



MINISTRY  
OF DIGITAL TRANSFORMATION

STATE SECRETARIAT FOR TELECOMMUNICATIONS  
AND DIGITAL INFRASTRUCTURE

## **REGULATORY IMPACT ANALYSIS REPORT**

**DRAFT ROYAL DECREE REGULATING THE REQUIREMENTS FOR  
THE PURPOSE OF 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**

22 December 2023



### EXECUTIVE SUMMARY SHEET

|  |   |             |            |
|--|---|-------------|------------|
| <b>Proposing Ministry/Body</b>                               | Ministry of Digital Transformation. State Secretariat for Telecommunications and Digital Infrastructure.  | <b>Date</b> | 22/12/2023 |
| <b>Title of regulation</b>                                   | Draft Royal Decree regulating the requirements to be considered a user of special relevance for the purposes of the provisions of General Law 13/2022, of 7 July 2022, on Audiovisual Communication.  |             |            |
| <b>Report type</b>   | Normal <input type="checkbox"/> Abbreviated <input checked="" type="checkbox"/>   |             |            |
| <b>TIMELINESS OF THE PROPOSAL</b>                            |   |             |            |
| <b>Regulated situation</b>                                   | The draft Royal Decree implements the requirements of revenues and significant audience for the purposes of consideration as a user of special relevance, which implies compliance with a series of obligations established in General Law 13/2022, of 7 July 2022, on Audiovisual Communication (Law 13/2022, of 7 July 2022).   |             |            |
| <b>Goals sought</b>  | <ul style="list-style-type: none"><li>- To implement regulatory requirements provided for in points (a) and (c) of Article 94(2) of Law 13/2022, of 7 July 2022, in order to be considered a user of special relevance in video-sharing platform services. Criteria concerning audience and significant revenues will be established.</li><li>- To establish a balanced regulatory framework (level playing field) between providers of these services and audiovisual media service providers.</li><li>- To provide the relevant legal certainty in rendering this type of services digitally.</li></ul> |             |            |
| <b>Main alternatives considered</b>                          |   |             |            |
| <b>CONTENT AND LEGAL ANALYSIS</b>                            |   |             |            |
| <b>Type of standard</b>                                      | Royal Decree  |             |            |
| <b>Structure of the regulation</b>                           | The draft Royal Decree consists of an explanatory memorandum and has a total of four articles organised in two chapters, and three final provisions.  |             |            |
| <b>Prior public consultation (Article 26(2) Law 50/1997)</b> | By agreement of the Council of Ministers of 5 December 2023, it was agreed that the procedure for the preparation and adoption of the draft Royal Decree in accordance with the provisions of Article 27(1) of Law 50/1997 of 27 November 1997, of the Government, should be processed as a matter of urgency. Therefore, in application of the provisions of Article 27(2)(b) of the aforementioned Law, the public consultation procedure provided for in Article 26(2) of Law 50/1997 of 27 November 1997 and Article 133(1) of Law 39/2015 of 1 October 2015 has been waived.                         |             |            |
| <b>Hearing process (Article 26(6) Law 50/1997)</b>           | From 7 December 2023 to 20 December 2023, a public hearing was held for the sector and the Autonomous Communities through the website of the Ministry of Digital Transformation, in accordance with the provisions of Article 26(6) of Law 50/1997 of 27 November 1997 and Article 133(2) of Law 39/2015 of 1 October 2015. During the period of time granted, 11 contributions were submitted by companies, associations and a private user.   |             |            |
| <b>Reports to be received (Article 26 Law 50/1997)</b>       | <ul style="list-style-type: none"><li>- <i>Technical General Secretariat of the Ministry of Digital Transformation. State Counsel.</i></li></ul> In the absence of the definitive criterion of the General Technical Secretariat, it is deemed that the following reports should also be obtained: <ul style="list-style-type: none"><li>- <i>Regulatory Coordination and Quality Office</i></li><li>- <i>Ministry of Finance and Public Service</i></li><li>- <i>Ministry of Health</i></li><li>- <i>Prior approval of the Minister of Finance and Public Service (26(5) Law 40/2015)</i></li></ul>      |             |            |



|   |   |   |
|---|---|---|
|   | <p>- Ministry of Public Administrations.</p> <p>- Ministry of Social Rights, Consumer Affairs and Agenda 2030. Consumer and User Council (CUC).</p> <p>- Notification by procedure for information in the field of technical regulations and of rules on information-society services in the European Union (TRIS) pursuant to Directive (EU) 2015/1535 of the European Parliament and of the Council, of 9 September 2015.</p> |   |
| <b>Reports received</b>                           | <p>- On 21 December 2023, a report was received from the National Commission on Markets and Competition, in accordance with 5(2)(a) Law 3/2013 of 4 June 2013, establishing the National Commission for Markets and Competition.</p>  |   |
| <b>Opinions to be received</b>                    | <p>- Opinion of the Council of State (Article 22(3) Organic Law 3/1980, of 22 April 1980, of the Council of State).</p>   |   |
| <b>IMPACT ANALYSIS</b>                            |   |   |
| <b>Compliance with the distribution of powers</b> | <p>The draft Royal Decree is issued under the title of competence of Article 149(1)(21) of the Constitution.</p>  |   |
| <b>Economic and budgetary impact</b>              | Overall economic impact   | <p>It has no significant effects and, in any case, the effect of unquantifiable.</p>  |
|   | With regard to competition  | <p><input type="checkbox"/> the regulation has no significant effects on competition.</p> <p><input checked="" type="checkbox"/> the regulation has positive effects on competition</p> <p><input type="checkbox"/> the regulation has negative effects on competition</p>  |
|   | From the point of view of administrative burdens  | <p><input type="checkbox"/> it implies a reduction in administrative burdens.<br/>Estimated quantification _____</p> <p><input type="checkbox"/> it incorporates new administrative burdens.<br/>Estimated quantification _____</p> <p><input checked="" type="checkbox"/> it does not affect administrative burdens.</p>   |
|   | From the point of view of budgets, the law  | <p>The National Commission for Markets and Competition has been monitoring compliance with the obligations imposed on audiovisual media service providers and video-sharing platform service providers relating to the protection of the audience, especially minors, and on the dissemination of commercial communications, so that it already has the necessary staffing and technical resources required for being able to carry out the tasks involved in verifying compliance.</p> |
|   | <p><input type="checkbox"/> Affects state budgets</p> <p><input type="checkbox"/> Affects the budgets of other regional administrations</p>   |   |
| <b>Gender impact</b>                              | The gender impact of the regulation is  | <p>Negative <input type="checkbox"/></p> <p>Non-existent <input type="checkbox"/></p> <p>Positive <input checked="" type="checkbox"/></p>   |



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## I. DESIRABILITY OF THE PROPOSAL

### ***Reasons for the draft Royal Decree regulating the requirements for the purpose of being considered a user of special relevance according to the provisions of General Law 13/2022 of 7 July 2022, on Audiovisual Communication***

The adoption of Directive (EU) 2018/1808 of 14 November 2018, which amended the Audiovisual Communication Services Directive, meant that video sharing platform services were included under the scope of audiovisual regulations. According to the fourth recital in the preamble to that Directive, those services make available audiovisual content that is increasingly accessible to the general public and to young people in particular. This also applies to social media services the main purpose of which is the distribution of audiovisual content, since they have become a significant means of sharing information, entertaining and educating, in particular through access to programmes and user-generated videos.

In addition, video-sharing platform services also have a considerable impact, as they offer users the ability to influence and shape the opinions of their audience. Therefore, in order to protect minors from harmful content and all citizens from incitement to hatred, violence and terrorism, the application of the Directive should be extended to such services.

The adoption of General Law 13/2022 of 7 July 2022 on Audiovisual Communication (hereinafter Law 13/2022, of 7 July 2022), which transposed into national law Directive 2018/1808, of 14 November 2018, has meant the introduction under the scope of national audiovisual legislation, in addition to video-sharing platform services, to the creators of audiovisual content and user-generated videos that offer such content through those services. With regard to the latter, it is worth mentioning those referred to as 'influencers', whose ability to mobilise a significant audience is very significant, and that every day they gain greater influence in the ecosystem of providing audiovisual services in the digital environment, and in particular in the online advertising market.

During the processing of the Government Bill on Audiovisual Communication, of 7 July, the National Commission of Markets and Competition and the Council of Consumers and Users, among others, requested the inclusion of this special type of users of video-sharing platform services within the scope of the regulation, with special emphasis on their ability to influence a certain audience, especially the underage



public, and to make and disseminate commercial communications. Likewise, during the parliamentary processing of this Bill, the Socialist parliamentary group in the Congress of Deputies introduced a set of amendments in order to regulate this category of users. The introduction of the above amendment was approved by the majority of members of the legislative chamber.

All of this led to the fact that the figure of 'influencers' is to be regulated in Article 94 of Law 13/2022 of 7 July 2022, referred to as 'users of special relevance who utilise video-sharing platform services'.

Article 94(2) of Law 13/2022, of 7 July 2022, establishes a series of requirements, the fulfilment of which allows a user of a video sharing service to be considered as an 'influencer'. In particular, these involve the following:

- a) The service provided entails an economic activity by which its owner derives significant revenue from his or her activity in video-sharing platform services;
- b) That the user of special relevance is the publisher responsible for the audiovisual content made available to the public with his or her service.
- c) That the service provided is intended for a significant part of the general public, and can have a clear impact on this.
- d) That the function of the service is to inform, entertain or educate, and the main objective of the service is the distribution of audiovisual content.
- e) The service is offered through electronic communications networks and is established in Spain in accordance with Article 3(2).

