[ES] The Government Approves a new Decree Law on Pay-DTTV Services

IRIS 2009-10:1/10

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On 13 August 2009, the Spanish Government approved a Decree Law that allows Digital Terrestrial TV (DTTV) providers to introduce pay-TV services.

According to the new provision, the concessionaires of the national DTTV services will be able to allocate, fully or partially, one of their DTTV programmes to the provision of pay-TV services, provided their concessions entitle them to manage more than one DTTV programme.

The approval of this provision has been very controversial, mainly for formal reasons. The Government intended to approve the introduction of pay-DTTV services by means of a Decree, but a few days before its approval by the Council of Ministers, the *Consejo de Estado* (Council of State), a consultative body, declared that such a provision should be approved by means of a Law. The Government decided then to approve it by means of a Decree Law.

In Spain, Laws are generally approved by Parliament, but, in cases of urgent need, Laws can be approved by the Government, by means of a “Decree Law”. In this case, the Government considered that, in the context of the economic crisis and the switch-off of analogue terrestrial TV (scheduled for April 2010), there was an urgent need to approve the introduction of DTTV, as it might have a positive impact on the economy and could also improve the quality of the DTTV programming, which in turn could help to achieve a successful transition from analogue terrestrial TV to DTTV.

The existing digital pay-TV providers have voiced the opinion that this matter should have been regulated in the new General Audiovisual Law (the recitals of the Decree Law expressly refer to an existing draft bill) and that the Government used a Decree Law without any real urgent need, simply in order to favour one of the competitors, the broadcaster Mediapro (La Sexta), which had recently decided to launch a pay-DTTV programme offering soccer matches (that programme, called Gol TV, was in fact launched a few weeks later, to coincide with the beginning of the soccer season).

In February 2009, the Government had already used a Decree Law (1/2009) to regulate the audiovisual sector (this constituted the amendment of some of the conditions of the analogue switch-off and of several limits on media

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concentration) and justified that decision by using similar arguments. In that case, broadcasting companies did not complain, although several opinion groups did, arguing that resorting to a Decree Law was not justified and that normal legislative procedures should have been followed.

On the other hand, some consumer groups consider that the decision to allow pay-DTTV services should have been taken earlier, as the DTTV penetration rate is over 65% of Spanish households and the DTTV receivers already sold do not allow for the reception of pay-DTTV services. Digital pay-DTTV services are not new to the Spanish market, as in 1999 there was already a digital terrestrial pay-TV platform called Quiero TV, which went bankrupt in 2002, but later legislation approved in this field did not include pay-DTTV services.

The Decree Laws have to be validated by the Parliament within a month. The Decree Law in question, Decree Law 11/2009 on pay-DTTV services, was put to a vote on 17 September and was ratified by 183 votes to 50 votes.

Real Decreto Ley 11/2009, de 13 de agosto, por el que se regula, para las concesiones de ámbito estatal, la prestación del servicio de televisión digital terrestre de pago mediante acceso condicional, Boletín Oficial del Estado, n. 197, de 15 de agosto de 2.009, pp. 70.202 y ss.

http://www.boe.es/boe/dias/2009/08/15/pdfs/BOE-A-2009-13497.pdf

Decree Law 11/2009, of 13 August 2009, on the regulation of the provision of national digital terrestrial pay-TV services, Official Journal No. 197, 15.08.2009, pp. 70.202ff.

Resolución de 17 de septiembre de 2009, del Congreso de los Diputados, por la que se ordena la publicación del Acuerdo de convalidación del Real Decreto-ley 11/2009, de 13 de agosto, por el que se regula, para las concesiones de ámbito estatal, la prestación del servicio de televisión digital terrestre de pago mediante acceso condicional, Boletín Oficial del Estado, n. 230, de 17 de septiembre de 2.009, p. 79.483.

http://www.boe.es/boe/dias/2009/09/23/pdfs/BOE-A-2009-15051.pdf

Resolution of 17 September 2009, of the Spanish Congress, on the publication of the agreement of the ratification of Decree Law 11/2009, of 13 August 2009, on the regulation of the provision of national digital terrestrial pay-TV services, Official Journal No. 230, 17 September 2009, pp. 79.483ff.

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