



## 4.10. ES – Spain – National legal summary<sup>191</sup>

### 4.10.1. Applicable related framework

Relevant legislation includes the following:

Primary legislation:

- *Ley General de Comunicación Audiovisual*<sup>192</sup> (Law 13/2022 of 7 July 2022 on Audiovisual Communication – LAC).
- *Ley General de Publicidad*<sup>193</sup> (Law 34/1988 of 11 November on Advertising – Law on Advertising).
- *Ley de Competencia Desleal*<sup>194</sup> (Law 3/1991 of 10 January on Unfair Competition – LUC).
- Real Decreto Legislativo 1/2015, de 24 de julio, por el que se aprueba el texto refundido de la Ley de garantías y uso racional de los medicamentos y productos sanitarios<sup>195</sup> (Royal Legislative Decree 1/2015, of 24 July, which approves the Law on guarantees and rational use of medicines and health products).
- *Ley 13/2011, de 27 de mayo, de regulación del juego*<sup>196</sup> (Law 13/2011, of 27 May on regulation of gambling).
- Ley 3/2013, de 4 de junio, de creación de la Comisión Nacional de los Mercados y la Competencia - CNMC<sup>197</sup> (Law 3/2013 of 4 June 2013 creating the National Markets and Competition Commission – LCNMC).

Secondary legislation:

- Real Decreto 1907/1996, por el que se regula la publicidad y promoción comercial de productos, actividades o servicios con pretendida finalidad sanitaria<sup>198</sup> (Royal Decree 1907/1996, of 2 August, on advertising and commercial promotion of products, activities or services with intended health purposes).

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<sup>191</sup> The factsheet on Spain incorporates feedback received from Pedro Domingo Martín Contreras, Senior Legal Advisor at the Directorate of Telecommunications and Audiovisual at the National Commission of Markets and Competition (*Comisión nacional de los mercados y la competencia*, CNMC), during the checking round with the national regulatory authorities.

<sup>192</sup> [https://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2022-11311](https://www.boe.es/diario_boe/txt.php?id=BOE-A-2022-11311).

<sup>193</sup> <https://www.boe.es/buscar/act.php?id=BOE-A-1988-26156>.

<sup>194</sup> <https://www.boe.es/buscar/act.php?id=BOE-A-1991-628>.

<sup>195</sup> <https://www.boe.es/buscar/act.php?id=BOE-A-2015-8343>.

<sup>196</sup> <https://www.boe.es/buscar/act.php?id=BOE-A-2011-9280>.

<sup>197</sup> <https://www.boe.es/buscar/act.php?id=BOE-A-2013-5940>.

<sup>198</sup> <https://www.boe.es/buscar/act.php?id=BOE-A-1991-628>.



- Real Decreto 1416/1994 por el que se regula la publicidad de los medicamentos de uso humano<sup>199</sup> (Royal Decree 1416/1994, of 25 June, on advertising for drugs for human use).

#### Self and co-regulatory instruments

- El Código de Conducta Publicitaria de Autocontrol<sup>200</sup> (Autocontrol's Advertising Code of Conduct)

### 4.10.2. Definitions and restrictions regarding commercial communications

This section aims at identifying the relevant definitions related to commercial communications stemming from related laws, rules and current practices, as well as ongoing reforms under the transposition and implementation of the revised Audiovisual Media Services Directive (AVMSD). Please note that this review includes definitions which are part of the revised AVMSD, inclusive of audiovisual commercial communications, advertising, surreptitious commercial communications, sponsorship and product placement, but also the definitions of supplementary and/or related concepts, such as the advertiser, sponsor and sponsored content, as well as misleading commercial communication, for the purpose of providing a comprehensive overview.

#### 4.10.2.1. Definitions

**Table 36. Definition of the main concepts related to commercial communications**

Concept	Existence of a definition
Audiovisual commercial communications	Yes.
Television advertising	Yes.
Advertiser	Yes.
Surreptitious commercial communication	Yes.
Misleading commercial communication	Yes.
Virtual advertising	No.
Sponsorship	Yes.
Sponsor	No.
Sponsored content	No.