Of all the above requirements, those referred to in points (a) and (c) are not fully implemented in Article 94(2) of Law 13/2022 of 7 July 2022. The seventh final provision of that Law refers the specificity of those requirements to the provisions necessary for the development and application of the provisions of Article 94 enacted by the Government, on the proposal of the person responsible the Ministry of Affairs and Digital Transformation (the reference to this ministerial department should be understood to be made to the Ministry of Digital Transformation, in accordance with Royal Decree 829/2023 of 20 November 2023).

Likewise, the ninth final provision of Law 13/2022 of 7 July 2022 postpones the entry into force of its Article 94 until the adoption of the regulation establishing the specific criteria to be considered a 'user of special relevance': Through the present draft Royal Decree, the two main requirements to be met in order to be able to consider a user of



a video-sharing platform service as a user of special relevance are to be specified. These are the requirements of significant revenue (a), and significant audience (c).

The consideration of a user of video-sharing platform services as a user of special relevance will mean that, from that moment, he or she must comply with a series of obligations with respect to the content that he or she disseminates through those services. In particular, they will be obliged:

- To protect the general public from audiovisual content that:
  - Incites violence, hatred or discrimination against a group or members of a group on the basis of age, sex, disability, sexual orientation, gender identity, gender expression, race, colour, ethnic or social origin, sexual or genetic characteristics, language, religion or belief, political or any other opinion, nationality, property or birth (Article 4(2) of Law 13/2022 of 7 July 2022).
  - Contains a public provocation to commit any crime and, in particular, will not publicly provoke committing a crime of terrorism, child pornography or incitement to hatred, hostility, discrimination or violence against a group, part of it or against a specific person on racist, xenophobic grounds, sex or gender or disability (Article 4(4) of Law 13/2022 of 7 July 2022).
- To protect minors from exposure to audiovisual content that may impair their physical, mental or moral development.
- To comply with the qualitative regulations on the dissemination of audiovisual commercial communications established in Sections 1 and 2 of Chapter IV of Title VI of Law 13/2022 of 7 July 2022, in respect of those commercial communications that sell, market or organise them and that accompany or are inserted in the audiovisual content that they make available to the public in the video-sharing platform services.

Therefore, the establishment of clear and precise requirements to consider a user of a video-sharing platform service as a user of special relevance will have the following benefits:



- Increased protection of users of video-sharing platform services and media and social media services that may be qualified as such, and in particular minors.
- It provides legal certainty to the figure of the influencer, by establishing a series of technical requirements for the purpose of having such a status.
- It guarantees similar ground rules between all those agents offering audiovisual services and competing to capture audiences and advertising revenues.

### ***Objectives of the new regulation***

The objectives pursued by this draft Royal Decree are summarised below:

- To implement regulatory requirements provided for in points (a) and (c) of Article 94(2) of Law 13/2022, of 7 July 2022, in order to be considered a user of special relevance in video-sharing platform services. Criteria concerning audience and significant revenues will be established.
- To establish a balanced regulatory framework (level playing field) between users of special relevance and audiovisual media service providers.
- To provide the relevant legal certainty in rendering this type of services digitally.

### ***Alternatives to adopting the draft as a Royal Decree***

No alternatives have been considered other than the preparation of a Royal Decree, since Law 13/2022, of 7 July 2022, itself provides in its ninth final provision that Article 94 would enter into force when the regulations specifying the requirements for being considered to be users of special relevance are adopted.

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

The draft Royal Decree complies with the principles of good regulation contained in Article 129 of Law 39/2015 of 1 October 2015 (principles of necessity, effectiveness, proportionality, legal certainty, transparency and efficiency), while it pursues a general interest in specifying certain aspects of Law 13/2022, of 7 July 2022, which will facilitate compliance with the obligations applicable to users of special relevance. In this sense, the important new aspects provided for in the aforementioned Law make it necessary to adopt this draft Royal Decree in order to provide certainty and legal certainty to the obliged subjects.



First, the principles of necessity and effectiveness are complied with, insofar as the regulatory initiative seeks to ensure the balance of the audiovisual market by defining a specific category of users of video-sharing platform services 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 a 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 for the purposes of being considered a user of special 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 legislation contains the regulations necessary to achieve the objectives justifying its adoption, since it is strictly limited to regulating the requirements which, as a legal imperative, require regulatory development. The realisation of those requirements has been guided, at all times, by the criterion of considering a ‘user of special relevance’ only to those users who, because they carry out an economic activity in video-sharing platform services that generates significant revenues 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 agreement of the Council of Ministers of 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 of the Government. Consequently, the public consultation procedure provided for in Article 26(2) of Law 50/1997 of 27 November 1997 of the Government has been dispensed with.

Likewise, a public hearing is to be held, aimed at 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, of the Government, in order to enable them to know the content of the draft regulation, make their contributions and, ultimately, improve the present Royal Decree. Likewise, the reports of the National Commission of Markets and Competition and the Council of Consumers and Users,



ministerial departments whose intervention is mandatory, as well as the mandatory opinion of the Council of State, will be collected.

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 will be possible for those possible affected by the regulation to participate in the preparation thereof through the procedure of a public hearing.

Finally, with regard to the principle of efficiency, this Royal Decree does not create any new administrative burden for the subjects affected by the regulation. Although compliance with the requirements of significant revenues and audience 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 taken into account and duly assessed in the Report of Analysis of Regulatory Impact corresponding to the Royal Decree that regulates the organisation and operation of said registry that is currently in the final stage of its processing.

## II. CONTENT, LEGAL ANALYSIS AND DESCRIPTION OF THE PROCEDURE

### *Structure and contents.*

The draft Royal Decree regulating the requirements of significant revenues and audience in order to be considered a user of special relevance according to the provisions of General Law 13/2022, of 7 July 2022, on Audiovisual Communication consists of four articles structured in two chapters, and three final provisions. The organisation of the Royal Decree is structured according to the following organisation:

#### Chapter I. General provisions

1. Article 1. Purpose It establishes the purpose of the Royal Decree, which consists in specifying the requirements laid down in points (a) and (c) of Article 94(2) of Law 13/2022 of 7 July 2022, in order to be considered a user of special relevance who uses video-sharing platform services.
2. Article 2. Scope of application. The scope of the Royal Decree is defined. It also includes excluding from the scope of the subjects provided for in Article 94(3) of Law 13/2022, of 7 July 2022, in the terms established by that provision. Similarly,



the audiovisual media service providers provided for in Article 2(4) of Law 13/2022 of 7 July 2022 are excluded from the scope of application; audiovisual media service providers are already subject to a full legal and supervision regime established in Law 13/2022 of 7 July 2022. This regime remains in force in relation to programmes, audiovisual content or extracts thereof that are made available to the public in the video-sharing platform services.

## Chapter II. Significant revenue and audience requirements

3. Article 3. Significant revenues. This specifies the requirement of significant revenues required in Article 94(2)(a) of Law 13/2022, of 7 July 2022, in order to be considered a user of special relevance of a video-sharing platform service. First, it is established that only revenues derived from the user's activity in video-sharing platform services will be taken into account. On the other hand, it excludes from calculating significant revenues those derived from activities that are not related to the activity of those users in the video-sharing platform services.
4. Article 4. Significant audience. The requirement established in Article 94(2)(c) of Law 13/2022, of 7 July 2022, regarding the minimum necessary audience that must have the services of the user to be considered as such. The determination of compliance will be based on the following criteria: number of followers in any of the video-sharing platform services on which he or she undertakes the activity and minimum number of videos shared on that service.

In order to establish the thresholds defined in Articles 3 and 4 to identify users of special relevance, the available evidence regarding the regulation of 'influencers' has been reviewed, different reports published by media agencies<sup>1</sup> and a comparison of the legal regime applied to these providers by other Member States of the European Union has been made. It is noted that there is some consensus on the classification of users of video-sharing platform services in the following four categories in relation to the significant audience:

- a) Nano-influencer: 1,000 – 10,000 followers.
- b) Micro-Influencer: 10,000 – 50,000 followers.
- c) Mid-influencer: 50,000 – 500,000 followers.
- d) Macro-influencer: 500,000 – 1,000,000 followers.

<sup>1</sup> <https://socialblade.com/>; <https://iabspain.es/>; <https://us.youtubers.me/>; <https://www.statista.com/topics/2496/influence-marketing>



e) Mega-influencer: > 1,000,000 followers.

