



## 5.10.ES – Spain – National legal summary<sup>161</sup>

The provisions of the revised Audiovisual Media Services Directive (AVMSD) related to video-sharing platforms (VSPs) are transposed into the General Law on Audiovisual Communication (LAC).

### 5.10.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- General Law 13/2022 of 7 July on Audiovisual Communication (Ley General de Comunicación Audiovisual, LAC)<sup>162</sup>

### 5.10.2. Definitions and scope

This section aims at identifying the relevant definitions related to VSPs stemming from the transposition of the revised AVMSD as well as elements of interpretation of the main concepts present in those definitions.

**Table 30. Definition of the main concepts related to VSPs**

Concept	Existence of a definition
VSP service	Yes.
VSP provider	Yes.
User-generated video	Yes.
“Principal purpose”	No.
“Dissociable section”	No.
“Essential functionality”	No.

Source: Spanish response to European Audiovisual Observatory standardised survey

<sup>161</sup> The factsheet on Spain incorporates feedback received from Pedro Domingo Martín Contreras, Officer at the Directorate of Telecommunications and Audiovisual, and María Inmaculada Casas Delgado, Head of Cabinet of the President, at the National Commission of Markets and Competition (*Comisión nacional de los mercados y la competencia*, CNMC), during the 2021 and 2022 checking rounds with the national media regulatory authorities.

<sup>162</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).



#### 5.10.2.1. VSP service

Article 2.12. of LAC defines the term “video-sharing platform service”, by transposing the text of the revised AVMSD verbatim, as follows:

*(VSP) service: service where the principal purpose of the service or of a dissociable section thereof or an essential functionality of the service is devoted to provide, to the general public, through electronic communications networks, programmes, videos generated by users or both, over which the platform provider has no editorial responsibility, in order to inform, entertain or educate, as well as issue commercial communications, and whose organisation is determined by the provider, among other means, with automatic algorithms, in particular through displaying, tagging and sequencing.*

#### 5.10.2.2. VSP provider

Article 2.17 of LAC defines the term “video-sharing platform provider” by transposing the text of the revised AVMSD verbatim, as follows: “[a ] natural or legal person that provides the VSP service through the platform”.

#### 5.10.2.3. User-generated video

Article 2.19 of LAC defines the term “user-generated video” by transposing the text of the revised AVMSD verbatim, as follows:

*User-generated video means a set of moving images with or without sound constituting an individual item, irrespective of its length, that is created by a user and uploaded to a video-sharing platform by that user or any other user.*

#### 5.10.2.4. “Principal purpose” or “dissociable section” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, caselaw, etc.) on how to interpret these concepts.

#### 5.10.2.5. “Essential functionality” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, caselaw, etc.) on how to interpret these concepts.



### 5.10.3. Obligations and measures imposed on VSP providers

The revised AVMSD provides for the extension of its scope to cover VSPs. It introduces obligations on these players to take appropriate measures to protect minors from harmful content which may impair their physical, mental or moral development; to protect the general public from illegal content and content that incites violence or hatred; and to respect certain obligations around commercial communications (Article 28b (1) and (2) of the revised AVMSD). To fulfil these obligations, member states are required to ensure compliance with the measures listed in Article 28b (3) of the revised AVMSD.

This section aims at identifying the obligations and measures imposed on VSP providers under national legislation in order to ensure their compliance with those obligations.

When available, this section also provides for other additional relevant information about the measures and concepts at stake.

#### 5.10.3.1. General provisions

According to Article 86 of LAC, VSP providers need to respect the general provisions regarding the protection of human dignity, incitement to hatred, respect for constitutional rights (particularly the right to honour and image, the right of reply and the right to privacy and data protection); incitement to commit acts of terrorism, crimes relating to child pornography or crimes of a racist and xenophobic nature (Article 4); gender equality (Article 6), the rights of persons with disabilities (Article 7.a); media literacy (Article 10), and self and co-regulation (Articles 12, 14 and 15), as follows:

*Article 86. General principles of the provision of (VSP services) (...).*

*The providers of the (VSP) service will guarantee the observance of the principles established in Articles 4, 6, 10, 12, 14, 15 and in section 1 of Article 7, with respect to the content distributed through its services by complying with the obligations established in this title.*

The LAC in Article 99 contains provisions regarding content harmful to the physical, mental and moral development of minors.\*

*1. All providers of the linear, open and conditional access television audiovisual communication service, and of the on-demand television audiovisual communication service shall provide users with sufficient and unequivocal information about the potentially harmful nature for physical, mental or moral development of minors from programs and audiovisual content through the use of a content description system, acoustic warning, visual symbol or any other technical means that describes the nature of the content, in accordance with the co-regulation agreement provided for in article 98.2.*

With reference to audiovisual commercial communications, Article 122 of LAC stipulates that:



1. Any audiovisual commercial communication that violates human dignity, promotes discrimination against a group of people or a member of a group based on age, sex, disability, sexual orientation, gender identity, gender expression, race, colour, ethnic or social origin, sexual or genetic characteristics, language, religion or beliefs, political opinions or of any other type, nationality, heritage or birth, encourage behaviour harmful to security or encourage behaviour seriously harmful to the protection of the environment.

