



Draft Royal Decree XX regulating the requirements with respect to being considered a user of special relevance according to the provisions of Article 94 of General Law 13/2022 of 7 July 2022 on Audiovisual Communication.

I

The adoption of General Law 13/2022 of 7 July 2022 on Audiovisual Communication led to the transposition into Spanish law of Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services.

On the basis of the aforementioned Directive, Law 13/2022 of 7 July was created with the aim of adopting an updated legal framework in line with the evolution that the audiovisual market has undergone in recent years and which allows a balance to be struck between access to content, the protection of users and competition between the different providers in the market, with the inclusion, in a level playing field, of all actors competing for the same audience.

II

The achievement of this objective led to the inclusion of the providers of the video-sharing platform service within the scope of the Directive, given the increasing importance they have acquired in the production and dissemination of audiovisual content and audiovisual commercial communications. Linked to these services are media or social media services the essential functionality of which allows the sharing of videos, since they have become a significant means of sharing information, entertaining and educating, particularly through access to user-generated programmes and videos.

In this respect, Law 13/2022 of 7 July 2022, in compliance with the provisions of Directive (EU) 2018/1808, includes in Article 2(13) and 2(17) a definition of the video-sharing platform service and the provider thereof, respectively. Likewise, Law 13/2022 of 7 July 2022 dedicates title V to the regulation of the providers of the video-sharing platform service by establishing a set of obligations aimed at ensuring the protection of their users in general and, in particular, minors, against certain audiovisual content and audiovisual commercial communications.

In particular, Article 88 of Law 13/2022 of 7 July 2022 imposes on providers of the video-sharing platform service the obligation to adopt measures to protect minors from programmes, user-generated videos and audiovisual commercial



communications that may harm their physical, mental or moral development. On the other hand, these providers must adopt measures aimed at protecting the general public against programmes, user-generated videos and audiovisual commercial communications that fail to comply with Articles 4(2) and 4(4) of Law 13/2022 of 7 July 2022. The protection measures referred to above are set out in Articles 89, 90 and 91.

The above-mentioned obligations shall also apply to media or social media services to the extent that they can be covered by the definition of 'video-sharing platform service'. One of the main audiovisual contents offered by these services are videos generated by users and uploaded to the platform by said users or any others. Within the set of users of these services, a certain category mainly stands out, those commonly referred to as 'vloggers', 'influencers' or 'content creators', who are particularly relevant in the audiovisual market from the point of view of consumption and advertising investment, especially among the younger audience.

The emergence and consolidation of these new agents therefore requires a legal framework that reflects the progress of the market, and that allows to achieve a balance in the audiovisual ecosystem in which all its agents are subject to similar rules. Since 'influencers' carry out their activity in competition with other players in the audiovisual and advertising market, and have certain characteristics that are similar to providers of audiovisual media services, it is therefore appropriate to apply to them a set of obligations comparable to the obligations for those providers of audiovisual media services.

The progress in the equalisation between the 'influencers' and the other audiovisual media service providers respond to the need to ensure their respect for basic principles of audiovisual communication, and to ensure the protection of the general public, and minors in particular, against harmful audiovisual content and commercial communications.

III

With regard to the 'influencers', Directive (EU) 2018/1808 did not expressly include them in its scope, leaving Member States free to regulate them. In that regard, it makes only a reference in recital 3 to that *'channels or any other audiovisual services under the editorial responsibility of a provider can constitute audiovisual media services in themselves, even if they are offered on*



a video-sharing platform which is characterised by the absence of editorial responsibility'. For its part, the European Regulators Group for Audiovisual Media Services (ERGA), has issued several reports on the possibility to attribute to 'vloggers' the status of audiovisual media service providers and the criteria to be followed for the regulation of their activity.

In this regard, some Member States have established their own legal regime on 'influencers' in their respective national legal system. Although the various regulations have, on most occasions, departed from the principle of considering 'influencers' as a type of audiovisual media service provider, they are not homogeneous with respect to the specific criteria for their consideration and the obligations applicable to them.

Aware of the growing influence of these subjects in the Spanish, European and international audiovisual and advertising market in general, Spanish legislature also chose to regulate, beyond the mandatory provisions of Directive (EU) 2018/1808, the role of 'influencers' in Article 94 of Law 13/2022 of 7 July 2022, which it refers to as 'users of particular relevance who use video-sharing platform services'.

The Spanish model is based on the assimilation of users of particular relevance as a particular type of audiovisual media service providers. However, given the nature of the service and its new and innovative features, they are not fully assimilated to other audiovisual media service providers, nor are all their obligations applicable to them.

Thus, Article 94(1) of Law 13/2022 of 7 July 2022 considers users of special relevance to be providers of audiovisual media services for the purposes of respecting the general principles of the provision of the video-sharing platform service contained in Article 86 of the aforementioned law and compliance with the obligations regarding the protection of minors, and audiovisual commercial communications, set out in Article 99(1) and 99(4), and in sections 1 and 2 of Chapter IV of Title VI, respectively, of the aforementioned law.