Reviewing the figures contained in these reports and the information available, and assuming that users of special relevance usually upload content to platforms and social media with a minimum frequency of between once or twice a week, the approximate platform revenue displayed in the following table could be estimated for the following categories of users of special relevance:

|          |                  | TIK TOK          |              |             | INSTAGRAM        |              |              | YOUTUBE          |              |              |
|----------|------------------|------------------|--------------|-------------|------------------|--------------|--------------|------------------|--------------|--------------|
|          |                  | Ingresos anuales |              |             | Ingresos anuales |              |              | Ingresos anuales |              |              |
|          |                  | Min              | Max          | Medios      | Min              | Max          | Medios       | Min              | Max          | Medios       |
| 50K-500K | Mid-influencer   | 3.507,51 €       | 72.342,31 €  | 37.924,91 € | 3.507,51 €       | 109.609,56 € | 56.558,53 €  | 17.055,25 €      | 256.880,96 € | 136.968,11 € |
| 500K-1M  | Macro-influencer | 6.576,57 €       | 153.453,38 € | 80.014,98 € | 6.576,57 €       | 306.906,77 € | 156.741,67 € | 48.447,43 €      | 711.760,64 € | 380.104,03 € |
| >1M      | Mega-influencer  | 52.612,59 €      |              |             | 52.612,59 €      |              |              | 109.609,56 €     |              |              |

Table 1. Estimated revenue by uploading a single content audiovisual content per week to the VSP

|                  |                 |
|------------------|-----------------|
| Ingresos anuales | Annual revenues |
| Medios           | Media           |

|          |                  | TIK TOK          |              |              | INSTAGRAM        |              |              | YOUTUBE          |                |              |
|----------|------------------|------------------|--------------|--------------|------------------|--------------|--------------|------------------|----------------|--------------|
|          |                  | Ingresos anuales |              |              | Ingresos anuales |              |              | Ingresos anuales |                |              |
|          |                  | Min              | Max          | Medios       | Min              | Max          | Medios       | Min              | Max            | Medios       |
| 50K-500K | Mid-influencer   | 7.015,01 €       | 144.684,62 € | 75.849,82 €  | 7.015,01 €       | 219.219,12 € | 113.117,07 € | 34.110,50 €      | 513.761,93 €   | 273.936,21 € |
| 500K-1M  | Macro-influencer | 13.153,15 €      | 306.906,77 € | 160.029,96 € | 13.153,15 €      | 613.813,54 € | 313.483,34 € | 96.894,85 €      | 1.423.521,28 € | 760.208,06 € |
| >1M      | Mega-influencer  | 105.225,18 €     |              |              | 105.225,18 €     |              |              | 219.219,12 €     |                |              |

Table 2. Estimated revenue by uploading at least two audiovisual content per week to the VSP

|                  |                 |
|------------------|-----------------|
| Ingresos anuales | Annual revenues |
| Medios           | Media           |

Therefore, in order to reconcile the basic principle of proportionality in the legal regime of innovative services with the protection of the public interest in compliance with the principles of audiovisual media, the protection of the public in general, and minors in particular, against audiovisual content and audiovisual commercial communications harmful or prohibited by Law 13/2022 of 7 July 2022, it has been considered reasonable to establish the following thresholds:

- **Revenues:** Generating in the previous calendar year, at least, revenues of EUR 300,000 for the performance of its activity in the set of video-sharing platform services. In view of the figures in the tables, it is deemed reasonable, from the point of view of compliance with obligations and the imposition of appropriate regulation according to the type of undertaking.



- **Audience:** At some point in the calendar year, at least one of the video-sharing platform services reaching a minimum of one million followers (mega-influencer typology according to the categories indicated above), or, alternatively, accumulating at least 2,000,000 in all the services offered by the user through the different platforms. These figures make it possible to state that the user is able to mobilise and influence a significant audience of the service.

*II – Final provisions.* The draft legislation includes three final provisions concerning the power to issue future provisions for the development, application and implementation of the Royal Decree; the title of competence, and the entry into force of the Royal Decree.

1. *First final provision.* This empowers the responsible for Ministry of Digital Transformation to dictate as many provisions for the development, application and execution of this Royal Decree as are necessary for its correct application. Likewise, by ministerial order, the significant revenues and audience thresholds set out in Articles 3 and 4 respectively may be updated in order to adapt them to the reality and evolution of the market.
2. *Second final provision.* The draft Royal Decree is issued under Article 149(1)(21) of the Spanish Constitution, which gives the State exclusive jurisdiction in telecommunications matters, in accordance with the sixth final provision of Law 13/2022 of 7 July 2022; and of the authorisation for regulatory development contained in the seventh final provision three of the aforementioned Law.
3. *Third final provision.* Provision is made for the entry into force of the Royal Decree the day after publication in the Official State Gazette.

### ***Legal analysis.***

#### ***Relationship with European law***

The Audiovisual Communication Services Directive, following the amendments introduced by Directive (EU) 2018/1808 of 14 November 2018, extended its scope of application to video-sharing platform services, and to social media services for the distribution of audiovisual content and user-generated videos. Through this type of services, audiovisual content is offered with the aim of educating, informing and entertaining, and competing for audience capture with audiovisual media services, so its inclusion in the field is deemed relevant.



As regards the 'influencers', Directive (EU) 2018/1808 did not explicitly include them in its scope of application, leaving Member States free to regulate them. In this regard, it makes only a reference in recital 3 to the fact that: '*channels or any other audiovisual service under the editorial responsibility of a provider may constitute audiovisual media services in themselves, even if they are offered through a video-sharing platform, which is characterised by the absence of editorial responsibility*';

In this sense, the Spanish legislature chose to regulate, beyond the mandatory provisions laid down in Directive (EU) 2018/1808, the figure of the 'influencers' in Article 94 of Law 13/2022 of 7 July 2022, which it called 'users of special relevance who use video-sharing platform services'.

This draft Royal Decree develops under the scope of audiovisual regulations, the 'influencers', being users of video-sharing platform services that meet significant revenue and audience requirements. This condition will result in a set of obligations in relation to the creation and distribution of audiovisual content intended for the protection of viewers, and in particular minors.

### **Relation to supraordinate regulations**

#### **Constitution**

The draft Royal Decree is fully in line with the fundamental regulation, since it is enacted under its Article 149(1)(21) which confers on the State exclusive competence in the field of telecommunications.

#### **Legal regulations**

The draft Royal Decree implements the provisions of Article 94(2) of Law 13/2022, of 7 July 2022, proceeding to specify the significant revenue requirements of significant audiences that will serve to consider a user of a video sharing service through the platform as a user of special relevance.

#### **Range of the regulation**

The draft regulation has the status of a Royal Decree and is enacted under the authorisation contained in the seventh final provision three of Law 13/2022, of 7 July 2022.



### ***Description of the process***

#### **a) Procedures performed**

With regard to initiating the procedure, this has been carried out by the Secretary of State for Telecommunications and Digital Infrastructures, with the Ministry of Digital Transformation being the only proposing Ministry.

As stipulated in Article 26(3) of Law 50/1997 of 27 November 1997 of the Government, the regulation is accompanied by this Report of the Regulatory Impact Analysis, which has been prepared in accordance with the provisions of Royal Decree 931/2017 of 27 October 2017 regulating the Report of the Regulatory Impact Analysis, approved by the Council of Ministers of 11 December 2009.

The text of the Royal Decree has been subject to the following procedures:

- On 5 December 2023, the Council of Ministers approved the Agreement authorising the urgent administrative processing of the draft Royal Decree regulating the requirements to be considered a user of special relevance for the purposes of the provisions of General Law 13/2022, of 7 July 2022, on Audiovisual Communication.
- On 20 December 2023 the deadline granted for the public hearing of the draft Royal Decree regulating the requirements to be considered a user of special relevance for the purposes of the provisions of General Law 13/2022, of 7 July 2022, on Audiovisual Communication, a procedure concluded in accordance with the provisions of Article 26(6) of Law 50/1997, of 27 November 1997, of the Government, and carried out with the aim of hearing the citizens affected and collecting as many additional contributions could be made from the audiovisual sector and the Autonomous Communities. A total of 11 contributions would have been received from companies, entities, associations and partners. These contributions received in public hearing and the assessment thereof are included in **Annex II**.
- On 7 December 2023, a report was requested to the National Commission of Markets and Competition, in accordance with the provisions of Article 5(2)(a) of Law 3/2013, of 4 June 2013, which was received on 21 December 2023. The contributions of the regulatory body and its valuation are set out in **Annex III**.

#### **b) Procedures pending**



- In the absence of the definitive criterion from the Technical General Secretariat, it is considered that the following reports should also be obtained (Article 26 of Law 50/1997 of 27 November 1997):
  - o Office of Coordination and Quality Regulations.
  - o Technical General Secretariat of the Ministry of Digital Transformation.
  - o National Commission of Markets and Competition, in accordance with 5(2)(a) of Law 3/2013, of 4 June 2013, on the creation of the National Commission on Markets and Competition.
  - o Ministry of Finance and Public Service.
  - o Ministry of Public Administrations.
  - o Ministry of Health.
  - o Ministry of Social Rights, Consumer Affairs and Agenda 2030. Consumer and User Association.
  - o Prior approval of the Minister of Finance and Public Service (26(5) Law 40/2015).
- Notification to the Commission of the draft technical regulation as 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 (TRIS Report).
- Opinion of the Council of State (Article 22(3) of Organic Law 3/1980 of 22 April 1980 on the Council of State).

**b) Procedures performed:**

### **III. IMPACT ANALYSIS**

#### ***General considerations***

The purpose of the draft regulation is to specify the significant revenue and audience requirements set out in Article 94(2)(a) and (c) of Law 13/2022 of 7 July 2022, so that a user of a video-sharing platform service is considered a user of special relevance, providing legal certainty and transparency to the agents involved, and facilitating the enforcement of their obligations by the National Commission on Markets and Competition (hereinafter 'CNMC').



### ***Adaptation of the draft Royal Decree to the distribution order of competences.***

- Prevailing jurisdictional authority:

The present draft Royal Decree is enacted by virtue of the jurisdiction that Article 149(1)(21) of the Constitution confers on the State exclusive competence in the field of telecommunications.

- Relevant competence issues:

In accordance with the authorisation of regulatory development contained in Law 13/2022, of 7 July 2022, the draft Royal Decree affects users of special relevance who offer services through video-sharing platform services, the regulation of which is enacted under the aforementioned exclusive competence of the State in telecommunications matters, and therefore does not have an impact on the order of distribution of competences between the State and the Autonomous Communities.

In short, the draft Royal Decree respects the constitutional order of distribution of powers between the General Administration of the State and the Autonomous Communities, as well as the jurisdiction established in Law 13/2022 of 7 July 2022; and in Law 3/2013, of 4 June 2013, in relation to the control and monitoring of the obligations of users of special relevance.

