

# Italy

MARIA STELLA RIGHETTINI, GIORGIA NESTI & CLAUDIA PADOVANI

<sup>1</sup>*Department of Politics, Law and International  
Studies, University of Padova*  
mariastella.righettini@unipd.it

<sup>2</sup>*Department of Politics, Law and International  
Studies, University of Padova*  
giorgia.nesti@unipd.it

<sup>3</sup>*Department of Politics, Law and International Studies,  
University of Padova*  
claudia.padovani@unipd.it

## 1. LEGAL FRAMEWORK

The Italian *Communications Regulatory Authority* (AGCOM, 'Autorità per le Garanzie nelle Comunicazioni') is one of the independent regulatory agencies created in Italy after the completion of the European Internal Market, in order to develop a free, competitive market in the public utilities sector. The European law has, therefore, decisively contributed to affirm the importance of competitiveness in several economic fields, in opposition to the previous Italian model of governmental control over national and local public services (Merusi and Passaro, 2003). AGCOM, as all other Independent Regulatory Agencies, are characterized by a *de jure* independence from political institutions (*formal independence*), as well as by a *de facto* independence, meaning a high level of autonomy both in its internal organisation and in the management of its financial resources by politics.

AGCOM was established in 1997 by Parliamentary Law no. 249 of July, 31<sup>st</sup> in order to support the Italian liberalisation of the telecommunications market, as the European Law clearly states. The AGCOM replaced the former *Radio and Publishing Guarantor* ('Garante per la Radiodiffusione e l'Editoria') that was responsible for overseeing television and radio broadcasting, and the press<sup>1</sup>. In contrast to such a *Guarantor*, the new agency now operates

---

<sup>1</sup> Due to its lack of formal independence from Parliament and the Government, the Guarantor was unable to ensure the creation and regulation of a competitive market free from political interests. Such a body had been created with the Act no. 223 of 1990 and was composed of a guarantor - appointed by the President of the Republic though nominated by the Presidents of the two Houses of the Italian Parliament - and by a public administrative structure. Its main task was to monitor activities of TV, radio and the press. It had neither regulatory functions nor expenditure autonomy.

with complete autonomy and independence in its judgements and evaluations<sup>2</sup>. The creation of an independent agency was conceived as a necessary step for the completion of the European Internal Market and for a more liberal and pluralist communication system in a national context marked by strong market dualism and political influence.

AGCOM's organisation and functions are primarily specified in the 1997 Law (see points 2 and 6). Other AGCOM duties are listed in Act no. 28 of 2000 on equal rights of access to TV and radio programmes for all political and social forces (the so-called '*par condicio*'), in the 2003 *Code for the protection of personal data* and in the 2004 *Code of self-regulation in respect of pluralism*.

Generally speaking, two fundamental features make AGCOM an interesting case-study in the landscape of European Independent Regulatory bodies. Firstly, according to Law no. 249 of 1997 AGCOM is a *convergent* Authority. This choice made by the Italian legislator represents one of the first attempts in Europe to create a single regulatory agency designed to actively promote the integration between the telecommunication and media markets<sup>3</sup>, in line with European Union recommendations. Secondly, AGCOM is the only Italian Independent Authority providing a decentralized complex system of regulation based on *Regional Communications Committees* ('Comitati Regionali per le Comunicazioni' – Corecom) established in each of the twenty Italian Regions. These local Committees have an autonomous administrative structure and a budget allocated by Regional Governments, with a fixed contribution per annum provided by AGCOM. Corecoms have a dual nature: (1) they were created in each Region with Regional Acts between 2001 and 2009 and endowed with advisory and other functions by Regional Councils. For this reason their organisation and performance tend to vary across the different Regions; (2) they also constitute delocalised branches of AGCOM and therefore perform some regulatory functions on behalf of the national Authority, according to the subsidiarity principle. In particular, Corecoms monitor local broadcasting programmes and content, as well as commercials and political messages during electoral campaigns. They also settle disputes between telephony or broadcasting operators and users. Finally, they are required to issue the annual list of local broadcasters entitled to receive State funds.

## 2. FUNCTIONS

Act no. 249 of 1997 describes in detail AGCOM's organisation and functions. The official website provides a useful summary of these activities<sup>4</sup>.

The *President* of the Authority "convenes the meetings of the collegial bodies, determines the agenda, chairs the proceedings, and supervises the implementation of decisions".

The Commission for Infrastructures and Networks:

<sup>2</sup> "È istituita l'Autorità per le garanzie nelle comunicazioni, di seguito denominata «Autorità», la quale opera in piena autonomia e con indipendenza di giudizio e di valutazione." (*Trans*: "The Act established the Communications Regulatory Authority, hereafter named Authority", which operates in full autonomy and independence in its judgements and evaluations.") Available at: <http://www.agcom.it/default.aspx?message=viewdocument&DocID=405>, 2012.

<sup>3</sup> See G. Morbidelli, F. Donati (a cura di)(2004), *Comunicazioni: verso il diritto della Convergenza?*, Giappichelli, Torino, p. 2.

