

# Code CoAN 2010: The first Code of Audiovisual Media Co-regulation in Spain

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**Abstract:** On 17 November 2009 the first co-regulation code for the audiovisual media sector was established in Spain: “2010 Co-regulation Code for the Quality of Audiovisual Contents in Navarra”. This Code is pioneering in the field and, taking into account the content of the recently approved General Law on Audiovisual Communication, is an example of the kind of work that shall be carried out in the future by Spain’s National Media Council (*Consejo Estatal de Medios Audiovisuales*, aka, *CEMA*) or the corresponding regulatory body.

This initiative shows the need to apply co-regulatory codes to the national systems of regulation in the audiovisual sector, as the European institutions urged in their latest Directive in 2010. This article addresses three issues that demonstrate the need for and advantages of applying co-regulation practices to guarantee the protection of minors, pluralism, and the promotion of media literacy: the failure of traditional regulatory instruments and the inefficiency of self-regulation; the conceptual definition of co-regulation as an instrument separated from self-regulation and regulation; and the added value of co-regulation in its application to concrete areas.

**Keywords:** Spanish co-regulation code; media legislation in Spain; Audiovisual Council of Navarre (CoAN); minors; pluralism; media literacy.

**Summary:** 1. Introduction. The crisis of the traditional regulatory instruments. 2. Methodology. Why is co-regulation needed? Conceptual delimitation. 3. Results. The added value of co-regulation. 3.1. Protection of minors: establishing legal principles and ensuring the efficacy of self-regulation. 3.2. Media literacy: overcoming the deficiencies of the legal framework. 3.3. Pluralism: progressions in the pursuit of an objective that is extremely important, but has been politicised and is in danger of stagnation. 4. References. 5. Notes.

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## **1. Introduction. The crisis of traditional regulatory instruments**

On 17 November 2009 the Audiovisual Council of Navarre (known as CoAN according to its initials in Spanish) and the regional television operators (*Localia Canal 4*, *Canal 6*, and *Popular Television Navarra*) made public their agreement to encourage and implement co-regulation practices for television broadcasting in the Chartered Community of Navarre (Spain). As the document states, this agreement, without underappreciating the value and continuity of previous initiatives, assumes the need of adopting a regulatory framework of closer collaboration, capable of improving the existing self-regulation systems. This objective thus recognises the imperfection of the previous system and manifests the necessity of improving the implementation of self-regulation systems to the audiovisual media activity in Spain.

A clear example of the ineffectiveness of the previous systems is the obvious daily unpunished breach of the self-regulation code on television content and childhood signed in December 2004 by the national television operators with regards to the scheduling of programming and advertising to protect minors from potentially harmful or inappropriate content.

The need highlighted in this agreement is not new in the audiovisual media field. What is new is the strategy proposed for the first time in Spain to tackle the problem: the adoption and implementation of new co-regulation practices capable of recognising the shared responsibility of the governmental authorities and the television operators of allowing the active participation of the involved sectors, and providing specific instruments to implement, monitor and update the agreed mechanisms. The first result of the agreement was the adoption of the “2010 Co-regulation Code for the Quality of Audiovisual Contents in Navarre” (hence the Code CoAN, since it was written by the CoAN). This code, which was subjected to the consultation of the regional operators, should be considered the first co-regulation code for the audiovisual media sector in Spain.

The implementation of this initiative at the national level is necessary and urgent. The European Audiovisual Media Services Directive (Directive 2010/13/EU, DO L 95, of 15.4.2010, pp. 01-24) recognises that the new technologies that have been incorporated to the transmission of audiovisual media services demand an adaptation of the regulatory framework. It is essential to establish reforms capable of: reflecting the effects of the structural changes, the technological developments and the evolution of business models; and ensuring the optimal conditions of competitiveness and legal security for the ICTs and the media services and industries in Europe.

Apart from demanding the updating of the audiovisual regulation in EU countries, this recognition also corroborates the historical difficulty, more than ever in need of an urgent

solution, to find a legal system that is suitable for the characteristics of the audiovisual media services.

This is the reason for the eternal and controversial issues that are the subject of unfinished academic, professional, business and political debates about: the controversial justification for the existence and permanence of publicly-owned television and radio stations; the governmental control through the councils; the existence of regulatory authorities and the establishment of their powers; the obligations of private audiovisual media companies and their compatibility with commercial objectives; the limited role of the legislation in its application to audiovisual media services; and the inefficiency of voluntary commitments through self-regulation agreements.