<sup>199</sup> <https://www.boe.es/buscar/act.php?id=BOE-A-1994-17681>.

<sup>200</sup> <https://www.autocontrol.es/wp-content/uploads/2021/05/codigo-de-conducta-publicitaria-autocontrol.pdf>.



<b>Product placement</b>	Yes.
<b>Other:</b>	Screen overlays and hybrid advertising (in the case of audiovisual linear services).

Source: Spanish response to European Audiovisual Observatory standardised survey

#### 4.10.2.1.1. Audiovisual commercial communications

Article 121 paragraph 1 of the LAC defines audiovisual commercial communications:

*Audiovisual commercial communications are considered to be images or sounds intended to promote, directly or indirectly, the goods, services or image of a natural or legal person engaged in an economic activity, which accompany or are included in a programme or in a user-generated video in exchange for remuneration or similar consideration in favour of the audiovisual media service provider, or for self-promotion purposes. Forms of audiovisual commercial communication include, inter alia, television advertising, sponsorship, teleshopping and product placement;*

Articles 121 to 125 LAC contain the general provisions applicable to all types of audiovisual commercial communications, in all types of services, as outlined further below.

#### 4.10.2.1.2. Television advertising

Article 126 LAC defines audiovisual advertising as:

*Audiovisual advertising is any form of audiovisual commercial communication by a natural or legal person, whether public or private, in connection with their trade, business, craft or profession, to promote the supply of goods or services, including property, rights and obligations.*

#### 4.10.2.1.3. Advertiser

The Law on Advertising, in Article 8, defines the advertiser as:

*the natural or legal person in whose interest the advertising is carried out.*

#### 4.10.2.1.4. Surreptitious commercial communication

Article 4 of the Law on Advertising provides the following definition:

*Subliminal advertising is that which, by means of production techniques of stimuli of border intensities with the thresholds of the senses or analogous, can act on the target public without being consciously perceived.*



#### 4.10.2.1.5. Misleading commercial communication

The LUC, in Article 5 paragraph 1 defines misleading commercial communication as:

*Any conduct that contains false information or information that, even though it is true, due to its content or presentation, misleads or may mislead the recipients, being likely to alter their economic behaviour, is considered unfair and misleading.*

Misleading commercial communication may trigger legal action before civil courts.

#### 4.10.2.1.6. Virtual advertising

There is no definition of virtual advertising.

#### 4.10.2.1.7. Sponsorship

Article 128 paragraph 1 of LAC provides for the definition of sponsorship:

*Sponsorship is considered to be any contribution that a natural or legal person, public or private, not linked to the provision of audiovisual media services or video-sharing platform services, or to the production of audiovisual works, makes to the financing of audiovisual media services, video-sharing platform services or user-generated videos or programmes, with the aim of promoting their name, brand, image, activity or product.*

#### 4.10.2.1.8. Sponsor

There is no definition of sponsor.

#### 4.10.2.1.9. Sponsored content

There is no definition of sponsored content.

#### 4.10.2.1.10. Product placement

The LAC, in Article 129 paragraph 1 defines product placement as:

*“Product placement” means any form of audiovisual commercial communication consisting of the inclusion or portrayal of, or reference to, a product, a service or the trade mark thereof so that it is featured within a programme or a user-generated video in return for payment or for similar consideration.*



#### 4.10.2.1.11. Other definitions

Article 14 paragraph 2 of the LAC establishes that a (future) regulation, to be adopted by the government will regulate the use of screen overlays and hybrid advertising in the case of audiovisual linear services. Article 141 paragraph 3 determines that the use of hybrid and interactive commercial techniques by audiovisual service providers is subject to the provisions included in the General Data Protection Regulation (Regulation 2016/679 of 26 April 2016).<sup>201</sup>

