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France

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Stage 1: An analysis of present-day structures (2012)

The case of the French Conseil Supérieur de l'Audiovisuel (CSA)

Through regulation the state delegates part of its authority to an intermediary entity. Regulation of media is established between government and communicators to preserve or correct the market balance. Its role can vary from country to country, as it can either ensure that official texts are respected and applied, or encourage the adoption of standards for better practices. In France, the *Conseil Supérieur de l'Audiovisuel* (CSA) acts as a buffer-agency, with members from the state, from the profession and, to a much lesser extent, from civil society (the association in defence of families, UNAF, was part of the first CSA).

Historically, the *Haute Autorité de l'Audiovisuel* was the first entity to regulate media in France (1982-1986). It was replaced by the *Commission Nationale de la Communication et des Libertés* (1986 à 1989) created by the law of September 30th 1986. The CNCL privatized TF1 and attributed the 5th and 6th channels (*La Cinq* and *M6*). In 1989, after much controversy, the CSA was created. Its task has consisted in monitoring the broadcasting norms (for high fidelity) and in negotiating the commercial licensing of public airwaves, as often required by the private sector itself. With the rise of an organized consumer sector, and under the pressure of public opinion as well as political will, CSA has progressively been involved in the management of disputes concerning ethical standards and public service obligations of the networks. It has been required to be increasingly transparent as to its procedures. It cannot practice a priori censorship of programmes but can admonish and fine a posteriori.

NB: This report considers the activities of the CSA in the field of audiovisual media, with a focus on pluralism and protection of minors through the use of examples.

1. Legal Framework

1.1 Designation and legal definition of the state media regulatory body

The media regulatory authority in France is the *Conseil Supérieur de l'Audiovisuel* (CSA, audiovisual superior Council) based in Paris. The CSA was established in 1989 by the law of 17th January 1989 that modified the law of 30th September 1986 relating to communication freedom. Its duties include the distribution of frequencies to operators, the organization of electoral campaigns (on radio and TV) and control of content (protection of minors, respect for pluralistic expression, fair treatment of news, respect for human dignity, protection of consumers as well as "the protection and illustration of the French language and culture").

More recently new duties have been added: making TV programmes available to people hard of hearing or visually impaired, ensuring the representation of the diversity within French society, contributing to actions in favour of health education and protection, etc.

1.2 What are the legal documents (laws, rules, protocols, others) framing the media regulatory entity?

The CSA is an "independent administrative agency" of the government whose task it to ensure that the law on communication is applied. The 9 members are nominated for 6 years by presidential decree, but only three are designated by the President; three more are designated by the president of the National Assembly and the last three are nominated by the president of the Senate. They cannot be nominated for two mandates and their membership is renewed by a third every two years. They have to adhere to a code of ethics and they cannot have any other employment in the private or public sector. Their nomination is political and is not based on any precise criteria. This can be problematic for independence when all the members belong to the same political majority, in spite of the biennial rotation by a third.

1.3 Relationship with self-regulatory and co-regulatory media structures

Concerning other regulatory media structures, the CSA has formal and informal relationships with the *Autorité de Régulation des Communications Electroniques et des Postes* (ARCEP) that regulates telecommunications since 2005. Former members of the CSA have become members of ARCEP. With the *Autorité de la Concurrence,* the relationship is less close, as it deals with matters of economic transparency.

In terms of policy and reporting (indicators…), CSA is also in a relationship with *Centre National du Cinéma* (CNC) and *Institut National de l'Audiovisuel* (INA).

In matters of protection of minors, the CSA is closely associated with the *Safer Internet Programme* of the EU, as the CSA is a member of the steering committee. The CSA board member in charge of protection of minors is a member of the expert committee of Action Innocence, the French chapter of the Swiss NGO, which has no legal mandate , something which is rather problematic in terms of independence and representativity (http://www.actioninnocence.org/suisse/web/Comite_d'Experts_239_.html, last consulted 10/09/2012).

Concerning self-regulatory media structures, the CSA has formal relationships with the *Autorité de Régulation Professionnelle de la Publicité* (ARPP, ex BVP) whose mission is to oversee advertising from the perspective of professionals, in consultation with civil society and the CSA among others as of 2008.

There are no relationships with the *Conseil National du Numérique* (CNN), created in 2011.

At the European and international level the CSA is a member of the *European Platform of Regulatory Authorities* (EPRA)

2. Functions

2.1 Major functions of the CSA

According to the law, the CSA has the power to authorize broadcasting agreements and to establish services and obligations. It must negotiate the contracts with each operator, even in domains that pertain to the general interest, like the protection of minors. It aims at maintaining the principles of pluralism and cultural diversity as well as the balance between various opinions, existing rights and expectations of different sections of the public.

In its early days and even today, it incorporated a research department (that commissioned studies, including ones from independent researchers when need be). It produces a newsletter and an annual report. It has full regulatory powers, and it has a certain degree of freedom to apply sanctions (broadcasting corrections, fines, formal summons). It tends to exert soft pressure on the media industry in matters of creating labelling codes or classificatory systems.

