

Audio-visual challenges facing media concentration and platforms: a new Spanish and European legal framework

Ángel García Castillejo
[University Carlos III and University Ramón Lull]
Manuel Chaparro Escudero
[University of Málaga]

Audio-visual information has been evolving since its emergence as a channel for service, business, and social influence. These three vectors are precisely the ones that have always been the focus of legal regulation. First, because of the need to administer a finite spectrum of State-owned bandwidths and to take decisions with regard to whoever competes for their use. Second, because since the liberalization of the service, the regulations have affected the business model, and it is necessary to set limits on the commercial exploitation of products whose value resides in capturing audiences. Is it important how? It is here that the third vector enters into play, the audio-visual media exercise notable influence on the population in the construction of their imaginary and their opinions, in decision-making, and in the socialization of behaviours and conduct.

Since the beginnings of radio as a news outlet, the ruling powers have been aware of its capability for manipulation and instrumentalization, but also of its capability to create values that could impact on the construction of more democratic societies, thanks to pluralist and accurate information. In addition, the democratic game was constructed on the basis of a hypothetical nineteenth-century division of powers that has hardly evolved, in which the mass media has constituted itself as a new power conditioning political and governmental discourse. Even considering the press as an influential media, oral and visual aspects of the audio-visual message mean that they are more universal measures, with greater capability for penetration, with no apparent need for a literacy programme. The need to control and to regulate its use arises from these considerations, which have been constant throughout its history.

Today more than ever before, the media are playing at exercising power, influencing, and representing public opinion, without any need for public consultation, in other words, the media has intervened in the name “of”... On occasions, supplanting the true identity of a heterogeneous citizenship whose motives for dissent vary. In this sense,

the need to defend freedom of expression stumbles and is not always coincident with the freedom of the firm when speaking of media that occupy the bandwidths in a transitory manner. Neither should the multiplication of channels, thanks to the digitalization of the signal be an excuse for deregulation that places business rights before the rights of the public and obligations for the performance of a service. The spectrum of bandwidths is still a finite space; however, technology makes the coexistence of further channels possible.

In the European Union, the regulatory frameworks of each country are, in fact, a reflection of EU directives and recommendations. In the case of Spain, the adaptation of its regulation to the European framework had to imply abandoning irregular practice in the awards of licenses and reinforcing the monitoring of compliance with the obligations of the operators. The fact is that the shortcomings that still exist within the Spanish audio-visual panorama are notorious and continue to provoke concern, outlining a highly concentrated mediatic structure and tending towards self-regulation on the basis of spurious interests.

In this study, we will conduct an analysis of the specific details that have impacted on regulation in Spain, the successes, failures, and immediate steps that might have to be taken to correct a situation that influences the quality of our democracy in a particular way. We must also take into account that the appearance of new platforms for non-linear audio-visual distribution outside of the bandwidths, blurs the current frameworks and makes it necessary to establish new criteria for regulation. This situation implies a new opportunity to undertake profound reforms that impact on the democratization of audio-visual activities, as was done, for example, through Directive (EU) 2018/1808, that implied a reform of General Law 7/2010 on Audio-visual Communication.

I. Background to European audio-visual regulation (1989-2018)

1. The European audio-visual community acquis. From the EEC to the European Union.

In the normative history of the European Union, the need for separate approaches to regulate the infrastructure for transmitting the content of audio-visual services constitutes an entrenched political position of the Commission. The services that provide audio-visual contents must be regulated on the basis of their nature (De la Quadra-Salcedo, Tomás, 1995: 9), not according to the channel through which they reach the

user.¹ Regulation must take into account such questions as cultural and linguistic diversity, access to audio-visual contents, the protection of youth and publicity, all of which are aspects that are likely to cause problems given their links to constitutional rights considered by the different member States of the European Union.

This perspective justifies the regulatory line followed in Directive 89/55/EEC², known as “Television without frontiers” and that culminated in Directive 2010/13/EU³, on “Audio-visual media services without frontiers”. The Commission and the European Parliament, prior to the publication of the proposal to reform Directive 2010/13/EU on “Audio-visual media services without frontiers” carried out an intensive examination of audio-visual policy that included various important points for consultation and analysis. One of the great regulatory milestones of these reforms with regard to the audio-visual sector was the approval in December 2007 of Directive 2007/65/EC⁴ of the European Parliament and of the Council of 11 December 2007, in modification of Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation, or administrative action in Member States concerning the pursuit of television broadcasting activities (Audio-visual Media Services Directive). This regulation of the European Union sought to adapt the regulatory framework to the convergent scenario that resulted from the incorporation of new technologies for the transmission and broadcasting of audio-visual media services in the digital era.

In 2013, the Commission published the Green Paper: “Preparing for a Fully Converged Audio-visual World: Growth, Creation and Values” and invited interested parties to express their viewpoints on the changing panorama of the communications media and the Internet without frontiers, in relation to market conditions, interoperability, and infrastructure, and their consequences for EU norms. The conclusions of the Green Paper are reflected in the document on the responses and

¹ Communication from the Commission of 15 December 2003 on the future of European regulatory audio-visual policy [COM(2003) 784 final. Not published in the Official Journal].

² Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:31989L0552>

³ Consolidated text: Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audio-visual media services (Audio-visual Media Services Directive) (codified version) (Text with EEA relevance) Available at: <https://eur-lex.europa.eu/legal-content/ES/TXT/PDF/?uri=CELEX:32010L0013&from=NL>

⁴ Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities.

their summary, published by the Commission in September 2014.⁵

With a view to the revision of the Audio-visual Media Services Directive, Directive 2010/13/EU, the Commission carried out a public consultation between 6th July and 30th September 2015 known as: “the AVMSD: A media framework for the 21st century”.

2. The Commission proposal for the revision of Directive 2010/13/EU⁶

The proposal of the European Commission (EC) approved on 25 May, 2016, was meant to update the audio-visual regulations of the European Union, which seeks to generate a more equitable state, from a normative standpoint, for all stakeholders within this sector, such as providers of audio-visual media services both linear and non-linear, platform-based and/or Over the Top (OTT).⁷ The proposal followed the guiding thread that began with the first “Television without Frontiers” favouring the promotion of the European audio-visual industry, the protection of children and youth against harmful material online, and standards in advertising, in so far as they affected restrictions, advertising taxes, tele-sales, self-promotions, and advance previews of programming on television.

The proposal, advanced to revise Directive 2010/13/EU, formed part of the community strategy for the single digital market.

Since 2010, prior to the launch of the strategy for the single digital market in May 2015, the Commission⁸ has conducted a comprehensive evaluation of the social and economic function of the new agents. It has concluded that a “one-size fits all” approach is not the most appropriate, so that consumers may enjoy the opportunities, and so that the regulations offer solutions to the different problems linked to the very diverse types of online platforms. Starting out on that basis, the Commission set out to analyze each zone in which it could act, from

⁵ Council conclusions on European Audio-visual Policy in the Digital Era [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014XG1203\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014XG1203(01)&from=EN)

⁶ Proposal for a Directive of the European Parliament and of the Council amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audio-visual media services in view of changing market realities Brussels, 25.5.2016 COM(2016) 287 final 2016/0151 (COD). Available at: Register of Commission Documents - COM(2016)287 (europa.eu)

⁷ Over The Top abbreviated as, OTT, in this context refers to transmissions that use broad band to transmit content freely, with no regulatory control.

⁸ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - a Digital Single Market Strategy For Europe 6.5.2015 – Com (2015) 192 final. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0192&from=En>

telecommunications to the norms on authorship rights, to resolve specific problems through solutions with a future for all the agents within the audio-visual market.

The principles of subsidiarity and proportionality were respected in the EC proposal, in that in general it maintained an approach of minimum harmonization and improved the mechanisms of exception and evasion. It also meant that member States could take into account their national circumstances.

As the EC itself pointed out, the member States have, in practice, adopted stricter norms regarding the definition of audio-visual media distribution services on demand, the creation of regulatory national authorities, the promotion of European works, the protection of minors and commercial media.

With regard to the enlargement of the scope of application of the Directive on video distribution platforms, the EU guaranteed coherence with the services already covered by that Directive. Maximum harmonization in this field prevents any possible future fragmentation resulting from national intervention in the audio-visual sector.

In October 2018, the European Parliament approved the informal agreement between the Parliament and the Council⁹ with 452 votes in favour, 132 against, and 65 abstentions, for the modification of Directive 2010/13/EU, dubbed “Audio-visual media without frontiers”.

In this process of revising Directive 2010/13/EU, the Commission carried out a public consultation, as has been mentioned above: “the AVMSD: A media framework for the 21st century”, which was developed between sixth July and 30 September, 2015.

The principal results with regard to the political options for the future were:

1. The convergence of the points of view of the interested parties with regard to the need for possible changes to the norms on the application framework of the Directive, even though they had neither a common nor a clear road map on how to advance;
2. The convergence of points of view with regard to the need to guarantee the independence of the national regulatory

⁹ COM (2016) 287: Proposal for a Directive of the European Parliament and of the Council amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audio-visual media services in view of changing market realities Brussels, 5 of October 2018. Procedure 2016/0151(COD). [EUR-Lex - 2016_151 - EN - EUR-Lex \(europa.eu\)](#)

- authorities;
3. The support of the interested parties when maintaining the *status quo* with respect to the principle of the country of origin: the obligations for transmission/localization; accessibility for people with disability; norms on important events for society, summary information, and the right to reply;
 4. At this time, there is no clear consensus between the interested parties on commercial media, the protection of young people and the promotion of European works.

The EC and Parliament coincided in warning that media convergence required an up-to-date legal framework that reflected the changing realities of the market and that achieved a balance between access to online media services, consumer protection, and competition, which up until today, was principally directed at linear audio-visual media service providers, as defined under art. 1.1.e) of Directive 2010/13/EU:

e) 'Television broadcasting' or 'television broadcast' (i.e., a linear audio-visual media service) means an audio-visual media service provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule;

The perspective of the European Community legislator started to change with the approval of Directive 2007/65/EC which not only outlined regulation on cable and satellite television and over the airwaves, but also observed the situation of global televised audio-visual media, with a service rather than an infrastructure-based focus, incorporating audio-visual content in Internet, as defined in art. 1.1.g) of Directive 2010/13/EU:

g) 'on-demand audio-visual media service' (i.e., a non-linear audio-visual media service) means an audio-visual media service provided by a media service provider for the viewing of programmes at the moment chosen by the user and at his individual request on the basis of a catalogue of programmes selected by the media service provider;

We therefore find ourselves facing a new catalogue of visual audio-

visual media services: “linear” and “non-linear”.

