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AND CIVIL SERVICE

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DIGITISATION AND AUDIOVISUAL MEDIA SERVICES

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# **REGULATORY IMPACT ANALYSIS REPORT**

## **DRAFT ROYAL DECREE REGULATING THE LEGAL FRAMEWORK GOVERNING THE OBLIGATION TO PROMOTE EUROPEAN AUDIOVISUAL WORKS AND LINGUISTIC DIVERSITY**

28 October 2025



## EXECUTIVE SUMMARY

<b>Ministry/Body proposer</b>	Ministry of Digital Transformation and the Civil Service. Secretary of State for Digitisation and Artificial Intelligence.	<b>Date</b>	28/10/25
<b>Title of the regulation</b>	Draft Royal Decree implementing the obligation to promote European audiovisual works and linguistic diversity		
<b>Type of report</b>	Normal <input checked="" type="checkbox"/> Abbreviated <input type="checkbox"/>		
<b>TIMELINESS OF THE PROPOSAL</b>			
<b>Regulated situation</b>	The draft royal decree implements the obligation for television audiovisual media-service providers to promote European audiovisual works and linguistic diversity laid down in Chapter III of Title VI of General Law 13/2022 of 7 July 2022 on Audiovisual Communication.		
<b>Objectives pursued</b>	<ul style="list-style-type: none"> <li>- To implement by regulation the obligation to promote European audiovisual works contained in Chapter III of Title VI of Law 13/2022 of 7 July 2022.</li> <li>- To implement by regulation the European audiovisual works quota obligation, as well as the obligation to give prominence to such works in on-demand audiovisual services.</li> <li>- To combine the promotion of European audiovisual works with the establishment of flexibility mechanisms in compliance with the obligation to promote European audiovisual works with the aim of ensuring its effective fulfilment by all obliged parties without creating a barrier that prevents the growth of providers or their competition.</li> <li>- To promote support for culture and the cultural and linguistic diversity present in our country.</li> <li>- To provide legal certainty to the system for the promotion of European audiovisual works and linguistic diversity provided for in the Law.</li> </ul>		
<b>Main alternatives considered</b>	To amend the current Royal Decree on the advance financing obligation, Royal Decree 988/2015 of 30 October 2015, to adapt it to the new legal framework established by Law 13/2022 of 7 July 2022 and simultaneously issue another Royal Decree to develop the legal regime relating to the European audiovisual works quota obligation and the obligation to give them prominence.		
<b>CONTENT AND LEGAL ANALYSIS</b>			
<b>Type of regulation</b>	Royal Decree		
<b>Structure of the Regulation</b>	The draft royal decree consists of a preamble, four titles and five chapters, with a total of 39 articles, four additional provisions, one transitional provision, a single repealing provision and four final provisions.		
<b>Prior public consultation (Article 26(2) Law 50/1997)</b>	From 29 July 2022 to 30 September 2022, a public consultation was held in accordance with Article 26(2) of Law 50/1997 of 27 November 1997 of the he Government. Within the established deadline, a total of 16 contributions were received from 10 associations, 5 companies, and 1 foundation.		
<b>Hearing process (Article 26(6) Law 50/1997)</b>	The draft regulatory Royal Decree has been submitted to a public hearing in accordance with the provisions of Article 133(2) of Law 39/2015 of 1 October 2015 and Article 26(6) of Law 50/1997 of 27 November 1997, making the text available to the general public via the website of the Ministry of Digital Transformation and Civil Service. A total of 19 contributions were received within the deadline, from 12 associations, 6 audiovisual media service providers and 1 audiovisual producer.		



<p><b>Procedure pending</b></p>	<p>- Notification through the procedure for the provision of information in the field of technical regulations and of rules on Information Society services of the European Union (TRIS), as provided for in Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 and in Royal Decree 1337/1999 of 31 July 1999 regulating the transmission of information in the field of technical standards and regulations and rules on Information Society services.</p>	
<p><b>Reports collected</b></p>	<p>- National Markets and Competition Commission, in accordance with Article 5(2) of Law 3/2013 of 4 June 2013 establishing the National Commission for Markets and Competition (23 May 2024).</p> <p>- State Legal Service.</p> <p>- Report of the Spanish Radio and Television Corporation (Corporación de Radio y Televisión Española, S.A. – RTVE) (22 July 2025)</p> <p>- Report of the Ministry of Equality, in accordance with Article 26(5) of Law 50/1997 of 27 November 1997 (24 July 2025).</p> <p>- Report of the Technical General Secretariat of the Ministry of Culture, in accordance with Article 26(5), of Law 50/1997 of 27 November 1997 (24 July 2025). A report is included from the Institute of Cinematography and Audiovisual Arts (Instituto de la Cinematografía y de las Artes) (21 July 2025).</p> <p>- Report of the Ministry of Economy, Trade and Business, in accordance with Article 26(5), first paragraph, of Law 50/1997 of 27 November 1997 (1 August 2025).</p> <p>- Report of the Ministry of Territorial Policy and Democratic Memory, in accordance with Article 26(5) of Law 50/1997 of 27 November 1997 (19 August 2025).</p> <p>- Report of the Ministry of Finance, in accordance with Article 26(5) of Law 50/1997 of 27 November 1997 (24 September 2025).</p> <p>- Report of the Office of Coordination and Regulatory Quality, in accordance with Article 26(9) of Law 50/1997 of 27 November 1997 (20 October 2025).</p> <p>- Report of the Technical General Secretariat of the Ministry of Digital Transformation and Civil Service, in accordance with the provisions of Article 26(5) of Law 50/1997 of 27 November 1997 (24 October 2025).</p>	
<p><b>Opinion to be collected</b></p>	<p>- Opinion of the Standing Committee of the Council of State (Article 22(3) of Organic Law 3/1980 of 22 April 1980 on the Council of State and Article 26(7) of Law 50/1997 of 27 November 1997).</p>	
<p><b>Consistency with the distribution of competences</b></p>	<p>The draft royal decree is issued pursuant to the titles of competence provided for in Article 149(1), points (21) and (27) of the Spanish Constitution, which confers on the State exclusive power concerning telecommunications and to dictate the basic rules governing the radio and television system and, in general, all social communication media, without prejudice to the powers that correspond to the Autonomous Communities in their development and implementation. In addition, the first additional provision will have the character of a basic standard.</p>	
<p><b>IMPACT ANALYSIS</b></p>		
<p><b>Economic and budgetary impact</b></p>	<p>General impact on the economy</p>	<p>It has no significant impacts and, in any case, it is impossible to quantify the impact.</p>



	With regard to competition	<input checked="" type="checkbox"/> the standard has no significant impact on competition <input type="checkbox"/> the standard has a positive impact on competition <input type="checkbox"/> the standard has a negative impact on competition
	With respect to administrative burdens	<input type="checkbox"/> it entails a reduction in administrative burdens. Estimated quantification _____ <input checked="" type="checkbox"/> It incorporates new administrative burdens. Estimated quantification <b>_EUR 201_</b> <input type="checkbox"/> it does not affect administrative burdens
	With respect to budgets, the Regulation: <input type="checkbox"/> affects State budgets <input type="checkbox"/> affects the budgets of other regional administrations	The National Commission on Markets and Competition has been monitoring compliance with the obligations relating to the share of European audiovisual works and the advance financing of European audiovisual works. It therefore already has the necessary staff and technical resources to be able to carry out the tasks involved in verifying the compliance of audiovisual media service providers with the obligation to promote European audiovisual works.
<b>Gender impact</b>	The standard has the following gender impact:	Negative <input type="checkbox"/> None <input type="checkbox"/> Positive <input checked="" type="checkbox"/>
<b>Impact on children, adolescents and families</b>		The draft may have a positive impact on children, adolescents or families since, in accordance with its content, it is intended to finance audiovisual content, in all official languages, whose target audiences are children, adolescents and their families, in order to encourage promotion of the linguistic diversity present within national territory.
<b>Climate change impact</b>		It has no impact on climate change, as the measures it establishes do not affect mitigation or adaptation efforts either positively or negatively.



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## I. TIMELINESS OF THE PROPOSAL

### 1. *Rationale of the draft royal decree on the promotion of European audiovisual works and linguistic diversity*

Law 7/2010 of 31 March 2010 incorporated Directive 2007/65/CE of the European Parliament and of the Council of 11 December 2007 on Audiovisual Media Services into Spanish law. However, in November 2018, Directive 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (AVMS) in view of changing market realities, introduced a series of amendments to certain provisions of the *Audiovisual Media Services Directive*; in particular, the provisions relating to the promotion of European audiovisual works and linguistic diversity were reformulated.

On the one hand, a European audiovisual works quota obligation was established for on-demand television audiovisual media-service providers, requiring that a minimum percentage of 30 % of the titles of the catalogue of programmes correspond to European audiovisual works, while ensuring that they were given due prominence. On the other hand, Member States were granted the power to extend the European audiovisual works finance obligations laid down in their national legislation to all providers offering audiovisual services in that State, even if they were not established in it. In practice, this last reform entails an exception in this area to the principle of country of origin, one of the pillars on which the freedom to provide services in the EU single market is based, justified by the objective of promoting European cultural and linguistic diversity.

The changes made to the *Audiovisual Media Services Directive* have been incorporated into Spanish law through Law 13/2022 of 7 July 2022, the General Law on Audiovisual Communication (*Ley General de la Comunicación Audiovisual*, hereinafter LGCA). Among the changes made to the regulatory regime to which audiovisual media-service providers are subject is the reform of the obligation to promote European audiovisual works and linguistic diversity, which consists of the following two obligations:

- European audiovisual works quota obligation, which requires television audiovisual media-service providers to dedicate a minimum percentage of their broadcasting time in the case of linear services, or a minimum percentage of the total titles of the programme catalogue for on-demand services, to the broadcasting of European works. In addition, in the case of on-demand



services, the obligation to give due prominence within the catalogue to European audiovisual works is included in order to facilitate their visibility and accessibility by viewers.

- Advance financing obligation for European audiovisual works, which requires linear or on-demand television audiovisual media-service providers to contribute part of their revenues in the Spanish audiovisual market to the production of European audiovisual works.

Consequently, the purpose of this draft royal decree is to approve the implementing standard of Chapter III of the LGCA, concerning the promotion of European audiovisual works and linguistic diversity integrated within its Title VI, which deals with the obligations to be met by audiovisual media service providers in that field. Specifically, the draft royal decree will implement the quota and advance financing obligations for European audiovisual works to which television audiovisual media-service providers are subject, making an effort to clarify the form and requirements for fulfilling both obligations.

This new legal framework is intended to create a stable and predictable legal environment from which both television audiovisual media-service providers and audiovisual producers can benefit, thus enabling the sustainable development of European audiovisual production in the Spanish audiovisual market. In addition, this new legal framework aims to support the objectives set out in the '*España, Audiovisual Hub for Europe*' Plan, an integral component of the Recovery, Transformation and Resilience Plan relating to the increase in audiovisual production achieved in Spain.

## **2. Objectives of the new regulation**

As already stated, the draft royal decree implements the provisions of Chapter III of Title VI of the LGCA, on the promotion of European audiovisual works and linguistic diversity.

Specifically, the draft royal decree specifies the obligations to promote European audiovisual works, both the European audiovisual works quota obligation and the obligation to advance finance these works and establishes the procedures, calculation mechanisms and information to be provided by television audiovisual media-service providers in order to fulfil both obligations.

The ultimate objective of the standard is to clearly define the specific terms and conditions for proper compliance with the obligation to promote European audiovisual works, in terms of both the European audiovisual works quota obligation and the system of annual contributions to the financing of European audiovisual production.



On the one hand, it is intended to provide legal certainty regarding compliance with the obligations, so that providers obliged by the standard can adapt their actions in accordance with certain, reliable and sustainable provisions. On the other hand, the draft royal decree provides audiovisual media service providers with sufficient flexibility to comply with these obligations in a way that allows them to exploit the full economic potential of the investments they make in the exercise of their activity.

The objectives pursued are summarised below:

- ❖ To implement by regulation the obligation to promote European audiovisual works contained in Chapter III of Title VI of the LLGCA.
- ❖ To implement by regulation, for the first time, the European audiovisual works quota obligation as well as the obligation to give prominence to such works in on-demand audiovisual services.
- ❖ To combine the promotion of European audiovisual works with the establishment of flexibility mechanisms in compliance with the obligation to promote European audiovisual works with the aim of ensuring its effective fulfilment by all obliged parties without creating a barrier that prevents the growth of providers or their competition.
- ❖ To promote support for culture and the cultural and linguistic diversity present in our country.
- ❖ To provide legal certainty to the system for the promotion of European audiovisual works and linguistic diversity provided for in the Law.

### **3. Analysis of alternatives**

Different options were raised:

#### (a) Regulatory inactivity

Given the profound changes made to the system for promoting European audiovisual works after the entry into force of the LGCA, particularly those concerning the financing obligation, the alternative, regulatory inactivity, was not feasible, since the then current regulatory development promoting European audiovisual works, provided for in Royal Decree 988/2015 of 30 October 2015, had become obsolete compared to the current law. On the other hand, it was necessary to implement the European audiovisual works quota obligation, which has not yet been implemented.

#### (b) Amendment of the current Royal Decree 988/2015 of 30 October 2015



Royal Decree 988/2015 of 30 October 2015 entered into force in 2015 and created a stable environment for providers to carry out their activities and comply with the obligation to invest in European audiovisual works.

Amendment of this standard would have required complete revision of its articles in order to adapt it to the new legislative framework established by the LGCA, since only the advance financing obligation for European works was regulated, and it would have been necessary to include not only the important changes made to the advance financing obligation regime, but also those provisions relating to implementation of the European audiovisual works quota obligation and the prominence of those works.

Therefore, it is considered necessary and appropriate to approve a new regulatory development that, collecting and drawing on the experience obtained under the validity of Royal Decree 988/2015 of 30 October 2015, addresses the needs of the sector in this new context in a renewed manner, in any case maintaining those forecasts that have been positive for the sector and which have permitted an increase in audiovisual production in Spain, both in volume and in quality.

(c) Amendment of Royal Decree 988/2015 of 30 October 2015 and promulgation of an exclusive Royal Decree for compliance with the European audiovisual works quota obligation

Another alternative considered was the possibility of updating Royal Decree 988/2015 of 30 October 2015 on the obligation to finance audiovisual works, based on the new regime established in the LGCA and, at the same time, processing an exclusive regulatory draft to implement the European audiovisual works quota obligation. However, given the close relationship between the two obligations that make up the promotion of European audiovisual works and linguistic diversity, it was considered more appropriate to draft a single legislative proposal establishing the legal framework for both obligations.

#### **4. Compliance with the principles of good regulation**

The draft royal decree complies with the principles of good regulation contained in Article 129 of Law 39/2015 of 1 October 2015 (principles of necessity, effectiveness, proportionality, legal certainty, transparency and efficiency), while pursuing a general interest in specifying certain aspects of the LGCA that will facilitate compliance with the obligations to promote European audiovisual works by parties subject to this compliance. In this sense, the important new aspects provided for in the aforementioned LGCA make it necessary to adopt this draft royal decree in order to provide the obliged parties with certainty and legal security.



The standard is also in accordance with the principle of proportionality, since it contains the material provisions to achieve 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 flexible compliance mechanisms in line with the editorial and business freedom that govern the operation of television audiovisual media services.

Similarly, the draft royal decree complies with the principle of legal certainty and is consistent with the rest of the legal system, establishing a stable, integrated and clear regulatory framework. In addition, during the procedure of drafting the legislation, the procedures for prior public consultation and public hearing laid down in Law 50/1997 of 27 November 1997 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, by virtue of the principle of efficiency, the standard introduces only a minimum increase, in terms of administrative burdens, resulting from the new regulation of the European audiovisual works quota obligation, compared to the previous rules.

## **5. Annual regulatory plan**

The draft royal decree regulating the legal regime governing the obligation to promote European audiovisual works and linguistic diversity was included in the Annual Regulatory Plan of the General State Administration for 2024 approved by the Council of Ministers on 26 March 2024<sup>1</sup> and, given the delay in its processing, it has been proposed that it be included in the Annual Regulatory Plan for 2025 as a regulatory draft to be promoted by the Ministry of Digital Transformation and Civil Service.

It will be a standard subject to ex post evaluation due to its impact on the audiovisual sector as a prominent economic sector (Article 3(1)(d) of Royal Decree 286/2017 of 24 March 2017 regulating the Annual Regulatory Plan and the Annual Regulatory Evaluation Report of the General State Administration and establishing the Regulatory Planning and Evaluation Board). The draft royal decree includes provisions for the National Commission on Markets and Competition (CNMC), the body that will supervise compliance with the obligation to promote European audiovisual works and linguistic diversity, to publish an annual report covering the compliance monitoring results for the obliged parties. This report, together with other sources, may be used to prepare the annual report for the sector or as a basis for establishing the possible strategic plans established in Title VIII on the State Audiovisual Policy of the LGCA.

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<sup>1</sup> <https://www.mpr.gob.es/prencom/notas/Paginas/2024/260324-bolanos-plan-normativo-2024.aspx>  
<https://www.mpr.gob.es/prencom/notas/Documents/2024/260324-plan-anual-normativo-2024.pdf>



## II. CONTENT

Before analysing the structure and content of the draft legislation, the following table graphically summarises the quota and advance financing obligations for European audiovisual works provided for in Chapter III of Title VI of the LGCA, on the promotion of European audiovisual works and linguistic diversity:

EUROPEAN AUDIOVISUAL WORKS QUOTA OBLIGATION AND PROMOTION OF LINGUISTIC DIVERSITY		
<p><b>Who is obliged?</b></p> <ul style="list-style-type: none"> <li>- Television audiovisual media-service providers at national level, public and private.</li> </ul> <p><b>What are they obliged to do?</b></p> <ul style="list-style-type: none"> <li>- To make available to the public a minimum percentage of European audiovisual works, which will vary depending on the type of provider.</li> </ul>		
Linear AVMS providers		On-demand AVMS providers
Private	Public service	
<p>A minimum of 51 % of airtime to European audiovisual works and at least half of that time to works in official Spanish languages.</p> <p>A minimum of 10 % to works by independent producers and half of that to recent works (&lt; 5 years).</p>	<p>A minimum of 51 % of airtime to European audiovisual works and at least half of that time to works in official Spanish languages.</p> <p>Of the sub-quota of works in official languages, reserve a minimum of 15 % for languages of the Autonomous Communities, according to population size, and not less than 10 % per language.</p> <p>A minimum of 10 % to works by independent producers and half of that to recent works (&lt; 5 years).</p>	<p>A minimum of 30 % of titles in the catalogue for European audiovisual works and at least half of that time to works in official Spanish languages.</p> <p>Of the sub-quota of works in official languages, reserve a minimum of 40 % for languages of the Autonomous Communities, according to population size and not less than 10 % per language.</p>

ADVANCE FINANCING OBLIGATION FOR EUROPEAN AUDIOVISUAL WORKS AND PROMOTION OF LINGUISTIC DIVERSITY
<p><b>Who is obliged?</b></p> <ul style="list-style-type: none"> <li>- Television audiovisual media-service providers, linear and on-demand, at national level, public and private, free-to-air or conditional access.</li> <li>- Television audiovisual media-service providers, linear and on-demand, that direct their services to Spain even though they are established in other EU Member States.</li> </ul> <p><b>What are they obliged to do?</b></p> <p>To contribute annually to the <b>advance financing of the production of European audiovisual works</b>, either through direct participation in the production, through the purchase of exploitation rights, or by contributing to the Fondo para la Cinematografía (film-making protection fund) or the Fondo de fomento</p>



de la cinematografía y el audiovisual en lenguas cooficiales distintas al castellano (Fund for the promotion of film-making and the audiovisual in co-official languages other than Castilian)

**How much should they devote to this advance financing?**

- **5 % of its accrued revenue** for the previous financial year according to the operating account in the Spanish audiovisual market for privately owned providers.
- **6 % of its revenue** for audiovisual media-service providers.

**Audiovisual media-service providers**

**What does this obligation entail for public for audiovisual media-service providers?**

- 1. Financing European works by allocating 6 % of their annual revenues to the Spanish audiovisual market.**
- 2. Financing independent audiovisual works:** a minimum of 70 % of the obligation must be allocated to audiovisual works produced by independent producers:
  - a. Financing European audiovisual works in official languages of the Autonomous Communities:** a minimum of 15 % to production, according to population size, and a minimum of 10 % per language.
  - b. Financing European audiovisual works directed or created exclusively by women:** minimum 30 %.
- 3. Financing independently produced cinema:** a minimum of 45 % works by independent producers.
- 4. A minimum of 12 % of the obligation to finance animations and documentaries.**

**Private AVMS providers**

**What does this obligation mean for privately owned service providers? Financing European works by allocating 5 % of their annual revenue to the Spanish audiovisual market.**

Revenue > €50 m	€50 m > Revenue > €10 m	EUR 10 m > Revenue
<b>1. Financing independent audiovisual works:</b> a minimum of 70 % of the obligation must be allocated to audiovisual works produced by independent producers: <ol style="list-style-type: none"> <li><b>a. Financing European audiovisual works in official languages of the Autonomous Communities:</b> a minimum of 15 % to production, weighted according to population and a minimum of 10 % per language.</li> <li><b>b. Financing of European audiovisual works directed or created exclusively by women:</b> minimum 30 %</li> </ol> <b>2. Financing independently produced cinema:</b> a minimum of 40 % works by independent producers.	<b>1. Financing independent audiovisual works:</b> a minimum of 70 % of the obligation must be allocated to audiovisual works produced by independent producers.	Exempt

The draft royal decree implementing the obligation to promote European audiovisual works consists of 39 articles structured in a preliminary title and three titles, four



additional provisions, one transitional provision, a repealing provision and four final provisions. The organisation of the Royal Decree is structured according to the following organisation:

I.- Preliminary Title 'General Provisions'. It consists of three articles (1-3). This title establishes:

- a) The objective of the Royal Decree, which will be to implement the obligation to promote European audiovisual works and linguistic diversity established in the LGCA.
- b) The objective scope of the obligation, which will be to guarantee investment in and distribution of European audiovisual works, in accordance with the definition established in the LGCA.
- c) The subjective scope of the Royal Decree, which includes the parties obliged to comply with the obligation to promote European audiovisual works. Within this scope, it is worth pointing out the inclusion, among the parties obliged to comply with the advance financing obligation for European audiovisual works, of television audiovisual media-service providers established in other EU Member States that direct their services to the Spanish audiovisual market in accordance with the provisions of the DSCA and the LGCA.

II. - Title I - 'Obligation regarding quotas for European audiovisual works and the promotion of linguistic diversity'. This consists of five articles (4-8) and, for the first time in national legislation, establishes the obligation for television audiovisual media-service providers to comply with the European audiovisual works quota obligation.

- It establishes that linear television audiovisual media-services must:
  - Reserve at least 51 % of their broadcasting time for European audiovisual works and, of that percentage, at least half for works in the official language of the state or the official languages of the Autonomous Communities.
  - Reserve 10 % of their broadcasting time for European audiovisual works by independent producers and half of that quota for works less than five years old.
  - In the specific case of public audiovisual media-service providers at national level, it is also established that, within the time allocated to broadcasting works in the official language of the State or in the official languages of the Autonomous Communities, a minimum percentage must be reserved for broadcasting audiovisual works in the official languages of the Autonomous Communities in accordance with the provisions of the LGCA.



- It establishes that on-demand television audiovisual media-services must:
  - Reserve a minimum of 30 % of the titles of the catalogue of programmes for European audiovisual works.
  - Allocate at least half of the established quota for European audiovisual works to European audiovisual works in the official language of the State or the official languages of the Autonomous Communities.
  - Reserve a minimum of 40 % of the quota reserved for European works produced in the official language of the State or the official languages of the Autonomous Communities for works produced in the official languages of the Autonomous Communities.

This sub-quota of works in the official languages of the Autonomous Communities will be distributed by taking as a reference the size of the population residing in the geographical areas of the Communities in which that language has been declared official, relative to the total population residing in Spain in Autonomous Communities with an official language, averaged over the last five financial years according to INE data, with a minimum of 10 % of the sub-quota being allocated to each language, as established by the LGCA. When calculating the population size, resident population averages are used to avoid the possible negative effects of depopulation in certain regions.

