



**Draft Royal Decree XX regulating the legal framework governing the obligation to promote European audiovisual works and linguistic diversity.**

ORIGINAL TEXT

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Promoting cultural and linguistic diversity is one of the main objectives of Law 13/2022 of 7 July 2022, the General Audiovisual Communication Law. Accordingly, its explanatory memorandum states that audiovisual media services 'are a tool for conveying values, meanings and identities, as well as for helping to preserve cultural and linguistic diversity within a society;. In particular, Chapter III of Title VI of the aforementioned Law sets out important developments in the system for the promotion of European audiovisual works which contains the obligations that providers of television audiovisual media services must fulfil in order to preserve and promote cultural and linguistic diversity by ensuring sufficient levels of investment and distribution of European audiovisual works.

The purpose of this Royal Decree is to implement the obligation to promote European audiovisual works and linguistic diversity contained in the aforementioned Chapter III of Title VI of Law 13/2022 of 7 July 2022.

In compliance with the regulatory development mandates set forth in Articles 114, 117 and 120 of Law 13/2022 of 7 July 2022, this Royal Decree aims to promote European audiovisual works and linguistic diversity by establishing and specifying clear and reliable rules that provide legal certainty for compliance by television audiovisual media service providers with both the obligation to broadcast a quota of European audiovisual works, which is being implemented for the first time at the regulatory level, and the obligation to provide advance funding for European audiovisual works. It is therefore necessary to establish certain mechanisms that combine a firm commitment to promoting cultural and linguistic diversity and gender equality in the audiovisual sector with the editorial and commercial freedom that governs the operation of television audiovisual media services.

Having set out the objective and purpose of this Royal Decree, it is now necessary to give an account of the legislative background to the obligations laid down in Chapter III of Title VI of Law 13/2022 of 7 July 2022, both within the scope of Community and national law.

The origin of the system of protection of audiovisual production dates back to European Parliament and Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, commonly known as the 'Television Without Frontiers' Directive. This first instrument laid the foundations of the emerging EU audiovisual policy. With regard to the promotion of European works, the Television without Frontiers Directive already provided, on the one hand, that Member States should ensure that television broadcasters reserve a majority proportion of their broadcasting time for European works and, on the other hand, that they should also ensure that television broadcasters reserve at least 10 per cent of their broadcasting time or, alternatively, ten per cent of their programming budget to European works by producers who are independent of television broadcasters.

This Directive was partially amended in 1997 and subsequently in 2007 by Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007. The amendments introduced deepened the cultural content of audiovisual media services, while



the provisions relating to the promotion of European audiovisual works remained virtually unchanged. In 2010, Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services was adopted. It merely recast the previous legislation without introducing any significant changes (Audiovisual Media Services Directive).

Finally, in 2018, Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 was adopted, introducing several new features to the Audiovisual Media Services Directive concerning the system for promoting European audiovisual works. Firstly, a quota obligation was established requiring that at least thirty per cent of the titles available in the catalogues of on-demand audiovisual media services be European works, together with an obligation to ensure appropriate prominence for those works. Secondly, it was allowed to extend the advance funding obligation for European audiovisual works to those providers of television audiovisual media services established in other countries of the European Union that direct their service towards the territory of other Member States. Finally, in order to ensure that the new obligations imposed did not hinder market development and to allow the entry of new operators, an exemption and flexibility regime was introduced for television audiovisual media service providers with a limited market presence (for example, low turnover, low audience levels, or where compliance would be impracticable or unjustified due to the nature or subject matter of the service).

At national level, the 'Television Without Frontiers Directive' was transposed by the adoption of Law 25/1994 of 12 July 1994. For the first time, this instrument introduced into our legal system an obligation for public television service providers to reserve fifty per cent of their annual broadcasting time for European works, with half of that time to be devoted to European works in their original version in any of Spain's official languages, and, in addition, ten per cent of broadcasting time to be reserved for European works produced by independent producers. That law was subsequently amended by Law 22/1999 of 7 June 1999, which introduced an obligation for certain television operators to allocate five per cent of their revenues to the financing of European feature films and European television films. Subsequently, Law 15/2001 of 9 July 2001 on the promotion and advancement of cinematography and the audiovisual sector reformed the advance funding obligation by specifying the parties subject to it.

Law 7/2010 of 31 March 2010, the General Audiovisual Communication Law, transposed Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 into the national legal framework and, in Article 5, more extensively regulated the right to cultural and linguistic diversity through the introduction of an obligation to reserve quotas for European audiovisual works and an obligation to provide advance funding for audiovisual works. This latter obligation was developed by Royal Decree 988/2015 of 30 October 2015, which regulates the legal regime governing the obligation to provide advance funding for certain European audiovisual works.



Finally, Law 13/2022 of 7 July 2022, the General Audiovisual Communication Law, which incorporates the Audiovisual Media Services Directive into national law, includes the amendments introduced by Directive (EU) 2018/1808 of 14 November. In this legal text, the legal regime for the promotion of European audiovisual works is reformed, adapting it to the new realities of provision of audiovisual services on the market.

Among the objectives of the reform of the European audiovisual promotion system that motivated the changes introduced by Law 13/2022 of 7 July 20, the following stand out: (a) To balance the conditions of competition in the market since all providers of television audiovisual media services offering television audiovisual media services on the Spanish audiovisual market regardless of their place of establishment will be subject to the obligation to provide advance funding to European audiovisual works; (b) To adjust the obligation to promote European audiovisual works taking into account the size of the providers present on the Spanish market, in order to eliminate obstacles and barriers that may hinder their growth; (c) To promote Spain's linguistic diversity and cultural richness, for which, for the first time, specific obligations have been introduced regarding quotas and advance funding for audiovisual works in the official languages of the Autonomous Communities; (d) To promote gender equality in the audiovisual production sector through the specific obligation to finance European audiovisual works directed or created exclusively by women.

The obligation to promote European audiovisual works developed in this Royal Decree consists of the following two obligations: Firstly, due to the obligation to broadcast European audiovisual works, which is specified as the minimum presence of European audiovisual works in television broadcasting services. Secondly, due to the obligation to provide advance funding for European audiovisual works, which takes the form of a contribution of a percentage of the revenue of the television audiovisual media service provider towards the funding of European audiovisual works.

Due to the amendments implemented by Law 13/2022 of 7 July 2022, it is necessary to undertake for the first time the regulatory development of the European audiovisual work quota obligation. This makes it possible to specify the obligation to broadcast a certain percentage of works in the official languages of the Autonomous Communities, both for providers of public services at the national level and for providers of on-demand television broadcasting services, as well as the rules on the prominence of European audiovisual works for providers of on-demand television broadcasting services. In both cases it is intended to combine the promotion of the European audiovisual work with the necessary mechanisms of flexibility in the fulfillment of the obligations. The regime of exemptions or flexibilities regarding compliance with the obligation is also developed, taking into account the different realities present in the Spanish audiovisual market and in accordance with the guidelines established by the Commission in its Communication of July 2020 on the calculation of the proportion of European works in on-demand catalogues and the definition of 'low audience' and 'low turnover' (2020/C 223/03).

With regard to the advance funding obligation for European audiovisual works, this Royal Decree implements the innovations provided for in Law 13/2022 of 7 July 2022, maintaining those elements contained in the aforementioned Royal Decree 988/2015 of 30



October 2015, which have demonstrated their effectiveness. Among the new features, we would first highlight the regulatory development of the inclusion of television audiovisual media service providers established in other Member States that direct their services towards Spain as obliged entities. Secondly, and in relation to the ways of complying with the obligation, it is worth highlighting the extension of the purchase of broadcasting rights for completed works and the possibility of complying with the obligation through contributions to the Film Protection Fund or the Fund for the Promotion of Film and Audiovisual Works in Co-official Languages other than Spanish. Thirdly, it is worth noting the promotion of gender equality within the audiovisual production sector through the implementation of rules relating to the obligation to fund European audiovisual works directed or created exclusively by women. Fourthly, it is worth highlighting the development of the obligation to provide advance funding for European audiovisual works in the official languages of the Autonomous Communities, both for the provider of the public service at the national level and for providers of on-demand television audiovisual media services. Finally, it is necessary to mention the development of the system of exemptions from compliance with the obligation, taking into account the different realities present in the Spanish audiovisual market.

The Royal Decree consists of 39 articles organised in a preliminary title and three titles, four additional provisions, a transitional provision, a repealing provision and four final provisions. The preliminary title lays down the general provisions relating to the promotion of European audiovisual works, the subject matter of the Royal Decree, the objective and subjective scope of the obligation.

The first title deals with the provisions contained in Law 13/2022 of 7 July 2022 relating to the obligation to include European audiovisual works. Specific, differentiated provisions are included for linear audiovisual television service providers and for on-demand audiovisual television service providers, due to the different intrinsic characteristics of both services and the different methods used to calculate the obligation. In linear services, the annual issuance time will be used as a unit, while in the case of on-demand services, the titles present in the provider's programme catalogue will be used as a unit. On this point, the aforementioned guidelines laid down by the Commission in its Communication of July 2020 (2020/C 223/03) are followed. Likewise, the obligation to give prominence to European audiovisual works in on-demand audiovisual media services is specified, as is the system of exemptions relating to compliance with the obligation to broadcast a quota of European audiovisual works in accordance with the aforementioned guidelines.

