

Legal Status

February 2023

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EMPLOYMENT

Planning of the Labour and Social Security Inspectorate for 2023: Intensification of actions for the control of compliance with effective equality



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The *Plan Estratégico de la Inspección de Trabajo y Seguridad Social 2021-2023* [Strategic Plan of the Labour and Social Security Inspectorate 2021-2023] established the following four main strategic lines to focus its activity, which are in turn broken down into a series of specific objectives and actions. Specifically, the four established lines are the following:

LINE 1: Contributing to improving the quality of employment, guaranteeing workers' rights, combating precariousness and fraud in employment and social security matters and effective gender equality.

LINE 2: Strengthening the capacity to act of the Labour and Social Security Inspectorate.

LINE 3: Strengthening and modernising the ITSS system to improve the quality of service delivery to citizens.

LINE 4: International activity of the Labour and Social Security Inspectorate for the years 2021-2023: Promoting decent work and

strengthening international cooperation in the fight against fraud.

Within the framework of the four lines identified as strategic, it is worth highlighting two specific objectives included in line 1, on which a large part of the Labour and Social Security Inspectorate's actions will be focused. These objectives are:

Objective 1: Ensure equality and non- gender based discrimination.

Objective 2: Guarantee equality and non-discrimination based on other grounds.

In this regard, the actions of the Labour Inspectorate will focus particularly on pay discrimination, family reconciliation, personal and working life, and discrimination in access to employment and professional promotion.

Therefore, at this point and within the framework of these objectives, it is worth highlighting the obligations that are fully applicable to companies, and which will undoubtedly be an essential part of proving compliance in terms of equality. Specifically, we refer to:

Implementation of Equality Plans for companies with 50 employees or more, or when the Collective Bargaining Agreement of application establishes its obligatory nature.

This register must be updated on an annual basis or when there are significant variations that have an impact on the data collected, with the obligation to justify any deviations of more than 25%.

Gender pay audits that should be part of the Equality Plan in companies with 50 or more employees.

In this context, and within the framework of the Equality Plans and pay audits, Order PCM/1047/2022, of 1 November, which approves and publishes the procedure for the evaluation of jobs provided for in Royal Decree 902/2020, of 13 October, on equal pay for women and men.

And finally, general protocols on harassment in the workplace for all companies - regardless of their number and size. However, in the case of companies with 50 employees or more, this document will be incorporated into the Equality Plan, which must be negotiated with the Legal Workers' Representatives or the most representative trade unions, in the event that there is no Legal Workers' Representation.

It is worth noting that non-compliance with any of the above measures may be classified as a serious or very serious offence, depending on the reasons and circumstances of the non-compliance, with a penalty of Euro 751.00 to 7,500.00 for serious offences and Euro 7,501.00 to 225,018.00 for very serious offences.

Therefore, the proper implementation of all the measures that have been published in recent years and which are compulsory for companies must be reviewed in order to accredit their due compliance, and not only their implementation, but also to have controls and proceedings that ensure and prove their monitoring and updating as an essential part of these protocols to ensure that there is an effective policy on effective equality in the company. All of this will be essential to be able to successfully overcome any inspection action that may occur in terms of effective equality. Even more so when it is known that this will be one of the main focuses of action of the Labour and Social Security Inspectorate for this year.

February 2023

First results following the implementation of the new Audiovisual Law



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The Telecommunications and Audiovisual sector has continued to successfully contribute to and assist the digital transformation process affecting all economic sectors and, in particular, the demand for communications and content that are transforming our daily lives.

In this regard, it is worth highlighting the recent approval and entry into force of the *Ley General de Comunicación Audiovisual 13/2022* [General Audiovisual Communication Law 13/2022 (hereinafter, the LGCA)], which transposes the Audiovisual Communication Services Directive (EU) 2018/1808 EC and has the following main objectives:

- a) To modernise and update the audiovisual regulatory framework in order to provide regulation more in line with the current digital environment.
- b) To strengthen the protection of users, especially minors, from content which could be harmful to their health by introducing more specific obligations to provide information on content and to use an age rating system.

- c) To include under its scope of application new obligated subjects, such as those who offer video sharing services through platforms as well as users who use these services, the so called “vloggers”, “influencers” or “opinion leaders”.
- d) To harmonise certain rules applicable to linear television services and on-demand television services.
- e) To encourage the promotion of European audiovisual works.
- f) To strengthen accessibility obligations.