The Directive has since 2007 extended the scope of its application to all the audio-visual “media” services, understanding them as the provision of moving images, with or without sound, intended to inform, to educate, or to entertain the public through the so-called electronic networks. These audio-visual media services can either be:

- Linear, when the user must adapt to the broadcasting schedule of the services or content established by the provider, whatever the broadcasting channel (satellite or cable television or over the air; Internet; mobile telephony; *etc.*).
- Non-linear, when the user decides at what moment to access the specific service or content that the provider makes available.

However, despite this important step, the evolution of audio-visual services over the Internet, and the development of video distribution platforms, and online videos on demand has left the modifications of 2007 somewhat obsolete. The new Directive sought to level the different regulations between “linear” and “non-linear” services and to offer a more balanced framework for the set of audio-visual media providers, regardless of either the technology or the infrastructure in use to reach the users.

In the new Directive, a maximum period of 21 months was envisaged for its effective transposition into the legal order of each member State, which implied the opportunity to update Spanish Law 7/2010¹⁰ and to resolve the shortcomings that we have been able to appreciate in its application throughout the past eight years. In this sense, the modification of the Directive was published in November 2018¹¹ and in January 2019 the opportune public consultation¹² was launched by the Spanish government for the modification of Law 7/2010 as a result of the transposition of the Directive on “Audio-visual media without

¹⁰ *Ley 7/2010, de 31 de marzo, General de la Comunicación Audiovisual*. Available at: <https://www.boe.es/buscar/act.php?id=BOE-A-2010-5292&tn=1&p=20130605>

¹¹ Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audio-visual media services (Audio-visual Media Services Directive). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L1808&from=EN>

¹² Preliminary public consultation on the modification of General Law 7/2010, of 31 March, on Audio-visual Media. Available at: [Ministerio de Asuntos Económicos y Transformación Digital - Consulta pública previa sobre la modificación de la Ley 7/2010, de 31 de marzo, General de la Comunicación Audio-visual \(mineco.gob.es\)](https://www.mineco.gob.es/consultas/consultas-publicas/consultas-publicas-2019/consultas-publicas-2019-01)

frontiers”.

3. Principal novelties of the audio-visual Directive 2018

The principal novelties of the 2018 audio-visual media Directive are convergent and are of a transversal nature for all the providers of audio-visual services, both linear and non-linear, seeking to minimize the situation of aggravation and greater regulatory pressure that were affecting conventional television. The rules of the audio-visual Directive were to cover Digital Terrestrial Television (DTT) channels, by cable and by satellite as up until today, and on demand video platforms, such as Netflix, and video distribution platforms, such as YouTube and Facebook, as well as direct retransmissions on those platforms.

In this way, the regulatory lines that were to impact within the whole audio-visual sector and that were to lead to the reform of Law 7/2010 were to be:

Reinforced protection of young people against violence and incitement to hatred and terrorism.

- New rules and limits to commercial audio-visual media.
- On-demand video platforms obliged to offer 30% European production.
- Reinforcement of independent audio-visual regulation.
- Promotion of self-regulation and co-regulation.
- Accessibility of people with disability to audio-visual services.
- Labelling of digital audio-visual contents.
- Media literacy.

The process of incorporating the European Directive into Spanish legislation, which was unexpectedly started up before 2020, took advantage of the opportunity for a general readjustment of Law 7/2010 in other areas such accessibility to contents for people with disability, media literacy, and digital labelling of contents to favour user access to audio-visual services.

3.1. Vectors of change driven by the new Directive

3.1.1. Reinforced protection of young people against violence, incitement to

hatred and terrorism in the audio-visual environment

Since its first drafts, the proposal for a new Directive envisaged the measures that the providers of audio-visual services were to take to combat content likely to incite violence, hatred, and terrorism. In turn, gratuitous violence and pornography were subject to strict rules. The video distribution platforms will assume responsibility for reacting when the users detect the existence of content considered harmful, especially for young people, given their greater vulnerability.

Despite the new Directive establishing no system to filter the content before it is uploaded, the obligation has been incorporated at the request of the European Parliament by which the Internet video platforms will have to create a transparent, simple and effective mechanism, so that users can mark the content detected as harmful, and notify the administrators of the site.

The negotiators of the European Parliament, in this same sense, also managed to incorporate a clause, in order to guarantee the protection of the personal data of young people and to ensure that in no case could the providers use them for commercial ends, including for the preparation of advertising profiles adapted in accordance with consumer spending patterns.

3.2.1. New rules and limits on audio-visual commercial communication

The new draft proposal of the Directive outlined a more balanced framework between the different audio-visual media service providers. The rigidities and scheduling limitations that were appreciated in the earlier legislation assumed a more flexible vision and adjusted to the new reality of linear and non-linear service provision legislation, in which it is not possible to introduce viewing provisions for a particular time. So, advertising was set at a maximum of 20% broadcasting time between 6:00 and 18:00. In this sense, the same limit of 20% was applied to the highest viewing times, which was set between 18:00 and 0:00.

There were also new rules on advertising and positioning of products between programmes for children. With the aim of guaranteeing greater protection of young children, the placement of products and teleshopping were permitted in programmes directed at the young population.

The prohibition or otherwise of sponsorship in programmes directed at children was made a decision of the member States of the European

Union.

3.3.1. Obligation for on-demand video platforms to offer 30% European production

According to the data in the hands of the Commission, the European television broadcasting firms invest around 20% of their turn-over in original material, and the on-demand providers invest less than 1%. The European legislator has sought to solve this imbalance with the purpose of driving cultural diversity in the audio-visual sector; the on-demand video platforms are now obliged to source a minimum of 30% European audio-visual material in their catalogue.

The video distribution platforms also have to contribute to the development of European audio-visual production, through direct investment in content and with contributions to national funds. In this way, the level of contribution in each country must be proportional to the income from on-demand video in that country.

The text of the new Directive also incorporated provisions on accessibility, integrity of the signal, and reinforcement of the regulatory bodies, insofar as it referred to the introduction of these new obligations on video platforms, as providers of non-linear audio-visual services.

3.4.1. Promotion of independent regulation

The European legislator took a decisive step in favour of the incorporation of self-regulation and co-regulation in the audio-visual sector without undermining the actions of public bodies, guarantors of the public interest and its protection, which in this field is represented by the independent regulatory authorities. The Directive granted them greater protagonism and called for their strengthening, throughout the Union, with the express and decided recognition of the European Regulators Group for Audio-Visual Media Services (ERGA).¹³

The liberalization of the audio-visual services markets comes through the introduction of digital technology, which offers more efficient usage of the scarce resource that is the radio broadcasting spectrum, which on the one hand makes it possible to increase televised programming and, on the other hand, to access audio-visual services through different infrastructures. Despite the above, which qualitative aspects will improve the contents that bring better offers is still unclear, with regard

¹³ <https://ec.europa.eu/digital-single-market/en/audio-visual-regulators>

to contents with values. The greater multiplicity of channels has as yet not contributed to a better quality of content that should lead to the construction of a more integrated Europe, showing solidarity, generating new narratives of transition at a time in history marked by the need to introduce urgent co-existential and eco-systemic changes. The audio-visual must be understood as an essential cultural space for social construction in which the public have the opportunity to express their feelings, their cultural and existential concerns; audio-visual is much more than market and business opportunity.

In the framework of the Digital Single Market Strategy for Europe,¹⁴ the proposal for a European Directive approved on 25 May, 2016, required that the EU member States have an independent regulatory authority for the audio-visual sector, as one of the options to respond to the absence of equitable competences. In that sense, it establishes a series of requirements to uphold their independence and effectiveness. Likewise, both the role and the function of coordination and assessment of the European Regulators Group for Audiovisual Media Services (ERGA) is reinforced and included within the structure of the Audio-visual Media Services Directive (AMSD).¹⁵

In their whereas clauses, the Proposal for a Directive agreed by the European Parliament and the Council on 2 October 2018, pointed out that:

Member States should ensure that their national regulatory authorities or bodies are legally distinct from the government. However, this should not preclude Member States from exercising supervision in accordance with their national constitutional law. National regulatory authorities or bodies should be considered to have achieved the requisite degree of independence if those authorities or bodies, including those that are constituted as public authorities or bodies, are functionally and effectively independent of their respective governments and of any other public or private

¹⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions “A Digital Single Market Strategy for Europe” 6 May 2015, COM (2015) 192 final. Available at: http://ec.europa.eu/priorities/digital-single-market/docs/dsm-communication_en.pdf.

¹⁵ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (Codified version) (Text with EEA relevance)

body. That is considered essential to ensure the impartiality of decisions taken by a national regulatory authority or body. The requirement of independence should be without prejudice to the possibility for Member States to establish regulatory authorities that have oversight over different sectors, such as the audiovisual and telecommunications sectors. National regulatory authorities or bodies should have the enforcement powers and resources necessary for the fulfilment of their tasks, in terms of staffing, expertise and financial means. The activities of national regulatory authorities or bodies established under Directive 2010/13/EU should ensure respect for the objectives of media pluralism, cultural diversity, consumer protection, the proper functioning of the internal market and the promotion of fair competition.

With a view to guaranteeing a coherent application of the regulatory framework of the audio-visual sector in all the member States, the Commission set up ERGA through a Decision of 3 February 2014.¹⁶ The function of the ERGA was to assess and to assist the Commission in its work of guaranteeing the coherent application of the Directive 2010/13/EU in all member States and to facilitate cooperation between the regulatory national authorities, as well as between these authorities and the Commission. The positive contribution of the ERGA to the coherence of regulatory practice has provided high-level assessment to the Commission on questions related with the application. Therefore, the proposal of the Directive includes the formal recognition and the reinforcement of its role.

The new text maintains as fundamental that the member States establish up-to-date registers of media service providers and providers of video exchange platforms under their jurisdiction. The information must be periodically shared with the authorities and independent regulatory organisms and with the Commission. Those registers must include information on the criteria upon which the jurisdiction is based.

The European legislator sent out a direct message in the text of the Directive to the member States. They had to ensure that their authorities or national regulatory bodies were legally independent of the government. Although it was specified and pointed out that “this Directive should not in any way prevent Member States from applying

¹⁶ Commission Decision of 3.2.2014 on Establishing the European Regulators Group for Audiovisual Media Services.

their constitutional rules relating to freedom of the press and freedom of expression in the media.”

The Commission and the European Parliament considered that the authorities or national regulatory bodies have reached the necessary degree of autonomy when they function independently both of their respective governments and of any other public or private body. Something that was essential to guarantee the impartiality of the decisions that were adopted.