<sup>4</sup> See <http://www.agcom.it/Default.aspx?message=contenuto&DCId=295> (2012).

- “defines measures to ensure the security of communications;
- sets standards for decoders in order to promote the utilisation of the service;
- defines objectives and criteria for interconnection and access to telecommunications infrastructure on the basis of non-discriminatory criteria, as well as setting maximum tariffs;
- regulates relations between operators and users of telecommunications infrastructures;
- verifies that telecommunications infrastructure operators provide interconnection and access to network infrastructure and service operators;
- promotes technological agreements between operators in order to avoid proliferation of technical transmission plants throughout the territory;
- settles disputes on interconnection and access;
- is periodically informed by the incumbent on all cases of service interruption;
- defines objective and subjective ambits of universal service’s obligations;
- promotes interconnection between national telecommunications systems and those of other countries;
- defines criteria for the drawing up of national telecommunication numbering plans, according to the principles of objectivity, openness, impartiality, equity and celerity;
- settles disputes between the incumbent and private users;
- verifies that radio-frequency ceilings compatible with human health are not exceeded”.

The Commission for Services and Products:

- “ascertains that services and products supplied by operators are consistent with the regulations in force and meet all the legal criteria required;
- promotes the integration of technologies and the offer of telecommunications services;
- issues directives on general standards of quality in services and on the adoption, by each operator, of a specific service charter;
- supervises modalities of distribution of services and products, including advertising, and may issue regulations, in conformity with European legislation, on the relation between fixed and mobile service operators and resellers of telecommunications activities;
- ensures that minimum periods are respected in order to use audiovisual contents;
- issues regulations on advertising and television-sales and regulates the interaction between suppliers and network operators and end-users, including proper use of private information;
- ascertains that regulations on safeguarding of minors in the radio-television sector are observed, in accordance with the self-regulatory codes adopted by operators and with the guidelines provided by the Parliamentary Commission for general policy and supervision of radio and television services;
- ascertains that the protection of linguistic minorities in mass media communications is observed;

- ascertains that regulations on the right of reply in the radio-television sector are observed and respected;
- guarantees the application of provisions currently in force regarding propaganda, advertising and political information, as well as the observance of regulations concerning equal treatment and parity in access to publications and transmission of information and electoral propaganda and issues specific regulations for their implementation;
- is responsible for surveys on mass-media audiences and the compilation of ratings;
- verifies correctness of methodologies used and the veracity of published data;
- ascertains the publication and distribution of surveys in accordance with criteria established by AGCOM;
- monitors radio-television transmissions;
- applies sanctions contained in article 31 of law no. 22 of August 6th 1990”.

The Council:

- “communicates its views to the Minister for Communications on the guidelines of the National plan for the distribution of frequencies;
- draws up, in cooperation with the Minister of Communications and having consulted the broadcasting licensees and the national associations of radio-television operators, plans for the allocation of frequencies;
- advises Government on opportune interventions – including legislative ones - on matters of technological innovation and development in the field of communications;
- guarantees application of legislative provisions regarding access to media and communication infrastructures, as well as drawing up specific regulations;
- promotes research and studies on technological innovation and development in the communications and multimedia services sectors;
- promotes integration of technologies;
- adopts regulations and criteria for the awarding of licences and authorisations as well as on the level of fees of contributions, both in the telecommunications and in the radio-television sectors;
- proposes to the Minister of Communications regulations to be annexed to concessions and authorisations in the field of radio and television broadcasting;
- verifies financial statements and data regarding activities and assets of authorised operators and radio-television licensees in accordance with regulatory arrangements;
- ascertains the existence of dominant positions in the radio-television sector and adopts the consequent measures;
- carries out the functions and tasks previously assigned to the *Radio and Publishing Guarantor*;
- maintains the national Register of communications operators;
- checks whether the guidelines issued by the Parliamentary Commission for general policy and supervision of radio-television services are respected by the licence holders for radio-television services;

- proposes to the Minister of Communications the outline of the agreement to be annexed to the licenses for public radio-television services and monitors the implementation of all envisaged duties;
- gives advice on measures taken by the Antitrust authority with regard to operators in the communications sector;
- prepares the Annual report on the activities and the programmes of work of AGCOM, which has to be submitted to Parliament by June 30th of every year;
- authorises conveyances of property of companies operating in the communication sector;
- adopts regulations concerning human resources and financial management of the AGCOM;
- approves the Ethical Code of Conduct which is obligatory for all personnel of AGCOM;
- exercises all other functions envisaged in Law no. 481/1995, as well as those not expressly attributed to the Commissions”.

The *Code for the protection of personal data* ('Codice per la protezione dei dati personali', 2003) and the *Code of self-regulation in respect of pluralism* ('Codice di autoregolamentazione in materia di attuazione del principio del pluralismo', 2004) increase the powers of the Authority in monitoring the adherence to such codes.