The reality is that the history of the audiovisual media market, not only in Spain but in the whole of Europe, has shown clear evidence that, at least so far, the traditional legal framework, by itself, does not seem capable of responding to the multiple and sometimes hardly compatible, social demands that are implicit in this type of professional activities. And it does not seem that the in future, which will be governed by digitalisation, the context surrounding the need to regulate this type of activities will be simplified (Herrero, 2009: 7). The new Spanish General Law on Audiovisual Communication (Ley 7/2010, of 31 March 2010, Official Gazette No. 79 of 1/04/2010, pp. 30157-30209) reflects the profound changes affecting the audiovisual market and highlights the need of updating the regulatory instruments according to the characteristics of the new digital scenario.

The law refers to a new context dominated by: the exponential growth of radio and television signals; the multiplication of possibilities and forms of access to audiovisual services; the growth and fragmentation of audiences; the irruption of the Internet as a competitor in audiovisual contents; and the evolution of business models. Therefore, as the law literally states: the rules have to evolve and must be adapted to new technological developments.

The adaptation of the legislation, however, goes beyond enacting a new Audiovisual Law, and demands the adoption of mechanisms capable of complementing and providing effectiveness to a new legal framework which is generic and therefore, in many respects, is in need of precision and development. However, one might wonder what are the measures that should be adopted because it does not seem easy to find instruments capable of replacing the traditional legislation and deterring the media from certain conducts, stopping the appetising intervention of the authorities with economic or political interests, and balancing the obligations of general interest with the specific short-term objectives of broadcasters in terms of profitability and audience [1].

Self-regulation has failed to overcome the shortcomings of the legal framework, and as the Code CoAN recognises, the limited scope of its objectives, the lack of a strict monitoring of its compliance, and the absence of sanctions have turned the self-regulation codes, except for some exceptions, into worthless scraps of paper.

In any case, the need to rethink the audiovisual regulation does not come exclusively from the multi-faceted nature of the audiovisual media services and therefore of their internal causes, but instead this need is part of the general and pending task of responding to a widespread crisis affecting, in a broad sense, the current governmental systems. We are faced with a complex society dominated by a global market that is governed by economic freedoms and in which at the same time that the services multiply and the freedoms expand, there is an increase of the social demands and the need to satisfy, through possible and practical alternative channels, the rights of citizens in relation to a diversity of services. This crisis is integrated in a context that we could qualify, especially in the case of certain activities, as uncontrollable and hardly governable by the traditional legal and administrative channels.

The deterioration of this model has been evident for decades in the case of the regulation of the television market in Spain. The institutions have faced these changes in an improvised and tardy manner, obviating the technological and commercial dimension of these services and plunging this medium of communication in the so called triple crisis of identity, legitimacy, and financing. The definitive introduction of digital television is presented as an opportunity to redefine the market and take the risk of proposing new rules capable of sorting out the chaos and overcoming the deficiencies of the initiatives implemented so far.

The new governmental instruments must have five essential characteristics:

1. Openness, which requires changes in the way the institutions work and the use of a simple, familiar and easily understandable language that is accessible to the general public;
2. Citizen participation, from the conception to the implementation of the various governmental tasks;
3. Responsibility, which requires clarity on the commitments agreed by all parties involved in any field of decision-making;
4. Efficiency, through the adoption of appropriate and harmonic measures, guided by clear and possible objectives that are the fruits of the gained experience;
5. Coherence, which requires the involvement of regional and local authorities and an appropriate approach of the policies within a complex framework of action.

These governmental formulas are reflected in the new agreement signed between the CoAN and the regional broadcasters, who affirmed that they are looking for a more active and updated collaboration framework, through new co-regulation practices capable of recognising: the shared responsibility of the government and the media operators; the active participation of the involved parties; and the adoption of specific instruments for the implementation, monitoring and updating of the mechanisms.

Taking into account these principles, the proposed changes are articulated around several objectives which include: the need to increase the participation of social actors and the enhancement of policies and regulations. This last chapter recommends that the legislation should not exceed what is strictly necessary to achieve the pursued objectives. The European institutions recognise that many of their provisions are excessively normative and too costly while others are inconsistent, unclear and obsolete. For these reasons, apart from supporting the enhancement of the legal framework, the European institutions support the use of mechanisms that complement the legislative formula [2]. In this line, the European Commission has recognised that the law is often only a part of a broader solution that must combine formal standards with other instruments, like self-regulation and co-regulation.