Some of its main functions are to ensure the quality of public service and to establish public service obligations for private operators and to apply measures for the protection of minors. Public service obligations relate to commercial as well as public channels. They encapsulate the rights and duties of media in relation to their public. They are implemented in the case of news (through measures like the candidate access rule and the personal attack or political editorializing rule). In fiction, especially in advertising, in youth programming and in documentaries there are also rules, partly established by the law and developed in detail by the CSA. The CSA has very little to do though with local media (no particular attention is paid to priority topics to be dealt with for the community as decided by local authorities).

The measures for the protection of minors enforce existing children's rights. These are often incorporated in the public service obligations. It can lead to procedures like scrambling or protecting anonymity, as well as asking for official permission to broadcast news or fiction where children are featured. This set of measures is characterized by a juxtaposition of various rules, according to the period of emergence of the different media and the moment of negotiation of the TV license, and it tends to show a relatively global coherence (except for some minor points).

The CSA has been a pioneer in establishing parental warning systems ("la signalétique"). They aim at classifying programmes prior to broadcasting according to their content,

by signalling the presence or absence of violent or pornographic messages as well as other categories of material that might damage young people's sensibilities. They belong to a subset of the measures for the protection of minors and the public service obligations. Their nature and their structure have been agreed upon collectively by the channels, but then each of them elaborates its criteria and establishes its screening committees. They are associated with scheduling restrictions. They give a strong ethical signal, and though they were perceived at first as a form of censorship, they have progressively been accepted as a form of parental decision-making tool.

2.2 The regulation in different media sectors

The field of competences of the CSA has to do with audiovisual sector, radio and TV and media-on-demand. It has no authority in matters related to the Internet (that is for ARCEP). There is a clear separation between the CSA and ARCEP, except in the matter of online audiovisual services where the CSA is the regulator, especially in matters of the protection of minors (not within ARCEP's mandate). Currently there are several proposals concerning a merger between these two entities, especially as expressed by the new political power in 2012 and by M. Boyon, the current president of the CSA.

Media content regulation covers advertising but only subsequent to self-regulation by ARPP. The CSA does not interfere much with the content of advertising but more on issues of overtime, hidden publicity or promotion of tobacco or alcohol (over authorized time).

In the communication law (article 43-11), the mission of media education is part of the mandate of France Televisions, the public service grouping of channels. This is stated in very general terms: *"Elles concourent au développement et à la diffusion de la création intellectuelle et artistique et des connaissances civiques,* économiques*, sociales, scientifiques et techniques ainsi qu'à l'éducation à l'audiovisuel et aux médias*."

An examination of these missions and obligations reveals that they are kept to a minimum. France 5 is the only channel that provides some content of this type, with no programmes for young people below 18 years of age nonetheless. For instance, the 2010 reports signals two programmes on the topic (*Médias le magazine*, on Sunday on France 5, and *Votre télé et vous,* every month on France 3, with the news ombudsman of the channel). It also mentions three internet sites developed by the group: *Curiosphère.tv, Lesite.tv* and *Ciné-lycée*, each with different activities that could come under the category of media education.

The CSA is not expected to perform other duties according to other social actors, except in the case of protection of minors in the media where no other entity is present. The major mission of CSA remains the regulation of the audiovisual sphere. Internet is not really regulated, in spite of many policies such as HADOPI, CNIL, CNN, Ministère de l'Intérieur… A reform is currently being prepared.

There is a functional distinction between state, self and co-regulatory mechanisms but this seems to be due to the evolution and history of media in France. Cinema is the result of co-regulation integrated within the state system, with a commission of classification that is made up of professionals, representatives of association in defence of families

and ministries. Television and radio have a dual system, with public and private sectors, and co-regulation is thus externalized, especially via the CSA. Internet seems to be subject to a mix of state control, regulation and self-regulation, in fluctuating ways.

3. Legitimizing / underlying values

Pluralism, protection of minors, respect for the dignity of the person, respect for public order are among the principles and values that are used to legitimate state intervention in the media via the regulatory body. Apart from pluralism, these are not principles specific to the media sphere. There is no written normative doctrine (like the "fairness doctrine" in the USA) that organizes the regulatory part of the state in a coherent body of values and actions. The overall reference is the French Declaration of Human Rights of 1789 and the European *"Convention de sauvegarde des droits de l'homme et des libertés fondamentales",* particularly the right to expression. The evolution of protocols and laws comes from European directives (TV Without Frontiers and then AVMS), from technological innovations (terrestrial digital TV, connected TV, SMAD), and the emergence of social issues that affect policy as a whole (minorities, discrimination, violence against women, for instance), with consequences on media.

As a result the law of September 30th 1986 is the basic reference for audiovisual regulation. It has been modified about 60 times, to accommodate the evolutions mentioned above. In matters of pluralism and anti-trust, the law of 1986 has been modified more than 40 times, particularly in order to include thresholds of ownership within media markets. Public service companies are excluded from the field of application of anti-concentration rules because the promotion of pluralism and diversity is already part of their missions. For private sector operators, measures to guarantee internal and external pluralism are included, notably in terms of limiting to 49% the amount of capital held by a single individual or legal entity. With the launch of Digital Terrestrial Television, the threshold applies to stations with more than 2,5 % average annual audience share. The example of article 15, concerning youth protection is also telling: it moved from 2 lines in 1986 to 15 lines today, taking into account the creation of "signalétique" in 1996, the transposition of TV Without Frontiers in 1997 and 2000 and a number of extensions (to mobile phones, in 2007, and to media on demand, in 2009, as a result of the new directive AVMS).

