii) Article 160(1)(c) is amended in order to empower the National Commission on Markets and Competition to impose as ancillary sanctions, on the one hand, the cessation of the provision of the service and the loss of the status of provider acquired through prior notification, for a maximum period of one year, when the very serious infringement provided for in Article 157(13) and (14) has been committed, and, on the other hand, the cessation of the provision of the service by the provider of the video exchange service through a platform, for a maximum period of one year, when the provider has committed the very serious infringement provided for in Article 157(8), consisting of failure to comply with its obligation to establish and operate age verification systems for users with respect to content that may harm the physical, mental or moral development of minors, which, in any case, prevent access by minors to the most harmful audiovisual content, such as gratuitous violence or pornography.
- (ix) Article 164(1) is amended to add, as provisional measures in penalty proceedings, in the case of very serious infringements referred to in Article 157(8) and (14), the measures provided for in Articles 8 and 11 of Law 34/2002 of 11 July 2002, in accordance with the provisions of those Articles, including the suspension of the offending service and the removal of data.

The **seventh final provision** sets out the titles of competence that empower the State to enact the Regulation (see its description and analysis in section 4 of this Report).

The **eighth final provision** specifies the precepts that have the nature of Organic Law and Ordinary Regulation (see its description and analysis in section 3.1 of this Report).

The **ninth final provision** contains a general regulatory development empowerment in favour of the Government.

It also incorporates a regulatory development mandate, within six months of the entry into force of the obligations laid down in Article 4, specifying the information to be provided by manufacturers of data terminal equipment, the

format in which it is to be provided and a specification of the risks to be reported on.

The **tenth final provision** establishes the entry into force of the law (see its content and justification in section 3.4 of this report).

### 3. LEGAL ANALYSIS

#### 3.1. Regulatory status

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When modifying the legal framework in force in the matter, it is appropriate that the Regulation has the rank of law.

The Law implies the modification of three Regulations with the rank of Organic Law: Organic Law 6/1985 of 1 July 1985 on the Judiciary; Organic Law 10/1995 of 23 November 1995 on the Criminal Code; and Organic Law 3/2018 of 5 December 2018 on protecting personal data and guaranteeing digital rights.

These amendments, contained in the first, second and fifth final provisions respectively, affect precepts of the aforementioned Organic Laws that are also organic in nature, and the amendment of the precepts affects organic matter.

That is why the articulation of these modifications must be made by means of a Regulation with the rank of Organic Law.

The rest of the precepts have the nature of Ordinary Law.

#### 3.2. Links with International and European Union Law

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The Regulation is consistent with the regulations of international and European Union Law.

At an **international level**, the Convention on the Rights of the Child provides that in all decisions and actions taken in both the public and private spheres, the best interests of the child will be considered paramount. In addition, in the event of another legitimate interest with the best interests of the child arising, and if not all the competing legitimate interests can be respected, the latter will prevail.

Specifically, Article 17 of the Convention on the Rights of the Child expressly recognises the important role played by communication media and the need, therefore, for the social, spiritual and moral well-being and physical and mental health of minors to be guaranteed in the access to and use of these media. It is therefore the duty of States to take promotional measures in this regard and to protect minors against information and material detrimental to their well-being.

Reference is also made to the Committee on the Rights of the Child's General Comment No. 25 (2021) on children's rights in relation to the digital environment, which sets out a number of principles and rights in the digital environment and mandates States parties to address the new risks faced by children in the digital context and to update existing legislation in line with the rights provided for in the Convention.

At a **European level**, various Commission communications have promoted measures and proposals for the regulation of digital environments with regard to minors.

The measures presented are consistent with the European Union Strategy on the Rights of the Child, welcoming the indications of the European Commission on the security of digital environments and the actions that should be carried out by technology and communication companies in this purpose. In particular, the European Commission refers to ensuring that children's rights, including privacy, protection of personal data and access to age-appropriate content, are included in digital products and services by design and by default, including those for children with disabilities; provide children and parents with adequate tools for monitoring their screen time and behaviour, and protecting them from the effects of overuse and addiction to online products; enhance measures to help react to harmful content and inappropriate commercial communications, for example through easy-to-use notification and blocking channels or effective age-checking tools; and continue its efforts to detect, report and remove illegal content online, such as child sexual abuse, from its platforms and services, to the extent that such practices are legal.

In particular, on the one hand, Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) recognises that Member States shall ensure that video-sharing platform providers under their jurisdiction take appropriate measures to protect minors. In addition, a number of instruments containing preventive obligations in this area are currently under negotiation, such as the proposal for a Regulation of the European Parliament and of the Council laying down rules to prevent and combat child sexual abuse.

On the other hand, the amendment of Articles 9(2) and 122 bis (2) of Law 29/1998 of 13 July 1998 regarding Contentious-Administrative Jurisdiction, as well as Article 90(5) of Organic Law 6/1985 of 1 July 1985 on the Judiciary, are necessary to ensure the effectiveness of the power to implement the acts adopted by the competent body to suspend the provision of information society services or to remove content in application of Law 34/2002 of 11 July 2002 (which transposes the Directive on electronic commerce into Spanish Law), as well as the limitation on the access of recipients to the intermediary service provided for in Article 51(3)(b) of Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act).

### **3.3. Links with the rest of the regulations of the Spanish legal system**

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With regard to its insertion into the Spanish legal system, it should first be noted that the Regulation is linked to some precepts of the Spanish Constitution.

