



***Independent Study on  
Indicators for Media Pluralism  
in the Member States – Towards  
a Risk-based Approach***

Prepared for the European Commission  
Directorate-General Information Society and Media  
SMART 007A 2007-0002

*by*

**K.U.Leuven – ICRI (lead contractor)  
Jönköping International Business School - MMTC  
Central European University - CMCS  
Ernst & Young Consultancy Belgium**

**Final Report - Annex III**

**COUNTRY REPORTS**

**Italy**

Contract No.: 30-CE-0154276/00-76

Leuven, July 2009



**Legal Notice**

By the Commission of the European Communities  
Directorate-General for Information Society and Media

Neither the European Commission nor any person acting on behalf of the European Commission is responsible for the use which might be made of the information contained in the following report. The views expressed are those of the authors. The report does not necessarily reflect the views of the European Commission, nor does the European Commission accept responsibility for the accuracy of the information contained herein.

**Important Notice**

By K.U.Leuven, Jönköping International Business School, Central European University and Ernst & Young Consultancy Belgium

The country reports are not in any way intended to be an implementation of the Media Pluralism Monitor in the Member States. They were drafted during the initial stages of the study, with the intention of obtaining a better view of regulatory measures in the broad sense – including co- and self-regulatory measures – adopted in the Member States to promote or safeguard, directly or indirectly, pluralism in the media. The intention was to obtain a high-level snapshot of possible implementation problems and not to express any value judgements on existing rules. The resulting overview facilitated the development of methods for assessing the effective implementation of regulatory safeguards, which had to be, according to the Terms of Reference for the study, an intrinsic element of the legal indicators. We strongly recommend that you also download the file containing our Introduction as it sets out our approach to the initial stages of the project in detail and includes a short manual on how to read the country reports. We draw your attention to the Overview file as well.

Please note that the country reports were finalized in the middle of 2008 and do not therefore reflect progress made with the transposition of the Audiovisual Media Services Directive or any subsequent initiative by Member States. They are made available not as final deliverables of the study, but as interim deliverables, intended to illuminate part of the route taken by the study team and thereby to contribute towards the full transparency of the MPM project.

## 14. Overview of legal and policy measures promoting/supporting media pluralism

### [ITALY]

Author: Katrien Lefever  
Country correspondent: Davide Parrilli

#### National regulations relevant in the area of media pluralism

**Legislation** (for all the below sources, please see <http://www.normeinrete.it/index.htm>):

- Constitution of the Italian Republic;
- Law 22 April 1941, no. 633 (Copyright Law);
- Law 7 August 1990, no. 241;
- Law 3 February 1963, no. 69;
- Law 25 February 1987, no. 67;
- Law 6 August 1990, no. 223;
- Law 14 November 1995, no. 481;
- Law 30 April 1998, no. 122;
- Law 31 July 1997, no. 249;
- Law 22 February 2000, no. 28, thereafter ‘Par Condicio law’;
- Law 7 March 2001, no. 62;
- Law 20 March 2001, no. 66;
- Law 3 May 2004, no. 112, thereafter ‘Gasparri law’;
- Law 10 October 1990, no. 287;
- Legislative Decree 31 July 2005, no. 177, *Testo unico della Radiotelevisione*, thereafter ‘Consolidated text on broadcasting’;
- Legislative Decree 1 August 2003, no. 259, *Codice delle comunicazioni elettroniche*, thereafter ‘Law on Electronic Communications’;
- Law 23 February 2006, no. 51;
- Law 6 June 2008, no. 101.

#### Other

- Service Contract between the Ministry of Communications and RAI (Contratto di servizio 2007 – 2009 tra il Ministero delle Comunicazioni e la RAI – Radiotelevisione Italiana Spa), retrieved from [http://www.comunicazioni.it/binary/min\\_comunicazioni/televisione\\_rai/contratto\\_servizio\\_5\\_aprile\\_2007.pdf](http://www.comunicazioni.it/binary/min_comunicazioni/televisione_rai/contratto_servizio_5_aprile_2007.pdf);
- Communication of the Authority for Communications 1 February 2006, thereafter the ‘AGCOM Communication’, retrieved from <http://www2.agcom.it/default.aspx?message=viewdocument&DocID=624>;
- Act of the Parliament Control Committee 18 December 2002, thereafter the ‘Act of the Parliament Control Committee 2002’, retrieved from [http://www.difesadellinformazione.com/leggi\\_e\\_provvedimenti/18/commissione-di-vigilanza-18-dicembre-2002/](http://www.difesadellinformazione.com/leggi_e_provvedimenti/18/commissione-di-vigilanza-18-dicembre-2002/);
- Authority for Communications (AGCOM) resolution no. 399/03/CONS, retrieved from [http://www.agcom.it/provv/d\\_399\\_03\\_CONS.htm](http://www.agcom.it/provv/d_399_03_CONS.htm);

- Act of the Parliament Control Committee 11 March 2003, thereafter the 'Act of the Parliament Control Committee 2003', retrieved from [http://www.difesadellinformazione.com/leggi\\_e\\_provvedimenti/19/commissione-di-vigilanza-11-marzo-2003/](http://www.difesadellinformazione.com/leggi_e_provvedimenti/19/commissione-di-vigilanza-11-marzo-2003/);
- Collective National Labour Agreement of Journalists of 4 November 2001, retrieved from [http://www.cnel.it/archivio/contratti\\_lavoro/nazionali/tipo.asp?per=n&set=G&c=G031](http://www.cnel.it/archivio/contratti_lavoro/nazionali/tipo.asp?per=n&set=G&c=G031);
- Deontology code as regards the processing of personal data for journalists (*Codice deontologico relativo al trattamento dei dati personali nell'esercizio dell'attività giornalistica ai sensi dell'art. 25 della legge 31 dicembre 1996, n. 675*), by the National Council of the Professional Association of Journalists, thereafter the 'Deontology Code', retrieved from <http://www.privacy.it/garanteprovv19980729.html>;
- Code of Ethics of the Italian Federation of the Italian Press (*Carta dei Doveri*), thereafter the 'Code of Ethics', retrieved from [http://www.fnsi.it/Contenuto/Documentazione/CarteDeontologiche/Carta\\_dei\\_Doveri.htm](http://www.fnsi.it/Contenuto/Documentazione/CarteDeontologiche/Carta_dei_Doveri.htm);
- Authority for Communications (AGCOM) resolution no. 365/00/CONS (Individuation of dominant positions), retrieved from [http://www.agcom.it/provv/D365\\_00\\_CONS.htm#11](http://www.agcom.it/provv/D365_00_CONS.htm#11);
- Authority for Communications (AGCOM) resolution no. 136/05/CONS (Actions to protect pluralism), retrieved from [http://www.agcom.it/provv/d\\_136\\_05\\_CONS.htm](http://www.agcom.it/provv/d_136_05_CONS.htm);
- Authority for Communications (AGCOM) resolution no. 435/01/CONS (Approval of the regulation for digital terrestrial broadcasting), thereafter the 'AGCOM 2001 resolution', retrieved from [http://www.agcom.it/eng/resolutions/2001/d435\\_01\\_CONS.pdf](http://www.agcom.it/eng/resolutions/2001/d435_01_CONS.pdf);
- Authority for Communications (AGCOM) resolution no. 163/06/CONS (Program for rational use of radio and television frequencies for the switching-off to digital techniques), retrieved from [http://www.agcom.it/provv/d\\_163\\_06\\_CONS.htm](http://www.agcom.it/provv/d_163_06_CONS.htm);
- Authority for Communications (AGCOM) resolution no. 603/07/CONS (Criteria for the switch-off of the region Sardinia), retrieved from [http://www.agcom.it/provv/d\\_603\\_07\\_CONS/d\\_603\\_07\\_CONS.htm](http://www.agcom.it/provv/d_603_07_CONS/d_603_07_CONS.htm);
- Authority for Communication (AGCOM) resolution no. 506/08/CONS (Assignment of the frequencies in preparation of the switch-off of the region Valle d'Aosta), retrieved from [http://www.agcom.it/provv/d\\_506\\_08\\_CONS.htm](http://www.agcom.it/provv/d_506_08_CONS.htm);
- Authority for Communication (AGCOM) resolution no. 200/08/CONS (Assignment of the frequencies in preparation of the switch-off of the areas all-digital), retrieved from [http://www.agcom.it/provv/d\\_200\\_08\\_CONS.htm](http://www.agcom.it/provv/d_200_08_CONS.htm);
- Authority for Communication (AGCOM) resolution no. 109/07/CONS (Regulation of the assignment of 40 % of transmission capacity of digital networks), retrieved from [http://www.agcom.it/provv/d\\_109\\_07\\_CONS.htm](http://www.agcom.it/provv/d_109_07_CONS.htm);
- Authority for Communication (AGCOM) resolution no. 645/07/CONS (Implementation of resolution no. 109/07/CONS), retrieved from [http://www.agcom.it/provv/d\\_645\\_07\\_CONS/d\\_645\\_07\\_CONS.htm](http://www.agcom.it/provv/d_645_07_CONS/d_645_07_CONS.htm);
- Authority for Communication (AGCOM) resolution no. 449/08/CONS (Implementation of resolution no. 645/07/CONS), retrieved from [http://www.agcom.it/provv/d\\_449\\_08\\_CONS.htm](http://www.agcom.it/provv/d_449_08_CONS.htm);
- Decree of the Ministry for Economic Development 10 September 2008 (Calendar of the definite switch-off to digital television), retrieved from <http://www.ingegneri.info/?cartel=novita&page=result&id=16836&view=y>;
- Authority for Communications (AGCOM) resolution no. 9/99 (Regulation concerning the promotion of distribution and production of European works), retrieved from [http://www.agcom.it/provv/D9\\_99.htm](http://www.agcom.it/provv/D9_99.htm).

