[ES] The Spanish Government Modifies the Digital TV Law

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The Spanish Government has changed the Law 17/1997, of 3 May 1997, by which the EC Directive 95/47 on the use of standards for the transmission of television signals (see IRIS 1996-2: 5) had been incorporated in Spanish law.

Two articles of this Law 17/1997 created a strong controversy, widely discussed in Spain:

- Art. 7.a) of Law 17/1997established that all decoders should be open, and that the operators using simulcrypt decoders (like Canal Satelite, the only channel operating at that time) had to reach an agreement with the other operators so that all programs could be received with a single decoder. If this agreement was not reached within two months, an interface should be added to the simulcrypt decoders in order to make them absolutely open, or they'll be deemed illegal (see IRIS 1997-8: 11, IRIS 1997-5: 12 and IRIS 1996-10: 15)

- Transitory provision 1 established that all the companies operating when this law was approved had to comply with its provisions within three months, especially with the obligation to register with the Comision del Mercado de las Telecomunicaciones (CMT) (Telecommunications Market Commission). If the decoders they were using were not considered "open" by the CMT, they had to be replaced by open decoders within six months. PRISA, the main Spanish media group and owner of Canal Satelite, and the PSOE, the socialist party, the main opposition group in the Spanish Parliament, complained to the European Commission. After studying the case, the Commission started an infringement procedure against Spain, because it considered that this law was in breach of the EC provisions of the freedom of movement of goods, especially considering that according to the Law 17/1997 these simulcrypt decoders could be considered illegal in Spain, although they were legally sold in other EU countries. After receiving the motivated opinion from the Commission, the Spanish Government finally decided to amend the law. This change was made by means of a Real Decreto-Ley (Decree-Law) a legal instrument which has the same legal status of statutory law, but which is adopted on exceptional grounds, directly by the Government and not by Parliament, for reason of an extreme and urgent necessity (in this case, the necessity to comply with the EC rules before the infringement procedure got to the Court of Justice of the EC). This Real Decreto-

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Ley remains valid only if it is convalidated by Parliament within a month (Art. 86 of the Spanish Constitution).

The Real Decreto-Ley 16/1997, 13 September 1997 amends the two controversial Articles.

- The Government insists, in the new Art. 7.a), that all the decoders must be directly and automatically open, whether because they use the multicrypt system, or because the decoders' owners reach an agreement with the other digital TV operators. This new article doesn't fix a term in which the operators have to reach an agreement, but it gives the CMT competences to approve the agreements reached by the operators, assuring that the agreements comply with the relevant rules of law and allow the consumers to receive all digital programs with one single decoder. If such an agreement is not reached, the CMT will establish the legal, technical or economic conditions necessary to allow the decoders to be directly and automatically open.

- The Transitory Provision 1 is also amended: it now establishes that the CMT can simply oblige to the companies already operating to inform their clients in writing on whether their decoders are open or not, and if they are not open, on what are the consecuences for the clients.

PRISA and the socialist party have complained about the new art. 7.a), because they consider that it gives too much power to the CMT, an authority whose members are appointed by the Government. They argue that if the CMT wants, it has now the power to impose to the operators an obligation to use simulcrypt decoders and similar conditions as the ones formerly that were previously established by the Law 17/1997.

Real Decreto Ley 16/1997, de 13 de septiembre, de modificación parcial de la Ley 17/1997, de 3 de mayo, por la que se incorpora al derecho español la Directiva del Consejo y del PE 95/47/CE, sobre el uso de normas para la transmisión de señales de televisión, y se aprueban medidas adicionales para la liberalización del sector (BOE n. 221, 15.9.1997, pp. 27241-27242)

Amendment of Law 17/1997, of 3 May 1997, by which the Directive 95/47/EC on the use of standards for the transmission of television signals had been incorporated in Spanish law (BOE n. 221, 15 September 1997, pp. 27241-27242)

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