More generally, Article 9(2) of the Spanish Constitution provides that: *It is the responsibility of the public authorities to promote the conditions for the real and effective freedom and equality of the individual and the groups into which he or*

*she is integrated; remove obstacles that prevent or hinder its fullness and facilitate the participation of all citizens in political, economic, cultural and social life.*

And in a more specific sense, with the mandate it imposes on the public authorities for the protection of children (Article 39) and to promote the conditions for the free and effective participation of young people in political, social, economic and cultural development (Article 48), in addition to the protection of youth and children as a limit to the freedoms of expression and communication (Article 20(4)) and the fundamental right to the protection of personal data that corresponds to minors, as to all natural persons (Article 18(4)).

Second, the insertion of this Regulation in the Spanish legal system requires assessing its link with the regulations with the rank of Organic or Ordinary Law currently existing.

Taking into account, on the one hand, the unitary meaning that the Regulation inspires in its purpose of protecting minors in digital environments and, on the other hand, the transversal nature of the measures contained in the Regulation, the assessment of the insertion of the Regulation in this plane can be made from two perspectives, so as to analyse, on the one hand, its integration with the regulations that currently define the general framework for the protection of minors in this type of environment; and on the other hand, the unique link between each of the measures it incorporates and the sectoral legislation it affects.

This second aspect has already been assessed in previous sections of this report, mainly as part of the explanations of the reasons (section 1.1.B) and the contents (section 2) of the measures that are adopted, which expressly refer to their connection with the particular legislation to which they are linked (education, health) or which they modify (general legislation for the defence of consumers' and users' rights, criminal law, jurisdictional order, audiovisual communication). For this reason, we refer here to the previous discussion thereof, focusing now on the first of the perspectives mentioned above.

The general framework for the protection of minors in digital environments, which this Law complements, is basically defined by three regulations that, without having as their sole purpose the protection of minors in this type of environment, do contain requirements that directly affect this matter: Organic Law 1/1996 of 15 January 1996 on the Legal Protection of Minors, partially amending the Civil Code and the Law on Civil Procedure (hereinafter LOPJM); Organic Law 8/2021 of 4 June 2021 on the comprehensive protection of children and adolescents from violence (hereinafter LOPIVI); and Organic Law 3/2018, of 5 December, on protection of personal data and guarantee of digital rights (hereinafter LOPDGDD).

Article 2(1) of Organic Law 1/1996 of 15 January 1996 on the Legal Protection of Minors, partially amending the Civil Code and the Law on Civil Procedure (LOPJM), provides that: *Every child has the right to have his or her best interests valued and considered as paramount in all actions and decisions concerning him or her, both in the public and private spheres. In the application*

*of this Law and other regulations that affect it, as well as in the measures concerning minors adopted by institutions, public or private, the Courts, or legislative bodies, the best interests of the same shall prevail over any other legitimate interest that may occur.*

Article 2(2) of the LOPJM establishes criteria for the interpretation and application of the best interests of the child, determining that, among other circumstances, the development of the child and the satisfaction of his or her physical, educational, emotional and affective needs, the consideration of his or her opinions and the right to participate progressively will be taken into account. Article 4 refers to the right to honour, personal and family privacy and self-image of minors; and Article 5, in developing their right to information, obliges to provide *special attention to digital and media literacy, adapted to each stage of development, enabling children to act safely and responsibly online and, in particular, to identify situations of risk arising from the use of new information and communication technologies, as well as tools and strategies to address and protect themselves from such risks.*

The requirements of this Organic Law are aligned with the provisions just mentioned, since in addition to promoting the free exercise of fundamental rights such as those expressed, it develops protection mechanisms that may interfere in their exercise affecting their personal development.

Organic Law 3/2018 of 5 December 2018 on the Protection of Personal Data and Guarantee of Digital Rights (LOPDGDD) provides for the need to grant real protection to minors on the internet, to which end it obliges parents, tutors, guardians, curators or legal representatives to ensure that minors make balanced and responsible use of digital devices and information society services, in order to guarantee the appropriate development of their personality and preserve their dignity and fundamental rights (Article 84); obliges educational establishments and any natural or legal persons carrying out activities involving minors to ensure the protection of the best interests of the child and his or her fundamental rights, and in particular the right to the protection of his or her personal data on the internet (Article 92); and provides for the adoption of an Action Plan to promote the training, dissemination and awareness-raising actions necessary to ensure that minors make balanced and responsible use of digital devices and equivalent social networks and information society services on the Internet in order to ensure their proper development of personality and to preserve their dignity and fundamental rights (Article 97(2)).

These provisions are complemented in the aforementioned Organic Law with the recognition of the right to digital education (Article 83(1)), which obliges the education system to guarantee the full integration of students in the digital society, in accordance with the provisions of Organic Law 3/2020 of 29 December 2020 amending Organic Law 2/2006 of 3 May 2006 on Education, which includes digital competence as a pedagogical principle.

This Regulation is also consistent with the above-mentioned provisions, the content of which it reinforces, insofar as it reinforces the need for a balanced



and responsible use of digital devices and information society services and the protection of minors' rights in this area.

Organic Law 8/2021 of 4 June 2021 on the comprehensive protection of children and adolescents from violence (LOPVI) establishes a general framework for the protection of minors from any form of violence, which, by its comprehensive meaning, also includes several references to technological means and environments, including digital ones.

That is why Article 1(2) thereof, in defining the concept of violence for the purposes of the Law, does so in an all-encompassing manner, with express reference, *inter alia*, to violence '*carried out through information and communication technologies, especially digital violence*'.