Co-regulation is a technique proposed by EU law from 2001 to 2010 in documents such as: the 2001 “White Paper of European Governance” (COM, 2001: 428 final); the decision of the European Parliament on the celebration of the 2003 Inter-institutional Agreement “Better regulation” between the European Parliament, the Council and the Commission (P5\_TA (2003) 0426) with a package of measures offered in 2005 (COM, 2005: 535 final) and since then subject to a process of continuous assessment [3]; and in concrete application to the field that concern us, in the 2005-2007 Study on the co-regulation measures in the media sector for the European Commission, and the new European Audiovisual Media Services Directive (Directive 2010/13/EU, DO L 95, of 15/4/210, pp.01-24).

## **2. Methodology. Why is co-regulation needed? Conceptual delimitation**

The novelty of the application of the term co-regulation to the operation of the audiovisual media market requires a detailed explanation of the origin and conceptual development of this term as well as a delimitation of its differences from the traditional legislation and the conventional self-regulation.

Co-regulation has been defined as:

“The set of processes, mechanisms and instruments implemented by the competent public authorities and other actors of the sector, in order to establish and implement an action

framework that is adequate to the normative, which is equidistant between the interests of the industry and citizens, and is translated into concrete and effective practices, so that all the involved actors are co-responsible for its correct operation (Mora-Figueroa Monfort B. and Muñoz Saldaña M., 2008 p: 125).

The new Directive defines co-regulation, in its whereas clause 44, as “a legal link between self-regulation and the national legislative power”.

Thus, we can affirm that, on the one hand, co-regulation is similar to the traditional law in terms of the involvement of authorities in the adoption and implementation of concrete initiatives and the monitoring of its compliance, and on the other hand, it is similar to the self-regulation system with regards to the involvement in the process of operators and other implicated actors. Its main features include:

- its development over what was established in the legal framework insofar as it adds value to the service of the general interest. Its use may be considered relevant when flexible or urgent measures are needed.
- its application with the involvement and supervision of the competent authority in the field to which it applies. In case the use of this mechanism does not produce the desired results, the use of traditional legislation can be considered.
- its implementation under the principle of transparency since citizens should have access to all the regulatory instruments and their modalities of implementation should be made public.
- and, finally, the integration of the parts interested and involved in the process, which must be considered to be representative, organised and accountable for its compliance.

As we can see the features of the co-regulation code are the result of the accumulation of the aforementioned general principles of Good Governance. As a consequence, this new form of regulation is especially recommended by EU law, both in a generic form, and with regards to its application to the media.

Co-regulation can help overcoming some of the weaknesses of the traditional legislation and self-regulation by contributing, among other things to: overcoming historical tensions between the controversial intervention by governmental authorities and the necessary suppression of the unnecessary administrative interference in the audiovisual media field; building a flexible regulatory framework adapted to the permanent technological evolution; guaranteeing the adoption of mechanisms of development and implementation in those areas considered by the legal framework, but in need of further precision by other means; involving the media through

techniques that ensure the compliance of the agreements and the sanctioning of breaches against such agreements.

Finally, perhaps the strongest argument is that co-regulation is an effective and proven instrument of success. This is demonstrated by the experience of countries that have implemented such instruments, taking as a paradigm the British model and its Ofcom code. However, we have the experience of other countries, like Germany, Italy and Portugal, which have adopted co-regulation instruments in the area of the protection of minors in relation to film, advertising, and audiovisual contents in general.

### **3. Results. The added value of co-regulation in its application to specific objectives**

From a general perspective we can see that co-regulation is an instrument that should be applied to areas in need of an urgent, flexible and effective regulation, cemented on already established legal principles and through which a real general interest can be added to the activities on which it is applied. This formula applied to the audiovisual media market is the objective of the Code CoAN 2010: improving the quality of television content.

Regardless of the perspective (legal, political, business or professional), dealing with the issue of the regulation of audiovisual content, or more specifically, the quality of television content is very complex. In this sense, it should suffice as proof the difficult or the impossibility to define what the television public service is and the obligations of public or private operators in this regard, which has always been delimited with general statements open to wide interpretation (MEDINA M. and OJER T. 2009).