The second title deals with the provisions relating to the obligation to provide advance funding to European audiovisual works. This title is divided into two chapters. The first chapter establishes which European audiovisual works will be eligible for funding through the funding obligation. This distinction stems from the connection between the protected public interest, namely the promotion of cultural diversity, and the type of European audiovisual works eligible for funding, in accordance with Constitutional Court Ruling 35/2016 of 3 March 2016. This first chapter also specifies the objective scope of the funding obligation, the ways in which the provider will be able to comply with the advance funding obligation, and finally, the exemption regime that aims to ensure that the new obligations imposed do not undermine the development of the market and allow the entry of new operators. The second chapter



establishes which revenues of the television audiovisual media service provider will be counted as the basis for calculating the investment obligation. However, this second chapter also establishes the production costs of a European audiovisual work that may be computed for the fulfillment of the obligation. As a new development among the eligible expenses, contributions have been added to the Film Protection Funds and to funds promoting cinema and audiovisual production in co-official languages other than Spanish.

Finally, Title III sets out the provisions relating to the monitoring and supervision of the obligation to promote European audiovisual works. This title is divided into three chapters. In accordance with the provisions of Article 120 of Law 13/2022 of 7 July 2022, the National Commission on Markets and Competition shall be responsible for supervising compliance with this obligation. Chapter I sets out the specific provisions relating to the deadlines and manner of submission of documentation for the supervision of the European audiovisual content quota obligation by television broadcasting service providers. Chapter II lays down the provisions governing the submission of documentation for the supervision of the obligation, imposed on the relevant service providers, to provide advance funding for European audiovisual works. Finally, Chapter III establishes the rules governing the actions of the National Commission on Markets and Competition, the body responsible for supervising compliance with this obligation. In particular, it establishes that it will publish an annual report on compliance with the obligation to promote European audiovisual works by providers, analysing the impact on the audiovisual sector. It is also provided that appropriate publicity will be given to the works funded under the advance funding obligation.

The additional provisions establish the cooperation regime between the National Commission on Markets and Competition and the regional supervisory authorities in order to carry out a detailed analysis of the impact of the obligation to promote European audiovisual works; set out the procedure for making contributions to the film funds; require the National Commission on Markets and Competition to publish forms on its electronic headquarters so that service providers can report information on compliance with the obligation; and, finally, call for the establishment of a mechanism for cooperation and coordination between that body and the Institute of Cinematography and Audiovisual Arts for the purposes of supervising the obligation. The transitional provision establishes that the procedures for the declaration of the loss of provider status which are pending before the State Register of Audiovisual Media Service Providers, video-sharing platform service providers and audiovisual media service aggregation service providers as at the date of entry into force of this Royal Decree shall continue to be processed in accordance with the time limits in force at the time they were initiated.

The first final provision amends Royal Decree 1138/2023 of 19 December 2023, which regulates the State Register of audiovisual media service providers, video sharing service providers via platforms and audiovisual media service aggregation providers, and the procedure for prior notification of the commencement of activity. The entry into force of Royal Decree 444/2024 of 30 April 2024, regulating the requirements for being considered a particularly important user of video-sharing platform services, in implementation of Article 94 of Law 13/2022 of 7 July 2022, has resulted in the entry into force of Article 94 of that Law, and therefore the obligation for these users to be entered in the aforementioned Register, and the



amendments included in this final provision are therefore intended to specify for these users the documentation to be provided in the application for registration, the reasons and the procedure for losing the status of audiovisual media service provider to the nature of users of particular relevance. Furthermore, based on the experience accumulated since the entry into operation of the State Register, the relevant procedures are provided for when prior notifications of commencement of activity or applications for registration are submitted containing data or accompanied by documents essential to the practice of registration that are manifestly incorrect, false or in which information also considered essential has been omitted, as well as the legal consequences of such submission. Finally, the maximum time limit for resolving the procedure for loss of provider status is extended to six months, within the possibility provided for in Article 21(2) of Law 39/2015 of 1 October 2015, on the Common Administrative Procedure of Public Administrations, in order to ensure adequate and effective investigation of proceedings within a reasonable time frame and in accordance with the complexity and variety of cases involving providers registered in the State Register. In line with this amendment, a transitional provision has been included for procedures for loss of provider status initiated at the time of entry into force of the Royal Decree.

The second final provision establishes the powers under which this Royal Decree is issued. The third final provision empowers the National Commission on Markets and Competition to issue the necessary instructions and circulars for the proper supervision of compliance with the obligation, subject to a mandatory and non-binding report from the head of the State Secretariat for Digitalisation and Artificial Intelligence. Finally, the fourth final provision establishes the entry into force of the royal decree.

The 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), insofar as it pursues a general interest by specifying certain aspects of Law 13/2022 of 7 July 2022, which will facilitate compliance with the obligations to promote European audiovisual works by those subject to compliance. In this regard, the significant changes provided for in the aforementioned Law 13/2022 of 7 July 2022 make it necessary to approve this Royal Decree, which will provide certainty and legal security to the parties subject to its provisions.

The regulation complies with the principle of proportionality, as it contains the regulations that are essential for achieving the aforementioned objectives. Thus, it seeks to combine a firm commitment to promoting cultural and linguistic diversity and gender equality in the audiovisual sector with the establishment of compliance mechanisms in line with the editorial and business freedom that govern the operation of television audiovisual media services.

Similarly, it complies with the principle of legal certainty, since it is consistent with the rest of the legal system and establishes a stable, integrated and clear regulatory framework.

In addition, during the process for drafting the legislation, the procedures for prior public consultation and public hearing established by the Law have been formalised in compliance with the principle of transparency, and the objectives pursued by this Royal Decree are also justified in the preamble.



Finally, in accordance with the principle of efficiency, the regulation introduces only a minimal increase in administrative burdens resulting from the new regulation on the obligation to include European audiovisual works, compared to previous laws.

With regard to the procedure, this royal decree has been submitted to a public hearing in accordance with the provisions of Article 26(6) of Law 50/1997, of 27 November 1997 on the Government, and reported by the National Commission on Markets and Competition pursuant to the provisions of Article 5(2) of Law 3/2013 of 4 June 2013, on the creation of the National Commission on Markets and Competition. Similarly, reports have been requested and collected from the ministerial departments whose powers are considered to be affected by the regulation, in accordance with Article 26(5) of Law 50/1997 of 27 November 1997. In accordance with the provisions of Articles 26(7) of Law 50/1997 of 27 November 1997, and 22(3) of Organic Law 3/1980 of 22 April 1980, the mandatory opinion of the Standing Committee of the Council of State shall be sought.

This Royal Decree shall be 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, in accordance with Royal Decree 1337/1999 of 31 July 1999 regulating the transmission of information in the field of technical standards and regulations and rules relating to Information Society services.

This Royal Decree is enacted pursuant to the provisions of Article 149(1)(21) and (27) of the Spanish Constitution, which confer upon the State exclusive competence in the field of telecommunications, and competence to adopt basic rules on the radio and television regime and, in general, on all social media, without prejudice to the powers which the Autonomous Communities have in their development and implementation.

Accordingly, on a proposal from the Ministers for Digital Transformation and Public Service, and for Culture, after consulting/in agreement with the Council of State and following deliberation by the Council of Ministers at its meeting of XX XXXXX 2026.

I HEREBY DECREE THE FOLLOWING:

## **PRELIMINARY TITLE**

### **General provisions**

#### **Article 1. Purpose.**

The purpose of this Royal Decree is to develop the obligation to promote European audiovisual works and linguistic diversity established in Chapter III of Title VI of Law 13/2022 of 7 July, the General Audiovisual Communication Law.



## **Article 2.** Objective scope of the obligation to promote European audiovisual works.

1. Providers of the audiovisual television media service shall contribute to reflecting the cultural and linguistic diversity of the State and ensure sufficient levels of investment and distribution of European audiovisual works in the terms provided for in Titles I and II of this Royal Decree.

2. European audiovisual works are those defined as such in Article 111 of Law 13/2022 of 7 July 20

## **Article 3.** Subjective scope of the obligation to promote European audiovisual works.

1. Providers of television audiovisual media services subject to the provisions of this Royal Decree are those defined in Article 2(4) of Law 13/2022 of 7 July 2022, and in particular those listed below, provided that they meet the requirements set out in the second paragraph:

a) Providers of linear television audiovisual media services as defined in Article 2(5) of Law 13/2022 of 7 July 2022, either in free-to-air format in accordance with Article 2(11), or conditional access in accordance with Article 2(12) of the aforementioned Law.

b) Providers of on-demand or non-linear television audiovisual media services, as defined in Article 2(6) of Law 13/2022 of 7 July 2022, whether free-to-air in accordance with Article 2(11), or conditional access in accordance with Article 2(12) of the aforementioned Law.