In fact, the creation of "*signalétique*" is a rare case of the CSA anticipating the law, after a series of multi-stakeholder consultations and a research report. In general, CSA presidents tend to underplay the role of their institution and avoid attracting attention to it. When they do, it is to justify actions of consultation or of coercion with the will to avoid controversy. For instance the sanctions against Skyrock, the youth radio (about anti-gay, sexist and obscene language) were not advertised widely though they implied heavy fines (50 000 and 200 000€).

Nonetheless, some ministers have taken the initiative of intervening in the field, with official reports being required on specific themes: Minister of Culture Jean-Jacques Aillagon (2002), Minister of Justice Dominique Perben (2002) Minister of Family Ségolène Royal (1996) and Nadine Morano (2009). Some members of Parliament have also called for specific reports (Yves Bur 2002, David Assouline 2009, Chantal Jouanno 2012).

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Officially, principles of freedom of speech, pluralism, diversity, protection of fundamental rights are of such constitutional importance that they cannot simply be arranged in an identifiable hierarchy. But the architecture of legal texts shows a clear dominance of the principle of freedom of speech and communication. This is partly due to the weight of the European Convention on Human Rights and in particular article 10 on freedom of expression as the guiding principle for media regulation. The French tradition does nonetheless state that such freedom can be legitimately limited by law (article 11 of the French *Declaration of the Human Rights of Citizens*), as some other values and principles can be brought to bear (responsibility, pluralism…). In the communication law of 1986, freedom of expression is stated in article 1.

Several French legal tools and sites have the legitimacy to analyse and make decisions about such constitutional principles as freedom of expression, pluralism, protection of minors, independence of media, diversity, with a variety of appreciations. The Constitutional Council can do so before the proclamation of a law, if asked for by 60 senators or deputies and (since 2008) by individuals within the framework of a lawsuit requiring constitutional evaluation ("*question prioritaire de constitutionnalité*"). The State Council can be asked to appreciate the legitimacy of CSA decisions a posteriori. This allows for such principles as privacy, protection of intellectual property and right to the image of a person to run counter to freedom of expression. The Court of Cassation is called upon on issues related to the right of the press, privacy, right to the image of a person, libel, etc.

In general, the French judges of these different Councils and Courts do not directly use the European Convention but they tend to take into account European jurisprudence in the matters at hand. The legality of infringements on freedom of expression depends on their nature that has to be neither general nor absolute, on the constitutionality of the principles which are set against them. The judge appreciates the compatibility ("conciliation") of the various principles, and the "balance" between these principles as proposed by legislative measures.

It is to be noted that one of the principles that could complement the right to freedom of expression is the right of the public to access information. But such a right is not clearly formulated or recognized in French law.

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The values defended by the CSA in terms of regulation are not the same as those safeguarded by self-regulation and co-regulation, but some self-regulatory mechanisms tend to align themselves onto the values and processes of the state regulator.

The regulation by the independent authority is done in rather narrow and technical sectors. This is supported by the French Constitutional Council where the judges also ensure that domains entrusted to the administrative regulation are not too wide. It ensures that the law remains the primary reference, and is a warrant of civil liberties because of the

public debates that take place, in particular in Parliament. For instance, on July 27th 2000, the judge annulled a disposition that would have made public the hearings held by the CSA for the nomination of the presidents of France Télévisions and other public companies (*Radio France, audiovisuel extérieur de la France*), putting transparency after the freedom of speech necessary during such hearings and the risks of damaging privacy.

As for self-regulation or co-regulation, they are not as such registered in the national legal apparatus and the word appears nowhere in French legislation. Self-regulation was created by the private sector in order to avoid a finer regulation but it is not generally framed or supervised by the law. Self-regulation in advertising tends to integrate the values of regulation as exemplified by some recommendations published on the site of ARPP.org concerning the image of the human person, eating habits, race, ethnicity, religion, childhood, safety). Its objective is to strengthen the legitimacy of this professional sector and to elaborate a preliminary control that the professionals who have agreed to it can use as guarantee, in principle, that they don't run the risk of contravening the law and the regulation.

Co-regulation does not exist legally but some forms of multi-partite decision-making could be considered as such. The classification of programmes ("*signalétique*") is a form of co-regulation between the CSA and the channels. The CNC that classifies movies also works by consultation with a panel of professionals and experts. The "*Forum des droits de l'internet*" used to have such a role for Internet (but has been replaced by a self-regulatory business alliance, CNN). At the European level, the classification of video games by PEGI is recognized in France. So, there are many variations and levels of co-regulation, some more multi-stakeholder than others, some more integrative of expert opinion than others, etc.

4. Performance

It is difficult to appreciate the whole performance of the regulatory authority, as the CSA presents the dual characteristic of having very clear mandates on the one hand (especially in the matter of license allocation, reporting and sanctioning if need be), and on the other hand, of enjoying enlarged competences that are subject to its own discretion.