Among other reasons, the exercise of fundamental rights such as the freedom of expression and the right to information through the media, and the difficulty of determining in the legal field, in a precise and practical form, the obligations and limits with regards to such exercise of rights, have strongly hampered the need of improving the quality of TV content in Spain and the need of ensuring the rights of consumers regarding such services.

While it is true that the fundamental nature of the rights exercised through the media has discouraged the adoption of more concrete or specific laws about media contents, it is also true that self-regulation has not succeeded in overcoming the generality of the legal framework. As the Code CoAN 2010 has recognised in relation to the self-regulation codes that have been approved so far, the limited scope of their objectives, the lack of strict monitoring of its compliance, and the absence of sanctions in accordance with the agreed principles, have turned such codes into worthless scraps of paper.

The new code combines, on the one hand, the generality and flexibility necessary to define broad goals and update its content according to the changing professional needs and practices, and on the other hand, the indispensable precision to ensure its correct and effective implementation. Its content is divided into a Preamble and ten chapters, which address the following issues: I. Rights of audiovisual media users; II. Media literacy; III. Protection of minors; IV: Pluralism; V. Electoral; processes; VI. Judicial; processes VII. Immigration; VIII. Information of TV viewers; IX. Advertising; X. Participation in competitions. Finally, it includes an annex listing a series of guiding criteria for the classification of TV programmes, existing at the national level, and designed to facilitate a suitable classification and signalling of the programming of Navarrese television channels.

A brief comparative analysis of the content of the chapter concerning the protection of minors in relation to what has been established by the legal framework allows noticing the added value of this innovative instrument promoted by the CoAN.

If we had to choose an area in need of effective reforms it would be the protection of minors from television contents that are potentially harmful to their physical, mental or moral development, especially taking into account that the new digital context will bring both opportunities and new potential risks through the new platforms, and products.

### **3.1. The protection of minors: establishing legal principles and ensuring the efficacy of self-regulation**

While it may be somehow contradictory, no one can say that the protection of minors has been a chapter ignored by the legal framework since it has been permanently present in the regional and national audiovisual media legislation in the successive rules adopted since the 1980s to the present day.

The first version of the 1989 Television without Frontiers Directive already included in its whereas clauses the need of establishing rules designed to safeguard the physical, mental and moral development of minors from potentially harmful television contents, and therefore it incorporated specific rules concerning advertising and minors (articles 15 and 16) and a specific chapter for the protection of this group (chapter V, article 22). The revision of this rule in 1997, which was incorporated into Spanish law in 1999, added the convenience of distinguishing between prohibition and control measures, and the convenience of promoting the incorporation of systems for the identification, classification and filtering of content to enhance parental control.



The new 2010 General Law on Audiovisual Communication, by transposing the Audiovisual Media Services Directive, continues this legislative concern for the protection of minors and, in its article 7, combines the rights of the minor in relation to the exercise of audiovisual media activities and the obligations of operators in relation to those rights.

Thus, in an analysis of national scope, the current legislation on television consumption and the protection of minors can be summarised in the following objectives:

- To protect minors from certain contents, in particular: commercial communication (and the possible abuse of the helplessness of minors to its influence) with some specific prohibitions (advertising of alcoholic beverages to minors), and scenes of violence and pornography [4].
- To prevent the access of minors to this type of content through schedule restrictions and visual identification systems. The broadcasting of programmes likely to harm minors' physical, mental or moral development is only allowed in certain time slots and will be subject to visual and acoustic warnings.
- To ensure that the programming does not include content that incites hatred on the grounds of race, nationality, sex or religion.
- To adopt and support measures (classification and filtering mechanisms) to facilitate the control by parents and guardians over the programming accessed by minors.

In the case of Navarre, to the national legislation on television and the protection of minors we should add the provisions of the 18/2001 regional law (*Ley Foral* 18/2001) of 5 July, which regulates the audiovisual media in Navarra, and the recently adopted Regional decree (*Decreto Foral* of January 2009), which regulates the use of mechanisms for the protection of minors from television.

The co-regulation code would be meaningless if it did not add value to the provisions of the legal framework. This text states in relation to the protection of minors:

Firstly, that regional operators should be committed to “implement the measures proposed by the CoAN in the Quality Charter for the broadcast of TV content during children’s time slots. This Quality Charter was approved by the CoAN in March 2009 and aims: to provide criteria that allow measuring/guaranteeing the quality of children’s programming; to describe the potentially harmful content, whose broadcasting must occur out of the protected hours; and in accordance with the abovementioned parameters, to provide operators with guidelines to properly schedule programming in the hours of enhanced protection.