2. The requirements for becoming a mandatory provider in accordance with the provisions of section 1 are:

a) To be established in Spain in accordance with the provisions of Article 3(2) of Law 13/2022 of 7 July 2022.

b) To provide a nationwide audiovisual media service, in accordance with the provisions of Article 2(9) of Law 13/2022 of 7 July 2022.

c) To have editorial responsibility for audiovisual media services in accordance with the provisions of Articles 2(1) and 2(2) of Law 13/2022, of 7 July.

3. Any television audiovisual media service provider established in another Member State of the European Union that directs its services to the Spanish market in accordance with the provisions of Article 3(7) of Law 13/2022 of 7 July 2022 shall be subject to the obligation of advance funding of European audiovisual works provided for in Title II of this Royal Decree.



## **TITLE I**

# **Obligation regarding quotas for European audiovisual works and the promotion of linguistic diversity**

**Article 4.** Obligation regarding the quota of European audiovisual works in linear television audiovisual media services.

1. Providers of linear television audiovisual media services shall reserve at least fifty-one per cent of their annual broadcasting time for European audiovisual works.

2. At least fifty per cent of the quota provided for in the previous paragraph shall be reserved for works in the official language of the state or in one of the official languages of the Autonomous Communities.

3. Of the sub-quota established in the preceding paragraph, the provider of the national linear public audiovisual media service shall in all cases reserve a minimum of fifteen per cent for audiovisual works in any of the official languages of the Autonomous Communities, taking into account their population weighting, and shall in any event reserve at least ten per cent for each of the official languages of the Autonomous Communities.

The population weighting shall be based on the average resident population over the previous five years in the geographical area of each Autonomous Community in which the language has been declared official, in relation to the average total resident population of the Autonomous Communities with an official language over the same period, in accordance with the data published by the National Institute of Statistics.

4. At least ten per cent of the total broadcasting time shall be reserved for European audiovisual works produced by producers independent of the service provider in accordance with the provisions of Article 112 of Law 13/2022 of 7 July 2022, and half of that ten per cent must have been produced in the last five years.

5. The quota of European audiovisual works in linear television audiovisual media services shall be calculated on the basis of the broadcasting time reserved for European audiovisual works in the service's programming

6. The broadcasting time referred to in this Article shall be calculated excluding the broadcasting time devoted to news programmes, sporting events, games and audiovisual commercial communications.

**Article 5.** Obligation regarding the quota of European audiovisual works in on-demand television audiovisual media services.

1. Providers of on-demand television audiovisual media services shall reserve at least thirty per cent of the catalogue for European works.



2. At least fifty per cent of the quota provided for in the previous paragraph shall be reserved for works in the official language of the state or in one of the official languages of the Autonomous Communities.

3. Of the sub-quota established in the preceding paragraph, providers of on-demand television audiovisual media services operating at national level shall in all cases reserve a minimum of forty per cent for audiovisual works in any of the official languages of the Autonomous Communities, taking into account their population weighting, and shall in any event reserve at least ten per cent for each of the official languages of the Autonomous Communities.

The population weighting shall be based on the average resident population over the previous five years in the geographical area of each Autonomous Community in which the language has been declared official, in relation to the average total resident population of the Autonomous Communities with an official language over the same period, in accordance with the data published by the National Institute of Statistics.

4. In the event that a television audiovisual media service provider has editorial responsibility for linear television audiovisual media services and on-demand television audiovisual media services, for the purposes of calculating the corresponding quota for on-demand television audiovisual media services, it may exclude from the programme catalogue those programmes offered to the public through catch-up services for a maximum of 7 days after broadcast on its linear television audiovisual media service.

For these purposes, catch-up services are considered to be those connected television services that provide users with access to audiovisual content, either simultaneously with its broadcast, allowing said content to be viewed from the beginning, or on a delayed basis within a maximum period of seven days after its broadcast.

5. The share of European audiovisual work in the on-demand television audiovisual media service shall be calculated by reference to the percentage of titles in the programme catalogue.

6. In any case, news programmes, sports events, games and audiovisual commercial communications shall not be taken into account for the calculation of the percentage of European audiovisual work.

7. For the purposes of complying with the European audiovisual work quota obligation, the following definitions shall apply:

a) In the case of cinematographic films, television films, documentaries, each audiovisual work constitutes a title in the catalogue of programmes.

b) In the case of television series, each individual season constitutes a title in the programme catalogue.

c) For the remaining types of programmes in the catalogue, each season constitutes a title in the programme catalogue.



## **Article 6.** Obligation of prominence of European audiovisual work in the television audiovisual media service on request.

Providers of on-demand television audiovisual media services subject to the European audiovisual works quota obligation shall take effective measures to ensure the due prominence of European audiovisual works in their programme catalogues. To fulfil this purpose, the providers of the on-demand television audiovisual media service may choose to implement the measures they deem most appropriate among the following:

- a) Create a section dedicated to European audiovisual works accessible from the service's home page.
- b) Highlight European audiovisual works on the service's home page.
- c) Facilitate the search for European audiovisual works through the tools of the service.
- d) Use European audiovisual works in the commercial campaigns of that service.
- e) Promote European audiovisual works from the catalogue through audiovisual commercial communications or other advertising formats.
- f) Other measures similar to the previous ones.

## **Article 7.** Exemptions and relaxation measures concerning compliance with the obligation to meet the quota for European audiovisual works.

1. Television audiovisual media service providers whose audiovisual media services are exclusively dedicated to providing news programmes, sports events, games, audiovisual commercial communications or teletext services shall be exempt from the obligation to comply with the European audiovisual work quota in those services.

2. Providers of linear or on-demand television audiovisual media services whose audiovisual media services have an average annual audience per service of less than one per cent of the total audience in their reference market shall be exempt from the obligation to comply with the European audiovisual work quota for such services.

3. Television broadcasters whose annual income is less than two million euros shall be exempt from the obligation to comply with the European audiovisual content quota.

4. Providers of television audiovisual media services offering linear or on-demand television audiovisual media services for exclusive broadcasting in other Member States of the European Union shall be exempt from complying with the quotas relating to European audiovisual works in the official language of the State or in any of the official languages of the Autonomous Communities established in Articles 4(3) and 5(3) of this Royal Decree in such services.

5. In addition, the provider of the national public television audiovisual media service and the providers of the on-demand television audiovisual media service may apply to the National Commission on Markets and Competition for an exemption from, or a relaxation of, compliance with any of the sub-quotas for European audiovisual works in the official languages of the Autonomous Communities where the available supply of audiovisual works in any of those languages is insufficient to ensure compliance with the obligation.



In the case of flexibility, this may consist of reducing the percentage required in the sub-quota or enabling compliance with audiovisual works dubbed or subtitled in that official language of the Autonomous Community.

6. Providers of television broadcasting services who provide thematic television broadcasting services whose specific theme or genre makes compliance with the European audiovisual work quota obligation impracticable or unjustified may apply to the National Commission on Markets and Competition for an exemption from, or a relaxation of, compliance with the quota obligation, providing the relevant supporting documentation.

For these purposes, a thematic television audiovisual media service shall be considered to be any television audiovisual media service that devotes more than 70 % of its programming time, or more than 70 % of the titles in its programme catalogue, to a specific theme or genre of programmes.

**Article 8.** Calculation of the audience of a television audiovisual media service.

1. To calculate the relative audience of a linear television audiovisual media service, the audience of that service shall be divided by the total audience of linear television audiovisual media services in the Spanish audiovisual market in accordance with the criteria established by the National Commission on Markets and Competition.

2. To calculate the relative audience of an on-demand television audiovisual media service, the audience of that service calculated in accordance with the rules provided for in the following paragraph shall be divided by the total audience of on-demand television audiovisual media services in the Spanish audiovisual market in accordance with the criteria established by the National Commission on Markets and Competition.

3. The audience of an on-demand television audiovisual media service, in accordance with the provisions of the previous paragraph, shall be calculated by adding together the following concepts:

a) Subscribers to conditional-access on-demand television audiovisual media services (SVoD).

b) In the case of transactional on-demand television audiovisual media services (TVoD) and advertising-funded on-demand television audiovisual media services (AVoD), the number of equivalent subscribers shall be calculated on the basis of the declared revenues, in accordance with the criteria made public by the National Commission on Markets and Competition, as provided for in Article 35.