The CSA is relatively well-endowed in terms of administrative services and qualified staff (308 persons in 2011), which enables it to meet its obligations and fulfil its missions. It publishes an annual report (in July) about them, as part of its duties. It is very useful for researchers and experts because it gives reliable and reusable information. This report is complemented by the stock-taking assessments of the various channels that are published in Autumn and give public access to the activities of the operators.

The law not only creates legal duties for the CSA, it also grants it some competences, which are possible fields of action, subject to its own appreciation. Besides reporting (on matters of content), the CSA has few legal obligations. The content examined the most relates to the issue of pluralism, about which the CSA has an obligation to publish every month its data on political speech in the news (especially important in times of elections). For the other types of content, this obligation is an annual one. Most of the activities of control of content are based on a discretionary decision taken by the CSA on its own initiative. This is

the case when there has been an infringement to the principles that are under its protection as defined in articles 1, 3, 13, 15 in particular: child protection, dignity of the person, incitement to violence or hatred for reasons of race, gender, religion or ethnicity, fairness in the news and pluralism. It also evaluates if the infringement is grave enough to entail a penalty or a formal demand (any penalty that must be preceded by a formal demand).

Not all its areas of competence can give rise to decisions susceptible to a penalty. Such issues as quality of programmes, social cohesion or the representation of diversity are domains in which the legislator has authorized the CSA to act but without determining any threshold. As a result, the CSA has sometimes anticipated the law as in the case of diversity, when it produced a report on the representation of visible minorities on French screens, in 2000, before the law was modified to that effect in 2006, within the legal framework of equality of opportunity. Once the report is published, the CSA often proceeds by requesting the operators to make commitments that they measure more than they evaluate in their implementation stage. No situation has appeared yet where the CSA might have had to enforce a penalty for commitments that were not kept.

The margin that separates the spheres of action required by the law in favour of a societal objective and the spheres of action to ensure their enforcement by media operators can be narrow. When the CSA does not wish to act in the name of respect for human dignity for instance, it intervenes in the name of child protection (and requests measures of classification) or in the name of programme quality (with even more flexible requests, as exemplified in the recent report on reality programming, in September 2011).

Several areas of action are currently of interest to the CSA, especially ones related to sustainable development, media education and obesity-related health issues. But the efficiency of the agency in actually having an impact and transformative change is low, as the publication of results is rarely followed by recommendations or policy-change. For example, the amount of scientific programmes that are supposed to sensitise the public to development (article 7 of *France Television* charter) is questionable and asymmetrical: most of them are broadcast on *France 5* (1060h out of a total of 1343h, or around 80%) and less than 10% are broadcast in prime time (94h out of a total of 1343h), according to the 2010 report (p. 77). The fact that the most watched channel of the group, *France2*, only broadcast 4h17 and *France 4*, the channel for young people, only broadcast 5h50 went by without comment. Besides, when the contents of these programmes are analyzed, it appears that very few of them are really educational, except maybe for the programme "*C'est pas sorcier*". Some of the Internet sites of the group, such as *lesite.tv* or *Curiosphère* are used, arguably, to compensate for the omissions of the channels, but they are not evaluated either. No recommendations for correcting the balance are being made.

The same situation applies in the case of media education (article 15 of *France Television* specifications). The article even mentions the need of programmes to target very young children. But none of the programmes listed in the report fall under the category of youth programming. The only actions related to this obligation are relegated to the Internet where, in some cases they are not targeting the general public of parents and children but rather specific publics, in high school, as on the site *Ciné-Lycée*.

The complexity of the societal issues and the number of actors implicated can also account for some discrepancies between legal competences and actual performance of the CSA. It can be characterized by a regulatory style that favours sensitization of actors over constraints and sanctions or even prohibitions.

The case of health is revealing in this matter, as the CSA acknowledged after due pressure from civil society organisations, particularly consumer groups and *UFC Que Choisir*) the obesity epidemic and considered it as being related to advertising for over-sweetened foods and drinks that encouraged nibbling and snacking while maintaining children passively in front of their screens. The CSA intervened in 2009 by drafting a charter that it brought to the TV channels, the advertisers and a number of operators (*France Télévisions*, *Lagardère Active, TFI, M6, NRJ12, NT1, TMC, Direct 8, Arte France, Disney France*) to sign, as well as the various ministries implicated (health and agriculture). Among the other signatories were the *Syndicat National de la Publicité T*élévisée (SNPTV), the *Association des Agences Conseil en Communication* (AACC), the *Union des Annonceurs* (UDA), the *Association Nationale des Industries Alimentaires* (ANIA), the *Autorité de Régulation Professionnelle de la Publicité* (ARPP), the *Société des Auteurs et Compositeurs Dramatiques* (SACD), the *Syndicat des Producteurs de Films d'Animation* (SPFA), the *Syndicat des Producteurs Indépendants* (SPI), the *Union Syndicale de la Production Audiovisuelle* (USPA). They all agreed to engage in a process of support of public policy on health, especially the *Programme National Nutrition Santé* (PNNS), coordinated by the Ministry of Health (CSA report 2011). The CSA grounded the legitimacy of its intervention on the absence of any legal measure in the matter, and connected it to the protection of minors in the media, that falls under its mandate and discretionary competences. It put forward Articles 3-1 (on health) and 439 on its capacity to suspend a programme coming from another member state of the EU.