*Act no. 112 of May 3, 2004*, is concerned with the competitive market in the field of both mass media and telecommunications (including the Internet), giving AGCOM further *antitrust* powers. Moreover, the subsequent *Single Text for Radio-television* ('Testo unico della Radiotelevisione') lists the principal subjects disciplining the markets of telecommunications and mass media, which has been re-named *Integrated Communications System* ('Sistema Integrato delle Comunicazioni' – *SIC*). Those subjects are: AGCOM, Corecoms – considered in their double nature as implementing bodies of AGCOM and advisory structures of the Regions – the Ministry for Communications, the Government itself, the Italian *antitrust* authority, the Italian Guarantor of privacy.

As stated above, some regulatory functions have been delegated by AGCOM to the Regional Committees (Corecoms). The so-called 'first degree' delegated functions have been established by means of a general agreement signed by AGCOM and the *Conference between State and Regions* ('Conferenza Stato – Regioni') in 2003. Such functions include:

1. monitoring the content of TV and radio programmes in order to protect minors against threatening, violent or erotic images;
2. monitoring the respect for each citizen's right of reply in TV and radio programmes;
3. control over the publication and distribution of surveys in response to criteria provided by AGCOM;
4. settling of disputes between users and operators or amongst operators;
5. monitoring the compliance with *antitrust* rules by local broadcasters.

Nowadays all Regions – except Sicily - have been delegated to fulfil these tasks. Some of them have also received from AGCOM so-called ‘second degree’ functions, listed in a second Agreement of 2008:

1. A complete monitoring of radio and TV programs broadcast in the Region, in line with national law and regulations set up by the boards of AGCOM;
2. The updating of the *Register of communications operators* (‘Registro degli Operatori di Comunicazione’) for every Region;
3. The *definition of disputes* (‘Definizione delle Controversie’), a sort of ‘second level judgement’ for those disputes which were not been settled during the first conciliatory attempt.

Furthermore, national Laws no. 448 of 1998 and no. 28 of 2000 involve Corecoms in the completion of two further tasks:

- The allocation of State contributions to national and local television and radio stations, distributed by the Minister of Communications on the basis of a list of criteria supplied annually by the Corecoms;
- Monitoring the equal right of access to TV and radio programmes by all political and social parties (*par condicio*). Act no. 28 of 2000 on that matter entitles every Corecom – as a functional organ of AGCOM – as well as AGCOM itself, to ensure the right to be represented and the participation in radio and television programs of every social, cultural or political group, as well as to publish political or social messages in newspapers if needed. Corecoms are required to collect citizens’ reports of alleged violations and to inform AGCOM on this and related matters.

Currently, only eleven Corecoms have received ‘second degree’ type of delegations; in the remaining Regions AGCOM carries out the duties.

Corecoms’ performance depends on a series of elements such as: staffing (human resources); the financial resources allocated by the Regions; the number of disputes between citizens and operators filed each year, the number of local television and radio stations to be monitored and controlled. Generally speaking, Corecoms have successfully fulfilled the expectations placed on them over the last few years; despite existing differences between regions, Corecoms have achieved their goals in terms of monitoring of TV and radio programmes, protection of minors and resolution of disputes between users and operators. According to AGCOM annual reports, Corecoms have become reliable institutions in the field of telecommunications regulation.

According to the national law, AGCOM should collaborate with the Minister of Communications on matters concerning licensing, frequency allocation, protection of human health, and promotion of public interest; and with the Postal and Communications Police (*Polizia postale e delle comunicazioni*) and the Financial Police (*Guardia di Finanza*) to prosecute crimes, frauds and abuses in the fields of telephony, broadcasting, radio and internet<sup>5</sup>.

<sup>5</sup> In particular, the Authority may require the collaboration of the Postal and Communications Police for the following activities: monitoring of services or products relating to telecommunications; controls on the conformity to the requirements of the services provided; verification on the ways of distribution of services, products and information to users; verification of

AGCOM is endowed with important *antitrust* powers, in order to preserve competitiveness in the telecommunication market. Nevertheless, the law does not make a clear distinction between AGCOM's functions and those assigned to the Competition Authority; as a consequence, competences often overlap and in day-by-day activities both agencies may intervene in cases of abuse of dominant positions in the telecommunication market. However, while the *antitrust* agency punishes the *abuse* of the existing dominant position of a TV or radio company, AGCOM aims to prevent and stop the *dominant position* itself.

Finally, it is important to recall the existence of a peculiar self-regulatory body in the Italian market of telecommunication: the *Committee for the Implementation of the Code for TV and Minors regulation* ('Comitato di attuazione del codice di regolamentazione convenzionale tv e minori'). In 1993 the *Federation of national and local Italian television stations* (FRT – 'Federazione Radio e Televisioni') and 21 associations of users, customers, teachers and parents wrote and signed a Code of self-regulation for the airing of appropriate TV and radio programmes for minors during a precise time slot of the day (16.00 to 19.00). The Committee is composed of representatives of national and local television stations and members of those associations who signed up to the Code. This body has not only advisory and monitoring tasks, but it also enables the co-operation between users and media operators in the exchange and sharing of ideas<sup>6</sup>.

