



Transparency of media ownership

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Foreword

Mass media are said to have a watchdog role, that is, they investigate, fact-check, interview, in order to publish curated information that hold the rich and powerful accountable. Beyond that, in the words of John Reith, General Manager of the BBC from 1922 to 1939, they also play a role of educating and entertaining the public. All of these are fundamental functions in today's screen-obsessed society.

Now, we could ask ourselves, like the Roman poet Juvenal did: *quis custodiet ipsos custodes*, which translates for our purposes as who watches the watchdogs themselves? Or said otherwise: who keeps the media from using their preeminent position for spurious purposes? To this question, the given answer could be 'civil society, regulatory authorities and, ultimately, the courts of law'. And yet, it is a bit difficult to watch the watchdog when you do not know who really the watchdogs are. Who are the persons, natural or legal, that own the media? Who are the real decision-makers when it comes to, let's say, the editorial line of a newsroom? If we agree, for example, that an unhealthy level of media concentration can threaten democracy and freedom of expression, then transparency of media ownership is fundamental for our societies.

This publication aims at providing some clarity about how the transparency of media ownership is regulated in Europe. After a brief introduction to the topic, chapters 2 and 3 provide an overview of rules on transparency of media ownership in light of EU primary and secondary law, whereas chapter 4 discusses media ownership transparency initiatives at Council of Europe and civil society level. Chapter 5 gathers together a number of country reports that serve as model examples, and chapter 6 provides a comparative analysis thereof. The publication closes with some concluding remarks.

Under the scientific coordination of Mark D. Cole and Jörg Ukrow from our partner institution – the Institute of European Media Law (EMR) in Saarbrücken, Germany - this publication includes country reports by Marina Piolino (Switzerland), Jörg Ukrow (Germany), Carles Llorens (Spain), Pascal Kamina (France), Lorna Woods and Alexandros Antoniou (United Kingdom), Roderick Flynn (Ireland), Amedeo Arena (Italy), Krzysztof Wojciechowski (Poland), and Roman Lukyanov (Russian Federation). All other chapters and the comparative analysis have been written by Mark D. Cole, Jörg Ukrow, Christina Etteldorf and Sebastian Zeitzmann from the EMR.

I would like to extend my warmest thanks to all authors and to the EMR team, in particular to Sebastian Zeitzmann, for his day-to-day engagement during the production process.

Strasbourg, December 2021

Maja Cappello

IRIS Coordinator

Head of the Department for Legal Information

European Audiovisual Observatory

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An amendment to the GWB has also attracted attention with regard to digital platforms: the *Bundeskartellamt* can issue a decision declaring that an undertaking which is active to a considerable extent in multi-sided markets and networks within the meaning of Article 18(3a) GWB is of paramount, cross-market significance for competition.¹⁹⁰ The amended GWB therefore takes into account the highly dynamic nature of the digital economy and the rapid growth of large digital platforms. The *Bundeskartellamt* can now, in order to protect competition, prohibit such undertakings from engaging in certain types of conduct. This can significantly curb the market power of the large platforms. In particular, the new Article 19a GWB can be used to prevent companies from favouring their own offers or the impeding of other companies from entering the market by processing data relevant for competition. It is also unlawful, i.a., to demand benefits for handling the offers of another undertaking which are disproportionate to the reasons for the demand, in particular to demand the transfer of data or rights which are not absolutely necessary for the purpose of presenting these offers. The German legislator is an international pioneer in this respect. Similar instruments are also being discussed in connection with the EU Digital Services Package, although this legislative process is still in its infancy.¹⁹¹

5.3. ES - Spain

Carles Llorens, Universitat Autònoma de Barcelona

5.3.1. Media ownership transparency in constitutional law

The Spanish Constitution contains a single reference to transparency; however, it is related exclusively to government and public administration. Article 105.b of the Spanish Constitution (1978)¹⁹² states that: “The law shall regulate: [...] the access of citizens to administrative files and records [from Government], except as they may concern the security and defense of the State, the investigation of crimes and the privacy of individuals”. Therefore, there is no explicit or related constitutional provision to regulate the transparency of media ownership.

¹⁹⁰ When declaring that an undertaking is of paramount significance for competition across markets, account should be taken in particular of (1) its dominant position in one or several market(s), (2) its financial strength or its access to other resources, (3) its vertical integration and its activities in otherwise related markets, (4) its access to data relevant for competition, and (5) the relevance of its activities for third-party access to supply and sales markets and its related influence on the business activities of third parties.

¹⁹¹ See

https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2021/19_01_2021_GWB%20Novelle.html?jsessionid=DCBA787B3687CDE336B5AA58905941AA.2_cid362?nn=3591568.