As a result of this multi-stakeholder agreement, the increase in the number of programmes related to this issue was impressive (78%) though in fact it doesn't represent that many programming hours (159h for *France Télévisions,* across its five channels, though the original agreement mentioned 60h to 75h). The closer analysis of the contents of these programmes shows mitigated results: they do carry the obligatory mention of the site of the Ministry of Health but they do not seem to insist on health as much as aesthetics and economics. In the years to come, they'll be observed by 3 experts on children's health.

The CSA presents this process and its success as rather unique, when it communicates about it (see communiqué of May 11th, 2011 after the signature by the Ministry of Agriculture). But it glosses over the fact that other countries have taken different positions and strategies, more stringent, such as the prohibition of such advertising during certain hours of the day when children watch television in Great-Britain. The lack of evaluation and follow-up is also characteristic of the CSA policy of sensitizing but not sanctioning.

In its daily activity, the CSA tends to complement the activities of self-regulation and co-regulation entities, often acting after the public and private operators have done so. In matters of advertising, CSA and ARPP are complementary: the ARPP makes its decision and gives advice before broadcasting, whereas the CSA can only intervene after the fact. The CSA can contradict a decision by ARP on some matters (protection of minors, health…).

Co-regulation in France, in this domain, is fully integrated into the workings of regulation and thus tends to avoid situations of conflict. It is considered to be a part of regulation, with the participation of representatives of the media sector and other regulatory entities.

The potential for conflict can exist between different regulatory authorities, whose mandates can overlap. The Autorité *de la Concurrence* and the CSA have been in conflict over the sale and acquisition of media. For instance, the *Autorité* annulled the acquisition of *TPS* and *CanalSatellite* by Vivendi Universal and Canal Plus in 2011, and has authorized it since but with drastic injunctions, to avoid a quasi monopoly situation. In the area of protection of minors, the CSA is the only regulatory body and as result no conflict with other (self) regulatory bodies arises.

When citizens, media companies or other actors disagree with the CSA, there are a few appeal mechanisms, all outside the CSA that does not have a complaints bureau (contrary to other authorities elsewhere). To overturn a particular decision taken by the CSA, the operators can appeal to the *Conseil d'Etat* directly and they regularly do so. The case is different for citizens, as there is no formal right to appeal or complain. The only exception is if the citizen has a right to act *("droit à agir"),* i.e. he is directly and personally implicated by the CSA decision.

The law (article 42) however recognizes the right for family associations (historically they were the first to hold this privilege and for a long time) and also associations in the defence of women and viewers as well as trade unions of the media sector to ask the CSA for a formal notice procedure, against operators in particular. The wording of the article implies that should the CSA fail to do so, the plaintiffs could appeal to the court to override the CSA refusal of the procedure, but this procedure has not yet been tested.

5. Enforcement mechanisms / accountability

The legal mechanisms to ensure compliance with the CSA decisions are diverse in nature. The CSA has the power to decide to apply a formal notice procedure, which is published in the *Gazette* (*Journal Officiel*), against which the operators can appeal to the administrative judge. The CSA decisions to apply a penalty are checked by the judge, especially when the penalties result in pecuniary fines that pertain to the domain of the tax authorities. By law, the CSA has the means to intervene if its decisions are not followed.

But in the actual facts, some of these decisions are not effectively followed such as the decision to stop one day of broadcasting that was not respected by radio stations for young people, in the 1990s. They were bracing themselves against the CSA's authority and the CSA could legally start new procedures and strengthen the penalties, but it is not always in its political interest to do so. The government was supporting youth radios and therefore it could lose some of its credibility. Since the 2000s, these scenarios have not appeared any more, partly because the CSA has kept well away from current events and societal clashes.

The CSA tends to avoid strictly binding guidelines. It very rarely applies penalties on media content, and it is reluctant to start formal notice procedures. It can formulate

"recommendations" or produce deliberations that clarify its expectations for the respect of certain principles. The recommendations are explanations that clarify the principles of the law and can give rise to a penalty. But most of the time, the CSA tends to stop just before the stage of the penalty, and sends mails to the channels called "warnings".

Examples taken from the annual report for 2011 show this soft hand strategy. Formal notice procedures were taken against the 3 channels that provide continuous information for infringement on pluralism (around the controversy due to the first ever socialist primary). In advertising, *BFM* was notified for going over the time limit for advertising and *C+* for promoting tobacco. Only 4 formal demands dealt with ethics or child protection: *TF1* was notified for inaccuracy and for humiliation (in the reality programming broadcast *Qui veut* épouser *mon fils?*) that contravened article 10 of the agreement with *TF1*; *Paris Première* was notified for infringement of child protection (broadcasting of material not suitable for minors without the age logo 16). But no penalty was applied in this domain (the penalties relative to the contents in 2011 concern NRJ's breach of quota laws and advertising infringements by *BFM* and *France TV*). In matters of child protection, the CSA pronounced only 3 formal demands concerning inappropriate classifications, while it sent 33 "simple" mails to various channels. The CSA itself brings attention to the fact in its report (p. 11), noting that the only penalties taken against reality programming have to do with product placement.