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

#### 5.10.3.2. Adapting terms and conditions of the VSP service to include those obligations – Article 28b (3) (a) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the requirements referred to in section 5.10.3.1, Article 89.1.a) of LAC provides for this obligation:

*Video-sharing platform will adopt the following measures to protect the minors and the general public from the [programmes, the videos generated by users and the audiovisual commercial communications] that violate the provisions of Article 4:*

*a) Include and put into practice in the terms of service the obligations established in Article 88 on certain audiovisual content.*

#### 5.10.3.3. Adapting terms and conditions to include obligations regarding commercial communications that are not marketed, sold or arranged by the VSP provider – Article 28b (3) (b) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the requirements set out for audiovisual commercial communications that are not marketed, sold or arranged by VSP providers, Article 91.2.(a) of LAC directly transposes the obligations from the revised AVMSD in relation to Section 1 of Chapter IV of Title VI of the draft Law, which includes provisions on general commercial communications:

*The providers of (VSPs) will guarantee that the audiovisual commercial communications they do not market, sell or organise, comply with the provisions of Section 1 of Chapter IV of Title VI through the following measures:*

*a) Include and implement in the terms of service the requirements established in Section 1 of Chapter IV of Title VI for audiovisual commercial communications not marketed, sold or organised by said providers.*



#### 5.10.3.4. Having a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications – Article 28b (3) (c) AVMSD

Regarding the measure consisting in having a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications as far as they know or can be reasonably expected to know, Article 91.2.(b) of LAC provides for these obligations:

*b) Provide a functionality for users who upload videos to declare whether in their understanding, or as far as they can reasonably be expected to understand, said videos contain audiovisual commercial communications.*

#### 5.10.3.5. Establishing and operating transparent and user-friendly mechanisms for users to report or flag content – Article 28b (3) (d) AVMSD

Regarding the measure consisting in establishing and operating transparent and user-friendly mechanisms for users of a VSP to report or flag to the VSP provider the content referred to in the general provisions, Article 89.1. (b) of LAC transposes the obligations stemming from the text of the revised AVMSD:

*(The providers of (VSP services) will adopt the following measures to protect the minors and the general public from the [programmes and videos generated by users and any audiovisual commercial communications]*

*b) Establish and operate transparent and user-friendly mechanisms that allow users to notify or indicate to the corresponding provider any content that violates the provisions of Article 88.*

#### 5.10.3.6. Establishing and operating systems through which VSP providers explain to users what effect has been given to reporting and flagging – Article 28 (b) (3) (e) AVMSD

Regarding the measure consisting in establishing and operating systems through which VSP providers explain to users of VSPs what effect has been given to their reporting and flagging initiatives, the legislation, in Article 89.1.(c) transposes the obligations from the revised AVMSD by obliging VSP service providers to:

*c) Establish and operate systems through which service providers explain to users the effect that has been given to the notifications or indications referred to in the previous letter.*



#### 5.10.3.7. Establishing and operating age verification systems for users with respect to content which may impair the physical, mental or moral development of minors – Article 28b (3) (f) AVMSD

Regarding the measure consisting in establishing and operating age verification systems for users of VSPs with respect to content which may impair the physical, mental or moral development of minors, Article 89.1.(e) of LAC directly transposes these obligations from the revised AVMSD by obliging VSP service providers to:

*e) Establish and operate age verification systems for users with respect to content that may harm the physical, mental or moral development of minors that, in any case, prevent their access to the most harmful audiovisual content, such as gratuitous violence or pornography.*

#### 5.10.3.8. Establishing and operating easy-to-use systems allowing users to rate the content – Article 28b (3) (g) AVMSD

Regarding the measure consisting in establishing and operating easy-to-use systems allowing users of VSPs to rate the content for the protection of minors, LAC, in Article 89.1.(d) directly transposes the obligations of the VSP service providers from the revised AVMSD, as follows:

*d) Establish and apply easy-to-use systems that allow service users to rate content that may violate the obligations established in Article 88.*

#### 5.10.3.9. Providing for parental control systems that are under the control of the end user with respect to content which may impair the physical, mental or moral development of minors – Article 28b (3) (h) AVMSD

