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# Engineering Europeanization: the role of the European institutions in shaping national media regulation

Alison Harcourt

**ABSTRACT** This article investigates the processes through which the European Union has become a major actor in national media regulation. The European Union is not viewed as a monolith but as a constellation of institutions that pursue Europeanization with different policy instruments and intersecting agendas. Therefore, the article illustrates how the European Commission (in turn, operating through different Directorates-General and the Merger Task Force), the European Court of Justice and the European Parliament have successfully constrained and ultimately ‘Europeanized’ the policies of five member states (France, Germany, Italy, Spain and the UK). The ensuing pattern is one of policy convergence – a result that is somewhat surprising considering the usual argument that the impact of the European Union is refracted by institutional structures that produce national modes of adaptation to Europe.

**KEY WORDS** Convergence; EU institutions; Europeanization; media policy; regulation.

## 1. INTRODUCTION

All European Union (EU) member states have developed specific regulatory regimes to govern their media industries, each differing substantially in approach. From the mid-1980s, a gradual Europeanization of media regulation can be observed which has resulted in a convergence in national policies. This article investigates the extent to which the institutions of the EU (the Commission, Court of Justice and European Parliament) have promoted sector liberalization and between them engineered a process of Europeanization at the national level.

There is a vibrant literature on Europeanization (Bulmer and Burch 2001; Green Cowles *et al.* 2001; Héritier and Knill 2001) and its mechanisms (Börzel and Risse 2000; Knill and Lehmkuhl 1999; Radaelli 2000). In terms of mechanisms, Börzel and Risse (2000) show that Europeanization produces domestic policy change by dint of two pathways; that is, resource redistribution and socialization effects. The point is important because this article will

present evidence of socialization effects. More precisely, this article is concerned with two *mechanisms* of Europeanization. The first mechanism is one of a 'top-down' process wherein the European institutions mandate the form that national policy choices should take. This mechanism can occur in two ways: either directly, whereby national governments comply with EU mandates, or indirectly, whereby domestic policy-makers – once their frameworks are Europeanized – bring national policy in line with EU options even in the absence of a direct compulsion from Brussels. The latter indirect mechanism has already been observed by scholars of EU policy (see, *inter alia*, Knill and Lehmkuhl 1999; Radaelli 1997).

The second 'bottom-up' mechanism is one in which member states transfer debates on domestic policy to the European level. Again, this mechanism can occur in two ways: either formally, whereby a national court refers decision-making to the European Court of Justice (ECJ); or informally, whereby domestic policy-makers attempt to influence debates at the EU level in order to steer domestic policy choices at home. This article will show that mechanisms, rather than being seen in isolation, should be examined in their overall direction. The question is, what is the overall effect produced by the two mechanisms? The mechanisms do not work in isolation from one another; rather, they work in tandem. Hence the overall picture is one of 'engineered' Europeanization. The notion of 'engineering' Europeanization, however, goes beyond the idea of the metaphorical 'vector' assembling the power of the two 'forces', that is, the 'top-down' and 'bottom-up' mechanisms. There is the very political meaning of engineering in that the mechanisms reflect the combined, complementary, and even multiplier-type effects of EU institutions effectively heading towards a single direction – in this case, policy convergence at the national level.

What about the more general idea (or concept) of Europeanization advanced in this article? Here it is important to observe the difference between claims made 'in the name of theory' and more modest claims, such as those made in this article, made 'in the name of empirical analysis'. Beginning with claims made 'in the name of theory', Börzel (2002) and Bulmer and Burch (2001) argue that Europeanization is a two-way process. On the one hand, member states seek to export policy models and ideas to the EU. On the other, they have to adapt to Europe when they 'download' (Börzel 2002) EU public policy – e.g. when transposing a directive into domestic law. By contrast, Radaelli, although acknowledging that real-world processes of EU policy formation and adaptation to Europe are intertwined, argues that analytically one should distinguish between the formation of EU policy and the reverberation of policy in national policy arenas (Radaelli 2000). Europeanization thus becomes a typical case of the 'second-image reversed' research design as defined by Gourevitch (1978).