### 3. LEGITIMIZING / UNDERLYING VALUES

The annual AGCOM report informs citizens about the purposes and the goals the Authority has achieved during the course of the year in the following fields of activity<sup>7</sup>:

1. Market *Competitiveness*. Since its inception, AGCOM has been endowed with important *antitrust* powers and one of its most relevant duties has been to create a free and competitive market in the field of telecommunications, according to European Union legislation. Nevertheless, while important improvements have been achieved in the country in the field of telephony (according to national and European data Italy has one of the most competitive telecommunication markets in Europe), the broadcasting sector has remained less competitive to date. Three big companies – the public sector RAI, Mediaset and Sky – have the monopoly over the national TV market, while hundreds of regional and local television stations struggle to maintain their position within local markets.
2. Media *Pluralism*. The oligopolistic structure of the Italian media market does not guarantee objective information that is independent of economic or political interests. AGCOM's regulations have not improved the situation to date, nor has it contributed to the introduction of digital technology between the years 2009

---

the infrastructures and networks; implementation of security measures in communications; verification on any interruption of public services in communications; verification of compliance with the rules concerning the protection of minors and protection of copyright.

<sup>6</sup> For more information visit the official website of the committee: <http://www.comitatotvminori.it/> (2012).

<sup>7</sup> Read the Introduction to the annual reports on the website of AGCOM: <http://www.agcom.it/Default.aspx?message=contenuto&DCId=5> (2012).

and 2011, as national incumbents hold the greater part of the digital spectrum. This is the reason why subsequent to the introduction of the digital TV, the Italian television market has not significantly changed.

3. *Technological Innovation*. Since its inception AGCOM has promoted the spread of digital technology in the audiovisual sector, while the diffusion of broadband connections and optical fibre for access to the Internet is still lagging behind, due to technical and economic problems. AGCOM has also made many efforts in the areas of media education and digital literacy, even though during the last few years the Authority has been confronted with the economic crisis, which has prevented bigger investments in activities aimed at promoting media literacy.
4. *De-centralisation*. Corecoms are the local regulatory and advisory bodies closest to the citizens' needs and rights and to the local broadcasting operators' activities. That is the reason why the decision to strengthen some of AGCOM's activities at local level is one of the most peculiar characteristics of this IRA.
5. *Relationships with other national and international bodies*. AGCOM co-operates with other regulatory bodies, Universities and research centres at the national level. It collaborates with the Minister of Communications, the Italian antitrust agency and the Guarantor for the protection of personal data (*'Garante per la protezione dei dati personali'*). Moreover, AGCOM is member of several European and international communication and media networks such as BEREC, EPRA, IRG, and the Mediterranean Network of Regulators EMERG.

#### 4. PERFORMANCE

The OECD has tried to assess what an independent and accountable Communications Regulatory Authority should be and has outlined some empirical indicators (OECD, 2009) related to IRAs main policy goals in this field:

- Improving the economic efficiency of communication markets shielded from short term political and administrative risks;
- Consumers' protection;
- Avoidance of dominance by specific interests.

Those indicators are, for example: the executive structure of the regulator; his or her appointment, nomination and reappointment; the possibility of overturning IRA's decisions; leadership; types of relations with the political system and the quality of the staff.

There is no empirical data to assess AGCOM's overall regulatory performance, but it can be assumed that the regulatory capability of improving the economic efficiency, consumer protection and capture avoidance has been achieved to a greater extent in the telecommunications field (notwithstanding the presence of the incumbent national operator Telecom) rather than in the broadcasting sector. Over the last twenty years the "Berlusconi factor" has deeply influenced the regulation of the Italian broadcasting sector and AGCOM's *de facto* independence has been seriously challenged by elected politicians through both the



nomination of the AGCOM President and Board and the possibility of overturning AGCOM's decisions by means of legal and political appeals on the part of Government.

## 5. ENFORCEMENT MECHANISMS / ACCOUNTABILITY

The *Guarantee Commission* ('Commissione di Garanzia') checks the transparency of AGCOM's financial administration and the legal correctness of the annual financial report. The Committee is established by article 42 of the 1997 Act, named 'Regulations on Accountability and Administrative Management of the Authority'.

Regarding inter-institutional *accountability*, AGCOM is accountable to the National Parliament and to the Court of Accounts. The independent regulator must present an annual report on its activities to Parliament, according to Act no. 249 of 1997. The Court of Accounts checks the correctness of AGCOM's annual financial report.

Act no. 103 of 1975 – article 1 - created a special *Parliamentary Commission for Vigilance and Control of Public Television and Radio* ('Commissione parlamentare per la vigilanza ed il controllo della radiotelevisione pubblica') composed of forty deputies of both Houses of the Italian Parliament, elected by the Presidents of the Senate and of the Chamber of Deputies ('Camera dei Deputati'). The main task of such a body is to ensure independence, objectivity and freedom of speech to all the political, social and cultural parties in the Country within PSB programs. The 1997 Law details the Commission's functions in relation to AGCOM. According to article n. 1, paragraph 4 of the Act no. 249 of 1997, the Commission shall ensure the respect of all norms regulating the public service broadcaster RAI and the collaboration between the Commission and the Minister of Communications. In order to fulfil its tasks, the Parliamentary Commission coordinates its activities with AGCOM through periodical consultations, as mentioned in the annual reports of AGCOM.

