[ES] A new Draft Communication on the consideration of vloggers as audiovisual media service providers is open to comments

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Streamers and content creators that offer their work in Spain using video-sharing platforms, such as YouTube or Twitch, could be considered audiovisual media service providers. In such a case, these creators, or so-called vloggers, would have to comply with the requirements set by the General Law on Audiovisual Communication (2010).

The independent state body responsible for ensuring the proper functioning of the markets in Spain, the *Comisión Nacional de los Mercados y la Competencia* (National Markets and Competition Commission — CNMC), has published a public consultation on a Draft Communication on this subject which aims to clarify the criteria according to which these agents would be subject to audiovisual rules. These criteria are open to scrutiny, and comments can be submitted until 1 March 2022.

The CNMC argues that there is confusion about the nature of the content these creators offer, which causes insecurity and unawareness of the rules

among both creators and consumers. Furthermore, vloggers are new audiovisual agents whose content has a highly significant presence in the market from the point of view of consumption and advertising investment.

The seven criteria to be met in order to be considered an audiovisual media service provider are the same as those that are set out in the General Law on Audiovisual Communication. The Draft Communication explains how these criteria are to be considered fulfilled in the case of new players offering audiovisual content on video-sharing platforms. Thus, for example, one criterion refers to the service provided involving an economic activity (or not); i.e., a service for which a compensation is received. In the case of online content creators, the specificity of their remuneration would be contemplated: payments from platforms for advertising, external commercial agreements (such as sponsorships, unboxings, or branded content), and payments derived from subscriptions and audience donations.

The remaining criteria include different factors, such as the existence of editorial responsibility on the part of the creator, the fact that the service is intended for the general public, or that the objective of the service is to distribute audiovisual

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content to inform, entertain or educate. In addition, due account should be taken of the fact that the service distributes audiovisual programmes and that the service is provided via electronic communications networks.

As the proposed Communication points out, Spain is in a transitional period due to the ongoing revision of the General Law on Audiovisual Communication because of the transposition of the EU's Audiovisual Media Services Directive (2018). In the case that the above-mentioned criteria are met, vloggers would be aligned with the legislation in regulatory terms. Though this is expected to be updated in the upcoming months.

Consulta pública sobre la propuesta de Comunicación de la CNMC para identificar a los nuevos agentes audiovisuales o vloggers (COMUNICACION-DTSA-003-21)

https://www.cnmc.es/sites/default/files/editor_contenidos/Audiovisual/Proyecto%20COMUNICACION-DTSA-003-21.pdf

Public consultation on the CNMC Communication proposal to identify new audiovisual agents or vloggers (DTSA-003-21 Communication)

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