Member States should ensure that their national regulatory authorities or bodies are legally distinct from the government. However, this should not preclude Member States from exercising supervision in accordance with their national constitutional law. National regulatory authorities or bodies should be considered to have achieved the requisite degree of independence if those authorities or bodies, including those that are constituted as public authorities or bodies, are functionally and effectively independent of their respective governments and of any other public or private body. That is considered essential to ensure the impartiality of decisions taken by a national regulatory authority or body. The requirement of independence should be without prejudice to the possibility for Member States to establish regulatory authorities that have oversight over different sectors, such as the audiovisual and telecommunications sectors. National regulatory authorities or bodies should have the enforcement powers and resources necessary for the fulfilment of their tasks, in terms of staffing, expertise and financial means. The activities of national regulatory authorities or bodies established under Directive 2010/13/EU should ensure respect for the objectives of media pluralism, cultural diversity, consumer protection, the proper functioning of the internal market and the promotion of fair competition (EU Directive 2018/1808 Audio-visual Media Services Directive, Whereas clause 53).¹⁷

¹⁷ Whereas Clause 53 of the Directive 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market

A situation that is not fully guaranteed in many Member States, and which might call for reorganization of administrative, financial and institutional roles within the regulatory framework of Law 3/2013,¹⁸ in which the roles and duties of both the “non nato” Consejo Estatal de Medios Audio-visuales (CEMA)¹⁹ [State Audio-Visual Media Council] and the Comisión Nacional de los Mercados y la Competencia (CNMC) [National Commission of Markets and Competition] are incorporated, without it having really become operational and without it having offered results. It may be said, therefore, that Spain from the perspective of the European Directive, lacks an independent audio-visual authority with defined and guaranteed powers.

3.5.1. Self-regulation and co-regulation

In such a dynamic sector as the communications sector, it is increasingly complex and ineffective to propose regulatory frameworks such as those at present, which are characterized by their rigidity and lack of adaptation to the changes that take place within the environments that they seek to regulate. A good enough example in itself is the case of the initiative to modify Directive 2010/13/EU that is analyzed here. Its passage into law started on 25 May 2016 with the Proposal from the Commission, today, after over two years of debate it was finally approved and published in the Official Journal of the European Union²⁰ as Directive (EU) 2018/1808 at the end of November 2018. As from that point, there was a period of 21 months, so that it could be transposed into the legal order of each Member State, i.e., in September 2020. In summary, we may wait for over four years, from when a regulation is necessary until it is transposed into law in a member State. How many things can change in four years within the audio-visual sector? These regulations are condemned to obsolescence before even having been effectively brought into existence.

Through the Communication to the European Parliament and the

realities. Available at: <https://www.boe.es/buscar/doc.php?id=DOUE-L-2018-81889>

¹⁸ *Ley 3/2013, de 4 de junio, de creación de la Comisión Nacional de los Mercados y la Competencia*. Available at: <https://www.boe.es/buscar/pdf/2013/BOE-A-2013-5940-consolidado.pdf>

¹⁹ *Título V de la Ley 7/2010, de 31 de marzo, General de la Comunicación Audio-visual*. BOE Num. 79 1 April 2010. Available at: <https://www.boe.es/boe/dias/2010/04/01/pdfs/BOE-A-2010-5292.pdf>

²⁰ Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities.

Council on “Better regulation: Joining forces to make better laws”²¹ of May 2015, the Commission stressed that when studying political solutions, it would take into account both reglementary and non-reglementary solutions, following the Community of Practice model and the principles for better self-regulation and co-regulation. It has been demonstrated that various codes of conduct established in the fields mentioned in Directive 2010/13/EU were well thought out, in consonance with these principles.

It is understood that specific objectives and goals must be established in the codes that ensure periodic follow-up and evaluations of the codes of conduct that are independent and transparent. Likewise, it is foreseen that the media must ensure the effective application of the codes of conduct. In the new text of the audio-visual Directive, self-regulation can be considered a complementary method for applying certain provisions of the Directive itself, without it undermining in any way the obligations arising from national legislative powers.

Co-regulation, in its minimum expression, provides a “legal link” between self-regulation and national legislative power, in accordance with the legal traditions of member States and it is co-regulation where the regulatory function is distributed between the interested parties and the government or the authorities or national regulatory bodies.

In the new text, the function of the public authorities within each country includes recognition of the system of co-regulation, control over its processes, and the financing of the system. Likewise, the possibility of state intervention must be retained, in case its objectives are not met, for which reason it encourages the use of self-regulation and co-regulation among the member States and legislation along those lines.

Aspects are also pointed out that, in the new Directive, are considered especially susceptible to be approached through self-regulation and co-regulation, such as the Directives on food and alcoholic drinks, commercial media (new wording of art. 9 of the Directive), the consumer protection and public health in the audio-visual world.

The text of the Directive includes the provision that ERGA must assist the Commission to contribute knowledge and technical assessment and to facilitate exchange of better practices on codes of conduct for self-regulation and co-regulation.

²¹ Available at: <http://data.consilium.europa.eu/doc/document/ST-9079-2015-INIT/en/pdf>

3.6.1. Accessibility of people living with disability to audio-visual services

Since the approval and the ratification of the UN Convention on disabled people's rights by various countries and the European Union, guaranteeing access to audio-visual content is considered an indispensable condition.

In the context of Directive 2010/13/EU, the term "disabled people" must be interpreted in the light of the nature of the services covered by the above-mentioned Directive. The rights of people with disability and older people to participate and to integrate in the social and cultural life of the Union is linked to the delivery of accessible audio-visual media. Member States must guarantee, without undue delay, that the providers under their jurisdiction actively promote accessibility to their contents for disabled people, in particular with visual or auditive disabilities, within the set of audio-visual services, whether "linear" or "non-linear". The entry into force of the new Directive in each member State implied that the measures that were previously put into practice for the broadcasters of free DTT, both public and private, were extended to and incorporated in the video platforms and audio-visual services with conditional access.

Accessibility to audio-visual media services in accordance with Directive 2010/13/EU must include, among other aspects, sign language, subtitling for deaf people and the hard of hearing, spoken subtitles, and acoustic descriptions. However, neither the features or the services that provide access to audio-visual media services, nor the accessibility features of on-line programme guides were covered in the Directive. The Directive was therefore understood without prejudice to any Union legislation with the objective of harmonizing accessibility to audio-visual media services, web sites, on-line applications, electronic programme guides, and the supply of information on accessibility in accessible formats, including emergency information.

3.7.1. Labelling of digital audio-visual content

In the new convergent environment, the Directive gives us to understand that the labelling of the audio-visual metadata must be promoted which means that a work is labelled as European and, naturally, the characteristics of any such work, its suitability for a certain age group, and its accessibility for people living with a disability. These metadata are decided upon by the media service providers, for their management in favour of improving the audio-

visual service and information destined for their users.

3.8.1. *Media literacy*

The tool that is considered fundamental to make available to present-day and future users of audio-visual services is “media literacy”, a discipline that covers the roles, knowledge, and comprehensive capabilities with which the public can make effective and safe use of the media. Media literacy goes beyond gaining skills for the use of technologies and equipment, which remain complementary to the basic objective that is centred on the capability to activate a critical awareness, the understanding of what the media are relating and why, and identifying the interests that exist in the messages. Nevertheless, when drafting the Directive, the importance of preparing and broadcasting messages from the people was overlooked, the importance of decisive support to the Third Sector, where literacy is gained through practicing the right to communication.

The new Directive makes it clear that:

In order to enable citizens to access information and to use, critically assess and create media content responsibly and safely, citizens need to possess advanced media literacy skills. Media literacy should not be limited to learning about tools and technologies, but should aim to equip citizens with the critical thinking skills required to exercise judgment, analyse complex realities and recognise the difference between opinion and fact. It is therefore necessary that both media service providers and video-sharing platforms providers, in cooperation with all relevant stakeholders, promote the development of media literacy in all sections of society, for citizens of all ages, and for all media and that progress in that regard is followed closely.

In the same sense, the weaknesses pointed out in relation to literacy are worth remarking upon, as well as a final appreciation on the recommendations of the Directive, the abandonment of radio, which is still nonetheless an audio-visual transmitter of culture and messages that deserves attention with regard to the use of the spectrum, business concentration, and quantity of contents. The radio continues to be a mass media affected by new uses, although its problems are limited more to ownership concentrated within each State than to the regulation

of contents in defence of the common cultural space, due to idiomatic questions. Nevertheless, community regulations should set guarantees for plurality in the market, the preservation of different areas of coverage, especially valuing local content and protection of autochthonous cultural productions, with a content that is fundamentally musical. This gap at present maintains radio in a regulatory limbo that prejudices the health of an audio-visual model that should be contemplated in its integrity.

II. And meanwhile in Spain ... from the dictatorship to the Constitution of 1978 and the new European audio-visual framework

1. Background to audio-visual regulation in Spain in the context of the European Union

On the basis of the rights and liberties of public communication in art. 20 of the 1978 Spanish Constitution²², a system of resources in permanent tension has been constructed between the desired plurality for reflecting public opinion and the tendency toward business concentration in large groups, a situation that affects both radio and television. A situation of risk that is evidence of a democratic deficit.

The first measures opening up society after the dictatorship were related with the reform of the public media. Law 4/1980, of the Radio and Television Statute,²³ laid the first stone of the legislative building of the Spanish radio-television broadcasting systems, ensuring the public commitment of RTVE (Bel, Corredoira and Cousido, 1992 and 1995).

The second of the measures was related to radio. During the dictatorship, public radio lived alongside private commercial radio, a unique case in the Europe of public monopolies. The abnormality in this Spanish-style coexistence lay in the interdiction on broadcasting news items and the obligation to connect to the news broadcasts of National Radio that affected commercial radio. There was an extensive presence of radio following the transition to democracy in Spain and the influence of radio marked current affairs, a situation favoured by the inexistence of private television that was not to appear until 1989, after the approval of Law 10/1988 (Chaparro, 2002; García Castillejo, 2014). The number of radio bandwidths and stations were extended with the

²² Spanish Constitution of 1978. <https://www.boe.es/legislacion/documentos/ConstitucionCASTELLANO.pdf>

²³ Ley 4/1980, de 10 de enero, del Estatuto de la Radio y la Televisión. <https://www.boe.es/boe/dias/1980/01/12/pdfs/A00844-00848.pdf>

approval of the Technical Plan of 1978 (RD 2648/1978 of 27 October).

The reform of the public media grouped under the Public Broadcaster RTVE was accompanied by concessions of radio licenses with the objective of constructing a more plural system. The different technical plans approved between 1978 and 2006, facilitated the call for public competitions and tenders, first through the exclusive competence of the State and then the Autonomous Regions.²⁴ In any case, the objectivity of the tender procedures have been heavily biased, due to criteria relating to political parties and the interests of media firms. The inexistence of an audio-visual state agency, leaving aside the CNMC that does not truly serve those ends, has contributed to this permeability of political-economic-media interests, to design a map that is basically dominated by three generalist chains (SER, Onda Cero, COPE), whose present-day firms (Prisa, Atresmedia, COPE) include other mainly musical satellite chains, to which may be added the musical programs of the Radio Blanca group.