According to Law no. 249 of 1997 the Administrative Tribunal of The Region of Lazio (TAR Lazio) is competent to suspend and judge the AGCOM decisions in case of disputes.

## 6. INSTITUTIONAL ORGANIZATION / COMPOSITION

The Steering Boards of the Authority are as follows:

- The *President*, who is responsible to Parliament for the general management of the Authority. He coordinates the activities and chairs the meetings of the boards.
- The *Infrastructures and Networks Commission* ('Commissione per le Infrastrutture e le Reti') and the *Services and Products Commission* ('Commissione per i Servizi e Prodotti'), is composed of four members each.
- The *Council*, is made up of all the members of the two commissions.

Advisory bodies of the AGCOM are:

- The *National Council of Users* ('Consiglio Nazionale degli Utenti'), is established by article 1, paragraph 28 of the Act of 1997 and is subject to the decisions by the Council no. 54/99/CONS. It is composed of experts from different associations

representing users. It monitors the regard for democracy, pluralism, human dignity and neutral information, as well as the representation of all social and cultural differences in the Country, in television and radio programmes. It issues non-binding opinions on the rule making process. Members are selected from a list created by national users' associations and are appointed by the Authority. Their number is restricted to 11 and their term of office is renewable once.

- The *Committee for Judicial Trials on television* ('Comitato Processi in TV - Comitato per l'applicazione del codice di autoregolamentazione in materia di rappresentazione di vicende giudiziarie nelle trasmissioni radiotelevisive') enforces the application of the self-regulatory Code on representation of legal affairs in television broadcasting. It was established in 2009 when the new Code (mentioned above) came into force. The Committee is made up of representatives of all associations which subscribe to the Code, as well as three members appointed by the President of AGCOM. All commissioners must have experience and expertise in the field of telecommunications and cannot be involved in the making of TV shows the content of which falls under the remit of the Committee.
- The *Ethical Committee* ('Comitato Etico') consists of three members, according to decision no. 18/98/CONS of the Council. It monitors the transparency and fairness of the decisions made by the members of the Authority.

The election and appointment of the President and the commissioners are subject to the following rules:

- The *President* is appointed by the President of the Italian Republic, upon nomination by the President of the Council of Ministers together with the Minister of Finance.
- Both the *Infrastructures and Networks Commission* and the *Services and Products Commission* are composed of the President and four members. The Parliament elects four members, two for the first Commission and two for the second one. Members must be elected by a majority of votes and are then appointed by the President of the Republic.
- The *Council* consists of the President and all designated commissioners.

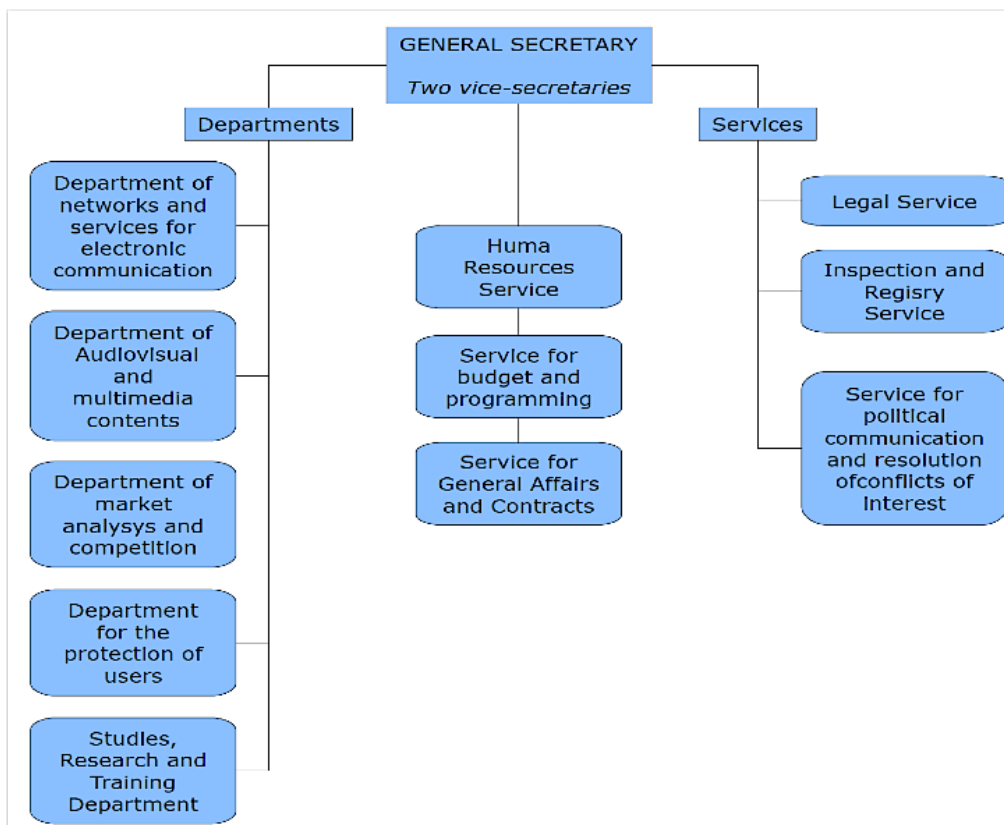
Commissioners must be chosen among experts in the field of communications, acknowledged for their experience and competence. Their mandate lasts seven-years and is not renewable. They cannot fill other public offices or political roles in national or local institutions. Moreover, they are not allowed to have any relationship with public or private companies in the field of telecommunications, during their term of office or for the four years subsequent to its end. The efforts of the Italian Parliament to endow the agency with a board independent of political interests or economic influence are clear. Following the standard procedure, four members are nominated by the Government and four by the opposition.

