[ES] The Spanish National Commission on Markets and Competition agrees on the transfer of sensitive information to the Ministry of Economic Affairs and Digital Transformation regarding the obligations relating to the promotion of European audiovisual works

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Article 5 of the Spanish General Law on Audiovisual Communication (Law 7/2010 of 31 March 2010) establishes a series of obligations relating to the promotion of European audiovisual works for television providers, electronic communication service providers broadcasting television channels and programme catalogue providers. According to this article, 5% of the revenues of these audiovisual providers must finance audiovisual works of various types (such as cinematographic films, films and television series, documentaries and animated series). To ensure this, the law establishes a system of quotas for the protection of Spanish audiovisual works, with special emphasis on the independent film industry, and the production of audiovisual content in the official languages of Spain.

The competent body for verifying compliance with this obligation is the Spanish National Commission on Markets and Competition (*Comisión Nacional de los Mercados y la Competencia* – CNMC). Therefore, on 31 May 2023, the General Directorate of Telecommunications and Management of Audiovisual Communication Services (*Dirección General de Telecomunicaciones y Ordenación de los Servicios de Comunicación Audiovisual* – DGTELECO), asked the CNMC for sensitive information on this process with a view to drafting a regulatory initiative on the obligations to promote European works. DGTELECO, which is part of the Spanish Ministry of Economic Affairs and Digital Transformation, requested the following information relating to the year 2021:

1) For each of the providers obliged to comply with the obligation:

a. Revenues computed in the fiscal year and which have been taken as the basis for calculating the lender's financing obligation (5%).

b. The advance financing obligation in European works of each provider obliged to comply with the obligation.

c. Investment finally acounted for the provider.

2) For each of the providers that have made the contribution:

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a. The provider(s) that have made the contribution.

b. The title of the audiovisual work.

c. The type of audiovisual format of the work.

d. An indication of whether the audiovisual work has been computed for compliance with the independent audiovisual work obligation.

e. An indication of whether the audiovisual work has been computed for compliance with the obligation of being produced in Spanish languages, indicating, if applicable, those works produced in the official languages of the Autonomous Communities.

f. An indication of how the provider has executed the obligation, specifically:

• Compliance through direct participation in the production.

• Compliance through the acquisition of exploitation rights of the audiovisual work.

As of 28 September 2023, the Regulatory Oversight Board of the CNMC Council has agreed to transfer this information to DGTELECO in application of the legislation in force. However, it clarifies that the CNMC does not have information on the language of production of the audiovisual work nor on the forms of direct participation, as providers are not obliged to report this. Moreover, the CNMC observes that the use of this sensitive information provided must be limited to what is required for the fulfilment of the functions entrusted to DGTELECO by virtue of its powers, specifically, the preparation of the aforementioned new regulation on the obligations to promote European works, on the understanding that this information cannot be passed on to third parties.

Agreement to provide DGTELECO with confidential information on the obligation established in Article 5.3 of Law 7/2010 of 31 March 2010, the General Law on Audiovisual Communication, for the fiscal year 2021 (IFPA/DTSA/192/23/DGTELECO)

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