The LOT, Law 31/87 on Telecommunications Ordination, should have set up a framework to correct the errors committed in the planning of the spectrum bandwidths and the award of licenses in competitions that were far from transparent. In reality, it only introduced a significant novelty, recognition of local municipalities to equip themselves with the means for local broadcasting that was one-hundred per cent public (up until then the municipal radios remained in the limbo of quasi-legality), as well as the competence of the historic Autonomous Regions (through Art.151 of the Constitution) to manage radio broadcasting

²⁴ The so-called historic Autonomous Regions or Communities (among which, Andalusia, Catalonia, Eus kadi, and Galicia) were awarded these statutory competences in 1978, as a result of two judgements 26/1982 of 24 May and 44/1982 of 8 June of the Spanish Constitutional Court. —Judgement of the Constitutional Court 26/1982 on a positive conflict of competence num. 181/1981, brought by the Government of the Nation, represented by the Solicitor General of State, against the Generalitat [Regional Government] of Catalonia, represented and defended by don Manuel María vicens i Matas, lawyer in relation with Decrees 82/1981, of 10 April, which prolongs the deadline established in the Decree of the Generalitat 175/1980, of 3 October, for the resolution of the requests for the concession of frequency modulation signal bandwidths relating to the first phase of the Technical Radiobroadcasting Plan on frequency modulation signal bandwidths, and 83/1981, of 13 Abril, in development of the second phase of the aforesaid Technical Plan, both Decrees published in the “Official Journal of the Generalitat de Catalunya” num. 121, of 15 April 1981. Available at: <http://hj.tribunalconstitucional.es/de/Resolucion/Show/68>

—Judgement of the Constitutional Court 44/1982 on a positive conflict of competency num. 38/1982, brought by the Solicitor General of State, in representation of the office he holds, against the Basque Government, on the concession of frequency modulation signal bandwidths for radio broadcasting. This decision was subsequently applied to the other Autonomous Communities through Organic Law 9/1992 on the transference of competencies to the Autonomous Communities whose autonomic status is granted in art. 143 of the Constitution.

services. A situation that would subsequently be regulated through Royal Decree 10/89 through which the National Technical Plan on Frequency Modulation Bandwidths for Radiobroadcasting was approved.

The two legal texts that are referenced might have implied a before and after, had they measured the willingness to correct the shortcomings that were detected. Some of the greatest errors were to continue, maintaining a system of discretionary and arbitrary concessions, exclusively conceived for strictly local broadcasters, when the facts demonstrated that most of them had finally been converted into stations that relayed the programs of radio station chains. The removal of local programming in commercial radio implied a serious loss for the news ecosystem when the local media disappeared, fundamental for territorial construction through the generation of public opinion knowledgeable of its reality and with critical capacity.

The LOT, as the first great legislative effort to reform the legislation approved to date in broadcasting matters had to divide the radio spectrum into packets of frequencies as they were assigned to stations broadcasting in chains for state, autonomous, or strictly local coverage, with the purpose of occupying three essential areas of coverage. Maintaining the earlier criteria constituted a clear concession to the interests of the chains, so that they continued distributing almost all of the frequencies through competitions plagued with irregularities and through the opacity of legal tenders.

Art. 3. Competences for legislative development and implementation were transferred to the Autonomous Communities of Asturias, Cantabria, La Rioja, the Region of Murcia, Aragon, Castilla y León in the framework of basic State legislation and, if necessary, in the terms established therein, legislative development, and implementation in the following areas:

(...) e) Press, radio, television, and other social media.

Five categories of radio broadcaster were contemplated in the tendering procedures in France, to avoid this abusive use of frequencies as radio relay stations:

Category A: Local community radio broadcasting. Financing from advertising accepted, provided that it was not over 20% of annual income.

Category B: Independent local and regional radio broadcasting

exclusively within their areas of coverage. Not allowed to transmit a national program.

Category C: Local and regional radio services that transmit the program through a known national network.

Category D: National radio services.

Category E: Generalist national radio services.²⁵

In these procedures that opened up democracy, Law 46/1983, on TV Channel III, broadened the public spectrum with an offer of greater proximity, extending the regional channels to all Autonomous Regions. Public television and radio within those Regions or Communities despite providing the service directly through especially created firms, did so through administrative concessions, as it is an essential State-owned public service, in the terms established in the Law of 1980.

On 3 May 1988, with the approval of Law 10/1988, on Private Television,²⁶ competition began between the public and the private television sectors within Spain. The formal inauguration of the first analogic broadcasts had to wait until the start of 1990, which exactly 20 years afterwards, on 3 April 2010, ended with the definitive deployment of DTT. Without any doubt, key events within the sector.

The Spanish television model, which up until that moment was still moving within the confines of the public monopoly of TVE under stage coverage, shared in some Autonomous Regions, entered into a new phase of competition for audiences. The television audio-visual sector underwent an authentic avalanche of new offers of contents, formats, and cathodic experiences that implied a before and an after for television, both in the way it was produced, and in the way it was watched by viewers. Mistakenly, the term zapping initially meant being able to choose between various television channels, as a synonym of freedom. A plurality of offer that it is worth observing in greater detail with a critical eye through business paradigms and diversity of news content. Reality has demonstrated that a greater number of channels brings with it no greater quality nor utilities for the users, nor significantly enriches the narrative plurality.

The Spanish media ecosystem is enriched from a legal perspective through Law 41/1995, on Local Television²⁷ (Chaparro, 1998), Law

²⁵ Categories listed on the CSA website: <https://www.csa.fr/Informer/PAF-1e-paysage-audiovisuel-francais/Les-radios-en-France>

²⁶ *Ley 10/1988, de 3 de mayo, de Televisión Privada*. Available at: <https://www.boe.es/boe/dias/1988/05/05/pdfs/A13666-13669.pdf>

²⁷ *Ley 41/1995, de 22 de diciembre, de Televisión local por ondas terrestres*. Available at: <https://www.boe.es/boe/dias/1995/12/27/pdfs/A36940-36944.pdf>

42/1995, on Cable Telecommunications²⁸ and the regulation of satellite digital television platforms, gave Conditional Access to digital television.²⁹ Although it is true that these laws entered into force after their publication in the Boletín Oficial del Estado (BoE) [Official State Gazette], their enforcement was gravely compromised, because their reglementary development -especially in the case of the two laws approved at the end of the socialist legislature- were postponed. This context generated authentic “law-of-the-jungle” situations, such as in the case of local television, in which over 600 channels without official status filled the bandwidths. The situation was not definitively resolved until the approval of the Plan Técnico Nacional de Televisión Digital Terrestre Local (PTNTDTL)³⁰ [Technical Plan for Local Digital Terrestrial Television of the Council of Ministers] of 12 March 2004, almost ten years after the entry into force of its Law.

The Technical Plan was bound to fail before it was launched, because it established demarcations within the local area which were neither consistent with the existing reality of broadcasting, nor with natural areas and which in addition obliged various municipalities to share a channel in the case of public operators. In this case, the existence of a strictly local television moved to a pseudo-regional model. The private operators never invested great interest in the tender offers, except in metropolitan areas, because the competition for advertising on three private and one public channel was impossible in zones with little or no options for advertising investment. The participation of private firms within these competitions was due to a greater interest in amassing licenses and analyzing subsequent options for their sale, protected by the permissiveness of the legal tender. The PTNTDTL turned out to be an evident disaster, a failed model that prejudiced the public operators and opened up business horizons with, in many cases, spurious interests.

In this narration of legislative proposals and mishaps, the entry of Spain in the era of digital radio and television, took place with Law 66/1997, of 30 December, on Tax, administrative and social order measures.³¹ In its additional Provision 44^a, it introduced the basis of

²⁸ *Ley 42/1995, de 22 de diciembre, de las telecomunicaciones por cable.* Available at: <https://www.boe.es/boe/dias/1995/12/23/pdfs/A36790-36796.pdf>

²⁹ *Ley 41/1995, de 22 de diciembre, de Televisión local por ondas terrestres.* Available at: <https://www.boe.es/boe/dias/1995/12/27/pdfs/A36940-36944.pdf>

³⁰ *Ley 42/1995, de 22 de diciembre, de las telecomunicaciones por cable.* Available at: <https://www.boe.es/boe/dias/1995/12/23/pdfs/A36790-36796.pdf>

³¹ *Ley 17/1997, de 3 de mayo, por la que se incorpora al Derecho español la Directiva 95/47/CE, de 24 de octubre, del Parlamento Europeo y del Consejo, sobre el uso de normas para la transmisión*

DTT and digital radio through two amendments approved in the Senate, feeding into subsequent regulatory developments that were evident in the approval of the corresponding national technical plans. As from that point, the tender and the awards took place in two competitions, which, in 2000, led to the appearance of an offer to subscribe to a paid multichannel television media, with the commercial name of “Quiero TV” [I want TV], which ended in failure within a strongly competitive commercial environment with multiple satellite and cable television pay-on-demand offers.

In 1999, the Government also awarded both concessions to two private DTT operators, “Vevo TV” [I watch TV] and Net TV, which ended up as “orphans” within the DTT space, in which they were only accompanied by the offer in simulcast of analogue operators with state coverage. At that time, most of the programmes were in analogue and the digital receptors were practically inexistent, as happened with radio. This orphanhood only ended with the subsequent modification of the National Technical Plan and the relaunch in 2005 of the DTT32 in Spain, with the obligatory migration of all analogue offers following EU directives. This improvisation and forcing of legality have been constants, something which in Spain no government has escaped.

The community televisions were in a high-risk situation, which was alleviated to some extent by the 18th Additional Disposition of Law 56/2007, on measures to Promote the Information Society.³³ This Disposition foresaw the future planning of frequencies for community TV, a great legislative advance in favour of the television biodiversity that must be consolidated through bandwidth planning and measures to incentivize it. Nevertheless, even after some years, the planning is still to be implemented and media incentives for the Third Sector are still a significant part of the democratic deficits.