For its part, Article 94(3) of Law 13/2022 of 7 July 2022 contains a list of subjects excluded from compliance with the obligations set out in Article 94(1), while Article 94(4) establishes the obligation of users of particular relevance to register in the State Register provided for in Article 39 of the aforementioned law.

On the other hand, Article 94(2) of Law 13/2022 of 7 July 2022 establishes the requirements for when users of video-sharing platform services are considered



‘users of particular relevance’. The setting of these requirements was carried out taking into account the recommendations contained in the ERGA reports, as they meet the criteria that allow them to be assimilated to audiovisual media service providers.

Of those requirements, point (a) refers to the ‘significant income’ that users of particular relevance must earn in the performance of their activities in video-sharing platform services. For its part, point (c) deals with the audience users of particular relevance must reach by virtue of their activities in those services.

The requirements laid down in Article 94(2)(a) and (c) are not laid down in that provision. In this regard, the seventh final provision of Law 13/2022 of 7 July 2022 refers to the provisions necessary for the development and application of Article 94. In fact, the entry into force of this article is subject to the adoption of the regulations specifying these requirements, in accordance with the fourth paragraph of the ninth final provision of Law 13/2022 of 7 July 2022.

Thus, in accordance with the seventh final provision of Law 13/2022 of 7 July 2022, this Royal Decree is drawn up with the aim of specifying the requirements laid down in Article 94(2)(a) and (c), the adoption of which shall entail the entry into force of Article 94.

IV

As for structure, the Royal Decree consists of four articles structured in two chapters and three final provisions.

Chapter I contains the subject matter and scope of the Royal Decree. Chapter II specifies the significant income and hearing requirements laid down in points (a) and (c), respectively, of Article 94(2) of Law 13/2022 of 7 July 2022.

In addition, and in accordance with the provisions of Article 129 of Law 39/2015 of 1 October 2015, this Royal Decree has been drawn up in accordance with the principles of necessity, effectiveness, proportionality, legal certainty, transparency and efficiency.

First, the principles of necessity and effectiveness are complied with, in so far as the regulatory initiative seeks to ensure the balance of the audiovisual market by defining a specific category of users of video sharing services through a platform that must comply with essential obligations for the protection of the general public, and minors in particular, against audiovisual content and audiovisual commercial communications that are harmful or prohibited by Law



13/2022 of 7 July 2022. Likewise, the regulation through the Royal Decree is the appropriate instrument to ensure comprehensive and consistent regulation of the requirements.

With regard to the principle of legal certainty, the Royal Decree is consistent with the rest of the national legal order by constituting, together with Law 13/2022 of 7 July 2022, a stable, predictable, integrated and clear regulatory framework with respect to being considered a user of particular relevance, as well as the obligations that that condition entails being subject to the scope of the regulation.

As regards the principle of proportionality, the regulations contain the rules necessary for achieving the objectives justifying its adoption, since it is strictly limited to regulating the requirements which, as a legal requirement, require regulatory development. The realisation of said requirements has, at all times, been guided by the criterion of considering 'users of special relevance' only to those users who, since they carry out an economic activity in video-sharing platform services that generate significant revenue and by having a clear impact on a significant audience, are considered to have a relevant influence on the audiovisual and advertising market comparable to that of other audiovisual media service providers.

By decision of the Council of Ministers on 5 December 2023, it was agreed that this draft Royal Decree should be processed urgently due to extraordinary circumstances as provided for in Article 27(1) of Law 50/1997 of 27 November 1997 on the Government. Consequently, the public consultation procedure provided for in Article 26(2) of Law 50/1997 of 27 November 1997 on the Government has been disregarded.

A public hearing has been held for the audiovisual sector and the Autonomous Communities, in accordance with the provisions of Articles 26(6) and 27(2)(b) of Law 50/1997 of 27 November 1997 on the Government, in order to enable them to know the content of the draft regulation, to give their input, and, ultimately, to improve the present Royal Decree. In addition, a report has been obtained from the National Commission on Markets and Competition, in accordance with Article 5(2)(a) of Law 3/2013 of 4 June 2013 establishing the National Commission for Markets and Competition. Likewise, a report shall be requested from the Council for Consumers and Users, from the ministerial departments whose involvement is mandatory, as well as the mandatory opinion of the



Council of State, in accordance with the provisions of Article 26(5), 26(7) and 26(9) of Law 50/1997 of 27 November 1997.

As regards the principle of transparency, the explanatory memorandum clearly and precisely defines the objectives pursued by this regulatory initiative and its justification. Although the urgent processing has meant the omission of the procedure of public consultation, it shall be possible for the addressees of the regulation to participate in the drafting of the same through the public hearing procedure.