- Ensure due prominence for European audiovisual works present in the catalogues through the implementation of measures intended for this purpose. Likewise, the draft royal decree incorporates a series of possible measures that could be implemented by providers in order to comply with the obligation, although it is not a closed list, in order to be able to provide some flexibility to providers to comply with the obligation.
- In order to calculate the European audiovisual works quota obligation for on-demand services, the concept of online catalogue title is defined based on the Guidelines established by the Commission in July 2020, which will be the basis for checking compliance on the part of the provider. Specifically, it is defined that, in the case of series, each season will count as a single title. In addition, the count by season is extended to other types of serial programmes that might be present in the catalogue of the on-demand service provider. Finally, as in the case of linear services, news programmes, sporting events, games and commercial communications are excluded.



- Likewise, in the event that the audiovisual media-service provider offers linear television services together with catch-up facilities, as well as on-demand services, for the computation of European audiovisual works present in the catalogue of the on-demand service, it will be able to discount those works that are offered to their audience through these facilities.
- The methods to be used to calculate the audience of a television audiovisual media-service are specified. In the case of linear television services the traditional audience measuring system will be used, while in the case of on-demand television audiovisual media-services, the draft royal decree proposes a methodology that should be used to calculate the audience.

In a convergent scenario in which providers offer a mix of on-demand audiovisual services, it does not seem appropriate to segment audiences according to the various modalities (subscription, pay-per-view or financed by advertising). Therefore, as the most appropriate measure, it has been decided to calculate the audience as an aggregate of the various audiences of the service. In the case of SVoD the subscriber numbers will be used, while in the case of TVoD and AVoD services, the methodology and criteria developed by the CNMC will be applied.

- Finally, the title establishes a regime for flexibility or, where appropriate, exemption regarding compliance with the European audiovisual works quota obligation for providers of television audiovisual media-service providers, both linear and on-demand, with low audiences or low revenues.
  - It develops the criteria for low audiences and low revenues laid down in the LGCA, which permit exemption from compliance with the obligation for audiovisual media service providers whose audiences or revenues are below a threshold.
  - It develops the concept of the nature or subject matter of an audiovisual media service, which will allow a provider to be exempt from compliance with the European audiovisual works quota obligation for that service or, where appropriate, to make that obligation more flexible. In this case, it is established that the CNMC will be the body responsible for granting providers flexibility or exemption authorisations in response to requests submitted by the provider, taking into account the audiovisual media service offered.
  - It is anticipated that television broadcasting services aimed exclusively at other countries will be exempt from compliance with the specific quota for



European audiovisual works in the official language of the state or Autonomous Communities, as it makes no sense to impose this obligation on them.

III. - Title II - 'Advance funding obligation for European audiovisual works and promotion of linguistic diversity' (Articles 9-23). This consists of 15 articles organised around 2 chapters. This Title implements the advance financing obligation for European audiovisual works contained in the LGCA, as well as the mechanisms for complying with it and for counting the investments made.

*c.1) Chapter I - 'Advance funding obligation for European audiovisual works and promotion of linguistic diversity' (9-13).* This chapter consists of five articles implementing the advance financing obligation for European audiovisual works that must be fulfilled by television audiovisual media-service providers. This draft legislation incorporates all aspects and provisions of the previous regime that have contributed to the development of the audiovisual production sector in Spain and positioned it as an audiovisual hub within Europe.

- The chapter establishes and defines those audiovisual works that will be eligible for financing through the advance financing obligation by television audiovisual media-service providers. This delimitation stems from the connection between the protected public interest, namely the promotion of cultural diversity, and the type of European audiovisual works eligible for financing, in accordance with judgment 35/2016 of the Constitutional Court of 3 March 2016. In addition, in view of the success of the previous regime of the advance financing obligation in the growth of the Spanish audiovisual production sector, it has been decided to maintain the typology of audiovisual works that may be financed by the obligation: cinematographic films, TV films, TV series, documentaries and animated audiovisual works.
- The financing obligation model is defined for both privately owned providers and the provider of the public audiovisual media-service. In particular:
  - o The percentage of revenue that the television audiovisual media-services provider must allocate to the advance financing of European audiovisual works.
  - o Special and specific quotas for the investment to be made by the provider: independent producers, audiovisual work directed or created by women, specific quota intended for the production of cinematographic films, or compulsory investment in audiovisual works



made in the official language of the State or official languages of the Autonomous Communities.

Type of provider		Obligation	
Public		6 % Revenue	<ul style="list-style-type: none"> <li>70 % allocated to audiovisual works by independent producers in the official language of the State or official languages of the Autonomous Communities:               <ul style="list-style-type: none"> <li>15 % allocated to official languages of Autonomous Communities, distributed in proportion to population size, with a minimum of 10 % per language</li> <li>30 % allocated to works directed or created exclusively by women</li> </ul> </li> <li>45 % allocated to cinematographic films by independent producers in the official language of the State or official languages of the Autonomous Communities.</li> <li>12 % allocated to animated and documentary audiovisual works</li> </ul>
Private	Large	5 % Revenue	<ul style="list-style-type: none"> <li>70 % allocated to audiovisual works by independent producers, in the official language of the State or official languages of the Autonomous Communities.               <ul style="list-style-type: none"> <li>15 % allocated to official languages of Autonomous Communities, distributed in proportion to population size, with a minimum of 10 % per language.</li> <li>30 % allocated to works directed or created exclusively by women</li> </ul> </li> <li>40 % intended for cinematographic films by independent producers in the official language of the state or official languages of the Autonomous Communities.</li> </ul>
	Medium-sized	5 % Revenue	70 % allocated to audiovisual works by independent producers, in the official language of the State or official languages of the Autonomous Communities.
	Small and micro	Exempt	

- It establishes the ways of complying with the obligation, maintaining those provided for under the previous regime and which have contributed to the growth of the audiovisual production sector in Spain and favoured its internalisation. However, in view of the provisions of the LGCA, the financial contribution of the provider to the Fondo de Protección a la Cinematografía or to the Fondo de fomento de la cinematografía y el audiovisual en lenguas cooficiales distintas al castellano is provided as an additional possibility; an



alternative method for complying with the advance financing obligation if necessary.

- It establishes a regime of exemptions from or flexibility in compliance with the advance financing obligation for European audiovisual works that must be met by television audiovisual media-service providers:
  - o Low provider revenue: given the characteristics and size of the Spanish audiovisual market, the LGCA deemed it appropriate to exempt providers with revenues of less than EUR 10 million from the financing obligation.
  - o Low audience: Audiovisual media service providers established in Spain or other Member States are exempted when they have an audience share of less than 2 % in the case of linear television audiovisual services and less than 1 % in the case of on-demand audiovisual services, in accordance with the guidelines set out in the Commission Communication of July 2020 (2020/C 223/03)<sup>2</sup>.
  - o Local television audiovisual media-service providers, as provided for in the LGCA, will also be exempt.
  - o Subject matter or nature: Audiovisual media services exclusively broadcasting X-rated films, newscasts or sports events shall be exempt from compliance with the provider's financing obligation. On the other hand, those other services whose nature or subject matter makes the financing obligation impracticable or unjustified must request exemption from compliance with the obligation from the CNMC, providing the relevant justification for analysis by that body. In any case, the exemption or flexibility shall be granted according to the particular circumstances of each application submitted.

c.2) Chapter II - 'Revenues and expenditure eligible for the fulfilment of the advance funding obligation for European audiovisual works and the promotion of linguistic diversity' (14-23). This chapter consists of 10 articles and specifies the revenues that will be taken into account for the purposes of establishing the obligation to invest in European audiovisual works and, on the other hand, all expenditure incurred by the provider that may be counted towards compliance with the obligation. In general, as in the previous chapter, the draft royal decree incorporates all of the measures from the previous regime that have contributed to placing the Spanish audiovisual production

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<sup>2</sup> [https://eur-lex.europa.eu/legal-content/ES/TXT/HTML/?uri=CELEX:52020XC0707\(03\)](https://eur-lex.europa.eu/legal-content/ES/TXT/HTML/?uri=CELEX:52020XC0707(03))



sector in a privileged position in Europe, in order to guarantee the stability of the audiovisual production system.

- It establishes that some revenues obtained by the television audiovisual media-service provider will be taken into account in calculation of the mandatory percentage that must be allocated to the advance financing of European audiovisual works, and that other revenues obtained by the audiovisual media-services provider will be excluded. The revenues included in calculation of the audiovisual production investment obligation are those that were established in the previous regime and ratified by the various Supreme Court judgments dated 25.10.2017 and 9.11.2017<sup>3</sup>. On the other hand, all revenues obtained by the provider that are unrelated to provision of the audiovisual media service by the provider are excluded.
- The following may be taken into account as expenditure in compliance with the advance financing obligation:
  - o expenditure on own audiovisual production;
  - o investment made through production commissions;
  - o investment in co-productions;
  - o financial contributions;
  - o expenditure on the acquisition of exploitation rights for audiovisual works; and
  - o Contributions to the Fondo de Protección a la Cinematografía, or to the Fondo de fomento de la cinematografía y el audiovisual en lenguas cooficiales distintas al castellano, covered in Law 55/2007 of 28 December 2007 on cinema (hereinafter LCINE).
- It establishes the rules permitting calculation of the expenditure incurred and reported by the television audiovisual media-service providers as investment made in own audiovisual production, production commissions, or co-productions.
- If the provider belongs to a group of companies, disbursements made by companies belonging to the business group to which it belongs may be taken into account.

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<sup>3</sup>Judgments 25.10.2017 Actions C-A brought by Mediaset, Disney and DTS. Judgment 8.11.2017 Action C-A, producer FAPAE.



- It is established that subsidies received intended to finance an audiovisual work will be discounted from the calculation of the expenditure incurred in that audiovisual work.
- For the purposes of complying with the obligation to finance European audiovisual works, expenditure incurred for the acquisition of exploitation rights for audiovisual works prior to completion of the production of such works shall be taken into account.
- On the other hand, as established in the LGCA, expenditure incurred for the acquisition of rights over completed audiovisual works that have not benefited from financing in their production phase may be accounted for as a way of making the obligation more flexible and enhancing the circulation of European audiovisual works between Member States. The regime established by Royal Decree 988/2015 of 30 October 2015 has been amended in this regard. The rigidity of that regime meant that it could not, in practice, be used by providers, giving rise to complaints and requests for amendment of the mechanism. The increase to the maximum threshold will permit greater use of this mechanism, while at the same time not having a significant impact on audiovisual production, the main objective of the advance financing obligation.

*Article 5.3 established that **Television audiovisual media-service providers with national or regional coverage shall contribute annually to the advance financing of European production of cinematographic films, television films and series, as well as documentaries and animated films and series, to the tune of 5 % of the revenue accrued in the previous financial year according to their operating account, corresponding to the channels on which they broadcast these audiovisual products within the first seven years after their date of production. For publicly owned audiovisual media service providers with national or regional coverage, this obligation shall be 6 %.***

*The financing of the aforementioned audiovisual works may consist in direct participation in their production **or acquisition of the exploitation rights thereto** [...].*

Therefore, audiovisual media-service providers were permitted to comply with the advance financing obligation for audiovisual works through the acquisition of exploitation rights for audiovisual works. Subsequently, Royal Decree 988/2015 of 30 October 2015 implemented the obligation, notably specifying the different methods whereby providers could comply with the obligation; in particular, Article 8 thereof provided that the amount paid for the acquisition of exploitation rights to audiovisual works would be accounted for.



Regarding the acquisition of exploitation rights for completed European audiovisual works, Article 10 of Royal Decree 988/2015 of 30 October 2015 established that they could be accounted for, provided that the works had not benefited from the financing in their production phase and the following requirements were met:

- The amount shall not exceed 0.3 % of the provider's total European works financing obligation, except in the case of providers whose eligible revenue figure is less than EUR 8 million, who may fulfil their total obligation only through the purchase of exploitation rights to completed works.
- The purchase took place no later than six months after the issue of the certificate of qualification in the case of cinematographic films or, in the case of works for television, six months after completion of the duly accredited production or, where applicable, after the first television broadcast. The exploitation rights were purchased directly from the producer, from a third party acting merely as an agent of the producer, or from the distributor. In the latter case, the distribution company must be independent, in accordance with the provisions of Article 4(ñ) of the LCINE.

Therefore, the regime governing the advance financing obligation for European audiovisual works provided for compliance with this obligation through the acquisition of exploitation rights for completed audiovisual works, but set limits on their use by broadcasters, since the main objective of this obligation is the production of new European audiovisual works, i.e. the creation of new works. Therefore, by way of a visual summary, the obligation remained as follows:

<b>RD 988/2015</b> <b><i>Purchase of exploitation rights</i></b>
<b><i><u>(a) No upper limit for the purchase of exploitation rights of audiovisual work prior to completion of production.</u></i></b>
<b><i><u>(b) Maximum limit of 0.3% of the obligation may be allocated to the purchase of exploitation rights to completed works, except for providers with revenues of less than EUR 8 million, who may discharge their total obligation through the acquisition of rights to completed works. The purchase must have been made no later than six months after the issue of the certificate of qualification in the case of cinematographic films or, in the case of works for television, six months after completion of the duly accredited production or, where applicable, after the first television broadcast.</u></i></b>

The new regime relating to the obligation to finance European audiovisual works established in the LGCA, despite introducing changes and modulating the obligation according to the revenues of the provider, has retained the available



methods whereby the provider can comply with that obligation, including the acquisition of exploitation rights to European audiovisual works, in accordance with the provisions of the second paragraph of Article 117 of the Law. In addition, Article 119 explicitly recognises that providers may comply with the advance financing obligation for European audiovisual works by purchasing exploitation rights to completed European audiovisual works. Maintaining this flexibility in the regime provided for in the LGCA granted providers a certain stability and legal guarantees; on the other hand, the obligations were balanced between the different types of providers subject to compliance with the obligation, since all of them could make use of this method of financing, as was the case in the previous regime.

However, as in the previous regime on the financing of European audiovisual works, the Draft Royal Decree implementing Chapter III of Title VI of the LGCA of 7 July 2022 has imposed a series of specific requirements in relation to the use of the acquisition of rights to completed audiovisual works as a method of complying with the obligation to finance European audiovisual works. In particular, the draft makes it possible to include in the calculation amounts paid out to acquire the exploitation rights to already completed European audiovisual works that did not benefit from the financing in their production phase, provided that:

(a) The amount does not exceed 10 % of the total advance financing obligation in the case of providers whose accountable revenue is greater than or equal to EUR 50 million. This percentage may be increased by an additional 15 % of the total advance financing obligation, provided that it is used to acquire exploitation rights to European audiovisual works already completed in one of the official languages of the Autonomous Communities, or to European audiovisual works already completed that were directed or created exclusively by women.

(b) The amount does not exceed 30 % of the total advance financing obligation in the case of providers whose accountable revenue is less than EUR 50 million and greater than or equal to EUR 10 million.

(c) The purchase takes place no later than 18 months after the issuance of the qualification certificate in the case of cinematographic films or, in the case of other audiovisual works, the purchase takes place no later than 18 months after the completion of the duly accredited production or, where applicable, after the first broadcast on a television audiovisual media service. The exploitation rights shall be purchased directly from the production company, from a third party acting as a mere agent of the production company, or from the distribution company. In the latter case,



the distribution company must be independent, in accordance with the provisions of Article 4(ñ) of the LCINE.

Comparing this new system of advance financing for European audiovisual works through the acquisition of audiovisual exploitation rights with the previous one, it can be seen that its use as a mechanism for television audiovisual media-service providers to comply with their obligations has been made more flexible. Specifically, the advantages of the new regime are as follows:

1. The maximum amount that an audiovisual media-service provider may allocate to the purchase of exploitation rights for completed works has been increased: 10 % (maximum 25 % under certain conditions) and 30 % of the investment obligation depending on the audiovisual revenues of the provider.
2. Audiovisual media service providers with revenues below EUR 10 million are not subject to this obligation. In this case, under the previous regime, Royal Decree 988/2015 of 30 October 2015 permitted the investment to be made for those with revenues of less than EUR 8 million through the purchase of exploitation rights to completed works. The following table shows that, as of entry into force, providers with revenues greater than EUR 50 million will be able to allocate almost 33 times more to the acquisition of rights.

Provider	Obligation 5 %	Law 7/2010 RD 988/2015	Law 13/2022 Draft RD	Δ Law 13/2022 vs Law 7/2010
Revenue > €50 m	2,5 M€	7.500 €	250.000 € 625.000 € max	33,33 83,33
€10 m < Revenue < €50 m	0,5 M€	1.500 €	150.000 €	100
Revenue < €10 m		Revenue < 8M€: 40.000	Exempt	-

3. The time limit for the purchase of exploitation rights for completed European audiovisual works is extended from 6 to 18 months. This extension of the time limit introduces greater flexibility into the regime for acquiring rights to completed works, which may encourage the circulation of non-national European audiovisual works between different Member States, thereby promoting and fostering European cultural diversity.

Therefore, although limits on the purchase of exploitation rights to completed European audiovisual works by providers have been introduced in the



draft legislation, compared to the current regime they are much more beneficial for audiovisual media service providers subject to compliance with the obligation to finance European audiovisual works. In addition, the limitations established in the new regime have a twofold objective: promotion of the production of European audiovisual works through the financing of new works; and flexibility regarding compliance with the obligation by providers.

- It establishes the regime relating to the calculation of contributions to the Fondo de Protección a la Cinematografía or to the Fondo de fomento de la cinematografía y el audiovisual en lenguas cooficiales distintas al castellano by providers and how the use of this method of financing by the provider must be demonstrated.
- Depending on whether or not the audiovisual work is cinematographic in nature, it establishes rules regarding what expenditure will be counted towards compliance with the obligation.
  - o Cinematographic films: expenditure determined in the regulations governing the recognition of costs of cinematographic films will be counted.
  - o Non-cinematographic audiovisual works: all production costs incurred by the provider that are directly related to the production, or those incurred for the acquisition of exploitation rights to audiovisual works, will be counted towards compliance with the obligation.
- It establishes a regime that introduces a degree of flexibility in compliance with the obligation to finance audiovisual production in the official language of the state or in the official languages of the Autonomous Communities. The new aspect introduced by the LGCA of specifically financing this type of works should not pose a disproportionate burden on the television audiovisual media-service providers obliged to comply with it, since if they do not comply with the provisions they face the possible imposition of sanctions. For these reasons:
  - o Audiovisual works filmed in several languages may be counted towards meeting this quota in proportion to the presence of those languages in the scripts of the audiovisual work. This flexibility reflects the linguistic diversity and plurality of audiovisual productions produced in Spain.
  - o Contributions made by providers to the Fondo de fomento de la cinematografía y el audiovisual en lenguas cooficiales distintas al castellano shall be counted towards meeting this sub-quota.



- It establishes and specifies the requirements for considering an audiovisual work to count towards meeting the quota for works directed or created *exclusively* by women. In the case of serial formats, in order to eliminate barriers to the participation of women, the costs of individual episodes directed or created by women may be counted towards the specific quota for women. Similarly, if the work is developed by a team of scriptwriters, it may be counted as part of this quota provided that women make up the majority of the team.

IV. - Title III 'Monitoring and supervision of the obligation to promote European audiovisual works and linguistic diversity' (Articles 24-39). This title consists of 16 articles organised into 3 chapters.

*d.1) Chapter I - Report on the declaration of compliance with the quota obligation for European audiovisual works and on the promotion of linguistic diversity (24-26).* It consists of three articles establishing the declaration report on compliance with the obligation that should be submitted by television audiovisual media-service providers in the electronic register of the CNMC for the purpose of supervision by that body of compliance with the European audiovisual works quota obligation of providers. These reports must use the templates made available by the CNMC via its website. Among the obligations imposed in this chapter, it is established that before 1 February of the current year:

- Linear television audiovisual media-service providers shall submit a declaration report on compliance with the obligation to broadcast a certain proportion of European audiovisual works during the previous year.
- On-demand television audiovisual media-service providers shall submit a declaration report on compliance with the European audiovisual works quota obligation present in the catalogues in the previous year.
- Data relating to audiovisual works in the official language of the State or in one of the official languages of the Autonomous Communities, works from independent producers and recent works shall be reported. The data shall be in percentage of time (linear AVMS) or on programme catalogue titles (on-demand AVMS).
- In the case of on-demand services, in addition to the quota obligation, compliance with the obligation of prominence of European works shall be reported, indicating those measures put into operation by the provider aimed at ensuring the due prominence of European audiovisual works present in the service catalogue.

*d.2) Chapter II - 'Declaration report on compliance with the advance financing obligation for European audiovisual works and promotion of linguistic diversity' (27-34).* It consists of eight articles, which establish the formats, the deadlines for



submitting the declaration report on compliance with the advance financing obligation for European audiovisual works by the obliged providers and, finally, the supporting documentation so that the CNMC can monitor compliance with the advance financing obligation.

- The provider shall submit the declaration report relating to compliance with the advance financing obligation for European audiovisual works by 1 April of each calendar year in respect of the financial year ending in the preceding year. However, if the financial year does not coincide with the calendar year, the documentation may be submitted no later than 31 July.
- The declaration report should be submitted using the forms made available by the CNMC via its website.
- The provider shall submit a list of the European audiovisual works financed, detailing for each one: the type of audiovisual work; whether the work has been made by an independent producer; the title of the work; the rights holder; the dates [of the contract and of completion of production]; financial amounts; language(s); indication of whether the audiovisual work has been directed or created exclusively by women.
- The CNMC shall be empowered to request any documentation necessary to verify the information provided by the providers.
- It establishes the possible methods available to the audiovisual media service provider to prove the revenue accrued on the Spanish audiovisual market, which will be the basis for calculating the obligation to invest in European audiovisual works. Based on the experience gained in Royal Decree 988/2015 of 30 October 2015, the systems already known and in use by providers have been retained.
- If the financial year does not coincide with the calendar year, the period between the first and last day of its financial year shall be taken as a reference to prove the expenditure incurred.
- Eligible expenditure will be accredited in accordance with the provisions of the Commercial Code, allowing financing provided through other subsidiaries belonging to the same group to be counted in the case of audiovisual groups present in several European markets.
- The time frame delimiting calculation of the financing will depend on how the audiovisual production has been done: own production, external production, acquisition of exploitation rights, or through contribution to the *Fondo de*



*Protección a la Cinematografía or to the Fondo de fomento de la cinematografía y el audiovisual en lenguas cooficiales distintas al castellano.*

- The possibility is introduced of applying part of the financing provided by the obligated provider to the immediately preceding or following financial years, provided that the provider has fallen short of compliance in those financial years.
- Possibility of accumulating the investment obligation for a maximum of three years when a mandatory minimum investment is not reached for any of the specific investment quotas or sub-quotas provided for in the LCGCA.

*d.3) Chapter III – Action by the National Commission on Markets and Competition (35 - 39).* This chapter consists of five articles. In accordance with the provisions of Article 120 of the LGCA, the CNMC shall be the body responsible for supervising compliance with the obligation to promote European audiovisual works and linguistic diversity for national providers and for providers established in other Member States that direct their services to Spain. The CNMC will collaborate with the ICAA in supervising compliance with this obligation.

In addition, the CNMC will be responsible for publishing the basic population sizes of official languages of the Autonomous Communities for the calculation of quota obligations and advance financing. In order to avoid errors of interpretation on the part of providers, the CNMC, as supervisor of the obligation, seems to be the ideal body to publish the population sizes of each of the official languages of the Autonomous Communities at the beginning of the year. This creates a climate of legal certainty that instils confidence in investors.

Finally, it establishes that the procedures will be processed electronically, with the obliged parties having to submit the documentation demonstrating compliance to the electronic register of the CNMC. On the other hand, the processing status of the file may be consulted on the website of that body, which is where the provisional and final decisions on the monitoring of providers' compliance with the obligation will be made public.

These articles also establish the procedure to be followed by the CNMC in order to monitor the compliance of obliged providers with the obligation to promote European audiovisual works of linguistic diversity.

- The CNMC will have a period of four months to verify compliance with the European audiovisual works quota obligation and prominence obligation by providers obliged to comply with them.