Although it is still too early to analyse whether the new regulation has achieved these objectives, six months after the approval and entry into force of the LGCA, we wonder what impact it has had on the new obligated parties.

After analysing some recent decisions issued by the Comisión Nacional de los Mercados y la Competencia (hereinafter, the CNMC), we have found, in practice, the strong and weak points to be highlighted, following the recent entry into force of the LGCA:

I - The [resolution](#) dated 29 September 2022, issued by the CNMC, relating to the advertising of an energy drink aimed at a teenage audience which was broadcast on various platforms, including Youtube and Twitch, analyses whether such advertising could contravene the provisions of the LGCA by encouraging unhealthy eating habits for minors through stating the following phrase: “you can do an exam without sleeping at all”. The CNMC resolution finally concludes that at

the time of issuing the resolution, i.e. 29 September 2022, the LGCA was only partially in force, as the provisions applicable to video-sharing platforms only came into force on 9 October 2022, and therefore they were not yet applicable to these platforms. Similarly, and in relation to the above, the country of origin principle would have been applicable at the time of the agreement and the matter should have been referred to the competent authority of the Member State where the service providers are established. However, after 9 October 2022, video-sharing platforms must comply with certain obligations in the LGCA, relating to the advertising they market, even if those providers are established in another Member State.

In short, we can conclude that after the application of the LGCA, video-sharing platforms will be effectively obliged to comply with their obligations regarding the advertising they broadcast and that such protection could be effective in practice, even in those cases in which the providers are established outside Spain.

II- [Agreement](#) dated 10 November 2022, issued by the CNMC, related to the non-compliance of Spotify for not providing users with information on content potentially harmful to the development of minors, specifically, for not providing a system to classify the content of the programs broadcast on the platform. In this case, the complaint referred to programs with explicit content including erotic stories and failing to include information regarding the nature of such content, making them accessible to

minors without the possibility of being able to filter access to them.

In this case, the CNMC closed the complaint received on the grounds that the LGCA only establishes minimum obligations for providers of on-demand audio-visual services such as Spotify, including those related to the protection of minors' image, their personal data and the prohibition of access to certain commercial communications (...), but obligations relating to the classification of content that may be harmful to minors and which could be found in the programs that the providers broadcast are left out, unlike the case of television audiovisual service providers, which enjoy comprehensive regulation in this area.

The lack of regulation of the obligations for providers of on-demand audio-visual services regarding the classification of their content is one of the weak points of the LGCA and perhaps an aspect that Spanish legislators should improve in the future, taking into account the evolution of the services offered by digital platforms and, in particular, the recent boom in the consumption of podcasts and on-demand audio services.

III - The [agreement](#) dated 17 November 2022, issued by the CNMC, regarding a complaint against Twitter and two content-generating users for non-compliance with the measures that should be implemented to protect minors from harmful content. In this case, various issues are analysed, such as the nature of the services offered by the Twitter platform and whether these could legally fit the definition of video sharing services. In this

regard, the CNMC determines that this would be a matter for the Irish audiovisual authority.

However, an interesting aspect about this ruling is that the CNMC concludes that the accounts of the individual users, in this case (with 438 and 4887 followers), do not constitute an audiovisual communication service in accordance with the LGCA, specifically because they do not meet some of the requirements for considering these users as “users of special relevance” established in the regulations, among them, **i)** that the service involves an economic activity, **ii)** that the content is intended for a significant part of the general public and may have an impact on them, or **iii)** that the function of the service is to inform, entertain or educate.

On the contrary, the CNMC understands that the user accounts analysed are aimed at expressing personal ideas, especially political ones, and that in no case are they aimed at providing an audiovisual communication service under the terms of the LGCA.

In this way, the CNMC delimits the scope of the concept of “user of special relevance”, which will serve as a starting point and, perhaps, as a precedent for future rulings that must analyse similar circumstances.

In conclusion, although it is still too early to conclude the success or failure of the new LGCA, some resolutions of the CNMC highlight the strong and weaker points of the new audiovisual regulation as well as the capacity of Spanish legislators to face the challenge posed by the advance of the most current digital sector.

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Measures to reinforce the protection of energy consumers and to reduction of natural gas consumption



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On 18 October, the Government approved the *Real Decreto-ley 18/2022 de medidas de refuerzo de la protección de los consumidores de energía y de contribución a la reducción del consumo de gas natural en aplicación del "Plan + seguridad para tu energía (+SE)*. [Royal Decree-Law 18/2022 on measures to reinforce the protection of energy consumers and to contribute to the reduction of natural gas consumption in application of the "Safe Energy Plan (+SE)"]. This Royal Decree-Law was validated by the Spanish Congress of Deputies by Resolution of 3 November 2022 and passed as a Draft Bill.