In the same vein, Article 3(a) states that one of the purposes of the Law is to 'Ensure the implementation of awareness-raising measures for the rejection and elimination of all types of violence against children and adolescents, providing public authorities, children and adolescents and families with effective instruments *in all areas, of social networks and the Internet*, especially family, education, health, social services, the judiciary, *of new technologies*, sport and leisure, the administration of justice and law enforcement.'

Article 5(c), referring to the specialised training of professionals who have regular contact with minors, includes at least, among other references, 'Specific training in safety and safe and responsible use of the Internet, including issues related to intensive use and generation of behavioural disorders'. With regard to training, Article 33 on 'Digital rights, security and responsibility training' entrusts public administrations with ensuring that students are fully integrated into digital society and that they learn how to use digital media in a manner that is safe and respectful of human dignity, constitutional values, fundamental rights and, in particular, with respect for and guarantee of personal and family privacy and the protection of personal data.

In a complementary way, LOPVI promotes awareness and implementation of safety and protection mechanisms against possible risks that may arise from the use of digital devices and access to illegal or inappropriate content for children and adolescents. In this regard, Article 8(2) expressly refers to collaboration between public administrations and information and communication technology companies in the detection and removal from networks of illegal content that involves a form of violence against children and adolescents; and Article 19 establishes a general duty to report to the competent administrative, police or judicial authority illegal content on the internet that could constitute a form of violence against any child or adolescent, or constitute a crime.

It also dedicates Chapter VIII of Title III (Articles 45 and 46) to new technologies, with specific provisions on the safe and responsible use of the internet and the diagnosis and control of content.

Specifically, these articles contain two types of measures, one aimed at preventing access to inappropriate content and encouraging the responsible use of digital environments, and the other at developing tools that prevent minors from accessing content which is illegal, expressly prohibited for minors,

or inappropriate, while encouraging the development of positive and safe digital environments.

This Organic Law deepens the development and implementation of these provisions of the LOPIVI. Thus, for example, under Article 45 of the LOPIVI, it is for public administrations to develop information, education and awareness campaigns for children and adolescents and their families on the safe use of the Internet and information and communication technologies, as well as the risks that may arise from the use of these technologies. Following this provision, this Law encourages the development of training activities in digital citizenship and media literacy, and the dissemination of information to minors and their families on the use of devices and new technologies within the framework of a National Strategy.

And, in line with the provisions of Article 46 of the LOPIVI, this Law gives effect in its definition to the obligations to establish mechanisms of parental control and age verification systems, as well as labelling on safe and responsible use of digital devices and on the possible related risks.

### **3.4. Entry into force**

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As a general rule, entry into force is fixed at 20 days after the publication of the Regulation in the Official State Gazette, in accordance with the general rule laid down in Article 2(1) of the Civil Code.

By way of exception, the obligations imposed on manufacturers of data terminal equipment in Article 4 will enter into force 1 year after the publication of this Organic Law. Weighing the interests involved, it is deemed that the *vacatio legis* that is available is proportionate and takes into account the needs of the companies concerned to adapt to this new obligation.

### **3.5. Repeal of regulations**

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The Regulation contains a generic repealing clause, according to which any Regulations of equal or lower rank that oppose the provisions of this Organic Law are repealed.

Likewise, Article 13(1) of the Implementing Regulation for Organic Law 15/1999 of 13 December 1999 on the protection of personal data, approved by Royal Decree 1720/2007 of 21 December 2007, which establishes the minimum age for consent to data processing at 14 years, is expressly repealed, as content that would be contradictory to the new wording of Article 7 of Organic Law 3/2018 of 5 December 2018, which raises this minimum age to 16 years.

## **4. THE CONFORMITY OF THE REGULATION WITH THE CONSTITUTIONAL ORDER OF DISTRIBUTION OF COMPETENCES.**

This Organic Law is issued on a basic basis under the provisions of Article 149(1)(1) and (13), which confers on the State exclusive competence in the regulation of the basic conditions that guarantee the equality of all Spaniards in

the exercise of rights and in the fulfilment of constitutional duties; and the basis and coordination of the general planning of economic activity.

More specifically:

The contents of Title II constitute basic regulations for enacting Article 27 of the Constitution, in accordance with the provisions of Article 149(1)(30) of the Spanish Constitution.

Title IV is provided by virtue of the competence of the State in matters of the basis and general coordination of health, provided for in Article 149(1)(16) of the Spanish Constitution.

The first, second and third final provisions are issued under the competencies in the field of criminal and procedural legislation, which Article 149(1)(6) of the Spanish Constitution attributes to the State.

The fourth final provision is also issued under the competence in matters of civil law, provided for in Article 149(1)(8) of the Constitution.

In the sixth final provision amending Law 13/2022 of 7 July 2022 on General Audiovisual Communication, the amendments to Articles 42 and 160 thereof are issued in accordance with Article 149(1)(27) of the Spanish Constitution, which confers on the State exclusive competence in relation to the basic regulations of the press, radio and television and, in general, of all social media, without prejudice to the powers of development and enforcement that correspond to the Autonomous Communities. The rest of its contents are enacted under the exclusive competence of the State in matters of telecommunications attributed to it by Article 149(1)(21) of the Spanish Constitution.

## 5. DESCRIPTION OF THE PROCEDURE

By means of the Agreement of the Council of Ministers of 4 June 2024, the **urgent administrative processing** of the Preliminary Draft Bill has been authorised, in accordance with the provisions of Article 27(1)(b) of Law 50/1997 of 27 November 1997 on the Government.