**TABLE 1. Constitutional protection of press and communication freedoms**

Measure	Source	Scope of application	Key features
<b>1.1. Freedom of expression</b>	Art. 21 Constitution	PM / AAVM	Everyone has the right to freely express his own thoughts in speech, writing, and any other means of communication. The press cannot be subjected to any authorization or censorship.
	Art. 3 Consolidated text on broadcasting	AAVM	One of the fundamental principle of the radio and television system is the freedom of expression and to express opinions for everybody.
<i>Note: the Criminal Code states notably that the following behaviors constitute crimes: injury to the President of the Republic (Art. 278), injury to the Republic, the Constitutional Institutions and the Armed Forces (Art. 290), injury to the Italian nation (Art. 291), injury to the national flag (Art. 292), injury to the flag of a foreign State (Art. 299), injury to a religion through injury to believers or to things related to that religion (Art. 403 and 404), defamation of the morality of the family through publications (Art. 565), injury (Art. 594), defamation (Art. 595), defamation through press publications (Art. 596 bis). Please be aware that many of these provisions (with the exception of the injury and defamation) are rarely enforced by national Courts.</i>			
<b>1.2. Freedom of right to information</b>			
<i>Is there – besides constitutional provisions – a specific act dealing with citizens’ or journalists’ access to public sector information?</i>	Chapter V Law 241/1990	PM / AAVM	Access to administrative documents granted to everybody who has a legitimate interest in order to protect his legal positions (“ <i>situazioni giuridicamente rilevanti</i> ”). Administrative document means every document, videotape, audiotape, photo, etc which contains administrative acts.
	Art. 2 (1) Law 69/1963	PM / AAVM	Freedom of information and criticism are absolute rights of all journalists, provided the respect of legal provisions aimed to protect other peoples’ personality.
	Code of Ethics	PM / AAVM	Journalists shall respect and defend the right of information.
	Art. 3 Consolidated text on broadcasting	AAVM	Freedom to receive or communicate information or ideas, unrestricted by national frontiers
	Art. 4 (1) (a) Consolidated text on broadcasting	AAVM	User’s right to access information and all kinds of content as offered by national and local broadcasters, under condition of pluralism and free competition.
	Art. 6(3) Deontology Code	PM / AAVM	Freedom of information encompasses the comments and opinions of the journalist.
<i>Are there specific rules dealing with journalists’ access to events for news reporting?</i>	No specific provisions in this field.		

<b>1.3. Explicit recognition of media pluralism</b>	Art. 3 Consolidated text on broadcasting	AAVM	The fundamental principles that all broadcasters must follow are, <i>inter alia</i> : -Pluralism; -Receptiveness to different political, social, cultural, religious opinions and tendencies; -Ethnic differences and national and local cultural, artistic and environmental heritage.
	Art. 5 Consolidated text on broadcasting (principle recalled in Art. 15, 43 and 53)	AAVM	General principles aimed to guarantee pluralism and competition. In particular, creating and keeping positions that damage the free competition is forbidden.
	Art. 1 (2) Law 223/1990	AAVM	Pluralism is recognized to be one of the fundamental principles of the radio and television system.
	Act of the Parliament Control Committee 2002	AAVM	Pluralism is a fundamental principle that has to be implemented and enforced.
	AGCOM Communication	AAVM	The news (and in general the programs of information) of every broadcaster, both public and private, must respect the principle of pluralism.
	Art. 2 Service Contract	TV	The public broadcaster shall broadcast a pluralistic offer.
	Art. 29 AGCOM 2001 resolution	AVMS	Pluralism is a fundamental principle that has to be implemented and enforced in the field of digital television as regards the agreements between content providers and service operators.
	Art. 1 (1) AGCOM resolution 200/08/CONS	AVMS	The switch-off to digital television in the areas ‘all digital’ (Valle d’Aosta, Piedmont, Province of Trento) must assure an efficient, competitive and pluralistic use of the radio and television resources. For some notes about the areas ‘all-digital’, see <i>infra</i> (8.3.2). The same principle is set forth, in more general terms, by the AGCOM resolution no. 163/06/CONS.
	Art. 2 (1) AGCOM resolution 603/07/CONS	AVMS	The switch-off to digital television in Sardinia must assure an efficient, competitive and pluralistic use of the radio and television resources.
	Art. 2 (1) AGCOM resolution 506/08/CONS	AVMS	The switch-off to digital television in Valle d’Aosta must assure an efficient, competitive and pluralistic use of the radio and television resources.
<b>1.4. Protection of journalistic sources</b>	Art. 2 (3) Law 69/1963	PM / AAVM	Journalists and publishers shall respect the professional secrecy of their information sources, when this is required by their fiduciary character.

	Code of Ethics	PM / AAVM	The journalist must respect the secrecy of his sources when requested by them and must inform the reader (in general, the recipient of the information) of that.
<i>Note: pursuant to Article 200 (3) of the Criminal Procedure Code, the judge can order the journalist, in case of absolute necessity, to tell the source of his information.</i>			
<b>1.5. Right of reply</b>	Art. 4 (1) (e) Consolidated text on broadcasting	AAVM	Right to reply when imputations causing both moral and material damages have been broadcast. Article 32 is specifically addressed to television and radio news.
	Art. 32 Consolidated text on broadcasting		
	Art. 10 (2-4) Law 223/1990	AAVM	Right to reply when imputations causing both moral and material damages have been broadcast. The principle applies to both private and public broadcasters.
	Art. 2 (2) Law 69/1963	PM / AAVM	The journalist must rectify the news that are incorrect and find a remedy to eventual mistakes.
	Art. 1 (6) (b) (8) Law 249/1997	AAVM	The Committee for Services and Products of the Authority for Communications (AGCOM) shall verify the respect of the right of rectification by the broadcasters.
	Code of Ethics	PM / AAVM	The journalist must rectify the news that is incorrect even without a specific request to do so.
	Art. 4 Deontology Code	PM / AAVM	The journalist must rectify the news that is incorrect without delay.
	Art. 7 (2) AGCOM 2001 resolution	AVMS	Organisations that are holders of authorisations for digital television are required to comply with legislative obligations concerning rectification.
<i>Note: the Italian sources that are relevant in the field are focused not precisely on the right of reply but rather on the right of the person to get the rectification by the journalist or broadcaster if the information provided to the users was not exact or was likely to damage the image or dignity of the person.</i>			
<b>1.6. Ratification of international instruments:</b> - CoE's Framework Convention For The Protection Of National Minorities - UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (Oct 2005)	-Yes -Yes		

