

European Politics of Regulating Digital Convergence

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INTRODUCTION

The European politics of digital convergence has been an important topic for public debate since the early 1990s, when the forces of the digital revolution began to clash with the complicated system of regulation established in the “analogue age” regarding the media and communications sector.

When the Maastricht Treaty was signed in the early 1990s, the issue of communications infrastructure was incorporated into the law of the European Union (EU) for the first time in the Union’s history. The Maastricht Treaty stipulates that the EU should develop a Trans-European Network of Telecommunications (TEN-Telecom), which supports network inter-connectivity and service inter-operability (Dai, 2000). The Delors White Paper on *Growth, Competitiveness, and Employment* envisions the downing of a multimedia age and calls for the creation of a “common information area” (European Commission, 1993). Shortly after the publication of the Delors White Paper, the Bangemann Report delivered a strong message to the European Council in Corfu that the EU’s regulatory framework would have to be reformed in order to take on the challenges brought by new information and communications technologies (ICTs), which are generating a new industrial revolution (Bangemann et al., 1994). The release of the Delors White Paper and the Bangemann Report heralded the creation of a new policy area—the European Information Society, in which EU institutions, in particular the European Commission, have been playing a significant role up until now. Meanwhile, although the issue of regulatory challenges posed by the multimedia revolution or digital convergence was highlighted in the early 1990s by the European Commission, there was surely a lack of detailed proposal for reforming the EU’s regulatory structure for ICTs.

European Regulatory reform in the information and communications technology sector gained further momentum during the second half of the 1990s. In December 1997, the European Commission published its Green Paper on convergence, which argues that “getting the regulatory framework right is of crucial importance” (European Commission, 1997, p. iv). To assist public debate, this Green Paper identifies a range of options and poses

specific questions with regard to the implications of digital convergence for regulatory reform in Europe. In the 1999 Communications Review, the European Commission provides a systematic analysis about the *status quo* of regulation on the information and communications technology and suggests a comprehensive plan for the overhaul of regulatory structure.

The early years of the 21st century witnessed the official launch by the European Union of a New Regulatory Framework, drawing an end to the old regulatory structure belonging to the “analogue age.” The New Regulatory Framework provides a fundamentally different package of regulation over the information and communications technology sector with a focus on the challenges posed by digital convergence.

The purpose of this article is to analyse the implications of digital convergence for regulatory and institutional changes in the European Union. Accordingly, it is the European policy and political responses to the regulatory issues raised by digital convergence that constitute the main focus for the discussions presented in this article. It is argued that, whilst major progresses have been achieved at the EU level since the 1990s in regulatory reform, there are still critical issues remaining to be resolved in relation to the regulation of digital convergence. More specifically, despite that the EU has now managed to move away from technology-specific regulation to technology-neutral regulation, the failure to establish a single European Regulatory Authority (ERA) will continue to create institutional barriers to achieving more effective and efficient regulation over digital convergence.

BACKGROUND

The concept of digital convergence is closely related to digitisation, which is essentially a process of converting analogue forms of information (or contents) and communication into digital or binary codes (ones and zeros) that could be read and processed by computers. The fact that digitised films, television programmes, internet traffic as well as voice telephony can be transmitted over a conventional telephone line with the help of ADSL (asymmetrical

digital subscriber line) technology serves as a specific example of digital convergence.

The European Commission defines the term digital convergence in two senses: (1) the ability of different network platforms to carry essentially similar kinds of services and (2) the coming together of consumer devices such as the telephone, television and personal computer (European Commission, 1997, p. 1). In addition to these two aspects there is a third dimension to the definition of digital convergence in a European context: the emergence of a single information and communications space, in which national and institutional boundaries are not compatible with the seamless (or converged) flow of digital information and services.

The International Telecommunications Union (ITU) sees the process of convergence through digitisation as leading to the emergence of a machine language common to all in the information age: “The common language of the new Information Age is not a human language but a machine language: the zeros and ones, highs and lows, ons and offs of binary code” (1999, p. 5). Some argue that digital technologies are poised to generate revolutionary changes in social, economic, and political life of all societies across the world (Castells, 1996). Although the changes that the information and communications technology sector is going from analogue to digital are not rocket science, “they are not as widely recognised or understood” (Currie & Carter, 2004).

The link between digital convergence and regulatory reform lies in the fact “that existing rules were defined for a national, analogue and mono-media environment, but that services increasingly cut across different traditional sectors and geographical boundaries, and that they may be provided over a variety of platforms” (European Commission, 1997, p. iii). This, in the view of the European Commission, “calls into question the underlying rationale beneath regulatory approaches in the different sectors affected by convergence” (*Ibid.*). Levy (1999) argues that digital convergence undermines not only the rationale for but also the feasibility of most nationally based regulation. Martin Bangemann, former European Commissioner charged with responsibility for telecommunications and enterprise in the 1990s, argued that “the world [as well as Europe] needs to establish a new set of rules adapted to the capabilities of new technologies” (cited in Aragón, Grewlich, & Pietrantonio, 1999).

DIGITAL CONVERGENCE AND EUROPEAN REGULATION

In order to bridge the gap between the existing regulatory structure in the EU and the digital age, the Bangemann

Report identifies two directions of regulatory reform that are necessary within the EU: (1) the creation of a single regulatory framework to cover all areas of the information and communications technology sector; (2) the migration of communications regulation from the national level to the EU level (Bangemann et al., 1994). While the EU has been successful in regulatory reform along the first direction (i.e., the change from technology—specific to general issue or technology—neutral regulation), the call for the migration of regulatory authority from the member state level to the EU level has met with considerable resistance and, hence, became an aborted plan.

A Single Regulatory Framework

Most pieces of EU Directives passed in the 1990s, as shown in Table 1, are concerned with specific areas of information and communications technologies. For example, regulation for television broadcasting standards differed from that for telecommunications; cable networks were regulated separately from satellite networks and mobile communications regulations had nothing to do with fixed line telecommunications and so forth.

The old regulatory method for electronic media and communications was basically in a response mode to technical innovations—the launch of a new platform of electronic communication would be followed by a new piece of EU legislation (or multiple pieces of legislations). Therefore, EU regulation for information and communications technologies during the era prior to the 1999 Communications Review was in most cases a step behind technical change. It is also true that, under the old regime of regulation, technical change and innovation quite often made specific regulations obsolete.

As proposed in the 1999 Communications Review, the long list of old directives would be simplified and consolidated into fewer pieces of general issue oriented regulation—with each Directive horizontally governing all technology areas.

On the basis of the European Commission’s 1999 Communications Review, the European Parliament and the Council of Ministers approved the overhaul of the technology-specific regulations and introduced a new communications regulatory framework (see European Parliament and the Council of Ministers, 2002). The new communications regulatory framework, now issue-orientated, comprises five pieces of legislation (i.e., the Framework Directive, Authorisation Directive, Access Directive, Universal Service Directive, and the Directive on Privacy and Electronic Communications) (see Table 1 for details). The new communications regulatory framework represents the single most important reform within the EU

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