- In the case of supervision of the advance financing obligation for audiovisual works, the CNMC shall have a period of six months in which to process the administrative procedure.
- The processing time will be calculated once the providers' declaration reports have been submitted to the CNMC electronic register.
- If the CNMC does not reach a decision within the deadline, it will be understood that the television audiovisual media-service providers have complied with the various obligations.
- In its supervision of the obligation to promote European audiovisual works, the CNMC will collaborate with the ICAA by requesting reports from both bodies.
- The CNMC shall publish an annual report on the compliance of audiovisual media-service providers with the quota and prominence obligations for European audiovisual works and advance financing. In this report, the body will analyse the impact of both obligations on the audiovisual industry, detailing the effects on independent production and on the presence of women in the sector of audiovisual direction and creation. It may also include recommendations for improving its effectiveness.
- The CNMC report shall be public and accessible via the CNMC website. Preparation of this report will require the collaboration of both the ICAA and the competent bodies of the Autonomous Communities.
- The audiovisual works benefiting from financing deriving from the advance financing obligation of television audiovisual media-service providers shall be published annually. For each audiovisual work financed, the following information shall be published: title, whether it has been produced by an independent producer, whether it has counted towards compliance with the obligation of work directed or created by women, or whether it has been taken into account as part of the obligation of investment in the official language of the State or in the official languages of the Autonomous Communities.

V - Additional provisions. The draft royal decree includes four additional provisions.

1. First additional provision. The audiovisual authorities of the Autonomous Communities shall, on an annual basis, send the CNMC information on compliance with the obligations relating to the European audiovisual works quota, the prominence of European audiovisual works and advance financing by the television audiovisual media-service providers at Autonomous Community level whom they supervise.



2. Second additional provision. The ICAA shall, within six months, ensure that the procedures necessary to make the contributions to the Funds have been implemented.
3. Third additional provision. It is established that, within a maximum of three months following approval of the Royal Decree, the CNMC shall make available to television audiovisual media-service providers the forms necessary to report compliance with the obligations to promote European audiovisual works by publishing them on its website. The CNMC must request a report from the Secretary of State for Digitisation and Artificial Intelligence (MTDFP) prior to publication of the forms.
4. Fourth additional provision. It establishes that a mechanism for collaboration and cooperation between the CNMC and the ICAA should be set up in order to monitor the obligation to promote European audiovisual works.

VI. – Sole transitional provision: It is stipulated that any procedures for declaring the loss of provider status that are pending before the State register of audiovisual media-service providers, video sharing platform service providers and audiovisual media-service aggregation providers, initiated prior to the entry into force of this royal decree, shall be processed in accordance with the regulations in force at that time.

VII. – Sole repealing provision. Royal Decree 988/2015 of 28 October 2015 is hereby repealed.

VIII. – Final provisions. The draft legislation includes five final provisions relating to the power to dictate future developments, the title of competence, amendment of Royal Decree 1138/2023 of 19 December 2023 and the entry into force of the draft:

1. First final provision. 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, is amended to adapt the requirements imposed for registration in said register of users of special relevance who meet the requirements established in Article 94 of Law 13/2022 of 7 July 2022 and which have been implemented by Royal Decree 444/2024 of 30 April 2024. On the other hand, it establishes that the time limit for administrative processing of the procedures for loss of provider status will be six months.
2. Second final provision. The draft royal decree is issued under the title of competence of Article 149(1), 21. and 27. of the Constitution. Likewise, it is



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

3. Third final provision. The CNMC is empowered to issue instructions and circulars necessary for the proper supervision of compliance with the regulated obligation.
4. Fourth final provision. It is established that the Royal Decree will enter into force on the day following its publication in the Official State Gazette. However, in view of the complexity and difficulty of compliance by some parties and the fact that certain audiovisual projects have a duration of more than one calendar year, the forecasts relating to the advance financing obligation for European audiovisual works are deferred to the 2026 financial year on the basis of the revenues for 2025.

### III. Legal analysis.

#### 1. *Legal basis and regulatory status*

The draft regulation has the status of a Royal Decree and is enacted under the authorisation contained in the seventh final provision of the LGCA.

#### 2. *Consistency with International and European Union Law*

The draft royal decree implements and embodies the provisions of Chapter III of Title VI of the LGCA. This standard transposed Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (*Audiovisual Media Services Directive*) into national law, as well as the amendments made to the *Audiovisual Media Services Directive* following the adoption of Directive 2018/1808 of 14 November 2018 of the European Parliament and of the Council. The LGCA exhaustively transposed the provisions of the Directive and the contents of this draft legislation do not of themselves constitute transposed Community law, but merely development of the provisions of that Law. Notwithstanding the foregoing, the provisions of this draft royal decree share and seek to achieve the objectives of the aforementioned Directive.

Therefore, it is necessary to briefly mention in this report the changes introduced in the *Audiovisual Media Services Directive* following its amendment by Directive 2018/1808, of 14 November 2018, relating to the changes made to the system for promoting European audiovisual works.



- I. - Directive (EU) 2018/1808 mentions the obligation to promote European audiovisual works in its recitals 36, 37, 39 and 40:

*(36) In order to ensure adequate levels of investment in European works, Member States should be able to impose financial obligations on media service providers established on their territory. Those obligations can take the form of direct contributions to the production of and acquisition of rights in European works. The Member States could also impose levies payable to a fund, on the basis of the revenues generated by audiovisual media services that are provided in and targeted towards their territory. This Directive clarifies that, given the direct link between financial obligations and Member States' different cultural policies, a Member State is also allowed to impose such financial obligations on media service providers established in another Member State that target its territory. In that case, financial obligations should only be charged on the revenues generated through the audience in the targeted Member State. Media service providers that are required to contribute to film funding schemes in a targeted Member State should be able to benefit in a non-discriminatory way, even in the absence of an establishment in that Member State, from the aid available under respective film funding schemes to media service providers.*

*(37) Broadcasters currently invest more in European audiovisual works than providers of on-demand audiovisual media services. Therefore, if a targeted Member State chooses to impose a financial obligation on a broadcaster that is under the jurisdiction of another Member State, the direct contributions to the production and acquisition of rights in European works, in particular co-productions, made by that broadcaster, should be taken into account, with due consideration for the principle of proportionality. This is without prejudice to the Member States' competence to establish, in accordance with their cultural policy and subject to compatibility with State aid rules, the level of financial contributions payable by media service providers under their jurisdiction.*

*(39) Where a Member State imposes financial contributions on media service providers, such contributions should strive for an adequate promotion of European works while avoiding the risk of double imposition for media service providers. In this way, if the Member State where the media service provider is established imposes such a financial contribution, it should take into account any financial contributions imposed by targeted Member States.*



*(40) In order to ensure that obligations relating to the promotion of European works do not undermine market development and in order to allow for the entry of new players in the market, providers with no significant presence on the market should not be subject to such requirements. This is particularly the case for providers with a low turnover or low audience. A low audience can be determined, for example, on the basis of a viewing time or sales, depending on the nature of the service, while the determination of low turnover should take into account the different sizes of audiovisual markets in Member States. It might also be inappropriate to impose such requirements in cases where, given the nature or theme of the audiovisual media services, they would be impracticable or unjustified.*

- II. - The other paragraph that must be mentioned in relation to the obligation to promote European audiovisual works is the new wording of Article 13 of the *Audiovisual Media Services Directive*, which establishes, on the one hand, the obligation for on-demand audiovisual service providers to include a European audiovisual works quota obligation in their catalogues, ensuring that such works are given due prominence, and, on the other hand, the possibility of extending the advance financing obligation to providers established in other Member States but offering their services in Spain:

*'1. Member States shall ensure that media service providers of on-demand audiovisual media services under their jurisdiction secure at least a 30 % share of European works in their catalogues and ensure prominence of those works.*

*2. Where Member States require media service providers under their jurisdiction to contribute financially to the production of European works, including via direct investment in content and contribution to national funds, they may also require media service providers targeting audiences in their territories, but established in other Member States to make such financial contributions, which shall be proportionate and non-discriminatory.*

*3. In the case referred to in paragraph 2, the financial contribution shall be based only on the revenues earned in the targeted Member States. If the Member State where the provider is established imposes such a financial contribution, it shall take into account any financial contributions imposed by targeted Member States. Any financial contribution shall comply with Union law, in particular with State aid rules.*



4. Member States shall report to the Commission by 19 December 2021 and every two years thereafter on the implementation of paragraphs 1 and 2.

5. The Commission shall, on the basis of the information provided by Member States and of an independent study, report to the European Parliament and to the Council on the application of paragraphs 1 and 2, taking into account the market and technological developments and the objective of cultural diversity.

6. The obligation imposed pursuant to paragraph 1 and the requirement on media service providers targeting audiences in other Member States set out in paragraph 2 shall not apply to media service providers with a low turnover or a low audience. Member States may also waive such obligations or requirements where they would be impracticable or unjustified by reason of the nature or theme of the audiovisual media services.

7. The Commission shall issue guidelines regarding the calculation of the share of European works referred to in paragraph 1 and regarding the definition of low audience and low turnover referred to in paragraph 6, after consulting the Contact Committee.

### **3. Consistency with the Spanish legal system**

#### **Spanish Constitution**

The draft royal decree is fully in line with the basic legislation. Thus, from articles on jurisdiction such as 149(1), 27., which attributes basic jurisdiction to the State in matters of audiovisual media, to Article 3(3), which states that *The wealth of the different language modalities of Spain is a cultural heritage which shall be the object of special respect and protection*, to Articles 9(2) and (46), which refer to participation in culture and culture as a guiding principle of economic and social life.

#### **Legal regulations**

As set out above, the draft royal decree implements the provisions of Chapter III of Title VI of the LGCA, replacing the current Royal Decree 988/2015 of 30 October 2015 regulating the legal regime of the advance financing obligation for certain European audiovisual works in that area. The amendments are made necessary by the adoption of the LGCA and, consequently, the need to adapt the procedures to that legislation. In addition, for the first time, a regulatory development is introduced concerning the European audiovisual works quota obligation to be complied with by television



audiovisual media-service providers, and how to notify compliance to the audiovisual regulator.

### ***Relation to the regulatory body***

The draft royal decree embodies the obligation to promote European audiovisual works contained in Chapter III of Title VI of the LGCA. It aims to combine the promotion of European audiovisual works with the establishment of flexibility mechanisms regarding compliance with the obligation to promote European audiovisual works, with the aim of ensuring the effective compliance of all obliged parties and legal certainty. Its effects extend to both audiovisual media-service providers obliged to comply with this obligation and audiovisual producers. The former are obliged to comply with the audiovisual legislation contained in the LGCA while the latter are governed by the provisions of the LCINE.

On the other hand, as mentioned previously, it is necessary to take into account the specific regulations of the CNMC, since that body will be responsible for monitoring compliance with the obligations imposed by this royal decree.

Finally, the draft royal decree is consistent with the text of the preliminary draft law on cinema and audiovisual culture<sup>4</sup> currently being debated in Parliament, as it attempts to harmonise definitions.

### **4. Entry into force**

Article 23 of Law 50/1997 of 27 November 1997 provides that *'the provisions for the entry into force of laws or regulations, the approval or proposed approval of which is the responsibility of the Government or its members, and which impose new obligations on natural or legal persons engaged in an economic or professional activity as a result of the exercise of that activity, shall provide for its entry into force on 2 January or 1 July following its approval.*

This draft establishes rules that impose economic obligations on television audiovisual media-service providers and, therefore, in accordance with the provisions of the aforementioned Article, should enter into force either on 2 January or 1 July 2026. Both dates in 2026 are clearly harmful to providers because, due to the state of processing of the draft royal decree, it would presumably enter into force on 1 July. However, entry into force on that date harms the economic interests of providers since, in the case of the advance financing obligation, significant economic investments will be negatively affected for projects whose duration exceeds the calendar year. This

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<sup>4</sup> [https://www.congreso.es/es/proyectos-de-ley?p\\_p\\_id=iniciativas&p\\_p\\_lifecycle=0&p\\_p\\_state=normal&p\\_p\\_mode=view&iniciativas\\_mode=mostrarDetalle&iniciativas\\_legislatura=XV&iniciativas\\_id=121/000026](https://www.congreso.es/es/proyectos-de-ley?p_p_id=iniciativas&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&iniciativas_mode=mostrarDetalle&iniciativas_legislatura=XV&iniciativas_id=121/000026)



would leave providers with no room for manoeuvre in the event of any non-compliance. Therefore, it is considered appropriate to delay the entry into force of the advance financing obligation until 1 January 2027.

### **5. Repeal of regulations**

Approval of the draft royal decree subject to this report will entail the repeal of Royal Decree 988/2015 of 30 October 2015 regulating the legal regime of the advance financing obligation for certain European audiovisual works.

## **IV. Adaptation of the draft royal decree to the distribution of powers**

- Prevailing jurisdictional authority:

This draft royal decree is issued by virtue of the competence conferred on the State by Article 149(1), 27. of the Constitution to dictate the basic rules governing the press, radio and television system and, in general, all social communication media, without prejudice to the powers corresponding to the Autonomous Communities in their development and implementation.

On the other hand, the first final provision, which amends Royal Decree 1138/2023 of 19 December 2023, is additionally issued by virtue of Article 149(1), 21., which confers upon the State exclusive competence in telecommunications by regulating the procedures of users of special relevance in relation to the State Register of Providers.

- Relevant issues relating to competence:

In accordance with the authorisation of regulatory development contained in the LGCA, the draft royal decree only affects audiovisual media service providers operating at national level and therefore has no impact on the distribution of powers between the State and the Autonomous Communities, with the exception of the first additional provision, relating to the submission of a report by the Autonomous Communities on the supervision of providers within their jurisdiction, which is of a basic regulatory nature.

On the other hand, the draft royal decree respects the distribution of powers between the bodies that regulate and monitor the audiovisual market, by establishing that the CNMC will be the body responsible for monitoring the compliance by national television audiovisual media-service providers with the obligations applicable to them in relation to both the share of European audiovisual works and the advance financing of the production of European works, in the terms of Chapter III of Title VI of the LGCA.

- Participation at Autonomous Community and local level:



The Autonomous Communities exercise their powers in relation to the development of basic state audiovisual regulations and the monitoring and supervision of the obligations of audiovisual media-service providers within their sphere of competence, in accordance with the provisions of their respective Statutes of Autonomy. As regards their participation in this draft royal decree, no contributions were received from other public administrations during the prior public consultation process carried out via the website of the then Ministry of Economic Affairs and Digital Transformation from 29 July to 30 September 2022.

In short, the draft royal decree respects the constitutional order of distribution of powers between the General Administration of the State and the Autonomous Communities and the attribution of powers established in the LGCA and in Law 3/2013 of 4 June 2013, in relation to the monitoring and supervision of the obligations of television audiovisual media-service providers as regards the advance financing of European works.

## V. Description of the procedure

### (a) Public consultation prior to creation of the draft legislation

Between 29 July and 30 September 2022, the Ministry of Economic Affairs and Digital Transformation, now the Ministry of Digital Transformation and Civil Service, in accordance with the provisions of Article 133 of Law 39/2015 of 1 October 2015 of the Common Administrative Procedure of Public Administrations and Article 26(2) of Law 50/1997 of 27 November 1997, The Government, launched a public consultation on the opportunity to draw up a draft regulatory standard on implementation of the obligation to promote European audiovisual works in audiovisual media services.

The purpose of this prior consultation was to gather, whether directly or through their representative organisations, the opinions of the persons and entities potentially affected by the Royal Decree regulating the legal regime governing the obligation to promote European audiovisual works established in Chapter III of Title VI of the LGCA.

#### Associations

Asociación de Productores Asociadas de Televisión de España (**PATE**) - Asociación de Mujeres Cineastas y de Medios Audiovisuales (**CIMA**) - Confederación Española de Organizaciones Empresariales (**CEOE**) - Asociación Española de Video On Demand (3) (**AEVOD**) - Unión de Televisiones Comerciales en Abierto (**UTECA**) - Asociación Española de la Economía Digital - **ADIGITAL**. Asociación Multisectorial de Empresas de la Electrónica, las Tecnologías de la Información y la Comunicación y de las Telecomunicaciones y de los Contenidos Digitales (**AMETIC**) - Consejo Especialista en Canales Temáticos Asociados (**CONNECTA**) - Federación de



Organismos de Radio y Televisión Autonómicos (**FORTA**) - Asociación Estatal de Cine (**AECINE**) - Federación Española de Productores de Animación y Efectos Visuales (**DIBOOS**) - Mesa territorial de Productores Audiovisuales (**MAPA**) - Productoras Audiovisuales Independientes Federadas (**PIAF**) - Productores Audiovisuales Federados (**PROA**) - Asociación de Productoras Españolas de Audiovisual Internacional (**PROFILM**)

**Audiovisual media-service providers**

DAZN SPAIN, S.L. (**DAZN**) - Telefónica España (**Telefónica**) - Mediaproducción, SLU, (**Mediapro**) - Mediaset España Comunicación S.A. (**MEDIASET**) - Apple Distribution International, Ltd (**APPLE**) (*submitted late*)

**Foundation**

**Fundación Gabeiras.**

A summary of the contributions made by the various representatives can be found in Annex III.

**(b) Public hearing procedure (Article 133(2) of Law 39/2015 of 1 October 2015 and Article 26(6) of Law 50/1997 of 27 November 1997)**

From 11 March to 5 April 2024, the draft legislation was submitted to a public hearing in accordance with the provisions of Article 133(2) of Law 39/2015 of 1 October 2015 and Article 26(6) of Law 50/1997 of 27 November 1997, making the text thereof accessible to the general public via the website of the Ministry of Digital Transformation and Civil Service<sup>5</sup>. A detailed analysis of the contributions made by the various representatives is incorporated as **Annex III** to this document.

<sup>5</sup> <https://avancedigital.mineco.gob.es/es-es/Participacion/Paginas/DetalleParticipacionPublica.aspx?k=379>



**(c) Report of the National Commission on Markets and Competition (Comisión Nacional de los Mercados y la Competencia)** in accordance with Article 5(2)(a) of Law 3/2013 of 4 June 2013 on the creation of the CNMC. On 23 May 2024, a mandatory report was received from the CNMC. Its analysis of the contributions made has been incorporated as Annex IV to this document.

**(d) Reports of the State Legal Service**, issued on 10 and 20 June 2025.

**(e) Report of the Spanish Radio and Television Corporation (Corporación de Radio y Televisión Española S.A.)**, dated 22 July 2025. The observations will be analysed in Annex V.

**(f) Report of the Ministry of Equality, pursuant to Article 26(5) of Law 50/1997 of 27 November 1997**, dated 24 July 2025. In its observations, it proposes reinstating the adverb 'exclusively' in both the preamble and the title of Article 23, in line with Articles 118(2)(a), 2., 119(2)(a), 2. and 151(1)(b) of Law 13/2022 of 7 July 2022, which refer to 'audiovisual works directed or created exclusively by women'. It also requests a review of the gender impact in the Regulatory Impact Analysis Report (Memoria Analítica Impacto Normativo - MAIN). Both comments have been accepted.

**(g) Report of the Technical General Secretariat of the Ministry of Culture, in accordance with Article 26(5) of Law 50/1997 of 27 November 1997**, received on 24 July 2025, **which** in turn includes a report from the **Institute of Cinematography and Audiovisual Arts**, dated 21 July 2025. The report of the Technical General Secretariat proposes the correction of a series of typos present in the text of the draft, which observation has been accepted. The evaluation of the contributions of the Institute of Cinematography and Audiovisual Arts will be analysed in Annex VI.



**(h) Report of the Ministry of Economy, Trade and Business, in accordance with Article 26(5) of Law 50/1997 of 27 November 1997**, received on 1 August 2025 and in which no observations are made.

**(i) Report of the Ministry of Territorial Policy and Democratic Memory, in accordance with Article 26(5) of Law 50/1997, of 27 November 1997**, received on 18 August 2025. In that report, an observation is made with respect to the second final provision establishing the titles of competence to issue that regulation. Greater precision is proposed with regard to the titles, since only the first final provision is additionally enacted pursuant to Article 149(1), 21. The proposal made is accepted.

**(j) Report of the Ministry of Finance, in accordance with Article 26(5) of Law 50/1997 of 27 November 1997**, received on 24 September 2025. The evaluation of the contributions made by that ministry will be analysed in Annex VII.

**(k) Report of the Office for Coordination and Regulatory Quality, pursuant to Article 26(9) of Law 50/1997 of 27 November 1997**, received on 20 October 2025. **The most relevant contributions made will be evaluated in Annex VIII.**

**(l) Report of the Technical General Secretariat of the Ministry of Digital Transformation and Civil Service, in accordance with Article 26(5) of Law 50/1997 of 27 November 1997**, received on 24 October 2025. The contributions will be evaluated in Annex IX.

**(m) Procedures pending**

- Notification through the procedure for the provision of information in the field of technical regulations and of rules on Information Society services of the European Union (TRIS), in accordance with Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 and Royal Decree 1337/1999 of 31 July 1999.
- Obtain the opinion of the Standing Committee of the Council of State (Article 22(3) of Organic Law 3/1980 of 22 April 1980 and Article 26(7) of Law 50/1997 of 27 November 1997).



## VI. IMPACT ANALYSIS

### 1. *General considerations*

The aim of the draft legislation is to specify the European audiovisual works promotion obligations and define the procedures for complying with both the European audiovisual works quota obligations and the European works advance financing obligations, as established in Chapter III of Title VI of the LGCA, so that there are uniform rules of application in the audiovisual market, providing legal certainty and transparency to the agents involved and facilitating control actions by the CNMC.

Specifically, the procedures established through the draft royal decree precisely establish, firstly:

- Which parties are required to comply with the obligations to promote European audiovisual works and linguistic diversity, either to comply with the quota obligation or to comply with the advance financing obligation.
- The concept of catalogue title for the purposes of calculating the European audiovisual works quota obligation present in on-demand audiovisual media services (VoD).
- The procedure to be followed by providers of both linear and on-demand services in order to report compliance with the European audiovisual works quota obligation. Likewise, in the case of on-demand services, it establishes a procedure for verifying how the obligation to give prominence to European works has been ensured.
- The expenditure that may be counted towards compliance with the financing obligation by television audiovisual media-service providers.
- The regime of exemptions from or flexibility in compliance with the obligations to promote European works that is available to providers. In view of the diversity of providers offering audiovisual media services in the Spanish market, a regime of exemptions or flexibility is being introduced with regard to certain obligations, so as not to introduce barriers or disproportionate burdens that seriously harm the business models or growth and of these providers and impede their growth.
- Definition of the concept of 'audiovisual work directed or created exclusively by women' in order to monitor compliance with the obligation, taking into account the realities of audiovisual production.



- Establishment of a flexible regime to promote the production of audiovisual works in the official language of the State or in the official languages of the Autonomous Communities.

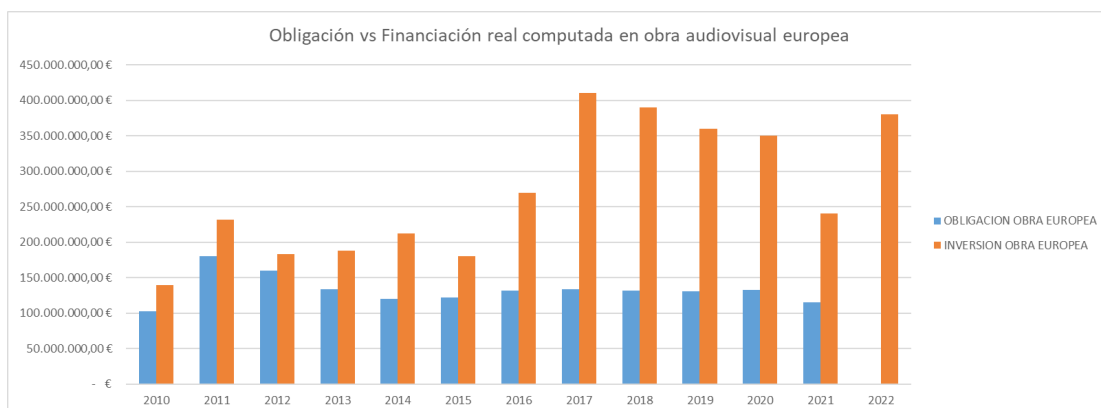
Finally, the draft royal decree establishes a series of guarantees for when the supervisor verifies the data submitted by the providers.