The Agreement is based on the need to adopt in the shortest possible time the measures proposed by the Regulation, which aim to guarantee and safeguard the development and rights of minors in their development in digital environments, this in the face of the risks and damages associated with the inappropriate use of digital media and devices, among which reference is expressly made to health risks (including health, physical, psychological, emotional problems, addictions, difficulties of social interaction or problems in cognitive development) and others related to the use of data and privacy of minors, the progressive desensitization to acts of violence, cyberbullying and the increase in cases of exploitation and abuse of minors.

The urgent procedure means that **public consultation** provided for in Article 26(2) of Law 50/1997 of 27 November 1997 on the Government (this is in accordance with Article 27(2)(b) of the same law) will not be necessary.

Subsequent processing is planned as follows:

- Report of the **Office of Coordination and Regulatory Quality** of the Ministry of the Presidency, Justice and Relations with the Courts (Article 26(9) of Law 50/1997, of 27 November 1997, on the Government). Report issued on 3 September 2024.
- Procedure of **hearing and public information** (Article 26(6) of Law 50/1997 of 27 November 1997 on the Government), carried out through the Ministry's web portal ('Citizen Participation'), from 11 June 2024 to 28 June 2024.
- Consultation with the **Autonomous Communities and Cities of Ceuta and Melilla**, through the Sectoral Conference on Children and Adolescents **and local authorities**, through the Spanish Federation of Municipalities and Provinces (FEMP).

The FEMP replied on 23 July 2024, without providing comments.

- **Reports of the Technical General Secretariats of the following Ministries as Proposers of the Regulation** (Article 26(5)(4) of Law 50/1997 of 27 November 1997 on the Government):
  - Ministry of the Presidency, Justice and Relations with the Courts.
  - Ministry of Youth and Children.
  - Ministry for Digital Transformation and the Civil Service.
  - Ministry of Social Rights, Consumer Affairs and 2030 Agenda.
- **Report of the Ministry of Territorial Policy and Democratic Memory** (Article 26(5)(6) of Law 50/1997 of 27 November 1997 on the Government). Report of 22 July 2024.
- **Reports from other Ministries** (Article 26(5)(1) of Law 50/1997 of 27 November 1997 on the Government):
  - Ministry of Education, Vocational Training and Sports. Report of 10 July 2024.
  - Ministry of Health. Report of 16 July 2024.
  - Ministry of Science, Innovation and Universities. Report of 15 July 2024.
  - Ministry of Finance. Report of 26 July 2024.
  - Ministry of the Interior. Report of 12 July 2024.
  - Ministry of Industry and Tourism. Report of 18 July 2024.
- **Other reports:**
  - Spanish Data Protection Agency. Report of 19 July 2024.
  - National Commission for Markets and Competition. Report of 22 July 2024.
  - General Council of the Judiciary.
  - Fiscal Council.

- Economic and Social Council: Opinion of 24 July 2024.
  - Childhood Observatory.
  - State Council for the Participation of Children and Adolescents.
  - Commission for Civil Dialogue with the Third Sector Platform: Report of 29 August 2024.
  - National Council on Disability. Report of 15 July 2024.
  - Interterritorial Council of the National Health System: Report of 31 July 2024.
- **Notification of technical regulations:** the notification procedure for technical regulations established by Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services.

## 6. IMPACT ANALYSIS

### 6.1. Economic impact

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#### A) Overall economic impact

##### a) Overall assessment

In general, it is deemed that it will not have a significant economic impact on the general economy; however, it will have a significant **direct impact on Spain's digital sector**, since the regulation regulates aspects that involve the organization or control of economic activities, although no significant and direct effects are expected on aspects such as prices, productivity and employment.

The Regulation lays down obligations for economic operators in the digital sector (implementation of a product labelling system, age control system) which may have a potential indirect impact on the **productivity** and **competitiveness** of companies in the sector insofar as it imposes compliance with new quality standards for certain products and services.

However, it should be borne in mind that the technology sector is one of the fastest growing sectors in Spain during the last decade and follows the guidelines set by the Digital Spain Plan 2026, aligned in turn with the Policy Program for the 2030 Digital Decade of the European Union that pursues a sustainable and human-centred vision of the digital society.

The digital technology sector is framed in what is known as the 'digital economy', a concept that also incorporates activity of other sectors of the business fabric that has its origin or a very direct relationship with digital technologies. First, it should be noted that both the sector as a whole and its

subsectors demonstrate high growth rates as reflected in its main macro-magnitudes listed below:

- The Spanish digital economy, understood in its broadest concept as all economic activity based on digital goods and services, whether new business models or business models transformed by digitalisation, reached 22.6 % of GDP in 2022.
- In relation to its volume, its recent evolution shows an increase in the number of companies. Thus, according to the AMETIC Digital Economy Barometer published in 2023, the number of companies in the digital technology sector added one more year of growth, reaching a total figure of 38 209 companies in 2022, representing an increase of 1 668 companies compared to the previous year (+ 4.6 %), and a new ceiling in the value of this sectoral indicator.

In relation to the general economy, the share of the number of companies in the digital technology sector in the total number of companies in the national economy increased from 2.7 % in 2021 to 2.9 % in 2022, thus increasing its share by + 4.8 % in this period.