## **TITLE II**

# **Advance funding obligation for European audiovisual works and promotion of linguistic diversity**

### **Chapter I Advance funding obligation for European audiovisual works and promotion of linguistic diversity**

**Article 9.** European audiovisual works subject to the advance funding obligation.

The audiovisual works subject to the advance funding obligation regulated in this title shall be as follows:

- a) Cinematographic film, as defined in Article 113 of Law 13/2022 of 7 July 2022.
- b) Television film means a single audiovisual work that is not part of a series and is intended for public communication by audiovisual media service providers.
- c) Television series means an audiovisual work comprising a set of fiction, animation or documentary episodes, with or without a common title, intended for successive and continuous public communication by audiovisual media service providers, each episode either being a self-contained narrative unit or continuing in the next episode.
- d) Documentary means an audiovisual work of an essentially narrative nature, which is not fiction and which, by virtue of its approach, narrative structure, composition, aesthetics, design or style, preferably reflected in the form of a script, seeks to portray reality with a distinctive originality and personal perspective, through the creation or filming of scenes or situations from everyday life or history taken from their real context and presented as a document, with a certain timeless quality that detaches it from the specific event to which it may originally have been linked, and which also involves production work demonstrating that substantial time has been devoted to the preparation and post-production of the work, comparable to that required for other types of eligible productions. In any event, audiovisual reports of a journalistic or informative nature, or the mere audiovisual reproduction of newsworthy events, will not be considered documentaries.
- e) Animated audiovisual work, understood as an audiovisual work with a narrative development in which, by means of any technique, movement is imparted to the static nature of a fixed, individual image, created using drawings, various materials, objects or other elements which, when projected consecutively image by image, construct movement that does not exist in reality. Where a work contains real images mixed with animation images, it shall be considered animation when a significant number of the main characters in the work are animated and provided that the time spent using this technique is the majority of the total duration of the work.



**Article 10.** Advance funding obligation for European audiovisual works for providers of public television audiovisual media services.

The provider of the national public television audiovisual media service shall allocate, each year, six per cent of the revenues specified in Article 14(2) to funding European audiovisual works, subject to the following conditions:

a) At least seventy per cent shall be allocated to audiovisual works produced by independent producers, either on their own initiative or on commission, in accordance with Article 112 of Act 13/2022 of 7 July 2022, through the forms of compliance provided for in Article 12, and in the State's official language or in any of the official languages of the Autonomous Communities. Of this sub-quota, the provider of the national public television audiovisual media service shall in all cases reserve:

1. A minimum of fifteen per cent for audiovisual works in the official languages of the Autonomous Communities, taking into account their population weighting, and reserving at least ten per cent for each of the official languages of the Autonomous Communities.

The population weighting shall be based on the average resident population over the previous five years in the geographical area of each Autonomous Community in which the language has been declared official, in relation to the average total resident population of the Autonomous Communities with an official language over the same period, in accordance with the data published by the National Institute of Statistics.

2. A minimum of thirty per cent for audiovisual works directed or created exclusively by women.

b) A minimum of forty-five per cent must be allocated to cinematographic films produced by independent producers, on their own initiative or by request, in accordance with Article 112 of Act 13/2022 of 7 July 2022, through the forms of compliance provided for in Article 12, and in the State's official language or in any of the official languages of the Autonomous Communities.

c) A minimum of twelve per cent must be allocated to animation and documentaries.

**Article 11.** Advance funding obligation for European audiovisual works for providers of linear or on-demand television audiovisual media services.

1. Providers of linear or on-demand television audiovisual media services shall allocate five per cent of the revenue specified in Article 14(1) each year to the funding of European audiovisual works.

2. Providers of linear or on-demand television audiovisual media services with a qualifying income of EUR 50 million or more shall comply with the obligation to finance European audiovisual works in accordance with the following two conditions:



a) At least seventy per cent shall be allocated to audiovisual works produced by independent producers, either on their own initiative or on commission, in accordance with Article 112 of Act 13/2022 of 7 July 2022, through the forms of compliance provided for in Article 12, and in the State's official language or in any of the official languages of the Autonomous Communities. From this sub-quota, the provider shall reserve in any case:

A minimum of fifteen per cent to audiovisual works in official languages of the Autonomous Communities, taking into account their population weighting and reserving at least ten per cent for each of them.

The population weighting shall be based on the average resident population over the previous five years in the geographical area of each Autonomous Community in which the language has been declared official, in relation to the average total resident population of the Autonomous Communities with an official language over the same period, in accordance with the data published by the National Institute of Statistics.

2. A minimum of thirty per cent for audiovisual works directed or created exclusively by women.

b) A minimum of forty per cent must be allocated to cinematographic films by independent producers, through their own initiative or by request, in accordance with Article 112 of Act 13/2022 of 7 July 2022, through the forms of compliance provided for in Article 12, and in the State's official language or in any of the official languages of the Autonomous Communities.

3. Providers of linear or on-demand television audiovisual media services whose computable income is equal to or greater than ten million euros and less than fifty million euros shall comply with the obligation to provide advance funding to European audiovisual works by allocating a minimum of seventy per cent to audiovisual works produced by independent producers, either on their own initiative or on commission, in accordance with the provisions of Article 112 of Law 13/2022 of 7 July, through the forms of compliance provided for in Article 12, in the official language of the State or in one of the official languages of the Autonomous Communities.

### **Article 12.** Ways of complying with the obligation to provide advance funding for European audiovisual works.

1. The obligation to provide advance funding for European audiovisual works shall be fulfilled through direct participation in the production of the European audiovisual works referred to in Article 9, through the acquisition of exploitation rights in such works, or through contributions to the Film Protection Fund or to the Fund for the Promotion of Film and Audiovisual Works in co-official languages other than Spanish

2. Direct participation in production means:

a) In-house productions.



- b) Commissioned productions.
- c) Co-productions.
- d) Purely financial contributions.
- e) Contributions made through Economic Interest Groupings whose purpose is the production of audiovisual works.

3. Acquisition of exploitation rights means any contract by virtue of which the exploitation rights of the audiovisual work are acquired, in any of its forms.

4. Contribution to the Film Protection Fund or to the Fund for the Promotion of Cinema and Audiovisual Works in co-official languages other than Spanish shall be understood to mean any contribution made by a provider of television audiovisual media services to those funds.

**Article 13.** Exemptions relating to the fulfilment of the obligation to provide advance funding for European audiovisual works.

1. Providers of television audiovisual media services whose services are devoted exclusively to offering news programmes, sporting events, games, audiovisual commercial communications or teletext services shall be exempt from compliance with the obligation to provide advance funding for European audiovisual works.

2. Providers of linear or on-demand television audiovisual media services whose eligible revenue is less than EUR 10 million shall be exempt from the obligation to provide advance funding for European audiovisual works.

3. Providers of the local television audiovisual media service that are not part of a national network shall be excluded from compliance with the obligation to provide advance funding for European audiovisual work pursuant to Article 117(8) of Law 13/2022 of 7 July 2022.

4. Providers of television audiovisual media services that are dedicated exclusively to the dissemination of films classified as 'X', in accordance with Law 55/2007 of 28 December 2007, shall be exempt from compliance with the obligation to provide advance funding for European audiovisual works.

5. Television audiovisual media service providers that provide thematic audiovisual media services whose specific theme or gender makes it impracticable or unjustified to comply with the advance funding obligation for European audiovisual works may apply to the National Commission on Markets and Competition for exemption from compliance with this obligation relating to that service, submitting the appropriate supporting documentation.

For these purposes, a thematic television audiovisual media service shall be considered to be any television audiovisual media service that devotes more than 70 % of its programming time, or more than 70 % of the titles in its programme catalogue, to a specific theme or genre of programmes.

6. Television audiovisual media service providers established in Spain or in another Member State of the European Union that direct their services to Spain, whose audience is less than



two per cent in the case of linear television audiovisual media services or less than one per cent in the case of on-demand television audiovisual media services, shall be exempt from the obligation to provide advance funding to European audiovisual works.

## **Chapter II Revenues and expenditure eligible for the fulfilment of the advance funding obligation for European audiovisual works and the promotion of linguistic diversity.**

**Article 14.** Revenue eligible to determine the amount of the advance funding obligation for European audiovisual works.

1. The income eligible to determine the amount of the advance funding obligation for European audiovisual works, in the case of providers of television audiovisual media services, in accordance with Article 2(4) of Law 13/2022 of 7 July 2022, is as follows:

- a) Revenue derived from advertising marketing.
- b) Revenue obtained from the sale to third parties of content produced or co-produced by the audiovisual media service provider that generates the obligation.
- c) Revenue from subscription fees to the television audiovisual media service subject to compliance with the advance funding obligation.
- d) Revenue obtained by the direct exploitation of the content by the television audiovisual media service provider regardless of the modality used.
- e) Revenue arising from the leasing of licences for the provision of television audiovisual media services by terrestrial airwaves or from the leasing of television audiovisual media services.
- f) Revenue from public aid and contributions, however described, which have the legal nature of subsidies.

2. The revenues to be taken into account to determine the amount of the obligation to provide advance funding in the case of the provider of the public audiovisual media service at national level shall be those set out in paragraphs a), b), c) and d) of Article 2(1) of Law 8/2009, of 28 August, on the Financing of the Spanish Radio Television Corporation.

**Article 15.** Revenue excluded from the calculation for determining the amount of the advance funding obligation for European audiovisual works.