## 2. Economic and budgetary impact

In relation to the analysis of the economic effects of the draft royal decree, the following must be taken into account:

Overall economic impact. In general, it is not noted that the proposed legislation will have effects that could directly or indirectly affect the prices of products or services, the productivity of individuals or companies, employment, innovative activities, consumers or, in particular, SMEs. The aim is to promote European cultural heritage by imposing obligations on television audiovisual media-service providers to broadcast a certain proportion of European audiovisual works and to finance the production of European audiovisual works.

However, it is possible to estimate a prior analysis of the economic impact of the measures contained in this draft royal decree, although before carrying out this analysis, it is appropriate to present the historical trajectory and current situation of the obligation to promote European audiovisual works and linguistic diversity and its impact on the fabric of Spanish production. For this reason, a review will be carried out of the various reports approved by the CNMC, on compliance with the obligation to finance European audiovisual works until the 2021 financial year, which are available on its [website](#).



Obligación vs Financiación real computada en obra audiovisual europea

Obligation vs Calculated actual financing in European audiovisual works

Obligación obra europea, Inversión obra europea

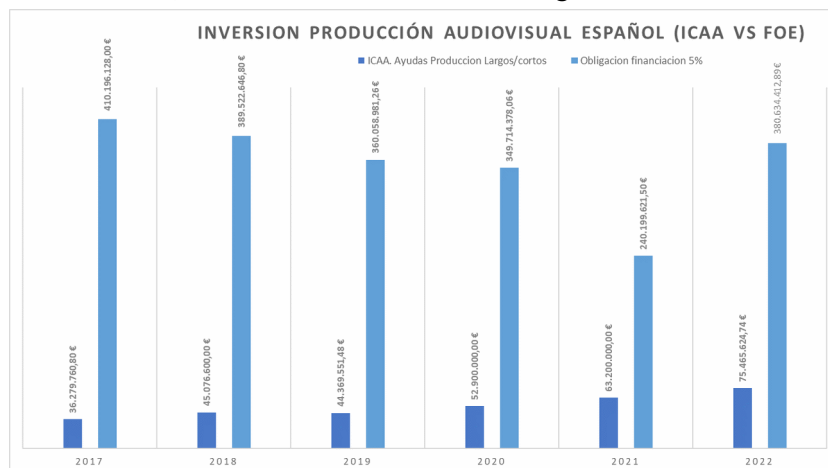
European works obligation, European works investment



**Figure 2. Financing obligation - Actual investment in the production of audiovisual works. Source: CNMC reports on compliance with the obligation. Data for the 2022 financial year is provisional.**

As may be seen, according to the data made public by the CNMC in its reports, the actual investment made by the television audiovisual media-service providers in the production of audiovisual works has always been much higher than the investment obligation generated by each of them according to their revenue.

When assessing the economic impact of the advance financing obligation for audiovisual works in the audiovisual production sector, it can be compared with the volume of aid granted by the ICAA (Spanish Film Institute) in this area<sup>6</sup>, based on the premise that the aid granted by this body to date has been exclusively for film production and creation, not for audiovisual works in general.



Inversión producción audiovisual español

Investment in Spanish audiovisual production

ICAA Ayudas producción largos/cortos

ICAA Aid for feature films/short films

Obligación financiación

Financing obligation

**Figure 3. Actual investment, advance financing obligation compared to audiovisual production aid awarded by the ICAA. Sources: CNMC/ICAA**

As may be seen from the graph above, the financial disbursement made by television audiovisual media-service providers, channelled through the advance financing obligation for audiovisual works, is very significant and results in an increase in the financing available on the market so that producers can develop their audiovisual works, all types of works, not only cinematographic works.

<sup>6</sup>The comparison has been made with respect to General aid for film production and aid for the production of short films.



With regard to sectors of audiovisual production benefiting from the financial disbursement made by providers through the advance financing obligation, the CNMC report for the 2020 financial year shows the progression of investment made over recent years by type of audiovisual work, showing the increasing investment made by television audiovisual media-service providers in television series in order to be able to adapt to the new trends and realities present in the audiovisual market, with the aim of creating audiovisual works whose quality is such as to capture new audiences and secure the loyalty of their users.

AÑO	CINE ESPAÑOL	CINE EUROPEO (No español)	PELÍCULAS TV ESPAÑOLAS	PELÍCULAS TV EUROPEAS (No españolas)	SERIES ESPAÑOLAS	SERIES EUROPEAS (No españolas)	TOTAL
2010	44,65%	7,32%	8,75%	0,38%	34,90%	4,00%	100%
2011	42,67%	3,05%	6,87%	0,00%	44,42%	2,99%	100%
2012	41,70%	12,01%	4,50%	0,06%	33,35%	8,37%	100%
2013	38,67%	7,74%	2,80%	0,35%	46,25%	4,20%	100%
2014	26,35%	2,62%	14,45%	0,21%	37,99%	18,47%	100%
2015	33,20%	5,89%	6,31%	0,89%	29,98%	23,74%	100%
2016	22,33%	0,92%	6,27%	0,14%	57,66%	12,68%	100%
2017	18,81%	0,90%	2,19%	0,18%	53,13%	24,77%	100%
2018	18,44%	0,57%	2,62%	0,01%	65,04%	13,32%	100%
2019	21,78%	2,13%	0,05%	0,00%	65,82%	10,22%	100%
2020	19,45%	3,30%	0,57%	0,55%	67,65%	8,48%	100%
2021	31,08%	1,09%	0,22%	0,40%	45,97%	21,23%	100%
PROMEDIO	29,93%	3,96%	4,63%	0,26%	48,51%	12,71%	100%

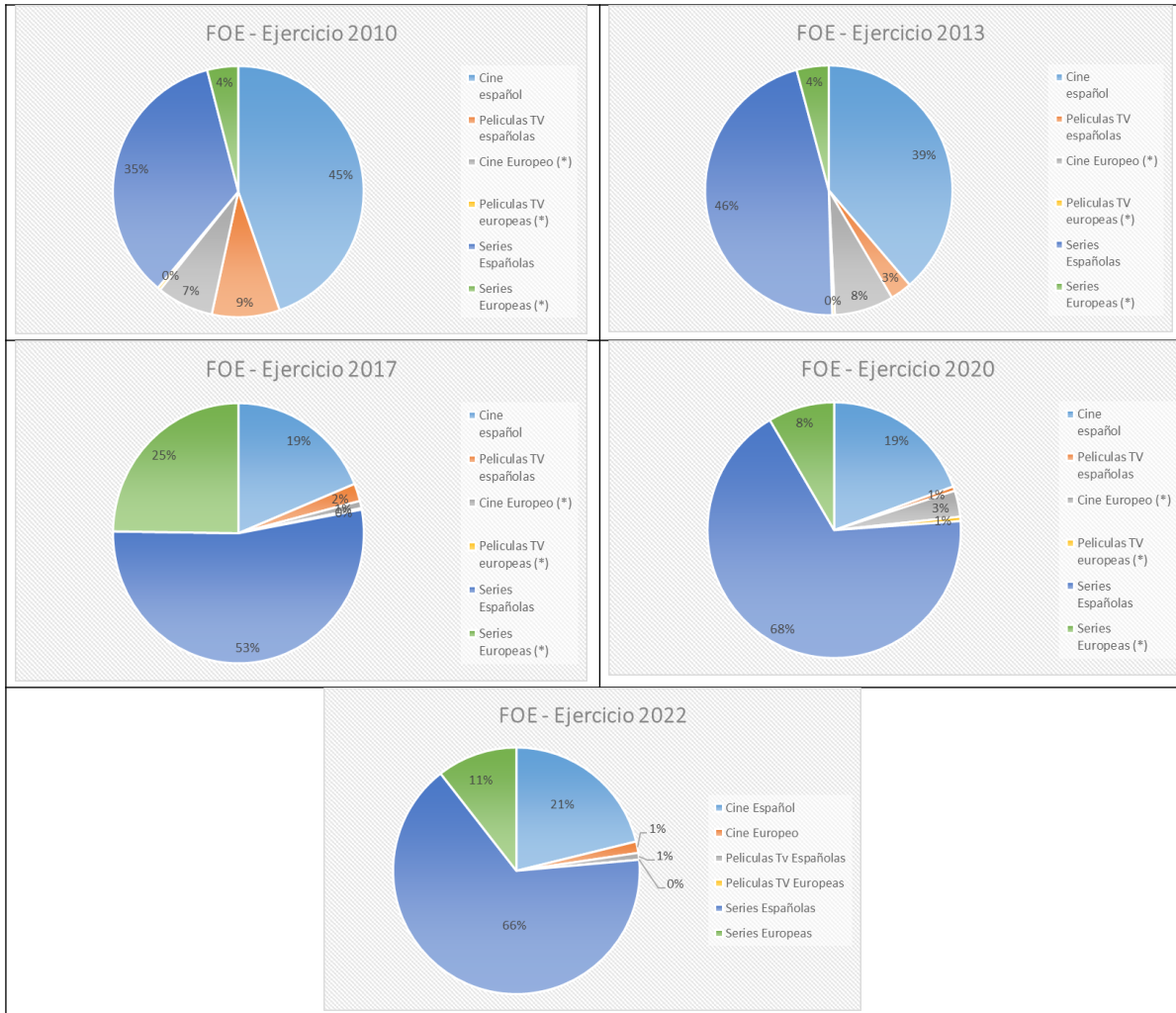
Año, Cine español, Cine europeo (No español), Películas TV españolas, Películas TV europeas (no españolas), series españolas, series europeas (no españolas), total

Promedio

Year, Spanish cinema, European cinema (not Spanish), Spanish TV films, European TV films (not Spanish), Spanish series, European series (not Spanish), total

Average

Figure 4. Progression of financing by type of audiovisual work. FOE (Mandatory European Financing) CNMC report 2021 financial year



**Ejercicio, Cine español, cine europeo, Películas TV españolas, Películas TV europeas, series españolas, series europeas**

**Financial year, Spanish cinema, European cinema, Spanish TV films, European TV films, Spanish series, European series**

**Figure 4. Progression of the financing of European audiovisual works by type of work (%). CNMC data**

This increase in the volume of series produced under the financing obligation has meant development of the audiovisual production sector for this type of formats, making Spain a leader in the production of this type of works. This fact is evident in the latest reports published by the European Audiovisual Observatory (EAO). Specifically, according to data from the report *Investments in original European content A 2012–2022 analysis*<sup>7</sup>, Spain ranks fourth in terms of investment in European audiovisual works and is second only to Poland in terms of investment growth in audiovisual works.

<sup>7</sup> <https://rm.coe.int/investments-in-original-european-content-2012-2022-analysis-november-2/1680ad4699> (November 2023)

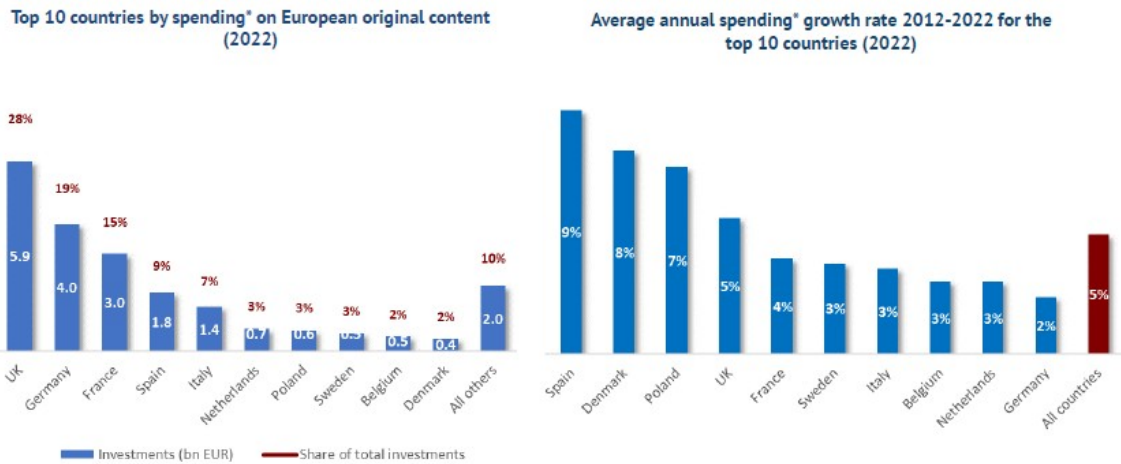


Figure 5. Investment in other European audiovisual works in European countries 2010-2011. EAO

Furthermore, the report *Investments in original European content A 2011-2021 analysis*<sup>8</sup> highlighted Spain's position as a recipient country for investment by global video on demand (VoD) audiovisual service providers: in 2021, investment by such providers accounted for 37 % of total investment in the creation of European audiovisual works.

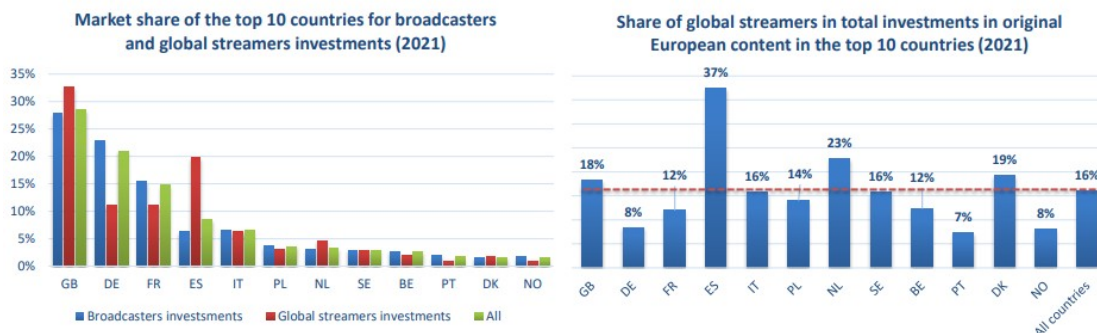


Figure 6. Investment of global VoDs in European audiovisual production. EAO

However, despite the fact that a large part of the investment is allocated to the production of series, it should be noted that, in recent years, most of the highest-grossing films (in terms of audience numbers/box office takings) have been financed by audiovisual media-service providers through compliance with the advance financing obligation for European audiovisual works.

<sup>8</sup> <https://rm.coe.int/investments-in-european-original-content-2011-2021-analysis-september-/1680a75db4> (September 2022)



## 2020

RANK	TÍTULO	DISTRIBUIDORA	FECHA ESTRENO	RECAUDACIÓN 2020	ESPECTADORES 2020
1	<b>Padre no hay mas que uno 2: La llegada de la suegra</b>	Sony	29/07/2020	12.938.633 €	2.317.890
2	<b>Adú</b>	Paramount Int'l	31/01/2020	6.371.655 €	1.088.469
3	<b>Malasaña 32</b>	Warner Bros	17/01/2020	3.760.940 €	610.057
4	<b>Hasta que la boda nos separe</b>	A Contracorriente	14/02/2020	2.726.373 €	452.401
5	<b>Superagente Makey</b>	DeAPlaneta	17/07/2020	1.828.232 €	328.633
6	<b>Eso que tu me das</b>	Warner Bros	30/09/2020	1.414.176 €	244.887
7	<b>Verano que vivimos, El</b>	Warner Bros	04/12/2020	1.042.969 €	164.334
8	<b>Si yo fuera rico</b>	Paramount Int'l	15/11/2019	975.044 €	159.010
9	<b>Boda de Rosa, La</b>	Filmox	21/08/2020	921.191 €	154.193
10	<b>No mataras</b>	Filmox	16/10/2020	863.983 €	138.090

## 2021

RANK	TÍTULO	DISTRIBUIDORA	FECHA ESTRENO	RECAUDACIÓN 2021	ESPECTADORES 2021
1	<b>A todo tren. Destino Asturias</b>	Warner Bros	08/07/2021	8.493.358 €	1.500.811
2	<b>Way Down</b>	Sony	12/11/2021	5.628.247 €	887.897
3	<b>Operación Camaron</b>	Walt Disney	24/06/2021	3.522.415 €	597.700
4	<b>Buen patron, El</b>	Tri Pictures	15/10/2021	3.336.892 €	528.523
5	<b>Maixabel</b>	Walt Disney	24/09/2021	2.828.416 €	515.293
6	<b>Madres paralelas</b>	Sony	08/10/2021	2.627.717 €	426.582
7	<b>Mamá o Papa</b>	Warner Bros	17/12/2021	1.814.261 €	295.223
8	<b>Familia perfecta, La</b>	Universal	03/12/2021	1.309.944 €	202.597
9	<b>D'Artacan y los tres mosqueperros</b>	A Contracorriente	18/08/2021	1.181.161 €	216.848
10	<b>García y García</b>	A Contracorriente	27/08/2021	1.025.363 €	176.181

## 2022

RANK	TÍTULO	DISTRIBUIDORA	FECHA ESTRENO	RECAUDACIÓN 2022	ESPECTADORES 2022
1	<b>Padre no hay mas que uno 3</b>	Sony	14/07/2022	15.606.842 €	2.707.038
2	<b>Tadeo Jones 3. La tabla esmeralda</b>	Paramount Int'l	26/08/2022	11.802.013 €	2.031.669
3	<b>Renglones torcidos de Dios, Los</b>	Warner Bros	06/10/2022	5.725.147 €	907.628
4	<b>A todo tren 2</b>	Warner Bros	02/12/2022	4.747.528 €	779.890
5	<b>Cuarto pasajero, El</b>	Sony	28/10/2022	4.334.214 €	668.990
6	<b>As bestas</b>	A Contracorriente	11/11/2022	3.525.771 €	556.338
7	<b>Alcarras</b>	Avalon Distribución	29/04/2022	2.332.801 €	391.387
8	<b>Modelo 77</b>	Walt Disney	23/09/2022	2.121.540 €	387.774
9	<b>Voy a pasarmelo bien</b>	Sony	12/08/2022	2.096.725 €	360.169
10	<b>Vida padre, La</b>	Paramount Int'l	16/09/2022	2.058.519 €	361.166

*Highest-grossing cinematographic films in 2020, 2021 and 2022. Cinematographic films financed through the advance financing obligation with data from the CNMC up to the 2020 financial year are highlighted.*

Título, Distribuidora, Fecha estreno,  
Recaudación, Espectadores

Having outlined the importance of the European audiovisual works advance financing obligation in the audiovisual industry, let us now assess the possible impact of the measures contained in this draft legislation on the obligation to promote European audiovisual works. In order to make an economic estimate of the impact that the entry into force of the new Royal Decree on the financing of European works may entail, reference should be made to the economic figures relating to the revenues of the audiovisual media-service providers present in the available public reports. In this case, the sources used shall be the data present in the Economic Telecommunications and Audiovisual Reports<sup>9</sup> prepared by the CNMC, as well as the data present in the report *Entertainment and Media Outlook 2023-2027, Spain*,<sup>10</sup> published by the consulting firm

<sup>9</sup> <https://www.cnmc.es/ambitos-de-actuacion/promocion-de-la-competencia/estadisticas-y-biblioteca>

<sup>10</sup> <https://www.pwc.es/es/entretenimiento-medios/assets/gemo-espana-2023-2027.pdf>



PricewaterhouseCoopers (PWC). The report predicts that the Spanish entertainment and media industry will grow by **4.6 %** to reach **EUR 35 011 million** in 2027.

The aforementioned report breaks down the revenues obtained by providers in the Spanish audiovisual market for the provision of different types of television audiovisual media services up to 2023 and then makes growth projections for these services up to 2027. The following table summarises the data contained in the report, including both revenues for 2023 and revenue projections for the sector for the period 2023–2027. On the basis of these projections, an estimate can be made of providers' advance financing obligation for audiovisual works, applying 5 % to the total revenue of the television sector.

AVMS revenue <sup>11</sup> (M€)	2023	2024	2025	2026	2027	CAGR 22/27
conditional access AVMS (pay TV)	2.079	2.072	2.083	2.097	2.124	0,4 %
on-demand AVMS (VoD)	1.283	1.413	1.522	1.613	1.689	5,7 %
Publicity	1.743	1.767	1.762	1.755	1.747	0,04 %
Total AVMS revenue	5.105	5.252	5.367	5.465	5.560	1,7%
5 % PWC financing obligation <sup>12</sup>	255,25	262,6	268,35	273,25	278	1,7%

As may be seen, the advance financing obligation for European audiovisual works generated on the basis of the projected revenues of providers increases annually, with an average growth over the period 2023/27 of around **2 %**. However, this figure should be treated with caution and considered as a maximum limit for the investment obligation, since the data in the PWC report represents an aggregate of all audiovisual media services provided in Spain: national, regional and local. Likewise, not all of the revenues included in the PWC report would be taken into account for calculation of the advance financing obligation for European audiovisual works, either because they are providers with a low volume of revenues (<EUR 10 m), because of the low audience of the service, or because of the theme or nature of the service itself.

On the other hand, in order to make more accurate estimates, the economic data included in the Reports on compliance with the advance financing obligation of annual audiovisual works published by the CNMC can be used. These reports present the aggregated revenues of all audiovisual media-service providers. Based on the CNMC report for the 2020 financial year, and assuming an average revenue growth of 5.1 % equivalent to that forecast by PWC in its report, the following trends are obtained for

<sup>11</sup> Revenue from the advertising market for audiovisual media services, over-the-top (OTT) and conditional access services according to figures from the report *Entertainment and Media Outlook 2023–2027. PWC Spain*

<sup>12</sup> Basing calculation of the 5 % investment obligation on the total revenue, without deducting revenue from exempt channels but including revenue from VoD service providers offering services in Spain and which are established in other member countries (Netflix, Disney+, HBO, Amazon)



the revenues of the providers to be considered and the obligation to invest in European audiovisual works.

Revenue (m€)	2020	2021	2022	2023	2024
<b>Total revenue of providers national level, CNMC</b>	2.375,60 €	2.484,88 €	2.599,18 €	2.718,74 €	2.843,81 €
<b>5 % CNMC financing obligation<sup>13</sup></b>	118,78 €	124,24 €	129,96 €	135,94 €	142,19 €

As the projection is based exclusively on PWC data, sustained growth in the investment obligation of television audiovisual media-service providers is expected in the coming years. However, it should also be borne in mind that the data used as a source, CNMC, does not include revenue data obtained in the Spanish audiovisual market by audiovisual media-service providers established in other Member States that direct their services to Spain, such as NETFLIX or *Disney +*. Therefore, at national level, the estimates in this table could be considered a lower threshold for the obligation. By grouping both limits together, we obtain the following table:

(M€)	2023	2024	2025
<b>5 % PWC financing obligation</b>	255,25	262,6	268,35
<b>5 % CNMC financing obligation</b>	135,94	142,19	148,73

As can be seen from the previous projections, the trends in the audiovisual market and the increase in the number of obliged parties (including the revenue generated by the services provided in Spain by providers established in other Member States), financing will improve and it will be possible to finance more audiovisual works of sufficient quality to permit international circulation and the consequent opening of cross-border markets. Furthermore, it should be noted that the figures included in this document are projections, since both national economic reports and European reports show that some audiovisual media services have higher revenue growth rates, such as on-demand services and online video.

On the other hand, the possibility that the financing obligation can be implemented through a contribution to the Fondo para la Protección de la Cinematografía or to the Fondo de fomento de la cinematografía y el audiovisual en lenguas cooficiales distintas al castellano, regulated in the draft royal decree, introduces some flexibility for those obliged providers whose obligation may be reduced. This flexibility will enable them to make their obligatory investment without incurring any infractions (this could be the case for channels specialising in certain subject matter that have difficulty finding projects aligned with their editorial line). In addition to this flexibility, in cases of

<sup>13</sup>Basing calculation of the 5 % investment obligation on the total revenue, without deducting revenue from exempt channels but including revenue from VoD service providers offering services in Spain and which are established in other member countries (Netflix, Disney+, HBO, Amazon)



reduced investment obligations due to low revenues, they will also be granted the possibility of accumulating the obligation generated over a limited period of years , allowing them to produce works of proven quality that also convey the Spanish cultural and linguistic reality.

But perhaps the most important impact, not economically quantifiable, is the promotion of European audiovisual works. This makes it possible for audiovisual works, perhaps intended for a minority audience or which would struggle to obtain financing, actually to obtain it. In this way, European cultural diversity is promoted, fostering ties and connections between the different communities comprising it.