¹⁹² Spanish Constitution (1978); [https://www.boe.es/eli/es/c/1978/12/27/\(1\)/con](https://www.boe.es/eli/es/c/1978/12/27/(1)/con)

5.3.2. Media ownership transparency rules in domestic law

5.3.2.1. Overview

Spanish regulation concerning transparency on media ownership is only applied to audiovisual communications providers by the *Ley 7/2010, General de la Comunicación Audiovisual* (General Law 7/2010 of Audiovisual Communication).¹⁹³ According to Article 6.1 of this Law, it is compulsory for audiovisual communication service providers¹⁹⁴ and holders of significant shares in audiovisual communication service providers to report related ownership data from 2010 onwards. For this purpose, a specific public registry for these providers at the Ministry of Economic Affairs and Digital Transformation was created.¹⁹⁵ This registry was regulated by the Royal Decree 847/2015, of 28 September 2015, regulating the National Registry of Audiovisual Communication Service Providers and the prior communication procedure for the start of activity.¹⁹⁶ The Registry records are accessible on the website of the Ministry for consultation by any natural or legal person, public administration or institution of any nature¹⁹⁷. They contain contact information, ownership structure and audiovisual services operated with a detailed description of each of them and a list of fines if any.

There are no specific transparency requirements for media companies different from audiovisual communications service providers such as press or Internet companies. However, general ownership information is available at the National Companies Registry (Registro Mercantil), which is publicly accessible. A fee is levied for each request for company information (EUR 18,50) and it is difficult to find out who is really behind each company as the data are not provided in open and reusable format.

Finally, it should be noted that the regulation concerning media ownership transparency in the audiovisual sector dates to the years 2010 and 2015. However, Spain is on course to implement the 2018 AVMS Directive. There is a draft of a new Audiovisual Law¹⁹⁸ to implement the new AVMSD 2018 provisions, which was discussed through two public consultations in 2020 and 2021. The draft includes a whole chapter on the requirements, definitions, public access, and other aspects of the national registry of audiovisual communication services providers, which include on-demand audiovisual media services and video-sharing platform providers as required by the Directive. The draft

¹⁹³ *Ley 7/2010, General de la Comunicación Audiovisual* (General Law 7/2010 of Audiovisual Communication), <https://www.boe.es/eli/es/l/2010/03/31/7/con>

¹⁹⁴ An audiovisual communication service provider is defined by Article 2.1 of Ley 7/2010 as follows: "The natural or legal person who has effective control, that is, the editorial direction, over the selection of programs and contents and their organisation in a channel or in a program catalog. The lessee of an audiovisual communication licence will be considered a service provider."

¹⁹⁵ <https://sedeaplicaciones.minetur.gob.es/RuecaListadosPublicos/>.

¹⁹⁶ *Real Decreto 847/2015, de 28 de septiembre, por el que se regula el Registro Estatal de Prestadores de Servicios de Comunicación Audiovisual y el procedimiento de comunicación previa de inicio de actividad* <https://www.boe.es/eli/es/rd/2015/09/28/847/con>

¹⁹⁷ *Registro público estatal de prestadores de servicios de comunicación audiovisual*, <https://sedeaplicaciones.minetur.gob.es/RuecaListadosPublicos/>

¹⁹⁸ https://portal.mineco.gob.es/RecursosArticulo/mineco/ministerio/participacion_publica/audiencia/ficheros/210628-APL-Com-Audiovisual-2.pdf.

must still pass through the entire parliamentary process, so some articles and provisions could be different in the final version.

5.3.2.2. Providers subject to the regulations

The 2010 and 2015 regulations are only applied to audiovisual media service providers. Press publishers' companies and Internet media companies are not covered by these audiovisual ownership transparency obligations as they are not audiovisual communication providers. This requirement on transparency is applied to any transnational, national, regional or local audiovisual media service provider which decides to start operations in Spain, and which consequently needs to make a prior communication to the Ministry of Economic Affairs and Digital Transformation and to register in the National Registry of Audiovisual Communication Service Providers. The draft of the new law imposes transparency obligations on audiovisual media services and on video-sharing platform providers.

5.3.2.3. Scope and content of the rules

5.3.2.3.1. 2010 Regulation

As a general principle, Article 6.1 of the Law 7/2010 establishes a right to transparent audiovisual communication: "Everyone has the right to know the identity of the audiovisual communication service provider, as well as the companies that are part of its group and its shareholders. For this purpose, it is considered that the provider is identified when it has a website in which it states: the name of the service provider; the address of establishment of it; e-mail and other means to establish direct and rapid communication; and the competent regulatory or supervisory body." Later, Article 33 descends more into details. It defines and describes the information requirements imposed on audiovisual communication service providers. They must register in a public State or regional registry, in accordance with the corresponding scope of coverage of the broadcast. The holders of significant shares in audiovisual communication service providers must also register in those registries, indicating the percentage of capital they hold. A definition of significant participation is also included in the law: it is understood to be a participation which represents, directly or indirectly, 5% of the share capital or 30% of the voting rights or a lower percentage if it is used to designate several directors representing more than half of the members of the company's administrative body within the 24 months following the acquisition. Moreover, in accordance with commercial law, shares or other securities owned or acquired by entities belonging to the same group of companies in a concerted manner or forming a decision unit, or by individuals, shall be considered owned or acquired by the same natural or legal person. Finally, Article 33.4 states that competent audiovisual State and regional authorities must articulate a channel that ensures the necessary coordination between the State registry and the regional registries.