*2. The use of transparencies, overprints, virtual advertising and split screen in programming shall be regulated, without prejudice to the provisions of Article 139 for sporting events.*

*3. If audiovisual media service providers use techniques based on hybrid or interactive advertising, they shall respect the provisions laid down in Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, and in Organic Law 3/2018 of 5 December 2018 on user consent and personal data processing.*

#### 4.10.2.2. Restrictions regarding commercial communications

The revised AVMSD introduces obligations for video-sharing platforms to, *inter alia*, respect certain requirements regarding commercial communications and this section aims at updating the information relative to these obligations and measures imposed under national legislation on media service providers, including VSP providers related to commercial communications.

As a general note, it should be noted that, according to Article 91 of the LAC, VSPs need to adopt a series of measures with regard to commercial communications that they sell or organise in order to guarantee that they also respect the provisions applicable to other providers.

*1. Video-sharing platform service providers shall ensure that the audiovisual commercial communications that they market, sell or organise comply with Section 1 of Chapter IV of Title VI, with the exception of the time limit laid down in Article 123(4) and (5), which shall not apply. In any case, commercial communications that encourage behaviours that are harmful or prejudicial to minors shall require age verification and provide access to users that are of age.*

Restrictions and prohibitions related to the aforementioned related provisions are provided below.

In paragraph 2 of the said article, VSPs are obliged to adopt measures, as stipulated by the revised AVMSD (Article 28b 3. of the revised AVMSD) and to guarantee that the

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<sup>201</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), <https://eur-lex.europa.eu/eli/reg/2016/679/oj>.



audiovisual commercial communications that they market, sell or organise comply with the provisions of the LAC through these measures.

4.10.2.2.1. Audiovisual commercial communications for alcoholic beverages and tobacco and tobacco-related products, including electronic cigarettes and refill containers

Article 123 paragraph 1 of the LAC provides prohibitions vis-à-vis tobacco and tobacco-related products:

*1. Audiovisual commercial communications concerning cigarettes and other tobacco products, including electronic cigarettes and their refill packs, and herb-based products for smoking, and the companies producing them shall be prohibited.*

Restrictions regarding alcohol beverages are found in Article 123 paragraph 3 of the LAC:

*3. Audiovisual commercial communications concerning alcoholic beverages that meet one of the following requirements shall be prohibited:*

- a) They specifically target minors, or present minors consuming such beverages.*
- b) They link consumption to improving physical performance, or to driving vehicles.*
- c) They give the impression that consumption contributes to social or sexual success, or associate, link or relate such beverages to ideas or behaviours that express success in a personal, family, social, sporting or professional context.*
- d) They suggest that alcoholic beverages have therapeutic properties or a stimulating or sedative effect that constitutes a means of resolving conflicts, or which is beneficial to health.*
- e) They encourage immoderate consumption or provide a negative image of abstinence or sobriety.*
- f) They underline the alcohol content of the beverage as a positive quality.*
- g) They do not include messaging about moderate, low risk consumption.*

4.10.2.2.2. Audiovisual commercial communications for medicinal products and medical treatment available only on prescription in the member state

Article 123 paragraph 2 of the LAC prohibits audiovisual commercial communications for medicinal products, medical treatments and other products with an alleged health purpose:

*Audiovisual commercial communications concerning medicines and health products that do not respect the limits laid down in the regulations governing health-related advertising and activities and, in any event, audiovisual commercial communications concerning products, materials, substances, energies or methods with an alleged health-related purpose that do not respect the provisions of Royal Decree 1907/1996 of 2 August 1996 on advertising and commercial promotion of products, activities or services with an alleged health-related purpose shall be prohibited.*



The aforementioned Royal Decree 1907/1996 on advertising and commercial promotion of products, activities or services with intended health purposes includes additional rules and principles, such as the advertising of secret remedies and products, materials, substances, energies or methods with intended health purposes.