Second, the code refers to a series of obligations assumed by operators, including: promoting parental control, through the new possibilities offered by digital terrestrial television; avoiding the dissemination of potentially harmful content on children's protected hours; ensuring a didactic and constructive perspective is provided when potentially harmful content is included; avoiding the broadcasting of potentially harmful programmes for children outside the protected times slots in holidays and dates in which their broadcast may reach minors.

In other words, with regards to the protection of minors, this co-regulation code implies a double progression in the inclusion of provisions that the legal framework can hardly develop (such as defining what is meant by potentially harmful contents, how to guarantee the quality of children's programming, or what criteria facilitate the proper classification of audiovisual contents); and constitutes another step in the provision of efficiency to previous initiatives developed in the framework of self-regulation and the non-binding recommendations made by the Regulatory Authority.

### **3.2. Media literacy: overcoming the deficiencies of the legal framework**

Media literacy, contrary to what occurs with the protection of minors, is one of the most innovative issues in the Spanish audiovisual media legislation. Although since a decade ago the academia has developed projects addressing the topic of digital education, or education in media consumption, its leap to the legal context was a consequence of the incorporation of the Audiovisual Media Services Directive to the Spanish legislation through the new General Law on Audiovisual Communication.

The General Law on Audiovisual Communication includes media literacy in the section relating to the rights of consumers and users (Chapter I, Title II, article 6) when recognising that the right to transparent audiovisual communication includes the obligation of the public authorities and audiovisual media service providers to contribute to citizens' media literacy (article 6.4). The law refers to this matter for the second time in chapter II, article 47 concerning the functions attributed to the National Council of Audiovisual Media, and specifies that the Council is responsible for "ensuring the promotion of media literacy in the audiovisual field for the purpose of promoting the maximum acquisition of media competencies among citizens".

Without discussing the multiple lights and shadows that surround the new regulatory authority, the reality is that the European directives advocate for the protagonist role of the Independent Regulatory Authorities in the monitoring of the audiovisual market.

However, the approach of the new law does not seem entirely appropriate, or at least presents important deficiencies with regards to media literacy.

The first deficiency of the Spanish law is that it does not define what media literacy means. The European Directive does defines this goal in its whereas clause 47 as the obligation of providing users of audiovisual services: the set of skills, knowledge and understanding capabilities that enable them to use the media in a safe and effective way, to make informed choices, to understand the nature of the contents and services, to protect themselves and their families from harmful or offensive content, and to take advantage of the opportunities offered by the new digital context.

Furthermore, the last study published in 2009 on the assessment criteria to measure the levels of media literacy in different EU Member States [5] defines media literacy as “the competence to cope, autonomously and critically, with the communication and media environment established within and as a consequence of the information society” (Assessment Criteria for Media Literacy Levels, 2009: 21).

This definition, in accordance with the objectives of the study, is developed by distinguishing two dimensions: individual competencies (use of technology, critical capacity and social skills) and external or environmental factors (media accessibility, education, political actions, regulation, or the role of other interested agents like the media industry). It is worth noting that in this study and with regards to the levels of media literacy Spain occupies the 14<sup>th</sup> place among the 27 analysed countries.

The second deficiency of the Spanish law is a result of the association of media literacy, as a right of the consumer, with the obligations of the operator: to identify the service provider; to disseminate in advance the programming to be broadcast; and to identify and differentiate commercial advertising from the rest of the contents.

Although the media literacy, from a general perspective, may relate to these issues, it transcends such obligations and affects such realities as: the full and proper exercise of the freedom of expression and of the right to information through linear and non-linear audiovisual media services; the right to media access; the acquisition of the necessary capacity to understand, evaluate, and criticise the consumed contents and services; the correct assessment of the provided information; the protection of minors; the ability to create content; the full exploitation of the diverse forms of communication; and the citizen participation in social issues through the media. The General Law on Audiovisual Communication does not include any reference to any of these issues in relation to media literacy.