**Impact on competition in the market.** It is not apparent that the proposed standard introduces elements that distort competition in the market. In fact, as has been pointed out, the draft royal decree aims to improve legal certainty, non-discriminatory treatment and certainty for the administration, for audiovisual media-service providers and the audiovisual production industry in Spain (responsible for producing audiovisual works).

Extending the scope of the advance financing obligation for European audiovisual works to include even providers established in other Member States of the European Union offering their services on the Spanish audiovisual market will have a positive effect, as it is a measure aimed at correcting a situation of imbalance between television audiovisual media-service providers established in Spain and those not established in Spain. This situation has been repeatedly reported by television audiovisual media-services providers established in Spain, as it placed them at a competitive disadvantage compared to foreign providers directing their services to the Spanish market. The possibility opened by the reform of the Audiovisual Media Services Directive has been incorporated into the LGCA in order to try to remedy the anti-competitive effects of the financing obligation on providers.

On the other hand, the draft legislation establishes a series of exemptions from the obligations for certain audiovisual media-service providers that meet a series of requirements. These requirements include: (a) having a turnover below EUR 10 million in the case of the advance financing obligation; (b) having a low audience; (c) exclusive broadcasting of news, sports events or advertising; and (d) subject matter or nature of the channel. In general, compliance with the above requirements reflects a generally small provider within the Spanish audiovisual market, even a niche provider, for whom imposing an obligation such as the promotion of European audiovisual works may be disproportionate. Therefore, the draft royal decree establishes the procedures and safeguards to free this type of provider from such an onerous barrier to their growth and survival in the agile and fast-changing audiovisual market.

### **3. Budgetary impact**

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

**Budgetary impact on the Autonomous Communities and Local Bodies.** The draft royal decree has no impact on the Autonomous Communities, since the competent bodies within the Autonomous Communities already ensure and monitor the compliance of providers under their remit with the financing obligation, using their own resources that they have designed.

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

### **4. Analysis of administrative burdens**

Article 120 of Law 13/2022 of 7 July 2022 maintains the current regime and designates the CNMC as the body responsible for supervising and monitoring compliance with the obligation to promote European audiovisual works. As regards the administrative burdens, the draft royal decree does not establish or impose any new administrative burdens that do not already exist on television audiovisual media-service providers, in respect of either the quota obligation or the obligation to finance audiovisual works.

On the one hand, as regards the advance financing obligation for works, providers are already obliged to inform the CNMC and provide it with the necessary documentation so that it can verify the provider's compliance. However, it is likely that the number of parties obliged to comply will increase, as the scope of the obligation will be extended to providers established in other EU Member States that offer their services in the Spanish audiovisual market, as permitted by the revised Audiovisual Media Services Directive. Nevertheless, these procedures are already carried out electronically in accordance with the provisions of Royal Decree 988/2015 of 30 October 2015 and Law 39/2015 of 1 October 2015 on the Common Administrative Procedure.

On the other hand, television audiovisual media-services providers must also provide information to the CNMC on compliance with the European audiovisual works quota obligation that they disseminate through their services, since that body must periodically inform the European Commission in accordance with Article 16 of the



Audiovisual Media Services Directive. This draft legislation aims to establish a regulated procedure that provides guarantees and legal certainty, while also streamlining the annual reporting to the supervisor of information on the European audiovisual works quota obligation for the purpose of analysing compliance. As with the advance financing obligation for European audiovisual works, in this case, providers are obliged to interact electronically with the Administration, in accordance with the provisions of Article 14 of Law 39/2015 of 1 October 2015.

From the above paragraphs, it can be concluded that the CNMC already has both sufficiently experienced human capital to be able, with sufficient agility, to analyse the data relating to quota and financing provided by the providers, and the material resources necessary to be able to process such documentation and carry out the relevant analyses.

In conclusion, the regulatory draft analysed does not include new burdens for providers, simply maintaining the two already existing to date, although in the case of the report relating to the quota obligation its frequency will become annual, which will result in a slight increase in the cost to be borne by providers, as can be seen in the table in Annex VIII concerning the economic valuation of the administrative burdens.

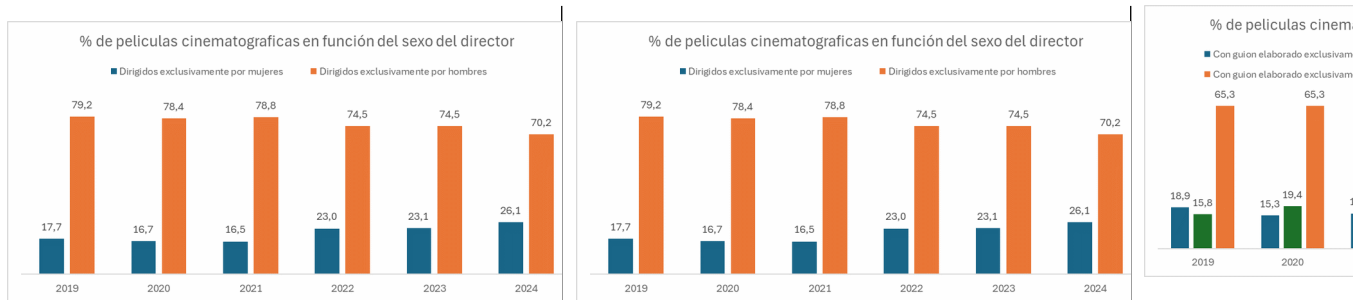
Finally, it is emphasised that the obligation for users of special relevance to submit a sworn statement when registering in the state register provided for in Article 39 of the LGCA, in accordance with paragraph one of the first final provision of the draft legislation, does not constitute a new administrative burden as its submission is inherent to the registration process. This process has already been analysed and quantified in the Regulatory Impact Analysis Report corresponding to the 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 registration procedure.

## **5. Gender-based impact**

For the purposes of the provisions of Article 19 of Organic Law 3/2007 of 22 March 2007 on the effective equality of women and men and Article 24(1)(b) of Law 50/1997 of 27 November 1997, The Government, in the wording given by Law 30/2003 of 13 October 2003 on measures to incorporate the assessment of gender impact into the regulatory provisions drawn up by the Government, it is noted that the draft royal decree has a positive gender impact, insofar as its content includes specific obligations aimed at promoting the presence of women in the audiovisual production sector. To this end, specific quotas have been included in the advance financing obligation for



European audiovisual works so that providers allocate a percentage of their revenues to the production of audiovisual works directed or created exclusively by women. These measures are intended to supplement others such as those already implemented by the Institute of Cinematography and Audiovisual Arts that encourage the production of films directed by women through grant awards. As may be seen in the table below, the percentages are gradually increasing, improving the baseline situation.



% de películas cinematográficas en función del sexo del director, Dirigido exclusivamente por mujeres, Dirigido exclusivamente por hombres

% of films by sex of director, Directed exclusively by women, Directed exclusively by men

% de películas cinematográficas en función del sexo del guionista, Con guion elaborado exclusivamente por mujeres, Con guion elaborado exclusivamente por mujeres y hombres, Con guion elaborado exclusivamente por hombres

% of cinematographic films by sex of screenwriter, With screenplay written exclusively by women, With screenplay written by women and men, With screenplay written exclusively by men

As may be inferred from the above graphs, the assessment of the impact of the obligation to invest a percentage in the production of works directed or produced by women can be observed through the annual reports on the advance financing obligation for European audiovisual works, which will be made public by the CNMC, and through the data made public by the ICAA. On the basis of the data contained in said reports, new packages of measures may be proposed, aimed at increasing equality within the audiovisual production sector.

**6. Impact on children, adolescents and families**

It may be inferred from the content of the draft royal decree, from implementation of the obligation to promote European audiovisual works and linguistic diversity, that it could tangentially have a positive impact on children, adolescents or families, since it is



planned to finance audiovisual content in all of the official languages, the target audience of which includes children, adolescents and their families, in order to promote the linguistic diversity present within national territory.

### **7. *Climate change impact***

This draft legislation has no impact on climate change, as the measures it establishes do not affect mitigation or adaptation efforts either positively or negatively.



## Annex I – Analysis of contributions to the prior consultation

The general idea underlying most of the contributions received is that the regulatory development of the obligation to promote European audiovisual works should afford the obliged parties sufficient flexibility to comply while reducing administrative burdens.

Please find below the comments submitted, grouped by subject matter:

### Concept of European audiovisual works

Some of the contributions received point to the difference between what is considered a European audiovisual work for the purposes of compliance with the works quota obligation, as opposed to the concept of an audiovisual work subject to the financing obligation. In particular, they point out that the financing obligation restricts the definition to a very specific number of formats: cinematographic films, television films, series, cinematographic or television documentaries, whereas the quota obligation opts for a broader concept.

Some contributions proposed that those with financial participation from third countries that are not members of the EU should not be considered European audiovisual works.

### Exemptions from the obligation to promote European audiovisual works

It is requested that the future regulation, as provided for in the LGCA, specify what is meant by 'low turnover', 'low audience', or the nature or subject matter of the audiovisual media service itself that makes the obligation impracticable or unjustified.

### Quantitative provider financing obligation

Some of the contributions requested that, when establishing the total amount of the European audiovisual works financing obligation to be paid by a provider, account be taken of the losses incurred by the provider in that financial year. On the other hand, it was also requested that the first EUR 10 million of revenue be deducted, in order to be on an equal footing with exempt providers.

### Concrete proposals relating to compliance with the obligation by providers

#### Quota

First of all, contributions have been received regarding setting the basic deadline for calculating whether or not the obligation would have been complied with in the on-demand services, since the LGCA does not establish a period. Likewise, it is requested that this deadline be defined in the regulations, taking into account the administrative burdens involved in reporting the data to the supervisor. It is also requested that the obligation be calculated for the body of services offered by the provider rather than for each of the services. It is also proposed that audiovisual works offered via catch-up or Startover facilities be excluded from calculation of the obligation, as they would not



form a regular part of the on-demand service catalogue. Finally, in the case of linear audiovisual media services, a proposal has also been submitted to establish a portion of the broadcast schedule to which the quota will apply.

### **Advance financing for European audiovisual works**

On financing, it is requested that: the concept of 'work created exclusively by women' be clarified; 'unscripted' works be counted for financing purposes; films in several languages other than Spanish be counted for compliance with the subquotas in official languages other than Spanish.

It is also requested that the requirements permitting calculation of the acquisition of rights over completed audiovisual works, by providers, be made more flexible. Today, the requirements present in Royal Decree 988/2015 of 30 October 2015, whereby completed works can count towards the financing obligation, are very strict, making it impossible to use this flexibility for providers.

On the other hand, several contributions propose extending the flexibility that provides for the possibility of allocating part of the obligation generated to previous/subsequent financial years, currently restricted to the previous or subsequent financial years. Likewise, some contributions raise the possibility of permitting the flexibility that permits accumulation of the obligation to be extended by several financial years in order to create quality works.

As regards compliance mechanisms, some contributions ask that the flexibility present in Royal Decree 988/2015 of 30 October 2015 be maintained, such that each party can choose the format they deem most appropriate to their interests while respecting the obligation. However, other contributions ask that the future development establish fixed investment obligations by mechanism (production, acquisition of rights). Likewise, others request the exclusion of providers' own production from the calculation.

On the other hand, the contributions include the request that the criteria be revised for calculating expenditure on own production, production commissions and co-productions and the acquisition of exploitation rights.

In the area of the obligation to finance European audiovisual works, a request has been made that, with a view to possible compliance through commissions, the concepts of 'production commission' and 'production service' be defined in order to provide legal certainty in the sector.

As was done during the processing of the LGCA already in force, requests have been submitted for the inclusion of the concept of subject matter television audiovisual media-services providers, as present in Law 7/2010 of 31 March 2010, in order to make providers' financing obligations more flexible so that they should only invest in the formats that they disseminate.

### **Contributions affecting the broadcasting and financing quota**



Some contributions show concern about compliance with sub-quotas in co-official languages. In order to be able to ensure some flexibility, different alternatives are proposed. In the case of the financing obligation, to calculate filming in several languages proportionally. In the quota and financing obligations, they also request that subtitled or dubbed works be taken into account, or that their dubbing be made available by the regional services. On the other hand, some request the exclusion of Aranese.

Finally, the contributions received request that the concept of 'population size' be defined in relation to the mandatory percentages of audiovisual works in co-official languages, present in both the quota and financing obligations.

### **Contributions concerning the prominence of European audiovisual works**

The LGCA, in line with the provisions of the Audiovisual Media Services Directive, establishes the obligation to give due prominence to European audiovisual works. Therefore, it is closely linked to the quota obligation.

In this area, on the one hand, some of the contributions request that the system included in the future regulation grant sufficient freedom to providers trying to be as unrestrictive as possible,

providing sufficient flexibility for them to implement it in the manner that best suits their interests.

Other arguments, on the contrary, call for the inclusion of specific measures to ensure the prominence of European audiovisual works. Specifically, the following measures are proposed:

- algorithms that do not discriminate between the languages in which the work is produced or between types of producers (try to ensure that algorithms do not favour the provider's own production);
- specific proposals to give European works the prominence they deserve: include the possibility of searching for European works in search engines; positioning in the start pages of the service with a minimum proportion of works.
- finally, with regard to prominence, it is also proposed that linear audiovisual media services be required to broadcast a percentage of European works during *prime time*.

Some contributions also propose establishing obligations for providers to include in their services commercial communications promoting European audiovisual works, reserving a percentage of the time allocated to the dissemination of advertising.

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

This area includes contributions relating to monitoring and control mechanisms on the part of the National Commission on Markets and Competition.



Some contributions call for the development of a computer application that streamlines control and supervision and affords access to all interested parties during processing.

In this area, several contributions advocate for a reduction in the administrative burdens on the obliged parties, in terms of both declaring their eligible revenue and reporting on their own compliance with the obligation. According to those involved, the requirements imposed for the presentation of accounts are very burdensome and they therefore propose that these be made more flexible.

Another argument in this area concerns the request to shorten the time limits for the verification procedure carried out by the CNMC, or at least to try to ensure that the control procedures are carried out with the necessary diligence.

Finally, within this area there is also the request to implement effective and sufficient control mechanisms for providers established in other Member States that offer their services in Spain.

#### **Other areas**

Contributions that do not fit into any of the above categories have been included under this heading. Firstly, a request has been made to develop the provisions contained in the fifth additional provision of the LGCA, relating to the design of a self-regulation system, with the aim of promoting linguistic diversity and the presence of the official languages of the Autonomous Communities in audiovisual media services.

It has also been proposed that, in order for commissions to be considered as having been given to independent producers, these producers should retain the intellectual property rights over the audiovisual work.

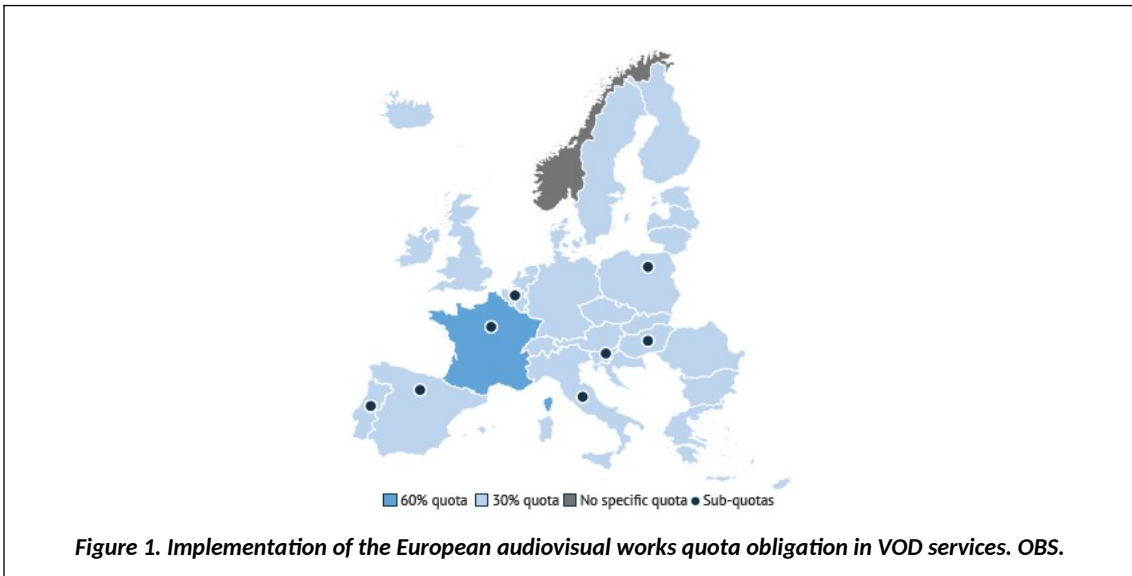


## Annex II – European comparison of implementation of the obligation to promote European audiovisual works

### European audiovisual works quota obligation (COE)

#### 1. On-demand audiovisual media services (VOD)

##### 1.1. Implementation of the European audiovisual works quota obligation in EU Member States



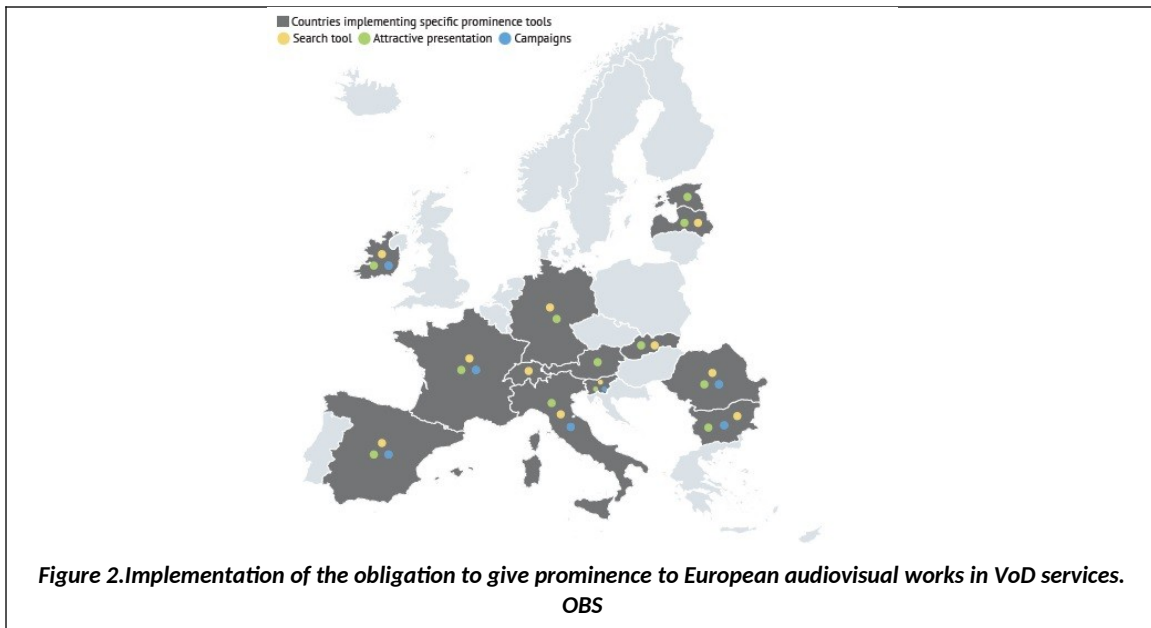
- 26 EU Member States have established the obligation that at least 30 % of the titles present in the catalogues of on-demand service providers under their jurisdiction correspond to European audiovisual works (AT, BE, BG, CY, CZ, DE, DK, EE, ES, FI, GR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK).
- France has imposed a stricter obligation, requiring that at least 60 % of the titles present in the catalogue must correspond to European audiovisual works.
- 8 EU Member States have established other types of sub-quotas in their national legislation: (a) Works carried out by independent producers; (b) Cinematographic films; and (c) Works whose original version has been produced in the official language of the country. These sub-quotas are detailed in the table below.

Country	Sub-quotas
BE	<ul style="list-style-type: none"> <li>• FR: 10 % of the titles in the catalogue are in French.</li> <li>• VL: significant proportion of titles in the catalogue in Dutch</li> </ul>
ES	15 % of the titles in the catalogue must correspond to works whose original version is in the official languages of Spain.
HU	10 % of the titles in the catalogue must correspond to works



	whose original version is produced in Hungarian
IT	<ul style="list-style-type: none"><li>• No less than 50 % of the European audiovisual works quota (15 %) must be allocated to works whose original version has been produced in Italian and which have been produced by independent producers in the last five years.</li><li>• One fifth of the Italian works quota (3 %) shall correspond to cinematographic films shot in Italian by independent producers.</li></ul>
FR	<ul style="list-style-type: none"><li>• At least 40 % of the titles present in the catalogue and at least 40 % of cinematographic films must be in French.</li><li>• Providers may sign agreements with the regulator (ARCOM) to establish a European works quota of less than 60 %, although always greater than 50 %. This reduction in the quota will be granted in return for the provider's commitment to invest in the financing of audiovisual works in French produced by independent producers.</li></ul>
PL	The 30 % quota for European audiovisual works must include audiovisual works whose original version is filmed in Polish.
PT	At least 15 % of the titles in the catalogue shall correspond to independent works whose original version is in Portuguese and is less than five years old.
SI	At least 5 % of the titles present in the catalogue shall correspond to works whose original version is in Slovenian.

1.2. Implementation of the obligation to give prominence to European audiovisual works present in the catalogues of on-demand audiovisual media services (VoD) in EU Member States



- The following 12 EU Member States have implemented specific measures or tools to give prominence to European audiovisual works present in the catalogue: AT, BG, DE, EE, ES, FR, IE, IT, LV, RO, SI and SK. The tools envisaged to facilitate prominence include: Attractive presentation of works (specific sections or making these works visually attractive); facilitating the search for European works in the service search engines; and campaigns to promote the viewing of European works.
  - 11 countries (AT, BG, DE, EE, FR, IE, IT, LV, RO, SI, SK) provide for measures concerning the attractive presentation of works, such as specific sections or making these works visually attractive;
  - 10 countries (BG, DE, ES, FR, IE, IT, LV, RO, SI, SK) are considering measures to facilitate searches for European works in service search engines;
  - 7 countries (BG, ES, FR, IE, IT, RO, SI) envisage the use of European works in campaigns aimed at promoting the service.
- It is worth mentioning that 83 % of the EU Member States introducing measures in their national legislation aimed at ensuring the due prominence of European works in their catalogues provide for specific measures in at least two of the aforementioned areas.