Finally, the Royal Legislative Decree 1/2015, of July 24, which approves the Law on guarantees and rational use of medicines and health products, in Article 80 paragraphs 2-3, contains a series of provisions applicable to commercial communications for medicinal products in all types of media, including VSPs. These relate to obligatory identification of products as medicine, that all the essential information for the correct use of the medication is included, that such advertising satisfies the accessibility conditions for people with disabilities, etc. It also stipulates that:

*...3. The advertising of medicines not subject to medical prescription will not require prior administrative authorisation, although the competent health administrations will carry out the necessary controls to guarantee that the advertising content complies with the legal and regulatory standards that are applicable to them and that they faithfully comply with the scientific and technical conditions contained in the marketing authorisation.*

#### 4.10.2.2.3. Surreptitious audiovisual commercial communications

The prohibition of surreptitious techniques in commercial communications is covered under Article 122 paragraph 4 of the LAC, relating to subliminal audiovisual commercial techniques (see 4.10.2.2.4.).

#### 4.10.2.2.4. Subliminal techniques in commercial communications

Article 122 paragraph 4 of the LAC prohibits subliminal techniques:

*Subliminal audiovisual commercial communications that, by means of techniques to stimulate the senses bordering on the threshold of the senses or similar, could act on the target audience without being consciously perceived shall be prohibited.*

#### 4.10.2.2.5. Prejudice with regard to human dignity

Commercial communications that may cause prejudice to human dignity are prohibited by Article 122 paragraph 1 of the LAC:

*Audiovisual commercial communications that undermine human dignity... are prohibited.*

#### 4.10.2.2.6. Inclusion or promotion of any discrimination (e.g., on the grounds of sex, racial or ethnic origin, nationality, religion, etc.)

Article 122 paragraph 1 of the LAC stipulates that:

*Audiovisual commercial communications that undermine human dignity or which encourage discrimination against a group of people or a member of a group on the reasons of age, sex,*



*disability, sexual orientation, gender identity, gender expression, race, colour, ethnic or social origin, sexual or genetic characteristics, language, religion or beliefs, political or any other opinions, nationality, heritage or birth, or which encourage behaviours that are unsafe or seriously harmful to environmental protection, are prohibited.*

Also, Article 122 paragraph 2 of the LAC states that:

*Audiovisual commercial communication that uses the image of women in a humiliating or discriminatory manner is prohibited.*

#### 4.10.2.2.7. Encouragement of behaviour prejudicial to health or safety

The LAC, in Article 122 paragraph 1 prohibits:

*Any audiovisual commercial communications that ... are harmful to security or encourages behaviours that are seriously harmful ...*

In addition to this, the aforementioned Article 123 should also be mentioned here, as it prohibits audiovisual commercial communications of products, including cigarettes and other tobacco products, etc. medicines and health products that do not respect the limits established in the regulations governing advertising, alcoholic beverages that, inter alia, specifically addresses minors, or presents minors consuming said beverages, etc.

#### 4.10.2.2.8. Encouragement of behaviour grossly prejudicial to the protection of the environment

Article 122 paragraph 1 of the LAC prohibits audiovisual commercial communications which encourage behaviours that are unsafe or seriously harmful to environmental protection

#### 4.10.2.2.9. Causing physical, mental or moral detriment to minors

Article 124 paragraphs 1-2 of the LAC prohibit audiovisual commercial communications from causing physical, mental or moral detriment to minors and provide further restrictions related to the protection of minors:

*1. Audiovisual commercial communications must not cause physical, mental or moral harm to minors and must not:*

*a) Directly incite minors to buy or rent products or services by taking advantage of their inexperience or credulity.*

*b) Directly encourage minors to persuade their parents or third parties to buy advertised goods or services.*

*c) Exploit the special relationship of trust that minors place in their parents, teachers, or other people, such as professionals in children's programmes or fictional characters.*