With regard to the principle of efficiency, this Royal Decree does not create any new administrative burden for those affected by the regulation. Although compliance with the requirements of significant revenue and hearing entails the obligation to register in the State Registry provided for in Article 39 of Law 13/2022 of 7 July 2022, this administrative burden has already been contemplated and duly assessed in the Regulatory Impact Analysis Report corresponding to Royal Decree 1138/2023 of 19 December 2023 regulating the State Register of audiovisual media service providers, providers of video-sharing platform services and providers of audiovisual media services aggregation services, and the procedure of prior communication of initiation of activity.

Finally, this Royal Decree has been subject to the procedure provided for in 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, as well as to the provisions of Royal Decree 1337/1999 of 31 July 1999 regulating the provision of information in the field of technical standards and regulations and rules on Information Society services.

This Royal Decree is issued under the provisions of Article 149(1)(21) of the Constitution, and the authorisation for the regulatory development of Law 13/2022 of 7 July 2022, contained in its seventh final provision paragraph three.

By virtue thereof, on the proposal of the Minister of Digital Transformation, with the prior approval of the Minister for Finance and the Civil Service, in agreement with/having heard the Council of State, and after deliberation of the Council of Ministers at its meeting on,



THE FOLLOWING IS DECREED:

CHAPTER I

General provisions

Article 1. Purpose.

This Royal Decree is intended to specify the requirements set out in points (a) and (c) of Article 94(2) of General Law 13/2022 of 7 July 2022 on Audiovisual Communication, with respect to being considered a user of special relevance who uses video-sharing platforms services.

Article 2. Scope.

1. This Royal Decree shall apply to natural or legal persons using video-sharing platform services, and who simultaneously meet the requirements set out in Article 94(2) of Law 13/2022 of 7 July 2022. The requirements laid down in points (a) and (c) of that provision are specified in Articles 3 and 4 of Chapter II, respectively.

2. In accordance with the provisions of Article 94(3) of Law 13/2022 of 7 July 2022, this Royal Decree shall not apply to the subjects listed in said provision under the terms established therein.

Likewise, it shall not apply to audiovisual media service providers registered in the first section of the State Register of audiovisual media service providers, providers of video-sharing platform services and providers of audiovisual media service aggregation services; in accordance with the provisions of Article 9(1) of Royal Decree 1138/2023 of 19 December 2023, in relation to programmes, audiovisual content and/or extracts thereof that are made available to the public in the video-sharing platform services.

CHAPTER II

Significant revenue and audience requirements

Article 3. Significant revenue.



1. In accordance with the provisions of article 94(2)(a) of Law 13/2022 of 7 July 2022, significant revenue is considered to be gross income earned in the previous calendar year, equal to or greater than EUR 300 000, derived from the activity of users in all video-sharing platform services that they employ.

2. Revenue eligible for determining significant income shall be as follows:

- a) Revenue obtained both from monetary remuneration and in kind, for marketing, sale or organisation of audiovisual commercial communications accompanying or inserted in the audiovisual content which is the responsibility of users of video-sharing platform services.
- b) Revenue received by users from the providers of video-sharing platform services as a result of their activity in those services.
- c) Revenue received from user activity from fees and payments paid by their audience for video-sharing platform services.
- d) Revenue from financial benefits granted by public administrations and entities, regardless of their name and nature, related to the activity of users on video-sharing platform services.
- e) Other revenue obtained from the activity of users on the video-sharing platform services not provided for in the preceding points of this paragraph.

3. Other revenue not related to the activity of users on the video-sharing platform services shall not be counted for the purpose of calculating significant revenue.

Article 4. *Significant audience.*

1. In accordance with the provisions of Article 94(2)(c) of Law 13/2022 of 7 July 2022, a service that is the responsibility of a user shall be deemed to be intended for a significant part of the general public and may have a clear impact on it when it meets, cumulatively, the following requirements:

- a) The service reaches, at some point in the previous calendar year, 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.

- b) That, in all video-sharing platform services on which the user carries out their activity, a number of videos of 24 or more has been published or shared in the previous calendar year, regardless of their duration.

First final provision. *Development powers.*

1. The person responsible for the Ministry of Digital Transformation may issue the provisions for the development, application and execution of this Royal Decree.
2. By ministerial order, the significant revenue and audience figures provided for in Articles 3 and 4 may be updated, respectively.

Second final provision. *Attribution of powers*

1. This Royal Decree is issued under the provisions of Article 149(1)(21) of the Spanish Constitution, which gives the State exclusive jurisdiction in telecommunications matters, in accordance with the sixth final provision paragraph three of Law 13/2022 of 7 July 2022.
2. This Royal Decree is issued under the authorisation for regulatory development set out in the seventh final provision paragraph three of Law 13/2022 of 7 July 2022.

Third final provision. *Entry into force.*

This Royal Decree shall come into force the day after its publication in the 'Official State Gazette'.