These figures are the result of positive developments, although uneven in all the technological areas that make up the digital technologies sector, differences that are also manifested in their very different shares in terms of the total set of companies. As in the previous year, information technologies are positioned at the forefront of growth, registering the incorporation of 1 085 companies compared to the previous year (+ 6.0%), placing their total figure for 2022 at 19 068 companies, which is equivalent to half (49.9 %) of the total digital technology sector. It is followed in growth rate and number of companies by the field of digital content that grew at a rate of + 4.8 % in 2022, with 496 new companies, putting their total figure at 10 898 companies, this is 28.5 % of the total number of companies in the Sector.

In terms of growth rate, we must mention the area of communications that in 2022 saw its company base increase by 46, + 3.1 compared to a year earlier, with a total of 1 548 at the end of 2022, which represents 4.1 % of the total number of companies in the sector. With the lowest growth of all areas, but still in positive, telecommunications and electronics incorporated 41 new companies in 2022 to position its total base at 6 695, which meant seeing it increased by + 0.6 % with respect to the previous year. The share of this telecommunications and electronics field was 17.5 % of the total of digital technology companies.

- In relation to their turnover, according to the National Institute of Statistics and its Indicators of the Information and Communications Technologies (ICT) Sector in 2022, the ICT sector invoiced EUR 122 066 million, which represents a growth of + 6 % compared to the previous year and the impact on the GDP of the sector also grew to reach 3.84 % in 2022. In the breakdown by technological field, information technology

accounts for almost half (48.9 %) of the total turnover of the sector; with about a quarter (24.4 %) of the total turnover of the digital technology sector being the field of communications. The breakdown is completed by digital content, with 13.9 %, followed very closely by telecommunications and electronics, which in 2022 represented 12.9 % of the total turnover of the digital technology sector. For another year, IT is the field with the highest year-on-year growth. Its turnover in 2022 reached EUR 59 633 million. Its growth rate was + 8.3 % as a result of increases of the same order in the categories of IT services. Due to its large share of the total, its performance is indicative of the growth trend in the digital technology sector.

- Foreign trade in goods and services in the Spanish ICT sector registered significant growth in its activity figures in 2022. The level of exports of ICT goods and services from Spain to abroad grew in 2022 at a remarkable pace of + 23.8 % to reach the record figure of EUR 21 089 million. The small difference in the growth rate in favour of ICT exports compared to those of the total of sectors allowed us to see how its share went in total from 4.3 % in 2021 to 4.4 % in 2022. Imports of ICT goods and services reached a value of EUR 33 347 million in 2022, with a notable increase of + 25.2 %, even greater than that registered by exports.
- Likewise, the digital technology sector is very intensive in R&D&I, and also has effects on other sectors that carry out their own R&D&I. Of the companies in the Spanish private sector that carried out innovation in 2021, 36.7 % of them belonged to the ICT sector, having increased by around 2 % compared to the previous year.
- Regarding employment, data from the AMETIC Digital Economy Barometer show that the direct employment of companies in the digital technology sector showed a growth rate of + 8.2 % in 2022, reaching 636 326 employees. In relation to the accumulated growth, it can be seen that in 5 years its total number of employees increased by a third (+ 33.1 %), which means the incorporation into the sector of 158 285 people in this period. The share of the number of employees in the digital technology sector in the economy was 3.9 % in 2022, + 6.7 % higher than the previous year, according to the Labour Force Survey prepared by the INE.

Employment growth in 2022 has focused particularly on the field of information technologies that lead growth with a double-digit rate of + 10.3 % (+ 46 773 people) compared to the previous year, exceeding by itself and for the first time the threshold of half a million, to bring its total figure to 502 577 employees, this is a remarkable 79 % of total employment in the digital technology sector in 2022.

With a share of 9.2 % of the total sectoral employment, there is the field of communications that in 2022 saw its employment figure increase by 1

119 people to 58 575 people, 1.9 % more than the previous year. Subsequently, representing 7 % of total employment in the sector is the field of digital content that employed 44 340 people at the end of 2022. Its year-on-year evolution figure was +1.5 %, which translated into a net increase of 662 people. The sector analysis is completed in the field of telecommunications and electronics, with a relative share of 4.8 %, which translates into 30 834 people employed at the end of 2022. In this case, the evolution throughout the year was - 0.8%, which meant the reduction of its total figure by 243 people compared to a year earlier.

Taking into account the above macro-magnitudes, and that there is an evolution in the national and European sector towards the inclusion of the measures included in the draft as collected throughout the draft, it is deemed that the effects in this area will be minor.

In any case, the measures introduced in the draft comply with the **principle of necessity**, taking into account the proven impact of technologies on children and adolescents.

In the design of the measures, attention has been paid to the **proportionality criterion** and the least restrictive measures possible have been designed to meet the general interest objective of protecting children and taking into account the best interests of the child in the design of the regulation that affects this group.

In general, taking into account the cost-benefit analysis and the proportionality criteria, it is deemed that the expected direct benefits on the protection of children and adolescents justify the approval of the measures included in the draft.

b) Economic impact of banning minors from accessing activating random reward mechanics

It is not possible to find disaggregated economic data on the absolute amount or percentage that random reward mechanics represent in the income of the different actors that are dedicated to their commercialisation (singularly, the video game industry).

However, a double impact of the Regulation on this sector can be assessed:

(1) Impact on demand for random reward mechanics.

Certain consequences related to the demand for these mechanics are foreseen.

First of all, the measures incorporated in this draft will reduce gambling activity insofar as, with regard to minors, an absolute prohibition on access to these products is established.



Precisely for this reason, and with a longitudinal approach in the medium term, it is expected that this Regulation will lead to a decrease in demand for these products.