The following revenues shall not be taken into account:

- a) Those obtained by the operation of television audiovisual media services, linear or on-demand, which do not give rise to the advance funding obligation.
- b) Those generated by the leasing or sale of reception equipment or antenna installation, as well as by the contracting and maintenance of technical equipment used for service reception, nor income from technical connection or services related to broadcasting infrastructure.



c) Those arising from activities not related to the audiovisual activity of the television audiovisual media service provider.

**Article 16.** Eligible expenditure for the purposes of complying with the obligation to provide advance funding for European audiovisual works.

1. The following expenditure shall be taken into account in the fulfilment of the advance funding obligation:

a) All expenditure on in-house productions, commissioned productions and co-productions, under the terms laid down in Article 17.

b) Financial contributions to production and contributions made through Economic Interest Groupings.

c) The amount of the acquisition of rights of exploitation of audiovisual works, in the terms provided for in Article 18.

d) The contribution to the Fund for the Protection of Cinematography managed by the Institute of Cinematography and Audiovisual Arts, O.A. in accordance with Article 19(3) of Law 55/2007 of 28 December 2007 on Cinema, or to the Film Protection Fund or the Fund for the Promotion of Film and Audiovisual Works in Co-official Languages other than Spanish.

2. In accordance with Article 117(7) of Law 13/2022 of 7 July 2022, advance funding or the purchase of rights to films that are likely to receive an "X" rating, in accordance with Law 55/2007 of 28 December 2007, may not be taken into account for the purposes of this article.

**Article 17.** Eligible expenditure on in-house productions, commissioned productions and co-productions.

1. Both the direct funding provided by the obliged providers and that provided through their subsidiary companies shall be taken into account.

2. Where the obliged provider of the television audiovisual media service belongs to a group of companies and prepares consolidated accounts with the parent company, the funding provided by any production company within the group to which the obliged provider belongs shall also be taken into account, provided that that company likewise prepares consolidated accounts with the parent company.

3. In all cases, the amount of subsidies obtained by the provider of the mandatory television audiovisual media service provider, the provider's subsidiary or parent production company, or any company in the group under the terms of the second paragraph, shall be deducted from the funding provided for each work, in the amount corresponding to their percentage of participation in the financing or production of the work.

Non-Spanish European productions must submit a responsible declaration stating that they have not received such aid or indicating any aid received, so that it may be deducted from the calculation.



4. In the case of financial contributions through an Economic Interest Grouping, the Economic Interest Grouping must certify the permanence of the capital investment throughout the production of the audiovisual work.

5. Under no circumstances shall double counting of the same funding be permitted.

**Article 18.** Eligible expenditure relating to the acquisition of exploitation rights.

1. The amounts paid for the acquisition of exploitation rights for European audiovisual works from production companies prior to the completion of the work shall be calculated in accordance with the provisions of paragraph four.

2. When the provider of the audiovisual television media service is part of a group of companies and submits consolidated accounts with the parent company, the acquisition of exploitation rights by any company in the group of companies to which the provider belongs shall also be taken into account, provided that that company in turn submits consolidated accounts with the parent company.

3. Expenditure arising from the escalation clauses provided for in the contract in favour of the producer, under which the price of the exploitation rights of the European audiovisual work may be increased depending on the audience achieved or on the results of its commercial exhibition, shall be eligible for the purposes of complying with the obligation to provide advance funding for European audiovisual works

4. In relation to the acquisition of rights directly from the production company and provided that the works are unfinished, the amounts of the acquisition of exploitation rights from third parties shall be calculated in the following cases and under the following conditions:

a) Where the rights relate to a production carried out exclusively by one or more EU production companies, none of which has a permanent establishment in Spain, the full amount paid to the third party may be counted as funding.

b) Where the overall rights have been acquired by an obliged television audiovisual media service provider, which in turn resales the broadcasting rights for each of the different modes of exploitation to other audiovisual media service providers, the resales may be calculated by the amount actually paid in net terms by each provider for the acquisition of those rights, provided that the contribution taken into account for the first provider is reduced by the same amount.

Where the broadcasting rights contract for a work is entered into by a subsidiary or parent production company of the obliged provider, or by any company within the group to which the obliged provider belongs, which has declared the funding of that work, that funding shall be reduced by the amount of the exploitation rights contracts, in order to avoid double counting.

In no case shall double counting be permitted of the amount successively paid for the same right by several obliged providers of television audiovisual media services subject to the funding obligation.



c) When the holders of the exploitation rights are distribution companies, the amount paid by the obliged provider to those companies may be calculated, provided that they are independent in accordance with the provisions of Article 4(ñ) of Law 55/2007 of 28 December 2007.

5. The amounts of the acquisition of exploitation rights of European audiovisual works already completed that have not benefited from funding in their production phase shall also be taken into account, provided that:

a) A maximum of 10 % of the total advance funding obligation for European audiovisual works shall not be exceeded in the case of providers of linear or on-demand television audiovisual media services whose eligible revenues are equal to or greater than EUR 50 million. This percentage may be increased by an additional 15 % of the total advance funding obligation provided that it is intended for the acquisition of rights to exploit European audiovisual work already completed in one of the official languages of the Autonomous Communities, or European audiovisual work already completed directed or created exclusively by women in accordance with the requirements laid down in Article 23.

b) A maximum of 30 % of the total advance funding obligation for European audiovisual works shall not be exceeded in the case of providers of television, linear or on-demand audiovisual media services whose eligible revenues are less than EUR 50 million and greater than or equal to EUR 10 million.

c) The purchase must take place no later than eighteen months after the issue of the classification certificate in the case of cinematographic films or, in the case of other audiovisual works, no later than eighteen months after the duly evidenced completion of production or, where applicable, from the first broadcast on a television audiovisual media service. The purchase of the exploitation rights must be made directly to the production company, to a third party acting as sole agent of the production company, or to the distribution company. In the latter case, the distribution company must be independent, in accordance with the provisions of Article 4(ñ) of Law 55/2007 of 28 December 2007.

**Article 19.** Eligible expenditure for contributions to the Film Protection Fund or the Fund for the Promotion of Film and Audiovisual Works in Co-official Languages other than Spanish.

The expenditure for contributions to the Film Protection Fund or the Fund for the Promotion of Film and Audiovisual Works in Co-official Languages other than Spanish by the subjects obliged to comply with the obligation to provide advance funding to European audiovisual work shall be taken into account in the first instance as funding carried out in the production of audiovisual work by independent producers as provided for in Article 117(6) of Law 13/2022 of 7 July 2022, unless otherwise indicated by the provider.

The audiovisual media service provider must provide proof of its contribution to the fund to the National Commission on Markets and Competition.



## **Article 20.** Eligible expenditure relating to cinematographic films.

1. In cases of financing of cinematographic films, only those determined in Order ECD/2784/2015 of 18 December 2015, which regulates the recognition of the cost of a film, will be computed as production costs or expenses.
2. The recognition of costs for a motion picture shall be applicable from the date on which notification thereof has been received.

## **Article 21.** Eligible expenditure for other European audiovisual works.

In cases of funding for non-cinematographic European audiovisual works, only costs or expenses directly related to production or the acquisition of exploitation rights shall be eligible.

## **Article 22.** Eligible costs of the advance funding obligation for European audiovisual works in the official language of the state or in the official languages of the Autonomous Communities.

1. Providers of television audiovisual media services that are obliged to fund European audiovisual works in the State's official language or in any of the official languages of the Autonomous Communities may, for the purposes of complying with this obligation, count expenditure on European audiovisual works in which several of those languages are used simultaneously. In that case, the funding carried out may be distributed proportionally according to the presence of each of the languages in the script of the audiovisual work.
2. Contributions made to the Fund for the Promotion of Film and Audiovisual Works in co-official languages other than Spanish by parties obliged to comply with the obligation to provide advance funding for European audiovisual works shall be counted as funding made in order to meet that obligation in one of the official languages of the Autonomous Communities, unless the provider indicates otherwise.

The audiovisual media service provider must provide proof of its contribution to the fund to the National Commission on Markets and Competition in accordance with the provisions of Article 28(4).

3. In those Autonomous Communities in which the Statutes of Autonomy recognise several official languages, the audiovisual media service provider may count, within the obligation in each of the official languages of the Autonomous Community provided for in Article 11(2)(a) (1), the funding expenditure of European audiovisual works using any of those official languages of the Autonomous Community.



**Article 23.** Eligible expenditure for the advance funding obligation for European audiovisual works directed or created exclusively by women.

Expenditure incurred by providers of television audiovisual media services in funding a European audiovisual work shall be counted within the sub-quota for audiovisual works directed or created exclusively by women where any of the following requirements are met:

- a) That the audiovisual work is directed exclusively and effectively by one or more women. For the purposes of calculating this sub-quota, in the case of television series, television audiovisual media service providers may calculate individually the expenses for each episode directed exclusively and effectively by one or more women.
- b) That the authorship of the script of the audiovisual work corresponds exclusively and effectively to one or more women. For the purposes of calculating this sub-quota, in the case of television series, television audiovisual media service providers may calculate individually the expenses for each episode whose script corresponds exclusively and effectively to one or more women.