In other words, the Spanish legal framework does not include the specifications of the Directive regarding media literacy nor the last contributions made by the European institutions in

documents such as the 2008 Report of the European Parliament on “media literacy in a digital world” (A6-04621/2008) or the Commission’s 2009 Recommendation entitled “Media literacy in the digital environment for a more competitive audiovisual and content industry and an inclusive knowledge society” (C (2009) 6464 final). In fact the latter document explicitly refers to the necessity of “developing and implementing co-regulation initiatives leading to the adoption of codes of conduct by the major involved parties” (C (2009) 6464, point 3, p. 6).

In the case of Navarre, while its regional law (*Ley Foral* 18/2001) does not make any reference to Media Literacy, since 2005 the CoAN addresses the issue of media literacy in the family context through the campaign entitled “Family and audiovisual screens”. This campaign is centred on workshops aimed at teaching parents a correct use of the different screens: TV, computer, video games or mobile phone. More than 2,000 parents have participated in these campaigns since they were implemented. Other initiatives of the CoAN in the field of media literacy is the creation of the audiovisual media users’ guide which informs citizens of their rights and obligations as consumers of audiovisual services and specifies the different routes they can use to exercise their rights with a simple and practical explanation.

The activities of the CoAN have resulted in the inclusion of this objective as one of the areas of the co-regulation code under study. It is interesting that the promotional video of the CoAN includes audiovisual media literacy as one of the four axes of its obligations and, curiously, occupying the first place on the list.

The Code CoAN, in the section relating to media literacy, includes three specific points: 1) the involvement of regional television stations, together with the CoAN and the involved authorities, in audiovisual education initiatives, in particular, concerning the training of parents about the opportunities and risks of the use of audiovisual screens; 2) the promotion by the operators and the CoAN of media literacy activities aimed at other sectors of the population like the elderly people or any average citizen who requests them; 3) the commitment of operators to include in their programming guides, at least once a year, a programme devoted to audiovisual education.

Although this section of the Code CoAN can be improved, taking into account the ongoing initiatives, it constitutes a progression with respect to the deficiencies and absences of the national and regional legal frameworks.

### **3.3. Pluralism: progressions in the pursuit of an objective that is extremely important, but has been politicised and is in danger of stagnation**

Pluralism, as is the case with the protection of minors, is a historic goal in audiovisual regulation. In the case of Spain, the 1980 Statute of Radio and Television already made reference to the obligation of radio and television operators, regardless of the public or commercial ownership, the broadcasting reach or technology, to “respect political, religious, cultural, social or linguistic pluralism” (article 4, section c).

The importance of pluralism in the exercise of audiovisual activities is such that it has often emerged as protagonist of the jurisprudence in audiovisual matters, sometimes, as a sad reflection of its politicisation. On the one hand, the flag of pluralism has been raised to defend the supervision of the political authorities in the functioning of the audiovisual market, in particular regarding the granting and renewal of licences. And at the same time, but in the opposite direction, the supporters of the liberalisation or deregulation of the sector justified their claims by embracing the same pluralism of which the Administration was guarantor.

While the digitalisation of the market has overcome, in part, this problem by multiplying the possibilities of emission and easing the system of granting and renewal of licenses, the difficulty of defining in the legal texts the objectives of pluralism persist.

Pluralism refers to issues relating to the media ownership and also to disparate factors such as: political influence, economic competition, cultural diversity, the development of new technologies, the transparency and working conditions of journalists, the compliance of the ethical standards of journalism, the access to the different available sources of information, transparency of information, and the promotion of public debate or the participation of citizens in the media. The difficulty to define these objectives through the legal framework is therefore understandable.

The new General Law on Audiovisual Communication refers to pluralism five times in its Preamble and 10 times throughout its articles. Without the intention of making an in-depth analysis on its content, the text of the new law associates the objectives about pluralism with: the existence of a plurality of media (both public and commercial); the reflection of political, ideological, cultural and social pluralism on the media content; the access to a diversity of sources with special reflection in the informative pluralism; the access to contents of diverse genres; and the diversification of audiovisual services in terms of areas of coverage.

In turn, Navarre’s regional law (Ley Foral 18/2001) places special emphasis on the principles of programming that should guide television broadcasts in its Autonomous Community: “the

respect for political, religious, social, cultural, ideological and linguistic pluralism” (article 3) and orders the creation of the CoAN “as independent body in charge of ensuring and promoting respect for constitutional principles and values, and in particular, the protection of pluralism, young people and children (article 20).

