[IT] New Law on Broadcasting

IRIS 2004-6:1/25

Maja Cappello
Autorità per le garanzie nelle comunicazioni (AGCOM)

On 3 May 2004, the Italian Parliament approved definitively the so-called Gasparri Law. The bill was proposed by the Ministero delle comunicazioni (Ministry for Communications) on 24 September 2002 to the Camera dei deputati (Chamber of Deputies of the Italian Parliament) (see IRIS 2002-10: 10) and after an almost two-year long discussion, during which temporary measures had to be adopted (see IRIS 2004-3: 11) in order to comply with a judgment of the Constitutional Court concerning the TV channels that were exceeding existing anti-concentration rules (see IRIS 2003-3: 13), the Law entered into force with its publication on 5 May in the Official Journal.

The aim of the new Act (Section I: Articles 1-13) is to set out the general principles of the broadcasting sector, as determined by the process of convergence between traditional broadcasting and other sectors such as telecommunications, publishing and Internet (the so-called integrated communications system). The principles concern the main aspects of freedom of expression, conceived both as a right to impart and to receive information, and pluralism of the media by prohibiting the achieving and maintenance of dominant positions. The Act introduces different authorisations for the different activities of network operators and content providers at national or local level and on different means of transmission (terrestrial, cable or satellite) under the obligation to apply equal conditions to any request for access. Informative broadcasting activity is considered as a service of general interest and underlies the obligations to represent facts truly, to ensure access to any political party, to broadcast daily news programmes and the prohibition on manipulating information. Protection of minors is reinforced by the prohibition on employing minors less than 14 years old in advertising and sanctions are increased to a range of EUR 25,000-350,000. The Autorità per le Garanzie nelle Comunicazioni (Italian Communications Authority AGCOM) is entrusted with the duty to ensure respect for fundamental rights.

Section II (Articles 14-15) concerns the protection of competition in the communications sector and introduces new rules on media concentration (see IRIS Special, "Television and Media Concentration - Regulatory Models on the National and the European Level", 2001, p. 47). The threshold of 20% of available programmes according to the frequency plan (see IRIS 1998-10: 12) is confirmed, but reference is made to the DTT frequency plan and consequently to a larger number of programmes. The threshold based on economic revenues (see IRIS

© European Audiovisual Observatory (Council of Europe) 2026

2000-7: 7) is lowered from 30% to 20%, while the terms of reference for the calculation no longer relate only to traditional broadcasting, but to the integrated communications system which includes daily and periodical press, yearbooks even on the Internet, radio and television broadcasting, cinema, outdoor advertising, communications initiatives and sponsorship. Cross-ownership limitations between television broadcasting and the press will be limited to an asymmetric rule allowing press operators to acquire shares in the broadcasting sector, while the reverse will be prohibited until 31 December 2010. Another limitation concerns operators collecting more than 40% of the revenues of the telecom market, who may not acquire more than 10% of the revenues of the whole integrated communications system.

Section III (Article 16) delegates to the Government the task of adopting a code that will gather and consolidate all existing provisions in the communications sector: the code will be adopted by a decreto legislativo (legislative decree) and will have the same force as an ordinary law, with the possibility of being able to directly amend existing legislation.

Section IV (Articles17-21) reserves general public service broadcasting to a public concessionaire (Radio-televisione italiana, RAI) acting on the basis of national and regional contracts signed by the Minister for Communications on behalf of the Government and renewed every three years. Public service broadcasting has to be ensured on the whole national territory and will have to devote an adequate number of transmission hours to educational, informative and cultural programmes according to a 3-year definition laid down by AGCOM. Specific provisions concern access to party political broadcasts, the promotion of the Italian language and culture abroad, the protection of minority languages in Italy and RAI's audiovisual archive. AGCOM and the Ministry for Communications will jointly issue guidelines for the renewal of the service contracts. AGCOM is additionally charged with checking that the income deriving from the public service fee is used only for carrying out public service programming in accordance with the Communication from the European Commission on the application of state aid rules to public service broadcasting of 15 November 2001 (see IRIS 2001-10: 4). An official auditor appointed by RAI and approved by AGCOM will supervise the yearly budget. In case of non-compliance with the public service obligations, RAI may be fined up to 3% of the revenues. All three RAI channels will be privatised, and the process will start in July 2004, but no stakeholders may hold more than 1% of the shares and a quota of the stocks will be reserved to people who have duly paid the public service fee in the previous year.

Section V (Articles 22-29) concerns the switchover to digital terrestrial transmissions up to the switch-off on 31 December 2006. Two stages are envisaged for the coverage of DTT: 50% of the population by 1 January 2004 and

© European Audiovisual Observatory (Council of Europe) 2026

70% of the population by 1 January 2005. During this transition period, RAI will have to transmit on two multiplexes using both analogue and digital technology. In the meantime, existing analogue broadcasters transmitting on Hertzian frequencies will be allowed to continue their transmissions, provided that AGCOM, by 30 May 2004, has given a positive evaluation on the existing degree of pluralism in the digital environment according to three criteria: coverage of at least 50% of the population, presence of decoders at accessible costs and effective offer of programmes different from those broadcast on analogue networks. Should the analysis have a negative outcome, AGCOM may take the measures envisaged by Law no. 249/97 in the case of dominant positions on the market, such as orders to separate the undertakings or combined assets, or pecuniary sanctions. In order to accelerate the switchover process, the rental or the purchase of DTT set-top boxes will be encouraged by means of economic incentives to households. The national budget set up a fund for the promotion of purchases or rentals of decoders for cable and terrestrial digital television (C-DVB and T-DVB) providing for a contribution of EUR 150 per consumer (see IRIS 2004-3: 11).

On 27 May AGCOM found that all three conditions foreseen by the abovementioned Act are satisfied and gave green light to the maintenance of the exceeding channels on analogue frequencies until the definitive switch off in 2006, but outlined, among other things, that the overcoming of technological bottlenecks cannot be considered as sufficient, alone, to ensure pluralism in Italy due to the high degree of economic concentration on the Italian television market.

Law of 3 May 2004, no. 112, Principles relating to the organisation of the broadcasting sector and of RAI, as well as delegation of powers to the Government to issue the broadcasting code, Official Journal of 5 May 2004, n. 82, s.o. no. 104

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026