With regard to digital radio, the Technical Plan for digital radio broadcasting (RD 1.287/1999) contributed no changes for all practical effects. The lack of receptor apparatus at an accessible price, at that time the most economic had a minimum cost of between 1,800 and 2,400 Euros, and scant few European initiatives in the sector, prevented the manufacturers from launching a product on the market at a more

de señales de televisión y se aprueban medidas adicionales para la liberalización del sector.
Available at: <https://www.boe.es/buscar/doc.php?id=BOE-A-1997-9711>

³² *Real Decreto 439/2004, de 12 de marzo, por el que se aprueba el Plan técnico nacional de la televisión digital local.* Available at: <https://www.boe.es/boe/dias/2004/04/08/pdfs/A14694-14716.pdf>

³³ *Ley 66/1997, de 30 de diciembre, de Medidas Fiscales, Administrativas y del Orden Social.*
Available at: <https://www.boe.es/boe/dias/1997/12/31/pdfs/A38517-38616.pdf>

competitive price. Days after the general elections of March 2000, the government of Prime Minister Aznar issued the first ten digital radio licenses. The frequencies were awarded to groups with previously existing general analogue broadcasting chains: SER, COPE, Onda Cero. Likewise, there were some new chains: Planeta-Luis del Olmo, Intereconomía, ABC, El Mundo, Onda Digital, Radio España-Tabacalera, and Recoletos. In November of the same year, two new concessions were issued to the Correo-Telecinco and Godó groups. The concessions came with the obligation for the successful candidates to prepare programmes that differed from their analogue broadcasting schedule, to try to consolidate a new and attractive schedule of programmes for viewers.

As of today, that rushed planning has had no effects, digital radio listeners are few and far between and faced with levels of general disinterest, the analogue shutdown on radio is still not 100% effective throughout Spain. Nevertheless, less costly listener devices for digital radio and the broad coverage of this service in European countries — Germany, Switzerland and the Czech Republic have set the shutdown for 2025 and in others, such as Norway, it is already a reality— might change this panorama and incentivize digital terrestrial radio.

It must be highlighted that when planning the bandwidth assignments, neither the interests of local commercial radio nor the local public and community radios have been taken into account. Digital Audio Broadcasting (DAB), now with well-known improvements such as DAB+, is the system adopted in Europe for the distribution of the signal through six-channel multiplex, a question that lacks sense for many areas of local coverage where the advertising market is incapable of supplying to so many broadcasting stations, aside from the technological investment that the licensees might be obliged to undertake (Chaparro, 2002). In 2001, the International Telecommunication Union (ITU) approved a technological alternative to DAB+ which might offer a solution to local radio: World Digital Radio (WDR) already tried and tested in some public European consortiums in France, Germany, Holland, and Great Britain for its overseas services, as well as by the USA. WDR is moreover based on open-access software.

2. *Ley 7/2010 General de la Comunicación Audio-visual (LGCA)* [General Law 7/2010 on Audio-Visual Communication]

On 18 March 2010, after calls for it over many years within the

audio-visual sector, the General Law 7/2010 on Audio-Visual Communication was approved in the Spanish Parliament. This Law constituted the basic legislation for radio and television in Spain and its Autonomous Regions and expressly repealed eighteen preceding norms that had generated a scattered normative scenario and legal insecurity, which was intolerable within the sector.

The General Law on Audiovisual Communication (Spanish acronym: LGCA)³⁴ is presented as a basic norm for both the private and the public sector, setting minimum principles that should inspire the presence of public operators, providers of public radio, television, and interactive services within the audio-visual sector. These principles are grounded in community regulations and recommendations on public financing compatible with the Founding Treaty of the European Community, especially its art. 151, independent control through regulatory organisms, guarantees of rights and their protection (Zallo, 2010).

2.1. *Content of normative television*

In its initial paragraphs, the LGCA sets out the long list of its objectives, committing itself to the prevention and the elimination of gender discrimination, within the framework of what was established in matters of publicity and means of communication in Spanish Organic Law 1/2004, of 28 December, on Integral Protection Measures against Gender Violence. The purposes were always good, but the reality of the contents of the programmes and the vertigo of the avalanche of advertising, faced with the absence of rigorous controls, prevented the desired outcome of a successful conclusion. *Public television and rights*

The LGCA created a framework focused on guaranteeing the public right to receive audio-visual communication under conditions of cultural and linguistic pluralism—which implies the protection of European and Spanish audio-visual works in their different languages—, as well as calling on the authorities to adapt the contents to the constitutional order and to the obligations of the providers in relation to youth and people living with disabilities.

With regard to the rights of the providers of audiovisual communications services, that service can be delivered under conditions of relative freedom with regard to the selection of contents, the editorial line, and the emission of channels, which in the case of

³⁴ Art. 2 of *Ley 7/2009, de 3 de julio, de medidas urgentes en materia de telecomunicaciones* (procedente del Real Decreto-ley 1/2009, de 23 de febrero).

electronic communications are freely available. Likewise, the possibility and the conditions of self-regulation and broadcasting of advertising content are recognized, constituting another two large sections of rights within the Law. With reference to publicity, the Law is conceived as an instrument of consumer protection against the broadcasting of advertising messages of all forms with regard to time and content. Likewise, it incorporates a basic regulating norm to prevent abuse and mistaken interpretations that have, in the past, led to the initiation of proceedings and serious arguments whenever interpreting European precepts. Nevertheless, the Law makes more reference to television than to radio, placing no limits on the number of its impacts at any time.

The Law sets out the principal of freedom of trade and industry and establishes the basic legal regime for the delivery of audio-visual media services. Thus, the difference between those that only require previous communication, because their segment is liberalized and those others that, because of using public radio on Hertz bandwidths and having limited capacity, need a license previously awarded in a public competitive tender held according to the terms set down in the public offer.

Likewise, the LGCA is a transposition of the principles of European ownership and reciprocity into the internal legal order of Spain. In this context, the ten-year license period changed to fifteen years and, if certain requirements were met, that period was automatically renovated, whilst acknowledging the possibility of leasing or passing on licenses under certain conditions. Likewise, conditional or paid access was regulated, as a right of the license holders, limiting it to 50% of the channels granted each license, in order to guarantee an extensive offer of television open to all viewers.

In another area, the right of access to electronic media services, to chain broadcasting of radio media services, and to community audio-visual services, solely conceived for that purpose with no commercial ends, was recognized in the Law under conditions of full interactivity. Likewise, a specific regulation was established with respect to “new technological entrants” or, as they are referred to in the Law, new forms of audio-visual media: High Definition and interactivity, permitting the possibility of single decoders that access all the interactive services on offer, with the cost-cutting that it implies and the final-user facilities of these services.

Among its aims, the LGCA aims to guarantee pluralism and to free competition in the market for radio and television, given the importance

of these media in shaping public opinion. In this sense, we should note that the reality of a concentrated market for both radio and television was a basic assumption of the Law, a circumstance that contradicted the guarantees of pluralism that it pursued.

Legislation on private commercial television has been fine-tuned, in such a way that it has moved from an initial requirement that no shareholder of a channel own over 25% and be present in other competitor firms, to permitting 100% capital ownership in a single physical or legal person and, finally, to being able to have a presence in more than one firm. An assumption of the LGCA is that those circumstances that were at first a matter of fact and then a matter of Law, such that the possibility of holding significant shares in various service providers with state media coverage was recognized, a right that is limited if accumulating over 27% of the audience of viewers and listeners at the time of the merger or acquisition.³⁵

The criteria of audiences when evaluating positions of dominion over the market is aligned with “pliant” regulatory solutions from other countries within the European scenario. The whimsical percentage of 27% was because, just at the time of the approval of the Law, that figure was exactly the maximum share of screen viewers that the dominant group had accumulated. It said nothing of limits, if that quota increased in excess of the aforementioned percentage.

A single shareholder may not hold significant shareholdings in operators of audio-visual media services that acquire over two multiplex (minimum eight channels) services and, in any case, must guarantee a minimum of three private state operators for the television market with state coverage.³⁶ A reasoning that, as may be observed in the following table, favoured multiplex channels.

The General Law on Audio-Visual Media of 2010, ended the legal principle that had since 1980 been laid down in the Statute of Radio and Television, in which these media were considered as an essential “state-owned public service”, in order to privatize them, and it went on to declare that:

Audio-visual radio and television media services, televised networks and interactive services are services of general interest that are provided in the exercise of the right to free expression of ideas, the right to communicate and to receive information, the

³⁵ Art. 2 *ibid.*

³⁶ Arts. 22, 36 (in the case of television), 37 (in the case of radio) and in agreement with *Ley 7/2010, de 31 de marzo, General de la Comunicación Audiovisual.*

right to participation in social and political life, and the right to freedom of trade and industry and within the promotion of equality, plurality, and democratic values (Art. 22.1 General Law 7/2010 on Audio-Visual Media).

RGE1	RGE2	MPE1	MPE2	MP	MP	MP	AUT
GROUPS							
rtve	rtve kiss tv ten	NET TV 	ATRESMEDIA	MEDIASETespaña.	MEDIASETespaña. ATRESMEDIA 13TV	MEDIASETespaña. ATRESMEDIA Pulsamedia TV	REGIONAL TELEVISION
CHANNEL							
1 2	clan HD	Disney Channel América	neox novo	5 cuatro® F.	BONG E.	BE MAD	REGIONAL CHANNELS
clan 1 HD 2 HD	ten KISS	Discovery MAX Vevo®	6 6 HD	d. 5 HD cuatro® HD	MEGA TRECE	A3S TODAY'S Pulsamedia TV	

In this new legal context, the broadcasting of public radio and television services is set down in Title IV of the General Law on Audio-Visual Media when it is defined as an “essential service of general economic interest” which could be provided by the State, the Autonomous Regions, and local Entities, prior to the decision of its competent bodies. The delivery of the public service is therefore the exclusive reserve of the public media and in the case of the State through RTVE. The general objectives that public radio, television and interactive services must seek are established in the Law as broadcasting content that promotes constitutional values; broadcasting varied public opinions; linguistic and cultural diversity; and the broadcasting of knowledge and the arts; as well as attention to minorities. These objectives must be reviewed every nine years through an instrument known as the “mandato marco” [mandate framework] by the regional parliaments or similar bodies at a regional and local level, presented in the “program-contracts” with a validity of three years.

2.2. *Public television and rights*

The rights of the audio-visual media public are widely covered in the LGCA. Televised subjects and rights are defined in the right to receive plural communication (art. 4 and following, to be seen in greater detail in what follows), the right to transparent audio-visual media (art. 6), the rights of youth (art. 7), the rights of people with disability (art. 8), and finally the right to participation in control of audio-visual contents.

The right to transparent audio-visual media is defined in the right to know the identity of the audio-visual service provider, as well as the firms that form part of its group and its share-holders.

In this sense, it is considered that the provider is identified when a web-site is available that states: the name of the service provider; the address of the establishment; email and other means to establish direct and rapid communication; the regulatory organ or competent supervisor, and the CNMC at state level.

The right to see the television program schedule within sufficient time, which in no case will be less than three days, appears under the right to transparent audio-visual media communication.