This soft hand strategy per se is not in itself questionable or open to criticism, as it is important that the operators understand the requests which are made of them, and their interpretation by the CSA. But the end result seems to be that the indulgence of the CSA, as made visible by the small number of formal notice procedures, may not be conducive to modifications in the behaviour of the broadcasters (as verified in the case of reality programming).

In the domains that do not fall under legal obligations, the penalties by definition cannot be used. The impact of the CSA is then entirely connected to the publication of information, reports, barometers (diversity), even the signature of charters and agreements (food health) that give rise to reports themselves.

The CSA itself is accountable to the government. It gives its annual report to the President of the Republic, to the government and to the presidents of both assemblies. It also has to provide a number of reports to Parliament, as for example on the advertising for on-line gambling. The CSA also chooses to create committees and to publish its own reports as exemplified by its commission on the evolution of programming, and by its report on reality programming Television.

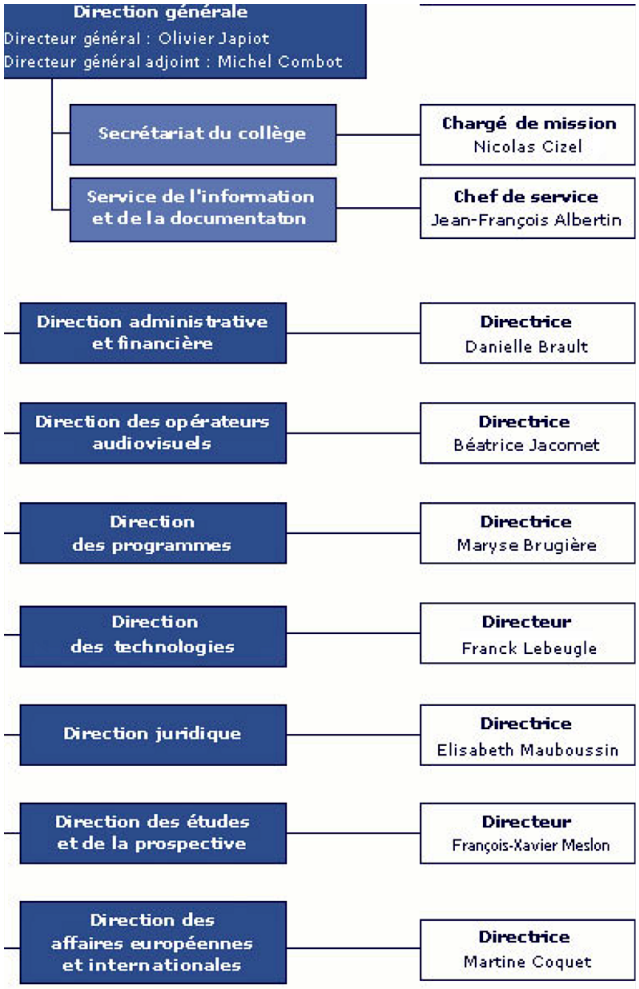
It tries to take part in international comparisons (in particular on the quality of the programs). But it is subjected to no control, except that of the *Cour des Comptes* (that checks the validity of its budget and expenses). The relations with Parliament are kept to a minimum, because in fact they tend to vary according to the missions that the Parliament gives itself. The CSA does communicate to Parliament any information that this one might require.

The CSA board members are subject to incompatibilities to safeguard their independence, as specified by article 5 of the law. Their functions are incompatible with any elective

mandate, any public employment and any other professional activity. Subject to statutory provisions N 57-298 of March 11th, 1957, on literary and artistic property, the members of the board cannot, directly or indirectly, exercise official functions, charge fees, except for services provided before taking office, nor hold interests or shares in any media or advertising company. However, if such is the case, the member of the board is given a three month deadline to comply with the law.

6. Institutional organization / composition

Board	Staff	Media sector	Civil Society
9 board members known as "conseillers" gathered in a "College". They each take on some of the missions demanded by law to the CSA, such as child protection (such as implementation of "*signalétique*" or observatory of diversity). Their decision requires a majority of the votes.	308 members of the staff in 2011. Organised in 7 "directions" services, with specific missions, related to the missions of the CSA board (see list below)	Not directly, though many "conseillers" come from that sector. Media are consulted in "public consultations" or during "concertations" such as the recent one that gathered the operators of social media in France. They are supposed to give their position on the matter at hand.	Civil society is not represented but can be consulted on specific domains and be part of commissions that examine a future decision. It can be present in advisory councils. The major representatives are CIEME and UNAF for children's issues. They give their advice and offer their perspective on the matter, often in contradistinction io the operators.
The board members are renewed every 2 years by a third. Their mandate of 6 years is not renewable.	Most of the activities are stable. Some surveys are outsourced	No mandate	No mandate
They are appointed by decree by the president, but 3 only are designated by him; 3 others by head of Parliament, 3 by head of Senate,	According to university diploma and "direction" need	By operators themselves, according to competences	By civil society itself, according to competences and time availability



Source: http://www.csa.fr/Le-CSA/Presentation-du-Conseil/Les-services/Organigramme