### ***Economic and budgetary impact***

In relation to the analysis of the economic effects of the draft Royal Decree, the following is highlighted:

Overall economic impact. In general, it is not noted that the proposed legislation will have effects that could directly or indirectly affect the prices of products or services, the productivity of individuals or companies, employment, innovative activities or consumers.

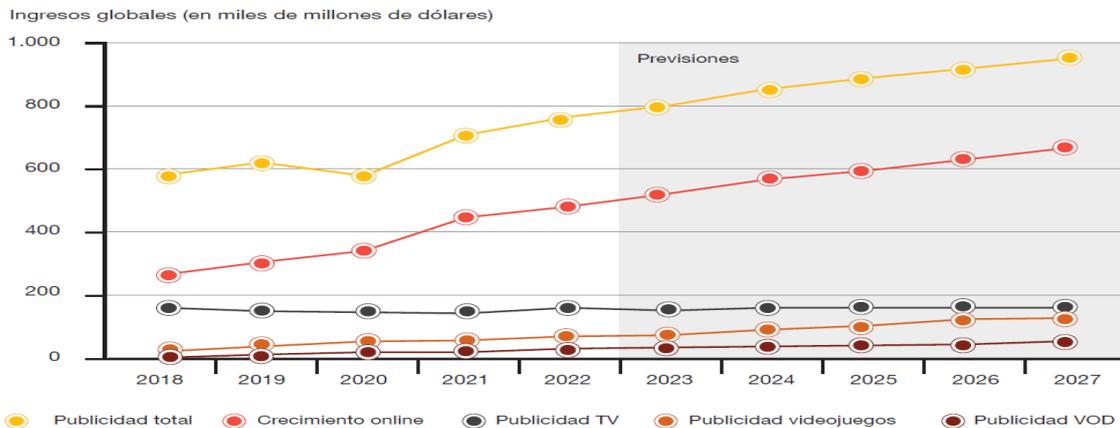
However, it can be considered that the measures contained in the Royal Decree might have an effect on SMEs, understanding these to be commercial companies established by users of special relevance in order to be able to invoice their works, either to advertisers or to the platforms, depending on the economic models of each of the



video-sharing platform services. Most users of special relevance will offer their services, either as self-employed or as micro or small enterprises, in line with the Commission Recommendation of 6 May 2003 on the definition of micro, small and medium-sized enterprises<sup>2</sup>.

Impact on competition in the market. The proposed standard introduces a series of requirements to establish a regulatory framework that ensures the balance between the different players in the audiovisual advertising market (level playing field). At present, audiovisual media service providers claim to subject both video-sharing platform services and their users of special relevance ('influencers') to a minimum set of regulations, so that competition in the market is not distorted.

According to the figures made public in the report 'Entertainment and Media Outlook 2023-2027. España'<sup>3</sup> drawn up by PWC, an increase in advertising revenue is expected, although based mainly on advertising and online marketing, an environment where the users of special relevance mainly operate. On the other hand, advertising revenues on television are stagnant.



|   |  |
|---|--|
| Ingresos globales (en miles de millones de dólares) | Overall revenue (in billions of dollars) |
| Previsiones   | Forecasts                                |
| Publicidad total                                    | Total advertising                        |
| Crecimiento online                                  | Online growth                            |
| Publicidad TV                                       | TV advertising                           |

<sup>2</sup> In accordance with Article 2 of the Recommendation of 6 May 2003: '[..]2. In the SME category, a small enterprise is defined as an enterprise employing fewer than 50 persons, and whose annual turnover or annual balance sheet does not exceed EUR 10 million.

3. In the SME category, a micro-enterprise is defined as an enterprise employing fewer than 10 persons and whose annual turnover or annual balance sheet does not exceed EUR 2 million.'

<sup>3</sup> <https://www.pwc.es/es/entretenimiento-medios/entertainment-media-outlook-espana-2023-2027.html>



|                        |                         |
|------------------------|-------------------------|
| Publicidad videojuegos | Advertising video games |
| Publicidad VOD         | VOD advertising         |

Therefore, it seems necessary to subject online advertising carried out by users of special relevance to a certain regulatory regime, correlating with what was done in Directive (EU) 2018/1808 of 14 November 2018, which extended the qualitative rules of advertising to the providers of the audiovisual media service on demand. With regard to the figures in the Spanish market, the projections of advertising revenues for television constitute a scenario of stagnation (accumulated decrease of 0.4 % by 2027), while online advertising revenues are set grow at an average sustained rate of 5.8 % in the same period.

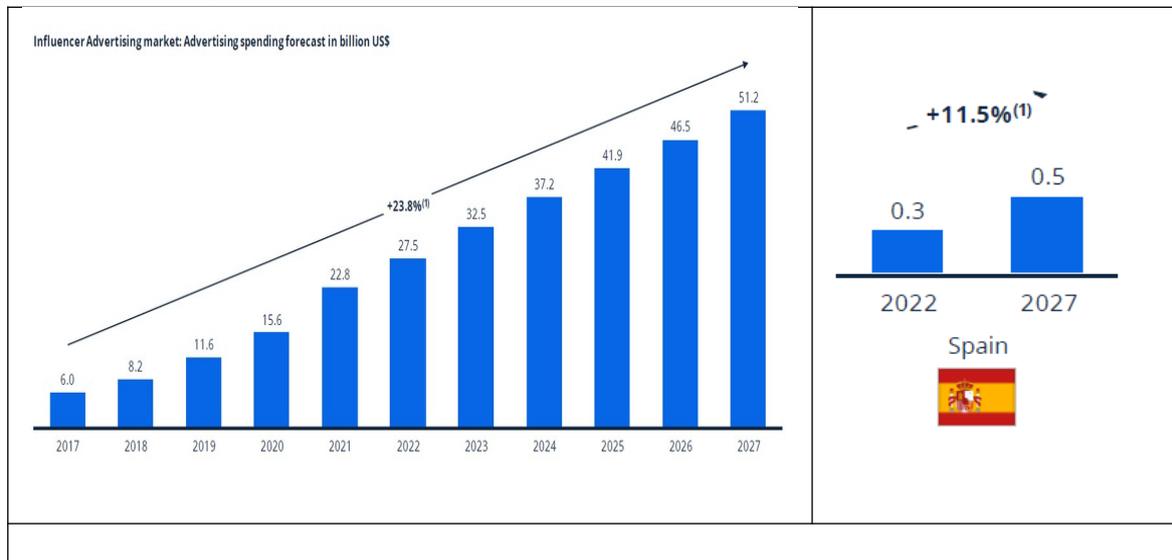
| Revenues from audiovisual media services                  |              |              |              |              |              |              |              |              |              |              |              |       |
|---|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|-------|
|   | 2018         | 2019         | 2020         | 2021         | 2022         | 2023         | 2024         | 2025         | 2026         | 2027         | CAGR         | 22-27 |
| <b>Televisión, vídeo y publicidad en televisión</b>       |              |              |              |              |              |              |              |              |              |              |              |       |
| <b>Suscripciones</b>                                      |              |              |              |              |              |              |              |              |              |              |              |       |
| ■ Suscripciones   |              |              |              |              |              |              |              |              |              |              |              |       |
| Suscripciones a través de TV <i>online</i>                | 38           | 39           | 119          | 192          | 217          | 221          | 224          | 226          | 225          | 221          | 0,4%         |       |
| Otras suscripciones                                       | 1.990        | 2.067        | 1.926        | 1.842        | 1.933        | 1.858        | 1.848        | 1.857        | 1.872        | 1.904        | -0,3%        |       |
| <b>Total suscripciones</b>                                | <b>2.029</b> | <b>2.107</b> | <b>2.045</b> | <b>2.034</b> | <b>2.149</b> | <b>2.079</b> | <b>2.072</b> | <b>2.083</b> | <b>2.097</b> | <b>2.124</b> | <b>-0,2%</b> |       |
| ■ Publicidad TV Tradicional                               |              |              |              |              |              |              |              |              |              |              |              |       |
| Multicanal  | 107          | 108          | 81           | 101          | 91           | 93           | 97           | 99           | 100          | 102          | 2,5%         |       |
| TV terrestre  | 2.020        | 1.894        | 1.541        | 1.672        | 1.588        | 1.532        | 1.542        | 1.527        | 1.513        | 1.500        | -1,1%        |       |
| <b>Total Publicidad TV tradicional</b>                    | <b>2.127</b> | <b>2.003</b> | <b>1.622</b> | <b>1.773</b> | <b>1.679</b> | <b>1.625</b> | <b>1.639</b> | <b>1.625</b> | <b>1.613</b> | <b>1.602</b> | <b>-0,9%</b> |       |
| ■ Online  |              |              |              |              |              |              |              |              |              |              |              |       |
| Publicidad TV <i>Online</i>                               |              |              |              |              |              |              |              |              |              |              |              |       |
| <b>Total Online</b>                                       | <b>43</b>    | <b>47</b>    | <b>45</b>    | <b>89</b>    | <b>105</b>   | <b>118</b>   | <b>128</b>   | <b>136</b>   | <b>142</b>   | <b>145</b>   | <b>6,6%</b>  |       |
| <b>Total Publicidad en televisión</b>                     | <b>2.170</b> | <b>2.049</b> | <b>1.667</b> | <b>1.862</b> | <b>1.784</b> | <b>1.743</b> | <b>1.767</b> | <b>1.762</b> | <b>1.755</b> | <b>1.747</b> | <b>-0,4%</b> |       |
| <b>Total televisión, vídeo y publicidad en televisión</b> | <b>4.199</b> | <b>4.156</b> | <b>3.712</b> | <b>3.896</b> | <b>3.934</b> | <b>3.822</b> | <b>3.840</b> | <b>3.845</b> | <b>3.852</b> | <b>3.871</b> | <b>-0,3%</b> |       |
| Datos en millones de euros                                |              |              |              |              |              |              |              |              |              |              |              |       |
| <b>Internet advertising revenues</b>                      |              |              |              |              |              |              |              |              |              |              |              |       |
|   | 2018         | 2019         | 2020         | 2021         | 2022         | 2023         | 2024         | 2025         | 2026         | 2027         | CAGR         | 22-27 |
| <b>Publicidad en Internet</b>                             |              |              |              |              |              |              |              |              |              |              |              |       |
| ■ Clasificados  | 232          | 260          | 234          | 268          | 307          | 329          | 345          | 357          | 365          | 372          | 3,9%         |       |
| ■ <i>Display</i>  | 1.267        | 1.418        | 1.283        | 1.478        | 1.484        | 1.585        | 1.700        | 1.774        | 1.815        | 1.831        | 4,3%         |       |
| ■ Video   | 429          | 480          | 442          | 738          | 886          | 992          | 1.127        | 1.250        | 1.364        | 1.465        | 10,6%        |       |
| ■ <i>Search</i>   | 887          | 993          | 977          | 1.445        | 1.575        | 1.717        | 1.812        | 1.884        | 1.933        | 1.966        | 4,5%         |       |
| <b>Total Publicidad en Internet</b>                       | <b>2.815</b> | <b>3.151</b> | <b>2.936</b> | <b>3.928</b> | <b>4.251</b> | <b>4.622</b> | <b>4.983</b> | <b>5.265</b> | <b>5.477</b> | <b>5.634</b> | <b>5,8%</b>  |       |
| Datos en millones de euros                                |              |              |              |              |              |              |              |              |              |              |              |       |

