

Social media challenges mean that the next Italian government may have to fix the rules dictated by the “Par Condicio” law

Blog Admin

*This weekend's Italian elections are in the spotlight because of their importance to the financial stability of the Eurozone. They also raise questions about media regulation because they will be the first under a controversial new impartiality regime – that also applies to smartphones. **Jacopo Genovese** considers whether fair elections might be achieved more easily through policies addressing the concentration of media ownership.*



With Italian voters heading to the polls, everybody – at least in Europe – is looking at Italy right now. **Nobody knows** who is going to win, and in turn, how **financial markets** are going to react. And since a new law has imposed a blackout on the broadcasting of opinion polls since February 9th, there is no way to know which of the candidates is leading in the polls.

The “**Par Condicio**” law attempts to level the media playing field during electoral campaigns in Italy by giving some role – albeit an ambiguous one – to regulators in promoting impartiality in the mass media. The law sets the rules for television and radio broadcasters, and to a certain extent for the press during the electoral period, with regards to reporting on political parties, candidates, and their platforms. The impartiality of the media has been a tradition in European media law, and it is commonly considered a duty on the part of broadcasters to present issues in an objective, fair, neutral, pluralist, and comprehensive manner.

Despite noble intentions, the law has been contentious. The law's critics, notably prime minister and owner of Mediaset (the largest commercial broadcaster in the country) Silvio Berlusconi, **lament** that the “Par Condicio” gives disproportionate media coverage to smaller political parties. Supporters of the law argue that the **political power** exerted on the Italian public service broadcaster RAI and the conflict of interest associated with Berlusconi impede the fair representation of all the candidates in the media. Many have called for even tougher impartiality laws. Now, another intriguing issue has come up in the current presidential campaign, raising even more concerns about the legislation.

The “Par Condicio” gives AGCom – the regulator for Italian telecommunications – competence over disputes on media impartiality. **Article 8** of the law forbids the public diffusion of election polls or projections during the 15 days before the voting period (the current election being the 24-25th of February). This provision was set to prevent – or at least moderate – the influence of such statistics on voters' political preferences. The law does not forbid, however, private parties or political parties from obtaining polls from pollsters. So when the Italian polling company SWG released a **smartphone and tablet app** capable of providing the latest survey data on the elections within the “no-polls” timeframe, AGCom at first did not intervene on the grounds that the high price – €9.99 – distinguished the app from a mass medium.

“Politiccapp”, however, was stopped from “**killing the ‘Par Condicio’**” two days before the polls-blackout started. On February 7th, the authority for the telecommunications took a U-turn and decided to withdraw the permission for the app, causing outrage on the part of SWG and other pollsters who favoured the initiative. In an official **communication**, AGCom explained that the rising significance and publicity gained by the story might have made it too easy for the public to access the polls. AGCom justified its authority to block the app by asserting that Article 8 is not limited to mass media outlets, but instead it refers to poll dissemination in general, and it was clear that the information provided by the

app could have been easily distributed on social networks.

Does this mean that all new and future forms of media are to be constrained by these impartiality rules? After all, polling estimates are not the only information that social media can provide.

Several [apps](#) and [web pages](#) measure polls and trends on social networks, and currently provide other political information without having to account for any impartiality rule. Many officials, including the president of AGCom, Marcello Cardani, believe that the “Par Condicio” should be applied to social networks, but that AGCom still [lacks legal competence](#) on the matter. Others argue that parliamentary intervention is not required, as AGCom [can already legally justify its authority](#) to regulate the Internet.

As the challenges highlighted in this current electoral campaign show, the next Italian government may have to fix the rules dictated by the “Par Condicio”. As it stands, it is unclear how the AGCom would apply the “Par Condicio” to social media. The distinction between mass media and social media is increasingly fuzzy, but it still exists. Impartiality rules on interactive formats such as social media might raise issues of freedom of expression and jurisdiction, and should be addressed carefully.

Nonetheless, the ideal of impartiality of the media will remain critical in a country such as Italy where one of the key political figures has a dominant position in the media markets. Indeed, considering the condition of the Italian media markets, and in particular the lack of pluralism which characterise them, perhaps more attention should be devoted to a legislative approach that will prevent individuals or single political parties from first attaining a dominant position in the media. Such media ownership and plurality legislation may advance media impartiality at the outset without resorting to a “Par Condicio” type of remedy.

This article first appeared at the [LSE Media Policy Project blog](#).

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