The main reason for its approval has been the current situation of uncertainty in international energy markets, which has been passed on to all European consumers in terms of both energy prices and increased security of supply risks. In this context, in recent months the energy sector has been subject to numerous regulatory reforms in many different areas: energy taxation, energy generation, the promotion of electric mobility, self-consumption and the development of renewable energies,

measures aimed at mitigating the impact of the escalation of natural gas prices in the retail gas and electricity markets. Consumer protection measures have also been implemented, as well as energy saving and efficiency measures.

Objectives and measures adopted by Royal Decree Law 18/2022

The Royal Decree Law 18/2022 seeks to address new measures grouped around six objectives: savings and efficiency; transformation of the energy system; extension of protection to citizens, especially the vulnerable sectors; fiscal measures; transformation of industry thanks to renewable energies or hydrogen, and solidarity with the rest of the European countries.

1. In the field of the natural gas sector:

The cases of application of the Last Resort Retailers rates? for natural gas are extended:

- Homeowners' associations are given the possibility of availing themselves of the Last Resort Retailers rates for natural gas as the maximum price that may be charged by retailers who have been designated as last resort suppliers to consumers who are entitled to these rates.
- The annual consumption thresholds below which consumers could benefit from the Last Resort Retailers rates (consumers of less than 50,000 MWh/year) are determined until the review to be carried out on 1 October 2023.

The following measures are taken in the field of consumer protection:

- The minimum aid per beneficiary of the bono social térmico [discount rate] is increased from 25 to 40 euros.
- The maximum amount of the penalty in favour of retailers in the event of termination of the contract by the consumer during the first year is limited, in order to provide certainty to the consumer and to strengthen their contractual position.
- In situations of change of supplier, the obligation is established to terminate at the same time as the supply the additional services contracted by the consumer, such as, for example, the maintenance of the installations, unless the consumer expressly indicates otherwise.
- The information provided to the consumer through the bills is improved, and includes a link to the comparative offers from the Comisión Nacional del Mercado y la Competencia [National Market and Competition Commission].
- The measures to make natural gas supply contracts more flexible as provided for in RDL 29/2021 for the industrial sector are extended, and the scope of these measures is extended to include self-employed workers.

2. The retail level of the electricity sector:

The measures adopted in relation to the electricity sector place particular emphasis on measures to strengthen consumer protection:

- The electricity social bonus is extended to households with low-income workers affected by the energy crisis, and the discount percentages of the electricity social bonus are increased (from 60% to 65%, and from 70% to 80% for the most vulnerable sectors). Furthermore, the maximum consumption limits subject to the bill discount are increased by 15%. These new percentages are extended until December 2023.
- As in the natural gas sector, the information available on consumption bills is improved in order to facilitate the choice of supplier. Likewise, measures to make electricity supply contracts more flexible (changes in tariffs and power) have been agreed in order to adapt consumption to the current price context.

3. Self-consumption

Self-consumption is an urgent and necessary commitment that allows consumers' bills to be reduced immediately, increases the degree of involvement of consumers in the energy transition process and, in the current situation, reduces the degree of energy dependence in general and gas consumption in particular. In this regard, self-consumption is being re-launched as a formula for empowering end consumers, and by

articulating temporary measures to take advantage of the maximum current renewable production capacities to reduce dependence on fossil fuels for electricity production in the national territory.

A series of measures relating to the administrative, technical and economic conditions for self-consumption of electricity have been adopted in order to promote self-consumption:

The “close installation” distance is extended from 500 to 1000 metres for photovoltaic technology and power plants that are located entirely on the roofs of buildings.

In order to promote collective self-consumption, a community is allowed to become a representative of the consumers, provided that they grant the corresponding authorisations.

Installations with an installed capacity of less than 500 kW are exempted from the authorisation regime.

In order to monitor the activity of self-consumption of electricity, from an economic point of view, and its impact on the fulfilment of renewable energy targets and on the operation of the system, the Ministerio para la Transición Ecológica y el Reto Demográfico [Ministry for Ecological Transition and the Demographic Challenge] has created an administrative register of self-consumption of electricity, which will be telematic, declarative and free of charge. The Autonomous Communities, to the extent of

their competences, may establish their own registers.

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Legal Statute

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