[ES] Transposition of AVMSD one step closer

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In May 2022, almost four years after the European Parliament updated Directive 2018/18018 (AVMSD), the Spanish Congress has approved the new law transposing the AVMSD. This was not without controversy, with 130 votes in favour, 83 votes against and 131 abstentions. The law will now be sent to the Senate to complete its parliamentary processing.

This new *Ley General de Comunicación Audiovisual* (General Law on Audiovisual Communication) updates the existing framework to foster the development of the audiovisual market, establishing the same rules for different actors that compete for the same audience and reinforcing measures to promote European audiovisual production. Along these lines, the law establishes the conditions for the provision of public and private television, as well as on-demand radio and sound services, video-sharing services via platforms and non-linear media operators.

The transposition of the Directive seeks to apply principles such as human dignity, protection against content that violates the dignity of women, the obligation to transmit a respectful image of people with disabilities, the promotion of linguistic pluralism in Spain and the veracity of information. Absolute restrictions are placed on subliminal advertising, advertising for tobacco and electronic cigarettes and advertising that violates human dignity or uses the image of women in a degrading way. In addition, the accessibility of content for people with disabilities is expanded, extending obligations to players who were not covered until now. Funding mechanisms for the public service broadcaster *Corporación de Radio y Televisión Española* (RTVE) are also established, with contributions from all players in the audiovisual market. In relation to the promotion of European works, the new law contemplates both quotas and funding obligations that also apply to on-demand services (transnational players such as Netflix included).

Regarding the quotas for European works in on-demand services, the minimum established by the AVMSD is maintained: 30% of the catalogue of such services must be reserved for European works, which must be given appropriate prominence. Additionally, two linguistic sub-quotas have been set within the minimum established. On the one hand, half of the European works will be reserved for works in the official language of the State or in the language of the Autonomous Communities (Catalan, Galician and Basque). On the other hand, within this criterion, the official languages of the Autonomous Communities must

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represent a minimum of 40%, considering their population weight and reserving at least 10% for each of these languages. In the case of linear television, European works must represent at least 51% of the annual broadcasting time.

In relation to funding obligations, it is stipulated that providers of linear or on-demand audiovisual media services with annual revenues over EUR 50 million must earmark 5% of their revenues for the funding of European works. Such financing can take place in three different ways: through direct participation in production, through the acquisition of exploitation rights, or by contributing to the Film Protection Fund managed by the *Instituto de la Cinematografía y las Artes Audiovisuales* (Film and Audiovisual Arts Institute — ICAA). Within these obligations, a percentage is reserved for audiovisual works produced by so-called independent producers.

The redefinition of an 'independent producer' is one of the issues that generated the most controversy during the passage of the law. Independent producers are understood as those who are not linked to an audiovisual communication service provider. However, the law also considers independent producers to be those who make works available to such services. In practice, therefore, natural or legal persons who develop a project for a large provider would be considered independent producers even though they are linked to another large provider. This last-minute redefinition has raised sound complaints among different associations of the sector.

Boletín Oficial de las Cortes Generales. (27 de mayo de 2022). 121/000076 Proyecto de Ley General de Comunicación Audiovisual

https://www.congreso.es/public_oficiales/L14/CONG/BOCG/A/BOCG-14-A-77-5.PDF

Official Gazette of the Parliament. (May 27, 2022). 121/000076 Draft General Law on Audiovisual Communication

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