**TABLE 2. Editorial independence**

Measure	Source	Scope of application	Key features
<b>2.1. Journalists</b>			
	AGCOM Communication	AAVM	All broadcasters must be impartial (provided the scope of the Communication, it means impartial from political parties or groups).
	Art. 1 (1) Par Condicio Law	AAVM	All editors and broadcasters shall be impartial from political groups or parties.
	Code of Ethics	PM / AAVM	Journalists cannot accept benefits, favors or tasks that undermine their autonomy and professional credibility.
	Code of Ethics	PM / AAVM	Journalists can accept suggestions and instructions from the editorial hierarchy of his newspaper, as long as they are not against the professional law, the national Italian journalist's work contract (CNLG) and the Code of Ethics.
	Art. 4 (1) (d) and 39 (1) (a) Consolidated text on broadcasting	AAVM	The content and scheduling of sponsored programmes may in no circumstances be influenced by the sponsor or advertiser in such a way as to affect the responsibility and editorial independence of the broadcaster in respect of programs.
<i>Note: as regards editorial independence from political parties or groups, Art. 11 of the Act of the Parliament Control Committee 2002 states that the directors of the public broadcaster channels and directorate shall assure that the programs regarding political information represent all political ideas with equal conditions of access for all groups represented in the Parliament. In more general terms, the applicable sources until 2005 did not address and remark specifically the editorial independence from business entities and still it does not seem to appear the main concern of the regulators.</i>			
<b>2.2. News / information programmes</b>	Art. 3 Consolidated text on broadcasting	AAVM	One of the fundamental principles that all broadcasters must follow is to provide objective, complete, trustworthy and impartial information.
<i>Note: for a more detailed analysis, see supra under 2.1.</i>			
<b>2.3. Other media content</b>	Code of Ethics	PM / AAVM	The journalist cannot use financial information that he obtained in the course of his profession for personal or thirds' profit and he cannot commit in general acts of insider trading.
<b>2.4. Subsidies/ Training of journalists (independence, ethic, recruitment, etc.)</b>	Art. 35 Collective Labour Agreement Journalists	PM / AAVM	The editors can set up some additional training sessions for trainee journalists (the content of the training is not specified).
<b>2.5. Consultative programming structure for participation of the public/citizens to media (i.e. a mechanism to allow citizens to participate in editorial decisions, under the form of e.g. an ombudsman, ethics or liaison committee, "Société des rédacteurs" ...)</b>	Art. 1 (25) Law 249/1997	AAVM	The AGCOM hosts a National Council of Users, composed of experts coming from various organizations that represent the users of radio, television and telecommunication services, with consultative roles.

**TABLE 3. Cultural pluralism**

Measure	Source	Scope of application	Key features
<b>3.1. Structural rules (guaranteeing or promoting access by the various cultural groupings to media companies’ bodies, structures...)</b>			
3.1.1. Special representation requirements in media company structures	No special provisions in this field.		
3.1.2. Special representation requirements in media advisory bodies	No special provisions in this field.		
3.1.3. Legal or policy measures either prohibiting discrimination in recruitment or promoting equal opportunities (ethnic minorities, gender, age, disabled...)	No special provisions in this field.		
<b>3.2. Representation of the various cultural groupings in the media</b>			
3.2.1. Access to airtime for cultural groupings	Art. 45 (2) (d) Consolidated text on broadcasting	AAVM	The public service broadcaster should allocate broadcasting time, in accordance with the legislation, to: religious denominations; cultural associations; legally recognized national cooperative associations; ethnical and linguistic groups, apart from political groups and trade unions.
	Art. 29 AGCOM 2001 resolution	AVMS	Content providers of digital television should assure opening to different opinions, as well as to political, social, cultural and religious trends.
<i>Note: for more detailed provisions, see Art. 4 and followings of the Service Contract.</i>			
<b>3.2.2. Content obligations</b>			
3.2.2.1. Promotion of European works	Art. 6 Consolidated text on broadcasting	AAVM	Wording of Directive incorporated directly into national law. For the implementation of this provision, see the AGCOM resolution 9/99 of 16 March 1999.
	Art. 10 (2) Service Contract	TV	The public broadcaster shall reserve at least 4 % of the annual gross benefits to the production and acquisition of documentaries made by Italian and European producers (including independent producers).
	Art. 10 AGCOM 2001 resolution	AVMS	Digital television content providers are required to reserve, within each program, at least 20 minutes per week to the promotion and advertisement of European programs.
<i>Note: Art. 45 (2) (l) of the Consolidated Text on Broadcasting states that the public broadcaster should reserve a quota of no less than 15% of the overall annual revenue for the acquisition and production of European works, including those made by independent producers. There is clearly a contradiction between the provisions of the law and of the contract, and the former should prevail.</i>			
3.2.2.2. Promotion of European independent works	Art. 44 (3) Consolidated text on broadcasting	AAVM	Public broadcaster shall reserve 20% of qualifying transmission time to the productions made by independent European houses. For Pay TV channels the rule is 10% of qualifying transmission time.
<i>Note: the principle of 20 % as regards the public broadcaster is contained also in Art. 10 (4) of the Service Contract.</i>			
3.2.2.3. Promotion of national/regional works	Art. 11 Service Contract	AAVM	The public broadcaster shall promote regional and local cultures (no more detailed rules and principles are provided), as pointed out also in Art. 1.

3.2.2.4. <i>Language requirements</i>	Art. 45 (1) (f) Consolidated text on broadcasting	AAVM	The public broadcaster should broadcast in German and Ladino in the autonomous provinces of Bolzano and Trento, in French in the autonomous region of Valle d’Aosta, and in Slovenian for the autonomous region of Friuli Venezia Giulia.
<i>Note: the principle as regards the public broadcaster is also contained in Art. 11 (2) of the Service Contract. In more general terms, no specific language requirements are expected from private broadcasters.</i>			
3.2.2.5. <i>Contribution to production</i>	See <i>supra</i> under 3.2.2.1.		
3.2.3. Representation of minorities on the screen (e.g. presenting the news, in drama, movies...; can be engagement in an internal charter or can be imposed statutory)	Article 8 (1) Service Contract	TV	The public broadcaster shall avoid any discrimination as regards the participation of handicapped people in programs, films and in general productions made by the public broadcaster itself.
3.2.4. Subsidies (apart from general PSB funding)	Art. 3-5-6-7-8 Law 62/2001	PM / AAVM	This law provides a series of financial supports to editors.
<b>3.3. Accessibility</b> (i.e. special measures to promote access to media contents by special needs groupings in society, like the elderly, disabled...)	Art. 4 (2) Consolidated text on broadcasting	AAVM	Adopt suitable measures for people suffering from sensory disabilities.
	Art. 45 (2) (q) Consolidated text on broadcasting	TV	Adopt suitable measures for people suffering from sensory disabilities. For implementing measures see Art. 8 of the Service Contract.
	Art. 45 (2) (h) Consolidated text on broadcasting	AAVM	Broadcast programs specifically tailored to children and, in general, youngsters. For implementing measures see Art. 7 of the Service Contract.
	Art. 11 (1) and (4) AGCOM 2001 resolution	AVMS	Digital television content providers that do not broadcast conditional access programs are required to comply with provisions on protection of minors applicable to holders of concessions for analogue broadcasting of television programs on terrestrial frequencies. Furthermore content providers shall adopt technical and editorial measures aiming at favouring reception by deaf and hearing-impaired people as to information, cultural and entertainment programs.

**TABLE 4. Political pluralism**

Measure	Source	Scope of application	Key features
<b>4.1. Structural rules (relating to the organization and structures of media companies/advisory bodies)</b>			
<i>Note: for further details please see under Table 2.</i>			
4.1.1. Restrictions to politicians' ownership/control of media (avoid one dominating voice)	No provisions on the restriction of political parties or organisations ownership.		
4.1.2. Requirements of independence from political parties / politicians	No provisions regarding this aspect.		
4.1.3. Incompatibility of political mandate with membership in media advisory or regulatory bodies	Art 2 (8) Law 481/1995		Members of all regulatory bodies cannot be representatives of political parties nor have elective political roles.
4.1.4. Representation requirements in media companies' bodies (board of directors...)	Art. 49 (3 and following) Consolidated Text on Broadcasting	AAVM	The board of directors of the public broadcaster is appointed by the general meeting of shareholders.
<i>Note: the only two shareholders of the public broadcasters are the Ministry of Finance (99,56%) and SIAE (Italian Company of Authors and Editors, 0,44%).</i>			
4.1.5. Representation requirements in media advisory bodies and/or regulators	See <i>infra</i> under 9.1.		
<b>4.2. Content rules (relating to media programs, press articles, other content)</b>			
<i>Note: in order to ensure the principles of equal treatment and equal access to media of all parties, law 28/2000 sets some rules to grant equal access to programs on radio and television broadcasting containing political opinions, such as party political broadcasts, debates, round tables etc. and other programs where the expression of political views appears to be relevant to all political parties involved in the elections (as well as those involved in the popular referendum). According to article 2, the transmission of such programs is compulsory for the public broadcaster and for private national concessionaires transmitting free on air. Detailed provisions establish the criteria relating to the presence (on screen or on radio) of political subjects (i.e. proportionate to the degree of representation of the political party), the duration of political advertisements, and the transmission of news. See also the Ordinanza no. 171 of 4-5 June 1997 of the Constitutional Court.</i>			
4.2.1. (Equal/proportionate) Access to airtime for political groupings	Art. 7 (2) (c) Consolidated Text on Broadcasting	AAVM	All political subjects shall have access to the programs of the public broadcaster, including those before elections, with conditions of equal treatment.
	Art. 29 AGCOM 2001 resolution	AVMS	The same principle applies in the field of digital television.
	Art. 2 (3) Par Condicio Law	AAVM	As a general principle, in every program with political content the broadcaster shall assure equal access to all political groups and parties.
<i>Note: for further elements see supra under 2.1.</i>			
4.2.1.a. Non-paid access, e.g. right to insert own programs or messages on the public channels	Art. 45 (2) (d) Consolidated text on broadcasting	AAVM	The public service broadcaster should allocate broadcasting time, in accordance with the legislation, to: all parties and groups represented in the Parliament; regional assemblies and councils; local autonomy associations; national trade unions; political movements; public bodies; political associations.