Regarding the measure consisting in providing for parental control systems that are under the control of the end user with respect to content which may impair the physical, mental or moral development of minors, Article 89.1.(f) of LAC provides for this, as follows:

*Facilitate parental control systems controlled by the end user with respect to content that may harm the physical, mental or moral development of minors.*

#### 5.10.3.10. Establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints – Article 28b (3) (i) AVMSD

Regarding the measure consisting in establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints to the VSP



provider in relation to the implementation of the measures for the protection of minors and the general public, Article 89.1.(g) of LAC directly transposes the text of the revised AVMSD:

*Establish and apply transparent, efficient and user-friendly procedures for the treatment and resolution of user complaints to service providers, in relation to the application of the measures referred to in the preceding letters.*

#### 5.10.3.11. Providing for effective media literacy measures and tools and raising users' awareness of those measures and tools – Article 28b (3) (j) AVMSD

Regarding the measure consisting in providing for effective media literacy measures and tools and raising users' awareness of those measures and tools, LAC, in Article 89.1.(h), obliges VSP service providers in the same manner as envisaged by the revised AVMSD:

*Facilitate effective media literacy measures and tools to inform users of the existence of these measures and tools.*

#### 5.10.3.12. Forbidding the processing of personal data of minors for commercial purposes – Article 28b (3) AVMSD

Regarding the processing of personal data of minors collected or otherwise generated by VSP providers for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising, Article 90 of LAC directly transposes these obligations from the revised AVMSD:

*The personal data of minors collected or otherwise generated by (VSP) providers may not be processed for commercial purposes, such as direct marketing, profiling or personalised advertising based on in behaviour. In any case, the processing of data of minors will be subject to the provisions of the data protection regulations.*

#### 5.10.3.13. Other relevant provisions related to the protection of minors

N/A.

#### 5.10.3.14. Other relevant provisions related to commercial communications which may impair the physical, mental or moral development of minors

Article 124.1 and 124.2 contain provisions aimed at preventing physical, mental or moral detriment to minors which mirror the AVMSD requirements for audiovisual commercial communications.



#### 5.10.3.15. Other relevant provisions related to minors' exposure to advertising for alcohol products and HFSS foods (high fat, sugar and salt foods) in commercial communications

There are no specific provisions related to minors' exposure to advertising for alcohol products. Provisions applicable to AVMS providers provides for criteria relevant to the prohibition of television advertising of alcoholic beverages.

Article 15.4 of LAC encourages the adoption of self-regulatory instruments regarding the advertising of these products and foods in audiovisual media.

*Article 15. Codes of conduct for self-regulation and co-regulation.*

*(...)*

*4. In any case, codes of conduct will be promoted, both at state and regional level, in the following areas:*

*(...)*

*d) Effective reduction of the exposure of minors to audiovisual commercial communications related to foods and beverages with a high content of salt, sugars, fat, saturated fats or trans fatty acids, or that do not comply for other reasons with national or international nutritional guidelines.*

*e) Effective reduction of the exposure of minors to audiovisual commercial communications related to alcoholic beverages.*

*f) Protection of minors from exposure to audiovisual commercial communications related to the promotion of gambling.*

*(...)*

Specific to VSPs, Article 91.4 sets out the following:

*Self-regulation will be promoted, through the development of codes of conduct, in order that video-sharing platform service providers effectively reduce the exposure of minors to audiovisual commercial communications related to foods and beverages that contain nutrients or substances with a nutritional or physiological effect, in particular fats, trans fatty acids, salt or sodium and sugars, of which an excessive intake is discouraged in the general diet and, in particular, to avoid such audiovisual commercial communications highlighting the positive qualities of its nutritional aspects.*

#### 5.10.3.16. Other relevant information

N/A.





## 5.10.4. Practicability of the measures imposed on VSP providers

Article 28b (3) of the revised AVMS Directive does not only provide for the list of measures which are detailed under the previous section. Paying attention to the principle of proportionality, it also states that the measures imposed on VSP providers should be practicable and proportionate and take into account criteria such as the size of the VSP service and the nature of the service, as well as the nature of the content.

This section aims at identifying how this is implemented in the national legislation.

Article 92 of LAC establishes that government decrees may set out further details regarding the scope and enforceability of obligations depending, among other things, on the size of the VSP service, the volume of users, the nature of the content or type of service offered by different categories of VSP providers:

*Article 92. Scope and proportionality of the obligations*

*Regulations may specify the scope of each of the measures listed in Articles 89 and 91 and their enforceability on VSP providers, depending on, among others, their size, volume of users, nature of the content or type of service offered.*

## 5.10.5. Regulation and enforcement

This section aims at identifying which body is in charge of regulatory and enforcement powers with regards to VSPs, as well as the scope of its activities with regards to such platforms. These relate to registration/notification systems of VSPs with the relevant national regulatory bodies, as well as with the development of self- or co-regulatory codes and schemes (as encouraged by Article 4a of the AVMS Directive), provisions related to out-of-court redress mechanisms for the settlement of disputes between users and VSP providers (as envisaged by Article 28(b)7 of the AVMS Directive) and provisions related to how users can assert their rights before a court in relation to VSP providers (as required by Article 28(b)8 of the AVMS Directive).