On the other hand, the broadcasting of audio-visual content that can seriously damage the physical, the mental, and the moral development of young people, and, in particular, the broadcasting of programs that include scenes of pornography, ill-treatment, gender violence, and

gratuitous violence, are all prohibited in the LGCA. Limits are set for the radio on broadcasting of advertisements for alcoholic beverages. In the case of television, Law 7/2010, under art. 13, outlines the right to broadcast commercial advertisements as a right of the audio-visual media service providers and under point 1 states that:

The private providers of the audio-visual communication have the right to create channels that are exclusively dedicated to broadcasting commercial advertising on television. The messages of the aforementioned programs are subject to the general regime laid out in this section, except with regard to limitations on the time of the advertising messages referred to under art. 14, and in the specific norms on publicity. Televised publicity and tele-sales should be easily identifiable as such and distinguishable from the editorial content.

Thus, the audio-visual media service providers can exercise this right through the broadcasting of 12 minutes of advertising every clock hour. The networked and interactive media services have the right to broadcast advertising with no temporal restrictions (Art. 14.1 of Law 7/2010).

Both advertisements and telepromotions are taken into account for the calculation of those 12 minutes, excluding sponsorship and placement. The calculation of telepromotions is also excluded when its individual message is clearly of a longer duration than an advertisement and the combined duration of tele-shopping and advertisements is neither any longer than 36 minutes a day, nor 3 minutes per clock hour.

In addition, the communications on programming and channel-promotion are limited, even though they are not considered computable as commercial advertising, to five minutes per clock hour.

Under art. 14, points 2, 3, and 4, another series of limitations to television advertising is established, for circumstances such as film “trailers”, children’s TV, retransmissions of sporting events, and religious services.

The measures of the Directive on Audio-visual media services (Directive 2010/13/EU) for the protection of broadcasting times are incorporated in the LGCA, with the addition of time bands reinforced in line with the provisions of the Code of Self-Regulation of televised contents and children.³⁷

³⁷ See <http://www.tvinfancia.es>

The rights of disabled people to access audio-visual contents are contained in the LGCA both under art. 8 and under its fifth transitory Disposition, defining the right and its process for incorporation in the televised programme. People with hearing disabilities have the right to view subtitling on 75% of all publicly broadcast programmes and on state or regional coverage and to have at least two hours a week of sign-language interpretation. Likewise, people with visual disabilities have the right to view at least two audio subtitled programs a week on audio-visual televised media with state and regional coverage.

Finally, the right to participation in control over audio-visual contents can be found in the LGCA, such that any physical or legal person can request that the competent audio-visual authority exercise control over the adaptation of the audio-visual contents, in accordance with the legal order and the codes of self-regulation.

In the list of these rights, in no case are the obligations of the broadcasters and radio producers regulated in relation to the content that they broadcast. In the following section, the exclusive obligations for television and their producers that could also have reached radio are specified. Thus, while pursuing the protection of European works through the establishment of obligatory quotas for state and regional television programming, something as basic and necessary as radio broadcasts of national and European musical productions are not protected with the same measure.

2.3. Television and obligations affecting audio-visual production

The right of the public to the inclusion of programming in public television that reflects the cultural and linguistic diversity of the general public is found in art. 4 and following of the LGCA.

This right of the public is defined in the rules imposed on television media services with state and regional coverage on the reservation of percentages of their programming under art. 5 LGCA. So, for the case of European works, the provider must reserve 51% of the annual broadcasting time of each channel or set of channels of a single provider, excluding the time allotted to news, sports events, games, publicity, teletext, and tele-shopping services.

broadcasting will be reserved for independent producers In turn, Section 2 of art. 5 establishes that “for the effectiveness of this right, the providers of the televised media service with state or regional coverage must reserve 51% of their programming time for European productions. Likewise, 50% of that quota is reserved for European works in any of the [official]

languages of Spain”. In any case, 10% of the total of the service provider and half of that 10% must have been produced in the past five years. The providers of a catalogue of programs must reserve 30% of their catalogue for European productions. Among those programs, half will be in some of the official languages of Spain.

3. *Award of DTT without tenders contrary to the LGCA*

The existence of a law hardly even appears to serve to avoid executive decisions being taken on the basis of self-interest and party-political interests, faced with the absence of an independent regulator. In the framework of the transitional process to the DTT, the Council of Ministers adopted the Agreement of 16 July, 2010, on the assignation of multiple digital channels to private providers of audio-visual televised media services that already had broadcasting licenses at the time of the analogue blackout (Antena 3, Telecinco, Cuatro, La Sexta, Net TV, and Veo TV). This action implied the allotment of nine additional television channels to the aforementioned providers without the opportune call for tenders and competitive tender awards, in accordance with the LGCA.

The appeal brought by a non-awarding body, “Infrastructures and Management 2002”, led to a judgement of the Supreme Court of 27 November 2012,³⁸ in which the agreement was annulled; a decision that was ratified on 18 December, 2013, by the Administrative-Contentious Chamber of the Supreme Court.

The Council of Ministers on 22 March, 2013, respected the decision of the Supreme Court. However, it decided on the transitory continuity of the broadcasts “with the purpose of safeguarding the objectives, in the general

³⁸ The Contentious-Administrative Chamber of the Supreme Court issued a writ that implied the end of the broadcasts on nine Digital Terrestrial Television (DTT) channels, acting on its judgement of 27 November, 2012. The High Court repealed in this writ the second point of an agreement of the Council of Ministers, adopted on 22 March 2013. The aforesaid agreement of the Council of Ministers implemented, under its first point, a judgement of the Supreme Court of November 2012. But in the second point, it made clear that the channels affected by that same judgement could continue with their broadcastings “until the liberation process of the digital dividend culminated”. In its writ of enforcement, the Supreme Court upheld the appeal of Infrastructures and Management 2002 against this decision of the Council of Ministers and obliged it to enforce the judgement of November 2012. In that judgement, the Supreme Court annulled the decision of the 2010 Government to assign digital multiplex with state coverage to each of the licensed Digital Terrestrial Television companies. The assignation of a digital multiplex to each of the licensees implied the award with no preliminary competitive tender of nine additional channels. The Supreme Court highlighted that it had been made “crystal clear” in its judgement of 2012 that it was not possible to assign nine channels without a preliminary competitive procedure, following the entry into force of General Law 7/2010, of 31 March, on Audio-Visual Media (Note of the General Council of the Judiciary).

interest”, until the process of reaping the advantages of the digital dividend culminated. In May 2014, the execution of the Supreme Court sentence was upheld and the channels stopped broadcasting.

4. *The public providers of the audio-visual media. Public television (RTVE and regional)*

The basic norms concerning the provision of audio-visual public services, which is qualified as an essential service, are listed under Title IV of the LGCA. The public audio-visual media service is attributed the production, edition, and broadcasting of radio, television, and news service channels in line with various and balanced programs for publics of all types, covering all the genres, with the aim of satisfying information, cultural, education, and entertainment needs within society and to preserve pluralism.

The bodies that provide the public audio-visual media service and their provider companies may not grant production and edition of news programs to third-parties and to those that expressly determine the mandate framework that is approved for each body in development of the corresponding framework of competences. In addition, they will drive the production of their own programming, in such a way that it covers most of the programs broadcast on the generalist chains.

However, the modification in 2012 of the LGCA left open the possibility of normative changes driven by the Regional Communities to permit the privatization of these public services, being able to opt for direct or indirect management. As of today, the Audio-Visual Laws of both Catalonia and Andalusia maintain their regional channels declared essential through direct management, and only in the case of the Regions of Murcia and the Canary Islands has it been decided to privatize all the production apart from the news services.

In the case of Murcia, Law 10/2012, of 5 December, in amendment of Law 9/2004, of 29 December, on the creation of the public firm Radio-televisión de la Región de Murcia (RTRM) [Radio-television of the Region of Murcia], defined an indirect management model for television services and a direct one for radio services, at the same time as it adapted the regional norm to the modifications that were introduced in the General Law on Audio-Visual media, in the aforementioned reform of 2012 driven by the Government of the Popular Party.

In turn, in the case of the Regional Community of the Canaries, Law 13/2014, of 26 December, on Public Radio and Television of the Regional Community of the Canaries (BOC 3, of 7.1.2015), according to its wording in Law 6/2018 of 28 December (BOC 252, of 31.12.2018), even though the

direct management of the service is attributed to the public body Radiotelevisión Canaria (RTVC) [RadioTelevision Canaries], art. 31 of this Law covers the possibility of “private exploitation of programming hours and occasional programming”:

- Art. 31. Private exploitation of programming hours and occasional programming. 1.- In accordance with the provisions of the General Law on Audio-Visual Communication, the companies of the public body RTVC may convoke competitive public procedures for the private exploitation of certain programming hours or occasional programming on television and/or radio channels, respecting the principles of functioning set down in art. 3 of this Law.*
- 2.- The determination of conditions and/or time bands that are subject to competitive procedures that will follow the general criteria corresponds to the Control Committee, at the proposal of the General Management.*
- 3.- The income received by the companies managing the television and the radio channels may consist in a fixed amount, in a percentage of the income arising from the exploitation, or in a combination of both payment modes, and may entail their broadcasting and exploitation through digital media and social networks of the public body RTVC or of the aforementioned companies.*

Each regional community is therefore empowered through the LGCA to legislate on the indirect provision of the public radio and television service, not only in the case of the regional channels, but also for the centres under municipal management, which have up until now not been affected, although *de facto* privatization procedures are appearing without the different CCAA demanding compliance with the Law or legislating on the basis of their competencies to avoid those privatizations. This situation is converting the public media into an objective of party politics in need of a profound consensus on the important role that they should play in our society.

In the LGCA, it is important to take into account that the provision of public services is reserved for publicly owned media, in other words, private commercial media are exempted from providing a service that is classified as essential. There is one highly important question that lowers the level of urgency in the use of the bandwidths and that to some degree implies its privatization. Remember that the broadcasting bandwidths are

still scarce assets whose ownership correspond to society as a whole. France and Spain setting precedents, few other European countries have stretched their legislation up to that point. Not even the country that is a model in the defence of the most neoliberal policies, the United States of America (USA), has taken such a significant step that goes against the public interest.

4.1. Public television and financing

Prior to the approval of the LGCA in 2004, the Government drove the reform process of the Spanish audio-visual system, whose first foundation stone was laid with the creation through Royal Decree 744/2004, of 23 April, of the Council for the reform of the state-owned communications media. The resulting draft Law contained the principal recommendations of the Council Report which was coherent with the requirements set out from the EC and that referred in a specific way to the state-owned communications media, *i.e.*, at that time RTVE and the EFE Agency.

The reform work of the audio-visual sector driven by the first government of President Rodríguez Zapatero, covered the state-owned public media, urgent measures to move forward with the transition to DTT, and, at a simultaneous point in time, the approval of a General Law on Audio-Visual media designed to end the normative dispersion was considered. The initiative of that General Law was not approved until the following legislature, in 2010, as we have seen.