	Art. 3 Law 28/2000	AAVM	Apart from the principles listed above, more specifically, this provision states that the public broadcaster must and private broadcasters can broadcast political messages organized by the political parties or groups themselves (“ <i>messaggi politici autogestiti</i> ”). These messages must allow a motivated exposition of the political programme of the interested party and respect a duration limit between 1 and 3 minutes. They cannot be inserted during a commercial advertising break and may not interrupt any programme, but have to be included in a specific slot together with other messages. They are not calculated within the daily/hourly time allowance for advertising.
	Art. 10 Act of the Parliament Control Committee	AAVM	This provision sets forth specific regulations implementing the content of Art. 3 Law 28/2000.
	Art. 4 Law 28/2000	AAVM	As above, during electoral campaigns.
4.2.1.b. Paid access: rules on political advertising	Art. 3 (7) Law 28/2000	AAVM	Only local private broadcasters can broadcast “ <i>messaggi politici autogestiti</i> ” not for free.
4.2.2. Government announcements	Art. 33 Consolidated text on broadcasting	AAVM	The national and local governments can ask private and public broadcasters to broadcast short messages for free for reasons of general necessity. The public broadcaster shall also broadcast the official declaration and communications of the President of the Republic, of the Chamber and of the Senate, of the Constitutional Court and of the Prime Minister.
	Art. 45 (2) (g) Consolidated text on broadcasting	AAVM	The public broadcaster shall broadcast announcements of public and social interest, as requested by the Prime Minister, free of charge, and broadcasting information on road and motorway traffic.
	Art. 10 (5) Law 223/1990	AAVM	The public and private broadcasters shall broadcast for free announcements of urgent public interest, as requested by the central and local governments.
4.2.3. Impartiality obligations	Art. 2 Service Contract	AAVM	The public broadcaster should offer an objective and impartial program offering. More specifically, Art. 12 states that the public broadcaster commits itself to improve the broadcasting of the sessions of the Parliament in light of the principle of social, cultural and political pluralism.
<i>Note: see supra under 2.1.</i>			
4.2.4. Fair representation of political viewpoints; special rules in election periods	Art. 4 (2) Law 28/2000	AAVM	The criteria to allocate the airtime between the different political groups are the following: <ol style="list-style-type: none"> <li>1) Before the lists of candidates are published: allocation between the political groups represented in the Parliament or regional and local assemblies, or at least represented in the European Parliament or in one of the two Chambers of the Parliament;</li> <li>2) After the publication of the lists of candidates and until the closing of the voting campaign: in principle, allocation in light of the principle of equal opportunities between all the groups.</li> </ol>
<i>Note: the Constitutional Court, with decision no. 155 of 24 April – 7 May 2002, recognized that the Par Condicio law is able to assure the pluralism, and in particular that the participation of political parties and groups to programs is able to guarantee the respect of pluralism.</i>			

	Art. 9 (2) Act of the Parliament Control Committee	AAVM	As a general rule, applicable to non election periods, the public broadcaster can broadcast programs with political content, apart from those specifically regulated (press conference, debates, round tables), assuring equal conditions and impartiality as regards access and expression of ideas.
	AGCOM Communication	AAVM	As a rule, in the programs with the aim to entertain the audience politicians should not be invited unless useful or necessary; if it is the case, the rules applicable to programs aimed to inform apply, in particular as regards impartiality, equal treatment and fairness. The principle is also stated in the Act of the Parliament Control Committee 2003.

**TABLE 5. Geographical pluralism**

Measure	Source	Scope of application	Key features
<b>5.1. Licensing policy fostering local/regional types of media</b> (for instance: is part of the spectrum explicitly reserved for regional/ local media; are there any rules safeguarding the local character of these media once they are operating, e.g. restrictions to cooperate or centralize programming/advertising decisions...)	Art. 8 (2) Consolidated text on broadcasting and Art. 7 (2) Gasparri Law	TV	The overall regulations of the system of television broadcasting should protect local broadcasting and, in particular, a third of the spectrum (transmitting capacity) is specifically assigned to providers of content directed to regional and local audiences.
<i>Note: as regards the powers of regional authorities in this field, please see Art. 12 and 13 of the Consolidated text on broadcasting.</i>			
	Art. 18 (1) Consolidated text on broadcasting	AVMS	The authorization to broadcast television contents and data with digital techniques in a regional or provincial area is delivered by the competent regional or provincial authorities.
	Art. 29 Consolidated text on broadcasting	AAVM	Local broadcasters that want to cooperate and broadcast at the same time must require an authorization to the Ministry of Communications. If granted, they can broadcast at the same time for a maximum of 12 hours/day (television) or 6 hours/day (radio). Every broadcaster shall keep its logo.
	Art. 37 (7) Consolidated text on broadcasting	AAVM	Local broadcasters that cooperate and broadcast at the same time (through interconnection) should respect the rules applicable to national broadcasters as regards the possible advertisements during programs.
<i>Note: local broadcasters can broadcast advertisements up to 25%/hour and 25%/day. The limit is up to 40% if they broadcast direct advertisements, the co-called ‘televendite’, structured like a program but with pure commercial purposes. Apart from this, it is interesting to point out, as regards the interconnection between local broadcasters, that the main three national private broadcasters (Canale 5, Italia 1, Rete 4) started their activities through interconnection. The case has been analysed by the Constitutional Court that basically did not intervene in the status quo at that time (decision no. 826 of 13-14 July 1988).</i>			
	Art. 38 (8) Consolidated text on broadcasting	AAVM	Only local broadcasters can broadcast advertisement of pure local interest.
	Art. 41 (1) Consolidated text on broadcasting	AAVM	At least 15% of the sums used by public authorities for advertisement shall be in favour of local radio and television broadcasters.
	Art. 22 AGCOM 2001 resolution	AVMS	In order to provide information society and interactive services, local and national network operators of digital television are entitled to enter into interconnection agreements among them and to interconnect their networks to other telecommunications networks. Such agreements shall be governed by current laws on interconnection of telecommunications networks.
	Art. 13 (7) and (8) AGCOM 2001 resolution	AVMS	As regards digital television, a national network operator is entitled to provide broadcasting and transmission services to local content providers; a local network operator is entitled to provide broadcasting and transmission services to national content providers.
	Art. 24 (1) (a) AGCOM 2001 resolution	AVMS	One third of the transmission capacity defined with the adoption of the frequency allotment plan for video broadcasting is reserved to organisations that are holders of [...]