7. Funding

In 2006 senator Patrice Gélard wrote a report on the problems related to independent administrative authorities such as the CSA. It shows that its budget amounted to 34 millions € in 2006 (38M € in 2011), one of the biggest budgets for such entities, surpassed by far nonetheless by the one authority in control of financial markets (63M €). But this report raises the question of the link between independence and financial autonomy, as well as the question of the gap between the stagnation of the means in staff and in financing, while the scope of channels to be controlled and its attendant activities have strongly increased. The number of channels was multiplied by 6 between 1991 and 2004, without counting digital terrestrial TV. The budget of the CSA already stood at 31.7M in 1994, and the staff of 278 (vs. 308 today). The budget of the CSA however was increased in 2010 (passing from 34M to 39M), before dropping again (38M €).

The accounts (expenses and revenues) of the CSA are subject to the control *a posteriori* of the *Cour des Comptes* and of the joint committee of finance of Senate and Parliament.

In France licenses are free and the penalties are not added to the budget of the authority that pronounces them, but go to the financing of the audiovisual sector.

The annual report of the CSA gives some global elements about its financing and the evolution of its human resources.

8. Regulation in context

The number of TV channels and radio stations is very large in France and covers the local as well as national mediascape. The television offer features the *France Televisions* group, with 7 national public channels (*France 2, 3, 4, 5* and Ô+*, Arte* and *LCP*) and a flurry of private operators, such as *TF1, M6, BFMTV, Direct Star, Direct 8, Gulli, iTele, NRJTV, NT1, TMC, W9,* available for free over the air. The national channels by subscription are *Canal+, Eurosport, LCI, Paris Première, Planète, TF6*. There are also 50 local and regional channels such as *Alsace20, direct Azur* or *Tele Bocal*. Thematic channels are also numerous, on cable, satellite or via the Internet (ADSL).

The radio offer features a great number of public stations of Radio France (France Inter, France Musique, France Culture, le Mouv', France Bleu, FIP). Other public radios are Radio France Internationale (RFI) and Radio France Outremer (RFO). The private stations are organized in networks among which the main ones are RTL Group (owned by Bertelsmann), Lagardère Active (Europe 1 and Europe 2), NRJ Group (Chérie, Nostalgie), NextRadioTV (RMC, BFM), Sud Radio Groupe, Groupe Orbus (Skyrock) and Espace group, a gathering of independent stations that share advertising strategies. A whole flurry of regional and local radios is also part of the landscape, characterized by linguistic specificities, around Alsatian, Breton and Basque languages for instance.

Delivery systems and Internet penetration are high though France tends to lag behind most developed countries in Europe. The pay-TV market is expanding, with four-play offers (television+ landline phone + mobile phone + broadband internet). Mergers such as *CanalSatellite* and *TPS Platforms*, and services like *Orange* and *FreeTV* that offer ADSL TV, high-speed telephone and Internet services, are upcoming. Between 1999 and 2009, the penetration rate of Internet has been multiplied by 10, from 7% to 60%, from 3 million persons connected to 29 million, according to the *Observatoire des usages d'internet* (*Médiamétrie*, May 2009). The penetration of mobile telephones is expected to reach 40% by 2014 (up from 12% in 2009). One of the major obstacles to penetration is the slow level of computer sales and the changes due to broadband infrastructure.

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The French national media sector presents some general features similar to other European countries and characteristics of its own. Among the features shared with Europe, the public-sector presence is strong and varied (*France Televisions* has numerous channels, including overseas). It benefits from strong state support in terms of subsidies, aids and taxes granted to all media; besides receiving "redevance", it is also allowed to capture revenues from advertising, even if the reform of 2009 suppressed advertising after 8 pm so as to preserve the revenues of the commercial channels and to increase the distinction between public and private sectors. The other common feature with Europe is the oligopolistic nature

of the media markets and the increasing trend towards concentration (see Lancelot report). *TF1*, the leading private operator (owned by construction magnate, Bouygues) enjoyed until recently around 30% of the audience share and more than 50% of advertising revenue. *M6*, the more recent private operator (controlled by the German group RTL/Bertelsmann) enjoyed about 13 % of the audience share and 22% of advertising revenue. More recently, in 2012, the audience share of *TF1* has dropped to 22% while *M6* remained relatively stable but, all in all, altogether these two operators take the lion's share of advertising.

Among the peculiarities of the French media sector, fragmentation is one. France does not have a large multimedia group comparable to Germany (Bertelsmann) or Spain (PRISA). Vivendi's expansion from 1999 to 2001 could have created one, but the difficulties experienced in the United States prevented this evolution. Paradoxically then, the group with significant presence in the 3 markets of radio, television and the press is the German group RTL (Bertelsmann).

Another specific point about the French media system, that makes it akin to the United States, is the presence of large industrial groups that are not related to the media sector: Bouygues Telecom (*TF1*, *TPS*, 8 thematic channels) is a section of a huge construction corporation; Vivendi (*Canal+* group and its thematic affiliates) is ex- Lyonnaise des Eaux, specialised in urban services and utilities; the Lagardère Group (34% of *CanalSatellite*, *Europe FM1* and *Europe FM2* radio network, thematic stations…) is also involved in car manufacturing and has a stake in European aeronautics (with a participation in EADS).