As explained above, the National Registry was regulated in more detail in 2015 by the Royal Decree 847/2015, of 28th September, completing the Law 7/2010. Article 12 of the Royal Decree enumerates the information required by each audiovisual service provider:

- a) name and surnames or, where appropriate, name or company name and nationality of the provider;
- b) tax identification number of the provider (NIF), or equivalent documentation in case a non-Spanish provider;
- c) registered office of the provider;
- d) name, surname, national identity document or passport of the legal representative and document accrediting the representation capacity;
- e) address and e-mail address of the representative of the audiovisual communication service provider;
- f) address in Spain for the purpose of notifications from the audiovisual communication service provider;
- g) name and surnames or, where appropriate, name or business name, including the tax identification number of the holders of significant participations in the capital stock, indicating the corresponding percentages, both directly and indirectly. Likewise, the number of shares per shareholder with significant stakes must be indicated;
- h) documentation proving the creation of the legal entity;
- i) administrative bodies of the company if the service provider is a legal entity, and subsequent modifications;
- j) documentation accrediting the participation of the audiovisual communication service provider and/or its partners in the capital or in the voting rights of other providers;
- k) documents accrediting the legal acts and businesses that imply the transmission, disposition or encumbrance of the shares referred to in the previous letter or the transfer or promise of transfer of shares, participations or equivalent titles that have the effect of direct or indirect acquisition of a company whose object is the provision of an audiovisual communication service.

Notwithstanding the above, the National Registry doesn't ask for information about other important aspects of the companies like shareholdings in other non-audiovisual services sector-related companies, the main sources of income of the media company, details of political and other affiliation of the owners or information on management or newsroom structures.

5.3.2.3.2. Draft of the new audiovisual law

The draft of the new audiovisual law, which implements the 2018 AVMSD directive, includes new requirements regarding information to be included in the National Registry and extends them to on-demand audiovisual media services like Netflix, video-sharing

service providers like YouTube, and podcast providers.¹⁹⁹ First, the number of female members of the company's board is required. Second, it is mandatory to offer to the public a direct contact point with the editorial team or manager. Third, a new definition of significant participation is also made in this draft: the current 2010/17 Law sets this at 5%, whereas the new draft lowers the threshold to 3% (Art. 37). Another important change is the making of this information more accessible to society beyond the national registry (Art. 41): there is a new obligation on the part of all operators to make basic company information easily accessible on a corporate website. Specifically, the following information is requested:

- a) name and registered office, contact details, including e-mail, as well as whether the entity for profit or not or whether it is owned by another State;
- b) competent audiovisual supervisory authority;
- c) individuals or legal entities who are ultimately holders of editorial responsibility or authors of the editorial content;
- d) natural or legal persons that are owners or holders of significant shares;
- e) an indication of how the right of complaint and the right of reply are ensured.

5.3.2.4. Disclosure methods

As explained, the backbone of the Spanish transparency mechanism is the National Registry of Audiovisual Communication Service Providers. The information is made public through a specific and public webpage of the Ministry of Economic Affairs and Digital Transformation²⁰⁰ and therefore the information is available exclusively online. Audiovisual communication service providers must provide notification, within a month, of any modification that affects the information contained in the registry and it must be accompanied by supporting documentation (Art. 22 and 23 Royal Decree 847/2015). These modifications are made through a specific online platform and are monitored by the Spanish government.

5.3.2.5. Supervision and monitoring of the rules

Currently the Ministry of Economic Affairs and Digital Transformation monitors and supervises the implementation of transparency of audiovisual media service providers, even if the first version of the Law 7/2010 established that a future independent audiovisual regulatory authority should be in charge of carrying out this task. However, Spain decided to create instead a macro-independent regulator, the National Commission of Markets and Competition (CNMC) in 2013,²⁰¹ the competences of which include some audiovisual matters. However, it did not incorporate the monitoring and supervising of the National Registry of audiovisual media service providers. According to the seventh additional provision of the CNMC's law, these supervision and control functions were taken on by the

¹⁹⁹ Anteproyecto de Ley General de Comunicación Audiovisual;
https://portal.mineco.gob.es/RecursosArticulo/mineco/ministerio/participacion_publica/audiencia/ficheros/210628-APL-Com-Audiovisual-2.pdf.