### **TITLE III**

## **Monitoring and supervision of the obligation to promote European audiovisual works and linguistic diversity**

### **Chapter I - Report on the declaration of compliance with the quota obligation for European audiovisual works and on the promotion of linguistic diversity**

**Article 24.** Declaration report on compliance with the obligation to meet the quota for European audiovisual works in linear television audiovisual media services.

1. Providers of linear television audiovisual media services subject to compliance with the European audiovisual work quota obligation set out in Title I of this Royal Decree must submit a declaration report before 1 February of each calendar year, stating the annual percentages of broadcasting time devoted to European audiovisual works broadcast in the previous year.
2. The declaration report referred to in the preceding paragraph shall, in all cases, break down the percentages allocated to audiovisual works in the State's official language, to audiovisual works in any of the official languages of the Autonomous Communities, or to European audiovisual works by independent producers, specifying, in the latter case, those produced within the last five years.



3. The provider of the national public audiovisual media service shall specify, in the declaration report referred to in the first paragraph, the percentages of broadcasting time devoted to European audiovisual works in each of the official languages of the Autonomous Communities.

4. To complete the declaration report, providers of linear television audiovisual media services shall use the form available on the website of the National Commission on Markets and Competition.

**Article 25.** Declaration report on compliance with the obligation to meet the quota for European audiovisual works in on-demand television audiovisual media services.

1. Providers of on-demand television audiovisual media services subject to compliance with the European audiovisual work quota obligation provided for in Title I of this Royal Decree shall submit by 1 February of each calendar year a declaration report with the percentages of European audiovisual work present in their programme catalogues during the preceding year.

2. The declaration report provided for in the previous paragraph shall, in any event, break down the percentages allocated to audiovisual works in the official language of the State and in each of the official languages of the Autonomous Communities.

3. To draw up the declaration report, the providers of the on-demand television audiovisual media service shall use the form available on the website of the National Commission on Markets and Competition.

**Article 26.** Declaration report on compliance with the obligation to ensure the prominence of European audiovisual works in on-demand audiovisual media services.

Providers of on-demand television audiovisual media services subject to compliance with the obligation to ensure the prominence of European audiovisual works shall submit by 1 February of each calendar year, together with the declaration report provided for in Article 25, a declaration report of the measures taken in the preceding year to ensure the due prominence of European audiovisual works in their programme catalogues, as provided for in Article 6.

## **Chapter II. Declaration report on compliance with the advance funding obligation for European audiovisual works and promotion of linguistic diversity.**

**Article 27.** Report of declaration of compliance with the advance funding obligation for European audiovisual works.

1. Television audiovisual media service providers subject to compliance with the advance funding obligation for European audiovisual works provided for in Title II shall submit, before 1 April of each calendar year, a declaration report indicating how they have complied with that obligation, without prejudice to the provisions of the following paragraph.



2. Television audiovisual media service providers subject to the obligation to provide advance funding European audiovisual works provided for in Title II whose financial year does not coincide with the calendar year may submit their declaration three months after the end of their financial year and, in any event, before 31 July.

3. To draw up the declaration report, television audiovisual media service providers subject to compliance with the advance funding obligation for European audiovisual works provided for in Title II shall use the forms available on the website of the National Commission on Markets and Competition.

4. Both the declaration report and the additional information required shall be confidential and may not be used for purposes other than those for which it has been provided, without prejudice to the provisions of Article 153(3) of Law 13/2022 of 7 July 2022 on the provision of information to the Ministry for Digital Transformation and the Civil Service for the proper performance of its powers.

### **Article 28.** Accreditation of the funding carried out.

1. For accreditation by the National Commission on Markets and Competition of the funding provided, television audiovisual media service providers subject to the obligation of advance funding of European audiovisual works provided for in Title II must submit a list of the works that have been funded.

2. The following data shall be provided for each work:

a) The type of European audiovisual work.

b) If it is an audiovisual work produced by an independent producer.

c) The title.

d) The rights holder or the production company, or, where applicable, the holder of the exploitation rights.

e) The dates of the contract, except in the case of in-house production, and the date of completion of the production; where the production has not been completed, this shall be indicated by the words 'not completed'.

f) The amounts corresponding to direct participation in production, in the case of in-house production, commissioned production, co-production or purely financial contributions, as well as those relating to the acquisition of exploitation rights.

g) Language(s) of the European audiovisual work.

h) If it is a European audiovisual work directed or created exclusively by women.

3. The National Commission on Markets and Competition may require the obliged provider of the television audiovisual media service to substantiate the data referred to in the preceding paragraphs by submitting the contracts entered into for that purpose or certificates issued by the producer, it being understood that invoices shall not be accepted as supporting documentation of the funding.



4. Where the contribution is made by means of a payment to the Film Protection Fund, in accordance with Article 19(3) of Act 55/2007 of 28 December 2007 on Cinema, or by means of a contribution to the Fund for the Promotion of Film and Audiovisual Works in co-official languages other than Spanish referred to in Article 36 of that Act, the providers shall send proof of the contribution made to the National Commission on Markets and Competition.

### **Article 29.** Accreditation of revenue.

1. In the declaration report provided for in Article 27, television audiovisual media service providers subject to compliance with the advance funding obligation for European audiovisual works provided for in Title II shall prove their revenue to the National Commission on Markets and Competition by submitting the following documentation:

a) The presentation of the duly audited annual accounts, in those cases where it is necessary in accordance with the applicable commercial regulations, and deposited in the Commercial Registry.

b) The submission of the annual accounts accompanied by reliable proof of their deposit in the corresponding register, if such deposit is mandatory, or, otherwise, certification from the representative of the corresponding provider that the annual accounts have been approved in accordance with the regulations applicable in the country in question, in the case of companies incorporated under a law other than Spanish law.

c) Presentation of the breakdown of the concepts necessary to determine the eligible revenue.

2. The breakdown of the concepts necessary to determine the eligible revenue must meet one of the following conditions alternatively:

a) To be confirmed by an external audit.

b) To be composed of an independent expert accredited in the Official Register of Auditors.

c) It shall be established by means of an Agreed Procedures Report or other equivalent document, which shall be drawn up in accordance with the form available on the website of the National Commission on Markets and Competition.

3. The Radio and Television Corporation shall certify its revenue by means of a certificate issued by its Board of Directors, with the same level of revenue breakdown as that required of private providers of the audiovisual television media service that are subject to this obligation.

### **Article 30.** Proof of the funding provided by the obliged audiovisual media service providers whose business year does not coincide with the calendar year.

Providers of compulsory television audiovisual media services whose financial year does not coincide with the calendar year, in accordance with the provisions of their articles of association, shall calculate the funding carried out with reference to the period between the first and the last day of their corresponding financial year.



### **Article 31.** Accreditation of eligible expenditure.

1. The accreditation of the expenditure provided for in Article 16 shall be calculated in accordance with the provisions of Articles 42 et seq. of the Commercial Code for the consolidated accounts.

2. In the event that the funding of a specific work is carried out by a television audiovisual media service provider as provided for in Article 3(3) of this Royal Decree, through the provider's subsidiary or any company in the group under the terms indicated in Article 17, and this funding obligation exists in another Member State of the European Union or in third countries that are party to the Council of Europe's European Convention on Transfrontier Television, a responsible declaration must be submitted stating that the work submitted has not, in turn, been submitted in any of these countries as funding to comply with a similar obligation.

### **Article 32.** Financial year in which the funding is calculated.

1. The funding carried out will apply to the financial year in which the contractual obligation of the providers of the television audiovisual media service obliged to third parties arises, regardless of their date of payment.

2. In the case of in-house production, the funding shall apply to the financial year in which production began. Where production is spread over several financial years, the expenditure actually recorded in each financial year shall be applied as funding for that year, and the same expenditure may not be recorded more than once.

3. The amount of contract escalations, under the terms set out in Article 18(2), shall be calculated in the year in which they are actually accrued and at their corresponding actual value.

4. Where the provider has made a contribution to the Film Protection Fund, in accordance with Article 19(3) of Law 55/2007 of 28 December 2007 on Cinema, or to the Fund for the Promotion of Film and Audiovisual Works in co-official languages other than Spanish referred to in Article 36 of that Law, that contribution shall be taken into account in the financial year in which the contribution was made.

### **Article 33.** Application of funding provided in the following financial year or in the immediately preceding financial year.

1. A portion of the funding provided in one financial year may be applied towards meeting the obligation in the following financial year or in the immediately preceding year, provided that there was a deficit in those years and that the funding provided to be taken into account in a financial year other than the year of application does not exceed forty per cent of the advance funding obligation applicable to the year in which it is applied.

2. The obliged audiovisual media service provider shall expressly indicate in its declaration report provided for in Article 29 its intention to avail itself of the provisions of the preceding paragraph.