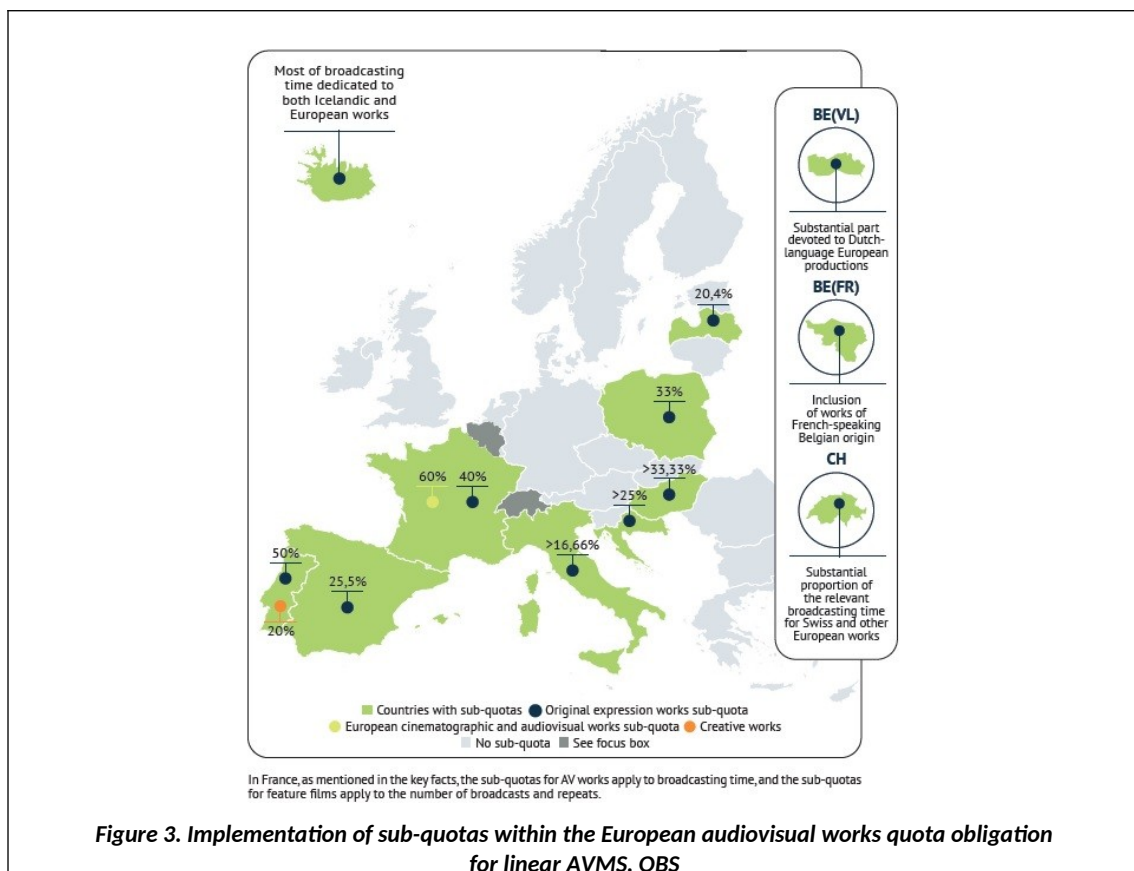
## 2. Linear audiovisual media services

### 2.1. Implementation of the European audiovisual works quota obligation for linear audiovisual media services in EU Member States

- All Member States have established the obligation for the majority of the linear service broadcast time to correspond to European works (time > 50 %)



- o 3 countries have established a minimum of 51 % of the time (EE, ES and LV).
- o FR has established a minimum percentage of broadcasting time of 60 % for European audiovisual works.
- 9 EU Member States have established specific sub-quotas for the broadcasting of cinematographic films or audiovisual works in the original version of that country (BE, ES, FR, HR, HU, IT, LV, PL, PT).
- 8 EU Member States have established several sub-quotas within the European audiovisual works broadcasting obligation (ES, FR, HR, HU, IT, LV, PL, PT). For example: Recent works, works by independent producers, works in original version
- BE (FR and VL) requires that original audiovisual works be included within the quota allocated to European works, but without specifying a specific percentage.
- France stipulates that linear audiovisual media service providers must reserve at least 60 % of their broadcasting time for European works and at least 40 % of their annual broadcasting time for original works in French.



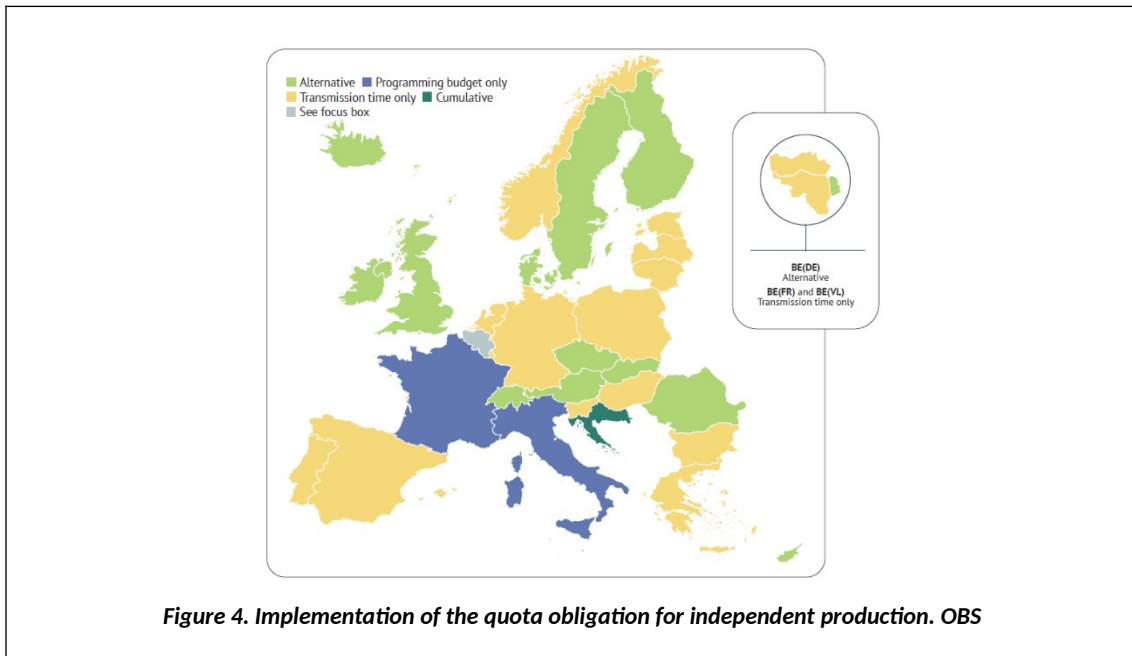
National audiovisual works quota/Country original version	
ES	At least 25.5 % of annual broadcasting time to audiovisual works produced in any of the official languages



FR	Minimum of 40 % of the annual broadcasting time to audiovisual works in French.
HR	At least 25 % of annual broadcasting time to Croatian audiovisual works
HU	At least 33.33 % of annual broadcasting time to Hungarian audiovisual works
IT	Minimum of 16.66 % of annual broadcasting time for Italian audiovisual works
LV	At least 20.4 % of annual broadcasting time for audiovisual works in the official language
PL	Minimum of 33 % of annual broadcasting time for Polish audiovisual works
PT	Minimum of 50 % of annual broadcasting time for programmes broadcast in Portuguese. At least 20 % of the annual broadcasting time to broadcast original works produced in Portuguese.



## 2.2. Implementation of the audiovisual works quota obligation reserved for independent audiovisual production



- 14 EU Member States (BE, BG, DE, EE, ES, GR, HU, LT, LU, LV, NL, PL, PT and SI), together with Norway, only require 10 % of airtime to be reserved for independent audiovisual productions
- 11 EU Member States (AT, BE, CY, CZ, DK, FI, IE, MT, RO, SE, and SK) offer providers a choice of the following alternatives: reserve broadcasting time or invest in the production of independent works.
- 2 EU Member States require 10 % of the programming budget to be reserved for independent productions (FR and IT).
- Croatia imposes a cumulative obligation: reserve 10 % of the broadcasting time and allocate 5 % of the revenue to the production of works by independent Croatian producers.
- 3 EU Member States impose a broadcasting quota for independent works of more than 10 % of airtime (BG, FI and IT).
- France stipulates that three quarters of the provider's expenditure (acquisition of rights or investment in productions) must be allocated to film production by independent producers. In addition, France stipulates that providers must allocate two thirds of 15 % of annual turnover to the creation of audiovisual works by independent producers.
- 25 EU Member States have introduced compulsory quotas into their legislation intended to promote recent audiovisual works:
  - o 12 States (AT, BE (VL), BG, CY, DK, EE, IE, LU, LV, MT, RO and SE) do not set a specific quota percentage.
  - o 13 States (BE(FR), CZ, ES, FI, HR, HU, IT, LT, NL, PL, PT, SI and SK) have introduced specific percentages for the promotion of recent works.



### 2.3. Implementation of the audiovisual works quota obligation reserved for recent audiovisual production

BE-FR	10 % of the total broadcasting time (the quota reserved for independent production may not be more than five years old)
CZ	1 % of the total broadcasting time (10 % of the quota dedicated to independent productions)
ES	5 % of the total broadcasting time allocated to works less than five years old (half of the quota for independent production)
FI	9.5 % of the total broadcasting time (half of the quota for independent production)
HR	5 % of the total broadcasting time (half of the quota reserved for independent production)
HU	8 % of the total broadcasting time for works by independent producers, in Hungarian, that are less than five years old
IT	6.25 % of the total broadcasting time for works of independent production, in Italian, that are less than five years old
LT	10 % of broadcasting time allocated to works less than five years old by independent producers
NL	3.33 % of the total broadcasting time for works less than five years old (one third of the quota reserved for independent production)
PT	5 % of the total broadcasting time for works less than five years old (half of the quota reserved for independent production)
SI	5 % of the total broadcasting time for works less than five years old (half of the quota reserved for independent production)
SK	1 % of the total broadcasting time for works less than five years old (10 % of the quota reserved for independent production)

#### **ADVANCE FINANCING OBLIGATION FOR EUROPEAN AUDIOVISUAL WORKS (FOE)**

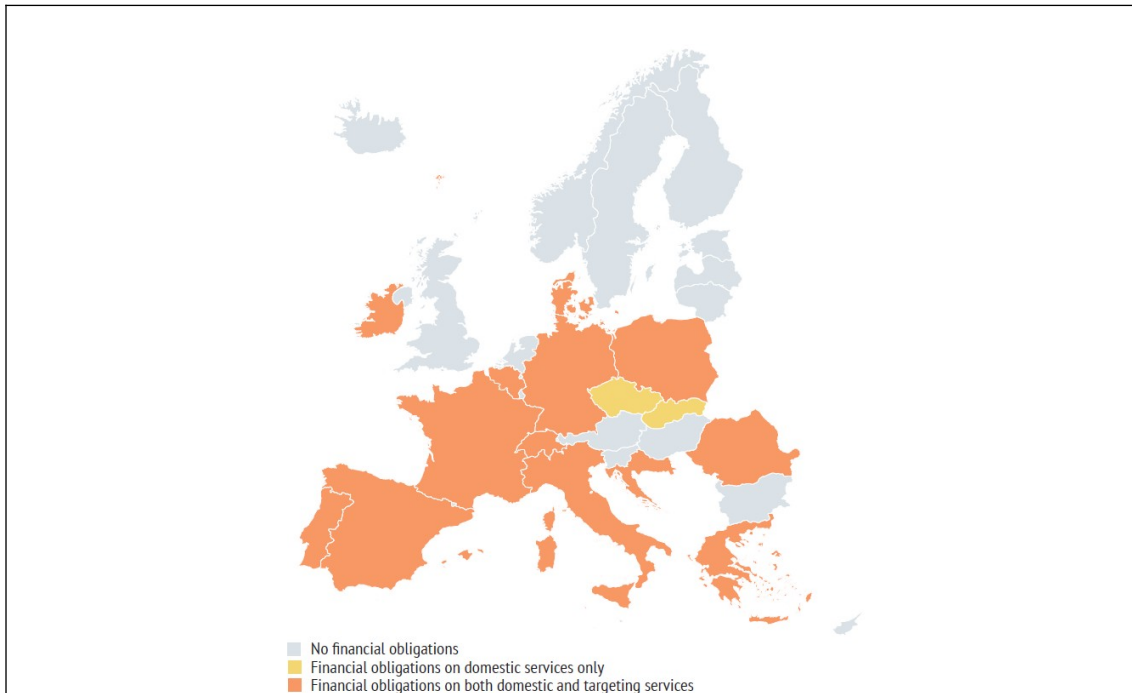
- 12 EU Member States (*AT, BG, CY, EE, FI, LT, LU, LV, MT, NL\*, SE, SI*) do not impose any obligations on audiovisual media service providers to finance European audiovisual works.
- 12 EU Member States (*BE (FR), DE, ES, FR, GR, HR, IE, IT, PL, PT, RO, SK*) have established a financing obligation for both linear and on-demand audiovisual media services.
- HU is the only country that imposes the financing obligation only on linear audiovisual media services.
- 3 EU Member States (*BE (VL), CZ, DK*) impose the audiovisual works financing obligation only on on-demand audiovisual media services (*VOD*).

(\*) NL: A regulatory amendment to the Audiovisual Act is currently being processed so that on-demand services



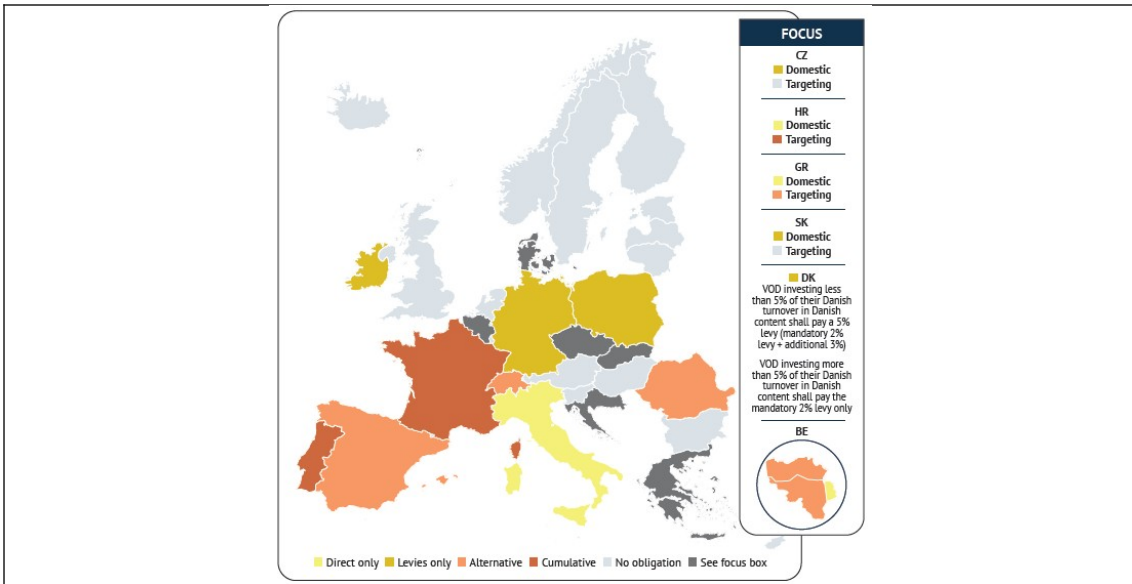
with revenues exceeding EUR 10 million in the Dutch audiovisual market will finance European works.

### 1. Implementation of the obligation to finance European audiovisual works among EU Member States for on-demand audiovisual media services (VOD)



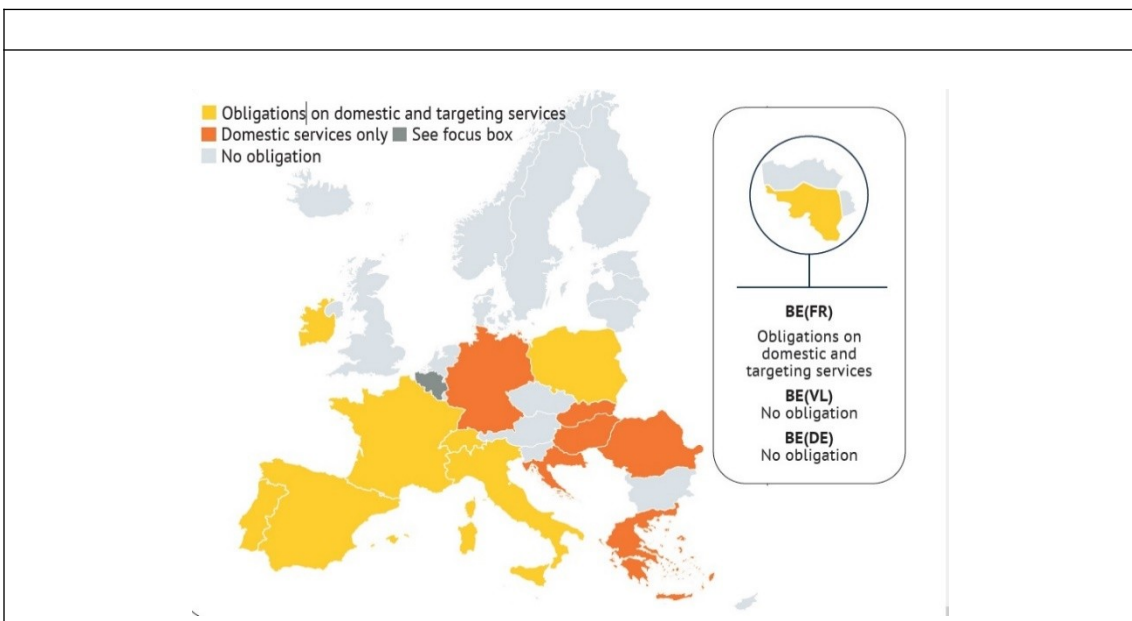
**Figure 5. Implementation of the advance financing obligation for European audiovisual works for on-demand services (VoD). OBS**

- 14 EU Member States impose the European audiovisual works financing obligation on on-demand services (VoD):
  - 12 countries (85.7 %) impose the obligation both on providers subject to their jurisdiction (domestic) and on those offering services in that country and established in another EU country (BE, DE, DK, ES, FR, GR, HR, IE, IT, PL, PT, RO).
  - CZ and SK only impose the obligation to finance audiovisual works on on-demand services under their jurisdiction.



**Figure 6. Map showing implementation of the financing obligation through direct or indirect contributions for VOD services. OBS**

**2. Implementation of the European audiovisual works financing obligation between EU member countries for linear audiovisual media services**



**Figure 7. Advance financing obligation for linear providers. OBS**

- Only 7 EU Member States have established a European audiovisual works financing obligation for providers of domestic and foreign linear television audiovisual media services directing their services to that country (BE(FR), ES, FR, IE, IT, PL and PT).
- 6 EU Member States impose the European audiovisual financing obligation



exclusively on linear service providers under their jurisdiction (DE, GR, HR, HU, RO, SK).

- In the case of Belgium, only the French-speaking region imposes an obligation on domestic and foreign providers to finance audiovisual works; the Walloon region does not impose any financing obligation on providers of linear audiovisual media services.
- CZ and DK do not impose a European audiovisual works financing obligation on linear services but do impose such an obligation on on-demand services.



### Annex III - Analysis of the contributions received during the public hearing

At the end of the period granted for submitting comments on the draft royal decree, a total of 18 contributions were received from 12 associations and 7 individual audiovisual media service providers:

Associations	AVMS service providers
<ol style="list-style-type: none"><li>1. Asociación de Mujeres Cineastas y de Medios Audiovisuales (CIMA)</li><li>2. Asociación Andaluza de Productoras de Cine de ficción, documental y seriado (ANCINE)</li><li>3. American Chamber of Commerce in Spain (AMCHAMSPAIN)</li><li>4. CEOE Confederación Española de Organizaciones Empresariales</li><li>5. Asociación de Productoras Asociadas de Televisión de España (PATE)</li><li>6. Asociación Española de la Economía Digital (Adigital)</li><li>7. Unión de televisiones Comerciales en Abierto (UTECA)</li><li>8. Asociación Española de Video On Demand (AEVOD)</li><li>9. Asociación Española para la Digitalización (Digitales)</li><li>10. Consejo Especialista En Canales Temáticos Asociados (CONECTA)</li><li>11. Asociación Estatal de Cine (AECINE)</li><li>12. Federación de Organismos o Entidades de Radio y Televisión Autonómicos (FORTA)</li></ol>	<ol style="list-style-type: none"><li>1. Corporación RTVE (RTVE)</li><li>2. Netflix</li><li>3. Telefónica España, S.A.U (Telefónica)</li><li>4. Grupo Mediapro, S.L.U. (MEDIAPRO)</li><li>5. Grupo Audiovisual Mediaset España Comunicación SAU (MEDIASET)</li><li>6. Apple</li><li>7. TEN MEDIA S.L. (TEN)</li></ol>

The contributions proposed by the different entities are summarised and analysed in the following table.



Article	Paragraph	Entity	Contribution	Evaluation
3	New	Telefónica, Digitales	Explicitly exclude the provider of the aggregation service defined in Article 2(16) of the LGCA from the scope of the regulation.	<b>Not accepted.</b> Under the LGCA, only television audiovisual media service providers are obliged to comply, therefore aggregators are not subject to this obligation.
4	2	ANCINE, AECINE	Distribute the quota reserved for Spanish European audiovisual works among producers established in different territories based on their population.	<b>Not accepted.</b> This exceeds the scope of the draft: the LGCA only establishes a quota obligation for the presence of audiovisual works in both the official language of the state and the official languages of the Autonomous Communities.
4	1	Telefónica, Digitales	The quota obligation should only be met explicitly on linear channels under the editorial responsibility of the provider.	<b>Not accepted.</b> The current wording of the draft only obliges providers, who are the ones who hold editorial responsibility according to the definition of provider in the LGCA.
4	1	AMCHAMSPAIN, AEVOD	The minimum quota of 51 % shall be enforceable whenever possible and by appropriate means.	<b>Not accepted.</b> Law 7/2010 of 31 March 2010 has already established the obligation of a minimum quota of 51 % of airtime/30 % of the catalogue for providers and the new LGCA regime has maintained this regime.
4	3	UTECA	The CNMC shall publish the specific percentages for each official language annually, sufficiently in advance. Once the minimum threshold of 10 % per language has been exceeded, each provider will distribute the remainder taking into account population size.	<b>Partly accepted.</b> The CNMC will be responsible for publishing the population sizes at the beginning of each year. However, it is included in the title corresponding to the CNMC, relating to its supervisory and control functions.
5	3	UTECA	The CNMC shall publish the specific percentages for each official language annually, sufficiently in advance. Once the minimum threshold of 10 % per language has been	<b>Partly accepted.</b> The CNMC will publish the population sizes on an annual basis. However, it is included in the title corresponding to the CNMC, relating to its



Article	Paragraph	Entity	Contribution	Evaluation
			exceeded, each provider will distribute the remainder taking into account population size.	supervisory and control functions.
5	6	AMCHAMSPAIN, AEVOD, CONECTA	In the case of series, offer the provider the possibility of counting the titles by episode or season	<b>Partly accepted.</b> The count for series will be by season according to the Commission guidelines, but this will not be optional for the provider.
5	1	Telefónica, Digitales	The quota obligation should only be fulfilled for services under the editorial responsibility of the provider.	Explicit incorporation <b>not accepted.</b> The current wording and the LGCA only impose obligations on providers, who are the ones who have editorial responsibility for the services in accordance with the definition of provider in the LGCA.
5	6	PATE	In the case of series, only if the episodes have a duration of more than 30 minutes, count them individually rather than by season	<b>Not accepted.</b> The count for series will be by season.
5	6	AECINE	Count series by season with a view to compliance with the obligation	<b>Accepted.</b>
5	6	UTECA	Count series and other types of serial programmes by season	<b>Accepted.</b>
5	6	MEDIASET	In other types of serial programmes, each individual programme is counted as a title.	<b>Accepted.</b> Serial programmes will be calculated by season.
5	4	Adigital, Digitales, Telefónica, CEOE	Leave works offered incidentally following their broadcast on linear media out of the quota obligation calculation	Not accepted. The provider is conceded the power to count them or not, in order to provide some flexibility.
5	4	UTECA, PATE	Works offered through the catch-up service automatically excluded from the count.	<b>Not accepted.</b> Power of the provider to count them by way of possible flexibility.
5	4	CONECTA	Extend the catch-up period to 30 days and classify this service as on-demand.	<b>Not accepted.</b> The seven-day time limit is maintained
5	4	MEDIASET	Delete all works present in the catch-up service, not only those that are European	<b>Partly accepted.</b> The provider may deduct all audiovisual works offered through the provider's catch-up service.
5		PATE	Include a specific quota for	<b>Not accepted.</b> Neither the



Article	Paragraph	Entity	Contribution	Evaluation
			independent production	LGCA nor the AVMSD establish such a quota in the case of on-demand services.
5	nuevo	UTECA	Establish that programmes devoted to news, sporting events, commercial communications and games shall neither be counted nor included in the catalogue.	Their inclusion in paragraph 5 is <b>accepted</b> . It is reasonable that, if the airtime of these programmes is not counted for linear services, it should not be counted in the catalogue either.
6		UTECA	Delete the adjective 'effective' for the measures, as the effectiveness of a measure can be subjective.	<b>Not accepted.</b> Measures are put in place that ensure the prominence of the European work and are, as such, effective.
7	1	RTVE	Replace the concept of 'news and sports events' with 'news programmes and sports programming'	<b>Not accepted.</b> Text of Article 115 LGCA.
7	5	AMCHAMSPAIN, AEVOD, CONECTA	Apply the exemption for Spanish audiovisual works not only to audiovisual communication services <u>exclusively</u> directed, but to all those <u>mainly</u> directed	<b>Not accepted.</b> Wording corresponding to Articles 115(4) and 116(3) of the LGCA.
7	6	AMCHAMSPAIN, AEVOD	Count dubbing or subtitling of the audiovisual work in official languages of the Autonomous Communities towards the specific quota for languages of the Autonomous Communities	<b>Not accepted.</b> The regulatory text already provides for dubbed or subtitled works to be counted as a flexibility measure and not a general standard.
7	7	AMCHAMSPAIN, AEVOD, CONECTA	Permit those services with a low presence in the Spanish audiovisual market to apply to the CNMC for flexibility or exemption	<b>Not accepted.</b> Services with low audience figures and providers with low revenues are exempt. The draft also provides for the possibility of requesting flexibility or exemption from the CNMC on a case-by-case basis.
7	6	Telefónica, Adigital, UTECA, Digitales	Include all television audiovisual media services, and not just on-demand services, in flexibility regarding the compulsory quota for languages of the Autonomous Communities.	<b>Not accepted.</b> Only the public provider and on-demand services are subject to the quota obligation for official languages of the Autonomous Communities, not private linear services.