*d) Present, without justified reasons, minors in dangerous situations.*

*e) Incite behaviour that favours discrimination between men and women.*





*f) Incite violent behaviour towards minors, as well as violent behaviour by minors to themselves or others, or encourage stereotypes based on sex, race or ethnic origin, nationality, religion or beliefs, disability, age or sexual orientation.*

*g) Promote the cult of the body and the rejection of self-image via audiovisual commercial communications on slimming products, surgical interventions and aesthetic treatments, which appeal to social rejection due to physical condition, or success due to weight or aesthetic factors.*

*2. Audiovisual commercial communications pertaining to products particularly intended for minors, such as toys, shall not be misleading about the characteristics or safety of such products, or the skills and aptitudes minors need to have in order to use them without causing harm to themselves or others. They shall also not reproduce sexist stereotypes in accordance with Article 3(a) of Law 34/1988 of 11 November 1988 (General Advertising Act).*

#### 4.10.2.2.10. Other

N/A.

### 4.10.3. Sponsorship and product placement

Certain obligations stem from the revised AVMSD vis-à-vis sponsorship and product placement and this part aims at identifying the rules and practices pertaining to these two specific categories of commercial communications.

#### 4.10.3.1. Sponsorship

The LAC, in Article 128 paragraph 3, stipulates certain conditions with regard to the provision of sponsorship, including an obligation to identify the sponsor (by name, logo, or any other symbol), a prohibition, related to the content of the sponsored program or audiovisual communication, on influencing the editorial responsibility of the audiovisual communication service provider, as well as a prohibition on directly encouraging the purchase or lease of goods or services.

#### 4.10.3.2. Product placement

Article 129 paragraph 3 of the LAC lists conditions for product placement, including a prohibition on influencing the editorial content or organisation of the programming schedule or the catalogue by affecting the responsibility and editorial independence of the provider of the audiovisual communication service, as well as on directly encouraging the purchase or lease of goods or services. Product placement shall also:

*c) Not give undue prominence to the products in question.*

*d) Identify that it is a product placement at the beginning, at the commencement of each resumption after an interruption, and at the end of the programme, when such programmes*



*have been produced or commissioned by an audiovisual media service provider or by one of its subsidiaries. Obligations regarding (v)blogs and (v)blogging*

#### 4.10.4. Obligations regarding (v)blogs and (v)blogging

The aforementioned Article 94 paragraph 1 of the LAC establishes that: “Users of special relevance who use VSPs will be considered providers of the audiovisual communication service.”

Article 94 paragraph 2 further establishes the following characteristics to identify users of special relevance:

- a) The service provided entails an economic activity for which its owner obtains significant income derived from its activity in the video-sharing services through the platform;*
- b) The user of special relevance is the editorial manager of the audiovisual content made available to the public in his/her service.*
- c) The service provided is intended for a significant part of the general public and may have a clear impact on it.*
- d) The function of the service is to inform, entertain or educate and the main objective of the service is the distribution of audiovisual content.*
- e) The service is offered through electronic communications networks and is established in Spain.*

According to a recent interview, the Spanish government hopes that the regulation with regard to the requirements for considerations as a “streamer” or “influencer” according to the audiovisual law will be adopted by the beginning of 2023.<sup>202</sup>

#### 4.10.5. Other relevant information

N/A.

#### 4.10.6. Content-related rules regarding commercial communications for VSP providers

While certain restrictions regarding the content of commercial communications stem from the revised AVMSD and relate to issues connected to the protection of minors and

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<sup>202</sup> More information on this is available at:  
<https://www.businessinsider.es/roberto-sanchez-ley-cav-streamers-1098011>.



restrictions on the advertising of certain products and services, this part deals with less-explored notions, such as rules pertaining to gambling, environmental claims vis-à-vis products and services, etc.

#### 4.10.6.1. Advertising of, or on behalf of, associations that are wholly or mainly concerned with religion, faith and other belief systems

No specific provisions deal with this issue.

In this context, it should be mentioned that Article 123.6, which also applies to VSP providers, restricts audiovisual commercial communications for esotericism and parasciences in the time period from 01.00 to 05.00.