- (2) Impact on the operational costs of companies operating or marketing random reward mechanics.

This Law implies the introduction of costs for entities that market this class of digital products, to the extent that a verification mechanism of the age of its users will have to be implemented. In any event, it is deemed that such costs are proportionate to the public interest objective pursued, for the reasons set out in this MAIN.

## **B) Effects on competition**

The Regulation is not expected to have an effect on competition, since the measures it contains are not considered to limit the number or variety of operators on the market, they do not limit the ability of operators to compete, and they do not reduce the incentives that operators have to compete.

In this respect, the Regulation will not significantly increase market entry or exit costs for operators; it does not grant exclusive rights to an operator; it does not establish a differentiated system of licences, permits or authorisations to operate in the market; nor does it give existing market players differential treatment with respect to new entrants, or create uncertainty for new entrants.

## **C) Effects on market unity**

The Regulation will have no impact on market unity, since economic operators will have the same rights throughout the national territory without maintaining differentiated treatment on the basis of place of residence or establishment.

## **D) Effects on innovation**

It is deemed that the Regulation may have an indirect positive effect on innovation insofar as it is foreseeable that new products and services adapted to new child protection standards in digital devices may be developed.

This positive effect is expected both in the technology sector, as well as in other sectors and in the economy as a whole. Thus, it is worth noting that if we compare the total turnover of the digital technology sector shown in AMETIC's Digital Economy Barometer (122 066 million) with what this proportion of 22.6 % of GDP represents in euros (299 926 million), it could be said that every 1 euro invested in the digital technology sector had an impact of 2.46 euros on the economy as a whole in 2022.

## **E) Effects on consumers**

Taking into account the current situation of underage consumers, according to the Study of the Sociodemographic Profile of Internet Users data analysis of the INE, the Regulation will have a positive effect on this group of consumers insofar as the protection of minors as vulnerable consumers is extended, it is intended to prevent them from being exposed to content harmful to their cognitive development and prevent inappropriate use of digital devices.

## **F) Effects on the European economy and other economies**

In this field, a neutral impact is expected given that the planned measures are aligned with the general lines promoted by the European Union in this area and measures that are being taken in surrounding countries, therefore, there is an approximation of legislation and convergence of regulation of the sector.

## **G) Impacts on SMEs**

Taking into account the above, it is deemed that the Regulation will not have significant direct effects on companies in the technology sector taking into account the macro-magnitudes and the evolution of innovation in the national and European sector towards the measures included in the regulatory draft.

For its part, the Regulation may have positive spill-over effects on innovation in SMEs.

## **6.2. Budgetary impact**

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From the point of view of **income**, the measures are not expected to lead to an increase or decrease in State revenue.

From the point of view of **expenditure**, the measures entail an increase in expenditure for the General State Budget as set out below.

Part of the resources needed to implement the measures provided for in the draft are partly provided for in the existing funding for the implementation of Organic Law 8/2021 of 4 June 2021 on the comprehensive protection of children and adolescents from violence.

This Law establishes in numerous precepts obligations of the public authorities for the prevention of violence in childhood and adolescence endowed with the necessary economic resources to provide the different systems (social services, education, health, etc.) that will serve to channel part of the financing necessary for the implementation of the proposed regulatory draft. Thus, of the EUR 75 068 748 provided for the implementation of the Organic Law on the comprehensive protection of children and adolescents from violence, they will comply with the measures provided for in the project.

In particular, in the field of **institutional campaigns**, the planned funding will be that for the implementation of the obligations of Article 45(4) of Organic Law 8/2021 on prevention campaigns and information on content harmful to children and adolescents, education, awareness-raising and dissemination campaigns aimed at children and adolescents, families, educators and other professionals who regularly work with minors on the safe and responsible use of the Internet and information and communication technologies, among others (EUR 500 000 in the defunct budget of Social Rights and 2030 Agenda).

For its part, the Digital Competences for Children Program (CODI) aims to reach 950 000 minors, primarily in vulnerable situations, so that none of them are left behind in the digitalisation process. The total budget has been EUR 222 million, divided into three annuities: 50 million in 2022; 97 million in 2023, and will be EUR 75 million in 2024.

For successive years, it is estimated that it would require an annual budget allocation to train 500 000 minors in digital skills each year, i.e. EUR 39.4 million.

Moreover, it is deemed that the measures taken will have no impact on the existing provisions in the field of health, given that the proposed measures are incorporated into the routine actions of the health administrations that are already included in the Common Portfolio of Services of the National Health System.

The summary of the budgetary costs of the proposed measures amounts to EUR 39.4 million per year.

### **6.3. Analysis of administrative burdens**

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The Regulation does not entail new administrative burdens or affect existing ones.

### **6.4. Gender impact**

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The proposed measures together have a positive gender impact.

It is observed as a starting assessment that there are inequalities in the digital field taking into account the existence of sexist and discriminatory content that can be harmful to the development of minors and, in particular, of girls. Pornographic content can also develop behavioural models that incite violence, aggression against women, humiliating behaviour or the development of affective relationships that promote inequality.

Through the measures presented, equal treatment between women and men is promoted, as well as measures against discrimination and gender stereotypes being established.

Specific measures are also envisaged in relation to minors accessing pornography, as well as effective blocking and reporting measures in the face of

the plurality of harmful content that is easily accessible and that disseminates acts of violence, sexual or non-sexual, with a particular impact on women.

In addition, it is possible to have a specific positive impact derived from some of the measures that are adopted, depending on their particular contents.