3. The National Commission on Markets and Competition, in view of the funding effectively recognised in each financial year, shall notify the obliged provider of the amount of funding that must additionally be generated in the following financial year in order to be applied to the closed financial year, or, on the contrary, the total amount of funding generated in the closed financial year that may be applied to the following or immediately preceding financial year.

4. Exceptionally, where the obliged provider has incurred audited accounting losses in a specific financial year and there is solely a compliance deficit, it shall meet the funding obligation in the following financial year for at least fifty per cent of the overall amount, with the remaining amount eligible to be offset over the subsequent two financial years.

5. The obliged audiovisual media service provider may not make use again of the option provided for in the preceding paragraph, even if it were also to incur losses in subsequent financial years, until the funding from the first financial year has been fully recovered.

#### **Article 34.** Accumulation of the advance funding obligation for European audiovisual works.

1. Television audiovisual media service providers subject to compliance with the advance funding obligation for European audiovisual works whose investment obligation arising from any of the quotas or sub-quotas established in Articles 10 or 11 generates funding of an amount equal to or less than EUR 400 000, may choose to carry out the funding in that financial year, accumulate that obligation for a maximum of three financial years or apply the funding provided to a maximum of three financial years. The total amount of the accumulation annually may not exceed EUR 800 000.

2. The television audiovisual media services provider subject to compliance with the advance funding obligation for European audiovisual works shall expressly indicate in the declaration report provided for in Article 27 their intention to avail themselves of the provisions of the previous paragraph.

3. In view of the funding actually granted in each financial year, the National Commission on Markets and Competition shall notify the television audiovisual media service provider subject to the obligation to provide advance funding to European audiovisual works of the amount of funding that must be generated additionally in subsequent financial years in order to be applied to the closed financial year, or, conversely, of the total amount of funding generated in the closed financial year that may be applied to subsequent or previous financial years.

### **Chapter III Action by the National Commission on Markets and Competition.**

#### **Article 35.** Monitoring and follow-up of the obligation to promote European audiovisual works.

1. The monitoring and follow-up of the obligations contained in this Royal Decree shall be the responsibility of the National Commission on Markets and Competition, after a mandatory opinion of the Institute of Cinematography and Audiovisual Arts.



2. The National Commission on Markets and Competition shall publish before 31 January of the current year the population weightings corresponding to each of the official languages of the Autonomous Communities for the purpose of calculating the specific quotas for European audiovisual works in those languages for quota obligations and advance funding in accordance with the criterion established in this Royal Decree.

3. The National Commission on Markets and Competition shall publish the criteria for calculating the equivalent subscribers to be taken into account when determining audience figures for transactional on-demand television audiovisual services (TVoD) and advertising-funded on-demand television audiovisual services (AVoD), using as the basis for the calculation the providers' revenues and the average revenue per subscriber in audiovisual services.

**Article 36.** Method of notification of compliance with the obligations to promote European audiovisual works.

1. The documentation required to verify compliance with the obligations to promote European audiovisual works shall be submitted to the electronic register of the National Commission on Markets and Competition.

2. Interested parties will be able to access, with the same certificate with which they submitted the declaration, the electronic headquarters of the National Commission of Markets and Competition, where they will be able to consult the documents submitted and the status of processing of the file according to the provisions of Article 53 of Law 39/2015 of October 1.

3. The publication on the website of the National Commission on Markets and Competition of the provisional and final decisions, as well as the other acts of the procedure, will have all the effects of the notification made in accordance with the provisions of Articles 41 and 45 of Law 39/2015 of 1 October, in relation to said procedure.

**Article 37.** Procedure for the monitoring and follow-up of the obligation to promote European audiovisual works by the National Commission on Markets and Competition.

1. Within six months of the submission by obliged audiovisual television media service providers of the declaration reports referred to in Articles 24, 25 and 26, the National Commission on Markets and Competition shall notify each obliged provider whether it has complied with its quota and prominence obligations in respect of European audiovisual works.

2. Where a period of four months has elapsed since the submission of the declaration reports referred to in the preceding paragraph without the obliged provider having received notification from the National Commission on Markets and Competition regarding compliance with the obligations, the obliged provider may consider the quota and prominence obligations relating to European audiovisual works to have been fulfilled in the terms set out in its declaration report.

3. Within six months of the submission by obliged providers of the declaration report referred to in Article 27, the National Commission on Markets and Competition shall notify in writing and with reasons each audiovisual television media service provider subject to the obligation



of advance funding of European audiovisual works as to whether it has complied with that obligation, following the mandatory report of the Institute of Cinematography and Audiovisual Arts, O.A. This notification shall indicate the terms under which the obliged provider may avail itself of the provisions of Article 33 or, where applicable, Article 34.

4. After the period of six months from the submission of the declaration report referred to in the preceding paragraph without having received notification from the National Commission on Markets and Competition in relation to compliance with the obligation, the obliged provider may consider the advance funding obligation for European audiovisual works to have been fulfilled in the terms presented in its declaration report.

5. The notification of the resolution and other acts of the procedure will be carried out, in accordance with the provisions of Article 42(5) of the Regulation on the action and operation of the public sector by electronic means, approved by Royal Decree 203/2021 of 30 March, by making it available to the interested party through the uniquely enabled electronic address and, additionally, through the electronic headquarters of the CNMC.

6. An administrative appeal may be lodged against the resolutions issued pursuant to the first and third paragraphs of this article, which put an end to the administrative procedure, within two months from the day following their notification, in accordance with the provisions of Law 29/1998 of 13 July 1998 regulating administrative jurisdiction.

7. If the declaration reports submitted by the providers pursuant to Articles 24, 25, 26 and 27 do not meet the requirements laid down by the specific applicable legislation, and in particular those required by the forms established by the National Commission on Markets and Competition, the interested party shall be required to remedy the absence or provide the required documents within ten days, in accordance with the terms laid down in Article 68 of Law 39/2015 of 1 October 2015.

8. In accordance with the provisions of Article 53(1)(a) of Law 39/2015 of 1 October 2015, interested parties may access this website to consult the documentation submitted and the status of the procedure.

### **Article 38.** Annual report on the impact analysis of the obligation to promote European audiovisual works.

1. The National Commission on Markets and Competition shall draw up, following the mandatory report of the Institute of Cinematography and Audiovisual Arts, O.A., an annual report on compliance by audiovisual television media service providers with the quota, prominence and advance funding obligations.

2. In the report established in the previous section, the National Commission on Markets and Competition shall:

a) Analyse the impact of the quota and prominence requirement for European audiovisual works on the audiovisual industry, in particular on the production of European audiovisual works in the official language of the State and in the official languages of the Autonomous Communities.



b) Analyse the impact of the advance funding obligation on the audiovisual industry in general, and in particular on the sector of audiovisual production by independent producers and the presence of women in that sector.

c) Recommend appropriate measures to improve the effectiveness and efficiency of the obligations to promote European audiovisual works and linguistic diversity.

3. The report referred to in paragraph one of this Royal Decree shall incorporate the reports submitted by the Autonomous Communities concerning compliance, at regional level, with the quota obligations and the advance funding obligations by obliged providers, in accordance with the first additional provision.

4. The report referred to in the first paragraph shall be published on the website of the National Commission on Markets and Competition, ensuring the confidentiality provided for in Article 27(4).

**Article 39.** Advertising of titles benefiting from the advance funding obligation for European audiovisual works.

The titles of the works benefiting from the funding provided for in this Royal Decree shall be published annually by the National Commission on Markets and Competition. In particular, for each title that has been funded by the obligation provided for in Title II, the type of audiovisual work shall be specified whether it has been produced by an independent producer or not, counted within the quota of European works in the official language of the State or in the official languages of the Autonomous Communities, or counted within the quota of works directed or created exclusively by women, where applicable.

**First additional provision.** Information from the regional audiovisual authorities.

The regional audiovisual authorities or, where appropriate, the bodies competent at regional level for audiovisual matters, shall send the following documentation to the National Commission on Markets and Competition for information purposes:

a) Before 1 April each year, a report shall be produced on compliance during the immediately preceding year, by regional-level audiovisual television media service providers and regional-level public audiovisual television media service providers, with the broadcasting quotas for European audiovisual works and works in any of the official languages of Spain, and with the broadcasting quotas for European productions made by independent producers, as well as with compliance with the obligation of prominence of audiovisual works available on on-demand services, in accordance with the provisions of Section 2 of Chapter III of Title VI of Law 13/2022 of 7 July 2022.

b) Before 1 October each year, a report shall be produced on compliance during the immediately preceding year, by regional-level audiovisual television media service providers and regional-level public audiovisual television media service providers, with the obligation of advance funding of European audiovisual production, as provided for in Section 3 of Chapter III of Title VI of Law 13/2022 of 7 July 2022. That report shall set out, broken down by obliged



provider, the operating revenue taken into account for the purposes of compliance with the funding obligation, as provided for in Article 14 of this Royal Decree, and the total funding contributed, distinguishing between funding directed to productions in any of the official languages of Spain and funding directed to other European productions and, within each of those categories, funding provided by independent producers, funding allocated to cinematographic films, to films and series for television, and to other productions, such as documentaries and animated productions, and, lastly, funding allocated to audiovisual works directed or created exclusively by women.