#### 4.10.6.2. Gambling, betting, betting tipsters, etc.

Article 91 paragraph 2 of the LAC relates to restrictions regarding audiovisual commercial communications for games of chance and betting in the following manner:

*c) In the case of audiovisual commercial communications linked to games of chance and gambling, these may only be disseminated when the accounts or channels disseminating such audiovisual commercial communications have as their main activity or offering the provision of information or contents on the gambling activities defined in Law 13/2011 of 27 May 2011, and which also guarantee that control mechanisms are established and available on the platform to prevent access by minors. It shall also be required for messages on safe or responsible gambling to be disseminated on a regular basis. In such cases, these commercial communications shall not have to adhere to the time slot framework set out in Article 123(7) and (8).*

#### 4.10.6.3. Environmental or “green” claims for products

No specific provisions deal with this issue

#### 4.10.6.4. Other

N/A.

### 4.10.7. Self- and co-regulation and enforcement

This section aims at identifying the legal framework and practice for self- or co-regulatory schemes and measures regarding commercial communications on VSPs, including identification of the body or bodies in charge of self- and co-regulation and enforcement



powers with regard to commercial communications and VSPs, as well as the scope of their activities with regard to commercial communications and VSPs.

#### 4.10.7.1. Self- and co-regulatory bodies

##### 4.10.7.1.1. Context of establishment and legal background

There are no clear designated self- or co-regulatory bodies in this area at this stage.

It is, however, important to mention the independent self-regulatory body of the advertising industry in Spain, Autocontrol<sup>203</sup>, established in 1995 as a non-profit association, and currently gathers advertisers, advertising agencies, the media and professional associations. Autocontrol's Advertising Code of Conduct, established in 1996, and inspired by the International Code of Advertising Practices of the International Chamber of Commerce (ICC), binds all companies adhering to the Association, which undertake to comply with its standards and submit to the Advertising Jury, which is the body in charge of monitoring compliance.

In addition, Autocontrol applies the Sectoral Advertising Codes of Conduct, through which certain sectors establish complementary voluntary commitments, in relation to the advertising of their specific products or services. Examples include the Code of Conduct on the use of influencers in advertising (2020), the Wine Commercial Communication Code (2018), Code of Ethics of Good Commercial Practices for the Promotion of Children's Diet Products (2013), the Code of Conduct on Commercial Communications of Gambling Activities (2012, amended in 2019), or the Code of Ethical Standards for the marketing, promotion and advertising of self-care medicines (2007, amended in 2020).

It should also be mentioned that, in 2003, Autocontrol and another advertising self-regulation organisations and Adigital created Confianza Online.<sup>204</sup> It was created to increase user confidence in the Internet. The main element is the "Trust Mark" (label) appearing on websites that comply with the Code of Ethics and can use the seal to demonstrate their commitment to good Internet practice. It is the only Spanish entity that offers the Ecommerce Europe Trustmark.<sup>205</sup> While Confianza Online is a self-regulatory organisation which aims to ensure a trusted and transparent e-commerce, including interactive advertising and E-Commerce, it is currently not identified as a self or co-regulatory body in relation to VSPs.

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<sup>203</sup> <https://www.autocontrol.es/>.

<sup>204</sup> <https://www.confianzaonline.es>.

<sup>205</sup> European Cross-Border E-commerce protection for consumers, <https://ecommercetrustmark.eu/>-



#### 4.10.7.1.2. Stakeholders involved

More than 10 associations, representing the areas of new digital media, e-commerce and advertising in Spain, as well as the self-regulatory organisation Autocontrol participated in the initial drafting of the Code of Ethics.<sup>206</sup> These regulations are intended to serve as a guide for any entity that provides its services or offers its products via the Internet and digital media, but not related to VSPs.