For example, the measures are expected to have a positive impact in the health field, as gender disaggregation is incorporated in the studies carried out, which will provide insight into gender-specific health problems. In addition, sex- and gender-specific health policies may be established.

## **6.5. Impact on children and adolescents**

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The draft legislation has a positive impact on children and adolescents.

The Regulation is based on an assessment of the current situation, taking into account studies on the impact of new technologies on minors, such as the report *Impact of technology on adolescence, Relationships, risks and opportunities*, made for UNICEF Spain<sup>14</sup>, or the FAD Youth study *Consume, create, play. Overview of the digital entertainment of young people*.

Overexposure to screens and online activities is a concern for the health and mental well-being of children and adolescents, as it leads to increased stress, attention deficit, vision problems and lack of physical and sports activity. In turn, the presence of children and adolescents online increases their exposure to harmful or illegal content, such as sexual abuse or child sexual exploitation materials, pornography and adult content, sexting, online hate speech or false information and disinformation, due to the lack of effective parental control or age verification systems.

For example, we take into account the potential damage reported by the Safe Internet for Children initiative of the National Institute of Cybersecurity (INCIBE) studies such as the Evolution of violence against children in Spain according to the victims by the Anar Foundation (Aid to Adolescent Children at Risk), which warns that with the arrival of ICT, violence has been transforming, giving rise to new issues that did not exist before and act as an enhancer that affects pre-existing problems in a transversal way or the Save the Children study on 'Viral Violence Analysis of violence against children and adolescents in the digital environment'.

The objectives set out in sectoral legislation should also be taken into account.

Thus, the Convention on the Rights of the Child, adopted by the United Nations General Assembly on 20 November 1989 and ratified by Spain in 1990, and the General Comments of the Committee on the Rights of the Child (CRC), state in Article 3 that: '*1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration*', which has been highlighted in General Comment No 14 of 2014, on the best interests of the child being given primary consideration.

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<sup>14</sup> [https://www.unicef.es/sites/unicef.es/files/comunicacion/Informe\\_estatal\\_impacto-tecnologia-adolescencia.pdf](https://www.unicef.es/sites/unicef.es/files/comunicacion/Informe_estatal_impacto-tecnologia-adolescencia.pdf)

Article 2 of Organic Law 1/1996 of 15 January 1996 on the Legal Protection of Minors establishes:

*'Article 2. Best interests of the child.*

- 1. Every minor has the right to have his or her best interests valued and considered as paramount in all actions and decisions concerning him or her, both in the public and private spheres. In the application of this Law and other regulations that affect it, as well as in the measures concerning minors adopted by institutions, public or private, the Courts, or legislative bodies, the best interests of the same shall prevail over any other legitimate interest that may concur [...]*
- 2. For the purposes of the interpretation and application in each case of the best interests of the child, the following general criteria shall be taken into account, without prejudice to those established in the specific applicable legislation, as well as those others that may be considered appropriate taking into account the specific circumstances of the case:*
  - a) The protection of the right to life, survival and development of the child and the fulfilment of their basic needs, material, physical and educational as well as emotional and affective. [...]"*

Article 4 of Organic Law 8/2021 of 4 June 2021 on the comprehensive protection of children and adolescents from violence states:

*'1. The general principles and criteria for interpreting the best interests of the child, set out in Article 2 of Organic Law 1/1996 of 15 January 1996 on the Legal Protection of Minors, partially amending the Civil Code and the Code of Civil Procedure, shall apply, as well as the following: [...] (b) Priority of preventive actions. [...] (d) Promote the comprehensiveness of the actions, from coordination and inter-administrative and intra-administrative cooperation, as well as international cooperation. [...] (l) Formal assessment and determination of the best interests of the child in all decisions affecting a minor.'*

Taking into account the above, the planned regulation generally balances a set of interests, giving priority to the best interests of the minor and comprehensive, preventive actions and ensuring coordination between the different actors as provided for in current legislation.

The Regulation is also an essential pillar to meet the objectives set out in the sectoral legislation in relation to minors in digital environments.

Within the framework of the Convention on the Rights of the Child, general comment No 13 (2011) on the right of the child not to be subjected to any form of violence devotes section 31 to violence through information and communication technologies, recognising the risks to children in different spheres. In addition, the Committee on the Rights of the Child in its 2018 Observations to Spain recommends that the State develop initiatives to regulate access to and use of the Internet and digital media and update the child protection curricula in this regard.

For its part, Organic Law 8/2021 of 4 June 2021 on the Comprehensive Protection of Children and Adolescents provides for training in rights, security and digital responsibility, responsible use of the Internet and the promotion of collaboration with the private sector for this objective and the associated risk issues.

In the light of the above, the Strategy for the Eradication of Violence against Children and Adolescents establishes as a strategic area the guarantee of safe environments in general, and includes various specific measures in this area, for example: *3.4.6. Establish measures for access and safe use of technologies for children and adolescents and include safe participation channels in each of the digital environments.*

The main objective of this proposal and the measures contained in the different titles is the full protection of the rights of minors in digital environments. The aim of these measures is not only to create protection mechanisms against external risks, but also to provide quality education for children and young people in the field of new technologies and digitalisation.

The expected results are to increase the knowledge of the rights of children and adolescents, and the appropriate use of the devices and technologies available to them. In the same sense, it is intended to promote their cultural, social and political participation at any level with all the guarantees, protect their privacy, confidentiality and the use of their personal data and offer accessible information, communication and reporting channels.