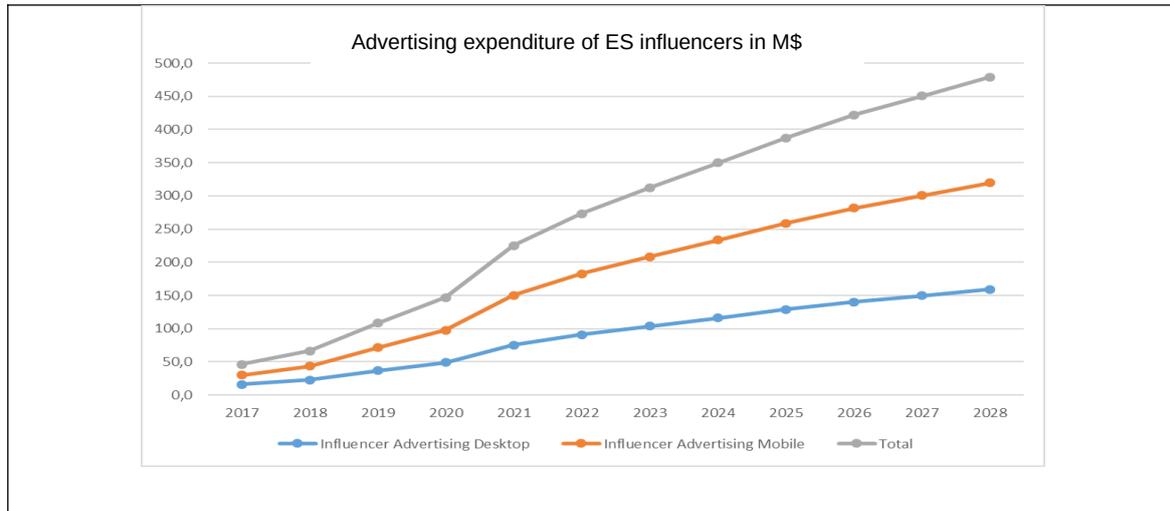
|  |  |
|--|--|
| Televisión, vídeo y publicidad en televisión | Television, video and television advertising |
| Suscripciones                                | Subscriptions                                |



|  |  |
|--|--|
| Suscripciones a través de TV online                | Subscriptions via online TV                        |
| Otras suscripciones                                | Other subscriptions                                |
| Total suscripciones                                | Total subscriptions                                |
| Publicidad TV Tradicional                          | Traditional TV advertising                         |
| Multicanal   | Multichannel                                       |
| TV terrestre                                       | Terrestrial TV                                     |
| Total Publicidad TV tradicional                    | Total traditional TV advertising                   |
| Publicidad TV Online                               | Online TV advertising                              |
| Total Online                                       | Total online                                       |
| Total Publicidad en televisión                     | Total advertising on television                    |
| Total televisión, video y publicidad en televisión | Total television, video and television advertising |
| Publicidad en Internet                             | Internet advertising                               |
| Clasificados                                       | Classified   |
| Total Publicidad en Internet                       | Total internet advertising                         |
| Datos en millones de euros                         | Data in millions of euros                          |

Finally, according to the data in the report 'Influencer Advertising: market data & analysis' drawn up by Statista, the advertising market that utilises users of special relevance in video-sharing platform services is set to have a sustained growth reaching the figure of \$ 52 billion in 2027. In the case of Spain, this report foresees that in 2027 the advertising revenue of the influencers is set to reach EUR 5 billion.





This increase in advertising investment through the what are known as influencers also has, as a direct consequence, a greater and more intense collaboration between them and advertisers when designing advertising campaigns and their content. In this sense, this regulatory project will help both to have clear legal rules for the dissemination of these campaigns through platforms.

Consequently, from the practical application of the requirements laid down in the Royal Decree and, therefore, from being considered a user of special relevance, it is concluded that these users must comply with a series of qualitative regulations regarding the dissemination of commercial communications, which will manage to balance the conditions of competition between the other providers of the audiovisual media service, and of this type of provider.

Analysis of administrative burdens. With regard to administrative burdens, compliance with the requirements contained in the draft Royal Decree will result in the consideration of the potential user as a user of special relevance, and in accordance with Law 13/2022 of 7 July 2022, the administrative burden of having to be registered in the State Register of providers of the audiovisual media service, of providers of the video-sharing platform service and of providers of the audiovisual media services aggregation service will be imposed. created pursuant to Article 39 of the aforementioned Law, and whose management, in accordance with the provisions of this article, will be exclusively electronic, and an application is made available to providers and users on the website of the Ministry of Digital Transformation.

Although, the obligation to register in the State Registry is an administrative burden, it is not imposed in this draft legislation, which is only dedicated to specifying those



requirements that will be taken into account in order to classify a user as a user of special relevance. The economic analysis of the imposition of the obligation to register in the State Registry must be carried out in the Report of Analysis of Regulatory Impact of the legislative project enacted to establish the organisation and operation of the State Registry.

Budgetary Impact. Given the purpose of the regulation, it is not apparent that the application of the regulation should, in general, lead to an increase in budgetary costs for the CNMC. At present, this body has the staffing and technical resources to be able to develop it and, therefore, the development of the measure will be covered by the current means already budgeted.

Budgetary impact on the Autonomous Communities and Local Bodies. The draft Royal Decree has no impact on the Autonomous Communities, since the body responsible for supervising compliance with the obligations will be the CNMC.

In conclusion, it is not apparent that the draft regulation entails an increase in expenditure or decrease in public revenue in the different administrations.

### ***Gender impact on childhood and adolescence and on the family***

For the purposes of Article 19 of Organic Law 3/2007 of 22 March 2007 for the substantive gender equality and Article 26(3)(f) of Law 50/1997 of 27 November 1997 on the substantive gender equality, it is stated that the draft Royal Decree would not, in principle, have a significant impact, since it merely specifies two technical requirements to determine which users of video sharing services may be considered as users of special relevance.

However, from the application of those requirements, and from the consideration as a user of special relevance, a positive effect can be derived in terms of gender impact, although not measurable. The entry into force of article 94 of Law 13/2022 of 7 July 2022, as a result of the adoption of the Royal Decree, will mean that users of special relevance must comply with basic principles of audiovisual media and with obligations that aim, in other objectives, to provide an equal and non-discriminatory image of women and to avoid the broadcast of sexist audiovisual commercial communications or that use the image of women on a vexatious basis.



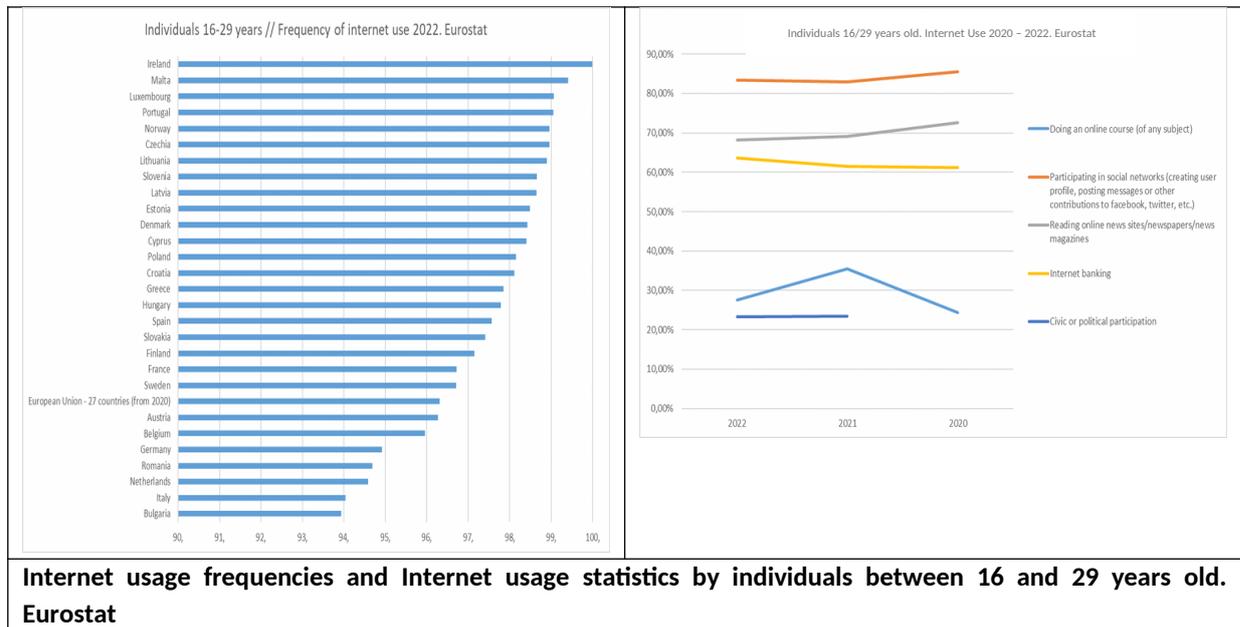
Likewise, concerning children, adolescents and the family, as is the case with the gender impact, the adoption of the Royal Decree will increase the protection of minors against damaging and harmful content, because users of special relevance will be obliged to comply not only with a series of generic rules regarding the content they disseminate, but also on audiovisual commercial communications. In this respect, we must bear in mind that according to the figures of Spain's National Institute of Statistics (INE), from the age of 10, nine out of 10 children have accessed the Internet in the last three months, and from the age of 15, 95 % of children have mobile phones. On the other hand, Eurostat highlights that 8 out of 10 individuals between the ages of 16 and 29 use the internet to access social media, which includes many of the video sharing platforms mentioned in this report.