			[...] authorisations for content provision intended for local broadcasting, to which, after planning, if available, additional capacity may be added.
	Art. 2 (3) (c) AGCOM resolution 200/08/CONS	AVMS	As regards the switch-off to digital television of the areas ‘all-digital’, at least one third of the broadcasting capacity available in the concerned regions shall be reserved to local broadcasters. See <i>infra</i> (8.3.2).
	Art. 1 (2) AGCOM resolution 603/07/CONS	AVMS	As regards the switch-off to digital television of the region Sardinia, at least one third of the broadcasting capacity available in the region shall be reserved to local broadcasters.
	Art. 2 (1) (c) AGCOM resolution 506/08/CONS	AVMS	The same applies to the switch-off of Valle d’Aosta.
<b>5.2. Structural measures: access of various localities to media (e.g. obligation to have branches throughout country)</b>	Art. 42 (5) Consolidated text on broadcasting	AAVM	When the Authority for Communications (AGCOM) adopts the national plans to assign the radio and television frequencies, the entire country shall be covered in efficient, pluralistic, uniform and rational way.
	Art. 45 (2) (a) Consolidated text on broadcasting	AAVM	The public broadcaster must broadcast all radio and television broadcast in the whole country, as far as the scientific and technological development allow this.
<i>Note: the Service Contract (Art. 16) sets forth that the public broadcaster should cover at least 99% of the population (television, 97% for the third channel) and at least 99% of the population / 80% of the territory of the country (radio).</i>			
	Art. 45 (2) (p) Consolidated text on broadcasting	AAVM	The public broadcaster must have one national headquarter and a branch in every region and in the autonomous provinces of Trento and Bolzano. As pointed out by the following paragraph 3, the regional and provincial branches are autonomous from the financial and accounting point of view.
	Art. 46 Consolidated text on broadcasting	AAVM	This provision states the duties of the public broadcaster at regional and provincial level and, in particular, sets forth the competence of the regional and provincial authorities to enact laws (aimed to specify the duties of the public broadcaster as regards regional programs) and to enter into agreements with the public broadcaster. Please be aware that the only provincial authorities with powers in this sector are the autonomous provinces of Trento and Bolzano.
<b>5.3. Content obligations: requirements to cover local events, etc.</b>	Art. 8 (1) Consolidated text on broadcasting and Art. 7 (1) Gasparri Law	AAVM	Local broadcasters should promote regional and local cultures, provided the political, cultural and language unity of the country.
	Art. 1 (3) Service Contract	AAVM	The public broadcaster commits itself to promote the specific geographical, social and cultural aspects of the regions.
	Art. 2 (5) (a) Service Contract	AAVM	The public broadcaster commits itself to cover local events and news. See also Art. 11 Service Contract.
<b>5.4. Regional State Aids</b>			
<b>5.5. Rules on national minorities</b>	See <i>supra</i> under 3.2.2.4.		
<b>5.6. Rules on social inclusion of remote areas (Aménagement du territoire)</b>			

**TABLE 6. Pluralism of ownership/control**

Measure	Source	Scope of application	Key features
<b>6.1. Sector specific rules limiting media ownership</b>			
6.1.1. Moment of intervention			
6.1.1.1. <i>At moment of market entry (licensing procedure)</i>	Art. 43 (3-5) Consolidated text on broadcasting	PM / AAVM	The sanctions imposed by the Authority for Communications (AGCOM, see <i>infra</i> under 9.1.2.3) apply when the licence is granted or renewed.
6.1.1.2. <i>At the moment of mergers &amp; acquisitions</i>	Art. 43 (1) Consolidated text on broadcasting	PM / AAVM	All companies involved in the communication sector (“ <i>sistema integrato delle comunicazioni</i> ”) must notify the competent Authority for Communications (AGCOM) of all the agreements and business operations that have, as a result, a concentration in the market.
	Art. 43 (4) Consolidated text on broadcasting	PM / AAVM	All contracts, mergers and acquisitions that have as result a concentration in the concerned markets are void.
<i>Note: this provision has serious implementation problems. In particular, it is really difficult in practice to cancel the effects of a merger or an acquisition that has already been implemented.</i>			
	Art. 3 Law 67/1987	N	In the field of daily newspapers, all operations (agreements, mergers and acquisitions) that have as a result the creation of a dominant position in the market are void. If such a dominant position has been reached indirectly through other ways (i.e., transfer of shares of companies not directly involved in the media sector), the Authority for Communications (AGCOM) informs of that the Parliament and sets a deadline (between 6 and 12 months) to cancel the dominant position. If the requirements are not met, the competence to remove the dominant position will be of the judicial authority.
<i>Note: see the remark above. In general terms, both in case of radio-television and newspaper, the lawmaker traditionally started from the consideration that there are actually no dominant positions in the concerned markets, and it is doubtful whether the principle stated in Art. 43 (5) of the Consolidated text on broadcasting (see <i>supra</i> under 6.1.1) has been enforced in practice. According to some commentators and analysts, this is not the case, and in Italy there are currently dominant positions in the media markets. See Open Institute Society 2008, Television across Europe: Follow-up Reports 2008, OSI/EU, Budapest/New York.</i>			
6.1.1.3. <i>Other (constant monitoring/supervision)</i>	Art. 43 (2) Consolidated text on broadcasting	PM / AAVM	The Authority for Communications controls whether there are dominant positions in the concerned markets. This control may happen <i>ex officio</i> (i.e., AGCOM takes the initiative spontaneously) or upon request of a third party with a legitimate interest.
6.1.2. Scope (i.e. trying to prevent one of the following forms of concentrated ownership and/or control)			

6.1.2.1. Monomedia	Art. 43 (7) Consolidated text on broadcasting	AAVM	After the complete implementation of the national plan for assignation of digital television and radio frequencies, a content provider, subsidiary or allied company may not hold authorisations allowing them to broadcast more than 20% of all television (or radio) programs that may be broadcast on terrestrial frequencies at the national level through the networks provided for in the plan. The same principle applies basically also until the plan is implemented. The plan has been enacted in 2003 (AGCOM resolution no. 399/03/CONS).
<i>Note: Art. 15 of the Law 223/1990 provided a limit for radio and television broadcasters of 25% of the national channels and, in any case, a maximum number of 3 channels. The Constitutional Court, with the decision no. 420 of the 5-7 December 1994, states that this principle is against the Constitution and the value of pluralism (see Art. 21 of the Constitution). The pluralism has been recognized to be a fundamental value of the broadcasting system also by the decision of the Constitutional Court no. 194 of 21-25 May 1987.</i>			
	Art. 43 (9) Consolidated text on broadcasting	PM / AAVM	Companies registered as communications operators may not, directly or indirectly, earn revenue greater than 20% of the total revenue of the integrated communications system. For further details please see the following paragraph 10 (definition of the total revenue).
	Art. 3 (1) Law 67/1987	N	Basically, no one may control more than 20% of the total daily newspaper circulation or more than 50% of a total regional or inter-regional circulation. It is supposed to be dominant also who is connected to companies publishing newspaper with a daily circulation of more than 30% of the overall circulation in the country.
	Art. 23 (3) Consolidated text on broadcasting	AAVM	As regards local broadcasters, a company or person cannot have more than 3 channel in the same area and 6 channels in different areas.
	Art. 24 (3) Consolidated text on broadcasting	R	A radio local broadcasting company or person cannot broadcast and potentially reach, directly or through connected or controlled enterprises, to more than 15 million people.
6.1.2.2. Crossmedia	Art. 15 (1) Law 223/1990	TV/N	A single publishing company holding more than 16% of the national circulation cannot hold any television licence. If the share is more than 8% of the national circulation, then it can hold only one television licence. If the share is less than 8% the company has the right to hold up to two licences.
	Art. 43 (12) Consolidated text on broadcasting	AAVM/N	The broadcasters that have more than one channel cannot buy shares of companies editing daily newspapers or create new companies in the field of daily newspapers. This limitation applies until 21/12/2010.

6.1.2.3. Vertical integration with networks	No specific provisions about vertical media concentration.	AAVM	Pursuant to the Law 66/2001 and the resolution no. 109/07/CONS of the Authority for Communications (AGCOM), network operators that have more than one analogue licence must reserve 40% of the transmission capacity in their digital multiplexes for third party content providers on transparent and non-discriminatory terms.
<p><i>Note: the resolution 109/07/CONS has been implemented by the resolution 645/07/CONS, which states that RAI (the public broadcaster), RTI (Reti Televisive Italiane) and Telecom Italia Media Broadcasting must reserve 40 % of the transmission capacity of their digital networks to third party content providers. These have been recently selected by the AGCOM and the list of the companies and projects can be found in the resolution 449/08/CONS. From the practical point of view competition in the digital television market can be surely enhanced by these actions and, more specifically, there are now the conditions to avoid monopolies/oligopolies in the concerned markets. With this regard the AGCOM resolution 136/05/CONS states that it is necessary to avoid that the concentration of resources (duopoly of RAI and RTI/Publitalia '80) actually existing in the system of analogical television is transferred to the system of terrestrial digital television.</i></p>			
	Art. 21 (1) AGCOM 2001 resolution	AVMS	Holders of licence as national or local network operator, also jointly among them, are allowed to use infrastructures provided by third parties and to share the use of technical infrastructures, civil infrastructures and installations, limited to activities included in the licence and in compliance with limits envisaged by electromagnetic emissions and frequency allotment plans.
	Art. 13 (6) AGCOM 2001 resolution	AVMS	As regards digital television, the network operator shall enter into the appropriate technical and trade agreements with content providers whose programs are broadcast through its network and with service providers supplied through its network.
<p><i>Note: the Consolidated text on broadcasting takes into account, to the ends of avoiding dominant positions, the concept of integrated system of communications ('sistema integrato delle comunicazioni'), which includes: daily and periodical newspapers and magazines; editing of paper and electronic yearly books; radio and television broadcasting; cinema; advertisement; communication of products and services; sponsoring. The integration between these services and the network is therefore excluded and not declared to be illegal.</i></p>			
6.1.2.4. Integration with advertising sector	Art. 15 (7) Law 223/1990		If a private or public broadcaster controls or is connected to an advertisement company, such a company cannot manage the advertisement of more than 3 national channels, or 2 national channels and 3 local channels or 1 national channel and 6 local channels. The same applies if an advertisement company controls a broadcasting company.
6.1.2.5. Integration with other (e.g. energy) sectors	No specific provisions in this field		
6.1.2.6. Control over both commercial and public media			
6.1.3. Criteria used to define thresholds for maximum ownership and/or control			
6.1.3.1. Number of licences	Art. 23 (3) Consolidated text on broadcasting	AAVM	As regards local broadcasters, a company or person cannot have more than 3 channels in the same area and 6 channels in different areas.