Measures in the health field are also expected to have a positive impact, as they constitute prevention and specialised care measures specifically aimed at the protection of minors.

The set of proposed measures is planned in collaboration with the private sector and public administrations, since the extent of the possible risks and damages, as well as their consequences, imposes the general action of all the actors involved. Likewise, the Regulation considers as an essential element the involvement of families and health and educational professionals as people of reference and who have the ability to positively influence the behavioural and cognitive development of children and adolescents.

In conclusion, it is deemed that the Regulation will ensure that, in the face of constant technological evolution, in addition to new opportunities, possible harmful or illicit scenarios are mitigated through an increase in the protection of the full development of children and adolescents with all the guarantees, advancing the rights of minors.

Since the proposed measures will have direct benefits on the development of the child from a comprehensive perspective, the impact on this group of society is clearly positive.

## **6.6. Impact on families**

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The action is based on an assessment of the difficulties of families to guarantee the exercise of the rights of minors in the digital field. The existing regulation,

both Organic Law 8/2021 of 4 June 2021 and Organic Law 3/2018 of 5 December 2018, on the Protection of Personal Data and Guarantee of Digital Rights, in Title X on the guarantee of digital rights, include precepts aimed at guaranteeing that families ensure that minors make balanced use of digital devices and information society services.

Likewise, the Strategy for the Eradication of Violence against Children and Adolescents includes among its actions the development of awareness-raising materials aimed at adults who are in contact with children and adolescents in this area.

The measures provided for in the Regulation are aligned with the instruments indicated, collecting measures specifically aimed at families with the purpose of educating and informing about prevention, detection and action in the face of the various conflictive or problematic situations that may arise. Therefore, a direct positive impact on families is expected through measures that have an impact on digital literacy.

In addition, it cannot be ignored that the harm suffered by children in digital environments usually has an indirect negative effect on their own families, so that the effectiveness of the measures contained in the Regulation in the protection of children in digital environments will also have a positive effect on their respective family situations.

#### **6.7. Impact on equal opportunities, non-discrimination and universal accessibility for persons with disabilities**

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Among the risks and harms associated with inappropriate use of digital media and devices, it is worth highlighting the appearance of health problems, but also others related to privacy, cyberbullying and violence, among others.

Regarding its effect on vulnerable groups, studies and reports from both CERMI and Autism Spain and other entities have shown that harassment and abuse in digital environments affect people with disabilities with greater incidence.

The measures included in the draft take particular account of the needs of persons with disabilities and persons with autism spectrum disorder, so as to ensure access to digital environments in a safe and equal manner. In view of the above, a positive impact is expected in this area.

#### **6.8. Climate change impact**

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The Regulation has no climate change impact.

#### **6.9. Other impacts**

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##### **A) Social impact**

The Regulation is deemed to have a positive social impact.

The digital divide refers to inequality in the access, use or impact of Information and Communication Technologies (ICT) among social groups. Currently, inequality in access to technology is also a form of social exclusion. In particular, as a result of the health crisis caused by the COVID-19 pandemic, evidence emerged on the differences in society in terms of access to technology and digital skills.

A study carried out by the Red Cross during the pandemic found that about 35 % of households with children under 16 years of age had difficulty following the school year due to the lack of computer equipment or internet connection. This circumstance demonstrates the need to guarantee equal access to the digital environments of childhood and adolescence. Digital and technological innovation affects the lives of children and adolescents in various areas of their lives, and in exercising their rights, even when they do not have access to the Internet. Adequate and equal access enables minors to participate fully in political, economic, social and cultural life. However, without the promotion of digital inclusion, existing inequalities will grow, or even new ones will emerge.

The proposed measures aim to take a further step towards preventing and eradicating discrimination in digital environments and through digital environments. In this area, minors may suffer discrimination due to lack of availability and access to new technologies, or suffer discriminatory attacks through digital environments, leading to situations of cyberbullying.

Therefore, media and information literacy is essential for overcoming the barriers of digital exclusion of families in vulnerable situations. General comment No 25 of the United Nations<sup>15</sup> warns that States party to the Convention on the Rights of the Child must ensure that all minors have equal and effective access to digital environments. This includes both developing measures to protect rights and promoting the acquisition of digital skills. The acquisition of digital skills together with the necessary skills to make responsible use of new technologies is not only useful in the early stages of education, but becomes a basic axis in the development of minors in relation to educational, social and labour issues, since the lack of digital skills and access to connectivity has also become a barrier to access to the professional market.

The draft measures are also expected to have a positive impact on the needs of persons with disabilities and persons with autism spectrum disorder, ensuring access to digital environments in a safe and equal manner.

## **B) Health impact**

The Regulation will have a positive impact on health, since the measures contained in it are intended to reduce the risk of the emergence of disorderly gambling behaviours in people who make excessive use of this type of mechanic or, where appropriate, to minimise the negative consequences that this activity can produce in certain players.

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<sup>15</sup> Committee on the Rights of the Child. General comment No 25 (2021) on children's rights in relation to the digital environment. <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsqlkirKQZLK2M58RF%2f5F0vEG%2bcAAx34gC78FwvnmZXGFUI9nJBDpKR1dfKekJxW2w9nNryRsgArkTJgKelqeZwK9WXzMkZRZd37nLN1bFc2t>



## **7. EX-POST EVALUATION**

The Annual Regulatory Plan of the General State Administration for 2024, which includes this proposal, does not foresee that the Regulation to be adopted will be subject to *ex post* evaluation.