AGCOM's offices are located in Rome and in Naples. This choice arises from the Legislator's desire to decentralise some important offices of the Administration of the State and to place them closer to citizens (as in the case of Corecoms).

As an independent agency, AGCOM is entitled in law to adopt its own regulations on the internal organisation of human and economic resources. The regulation is adopted by means of a Decree of the President of the Council of Ministers, in consultation with the Ministers of Finance, Communications and Public Administration and with AGCOM itself. The same law limits to a maximum of 260 the number of public officers directly hired by AGCOM. However, since 2009 the number of employees has exceeded this limit<sup>8</sup>. The number of employees who held permanent positions within AGCOM was 271 in 2009, 278 in 2010 and 279 in 2011. The law also determines the maximum number of temporary staff seconded from other public bodies (30 units). In 2009 overall AGCOM's staff consisted of 297 people (not including the members of the boards); in 2010 it amounted to 348 and in 2011 to 354.

The following chart shows the current internal organisation of AGCOM.

**Chart 1: Administrative structure of AGCOM in 2012**



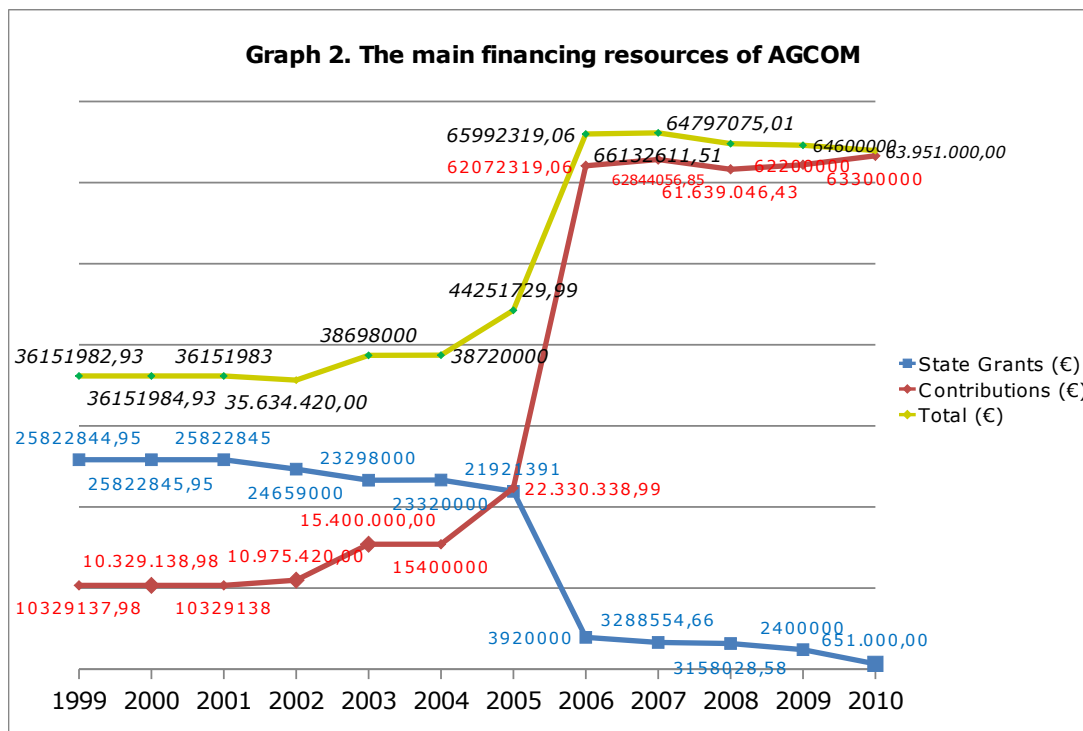
Source: Official website of AGCOM.