#### 4.10.7.1.3. Scope and objectives

The Code of Ethics described above includes the element of “labelling”.<sup>207</sup> i.e. providing a stamp on websites indicating ethical and professional conduct, as well as arbitration and dispute resolutions as provided further below.

The scope of the self-regulatory instruments includes:

- ACCs which encourage behaviours grossly prejudicial to the protection of the environment.
- Inappropriate ACCs for alcoholic beverages

Autocontrol has produced a Code of Conduct on the use of influencers in marketing. A code of co-regulation of advertising for food products and beverages directed to children, prevention of obesity and health is currently under review.

#### 4.10.7.1.4. Code(s) of conduct

The Code of Ethics is formed of an ensemble of regulations divided into four larger areas: Protection of personal data, e-commerce with consumers, digital advertising, protection of minors and adolescents.

Article 15 of the LAC details necessary element of self-regulatory codes of conduct, such as their acceptance by the main stakeholders, clear objectives, transparent and independent monitoring and evaluation of the achievement of the objectives pursued, effective enforcement, including effective and proportionate sanctions, etc. Areas to be covered by self-regulatory codes of conduct include: protection of users and public health in the audiovisual field, protection of minors and effective reduction of the exposure of minors to audiovisual commercial communications related to alcoholic beverages, promotion of games of chance and foods and beverages with a high content of salt, sugar, fat, saturated fat or trans fatty acids, etc., Effective reduction of the exposure of minors to audiovisual commercial communications related to alcoholic beverages, protection of users regarding content that violates the dignity of women, or promotes sexist, discriminatory or

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<sup>206</sup> Código de Conducta de Confianza Online<sup>206</sup> (Code of Ethics by Confianza Online (2022)): [https://www.confianzaonline.es/doc/codigo\\_etico\\_confianzaonline.pdf](https://www.confianzaonline.es/doc/codigo_etico_confianzaonline.pdf).

<sup>207</sup> Requirements and process to obtain the label are specified here: <https://www.confianzaonline.es/unete-a-nosotros/>.



stereotyped values, content that promotes a non-adjusted or stereotyped image of people with disabilities, misinformation, gratuitous violence and pornography, protection of users regarding misinformation promotion of respectful, inclusive and stereotype-free image of people from racial or ethnic minorities, protection and promotion of linguistic and cultural diversity, promotion of media, information and audiovisual literacy, protection of intellectual property rights and codes related to the respect of nature, animal welfare and similar.

The Autocontrol Code of Advertising Practice,<sup>208</sup> binds all companies affiliated with the association to comply with its rules under the supervision of the Advertising Jury, in charge of supervising compliance to the Code.

#### 4.10.7.1.5. Role of the (self-)regulatory bodies

A Trust Mark (label), granted by Confianza Online – Businesses who have the Trust Mark have been assessed on the basis of 30 objectives, and use it on their website. Websites with the Trust Mark are subject to a self-regulatory claims system, which allows for mediation and arbitration between consumers and businesses with no costs, not related to VSPs.

Besides, there is an online claims resolution system, based on two “authorities”:

- The Autocontrol Advertising Jury,<sup>209</sup> an independent advertising self-regulatory organisation in Spain, established in 1995, comprised of advertisers, advertising agencies, media and professional associations, with the goal of working towards responsible advertising. Autocontrol is responsible for claims related to commercial communications, privacy, data protection and protection of minors. The handling of complaints by the jury is based on a principle of decisions by the independent extrajudicial body responsible for resolving disputes and complaints in advertising, with an official recognition provided to Autocontrol in 2018 as an Alternative Dispute Resolution body in the related legislation. Once the jury makes its decision related to advertising-related complaints, by applying the provision of the Code, they are made public and are binding for members of Autocontrol<sup>210</sup>.
- The National Consumer Arbitration Council (Junta Arbitral Nacional de Consumo)<sup>211</sup> is responsible for claims relating to consumer issues with e-commerce. In this case, a prior mediation is carried out by Adigital,<sup>212</sup> an organisation formed by more than 500 companies, Spanish and international technology companies and digital platforms, and digital startups, which leads the dialogue with public agents, promotes collaboration between sectors and gives visibility and support to associates.