	Art. 15 (7) Law 223/1990	AAVM	If a private or public broadcaster controls or is connected to an advertisement company, such a company cannot manage the advertisement of more than 3 national channels, or 2 national channels and 3 local channels or 1 national channel and 6 local channels. The same applies if an advertisement company controls a broadcasting company.
	Art. 43 (12) Consolidated text on broadcasting	AAVM/N	The broadcasters that have more than one channel cannot buy shares of companies editing daily newspapers or create new companies in the field of daily newspapers. This limitation applies until 21/12/2010.
6.1.3.2. Market shares	Art. 43 (7) Consolidated text on broadcasting	AAVM	After the complete implementation of the national plan for assignment of digital television and radio frequencies, a content provider, subsidiary or allied company may not hold authorisations allowing them to broadcast more than 20% of all television (or radio) programs that may be broadcast on terrestrial frequencies at the national level through the networks provided for in the plan. The same principle applies basically also until the plan is implemented. The plan has been enacted in 2003 (AGCOM resolution no. 399/03/CONS).
	Art. 24 (1) (b) AGCOM 2001 resolution	AVMS	One or more organisations with a control or association relation between them pursuant to corporate law sources cannot receive authorisations, uncoded or encoded, enabling the broadcasting of more than 20 % of numeric television programs, nationwide.
	Art. 24 (1) (c) AGCOM 2001 resolution	AVMS	One or more organisations with a control or association relation between them pursuant to corporate law sources cannot receive authorisations enabling the local broadcasting of more than a block of numeric television programs.
	Art. 24 (2) AGCOM 2001 resolution	AVMS	One or more organisations with a control or association relation between them pursuant to corporate law sources cannot hold authorisation as content provider at national and local level at the same time. With this regard, brands, names and identifications used for program provision at local level shall be different from those used at national level.

*Note: please be aware that the criterion adopted by the lawmaker is not precisely based on the market share but rather on the ‘programs share’. Furthermore, the AGCOM 2001 resolution defines ‘numeric television programs’ as the set of content, prepared by the content provider, intended for public use by means of television broadcasting and characterised by a single brand, while ‘transmission block’ means the set of data and radio and television programs broadcast on an allotted frequency and including, for radio-telephony, at least five different schedules of television programs and, for television, at least three schedules of television programs. From a different perspective, Article 25 (1) states that organisations holding more than one authorisation as content provider shall keep separate accounting for each of them, while the second paragraph points out that the national content provider being also service provider shall adopt a separate accounting system for each activity included in the authorisation.*

6.1.3.3. Circulation and audience shares	Art. 3 (1) Law 67/1987	N	Basically, no one may control more than 20% of the total daily newspaper circulation or more than 50% of a total regional or inter-regional circulation. It is supposed to be dominant also who is connected to companies publishing newspapers with a daily circulation of more than 30% of the overall circulation in the country.
	Art. 15 (1) Law 223/1990	TV/N	A single publishing company holding more than 16% of the national circulation cannot hold any television licence. If the share is more than 8% of the national circulation, then it can hold only one television licence. If the share is less than 8%, the company has the right to hold up to two licences.
	Art. 24 (3) Consolidated text on broadcasting	R	A radio local broadcasting company or person cannot broadcast and potentially reach, directly or through connected or controlled enterprises, more than 15 million people.
6.1.3.4. Capital shares			
6.1.3.5. Voting shares			
6.1.3.6. Advertising revenues			
6.1.3.7. Involvement in number of media sectors	Art. 15 (1) Law 223/1990	TV / N	A single publishing company holding more than 16% of the national circulation of daily newspapers cannot hold any television licence. If the share is more than 8% of the national circulation, then it can hold only one television licence. If the share is less than 8%, the company has the right to hold up to two licences.
	Art. 43 (12) Consolidated text on broadcasting	AAVM / N	The broadcasters that have more than one channel cannot buy shares of companies editing daily newspapers or create new companies in the field of daily newspapers. This limitation applies until 21/12/2010.
<b>6.2. Sector specific rules preventing cooperation between media companies</b>	Art. 43 (12) Consolidated text on broadcasting	AAVM / N	The broadcasters that have more than one channel cannot buy shares of companies editing daily newspapers or create new companies in the field of daily newspapers. This limitation applies until 21/12/2010.
	Art. 27 (1) AGCOM 2001 resolution	AVMS	As regards digital television, a local operator being also a content provider shall adopt a separate accounting system, while for a national network operator being also a content provider company separation is mandatory.

*Note: Article 27 (2) AGCOM 2001 resolution states that the network operator shall (i) guarantee equal treatment to content providers not referable to affiliated and subsidiary companies, by making available to the latter, for the purposes of defining the necessary agreements, the same technical information made available to content providers referable to affiliated and subsidiary companies; (ii) not make discriminations, in establishing appropriate technical agreements, concerning transmission quality and terms for network access between organisations authorised to content provision belonging to parent, affiliated or subsidiary companies and independent service and content providers; (iii) use, under its responsibility, information received by content providers not referable to affiliated and subsidiary companies, solely in order to enter into technical and trade agreements for network access. Information received shall not be transmitted to other affiliated and subsidiary companies, nor to third parties.*

<b>6.3. (Sector specific or general) rules preventing foreign (non-EU) ownership</b>	Art. 1 Law 416/1981	PM / AAVM	No restrictions on EU countries. Reciprocal arrangements apply to the other countries (recognition of equal conditions). The same applies as regards digital television content providers and service providers.
<b>6.4. General competition rules</b>	Law 287/1990	PM / AAVM	General competition law and cartel-law regulations (Law No. 287/90) also apply to the media sector.
6.4.1. Antitrust			
6.4.1.1. <i>Specific provisions for media sectors (e.g. public interest test...)</i>	See <i>supra</i> under 6.1.		
6.4.1.2. <i>Case law in media sectors (examples of leading cases; any specificities?)</i>			
6.4.2. Merger control			
6.4.2.1. <i>Specific provisions for media sector (e.g. possibility for government to overrule NCA decision, public interest test...)</i>	Art. 43 (1) Consolidated text on broadcasting	PM / AAVM	All companies involved in the communication sector (“ <i>sistema integrato delle comunicazioni</i> ”) must notify the competent Authority for Communications (AGCOM) of all the agreements and business operations that have, as a result, a concentration in the market.
<i>Note: the power to investigate is of the Authority for Communications (AGCOM).</i>			
	Art. 3 Law 67/1987	N	In the field of daily newspapers, all operations (agreements, mergers and acquisitions) that have as a result the creation of a dominant position in the market are void. If such a dominant position has been reached indirectly through other ways (i.e., transfer of shares of companies not directly involved in the media sector), the Authority for Communications informs of that the Parliament and sets a deadline (between 6 and 12 months) to cancel the dominant position. If the requirements are not met, the competence to remove the dominant position will be of the judicial authority.