## 7. FUNDING

Law no. 249 of 1997 defines AGCOM as a financially autonomous agency. Its budget depends on: (1) a fund from the annual State budget, granted to the Authority by a Decree of the Ministry of Economy and Finance; (2) a contribution from telecom and broadcasting

<sup>8</sup> See the annual reports of AGCOM on the official website for further details: <http://www.agcom.it/Default.aspx?message=contenuto&DCId=5>, 2012.

operators, determined by the Ministry; this consists of a fixed percentage of the annual income of each operator. Although Act no. 481 of 1995 has fixed a maximum of 1 per thousand for this contribution, the limit has been exceeded in the years 2006 and 2007, when the Minister of Finance allowed the application of a percentage of 1.50 per thousand; while in 2008 and 2009 the percentage decreased to 1.45 per thousand. In 2010 it increased again up to 1.50 per thousand. Neither the annual reports nor other official documents explain the reasons of such variations; they probably depend on the reduction of the state grant through the years, which made inevitable a substantial change in the system of funding. It is interesting to point out, therefore, how the revenue from the contributions of the economic operators has progressively replaced State aids in the general financing of the Authority. If, on one hand, the central Government has cut resources through the years, on the other hand, through 'private' contributions, AGCOM could rely on a 'proper' source of income, thus becoming more and more independent from the State budget<sup>9</sup>.



Sources: Annual Reports of AGCOM

## 8. REGULATION IN CONTEXT

The liberalisation of the Italian media sector began in the 1960s, as a result of several rulings by the Italian Constitutional Court, which progressively recognised the importance of private companies, thus eliminating the exclusive right of broadcasting by public television

<sup>9</sup> AGCOM annual budget is available on the official website: <http://www.agcom.it/Default.aspx?message=contenuto&DCId=331>

(PSB)<sup>10</sup>. In 1973, the new Postal and Telecommunication Code ruled that the installation of devices for broadcasting under previous authorisations of the Government was also open to private companies. A subsequent act of 1975 reaffirmed the importance of the role of the State in the making and broadcasting of radio and television programmes, and created new regional advisory and regulatory bodies, *Co.Re.Rats* (Regional Committees for radio and television services - *Comitati Regionali per il Servizio Radiotelevisivo*) later replaced by Corecoms (Regional Committees for Communications - *Comitati Regionali per le Comunicazioni*).

A subsequent judgement by the Italian Constitutional Court declared as 'illegitimate' some provisions of the 1975 Act, thus allowing the establishment of commercial television and radio at a local level, while PSB was responsible for transmitting programmes of public interest<sup>11</sup>.

It was only in 1990 that the Italian Parliament approved an organic law aimed at reorganising the national media market, composed of hundreds of small and medium-sized local broadcasting companies, some of which were struggling to achieve a national dimension and able to compete with the incumbent national TV and radio broadcaster RAI. Act no. 223 of 6<sup>th</sup> August 1990 allowed private television and radio broadcasters to air their programs on a national level under a special authorisation and also established a number of rules for both private and public television. The Act also created the above mentioned *Radiodiffusion and Publishing Guarantor*, but did not introduce any *antitrust* rules concerning the concentration of media ownership. A specific regulation was introduced as late as 1997 with Law no. 249.

## REFERENCES

- Carlassare, Lorenza (a cura di) (2007), *Il pluralismo radiotelevisivo tra pubblico e privato*, Padova, CEDAM.
- Del Campo, Franco (2007), 'Legislazione "concorrente" in materia di comunicazione e modello Corecom'. *Le istituzioni del Federalismo*. 1/07: 7-9.
- Della Penna, Davide (2004), *Riassetto del settore radiotelevisivo*, Milano, Giuffrè editore.
- Giani, Loredana (2002), *Attività amministrativa e regolazione di sistema*, Torino, Giappichelli.
- Merussi, Fabio e Michele Passaro (2003), *Le autorità indipendenti, Un potere senza partito*, Bologna, Il Mulino.
- Jacobzone, Stephane, (2009), *Designing Independent and Accountable Regulatory Authority. A comparative Overview across OECD Countries*, Presentation held in Pretoria, National Treasury, November 2009, South Africa, OECD.

<sup>10</sup> See the Italian Constitutional Court's rulings n. 59/60, 225/74, 226/74.

<sup>11</sup> Ruling n. 202/1976.