5. The new Law of RTVE

The objective pursued when drafting Law 17/2006 was, on the one hand, to endow state-owned radio and television with a legal structure that might guarantee its independence, neutrality, and objectivity, at the same time as establishing organizational structures and a suitable model of financing to achieve its mission of public service with efficiency, quality, and public recognition. Parliamentary intervention was also foreseen in the Law and the supervision of its activity by an independent audio-visual authority.

The Council recommendations were also maintained in the Law:

- Public ownership of state radio and television.
- Reinforce and guarantee its independence, through a statute and appropriate supervisory bodies.
- Confirm its public service character, with the objective of conciliating the social profitability that should inspire its activity.
- Establish a system that guarantees orderly and viable economic

management, based on mixed financing.

—Define the public service function based on quality programming and the promotion of Spanish and European production.

—Foresee guarantees of independence for public media professionals, such as the Consejo de Informativos [News Council], an organ for professional participation, to ensure the neutrality and the objectivity of news contents.

—Establish an Advisory Council that channels the participation of significant social groupings.

The Royal Decree-Law reduced the number of members of the RTVE Corporation Board of Administration from twelve to nine. In this way, three members were removed whose designation corresponded to the Congress of Deputies, two of whom were selected with the backing of the most representative trade unions with a presence in the Corporation.

The reform of the designation system meant that in the case of not achieving the two-thirds majority for the election of the members of the Board of Administration in the corresponding Chamber, the voting was repeated after twenty-four hours. In this case, each Chamber will on the basis of an absolute majority, select the delegates that correspond to them. The same mechanism is applied to the designation of the president of the Board of Administration.

Fixed emoluments were ended in the Royal Decree-Law, which the members of the Board of Administration had up until that point in time received. They were replaced by honorariums for attendance at the sessions of the Board, except in the case of the president.

The following instruments were established for compliance with the mission of the public service:

—a mandate-framework that the Parliament was to approve, defining the general objectives of that public service function, with a life of nine years;

—a triennial program-contract, to which the Government and the RTVE Corporation will subscribe, setting the specific objectives to be developed, prior to the report of the audio-visual authority and having informed the Cortes Generales [Spanish Parliament];

—a system of analytical accountancy that guarantees financial transparency and with which the net cost of public service obligations may be determined;

—and economic-financial supervision in the hands of the Intervención General de la Administración del Estado [General Intervention of the State Administration] and the Tribunal de Cuentas [Court of Audit].

5.1. A new fiasco, Law 8/2009, of 28 August on the financing of the Spanish Radio and Television Corporation

The content of Law 17/2006 of 5 June on state-owned radio and television began with the premise that financing was not to be at the cost of increasing the State contributions when ending, for all practical purposes, advertising income. According to this logic, those that benefitted from this decision, in other words, the private commercial media, should also be the ones that, in part, shoulder the burden of that economic load. Setting a tariff for private operators of public television, paid operators, and operators of electronic media that provide audio-visual services, turned out to be the proposed solution.

Three years having elapsed since the approval of the CRTVE Law, the government substantially modified the financing model, choosing to apply a percentage on the income from operators: 3% for open commercial television, 1.5% for operators of paid television, and 0.0% for telecommunications.

Law 8/2009, created a reserve fund, set up with income in excess of the net cost of the public service that was delivered, either to attend to exceptional situations or to reduce the direct contributions of the State through the General Budget. This fund, which had not been used in four years, was meant to reduce the contributions of the State. Its total or partial use was to be implemented under the supervision and with the authorization of the then Ministry of Economy and Finance. In July 2014, the General Court of the European Union confirmed the validity of this new system of funding of the RTVE that had been the object of controversy. The Court rejected all aspects of the appeals that two electronic media companies presented against a decision of the EC that had upheld the financing system. The Court considered, in two judgements, that the financing system approved was compatible with community norms.

All these attempts to finance CRTVE in accordance with the service that it should offer were bound to fail. The first contract-programme was never finally approved. Although the failure was blamed on the emergent crisis of the advertising market, the reality was once again the politics of an opposition blocking the government that was promoting the measure. The strategy of weakening the public sector after the election of the Partido Popular to government in November 2011 may also be added.

In 2013, CRTVE accumulated losses of a value of 302 million Euros. We must recall that, in accordance with Law 2006, RTVE renounced its status as a public body to constitute itself as a corporation. This step implied that the policies of private indebtedness, promoted by earlier governments to avoid the “criteria of convergence” which sought to lower the levels of public deficit, prevented the “return” of the debt to the public coffers and responsibility for a deficit of over 7,000 million accumulated since 1990.

Along these same lines, the balance has been negative, year after year, since 2010, when the new law on financing RTVE entered into force, accumulating losses of 47 million in 2010, 29 million in 2011, and 113 million in 2012 and 2013, respectively.

The model of financing favoured by the European Court of Justice (ECJ), through which the financing of CRTVE was made dependent on the turnover of private operators, has caused intense financial instability. The contribution of the State was reduced by 550 million in 2010 to 292,74 million in 2013, and 375 million Euros were budgeted for 2019 (an increase of 9.5% with regard to the preceding financial year) in the Draft Law for the General State Budget.

With regard to the contribution of the private chains, paid television, and telecommunications operators providing audio-visual media services, in view of the most recent available data at the time of writing this paper, the contribution of 183.8 million Euros increased to 190.04, which implied moving from 21% to 19.51% of the total of all budget headings earmarked for funding the CRTVE in 2015 and 2016, respectively (see Graph 1).

Insufficient income and a financing model that endangers state-owned radio-television, as the CNM pointed out in its Report (2015-2016) on compliance with the obligations of public service for the Spanish Radio and Television Corporation (RTVE) and its financing: “In effect, as pointed out in the RTVE Report 2014, recourse to the financial contribution established in Law 8/2009 is not efficient and is poorly proportioned, given that it does not permit the CRTVE to obtain stable and proportionate income in each financial year”.

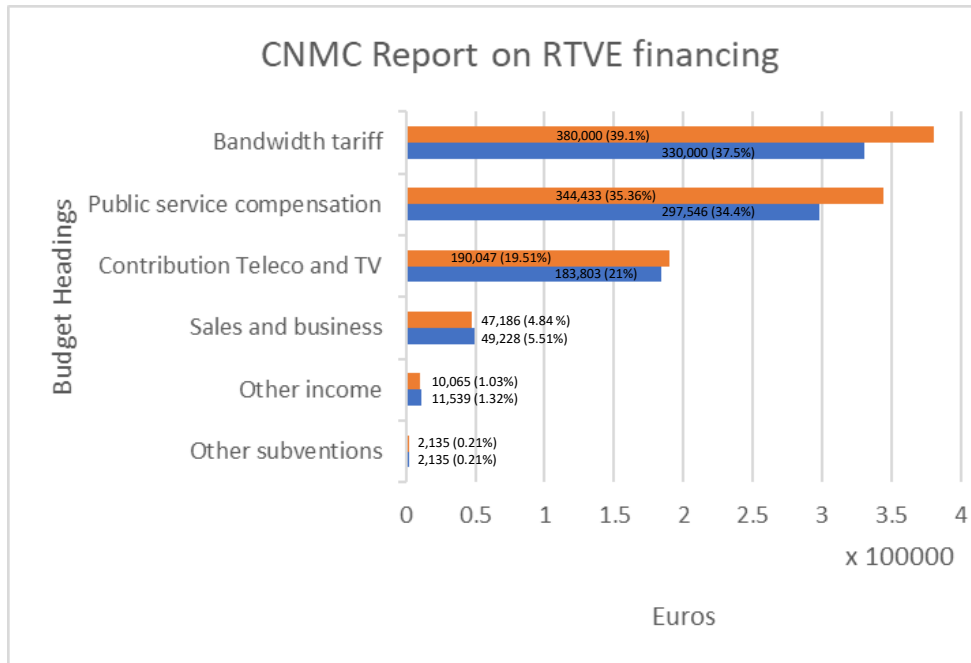
6. The independent Audio-Visual Regulator. A grave shortcoming of the LGCA

The launch of the Comisión Estatal de Medios Audio-visuales (CEMA) [State Commission of Audio-Visual Media] constituted a fundamental pillar of the LGCA, a much called for independent body

that was the subject of the committee constituted in the Senate in 1993, with the purpose of studying problems relating to the content of television programs. The Committee headed by Victoria Camps concluded in its final report that there was some urgency to set up a regulatory body for adequate supervision of television programs, for harmonization with other European countries, and to give the go-ahead to a Spanish audio-visual council (García Castillejo, 2006).

The launch of the CEMA, overturned by Law 3/2013, never took place. With this measure, Spain distanced itself from the policies on economic regulation and competition incentivized in other EU countries. Instead of advancing towards the strengthening of specialized independent and autonomous policies, for the sectoral regulation of liberalized markets such as energy, transport, and telecommunications, a new body was set up: the Comisión Nacional de los Mercados y la Competencia (CNMC) [National Markets and Competitiveness Committee], which in a generalist and non-specialized way has to attend to all aspects of market regulation and supervision (with the exception of the financial sector).

Graph 1. CRTVE income in 2015 and 2016 by budget headings (Expressed in thousands of Euros and % of the total).



Source: *Comisión Nacional de los Mercados y la Competencia (CNMC). Report on compliance with the obligations of public service by the Corporación Radio y Televisión Española (RTVE) and its financing. Years 2015 and 2016. Published 27 of March, 2018. Authors' own work.*

It implies a loss of real knowledge on each of the markets, of risk, and the impossibility of both adopting adequate solutions and covering the full complexity of the problems.

As may be understood from the explanatory memorandum of this Law on the launch of the CNMC, the reform of the set of regulatory organisms is founded on a multiplicity of factors. Among them, a supposedly less tight supervisory authority, both ex ante and ex post, is sought, and the avoidance of an overly complex institutional framework. The principal excuse to carry out this plan was the context of crisis that permitted justifying the austerity drive in the Public Administration. In reality, rather than regulating the markets the measure deregulated them because it made effective controls

impossible. In audio-visual matters, as well as for the other group of regulatory bodies, there is only one advisor to attend to areas of competency whereas beforehand various specialized advisors were available or foreseen.

In the cases of Andalusia and Catalonia, the launch of audio-visual committees met with the difficulty of finding a parallel State body. The Audio-visual Council of Catalonia held greater authority than the one in Andalusia, as it was for example responsible for the competitive tenders for licenses and for sanctions in case of non-compliance.

7. Conclusions

Having contemplated this panorama, it may be concluded that legislative nonsense, systematic normative non-compliance, and the absence of effective regulatory bodies have generated, if not maintained, a sensation of impunity where the pressure of dominant media groups imposes their criteria and forces legislation based on past events that contravened regulatory principles.