Article	Paragraph	Entity	Contribution	Evaluation
7	7	Telefónica, Digitales	Expressly mention linear service providers, using the terminology 'channel'.	<b>Not accepted.</b> The text as it stands already applies to all television audiovisual media services.
7	1	CEOE, Adigital	Make services dedicated to self-promotion of the provider's own services exempt.	<b>Not accepted.</b> These channels would not count as exclusively dedicated to broadcasting commercial communications, or to self-promotions of the provider.
7		CEOE	Specify that works in the languages of the Autonomous Communities must be obtained under market conditions.	<b>Not accepted.</b> This exceeds the scope of the draft legislation.
7		PATE	Each exemption from or flexibility in compliance granted by the CNMC must be renewed annually.	<b>Not accepted.</b>
7		PATE	Seek the opinion of production companies when granting exemptions to providers.	<b>Not accepted.</b>
7		PATE	Include that in addition to the flexibility afforded through dubbing and subtitling, the provider may make a contribution to the fund to comply with the obligation	<b>Not accepted.</b> Article 7 establishes the exemptions to the audiovisual works quota obligation, contribution to the Funds does not make sense as a measure for making the quota obligation more flexible.
7	2	Mediapro, UTECA, MEDIASET, TEN	Consider 2 % as a low audience threshold for linear services and to be exempt from quota	<b>Partly accepted.</b> The threshold is increased and exemption from compliance is granted.
7		UTECA	Specify that the exemption for exclusive news, sports or commercial communication services only applies to those services.	<b>Accepted.</b>
7		UTECA	Exclude time/programmes dedicated to news for the theme and in the event that more than 70 % is dedicated to news, sports and advertising, the service can be exempted.	<b>Not accepted.</b> Subject matter channels are those that broadcast content of the same nature or subject matter most of the time; it is not necessary to deduct time. Channels dedicated to news, sports or advertising are already exempt.
7		UTECA, APPLE	The quota is calculated on an aggregate basis, taking into	<b>Not accepted.</b> The quota is calculated for each service.



Article	Paragraph	Entity	Contribution	Evaluation
			account all services for which the provider is responsible.	
7		CONNECTA	Increase the threshold for not reporting data to the CNMC to 1 %	<b>Accepted</b> to increase the threshold in order to be exempted from the quota obligation.
7		CONNECTA	Increase the revenue threshold for exemption to EUR 10 million.	Not accepted. The quota obligation is less burdensome than the financing obligation, and therefore easier to comply with.
7	7	MEDIASET	Apply the quota exemption to online services that are extensions to linear services.	<b>Not accepted.</b> Providers may not count the works they offer through catch-up services towards the quota obligation.
8	3	AMCHAMSPAIN, AEVOD	Indicate that the audience of an on-demand service shall be calculated on 31 December of each year.	<b>Not accepted.</b> It will be calculated based on the guidelines published by the CNMC.
8	1, 2	Telefónica, CEOE, Adigital, Digitales	Consider the cumulative audience of all audiovisual media services for which the provider has editorial responsibility.	<b>Not accepted.</b> The audience will be calculated based on the CNMC criteria.
8		CEOE	In on-demand services, calculate the audience on the basis of cumulative access to the works in the catalogues	<b>Not accepted.</b> Either the subscribers to the SVoD or the criteria published by the CNMC will be applied.
8		UTECA	Leave the audience criteria and calculations for on-demand services to the CNMC, which will make them public.	<b>Accepted.</b>
8	3	CONNECTA	Clarify the clause 'to avoid double counting' introduced when establishing the criteria for calculating the audience of on-demand services.	<b>Accepted.</b>
8	3	MEDIASET	Replace the concept of unique users with one that is easier to calculate and include the audience of foreign services in the Spanish market.	<b>Partly accepted.</b> Reference is made to the criteria made public by the CNMC.
9		AMCHAMSPAIN, AEVOD	Amend the definition of 'Documentary' so as not to exclude works likely to be considered as such.	<b>Not accepted.</b> The definition in the draft is established and agreed on in the sector and by the providers



Article	Paragraph	Entity	Contribution	Evaluation
				through Royal Decree 988/2015.
9		MEDIASET, APPLE	Include new types of works as eligible for financing through the obligation, in particular unscripted programmes (reality shows, talent shows).	<b>Not accepted.</b> The current formats are maintained in order to comply with the financing obligation.
10		UTECA	Include the verbatim wording of Article 118 LGCA: 'on its own initiative or by commission'	<b>Accepted.</b>
10	1	ANCINE, AECINE	Distribute the obligation to invest in European audiovisual works among works produced by production companies established in the different Autonomous Communities according to the population size of each region.	<b>Not accepted.</b> The financing obligation is aimed at the production of audiovisual works, and the proposal exceeds the scope of the regulatory draft.
10	1	UTECA	The CNMC shall publish the specific percentages for each official language annually, sufficiently in advance. Once the minimum threshold of 10 % per language has been exceeded, each provider will distribute the remainder taking into account population size.	<b>Partly accepted.</b> The CNMC will publish the population sizes annually to facilitate compliance. However, it is included in the title corresponding to the CNMC, relating to its supervisory and control functions.
11		UTECA, CONECTA	Include the verbatim wording of Article 119 of the LGCA 'on its own initiative or on commission'.	<b>Accepted.</b>
11	2	AMCHAMSPAIN, CEOE, AEVOD, ADIGITAL, Netflix	Establish that the CNMC will publish population sizes annually, before 31 January, or from a date	<b>Accepted.</b> The CNMC will publish the population sizes annually to facilitate compliance. However, it is included in the title corresponding to the CNMC, relating to its supervisory and control functions.
11	2	UTECA	The CNMC shall publish the specific percentages for each official language annually, sufficiently in advance. Once the minimum threshold of 10 % per language has been exceeded, each provider will distribute the remainder taking into account population size.	<b>Partly accepted.</b> The population sizes will be published annually by the CNMC. However, it is included in the title corresponding to the CNMC, relating to its supervisory and control functions.



Article	Paragraph	Entity	Contribution	Evaluation
11	2	APPLE	Sub-quotas for co-official languages should be clearly defined in advance.	<b>Accepted.</b> The CNMC will be the body responsible for making them public in advance, and it is included in the title corresponding to the CNMC, relating to its supervisory and control functions.
12	1	AMCHAMSPAIN, AEVOD	Amends the wording of the provision, replace ',' with the conjunction 'and/or' to indicate that they can be combined	<b>Not accepted.</b> The text of the provision is that contained in the LGCA.
12	5	AMCHAMSPAIN, CONECTA	Include that the compulsory quota for financing works in the languages of the Autonomous Communities may be met through the subtitling or dubbing of works.	<b>Not accepted.</b> In order to have works available in the languages of the Autonomous Communities, it is necessary to invest and finance; and the provider will have other flexibilities.
12		PATE	Abolish own production as a means of compliance with the financing obligation.	<b>Not accepted.</b> Contrary to the LGCA, which allows the provider to allocate 30 % of its investment through own production.
12		PATE	Direct participation shall be calculated as the amount paid by the provider when making production commissions.	<b>Not accepted.</b>
13	5	CIMA, PATE	Remove the possibility of using the CNMC to request flexibility in or exemption from the financing obligation for reasons relating to the nature, subject, genre or subject matter of the service.	<b>Not accepted.</b> Flexibility mechanisms should be provided for providers, and the CNMC as supervisor seems an appropriate body to review case by case, nature or subject matter.
13	1	RTVE	Replace news and sports events with information programmes and sports programming	<b>Not accepted.</b> The text corresponds to the articles of the LGCA.
13	5	Netflix	Implement a specific design for exemption due to subject matter or nature, flexibility	<b>Not accepted.</b> The wording of the draft is retained.
13	6	AMCHAMSPAIN, Telefónica, CEOE, Adigital, UTECA, AEVOD, Digitales, CONECTA, MEDIASET, TEN, Mediapro	Extend the possibility of exemption from the financing obligation due to low audience ratings to services established in Spain.	<b>Accepted.</b>
13	6	AMCHAMSPAIN, CONECTA	The low audience exemption should be determined on a	<b>Accepted.</b>



Article	Paragraph	Entity	Contribution	Evaluation
			service-by-service basis.	
13	1	CEOE, ADIGITAL	Exemption from the European works financing obligation for services intended for self-promotion	<b>Not accepted.</b> These types of services should be considered exempt by subject matter or nature, as they are unable to broadcast the works that they would have to finance.
13	1	UTECA	Technical amendment to establish that only services dedicated to certain content (newscasts, sporting events) are excluded.	<b>Accepted.</b>
13	5	UTECA	Explicitly mention on-demand and linear services as potential applicants for exemption or flexibility in compliance	<b>Not accepted.</b> The current wording of the provision covers both types of audiovisual media services.
13	3	CONNECTA	Technical amendment: local providers exempted from the financing obligation not from the generic promotion obligation.	<b>Not accepted.</b> Provision contained in the LGCA and the DSCA.
13	1,5		New wording for paragraph 5 to merge it with the first paragraph of this article.	<b>Not accepted.</b> Clarity and legal certainty in the current wording of the draft.
13	5	APPLE	The established subject matter creates legal uncertainty for the provider, needs greater precision	<b>Not accepted.</b> It is not possible to provide a closed list of subject matter because it may change or develop over time. The design involving application to the CNMC seems more appropriate and durable.
13	5	APPLE	Provide for a compliance flexibility mechanism subject to prior authorisation by the CNMC.	<b>Not accepted.</b> Application to the CNMC is already provided for as a flexibility mechanism, the procedure must be determined by the CNMC.
13		APPLE	Audience calculation for on-demand services based on revenue	<b>Partly accepted.</b> The criteria established by the CMC for calculating the audience of an on-demand service shall apply.
13	5	CIMA	Remove the possibility of individually requesting flexibility from the CNMC due to its indeterminacy.	<b>Not accepted.</b> As a supervisory body, the CNMC has knowledge of the market and the situation of audiovisual production. It therefore seems to be the



Article	Paragraph	Entity	Contribution	Evaluation
				appropriate body to process applications for exemption or flexibility
13	1, 5, 7		Delete paragraph 7 and amend the wording of paragraph 1 such that those providers whose programming exceeds 70 % of news, sporting events, games or commercial communications are also considered exempt	<b>Not accepted.</b> The theme present in the draft is not based on the audiovisual formats present in the service.
14	1	AMCHAMSPAIN	Specify that the eligible revenues are those obtained on the Spanish market.	<b>Not accepted.</b> Article 117(3) already states that the amount of the obligation will be based on revenues in the Spanish audiovisual market.
14	1	AMCHAMSPAIN, AEVOD, CONECTA, APPLE	Disregard revenue from the sale to third parties of produced or co-produced content.	<b>Not accepted.</b> These are audiovisual revenues and, as such, the Supreme Court has confirmed in several judgments in contentious-administrative appeals against Royal Decree 988/2015 that they must be included in the calculation base.
14	1	Digitales	Individualise the revenue established in paragraph (e) for the provider's own services, even if the responsibility lies with a third party.	<b>Not accepted.</b> The revenues of the provider for its services shall only be taken into account where the third party offer is an aggregator that is not subject to the financing obligation.
14	1	AMCHAMSPAIN, AEVOD, APPLE	Remove those relating to the marketing of audiovisual media services.	<b>Not accepted.</b> These are audiovisual revenues and, as such, the Supreme Court has confirmed in several judgments in contentious-administrative appeals against Royal Decree 988/2015 that they must be included in the calculation base.
14	1	AMCHAMSPAIN, AEVOD	Specify that aid and subsidies must be intended for the provision of audiovisual media services.	<b>Not accepted.</b>
14		Telefónica	Amend to include the detail	<b>Accepted.</b>



Article	Paragraph	Entity	Contribution	Evaluation
			that services can be linear or on-demand	
14	New	CEOE, Adigital, AEVOD, Netflix	Deduct the contribution to RTVE from the revenue eligible for calculation of the obligation.	<b>Not accepted.</b> Gross operating revenue is taken into account and the APTVE is a fiscal contribution in nature.
14	1	PATE	In the case of subscription fees for the audiovisual media service, the CNMC shall be responsible for prorating the fees.	<b>Not accepted.</b>
14	1	CONNECTA	Amend to present a more generic text, audiovisual revenue which may include, among others	<b>Not accepted.</b> The revenues considered have been confirmed by the Supreme Court in various rulings following contentious-administrative appeals against Royal Decree 988/2015.
14/15	1	MEDIASET	Exclude revenue from direct exploitation of content	<b>Not accepted.</b> These are audiovisual revenues and, as such, the Supreme Court has confirmed in several judgments in contentious-administrative appeals against Royal Decree 988/2015 that they must be included in the calculation base.
14		FORTA	Maintain the current wording in Royal Decree 988/2015, applicable only to private-sector providers in order to avoid conflicts of powers.	<b>Not accepted.</b> The article on scope specifies that it applies only to those at national level. Each Autonomous Community will have its own implementing legislation.
15		Digitales	Exclude revenues from the aggregation service	<b>Not accepted.</b> Aggregators are not subject to this obligation and therefore neither are their revenues.
17	3	AMCHAMSPAIN, CEOE, Adigital, AEVOD, CONNECTA, Netflix	Replace the term 'public aid' with 'subsidy' in order to provide greater legal certainty to providers and ensure that it does not apply to tax incentives.	<b>Accepted</b> clarification to ensure legal certainty for audiovisual media-service providers.
17	3	PATE	Replace the term 'public aid'	<b>Not accepted.</b> The concept



Article	Paragraph	Entity	Contribution	Evaluation
			with 'state aid'	of state aid is considerably broader and may generate some legal uncertainty in the sector and, consequently, in investments in audiovisual production.
17	5	MEDIASET	Admit double counting of the same financing or, alternatively, prohibit double counting during the last three financial years.	<b>Not accepted.</b> This was already in the previous regime and this provision is maintained. Resources would be subtracted from the production of audiovisual works.
17		FORTA	Not count subsidies received by public providers.	<b>Not accepted.</b> Article 17 covers expenditure eligible for compliance and excludes public subsidies for works. The proposal goes beyond the article itself and would harm the financing of audiovisual works.
18	4	Netflix, Adigital,	Increase the possibility of acquiring rights to completed works up to 25 % of the total obligation for providers with revenues exceeding EUR 50 million, or temporarily until there is a sufficient volume of work.	<b>Partly accepted.</b> It is increased to 25 %, but the increase included may only be used for works in the official languages of the Autonomous Communities or works directed or created by women.
18	3	Netflix	Consider removing the requirement for the distributor to be independent, as established in paragraph (c), due to a possible conflict with paragraph (b), relating to purchasing from a provider.	<b>Not accepted.</b> The wording was already present in Royal Decree 988/2015 of 30 October 2015 and there have been no problems or complaints among the obliged parties.
18		AMCHAMSPAIN, AEVOD, MEDIASET	Allow the acquisition of exploitation rights for any type of work, whether completed or not, to be counted up to 18 months after its finalisation.	<b>Not accepted.</b> The acquisition of completed works is limited because the objective of the financing obligation is the creation of new works.
18		MEDIASET, UTECA	Permit any acquisition of rights to audiovisual work to be counted, whether completed or not, without requirements.	<b>Not accepted.</b> The acquisition of completed works is capped because the objective of the financing obligation is the creation of new works.



Article	Paragraph	Entity	Contribution	Evaluation
18		AMCHAMSPAIN, AEVOD, CONECTA	Count the acquisition of works produced through subsidiaries or companies of the provider.	<b>Accepted.</b>
18		AMCHAMSPAIN, CEOE, APPLE	Increase the maximum limits for the purchase of rights to finished works	<b>Partially accepted</b> to increase the maximum limits for the acquisition of exploitation rights for completed works under certain conditions.
18		PATE, Mediapro	Limit the possibility of purchasing rights to finished works to audiovisual works completed 12 months earlier.	<b>Not accepted.</b> The time frame is maintained in order to benefit the circulation of European audiovisual works.
18	3	COOE, Adigital	Permit the purchase of rights not only from distributors but from providers where they have the possibility of resale.	<b>Not accepted.</b> It is already permitted in the case of unfinished works meeting certain requirements.
18		UTECA	Reduce revenues according to the resale of rights (contribution when it is purchased from a provider).	<b>Not accepted.</b>
18		UTECA	The purchase of rights (whether or not finished) may always be counted when the first provider reduces its contribution for works that have been financed by the obligation.	<b>Not accepted.</b>
18		AEVOD	Where the rights are purchased from production companies: lift the requirement for the distributor to be independent or, if the rights holder meets [the requirements regarding] the rights it meets the requirement [regarding] the independence of the undertaking that resells them.	<b>Not accepted.</b>
18		AEVOD, CONECTA	If purchased more than 18 months previously, set maximum purchase limits of 30% and 50% of the total investment depending on the revenue.	<b>Not accepted.</b>
18		CONECTA	Lift the [requirement] that distributors be independent for the purchase of rights.	<b>Not accepted.</b>
18		TEN	Allow the acquisition of rights to any type of work without time limitation.	<b>Not accepted.</b> The acquisition of rights to finished works is time-limited because the



Article	Paragraph	Entity	Contribution	Evaluation
				objective of the financing obligation is the creation of new works.
18		APPLE	Amend the definition of independent distributor to align it with the definition of independent producer in Law 13/2022.	<b>Not accepted.</b>
19		AMCHAMSPAIN, Netflix, CEOE, Adigital, AEVOD	Permit contribution to the fondo de Cinematografía also to count towards the women's quota.	<b>Not accepted.</b> The LGCA establishes that contribution to any of the Funds counts as an independent work.
19		CIMA	Ensure that the contribution to the Fondo de Protección a la cinematografía is earmarked for support, and that the proportional share is earmarked for productions directed or created by women.	<b>Not accepted.</b> The Ministry of Culture is responsible for issuing the regulations governing the management of the Fund.
20		AMCHAMSPAIN, AEVOD	Apply the regulations concerning recognition of the costs of a cinematographic film only to films of Spanish nationality.	<b>Not accepted.</b> It is necessary to provide clear rules and legal certainty and the only regulation is that issued by the Ministry of Culture.
20		AEVOD, CONECTA	Take into account acquisition fees as eligible expenditure on cinematographic works.	<b>Not accepted.</b> The acquisition of rights will be calculated based on the type of work in question, or whether or not it is finished.
20		Digitales, Telefónica	Delete the article and not reference the Ministry of Culture regulations on aid in relation to the recognition of expenditure.	<b>Not accepted.</b> It is necessary to provide clear rules and legal certainty and the only regulation is that issued by the Ministry of Culture.
21		AMCHAMSPAIN, AEVOD	Apply to cinematographic films of non-Spanish nationality in addition to other types of audiovisual works	<b>Not accepted.</b> Differentiated treatment of the same format according to nationality could be discriminatory.
22		UTECA	In the event that the work is produced in several languages, it shall be up to the provider to decide whether to distribute the investment or calculate it in a single language.	<b>Not accepted.</b> It is optional to make works in several languages, but the distribution criterion must be known and create legal certainty, which is why the script should be used.



Article	Paragraph	Entity	Contribution	Evaluation
22		MEDIASET	Where a co-official language of an Autonomous Community predominates, the investment is considered to be fully in that language.	<b>Not accepted.</b> In the case of works with several languages, the provider may distribute the financing according to their presence in the script.
22		MEDIASET	If the provider does not have territorial disconnection, the obligation may be met by investing in subtitling.	<b>Not accepted.</b> If there is no investment in production, works will never be created in the official languages of the Autonomous Communities.
22		CIMA	Prohibit the use of the Fondo de fomento de la cinematografía y el audiovisual en lenguas cooficiales to meet the quota for works directed or created by women.	<b>Not accepted</b> to include this express prohibition.
23		Netflix, AMCHAMSPAIN, CEOE, Adigital, AEVOD	Consider audiovisual works in which the auxiliary or main units are directed by a woman to constitute works directed by women.	<b>Not accepted.</b>
23		NETLIX, AMCHAMSPAIN, CEOE, Adigital, AEVOD	Grant providers the possibility of distributing the costs by episode in the case of series	<b>Not accepted.</b> The text already provides for the distribution of costs per episode, provided that the series is directed or created by women.
23		AMCHAMSPAIN, CEOE, AEVOD, CONECTA	Introduce the principle that there can also be mixed direction teams	<b>Not accepted.</b>
23		MEDIASET, APPLE	Introduce new professional categories [for women] such as creators of the works (composers of the music)	<b>Not accepted.</b>
23		CIMA	In the case of series, permit counting by season rather than by individual episode.	<b>Not accepted.</b> The objective is for women to gain access to director roles and nowadays it is common practice for seasons to have more than one director.
24		AMCHAMSPAIN, AEVOD	Incorporate the possibility that the provider add or provide information following the compulsory report of the CNMC // Grant providers the possibility of submitting claims	<b>Not accepted.</b> Providers may already submit additional information in accordance with the administrative procedure established in Law 39/2015



Article	Paragraph	Entity	Contribution	Evaluation
			to demonstrate compliance with their obligations.	of 1 October 2015.
24		PATE	For its monitoring and supervision tasks, the CNMC shall seek the opinion of the most representative associations of audiovisual producers.	<b>Not accepted.</b> The CNMC already has the support of the Ministry of Culture in carrying out its supervision and monitoring tasks.
30		AMCHAMSPAIN, AEVOD	Permit any document valid in law and not only invoices as evidence // Generalise the text, so that the provider presents the appropriate documentary evidence, which may be contracts, and grant the possibility of invoices	<b>Not accepted.</b>
30	3	UTECA	Require the provider to produce contracts with other providers when it is they that hold the rights	<b>Not accepted.</b>
30	2.h	CIMA	Indicate the data relating to the director or scriptwriters that will make it possible to check compliance with the obligation	<b>Not accepted.</b>
31		APPLE	Adapt the documentation to be provided by foreign providers so that their data is verified, in particular the information relating to the annual accounts, which is a commercial risk for providers. Report on agreed procedures.	<b>Not accepted.</b> This exceeds the scope of the draft and is more relevant to instructions issued by the CNMC.
31		AEVOD	Providers shall accredit their eligible revenues.	<b>Not accepted.</b>
31		AMCHAMSPAIN, AEVOD	The report shall be drawn up by the person responsible on behalf of the obliged provider.	<b>Not accepted</b>
31		AMCHAMSPAIN, AEVOD	Deletion of the fact that the IPAA will only apply in the case of providers of consistent electronic communications services.	<b>Accepted.</b> The IPAA may be used by all providers.
34	4/new	AMCHAMSPAIN, CEOE, Adigital, AEVOD, Netflix	Include the possibility of contributing to the funds if the CNMC detects a compliance deficit after the fact (after the obliged provider has made the	<b>Not accepted</b> to include this provision. The draft already provides for mechanisms available to the provider, aimed at alleviating possible