| Uso de ordenador, Internet y disposición de teléfono móvil | Total Niños (10 - 15 años) | Niños usuarios de ordenador en los últimos 3 meses (%) | Niños usuarios de Internet en los últimos 3 meses (%) | Niños que disponen de teléfono móvil (%) |
|--|----------------------------|--|---|--|
| <b>Total Niños (10 - 15 años)</b>                          |                            |  |   |  |
| Edad: 10 años  | 472.458                    | 89,5   | 91,7  | 23,3                                     |
| Edad: 11 años  | 496.777                    | 90,6   | 92,3  | 45,7                                     |
| Edad: 12 años  | 505.165                    | 93,2   | 95,2  | 72,1                                     |
| Edad: 13 años  | 507.862                    | 94,2   | 95,3  | 88,2                                     |
| Edad: 14 años  | 521.428                    | 94,4   | 96,1  | 94,1                                     |
| Edad: 15 años  | 532.819                    | 96,0   | 97,1  | 94,8                                     |

**Table 3. Frequency of use of internet and mobile phone in children under 15 years of age. INE**

|  |  |
|--|--|
| Uso de ordenador, Internet y disposición de teléfono móvil | Use of computer, Internet and availability of mobile phone |
| Total Niños (10 - 15 años)                                 | Total children (10 - 15 years old)                         |
| Niños usuarios de ordenador en los últimos 3 meses (%)     | Child computer users in the last 3 months (%)              |
| Niños usuarios de Internet en los últimos 3 meses (%)      | Child Internet users in the last 3 months (%)              |
| Niños que disponen de teléfono móvil (%)                   | Children with mobile phones (%)                            |
| Total Niños (10 - 15 años)                                 | Total children (10 - 15 years old)                         |
| Edad: 10 años  | Age: 10 years  |

|  |  |
|--|--|
|  |  |
|--|--|



In the study 'The impact of influencers on advertising and consumer protection in the Single Market'<sup>4</sup> commissioned by the European Parliament, it is clear that young consumers appear to be particularly prone to marketing by 'influencers'. On the one hand, children use social networks more frequently, as stated in the previous paragraphs; however, it must be taken into account that minors have less developed their analytical capacities to differentiate content and advertising practices (*media literacy skills*). A study conducted among the UK population in 2018 revealed that the proportion of millennials (< 35 years old) making a purchase based on the recommendation of an 'influencer' it was 25 %, while for those over 35 it was only 8 %<sup>5</sup>. This difference becomes even greater, the younger the age of the respondents. In another survey carried out in 2018 in Germany<sup>6</sup>, 32 % of participants indicated that a product caught the attention of a consumer because it was presented or advertised by an 'influencer'. This percentage increased to 76 % among participants between 16 and 19 years old, and was reduced by increasing the age of the participant. Additionally, a survey conducted in 2019 in Austria<sup>7</sup> among Generation Z consumers supported previous results, as 52 % of respondents purchased a product that had been advertised by an 'influencer';

<sup>4</sup> [https://www.europarl.europa.eu/RegData/etudes/STUD/2022/703350/IPOL\\_STU\(2022\)703350\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2022/703350/IPOL_STU(2022)703350_EN.pdf)

<sup>5</sup> <https://www.thedrums.com/news/2018/11/06/surveymonkey-data-shows-how-brand-trust-influences-millennials-and-over-35s>

<sup>6</sup> pwc, 2018, Zwischen Entertainer und Werber - Wie Influencer unser Kaufverhalten beeinflussen. Available at: [www.pwc.de/InfluencerMarketing](http://www.pwc.de/InfluencerMarketing)

<sup>7</sup> mindtake, 2019, Consumer-Check zur Generation Z, Commissioned by the Austrian Retail Association. Available at: [https://www.handelsverband.at/fileadmin/content/images/publikationen/Studien/HV\\_ConsumerCheck\\_GenerationZ\\_2019.pdf](https://www.handelsverband.at/fileadmin/content/images/publikationen/Studien/HV_ConsumerCheck_GenerationZ_2019.pdf)



In short, the mode of consumption of audiovisual content by children and young people is very different from that of older people. According to a recent study by GECA study, prepared for the third edition of Iberseries & Platinum Industry (October 2023), while those over 55 years old are 63.2 % of viewers of linear television, 67.5 % of those who use platforms are under 55 years old. In the case of viewers aged 18 to 24, they are 10.3 % of platform users, while they are only 2.7 % of television viewers. Thus, young people of Generation Z are digital natives, having been born with widespread use of the internet, and are familiar with smart digital and mobile devices: they live connected, a significant part of their relationships are carried out through social networks, and for them it is much easier to create or receive audiovisual content through platforms.

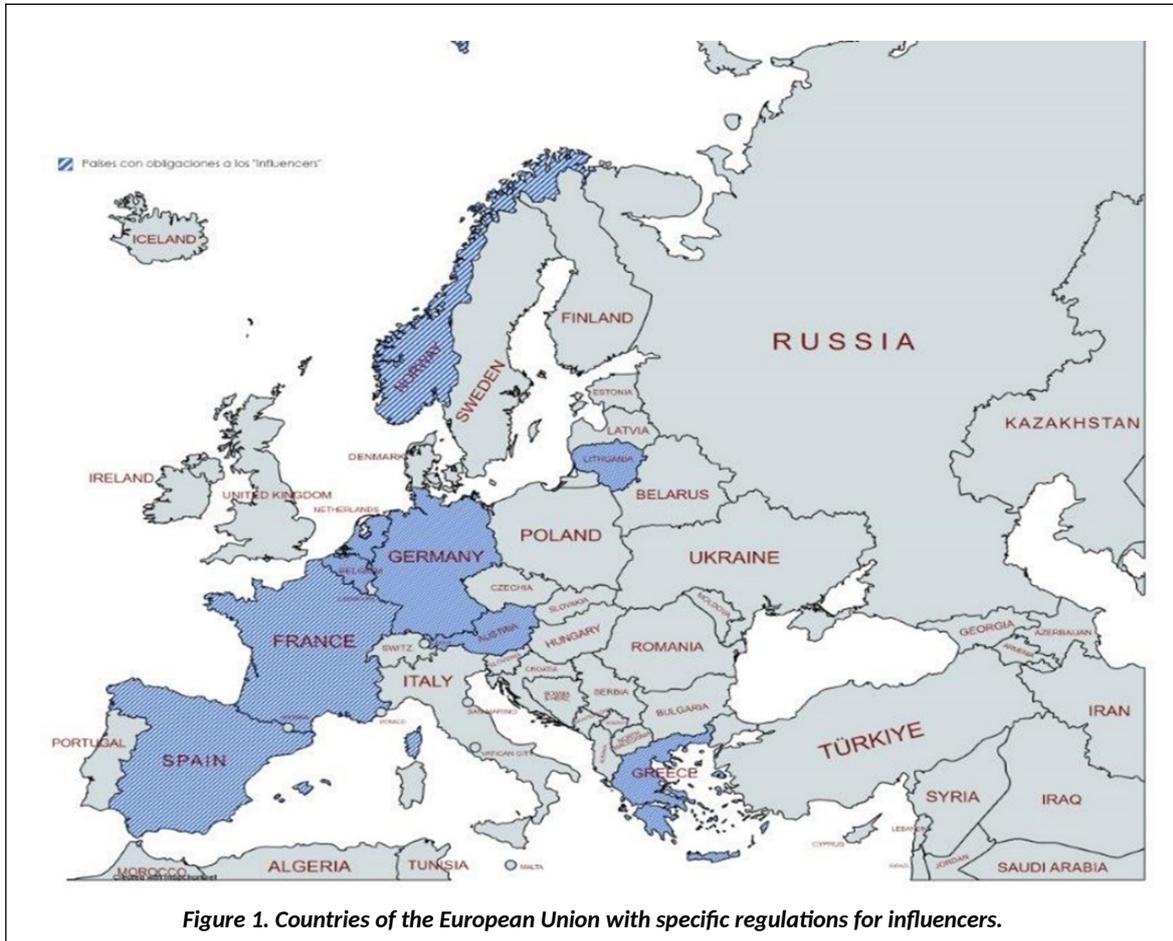
Consequently, to include users of special relevance ('influencers') with the obligations set out in article 94 of Law 13/2022 of 7 July 2022 in the scope of the audiovisual legislation will increase the protection of minors, reducing their exposure to harmful and harmful content, which encourage hatred, discrimination, or behaviour that does not promote equality. Nevertheless, this impact - which can only be considered positive - will be complex to evaluate.