The Spanish audio-visual media landscape is concentrated and centred on the model of radio and television chains for state coverage. The imbalance in the necessary territorial organization is a democratic risk, hence the importance of defending the coexistence of local media within the three sectors and, fundamentally, the public and the community-based media oriented more than any others towards the principles of social profitability. Only the regional media guarantee, in part, greater proximity with the audience, even with the weaknesses arising from insufficient independence.

The absence of a truly independent audio-visual authority constitutes a serious problem. The European recommendations have not been taken into account. This disinterest in political circles, connivance with the private sector, represents the principal problem for respect towards the rules of the game grounded in plurality, attention for all regions, ethics and the administration of independently implemented norms.

It all leads to another great challenge and at the same time historic non-compliance that maintains the Spanish state in a democratic anomaly: refusal to plan and to grant bandwidth frequencies to community media. Let us recall that the United Nations High Commission for Human Rights opened an investigation into Spain for violating the rights of these media. It was reported by the Red de Medios Comunitarios (ReMC) (Community Media Network) and by RTV Cardedeu in July 2017, faced with non-compliance with respect to five articles from the United Nations International Covenant on Civil and Political Rights, a treaty signed by

Spain in 1977.

It is impossible to conceive of a government for the common good without a regulated system of audio-visual media oriented towards satisfying validated and plural information, a commitment with culture, education and with narratives that permit inspiring social purposes that encourage critical capacity, solidarity awareness of social models and behaviours facing a crisis of values, the true cause of a large part of the problems that affect our society.

The revision of the current General Law 7/2010, on Audio-Visual Communication, to adapt it to the new Directive (EU) 2018/1018, was an opportunity to update a Law. Although it implied an important step forward for the sector in 2010, ending a drawn-out period of dispersion and legal uncertainty, although without intervening in a concentrated market, it now needs an urgent adaptation to the new reality of audio-visual services and the needs and demands of the public at large.

This modification must be directed towards a balanced framework, with stability and legal safety for the commercial public, private and not-for-profit providers, in state and regional and local coverage, and that offer their services in a linear or non-linear manner. Finally, the general objective of the new Law must rework the use of technology to place it at the service of the common good.

References

- Accenture (2009): *Análisis de la adopción de modelos de TDT de acceso condicional en Europa Occidental y su impacto en la implantación de la Televisión Digital Terrestre*, Madrid.
- Asociación para la Implantación y el Desarrollo de la Televisión Digital Terrestre en España (2010): *Impulsa TDT*, Informe final 2010, Madrid.
- Bel, I, Corredoira, L and Cousido, P. (1992): *Derecho de la Información. Sujetos y medios*, Madrid: Colex. (1995): «Un nuevo marco legal», *Revista de coyuntura económica*, num. 4, pp. 77-104.
- Bustamante, E. (2013): *Historia de la radio y la televisión en España. Una asignatura pendiente de la democracia*, Barcelona, Gedisa.
- Chaparro Escudero, M. (1998): *Radiotelevisión pública local y alternativa*, Jerez de la Frontera: Perspectivas, iMEDEA/EMA-RTV.
- (1996): *Radio Pública Local*: Madrid: Fragua.
- (1998): *La democratización de los medios*, Sevilla: iMEDEA/EMA-RTV.
- (1998): *Radiotelevisión pública local y alternativa*. Seville: Perspectivas, EMA-RTV.
- (2002): *Sorprendiendo al futuro. Comunicación para el desarrollo e información audiovisual*, Barcelona: Los Libros de la Frontera.
- (2015): *Claves para repensar lo medios y el mundo que habitamos. La distopía del desarrollo*, Bogotá: Ediciones Desde Abajo.
- Chaparro, M. and García Castillejo, A. (2012): «Desregulación y concentración. Presente inmediato del audio-visual en España», *Revista Audio-visual, Comunicación para la inclusión*, núm. 1, Buenos Aires.
- Chinchilla Marín, Carmen. (1987): «Las competencias de las Comunidades Autónomas en materia de televisión», *Revista catalana de dret públic*, num. 8, pp. 61-90, ISSN 0213-344X.
- Comisión Nacional de los Mercados y la Competencia (CNMC) (2018): *Informe sobre el cumplimiento de las obligaciones de servicio público por la Corporación Radio y Televisión Española y su financiación, años 2015 y 2016*.
- Corredoira Alfonso, L. (2009): «Veinte años de la Ley de Televisión Privada

(1988/2008): cambios y perspectivas de futuro sobre el derecho audio-visual», *Textual & Visual Media: revista de la Sociedad Española de Periodística*, Issue 2, pp. 129-146.

De la Quadra-Salcedo, Tomás. (1995): *Liberalización de las Telecomunicaciones, servicio público y Constitución económica europea*, Madrid: Centro de Estudios Constitucionales.

García Castillejo, Ángel (2006): «Una laguna fundamental del sistema democrático. El Consejo Estatal de Medios Audio-visuales de España», *Telos: Cuadernos de comunicación e innovación*, num. 68, Madrid, Fundación Telefónica.

(2008): «La televisión como acceso a la sociedad de la información», *Telos: Cuadernos de comunicación e innovación*, num. 74.

(2013): *Régimen jurídico y mercado de la televisión en abierto en España*, Barcelona: Editorial UOC.

(2013): *Régimen jurídico y mercado de la televisión de pago en España*; Barcelona: Editorial UOC.

(2014): «El Derecho del Audio-visual», in Bel J. and Corredoira L. (Dir.) *Derecho de la Información: el*

ejercicio del derecho a información y su jurisprudencia, Madrid: Editorial Ariel, Centro de Estudios Políticos y Constitucionales.

Gutiérrez Laso, F. and Gómez-Luengo, J. (2007): *Las polémicas concesiones de radio en frecuencia modulada*, Madrid: Ediciones Jurídicas Ottawa.

Palacio, Manuel. (2006): «Cincuenta años de televisión en España», in Fernández, J. and Díaz, B. (Coord.) *Tendencias 06: Medios de comunicación, el año de la televisión. Tendencias*, Madrid: Fundación Telefónica.

Souvirón Morenilla, J.M. (1998): *La actividad de la Administración y el Servicio Público*. Madrid: Editorial Comares, INAP. ISBN 84-8151-570-1

Zallo, Ramón. (2010): «La política de Comunicación Audio-visual del gobierno socialista (2004-2009): un giro neoliberal», *Revista Latina de Comunicación Social*, num. 65, pp. 14-29, Universidad de la Laguna.

Webgraphy

Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions. The Future of European Regulatory Audiovisual Policy. Available at: <https://eur-lex.europa.eu/legal-content/ES/TXT/?uri=celex:52015DC0192>

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Better regulation for better results -An EU agenda. Available at: <http://data.consilium.europa.eu/doc/document/ST-9079-2015-INIT/en/pdf>

European Commission (2013): *Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values* (Green Paper). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52013DC0231>

European Commission (2015): Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A Digital Single Market Strategy for Europe. Available at: <https://eur-lex.europa.eu/legal-content/ES/TXT/?uri=celex:52015DC0192>

European Commission (2015): Communication from the Commission “A digital Single Market Strategy for Europe”. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/>

?uri=CELEX:52015DC0192&from=ES.

Directives and Laws:

Directive 89/552/EEC on “Televisión without frontiers” (1989).
Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31989L0552>

Directive 2007/65/EC approved December 2007.
Available at: <https://eur-lex.europa.eu/legal-content/ES/TXT/?uri=celex%3A32007L0065>

Directive 2010/13/EU of the European Parliament and of the Council, of 10 March, 2010, on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive).
Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:095:0001:0024:EN:PDF>

Proposal for a Directive of the European Parliament and of the Council amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities, Brussels, (2016). Available at: <https://eur-lex.europa.eu/legal-content/EN/HIS/?uri=COM:2016:287:FIN>

Proposal for a Directive of the European Parliament and of the Council amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities, Brussels, 5 October 2018. Available at: <http://data.consilium.europa.eu/doc/document/ST-12689-2018-INIT/en/pdf>

Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities. Available at: <https://eur-lex.europa.eu/legalcontent/EN/TXT/HTML/?uri=CELEX:32018L1808&from=EN>

Spanish Constitution 1978 [in Spanish]. Available at: <https://www.boe.es/legislacion/documentos/ConstitucionCASTELLANO.pdf>

Ley 10/1988, de 3 de mayo, de Televisión Privada. Available at: <https://www.boe.es/boe/dias/1988/05/05/pdfs/A13666-13669.pdf>

Ley 4/1980, de 10 de enero, del Estatuto de la Radio y la Televisión. Available at: <https://www.boe.es/boe/dias/1980/01/12/pdfs/A00844-00848.pdf>

Ley 41/1995, de 22 de diciembre, de Televisión local por ondas terrestres. Available at: <https://www.boe.es/boe/dias/1995/12/27/pdfs/0bA36940-36944.pdf>

Ley 42/1995, de 22 de diciembre, de las telecomunicaciones por cable. Available at: <https://www.boe.es/boe/dias/1995/12/23/pdfs/>

Ley 17/1997, de 3 de mayo, por la que se incorpora al Derecho español la Directiva 95/47/CE, de 24 de octubre, del Parlamento Europeo y del Consejo, sobre el uso de normas para la transmisión de señales de televisión y se aprueban medidas adicionales para la liberalización del sector. Available at: <https://www.boe.es/buscar/doc.php?id=BOE-A-1997-9711>

Ley 66/1997, de 30 de diciembre, de Medidas Fiscales, Administrativas y del Orden Social. Available at: <https://www.boe.es/boe/dias/1997/12/31/pdfs/A38517-38616.pdf>

Ley 56/2007, de 28 de diciembre, de Medidas de Impulso de la Sociedad de la Información. Available at: <https://www.boe.es/buscar/pdf/2007/BOE-A-2007-22440-consolidado.pdf>

Ley 7/2010, de 31 de marzo, General de la Comunicación Audio-visual. Available at: <https://www.boe.es/buscar/act.php?id=BOE-A-2010-5292&tn=1&p=20130605>

Ley 3/2013, de 4 de junio, de creación de la Comisión Nacional de los Mercados y la Competencia. Available at: <https://www.boe.es/buscar/pdf/2013/BOE-A-2013-5940-consolidado.pdf>

Real Decreto 439/2004, de 12 de marzo, por el que se aprueba el Plan técnico nacional de la televisión digital local. Available at: <https://www.boe.es/boe/dias/2004/04/08/pdfs/>

Real Decreto 944 /2005, de 29 de julio, por el que se aprueba el Plan Técnico Nacional de la Televisión Digital Terrestre. Available at: <https://www.boe.es/boe/dias/2005/07/30/pdfs/A27006-27014.pdf>