Article	Paragraph	Entity	Contribution	Evaluation
			declaration).	financing compliance deficits.
34	2	PATE	Delete paragraph 2, concerning the calculation of own production by the provider.	<b>Not accepted.</b> The provider may discharge 30 % of its obligation to finance audiovisual works through its own production in accordance with the provisions of the LGCA.
34	1	MEDIAPRO	Include a clause stating that payment obligations must comply with the principles set out in Law 3/2004 of 29 December on combating late payment.	<b>Not accepted.</b> This exceeds the scope of the regulatory draft and in any case they must be taken into account in the clauses of the contract between the parties.
34		UTECA	The financing shall be counted in accordance with the effective date of the contractual obligation set by the parties to the contract.	<b>Not accepted.</b>
34	2	MEDIASET	Count production commissions as own production for the purposes of counting when production starts.	<b>Not accepted.</b>
35	1	AMCHAMSPAIN, CEOE, Adigital, AEVOD, Netflix	Allow excess financing, including the contribution made to the funds, to be transferred to other financial years.	<b>Not accepted.</b> Excess financing may only be transferred if there is a compliance deficit in the preceding or subsequent financial years.
35	1	AMCHAMSPAIN, AEVOD	Increase the maximum transfer limit to cover deficits from 40 % to 50 %.	<b>Not accepted.</b>
35	4	AMCHAMSPAIN, AEVOD	Take into account the investment made up until the moment there is a deficit and reduce the initial obligation	<b>Not accepted.</b>
35		UTECA	Include the possibility of transferring financing between financial years, even if there is no compliance deficit.	<b>Not accepted.</b> This could mean investment in fewer projects in certain financial years if in the previous one there had been an excess, meaning less investment.
36	1	Netflix, AMCHAMSPAIN, CEOE, AEVOD, Adigital	Increase the thresholds to be able to accumulate the European audiovisual works financing obligation and	<b>Partly accepted.</b> Accepted to increase the threshold, although not until the proposal, which would



Article	Paragraph	Entity	Contribution	Evaluation
			establish them at EUR 1.5 million and EUR 3 million respectively.	permit the production of certain works.
36	1	UTECA	Increase the thresholds to be able to accumulate financing and set them at EUR 0.5 million and EUR 1.5 million respectively.	<b>Partly accepted.</b> The thresholds permitting accumulation of the investment obligation are increased.
36		TEN	Apply the accumulation for official languages and/or women to providers with revenues greater than EUR 10 million and less than EUR 50 million.	<b>Accepted.</b>
37	4	AMCHAMSPAIN, AEVOD	Establish that the CNMC completes the procedures before 30 September.	<b>Not accepted.</b> This may run contrary to Law 39/2015 of 1 October 2015 and to the administrative processing deadlines in the event of extensions or prolongations.
37	4	UTECA	Amendment to the wording: what is notified is the Resolution resolving the verification procedure.	<b>Not accepted.</b>
39		Netflix, AMCHAMSPAIN, CEOE, Adigital, AEVOD	Limit the data of the financed works to be made public as it could affect the provider's commercial strategy. Provide for regulatory development for MTDFP - CNMC data-sharing.	<b>Accepted.</b>
39		UTECA	Among the data to be published, indicate whether the work has been produced by independent producers on their own initiative or on commission in accordance with the provisions of Article 112 of the LGCA.	<b>Accepted.</b>
Transitional provision		UTECA, MEDIASET	Amend the transitional arrangement to make it clear that before entry into force it would only apply the standard if it was more favourable to the provider.	<b>Not accepted.</b> Entry into force has been amended to create a climate of legal certainty for investors.
Transitional provision		TEN	The provisions of the draft shall only apply to transactions subsequent to its entry into	<b>Not accepted.</b> It is already prohibited to apply regulatory regimes that are



Article	Paragraph	Entity	Contribution	Evaluation
			force, with the transitional regime of the LGCA applying to previous transactions.	more restrictive of rights to prior situations. However, as long as the new framework is more favourable, it should be possible to apply it.
Annex		CIMA	Incorporate the forms for the declaration of compliance by the provider as an annex to the Royal Decree.	<b>Not accepted.</b> It will be the CNMC that issues the instructions and designs the forms to monitor compliance with the obligation by the providers.
New transitional provision		RTVE	Be able to apply the provisions of Article 22(3) of the draft to the 2023 financial year	<b>Not accepted.</b>
First additional provision		FORTA	Specify that the reports submitted by the bodies of the Autonomous Communities will be prepared in accordance with the relevant regional regulations in order to avoid conflicts of powers.	<b>Accepted.</b>
Second final provision		UTECA	Only the head of the Ministry of Digital Transformation and the Civil Service would be authorised to raise the thresholds for exemptions contained in the draft legislation.	<b>Not accepted.</b> The review and update may take any direction depending on the evolution of the Spanish audiovisual market.



## Annex IV - Report of the National Commission on Markets and Competition

Preliminary Title. General provisions		
Article	Contribution	Evaluation
2	Limit the objective scope of the obligation to compliance with Articles 5, 6, 10 and 11. Accordingly, delete paragraph 2 as redundant.	<b>Not accepted.</b> Chapter III of Title VI of the LGCA establishes the obligation for television audiovisual media service providers to promote European audiovisual works and linguistic diversity.
3	Technical improvement of the wording of paragraph 2, to indicate that the requirements must be met in order to be subject to compliance with the obligation	<b>Accepted.</b>
3	Delete the 'State' scope of the provider from the requirements because those established in other EU countries must also comply.	<b>Not accepted.</b> Providers established in other member countries are only obliged to fulfil the financing obligation in accordance with the LGCA and this is detailed in paragraph 3 of this Article.
Título I. Obligación de cuota de obra audiovisual europea		
4	Population size calculation method for both this obligation and the financing obligation	<b>Accepted.</b>
4	In paragraph 6, replace 'news' with 'current affairs programme'. Likewise, no references to prohibited content (pornography and gratuitous violence) have been included.	<b>Not accepted.</b> The wording is in accordance with the text of Article 115(5) of the LGCA.
5	It does not make sense to exclude only European works, therefore it is proposed that the catch-up service be directly excluded.	<b>Partly accepted.</b> Whether or not to count works offered through the catch-up service constitutes flexibility granted to the provider regarding meeting the quota obligation.
5	In the case of series, count each of the seasons as a title	<b>Accepted.</b>
6	Establish detailed and concrete prominence obligations	<b>Not accepted.</b> Neither the LGCA nor the DSCA impose specific measures and the wording proposes a list of measures aimed at ensuring prominence.
6	Establish exemptions from the prominence obligation	<b>Not accepted.</b> Providers subject to the quota obligation shall respect the prominence obligation. Therefore, if they are exempt from the quota they do not have to fulfil the prominence obligation.
7	Making the content exclusivity obligation more flexible in order to be subject to the quota obligation. 70 % is proposed.	<b>Not accepted.</b>
7	Technical improvement to the wording of paragraph 5 to bring it into line with the rest of the paragraphs.	<b>Accepted.</b>
7	Extend the possibility of requesting exemption from the quotas for official languages of the Autonomous Communities to all linear service providers.	<b>Not accepted.</b> The obligation to provide works in co-official languages (quota for official languages of the Autonomous Communities) only applies to public providers at national level in the case of linear services and on-demand services.
7	Amend the clause 'where there is insufficient supply' by establishing a grace period.	<b>Not accepted.</b> Investment must be gradual in order to create supply.
7	Deletion of the clause relating to assessment by the CNMC of the nature or theme of the service	<b>Accepted.</b> The CNMC may take into account any factors it deems relevant when granting flexibility to



	with a view to granting flexibility in or exemption from the quota obligation for languages of the Autonomous Communities.	the provider.
7	Precisely define the concepts of subject matter or genre with regard to flexibility or exemption in respect of the quota obligation.	<b>Not accepted.</b> Proposing a closed list of topics or genres reduces the scope for action of the CNMC itself in its capacity as a supervisory body.
8	Delegate the establishment of criteria for calculating audience figures for on-demand services to the CNMC, and use the concept of equivalent subscribers in AVOD and TVOD.	<b>Accepted.</b> The CNMC will be responsible for establishing the criteria for calculating audience figures for the TVOD and AVOD services.
<b>Title II. Advance financing obligation for European audiovisual works</b>		
Chapter I advance funding obligation for European audiovisual works		
	Define 'executive producer' and include when a work can be considered complete or when it has reached such a point that it can be counted as meeting the obligation.	<b>Not accepted.</b> The LGCA only includes the definition of 'independent producer' based on the criteria established by the DSCA.
9	Restrict the definition of film for television to avoid it including repeat broadcasts of sports events.	<b>Not accepted.</b> The current [definition] in the draft is in line with that proposed by the Ministry of Culture in the preliminary draft law on Cinema.
9	Include a second paragraph in the definition of 'television series' to clarify the concept of a serial.	<b>Not accepted.</b> It establishes the concept of a series, which may cover a variety of subject matter.
9	Consider amending the definition of 'documentary' to include other types of formats: Docuseries, biopic.	<b>Not accepted.</b> The definition of documentary is the one that has been applied since RD 988/2015 of 30 October 2015.
9	Technical improvement of the definition of 'animated audiovisual work'	<b>Amendment to wording accepted.</b>
12	Define what is meant by 'production commission', and at the same time, differentiate between this and a subcontracting commission and how they fit within the independent quota.	<b>Not accepted.</b> Production commissioning is a widely used and accepted concept in the market and it is not considered relevant to include its definition.
12	Technical improvement to paragraph 4, deletion of 'monetary' because any contribution to a Fund will be of that nature.	<b>Amendment to wording accepted</b>
13	Make the exemption for news reports more flexible, reducing it exclusively to 70 %.	<b>Not accepted.</b>
13	Define the concepts 'subject matter' or 'nature' of the channel that make the obligation impracticable.	<b>Not accepted.</b> Maintaining the wording gives the CNMC flexibility to issue instructions or adapt to market realities.
13	Extend the exemption for low audience in paragraph 6 to providers established in Spain.	<b>Accepted</b> to extend the flexibility to all providers established in Spain.
Chapter II Revenues and expenditure eligible for the fulfilment of the advance funding obligation for European audiovisual works		
14	In paragraph 1(c), take into account that the provider may include services that are not subject to compliance with the financing obligation and, as such, only revenues from the services.	<b>Accepted.</b>
14	Amend the wording by replacing 'channels' in paragraph 1(e), as it refers only to linear services, with a more generic term to include	<b>It is accepted</b> to update the terminology.



	on-demand services.	
16	Amend the wording of paragraph 1 (b) to bring the financial contributions to the level of the rest.	<b>Accepted.</b>
16	Not count the acquisition of programmes eligible for X rating towards compliance.	<b>Not accepted.</b> It extends the scope of Article 117(7) of the LGCA, which only covers 'films'.
17	Amend the title of the article in light of the [fact that] the content only develops methods of direct participation by the provider.	<b>Not accepted.</b> Indirect participation is also considered in the article.
17	Amend paragraph 1 of the Article to delete the reference to 'indirect' in order to avoid confusion and delete 'production companies' so that financing implemented by any subsidiary company can be taken into account.	<b>Accepted.</b>
17	Calculation of contributions; and problems with Economic Interest Groups (EIG).	<b>Not accepted.</b>
18	Specify in the wording that the exploitation rights to the works will only be counted before they are completed if they respect the requirements of paragraph 4	Amendment to wording <b>accepted.</b>
18	Amend the wording of paragraph 4 to indicate that the acquisition of rights to finished works is considered an exception as a method of compliance.	<b>Partly accepted.</b> In accordance with the LGCA it is another method; however, its use is restricted since it helps to circulate works not to produce new works.
19	Amend the title to include the correct names of the two Funds included in Law 55/2007.	<b>Accepted.</b>
19	Delete the phrase 'or that the amount exceeds the investment' from the wording, as it creates unnecessary confusion and uncertainty for the provider.	<b>Accepted.</b>
20	Percentage of participation or ownership of the rights.	<b>Not accepted.</b> The recognition of costs is linked to the regulations of the Ministry of Culture without applying the limits to it.
21	Specify how providers' contributions to the funds are calculated and align with previous articles and the LGCA itself.	<b>Accepted.</b>
<b>Title III Monitoring and supervision of the obligation to promote European audiovisual works</b>		
24	Add in accordance with Article 120 LGA	<b>Not accepted.</b> It is already in the LGCA.
24	Provide that the CNMC may require documentation in Castilian/Spanish.	<b>Not accepted.</b> This exceeds the scope of the draft and could represent an administrative burden. In any case, it may be subject to the instructions of the CNMC itself.
26, 27, 28 and 37	It is recommended that the date be brought forward to 1 February to avoid excessive burdens on stakeholders in a short time (proximity of financing obligation declaration report). In addition, to maintain a period of six months for the CNMC to resolve the procedure, as in the case of the financing obligation.	<b>Accepted.</b>
30	The concept of 'independent production' has not been defined in the draft legislation; use 'by	<b>Accepted.</b>



	an independent producer'.	
30	Accept certificates from the distributor in addition to those from the producer.	<b>Accepted.</b>
30	CNMC recommends that evidence take the form of a transfer receipt indicating the payment reference, or a certificate of entry to the ICAA registry, documentation in evidence of payment. Alternatively ICAA certificate.	<b>Not accepted.</b> Detail exceeds the scope of the draft legislation. It may form part of the instructions issued by the CNMC.



## Annex V – Report of the Corporación de Radio y Televisión Española S.A.

Article	Contribution	Evaluation
<b>Title I. Obligation regarding quotas for European audiovisual works</b>		
7	Include linear television audiovisual media services as eligible to request flexibility in the European audiovisual works quota for co-official languages in the event of insufficient supply.	<b>Partly accepted.</b> Private linear television audiovisual media-service providers are not subject to this obligation under Law 13/2022 of 7 July 2022. It only applies to CRTVE as a television audiovisual media-service provider at national level and as part of its public service mission, which is why it is included in the scope.
4 and 5	To count, towards compliance with the quota of official languages of the Autonomous Communities, those [works] in which any of the official languages declared in that Autonomous Community are used.	<b>Not accepted.</b> Adds excessive complexity to supervision for the CNMC
<b>Title II. Advance funding obligation for European audiovisual works</b>		
Chapter I advance funding obligation for European audiovisual works		
13	Amend the wording of paragraph 1 to exclude services that are exclusively dedicated to broadcasting information programmes or sports programming.	<b>Not accepted.</b> The current text corresponds to that contained in Article 115(5) of Law 13/2022 of 7 July 2022: news programmes, sporting events, games and audiovisual commercial communications.
Chapter II Revenues and expenditure eligible for the fulfilment of the advance funding obligation for European audiovisual works		
22	In the event that an audiovisual work features an official language of the Autonomous Communities for more than 50 % of its duration, the total investment shall be calculated as having been made in that language.	<b>Not accepted.</b> The current wording of the article already allows for such flexibility at the request of the provider.



## Annex VI - Report of the Institute of Cinematography and Audiovisual Arts

Article	Contribution	Evaluation
Preamble	Correctly cite the judgments of the Constitutional Court in accordance with the DTNs.	<b>Accepted.</b>
3.1	Amend the wording in accordance with the ICAA proposal to clarify which providers are obliged to comply with the established provisions.	<b>Not accepted.</b> The current wording is already sufficiently clear and precise.
4	The reproduction of Article 115 is contrary to the DTNs.	<b>Not accepted</b> to delete the paragraph because the inclusion allows for an ordered and self-contained text.
5.5	Reformulate this paragraph and create a new paragraph with its second subparagraph.	<b>Accepted.</b>
9	Use the definition of <i>film for television</i> contained in the Draft Law on Cinema and Audiovisual Culture, which does not focus on television providers.	<b>Accepted.</b>
11.2.b)	Proposes an alternative wording by referring the independent producer to Article 112 of Law 13/2022 of 7 July 2022, since the current one may cause some confusion.	<b>Not accepted.</b> The current wording is that contained in Law 13/2022 of 7 July 2022.
12.2	Include the financial contributions in the concept of associated producer.	<b>Not accepted.</b> The draft already includes purely financial contributions, a broader concept within which the proposal can be subsumed.
13.6	References to the guidelines are unnecessary and simplification is proposed through the inclusion of a definition relating to the concepts of low audience and low revenue volumes.	<b>Accepted.</b>
20.1	Correctly quote the order recognising the cost of a film.	<b>Accepted.</b>
22.1	Include an express calculation rule for works in which Spanish or one of the official languages of the Autonomous Communities and one or more foreign languages are used simultaneously.	<b>Not accepted.</b> It has already been established that the investment made by the provider will be calculated proportionally to the weight of each language in the script.
23.b)	In this paragraph, the concept of works created by women is narrowed down to those whose scripts have been written exclusively by women, but this is not standard market practice.	<b>Not accepted.</b> The precept is maintained as it is, since the concept of work directed or created exclusively by women is sufficiently defined.
37.1	Delete the requirement for the prior report of the ICAA in relation to the quota and prominence obligations. ICAA does not have any information.	<b>Accepted.</b>
37	Include a new paragraph establishing the obligation for the CNMC to certify that investments have materialised through the funds.	<b>Not accepted.</b> The ICAA has already made a procedure available to providers on how to make contributions, that requires the providers to report their fund contributions to the ICCA. On the other hand, the required fund contribution data appears in the CNMC's own decisions if the contribution has



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OF DIGITAL TRANSFORMATION  
AND CIVIL SERVICE

SECRETARY OF STATE FOR DIGITISATION AND  
ARTIFICIAL INTELLIGENCE

GENERAL DIRECTORATE FOR THE REGULATION OF  
DIGITISATION AND AUDIOVISUAL MEDIA SERVICES

GENERAL SUBDIRECTORATE FOR THE REGULATION  
OF AUDIOVISUAL MEDIA SERVICES

		been made <sup>14</sup> .

<sup>14</sup> <https://www.cnmc.es/sites/default/files/5720955.pdf>



## Annex VII - Report of the Ministry of Finance

Article	Contribution	Evaluation
MAIN	Evaluation in the MAIN of the costs to CNMC or ICAA of the new administrative burdens.	<b>Partly accepted.</b> The CNMC and the ICAA already perform the tasks that are regulated in the draft legislation and no new procedures are established. It already has experienced human resources and the necessary material resources.
Second additional provision	It is recommended that the MAIN be supplemented by gathering an advance copy of the envisaged management model and an evaluation of how the ICAA budget will be allocated.	<b>Not accepted.</b> The procedure is already being rolled out by the ICAA and the instructions are available here <sup>15</sup> .
7.5	Extend the scope of the derogation to linear providers.	<b>Partly accepted.</b> The scope is extended to the public service provider at national level, as it is the only linear provider that has this obligation to avoid discrimination.
13.1	Amend the wording of the paragraph as it may be too restrictive, making it difficult to qualify for this exemption.	<b>Not accepted.</b> The concepts are those recognised in Law 13/2022 of 7 July 2022, specifically in Article 115 thereof.
22.1	Count any work in which the percentage presence of that language is greater than 50 % towards the co-official language quota.	<b>Not accepted.</b> The current text grants greater flexibility to both providers and supervisors and permits this interpretation.
	Consider calculating the quota obligation in co-official languages based on the proportional share of works filmed in various languages, as is done in financing.	<b>Not accepted.</b> Adds new administrative burdens on providers, as well as excessive complexity to supervision by the CNMC

<sup>15</sup> <https://www.cultura.gob.es/dam/jcr:05565c3c-9ecb-4ec8-b5ab-c1a01ee87554/report-resoluci-n-procedimiento-ingresos-en-los-fondos-del-icaa-obligacion-igca.pdf>



## Annex VIII - Report of the Office for Coordination and Regulatory Quality

Article	Contribution	Evaluation
MAIN	Analyse consistency with other legislative drafts currently being processed, such as the preliminary draft law on Cinema and Audiovisual Culture.	<b>Accepted.</b>
MAIN	Justify the entry into force of the proposal.	<b>Accepted.</b>
MAIN	Adapt to the new MAIN scheme.	<b>Accepted.</b>
Second final provision	It is recommended that the titles of competence addressed by each of the articles be specified.	<b>Accepted.</b>
6	It is recommended that more specific details be included regarding the obligation of prominence	Not accepted. Only the obligation of prominence in the Directive itself is stated and the article offers a range of possibilities to grant maximum flexibility to the provider, given the wide variety of ways in which to give prominence to audiovisual media services. The CNMC, in its supervisory capacity, may check compliance.
13.3	Local providers are excluded only from the financing obligation in accordance with the provisions of Article 117(8) of Law 13/2022 of 7 July 2022	<b>Accepted.</b>
25.2	Include the quota for European audiovisual works by independent producers as in Article 24(2).	<b>Not accepted.</b> On-demand services do not have a European audiovisual works quota obligation for independent producers, in accordance with the provisions of Law 13/2022 of 7 July 2022.
29.3	For the sake of greater clarity, it would be advisable to add the qualifier 'private' at the end of the sentence, as it is these providers who are being referred to.	<b>Accepted.</b>
35	Include the form that the collaboration between the CNMC and the ICAA will take, in a similar form to that provided for in Royal Decree 988/2015 of 30 October 2015.	<b>Accepted.</b> A fourth additional provision has been established to provide for the establishment of a coordination instrument between the ICAA and the CNMC.
First final provision	Reformulate the text to make explicit reference to Royal Decree 444/2024 of 30 April 2024.	<b>Accepted.</b>
First final provision	Clarify whether the submission of a sworn statement by users of special relevance when registering in the State Register constitutes a new administrative burden and, if so, quantify it.	<b>Accepted.</b>
Third final provision	Review the content, as it entails a contradiction with the principle of regulatory hierarchy.	<b>Accepted.</b>



### Annex IX - Report of the Technical General Secretariat of the Ministry of Digital Transformation and Civil Service

Article	Contribution	Evaluation
MAIN	Correct the inconsistency with the text of the fifth final provision of the Royal Decree as regards the date of entry into force.	<b>Accepted.</b>
MAIN	Update the text of the MAIN to reflect any significant developments that have occurred during the proceedings, including a reference to the issuance of this report and reflecting the assessment of the observations contained therein.	<b>Accepted.</b>
Third final provision	Review the content, as it is deemed inappropriate under the principle of regulatory hierarchy.	<b>Accepted.</b> This provision is deleted and the numbering of the final provisions adjusted.



MINISTRY  
OF DIGITAL TRANSFORMATION  
AND CIVIL SERVICE

SECRETARY OF STATE FOR DIGITISATION AND  
ARTIFICIAL INTELLIGENCE

GENERAL DIRECTORATE FOR THE REGULATION OF  
DIGITISATION AND AUDIOVISUAL MEDIA SERVICES

GENERAL SUBDIRECTORATE FOR THE REGULATION  
OF AUDIOVISUAL MEDIA SERVICES

### Annex X - Calculation of the reduction in administrative burdens

A. ADMINISTRATIVE BURDENS DERIVING FROM THE CURRENT LEGISLATION								B. ADMINISTRATIVE BURDENS DERIVING FROM THE DRAFT REGULATION							DIFFERENCES	
A1	A2	A3	A4	A5	A6	A7	A8	B1	B2	B3	B4	B5	B6	B7	A8-B7	
Existing administrative obligations	Reference of standard in force	Article	Burden	Cost	Frequency	Population	Annual cost	Article	Administrative obligations derived from the draft standard	Burden	Cost	Frequency	Population	Annual cost		
Presen. FOE communication Linear and VOD	RD 988/2015	14	7	4	1	25	100	27.1	Presen. FOE communication Linear and VoD	7	4	1	25	100	0	
Presen. FOE electronics Linear and VOD	RD 988/2015	14	6	2	1	25	50	27.1	Presen. FOE electronics Linear and VoD	6	2	1	25	50	0	
Presen. communication quota Linear and VoD	Law 7/2010	5.2	7	4	0,3	39	46,8	24.1 y 25.1	Presen. communication compliance Linear Quota and VoD	7	4	1	39	156	-109,2 €	
Presen. Electronic Quota Linear VoD	Law 7/2010	5.2	6	2	0,3	39	70,2	24.1 y 25.1	Presen. Electronic compliance linear quota and VoD	6	2	1	39	78	-7,8 €	
								26	Electronic submission VoD prominence	7	4	1	14	56	-56 €	
								26	Electronic submission VoD prominence	6	2	1	14	28	-28 €	
<b>CURRENT REGULATIONS ANNUAL BURDENS COST</b>							<b>267 €</b>	<b>DRAFT REGULATIONS ANNUAL BURDENS COST</b>							<b>468 €</b>	<b>-201 €</b>