***Impact due to climate change, valued in terms of mitigation and adaptation to it***

Finally, given the content of the draft regulation, it is not expected to have environmental impacts in general, nor on climate change in particular.



## Annex I - Comparative European regulation of vloggers/influencers



| Country | Regulation of vloggers  |
|---------|---|
| Austria | <ul style="list-style-type: none"><li>- Does not establish a definition of influencer in its audiovisual regulations. However, it qualifies them as providers of an on-demand audiovisual media service, depending on the type of content and how it is distributed.</li><li>- The qualification as a provider depends on the service being regarded as a mass service. Potential influencers may consult the regulator on this matter.</li><li>- The start of the activity as an influencer is subject to prior communication with two months in advance.</li><li>- The audiovisual legislation expressly includes a list of cases excluded from the condition of influencer (companies, associations, universities, schools, museums, theatres, etc. to promote their activities or the services or products they offer).</li><li>- Obligations to be fulfilled by influencers:</li></ul> |



|         |  |
|---------|--|
|         | <ul style="list-style-type: none"><li>o Qualitative legislation relating to the dissemination of commercial communications, as well as the providers of the television audiovisual media service. However, they are not subject to the obligation of strict separation between advertising and audiovisual content or the time or frequency limits of advertising specific to television.</li><li>o Financial contribution to the authority, although they will be exempted if they have an revenues of less than EUR 60,000</li><li>o Accessibility to the service, with the exemption for those with a turnover of less than EUR 500,000 in the previous year.</li><li>o Registration in the Austrian Chamber of Commerce.</li><li>- The audiovisual regulatory authority:<ul style="list-style-type: none"><li>o Monitors the commercial communications of providers on demand (including influencers) monthly.</li><li>o Will promote self-regulation in the field of audiovisual commercial communications</li></ul></li><li>- The regulatory authority has imposed few sanctions on influencers most for lack of product placement rating or for giving undue prominence to products in that type of commercial communication.</li></ul>   |
| Belgium | <p><u>Flemish Community</u></p> <ul style="list-style-type: none"><li>- Audiovisual legislation equates influencers with the providers of the television audiovisual media service.</li><li>- No followers/subscribers or revenue thresholds are foreseen to be considered influencer.</li><li>- They are obliged to qualify commercial communications, which must be clearly visible and identifiable as such. Audiovisual content qualified as suitable for children under 12 years old may not contain <i>'product placement'</i>.</li><li>- Indications of trademarks and of products or services of a company are considered commercial communications provided that the influencers gain a benefit in return. <b>A benefit is considered both the payment in money and the delivery of free products or invitations to events or other unique experiences.</b></li><li>- The Flemish consumer protection authority has published good practice guides for influencers and the advertising self-regulatory authority has made public a guide to recommendations on marketing influencers.</li><li>- The Flemish authority provides a contact point to ask questions on the subject, and monitors the content of the videos of the influencers established in its territory.</li></ul> |



|        |   |
|--------|---|
|        | <p><u>Francophone Community</u></p> <ul style="list-style-type: none"><li>- Considers the influencers as providers of audiovisual media services given their audiences, their degree of monetisation and professionalisation, and their ability to influence the public.</li><li>- The audiovisual supervisory and authorisation authority analyses on a case-by-case basis whether the requirements for being considered an audiovisual media service are met. In particular, the following criteria are analysed:<ul style="list-style-type: none"><li>i. If the activity constitutes an economic activity,</li><li>ii. If the influencer has editorial responsibility over the channel(s) he or she has in the video-sharing platform services,</li><li>iii. Whether the content offered is intended to entertain, educate or inform the public or issues commercial communications; and</li><li>iv. If the channel(s) is/are targeted at a significant proportion of the population.</li></ul></li><li>- No mention is made of the existence of thresholds for determining compliance with the above requirements.</li></ul>  |
| France | <ul style="list-style-type: none"><li>- The legislation contains a definition of influencer limited to those natural or legal persons who use their 'influence' to communicate to the public content intended for directly or indirectly promoting goods or services or carry out commercial influence activities by electronic means. The definition does not provide for followers or revenue thresholds.</li><li>- It contains explicit references to submitting influencers to the EU provisions on the dissemination of online communication services to the public and advertising, as well as national legislation on public health and the commercial exploitation of images of children aged under 16 on online platforms.</li><li>- It prohibits commercial activity that promotes beauty products or methods or that are intended to be substituted or preferable over therapeutic products. Likewise, it also prohibits the promotion of financial products or the subscription to forecasts or sports councils. Non-compliance could lead to a penalty of up to two years' imprisonment and a fine of up to EUR 300,000, and a temporary or permanent ban on the exercise of commercial influence.</li><li>- Commercial communications of goods or services must be explicitly identified by the terms 'advertising' or 'commercial collaboration' which will be legible, clear and identifiable. The absence of identification of commercial content constitutes a misleading commercial practice due to omission, and can lead to a penalty of up to two years' imprisonment and a fine of up to EUR</li></ul> |



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|         | <p>300,000.</p> <ul style="list-style-type: none"><li>- The modification of the content by any image processing technique intended to thicken or refine the figure of the influencer or modify the appearance of the face of the same must be accompanied by the words 'retouched images'; The reproduction of a face or silhouette by means of an AI process must be accompanied by the words 'virtual images'; The particulars indicated will be legible, clear and identifiable in the image or video throughout the viewing. Failure to comply with these obligations will be punishable by a penalty of up to one year's imprisonment and a fine of EUR 4,500.</li><li>- The influencers whose activity is limited exclusively to the marketing and advertising of the products and do not take care of the delivery of them, which is carried out by the supplier, they will be automatically liable to the buyer.</li><li>- Persons engaged in the activity of representation of the influencers will take all necessary measures to safeguard the interests of their representatives, to avoid situations of conflict of interest and to ensure that their activities comply with the law. The relationship between a influencer and his or her representative must be regulated by a written contract and include a series of clauses, under penalty of nullity.</li><li>- Influencers who are not established in the territory of an EU Member State, the Swiss Confederation or the European Economic Area (EEA) will designate in writing a natural or legal person to ensure a form of representation on EU territory.</li><li>- Influencers established outside the territory of the EU, the Swiss Confederation or the EEA who direct their activities, even incidentally, the French public must take out civil liability insurance with an insurer established in the EU, in order to ensure the pecuniary consequences of their professional liability.</li></ul> |
| Germany | <ul style="list-style-type: none"><li>- There is no definition of influencer, nor are thresholds set for its classification as such.</li><li>- The type of audiovisual content offered by the influencer and its function is what determines that it can be considered or not to be considered an audiovisual media service provider.</li><li>- According to the German authorities, most of the videos uploaded to YouTube can be understood as television programmes.<ul style="list-style-type: none"><li>i. If the audiovisual content resembles television audiovisual media services on demand, they must be subject to the regulations on the protection of minors and audiovisual commercial communications.</li><li>ii. If the audiovisual content resembles linear television communication services, in addition to fulfilling the</li></ul></li></ul>   |



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|           | <p>obligations of protecting minors and commercial communications, prior authorisation will be required.</p>   |
| Greece    | <ul style="list-style-type: none"><li>- There is no legal definition of influencer. No thresholds for classification have been set.</li><li>- They are treated as providers of television audiovisual media services on demand, in so far as the service offered constitutes a professional activity. A number of criteria are indicated to verify this:<ul style="list-style-type: none"><li>i. The regularity of making videos available on one or more video sharing platforms or social networks.</li><li>ii. The register of the provider/influencer in databases.</li><li>iii. Advertising audiovisual content.</li><li>iv. The use of the tools offered by the platform for the classification of videos.</li><li>v. The existence of commercial communications in the videos of the influencer.</li><li>vi. Drafting contracts with video-sharing platforms or social networks with respect to advertising revenue.</li></ul></li><li>- Work is under way on possible criteria for determining the location of the services provided by the influencers.</li></ul>   |
| Lithuania | <ul style="list-style-type: none"><li>- Where an audiovisual media service provider offers its services through a video-sharing platform service, the audiovisual media service provider may not exempt it from the obligations of the audiovisual media service, including obligations relating to the protection of minors.</li><li>- It is understood as influencers with the providers of television audiovisual media services on demand and, therefore, they must notify the regulatory authority of the commencement of their activity.</li><li>- To consider whether an influencer it is providing audiovisual media services, the following criteria should be taken into account:<ul style="list-style-type: none"><li>i. That the influencer carries out an economic and commercial activity.</li><li>ii. That the influencer offers programmes or audiovisual content the function of which is to inform, entertain or educate.</li><li>iii. That the influencer be the editorial responsible for the audiovisual content.</li><li>iv. That the audiovisual content can be selected by users from a catalogue and at the time they choose.</li><li>v. That his or her audience constitutes a significant proportion of the public, and he or she a clear impact on this.</li></ul></li><li>- The requirements applicable to influencers considered providers</li></ul> |