## WEBSITES

### National Legislation

#### Current President and Commissioners of AGCOM

Decreto Legislativo 1 agosto 2003, n. 259	Codice delle comunicazioni elettroniche. <a href="http://www2.agcom.it/L_naz/cod_comunicaz_dl259_03.htm">http://www2.agcom.it/L_naz/cod_comunicaz_dl259_03.htm</a> , anno 2010.
Decreto ministeriale n. 292 del 5 novembre 2004, Ministero delle Comunicazioni	Regolamento recante nuove norme per la concessione alle emittenti televisive locali dei benefici previsti dall'articolo 45, comma 3, della legge 23 dicembre 1998, n. 448, e successive modifiche e integrazioni.
Decreto del Presidente della Repubblica n. 318 del 1997	Regolamento per l'attuazione di direttive comunitarie nel settore delle telecomunicazioni. <a href="http://www2.agcom.it/L_naz/dpr318_97.htm">http://www2.agcom.it/L_naz/dpr318_97.htm</a> , anno 2010.
Legge 4 febbraio 1985 n. 10	Conversione in legge del decreto-legge 6 dicembre 1984, n. 807, recante disposizioni urgenti in materia di trasmissioni radiotelevisive. <a href="http://www.mcreporter.info/normativa/l85_10.htm">http://www.mcreporter.info/normativa/l85_10.htm</a> , anno 2010.
Legge 6 agosto 1990, n. 223	Disciplina del sistema radiotelevisivo pubblico e privato (Legge Mammi). <a href="http://www2.agcom.it/L_naz/L223_90.htm">http://www2.agcom.it/L_naz/L223_90.htm</a> , anno 2010.
Legge 14 novembre 1995, n. 481	Norme per la concorrenza e la regolazione dei servizi di pubblica utilità. Istituzione delle Autorità di regolazione dei servizi di pubblica utilità. <a href="http://www.corecomfvg.it/opencms/export/sites/default/corecom/documentazione/normativa/allegati/legge481.pdf">http://www.corecomfvg.it/opencms/export/sites/default/corecom/documentazione/normativa/allegati/legge481.pdf</a> , anno 2010.
Legge 31 luglio 1997, n. 249	Istituzione dell'Autorità per le Garanzie nelle Comunicazioni e norme sui sistemi delle telecomunicazioni e radiotelevisivo (Legge Maccanico). <a href="http://www.agcom.it/default.aspx?message=viewdocument&amp;DocID=405">http://www.agcom.it/default.aspx?message=viewdocument&amp;DocID=405</a> , anno 2010.
Legge 20 marzo 2001, n. 66	Conversione in legge, con modificazioni, del decreto-legge 23 gennaio 2001, n. 5, recante disposizioni urgenti per il differimento di termini in materia di trasmissioni radiotelevisive analogiche e digitali, nonché per il risanamento di impianti radiotelevisivi. <a href="http://www.parlamento.it/parlam/leggi/01066L.htm">http://www.parlamento.it/parlam/leggi/01066L.htm</a> , anno 2010.
Relazioni Annuali Agcom	<a href="http://www.agcom.it/Default.aspx?message=contenuto&amp;DCId=5">http://www.agcom.it/Default.aspx?message=contenuto&amp;DCId=5</a> , anno 2010.
Sent. C. Cost. n. 59 del 1960	<a href="http://www.giurcost.org/decisioni/1960/0059s-60.html">http://www.giurcost.org/decisioni/1960/0059s-60.html</a> , anno 2010.

#### Norms ruling functions and organization of AGCOM

Delibera 53/99/CONS	Approvazione del regolamento relativo alla definizione di materie di competenza dell'Autorità per le Garanzie nelle Comunicazioni delegabili ai Comitati Regionali per le Comunicazioni. <a href="http://www.agcom.it/default.aspx?message=viewdocument&amp;DocID=401">www.agcom.it/default.aspx?message=viewdocument&amp;DocID=401</a> , anno 2010.
Delibera 54/99/CONS	Regolamento sui criteri per la designazione, l'organizzazione ed il funzionamento del Consiglio Nazionale degli Utenti. <a href="http://www2.agcom.it/cnu">http://www2.agcom.it/cnu</a> , anno 2010.
Delibera 435/01/CONS	Approvazione del regolamento relativo alla radiodiffusione terrestre in tecnica digitale. <a href="http://www2.agcom.it/provv/d_435_01_cons.htm">http://www2.agcom.it/provv/d_435_01_cons.htm</a> , anno 2010.
Delibera 182/02/CONS	Adozione del Regolamento per la risoluzione delle controversie insorte nei rapporti tra organismi di telecomunicazioni ed utenti. <a href="http://www.agcom.it/default.aspx?message=viewdocument&amp;DocID=522">www.agcom.it/default.aspx?message=viewdocument&amp;DocID=522</a> anno 2010.
Delibera 137/06/CONS	Modifiche e integrazioni alla Delibera 182/02/CONS. <a href="http://www.agcom.it/default.aspx?message=viewdocument&amp;DocID=463">www.agcom.it/default.aspx?message=viewdocument&amp;DocID=463</a> anno 2010.
Delibera 173/07/CONS	Approvazione del regolamento in materia di procedure di risoluzione delle controversie tra operatori di comunicazioni elettroniche ed utenti.
Delibera 300/10/CONS	Piano nazionale di assegnazione delle frequenze per il servizio di radiodiffusione televisiva terrestre in tecnica digitale: criteri generali. <a href="http://www.agcom.it/default.aspx?DocID=4532&amp;Search=Delibera_300/10/CONS">http://www.agcom.it/default.aspx?DocID=4532&amp;Search=Delibera_300/10/CONS</a> , anno 2010.
Relazioni Annuali Agcom	<a href="http://www.agcom.it/Default.aspx?message=contenuto&amp;DCId=5">http://www.agcom.it/Default.aspx?message=contenuto&amp;DCId=5</a> , anno 2010.