²⁰⁰ <https://sedeaplicaciones.minetur.gob.es/RuecaListadosPublicos/>.

²⁰¹ Ley 3/2013, de 4 de junio, de creación de la Comisión Nacional de los Mercados y la Competencia.
<https://www.boe.es/eli/es/l/2013/06/04/3/con>

government, specifically, by the predecessor of the current Ministry of Economic Affairs and Digital Transformation.

The draft of the new law of audiovisual communication, which updates the 2010 Law to implement the 2018 AVMSD directive, doesn't include any significant changes concerning the operation of the Registry, even if Article 38.3 opens a door for future updates and amendments as it establishes that future regulation will put in place the organisation and operation of the Registry.

5.3.2.6. Penalties and legal consequences

According to Law 7/2010, if an audiovisual media service provider doesn't fulfill the obligation to register in the National Registry or provides false data, this is considered a very serious infraction (Art. 57.11). As such, a fine of EUR 500,001 to EUR 1 million for television audiovisual media providers can be imposed, whereas radio broadcasters can be fined between EUR 100,001 and EUR 200,000 (Art. 60.1). It has to be said that no fines have been imposed to our knowledge for failure to register by any AVMS provider.

However, the draft of the new law of audiovisual communication details in more depth these infractions and qualifies them as serious rather than very serious and therefore, the fines are lower than under the current Law 7/2010. The infractions related to transparency of media ownership occupy the first three paragraphs of the draft law's Article 156:

A serious infringement is:

- 1. Failure to comply with the obligation set forth in Article 36.2 [obligation to provide the National Registry with information on ownership structure, the number of women on the board and contact with the editor-in-chief] to keep the information in the corresponding registry up to date in relation to the significant holdings [definition] provided for in Article 37.*
- 2. Failure to comply with the publication obligations regarding ownership structure provided for in Article 41 [name and registered office, contact details, competent audiovisual supervisory authority, individuals or legal entities who are ultimately holders of editorial responsibility or authors of the editorial content, natural or legal persons that are owners or holders of significant shares and ensuring the right of complaint and the right of reply].*
- 3. The absence of registration in the registry provided for in Article 38 by the providers of the audiovisual communication services, the providers of the aggregation service of audiovisual communication services,²⁰² and the video-sharing service providers through platforms.*

²⁰² Article 2.15 of the *Anteproyecto de Ley General de Comunicación Audiovisual* defines a provider of the aggregation service of audiovisual communication services as the natural or legal person that offers in an aggregate way, through electronic communications networks, audiovisual communication services of third parties to users.
https://portal.mineco.gob.es/RecursosArticulo/mineco/ministerio/participacion_publica/audiencia/ficheros/210628-APL-Com-Audiovisual-2.pdf.

Regarding sanctions, serious infraction fines (Art. 158.2) are more specific and progressive than those in Law 7/2010. In the case of providers of linear television, audiovisual communication services, television on demand services and providers of video-sharing platform services, if the previous year's income in the Spanish audiovisual market is below EUR 2 million, then the fine can be a maximum EUR 10 000; if the turnover was below EUR 10 million but higher than EUR 2 million, then the fine can be a maximum EUR 50 000; if the turnover was below EUR 50 million but higher than EUR 10 million, then the fine can be a maximum EUR 250 000. Finally, if the audiovisual media service provider's Spanish turnover in the previous year was above EUR 50 million, then the fine can be up to 0.5% of that amount. In the case of radio providers and podcasters, the fine can be a maximum EUR 50 000.

5.3.3. Other developments

The transparency of ownership of AVMS providers in Spain will be improved with the implementation of the AVMS Directive into Spanish law. A new General Law on Audiovisual Communication is ready to start the parliamentary process of approval. If finally ratified, it will establish new transparency ownership requirements which will be extended to on-demand audiovisual media services and video-sharing platforms. Moreover, operators will have to make that information more accessible to society through their websites to improve the current non-user-friendly interface of the National Registry. Even if the ownership transparency of audiovisual media providers is already quite high in Spain and will be further improved if the new law is adopted, the challenge is still how to offer that amount of complex information in a significant way to the public in order to improve the debate and discussion on media ownership and its consequences for media discourse. The current National Registry contains an important amount of information, however sometimes the classification and filter options are incomplete and unclear.

5.4. FR - France

Pascal Kamina, Professor, University of Lyon 3, Attorney, Paris Bar

5.4.1. Media ownership transparency rules in constitutional law

France has not formally implemented the provisions of Article 5(2) of the Audiovisual Media Services Directive (AVMSD) allowing Member States to oblige media service providers under their jurisdiction to make accessible information concerning their ownership