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<sup>208</sup> <https://www.autocontrol.es/autocontrol-eng/codes-of-conduct/>.

<sup>209</sup> AUTOCONTROL, <https://www.autocontrol.es/autocontrol-eng/quienes-somos-eng/>.

<sup>210</sup> More information is available at: <https://www.autocontrol.es/autocontrol-eng/other-services/#advertising-complaints>.

<sup>211</sup> <https://www.consumo.gob.es/es/consumo/juntasArbitrales/nacional>.

<sup>212</sup> Asociación Española de la Economía Digital, <https://www.adigital.org/>.



#### 4.10.7.1.6. Period of activity (if limited)

N/A.

#### 4.10.7.1.7. Role of the regulatory authority in a co-regulatory system

##### 4.10.7.1.7.1. Regulatory body

The LAC charges the national AV authority to promote self-regulation (Art. 12) and co-regulation (Art. 114) through the voluntary adoption of codes of conduct (Art. 15).

The LAC, in Article 153 paragraph 1, subparagraph e, includes provisions regarding the authority in charge of the promotion of self-regulation and co-regulation systems, establishing that the promotion of self-regulation and co-regulation is the role of the Ministry of Economic Affairs and Digital Transformation:<sup>213</sup>

*The Ministry of Economic Affairs and Digital Transformation is the competent audiovisual authority at state level in the terms provided in this law and, in any case, will exercise the following powers:*

*...e) Promotion of self-regulation and co-regulation at a national, European and international level..."*

Also, the LAC establishes that the national audiovisual authority National Markets and Competition Commission CNMC<sup>214</sup> is to promote self-regulation and co-regulation through the voluntary adoption of codes of conduct, as well as establishes the competencies and mandate of CNMC in the audiovisual sector, in relation to monitoring and compliance.

##### 4.10.7.1.7.2. Co-regulatory scheme

Art. 15 details the co-regulatory scheme.

Article 14 of the LAC provides details on the co-regulatory scheme, with the CNMC having to promote co-regulation through agreements signed with self-regulation bodies and, whenever it directly affects them, audiovisual communication service providers, video sharing service providers through the platform or the organizations that represent them.

##### 4.10.7.1.7.3. Relationship and roles of stakeholders

N/A.

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<sup>213</sup> Ministerio de Asuntos Económicos y Transformación Digital.  
[https://www.mineco.gob.es/portal/site/mineco/?lang\\_chosen=en](https://www.mineco.gob.es/portal/site/mineco/?lang_chosen=en).

<sup>214</sup> <https://www.cnmc.es/en>.



#### 4.10.7.2. Monitoring/evaluation, compliance and sanctioning powers

Article 93 paragraph 1 of the LAC establishes that the CNMC is the regulatory body in charge of supervising the activities and obligations of VSPs, as it: “controls fulfilment by VSPs of the obligations established in this Title and in its development provisions”.

Besides, the fifth final provision of LAC modifies Article 9 of the LCNMC vis-à-vis the competencies of CNMC in the audiovisual sector, providing CNMC with the mandate to:

*Fifth final provisions*

...

*14. Supervise the compliance of audiovisual content and commercial communications with current legislation and with the codes of self-regulation and co-regulation, ....*

*15. Promotion of self-regulation and co-regulation at national, European and international level, ....*

*16. Ensure compliance with the codes of self-regulation and co-regulation on audiovisual content, verifying its compliance with the regulations in force...*

#### 4.10.8. Cross-sector and cross-border collaboration

N/A.

#### 4.10.9. Update on plans and practices relative to new obligations of VSPs

N/A.

#### 4.10.10. Studies, reports and research

N/A.

#### 4.10.11. Data compilation

This factsheet is based on data compiled by Joan Barata Mir, Fellow at Stanford Cyber Policy Center.