<p>6.4.2.2. Case law in media sectors (examples of leading cases; any specificities?)</p>			<p>One of the leading and most recent case in the field of media is the ECJ case Centro Europa 7 [OJ C 79, 29.03.2008, p. 2] in which the Court states that a broadcaster which has a licence should be in the position to use such a licence and fully perform its business and, thus, broadcast on an assigned frequency. Following this decision, the Council of State (‘Consiglio di Stato’), decision of 6 May 2008, no. 2622, rejected the request of Centro Europa 7 S.r.l. to get a positive action from the competent administration aimed to assign a spectrum of frequencies to the claimant. The need of clarifications and of a consistent and fair implementation of the principles stated in the applicable legal sources has been highlighted also by the Constitutional Court, e.g. in the decision no. 466 of 20 November 2002 (in which the judges say that the status quo consisting in a clear violation of the pluralism cannot be unlimited in time).</p>
<p><b>6.5. Transparency obligations</b></p>			
<p>6.5.1. Transparency towards consumer (e.g. identification obligation; cf. Art. 3a AVMS Directive)</p>	<p>The AVMS Directive has not been implemented yet by the Italian lawmaker.</p>		
<p>6.5.2. Transparency obligations towards regulator or in general (info on capital structure, balance sheets, either in specific media laws or in general company laws...)</p>	<p>The general rules stated in the Civil Code apply as regards corporate transparency. In particular, it is necessary to consider the legal form adopted by the media company. In many case it will be a public company S.p.a. (‘Società per Azioni’).</p>	<p>PM / AAVM</p>	
<p><i>Note: Article 2 (4) of the AGCOM 2001 resolution states, as regards digital television, that the national authorisation for content providers is issued solely to join-stock companies or co-operatives with fully paid-up share capital, net of losses reported in the balance sheet, of at least € 6,200,000 and with at least twenty employees. As regards local content providers, the limits, pursuant to the following paragraph 5, are of a capital of € 155,000 and at least four employees.</i></p>			

	Art. 2 (9) AGCOM 2001 resolution	AVMS	<p>The authorisation application for digital television content providers, to be sent to the Ministry for Communications, shall include, <i>inter alia</i>: (i) statement certifying that directors and legal representatives have not been irrevocably sentenced to a term of imprisonment longer than six months for a crime committed with malice, or having been subject to precautionary or security measures; (ii) an extract from the applicant company’s shareholders’ register, accompanied by a statement signed by the legal representative, certifying the non-existence of fiduciary agreements having as their object, in whole or in part, the applicant organisation’s share capital, or – in case of the existence of said fiduciary pacts – accompanied by a statement signed by the legal representative and including data to identify the actual beneficiaries of the stockholders’ rights; (iii) shareholders list – that as of the date of the application submission – hold an interest higher than 2 % of the share capital, with information as to the number of shares or stakes held by each shareholder, as well as control positions (in the event shareholders holding, even indirectly, the control of the applicant organisation are, in their turn, companies, it shall be included also the shareholders list of the latter holding, even indirectly, such control; (iv) elements certifying compliance with provisions on the ban on dominant positions.</p>
	Art. 15 (2) AGCOM 2001 resolution	AVMS	<p>The authorisation application for national television broadcasting on terrestrial frequencies (network operator), to be sent to the Ministry for Communications, shall include, <i>inter alia</i>, the documents mentioned above under (i) and (iii). The same applies for the issuance of licence as network operator for local television broadcasting on terrestrial frequencies (Art. 16).</p>

**TABLE 7. Pluralism of media types and genres**

Measure	Source	Scope of application	Key features
<b>7.1. Minimum service in a number of programme strands for commercial / community / public service media</b>	Art. 45 Consolidated text on broadcasting	AAVM	This article states the minimum service requirements and the general guidelines that the public broadcaster must offer and follow. For further details see <i>supra</i> .
<b>7.1bis. Special framework for community media (“medias associatifs”): Is there a special legal framework granting protection to community media (including rules determining the criteria - e.g. being independent of political parties, non-profit, respecting the law, etc. - in order to qualify as community media; granting certain privileges to that type of media, like guaranteed access to spectrum or networks, etc.)</b>	Art. 6 (4) (5) Law 416/1981	PM	This article regulates the cooperatives of journalists.
<i>Note: these cooperatives are not very often addressed in other sources.</i>			
<b>7.2. Events list</b> (please indicate what type of events are listed, e.g. only sports events or also cultural, political events...)		AAVM	The events list only contains one non-sport event (The Italian Music Festival of Sanremo)
<b>7.3. Short news reporting</b>		AAVM	As regards the right to broadcast events (e.g. sport events) in an exclusive way, such a right has his source in the copyright law (Law no. 633/1941) provided that the broadcasting of an event may be considered as a creative work. Different opinions have been expressed in the literature and case law, and in any case such exclusive rights will have a contractual basis that prohibits other operators to broadcast the event, apart from short news reporting. See in the case law Court of Cassation, decision no. 752 of 4 July 2006.
<b>7.4. Fixed book price</b>	Art. 11 Law 62/2001	B	The maximum discount allowed is, in general terms, 10%. But there are exceptions: <ul style="list-style-type: none"> <li>• Discount up to 20% is possible on books sold during book fairs, on books sold by mail orders and on books sold to charities, schools of any grade, universities, research departments;</li> <li>• Unlimited discount: on books out of print; books sold via the Internet; books sold to libraries, archives and museums; books published by at least 20 months and for which booksellers did not place orders for at least 6 months, etc.</li> </ul>
<b>7.5. Public service media</b>			
7.5.1. Structural rules - organization			

7.5.1.1. Independence (from government, political powers, economic powers; is this explicitly guaranteed, how?)	There are no specific provisions stating that the public broadcaster must be independent from government or other political or economical powers. The general provisions in the field of pluralism (see <i>supra</i> under 1.3 and 3.2.1) apply.	AAVM	
7.5.1.2. Election of management, composition of board members...(government? Parliament? Other?)	Art. 49 (3 and following) Consolidated Text on Broadcasting	AAVM	The board of directors of the public broadcaster is appointed by the general meeting of shareholders.
<i>Note: provided that more than 99% of the shares are in the hands of the Ministry of Finance, this means that the government has the power to appoint the members of the board of directors. It is remarkable to say that the legal situation is rather confusing: the Gasparri law stated in 2004 that the public broadcaster should be privatized following the model of the diffused share ownership, but this never happened in reality, and therefore the principle that the shareholders (basically, only one) appoint the members of the board seems to be conflicting with the pluralism that should dominate the public broadcaster.</i>			
7.5.1.3. Specific representation requirements for board of directors, other bodies	No specific provisions in the field.		
7.5.1.4. Advisory bodies: ensured broad representation of cultural, political and geographic groupings	No specific provisions in the field: the only bodies regulated by the Service Contract shall be created by the public broadcaster and the Ministry of Communications (Art. 37-38).		
7.5.1.5. Employment: ensured broad representation of cultural, political and geographic groupings	No specific provisions in the field.		
7.5.2. Structural rules - funding			
7.5.2.1. Source of funding (state / tax money, public / licence fees, advertising, merchandising...)	Art. 47 and Art. 38 (1) Consolidated text on broadcasting	AAVM	Licence fee (' <i>Canone</i> ') and advertising (maximum 4% of the transmission time per week and maximum 12% of the transmission time per hour).
7.5.2.2. Sufficiency of resources (taking into account the missions and new media activities)			
7.5.3. Definition of public service remit			
7.5.3.1. Obligation to provide a varied and pluralistic offer	Art. 3 Service Contract	AAVM	Obligation to guarantee a broad offer of programs with a high level of quality. For further details see <i>supra</i> under 4.2.
<i>Note: the Constitutional Court several times (see, for instance, the decision no. 284 of 19-26 June 2002) states that the existence of a public broadcaster not in regime of monopoly is a way to assure pluralism of information to the citizens and users.</i>			
7.5.3.2. Obligation to engage in new media activities	Art. 45 (2) (m-n) Consolidated text on broadcasting	AAVM	The public broadcaster commits itself to create interactive digital services of public use and to set up the infrastructures to broadcast with digital techniques.
	Art. 21 and following Service Contract	AAVM	Introduction and adoption of new technologies, especially based on the digital one.
	Art. 6 Service Contract	AAVM	The public broadcaster should valorise its multimedia offer (digital TV, satellite, mobile, internet, etc).
7.5.4. Content obligations (not yet mentioned in table 3, 4 or 5)			
<i>Note: the general content obligations are stated in Art. 4 of the Service Contract and include: news and information, social communication, cultural promotion, tourism, shows, sport, children and youngsters, films and fictions. As regards the radio content obligations, the list is very similar and is contained in Art. 5.</i>			

	Art. 45 (2) (b) Consolidated text on broadcasting	AAVM	Broadcast an adequate number of radio and television programs devoted to education, information, training, promotion of culture, and theatrical, cinematographic, television and musical works, including works in the original language, that are recognised as being of great artistic value or highly innovative. The number of hours devoted to such programs is defined every three years by the Communications Authority. Programs for children are excluded from the calculation of these hours
	Art. 7 Service Contract	AAVM	The public broadcaster should broadcast programs for minors and respect their sensibility and dignity.
	Art. 2 (3) Service Contract	AAVM	The public broadcaster commits itself to broadcast a series of programs regarding, <i>inter alia</i> , international politics, national culture and art, promotion of work, equal conditions man/woman etc.
7.5.5. Universal coverage obligations	Art. 16 Service Contract	AAVM	The public broadcaster should guarantee national broadcasting of all programs of public service radio and television, as far as technical conditions allow.
	Art. 45 (2) (a) Consolidated text on broadcasting	AAVM	The public broadcaster must broadcast all radio and television broadcast in the whole country, as far as the scientific and technological development allow this.