Therefore, the law regulating the audiovisual activity in Navarre states that the obligations of the CoAN in relation to pluralism include: “to inform perceptively and positively (...) the proposals presented in the licencing contests (...) in order to ensure pluralism and free competition in the sector (...)”; “to submit to the Parliament of Navarre an annual report about its activity in the previous period (...) with special attention to contents, and among them the topics that affect pluralism (...)”; “to oversee the compliance of the provisions of the audiovisual legislation and the defence of the principles on which it is based and, in particular, to ensure the compliance of the principles of political, social, religious, cultural, and ideological pluralism and to ensure the linguistic and cultural plurality in all the audiovisual system in Navarre”; “to promote in television and radio stations the compliance of constitutional rights related to pluralism” (article 26).

As a consequence, and in accordance with these obligations, the co-regulation code addresses the theme of pluralism in its fourth section, which summarizes the obligation of operators, whose performance will be monitored according to the procedures laid down by the code, to put into practice the periodic recommendations of the CoAN and to design programming guides that reflect the different genres; to reflect in a balanced way all the different geographical sectors, ways of life and perspectives in the regional news programmes; and to offer spaces in Basque language in accordance with the demands of the Navarrese society.

The added value of this brief section lies, in its first part, in the commitment of operators to follow and implement the recommendations eventually made to them. The reason for this added-value lies in the fact that, although external pluralism can be guaranteed, at least partially by legislation; internal pluralism, however, requires a more precise, circumstantial and, therefore, changing analysis.

In this regard, in recent years the CoAN has developed a series of recommendations directly related to internal pluralism, with regards to: programming (CoAN recommendation, of May 2003, about the access to programming by hearing-impaired people); the approach of the contents and the cultural and social pluralism (CoAN recommendation, of October 2006, about the informational treatment of immigration); and the content of news programmes (CoAN recommendation, of April 2007, about the press coverage of the electoral period by the audiovisual media).

The co-regulation code adopts the basic principles in the search for a genuine pluralism in the exercise of audiovisual activities: the direct collaboration of operators (adopting the freedom of programming under the paradigm of what was established by the legal framework); the variability of the needs in this area (depending on the informational, media, business, cultural or political context); and the need to deal enable it with effectiveness as a development and complement of what was established by the legal framework.

It does not appear in any way, as the sceptics of the Audiovisual Councils' performance (Zallo R., 2006: 80) could claim, that addressing these topics necessarily poses a threat to the exercise of the freedom of expression or the right to information through the media. On the other hand, as we have seen in some decisions made in recent months, the threats to the freedom of expression may come directly from institutions that should be ensuring the observance of the legislation. On the contrary, an appropriate approach to these actions, regardless of the political orientations (Salomon E., 2009: 152), can contribute significantly to improving the quality of audiovisual services and to the observance of the provisions of the legislation which, inevitably, considers objectives like this in a general and abstract manner.

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## 5. Notes

[1] On this subject see Zallo, R. (2010): “La política de Comunicación Audiovisual del gobierno socialista (2004-2009): un giro neoliberal” (The audiovisual communication policy of the socialist Government (2004-2009): A neoliberal turn), in *Revista Latina de Comunicación Social*, 65, pp. 14-29. La Laguna (Tenerife): University of La Laguna, retrieved on 25 August 2010, from:  
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[2] The three key documents, result of the process begun by the White Book are: Communication from the Commission entitled “Simplifying and improving the regulatory environment”, COM (2002) 278 final; Communication from the Commission entitled “Towards a reinforced culture of consultation and dialogue. General principles and minimum standards for consultation of the Commission to the parties concerned”, COM (2002) 274 final; Communication from the Commission on the assessment of the impact, COM (2002) 276 final.

[3] The last documents in this respect are: “Commission working document. Second progress report on the strategy for simplifying the regulatory environment”, COM (2008) 33 final, which complements the second strategic analysis of the programme “Better Legislation” in the European Union, COM (2008) 32 final.

[4] The communication service providers located under the jurisdiction of the Member States should be subject in any event to the prohibition on the disseminating child pornography in accordance with the provisions of the Decision 2004/68/JHA framework of the Council, of 22 December 2003, relative to the fight against the sexual exploitation of children and child pornography.

[5] Study carried out by the Communication Office of the Autonomous University of Barcelona, the European Association for Viewers Interest, the University of Tampere (Finland), the Ministry of National Education of France, and the Catholic University of Louvain (Belgium).

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