**Second additional provision.** Procedure for making contributions to the Fund.

The Institute of Cinematography and Audiovisual Arts (Instituto de la Cinematografía y de las Artes Audiovisuales, O.A.) shall, no later than 6 months after the entry into force of this Royal Decree, ensure the implementation of the procedures necessary to enable television audiovisual media service providers to make contributions to the Film Protection Fund, in accordance with Article 19(3) of Law 55/2007 of 28 December on Cinema, or to the Fund for the Promotion of Film and Audiovisual Works in co-official languages other than Spanish as referred to in Article 36 of that Law, as provided for in this Royal Decree.

**Third additional provision.** Forms for notifying compliance with the obligations to promote European audiovisual works.

Within a maximum period of three months from the entry into force of this Royal Decree, the National Commission on Markets and Competition shall make available, on its website, to the obliged parties the forms for notifying compliance with the obligations laid down in this Royal Decree, following the mandatory but non-binding report of the Head of the State Secretariat for Digitalisation and Artificial Intelligence of the Ministry for Digital Transformation and the Civil Service.

**Fourth additional provision.** Collaboration of the Institute of Cinematography and Audiovisual Arts.

The National Commission on Markets and Competition and the Institute of Cinematography and Audiovisual Arts (Instituto de la Cinematografía y las Artes Audiovisuales, O.A.) shall establish a channel to ensure the necessary coordination and cooperation between the two bodies for the purposes of verifying the obligation to finance European audiovisual works by the National Commission on Markets and Competition.

**Sole transitional provision.** Procedures for declaring the loss of status as a provider in operation.

The procedures for declaring the loss of the status of provider that are being processed before the State Registry of audiovisual media service providers, video-sharing platform service providers and audiovisual media service aggregation service providers on the date of entry into force of this Royal Decree shall continue to be processed in accordance with the time limit in force at the time of their initiation.



## **Sole exemption provision.** Regulatory repeal.

Royal Decree 988/2015 of 30 October 2015 which regulates the legal regime governing the obligation of advance funding of certain European audiovisual works, is hereby repealed, together with any other provisions of equal or lower rank that are contrary to the provisions of this Royal Decree.

**First final provision.** Amendment to Royal Decree 1138/2023 of 19 December 2023, regulating the State Register of audiovisual media service providers, video-sharing platform service providers and audiovisual media service aggregation service providers, and the procedure for prior notification of the commencement of activity.

Royal Decree 1138/2023 of 19 December 2023, regulating the State Register of audiovisual media service providers, video-sharing platform service providers and audiovisual media service aggregation service providers, and the procedure for prior notification of the start of activity, and the procedure for prior notification of the commencement of activity; is amended as follows:

One. A new paragraph 6 is added to Article 12, and reads as follows:

“6. Users of special relevance who use video-sharing platform services must also provide an accompanying responsible declaration stating, under their own responsibility, that they meet the requirements laid down in Article 94(2) of Law 13/2022 of 7 July 2022, in the terms specified by Royal Decree 444/2024 of 30 April 2024 regulating the requirements for being considered a particularly relevant user of video-sharing platform services, in implementation of Article 94 of Law 13/2022 of 7 July 2022, the General Audiovisual Communication Act

For the purposes of complying with the obligation set out in the previous paragraph, users of special relevance shall use the standardised responsible declaration model available on the associated electronic headquarters of the Ministry for Digital Transformation and Public Administration.

Two. A subparagraph is added to paragraph 5 and a paragraph 6 is added to Article 16, which shall read as follows:

5. In accordance with Article 69(4) of Act 39/2015 of 1 October 2015, the prior notification shall cease to have effect from the moment that any essential inaccuracy, falsehood or omission is detected in the submission of the data and/or documents specified in Articles 12(1) (a), 12(1)(b), 12(1)(c), 12(1)(d), 12(1)(e), 12(1)(g) and 12(1)(j), and 12(2)(a), 12(2)(b), 12(2)(c), 12(2)(d) and 12(2)(f), and 13(1)(a), 13(1)(c), 13(1)(d), 13(1)(e), 13(1)(f), 13(1)(i) and 13(1)(j).

By resolution of the head of the Secretariat of State for Digitalisation and Artificial Intelligence, the occurrence of any of the circumstances set out in the previous paragraph shall be declared.

6. An appeal for reversal may be lodged against the decision referred to in the second paragraph of the previous section, which puts an end to the administrative procedure, before the same body that issued it, in accordance with the provisions of Article 123 et seq. of Law



39/2015 of 1 October 2015, or said decision may be challenged directly before the contentious-administrative court.

Three. Subparagraph (c) of Article 22(1) is amended and a subparagraph (d) is added to read as follows:

'c) In the case of audiovisual media service aggregation service providers, video-sharing platform service providers and users of particular relevance who use video-sharing platform services, once the application for registration in the State Register has been received, which must be submitted within a maximum period of one month from the start of the activity.

d) In the case of users of particular relevance who use video-sharing services via a platform, once the application for registration in the State Register has been received, which must be submitted within a maximum period of one month from the moment the user meets the requirements set out in Article 94.2 of Law 13/2022, of 7 July, under the terms specified in Royal Decree 444/2024 of 30 April.'

Four. Paragraphs 3 and 4 are added to Article 24, which shall read as follows:

'3. Where the application for registration contains any essential inaccuracy, falsehood or omission in the submission of the data and/or documents specified in points (a), (b), (c), (d), (e), (g) and (j) of Article 12(1), in Article 12(6), in points (b), (c), (e), (f), (i) and (j) of Article 13(1), and in Articles 13(3) and 13(4), as applicable to the type of provider concerned, the State Secretariat for Digitalisation and Artificial Intelligence shall, after hearing the interested party, issue a reasoned decision declaring the application inadmissible.

4. An optional administrative appeal for reconsideration may be lodged against the decision referred to in the preceding paragraph, which brings the administrative procedure to an end, before the same body that issued it, in accordance with the provisions of Article 123 et seq. of Law 39/2015 of 1 October 2015, or that decision may be challenged directly before the contentious-administrative courts.

Five. The sole paragraph of Article 29 is numbered as paragraph 1 and a paragraph 2 is added, which are worded as follows:

"1. Audiovisual media service aggregation service providers, video-sharing platform service providers, and users of special relevance who use video-sharing platform services shall lose their status as providers, in accordance with the grounds set out in Article 20(1)(a), (b) and (c) of Law 13/2022 of 7 July 2022, through the procedure provided for in Article 30.

2. In addition to the grounds set out in the preceding paragraph, users of special relevance who use video-sharing platform services shall lose that status where they cease to comply with any of the requirements laid down in Article 94(2) of Law 13/2022 of 7 July 2022, under the terms specified in Royal Decree 444/2024 of 30 April 2024.

Six. A subparagraph (d) is added to paragraph 1 and Article 30(3) is amended to read as follows:



“(d) In the case of Article 29(2), upon receipt of notification from a user who uses video-sharing services via a platform in the circumstances referred to therein, or from the moment the competent body becomes aware of such fact.

(...)

3. By decision of the head of the State Secretariat for Telecommunications and Digital Infrastructures, within six months of the agreement to initiate the procedure, and after hearing the interested party, the loss of audiovisual media service provider status shall be declared.”

**Second final provision.** Competence titles and legal nature of the regulations.

1. This Royal Decree is issued pursuant to the provisions of Article 149(1), (27) of the Spanish Constitution, which confers on the State exclusive power to lay down the basic rules governing the radio and television system and all means of social communication, without prejudice to the powers that correspond to the Autonomous Communities in their development and implementation.

2. Final Provision One is also adopted pursuant to Article 149(1)(21) of the Spanish Constitution, insofar as it confers on the State exclusive competence in matters of telecommunications.

3. The first additional provision is of a basic nature, in accordance with the provisions of Article 149(1)(27) of the Spanish Constitution.

**Third final provision.** Authorisation for the application of the provisions of this royal decree.

In accordance with the provisions of Article 30 of Law 3/2013 of 4 June 2013, the National Commission on Markets and Competition may issue the instructions and circulars necessary for the proper supervision of compliance with the obligation regulated in this Royal Decree, following a mandatory report from the head of the State Secretariat for Digitalisation and Artificial Intelligence.

**Fourth final provision.** Entry into force.

1. This Royal Decree shall enter into force on the day following its publication in the Official State Gazette, without prejudice to the provisions set out in the following paragraphs.

2. Title I shall enter into force on 1 January 2026 for application in the financial year corresponding to that year.

3. Title II shall enter into force on 1 January 2027 for application in the financial year corresponding to that year, based on the revenue accrued in 2026.