**TABLE 8. Distribution (networks/network facilities/print distribution)**

Measure	Source	Scope of application	Key features
<b>8.1. Guarantees for 'public contents' to be distributed (must carry or other)</b>	No must-carry regulation.		
<b>8.2. Guarantees for network operators to distribute 'public contents' (must offer or other)</b>	No must-offer obligations.		
<b>8.3. Ex ante regulation (in electronic communications): SMP market analysis for broadcasting transmission</b>			
8.3.1. Implementation of market analysis procedure in ECNS Directives	Wording of Directive		
8.3.2. Result of (first) round of market analysis of market 18	<a href="http://circa.europa.eu/Public/irc/info/ecctf/library?l=italia/registeredsnotifications/it20060424&amp;vm=detailed&amp;sb=Title">http://circa.europa.eu/Public/irc/info/ecctf/library?l=italia/registeredsnotifications/it20060424&amp;vm=detailed&amp;sb=Title</a>	AAVM	Three markets have been analysed: 1) National market of television analogical broadcasting: there is a duopoly between RAI (public broadcaster) and RTI S.p.a. (together with the affiliated company Publitalia '80 S.p.a., as pointed out by the AGCOM resolution 136/05/CONS); 2) National market of television digital broadcasting: there are no dominant positions; 3) National market of radio broadcasting: there is good competition.
<p><i>Note: as provided for by Art. 8-novies (5) of the Law 101/2008, the Decree of the Ministry for Economic Development 10 September 2008 sets for the calendar for the adoption of digital television broadcasting, to be done by 31 December 2012. As regards Sardinia, the adoption has to be made by the end of October 2008, and for the region Valle d'Aosta by mid-December 2008. For further information see <a href="http://www.sardegna digitale.it/">http://www.sardegna digitale.it/</a> and <a href="http://notes1.regione.vda.it/dbweb/tvdigitale/tvdigitale.nsf/WebHomeITA?OpenForm">http://notes1.regione.vda.it/dbweb/tvdigitale/tvdigitale.nsf/WebHomeITA?OpenForm</a>. For the rest of the country, the switch off was initially planned to be completed by the end of 2008 (Law 23 February 2006, no. 51), but this deadline, as pointed out above, has been postponed to the end of 2012. The Decree 10 September 2008, in particular, defines 16 technical areas, corresponding more or less to the existing Regions and sets forth that the switch-off to digital television shall be carried out in an equal way without privileging some particular areas (i.e., the wealthiest Regions). In the previous pages we mentioned the areas 'all digital', i.e. Valle d'Aosta, Piedmont and Province of Trento, as specified by the AGCOM resolution 200/08/CONS. In practice, nevertheless, the first areas to switch-off to digital are the Regions Sardinia and Valle d'Aosta.</i></p>			
<b>8.4. Ex ante regulation for associated facilities of networks, so-called 'bottleneck facilities'</b>			
8.4.1. Conditional access	Art. 41 and Annex 2 Law on Electronic Communications	AAVM	The operators of public networks have the right and, if requested by other operators, the obligation to negotiate the interconnection of their networks at fair, reasonable and non-discriminatory terms.
8.4.2. EPG (or other search tools)	Art. 42 (2) (b) and annex 2, part II Law on Electronic Communications	AAVM	Almost verbatim reproduction of art. 5(1) and annex 1 Part II of the Access Directive.
8.4.3. API	Art. 21 Law on Electronic Communications	AAVM	Transposes almost entirely Art. 18 of the Framework Directive.

*Note: the Italian government subsidized consumers purchasing interactive digital TV set-top boxes. On December 21, 2005 the European Commission (Commission) opened a state aid inquiry into these subsidies. The Commission received two complaints from terrestrial and satellite television operators alleging that even if the direct beneficiaries of the grant are end-users, the measure may constitute an indirect advantage to the current terrestrial television broadcasters and network operators. The European Commission has decided that subsidies for digital decoders granted by Italy in 2006 do not violate EC Treaty state aid rules (Article 87(1)) as they are offered for all decoders, regardless of the transmission platforms. However, the Commission has also decided that subsidies provided in 2004 and 2005 are incompatible under the state aid rules as they were not technology-neutral.*

8.4.4. Other			
<b>8.5. Interoperability requirements</b>	Art. 21 Law on Electronic Communications	TV	As regards digital television, the providers should adopt an open API in order to assure interoperability.
	Art. 40 Law on Electronic Communications	AAVM	Operators shall enter into agreements to assure access and interconnection. For further details, see <i>supra</i> (5.1).
	Art. 42 Law on Electronic Communications	AAVM	The Authority for Communications (AGCOM) can force operators to guarantee interoperability to the final users.
<b>8.6. Specific rules for distribution systems in print media</b>			
<i>Note: the distribution market has been liberalized in recent years.</i>			
<b>8.7. General competition law</b>	Law 287/1990		
<b>8.8. Policies fostering distribution systems (libraries, broadband networks...)</b>			
<b>8.9. State Aids to distribution platforms and/or schemes (can be based on one or more of the following criteria:        - Regional        - Linguistic/minority        - National )</b>			

**TABLE 9. Supervision**

Measure	Source	Scope of application	Key features
<b>9.1. National Regulatory Authority</b>			Autorità per le Garanzie nelle Comunicazioni-AGCOM ( <a href="http://www.agcom.it">www.agcom.it</a> )
9.1.1. Structure/ organisation	Art. 1 (3) Law 249/1997	PM / AAVM	The Authority comprises the following bodies: the president, the commission for infrastructures and networks, the commission for services and products and the council. Each commission is a collective body made up of the president and four commissioners. The council comprises the president and all the commissioners. The Senate of the Republic and the Chamber of Deputies elect four commissioners each of whom will be subsequently appointed by a decree of the President of the Republic.
9.1.1.1. Guarantees for independence	Art. 1 (1) Law 249/1997	PM / AAVM	AGCOM will be fully autonomous and independent in its judgments and evaluations.
9.1.1.2. Representation requirements	Art. 1 (3) Law 249/1997	PM / AAVM	The members of the Authority are appointed by the Parliament.
9.1.2. Credibility and efficiency			
9.1.2.1. Sufficient resources	Art. 6 Law 249/1997	PM / AAVM	The law states the budget of the Authority, and the Ministry of Finance can modify it if necessary.
9.1.2.2. Tasks and duties	Art. 1 (6) Law 249/97	PM / AAVM	The two main tasks assigned to AGCOM are to ensure equitable conditions for fair market competition (application of antitrust rules in the field of communications, inquiries on dominant positions, organisation of the Registry of Communication Operators) and to protect fundamental rights of all citizens (universal service, quality and distribution of services and products, political, social and economic pluralism in broadcasting). Being a “convergent authority”, it supervises and enforces compliance with legislation with an extension that ranges from the telecommunications to the audiovisual and press-publishing sectors.
9.1.2.3. Effective sanctioning powers	Art. 43 (3-5) Consolidated text on broadcasting	AAVM	The Authority can enact a public complaint (with no real effects) or impose sanctions like the selling of enterprises or parts of enterprises.

	Art. 3 Law 67/1987	N	In the field of daily newspapers, all operations (agreements, mergers and acquisitions) that have as a result the creation of a dominant position in the market are void. If such a dominant position has been reached indirectly through other ways (i.e., transfer of shares of companies not directly involved in the media sector), the Authority for Communications informs of that the Parliament and sets a deadline (between 6 and 12 months) to cancel the dominant position. If the requirements are not met, the competence to remove the dominant position will be of the judicial authority.
9.1.3. Cooperation with other regulators	No specific provisions in this field.		
<b>9.2. Press Council</b>			
9.2.1. Broad representation of sector	Law 69/1963	PM / AAVM	The Press Council represents full and part-time journalists and trainees.
9.2.2. Sufficient resources			
9.2.3. Credibility			
<b>9.3. Competition Authority</b>			( <a href="http://www.agcm.it/">http://www.agcm.it/</a> )
9.3.1. Structure/ organization <i>(What this row should learn is whether there is a problem for media pluralism because NCA does not function properly; it should not contain an in-depth analysis of functioning of NCA!)</i>	Art. 20 (1) Law 287/1990	AAVM	The control over concerted practices, abuse of dominant position and concentration is competence of the Authority for Communications (AGCOM) and not of the NCA.
9.3.2. Cooperation with other regulators			