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|             | <p>are mainly related to advertising and the protection of minors.</p> <ol style="list-style-type: none"><li>i. Videos are required to be labelled according to indexes.</li><li>ii. Advertising should be easily recognisable, and users should be explicitly informed of sponsorships and product sites.</li></ol>  |
| Netherlands | <ul style="list-style-type: none"><li>- In order to determine whether an influencer should be considered as a provider of the audiovisual media service, the following requirements must be met:<ol style="list-style-type: none"><li>i. The influencer must have one or more active accounts on a video-sharing platform service,</li><li>ii. At least one of the active accounts must have a number of followers or subscribers equal to or greater than 500,000;</li><li>iii. At least 24 videos have been uploaded to the account during the past year; and</li><li>iv. The influencer you must receive revenue or receive products or services for the performance of your activity.</li></ol></li><li>- If he or she meet all the above requirements, he or she will be considered a provider of the television audiovisual media service on demand, and must register with the Chamber of Commerce.</li><li>- The influencer is obliged to comply with the transparency rules regarding the qualification of commercial communications and the obligations aimed at the protection of minors.</li><li>- In addition to the registration obligation, the influencer you must join the Advertising Code Foundation and notify your channel/service to the Netherlands Institute for the Classification of Audiovisual Services. Upon receipt of the notification, the Institute will decide whether to join it for producing content that may be harmful to minors. In such a case, that content will be labelled as such.</li><li>- A certain percentage of videos must consist of European productions. The influencer you must have an editorial status and take steps to improve the accessibility of the visual and hearing impaired.</li><li>- Are obliged to qualify commercial communications consisting of advertisements, product placement or sponsorship (especially if this is aimed at children under the age of 12). A content will be understood to have a commercial character when it is produced with the intention of selling or promoting a product or service (which is assumed if it receives a consideration or profit in return, whether in cash or in kind).</li><li>- It is prohibited to advertise medical treatments and use subliminal techniques in videos.</li><li>- In sponsorships and in the product placement the rules provided</li></ul> |



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|        | <p>for in Articles 10 and 11 of Directive 2010/13/EU will be observed respectively.</p>   |
| Norway | <ul style="list-style-type: none"><li>- Audiovisual regulations do not establish a legal definition of 'vlogger' or 'influencer'. It treats them as providers of television audiovisual media services on demand if their activity is of an economic or commercial nature and exercises editorial responsibility for the video catalogue.</li><li>- With regard to the obligations to which the influencers:<ul style="list-style-type: none"><li>o The main duty is to identify the advertising content (and other specific ones in this regard, such as the duty not to give undue prominence to the goods or services in the product placement), and the prohibition of commercial communications of tobacco-related products.</li><li>o To protect the child from exposure to harmful or harmful content while they are assimilated to audiovisual services on demand.</li><li>o Obligation to register, accessibility and promotion of European audiovisual works. In this regard, they must keep statistics presenting the proportion of European audiovisual works in their catalogues.</li></ul></li><li>- The possibility of establishing a threshold relating to economic activity excluding the economic activity of minor and non-professional influencers has been discussed.</li><li>- The regulatory authority has worked closely with the influencers and their representative agencies in introducing this regulation.</li></ul> |



## Annex II – Analysis of the arguments received during the public hearing

During the period of time to make contributions granted in the public hearing procedure of the draft Royal Decree regulating the requirements to be considered an influencer for the purposes of the provisions of General Law 13/2022, of 7 July 2022, on Audiovisual Communication have received contributions from the following entities and users or individuals:

- Asociación de Usuarios de la Comunicación (AUC)
- Samy Road, S.L. (Samy Road)
- IAB Spain
- Unión de Televisiones Comerciales en Abierto (UTECA)
- Centro Español de Derechos Reprográficos EGDPI (CEDRO) y la Federación Gremio de Editores de España (FGEE)
- Adigital
- ICmedia
- Telefónica España
- La Coalición de Creadores e Industrias de Contenidos (La Coalición)
- Mediaset
- Sergio Azcona

| Article 2. Scope of application  |                |   |
|--|----------------|---|
| Contribution   | Stakeholder(s) | Evaluation  |
| Extend the scope of the draft legislation to providers of the Audiovisual Media Service [Servicio de comunicación audiovisual] (SCA) | IAB, UTECA     | Not accepted. The programmes uploaded by audiovisual service providers already comply with the minimum set of obligations imposed on EBUs by sharing audiovisual content in video-sharing platform services. To ensure the principle <i>nom bis in idem</i> |
| The EBU-declared user should only fulfil the obligations arising from such a rating on platforms where it meets the requirements     | Adigital       | Not accepted. Once declared EBU, the obligations must be fulfilled in all those services offered.   |

| Article 3. Significant revenues  |                          |   |
|--|--------------------------|---|
| Contribution   | Stakeholder(s)           | Evaluation  |
| To reduce the established threshold of EUR 500,000 to be considered EBU  | UTECA, La Coalición, AUC | It is accepted to reduce the minimum revenue threshold to be considered EBU |
| To increase the revenue threshold to EUR 1,000,000 and modify the temporary requirement to consider a period longer than the calendar year | Samy Road                | Not accepted.   |
| Not to count revenues from UR activities in non-EU countries, or establishes a territoriality criterion                                    | IAB, Adigital            | Not accepted.   |
| To take into account the in-kind revenue   | UTECA, AUC,              | Accepted.   |



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| received by users of video-sharing platform services in order to meet the significant revenue requirement. | Sergio Azcona |  |
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| Article 4. Significant audience  |   |   |
|--|---|---|
| Contribution   | Stakeholder(s)                              | Evaluation  |
| To reduce the established threshold of 2,000,000 followers to be considered EBU  | Icmedia, UTECA, Mediaset, La Coalición, AUC | It is accepted to reduce the threshold of followers to be considered UER              |
| To amend the wording of paragraph 2, to specify that all videos uploaded, published or shared to prevent possible fraud                  | Mediaset                                    | Accepted  |
| To detail audience requirements by video exchange service through a specific platform.   | Samy Road                                   | Not accepted.   |
| Not to consider a certain type of audiovisual content (Instagram stories) for fulfilling the requirement of the minimum number of videos | Samy Road                                   | Not accepted. The definition of user-generated video does not set a minimum duration. |
| To establish a criterion of territoriality for the audience, considering only the Spanish  | Samy Road, Adigital                         | Not accepted  |
| To consider other factors, not just the number of followers to assess the meaningful audience criterion                                  | Telefónica                                  | Not accepted  |

| Other  |                    |  |
|--|--------------------|--|
| Contribution   | Stakeholder(s)     | Evaluation   |
| To consider still images as audiovisual content, taking into account the importance of such content in certain social media.                 | AUC, Sergio Azcona | Not accepted. User-generated programme and video definitions of Law 13/2022, of 7 July 2022, direct transposition of the Audiovisual Media Services Directive. |
| The provision of services of EBUs must be respectful of intellectual property rights as set out in Article 13 of Law 13/2022 of 7 July 2022  | CEDRO-FGEE         | Not accepted. Exceeds the scope of the draft legislation   |
| To incorporate into the project both for EBU and for providers of video-sharing platform services the obligations and their responsibilities | Icmedia            | Not accepted. Exceeds the scope of the draft legislation   |
| To introduce an extension period for the   | IAB, Adigital      | Not accepted. The regulatory projects  |



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| entry into force of the obligations   |               | where the obligations are established will take into account this circumstance, as has already occurred in Decree 1138/2023, of 19 December 2023, regulating the State Register of providers of audiovisual media services, of providers of the video-sharing platform services and of providers of the aggregation service of audiovisual media services, and the procedure of prior communication of start of activity <sup>8</sup> . |
| To apply rating obligations and trade restrictions only to programs uploaded by the EBU, and not to user-generated videos. Not to extend the ban on product placement in children's programs to user-generated videos | Adigital      | Not accepted.   |
| Implementation of tools in video-sharing platform services that guarantee the levels of protection established in the General Law on Audiovisual Communication  | Telefónica    | Not accepted. It goes beyond the scope of the regulation.   |
| Do not apply simultaneously in the consideration of influencers.  | AUC           | Not accepted. Article 94(2) Law 13/2022 of 7 July 2022  |
| To tighten the sanctioning regime   | Sergio Azcona | Not accepted. Exceeds the scope of the draft legislation  |

<sup>8</sup> [https://boe.es/diario\\_boe/txt.php?id=BOE-A-2023-25886](https://boe.es/diario_boe/txt.php?id=BOE-A-2023-25886)



## Annex III – Analysis of the contributions made by the Report of the National Commission on Markets and Competition

The National Commission of Markets and Competition makes a positive general assessment of the draft Royal Decree regulating the requirements to be considered a user of special relevance for the purposes of the provisions of General Law 13/2022, of 7 July 2022, on Audiovisual Communication. However, it makes the following specific recommendations to the draft text:

| Contribution  | Evaluation   |
|---|--|
| Article 2. Not to exclude from the scope providers of radio or sound audiovisual media services.  | Not accepted.                                      |
| Article 2. Clarify that the exclusion of subjects excluded from the scope of 94(3) of the General Law on Audiovisual Communication is carried out when they disseminate audiovisual content intended for the purposes that justify their exclusion. | Accepted   |
| Articles 3 To reduce significant revenue thresholds   | Accepted.  |
| Article 3. To include benefits in kind  | Accepted   |
| Article 3. To clarify the temporary revenue milestone   | Accepted   |
| Article 4. To lower the significant audience threshold. The CNMC proposes an umbra of 500,000 followers, or as a substitute, proposes establishing a minimum threshold of 500,000 followers in some account, and 2,000,000 in an aggregated form.   | Partly accepted. The audience criterion is lowered |
| Article 4. To remove linking the audience threshold to an average time area.  | Accepted   |
| Article 4. Regarding the minimum number of videos requirement, it is proposed that at some point they have identified 24 videos.  | Partly accepted                                    |
| Final First Provision. Doubts concerning the suitability to use a ministerial order to update significant revenue and audience thresholds   | Not accepted.                                      |