The consequences of this situation are various: fragmentation prevents the French media from competing at the international level with bigger conglomerates such as GE, Disney, CBS, Viacom, News Corp, Bertelsmann, Sony. Besides the weight of industrial groups out of the media sector represents a conflict of interest (especially in the matter of news fairness and pluralism). Finally, these groups are closely related to the state, as visible in their regular success in winning tenders for public services and facilities. They are also closely related to the CSA, where they participate in committees and commissions, with a strong lobbying capacity that can also explain the soft hand strategy adopted by the regulatory entity.

To counterbalance the weight of such corporations, the CSA tries to favour audiovisual diversity through two types of regulations: a system of external pluralism to prevent an individual or legal entity from simultaneously controlling several media markets and systems; multimedia anti-concentration rules. Following the law, CSA has made it illegal to own more than one national TV service but exceptions are being made for Digital Terrestrial Television, where the same entity can own up to seven authorisations at national level. The digital turn is putting a lot of pressure on the CSA to slowly abandon its classic media rules but its relevance remains significant and the current reform of the CSA and its rapprochement with ARCEP may lead to increased attention being paid to the transfer of the values of pluralism and anti-concentration on the digital sphere, though there is no guarantee of such process as yet.

9. Ignored dimensions

- The choice of board members is a key issue for the performance of the CSA. Some personality may block a process or stall decision-making. Though the staff is selected on its competences, it is not the case necessarily with the "conseillers", who are not necessarily chosen for their competence or their engagement in the media sector, especially in matters of contents. The profile of the board members tends to show a bias in favour of journalists or TV anchors as well as high-ranking officials, that may be efficient in maintaining good relations with operators but does not make up for the lack of legal-minded specialists or representatives of civil society.
- CSA does not communicate constructively about its decisions or initiatives on content, as if it did not want to draw attention to this enlarged competence. When it does communicate, as in the case of *"signalétique",* in spite of well-made awareness-raising campaigns, it is without much conviction, as if not to hurt the operators, to the detriment of the civil society sector that upheld the measure. So there is a need to consider the weak articulation between CSA and the grassroots associations that are concerned with matters of diversity, human rights, protection of minors…
- CSA does not have a clear policy as to the role of the audience. There is no complaints bureau, which makes it difficult to pay attention to the expectations of the public. The complaints that are received are carefully analyzed and it may lead to decision-making but, once more, there is no official recognition of their role and very little public communication and awareness about the issues at hand. The absence of such a bureau means that criticism emanating from the audience is not likely to reach the programme managers and the news editors. The presence of an ombudsman in the public service channel is not advertised much either. Such an absence creates problems in relation to the right to correct information, to the respect of a person's public image, to the possibility of asking for reply. There is no monitoring of the rights to reply in case of personal attack or political editorializing.
- The lack of integration of the convergence of content on different technological platforms is also problematic, as content regulated over the air may slip unnoticed on the digital networks, a point particularly problematic for the protection of young people. The digital turn presents the risk that the actual levels of regulation will slacken rather than be maintained, on the argument that there is no scarcity and that the multiplicity of media outlets per se serves pluralism and other human rights values.
- The narrow economic focus of the research department within the CSA is also detrimental to content evaluation, on societal issues such as harmful content or TV for babies, for instance. Every time the CSA wants to involve itself in an issue, it tends to outsource the research that leads to specific reports, mostly to survey institutes (and not to independent, public university researchers as in the case of the Catalan CAC). This procedure is not always transparent and may lead to bias in research, not to mention the extra cost of outsourcing.

- The participation of civil society in the consultations by the CSA requires some vigilance. This is particularly the case in situations when independent associations are solicited to take shared responsibility with the industry on issues over which final control is left to the free play of competition. In the case of *"signalétique",* the classification of programmes, done by the broadcasters, exemplifies this dilemma. Participation in the administration councils of public or private media is another example, as civil society can retain a measure of control on the global editorial line but not manage the daily decisions of broadcasters.
- The evolution of civil society organization is under-estimated by the CSA though they have become a real force in France. The *Collectif Interassociatif Enfance et Médias* (CIEM, renamed CIEME in 2010) has been active in trying to create an active critical awareness of the general public on issues like the rights of minors and other rights related to communication and information. It aims at establishing principles, recommendations and standards of practice and to disseminate them. It encourages cooperation agreements among the different actors implicated in the media process. It has lobbied the CSA in order to be consulted on major issues that apply to basic principles of the protection of minors (having to do with advertising, violence, *Baby TV*…). It is involved in advisory councils for programmes as the CSA officially appoints council members who come from the world of education and of paediatrics. The case of *Baby TV* is quite telling: civil society, in this case represented by CIEM and paediatricians, was successful in getting the attention of the Ministry of Health and the prohibition by the CSA of channels for children under three located in France. Despite this success, and for political reasons, the government of Nicolas Sarkozy did not see it fit to provide civil society lay associations with the means to become a full actor in co-regulation, on a par with the other sectors (State and Media sector). This can have an impact on the co-regulatory evolution of the CSA in the future.