### 5.10.5.1. Regulatory body

The competent regulatory body for VSPs is the National Authority for Markets and Competition (CNMC).<sup>163</sup>

Besides, the Ministry of Economic Affairs and Digital Transformation retains some competences in this regard, such as, the National Registry, in Article 153.1.(d):

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<sup>163</sup> <https://www.cnmcc.es/>.



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

*d) Keeping of the State Registry of audiovisual communication service providers, video-sharing platform service providers, video exchange service providers through platform and audiovisual communication service aggregation service providers.*

#### 5.10.5.2. Existence of a registration/notification system

According to Article 87, VSP providers must register in the general audiovisual Registry established in Article 39 of LAC:

*Article 87. Registration in the State Registry.*

*The providers of the video-sharing platform service must register in the Registry provided for in Article 39 in accordance with the provisions of section 1 of Article 37.*

*Article 39. State registry of audiovisual communication service providers, video-sharing platform service providers and audiovisual communication service aggregation service providers.*

*2. The following providers will be registered in the Registry provided for in this Article:*

*(...)*

*d) Providers of (VSP services).*

#### 5.10.5.3. Compliance, enforcement and sanctioning powers

Article 93 of LAC provides for supervision and control over VSP providers by CNMC:

*1. The National Commission of Markets and Competition will control compliance by video-sharing platform service providers through the platform of (their legal) obligations.*

At the same time, the Ministry of Economic Affairs and Digital Transformation is in charge of controlling the notification and registration of VSPs in the National Registry.

#### 5.10.5.4. Development of self- or co-regulatory codes or schemes

Current self-regulatory schemes include *Confianza Online*, with its ethical code covering the protection of personal data, e-commerce and its consumers, digital advertising and the protection of minors and adolescents. Furthermore, there is a trust mark (label) system, which involves businesses being assigned a label according to the assessment of their compliance various criteria. In addition, there is an online claims resolution system, including the *AUTOCONTROL* Advertising Jury, for claims related to commercial communications, privacy, data protection and the protection of minors and the National



Consumer Arbitration Council, for those relating to consumers disputes in the field of e-commerce. There is also the PAOS (Advertising, Activity, Obesity and Health) Code, a co-regulatory instrument regarding the advertising of food and beverages to minors.

According to Article 15 of LAC, the CNMC will promote the use of self-regulation and co-regulation systems through the voluntary adoption of codes of conduct prepared by the providers of the audiovisual communication service, the providers of the VSP services or the organizations that represent them, in cooperation, if necessary, with other interested parties such as industry, commerce or professional or user associations or organizations. Articles 89.2 and 91.4 of LAC contain a general reference to the need to promote self and co-regulation schemes regarding the activities of VSP providers.

Article 89.2 establishes that: “[f]or the purposes of applying the measures provided for in the previous section (quoted above), the use of co-regulation will be encouraged (...)”.

Article 91.4 states that:

*Self-regulation will be encouraged, through the development of codes of conduct, in order that the providers of the (VSP) service effectively reduce the exposure of minors to audiovisual commercial communications related to food and beverages that contain nutrients or substances with a nutritional or physiological effect, in particular fats, trans fatty acids, salt or sodium and sugars, of which an excessive intake is discouraged in the general diet and, in particular, to avoid such audiovisual commercial communications highlighting the positive qualities of its nutritional aspects.*

#### 5.10.5.5. Out-of-court redress mechanisms for users

Article 89.1.i) recognizes the right of users to assert their rights in an alternative resolution procedure:

*The (VSP) providers, to protect minors and the general public from the audiovisual content indicated in the previous article, will take the following measures:*

*i) Facilitate that users, in the event of a claim presented by them and not resolved satisfactorily, can submit the conflict to an alternative resolution procedure for consumer disputes, in accordance with the provisions of Law 7/2017, of November 2, by which Directive 2013/11/EU, of the European Parliament and of the Council, of May 21, 2013, on the alternative resolution of consumer disputes, is incorporated into the Spanish legal system. All this without prejudice to the fact that users can resort to the corresponding judicial route.*

#### 5.10.5.6. Rights before a court for users

No specific provision of the draft Law deals with this issue.



### 5.10.6. Studies, reports and research

N/A.

### 5.10.7. Data compilation

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