This article sticks more closely to this (latter) more restrictive definition of Europeanization. The reason for this is not theoretical, but empirical. Although it is recognized that more complex research designs consider the whole

interactive process of Europeanization described by Börzel (2002) and Bulmer and Burch (2001), the empirical focus of the analysis presented in this article is restricted to processes wherein national regulatory frameworks are brought into line with EU policy goals.

## 2. EUROPEANIZATION OF NATIONAL MEDIA POLICIES

The beginnings of the Europeanization of national media policies took place in the mid-1980s and accelerated after 1990 when EU member states implemented the *Television Without Frontiers* (TWF) Directive. The degree to which the directive was implemented in the member states was initially dependent upon how well the directive 'fitted' in with the widely varying national regulatory structures. However, dissatisfaction of the EU institutions with the mode of implementation led to pressure for revisions to national media laws. The pressure exerted by the European institutions was substantial. In particular, when faced with efforts by member states to bypass TWF requirements (De Witte 1995), the diligence of the ECJ over a ten-year period has enforced implementation throughout EU member states. In parallel with the actions of the Court, the Commission's Merger Task Force (MTF) was active in moulding Europe's commercial broadcasting markets through the application of competition law. In some cases, the dual actions of these EU institutions ran rough-shod over cultural considerations of the member states despite cries of subsidiarity (even from national ministers and heads of state).

To complement actions of the ECJ and the MTF, the European Commission simultaneously practised an indirect approach to furthering Europeanization through the suggestion of best practices, models and solutions to the problem of regulating media markets. This was done specifically through the promotion of regulatory instruments in Commission reports, green papers and draft directives. Consultation with national administrations and interest groups enabled the dissemination of suggested policy instruments to national levels.

In order to observe the phenomena of Europeanization in the area of media policy, the article examines the media policies of France, Germany, Italy, Spain and the UK. Section 3 of the article will provide an overview of policy convergence in the countries under observation. Sections 4 through 8 will address how the European institutions have steered this convergence. Section 9 will draw conclusions and point to wider processes of Europeanization in the EU.

## 3. CONVERGENCE IN NATIONAL POLICY

Authors (in particular Levy 1997, 1999) have argued that media policy represents a limitation to policy convergence within the EU. This argument is based upon the classic literature on policy style which considers national cultural considerations (beliefs, values, historical experience, etc.) to diffuse the

influence of European policy. This observation is important as media policy has traditionally been influenced by cultural variables. However, it is argued in this article that over time there has been a high occurrence of convergence in media policy in the EU. Moreover, the policies of the EU have had a substantial effect upon convergence.

From the mid-1980s, a gradual pattern of market liberalization, regulation and deregulation starts to emerge amongst the countries under observation. Three key regulatory overhauls of national media policies can be distinctly marked as occurring just after the EU's 1986 Single European Act (SEA), the 1989 Television Without Frontiers (TWF) Directive and during the mid-1990s.

Much of the driving force behind changes in national policies is EU industrial policy. Central to this policy is the fact that the media industry was identified during the 1980s and 1990s as a key growth industry by the European Commission. Indeed, it became increasingly apparent during this time that there existed a deeply rooted faith in the communications industries to ease the very serious problem of growing unemployment in Europe. This belief was stated in two recommendations to the European Council: the 1993 Delors paper on *Growth, Competitiveness and Employment* and the 1994 Bangemann paper on *Europe and the Global Information Society*. The Delors paper stated that the media industry represented 5 per cent of EU GDP and was identified as one of only three sectors expected to produce future job growth. The Bangemann paper also recognized the importance of the sector's growth. Section 17 of the Bangemann paper stated that national media laws are 'a patchwork of inconsistency which tend to distort and fragment the market'. Similarly, in 1998 Jacques Santer predicted a 70 per cent global growth rate in the industry to take place within the next decade.<sup>1</sup>

The SEA may not have been a direct catalyst of media market liberalization; however, its liberalizing philosophy was extremely significant. Following the 1986 SEA, many European countries liberalized their media markets. Accompanying regulation resulted in: the French 1986 Press and Freedom of Communication Laws;<sup>2</sup> the German 1987 Inter-State Agreement on the Regulation of Broadcasting,<sup>3</sup> the Italian 1987 Publishing Law,<sup>4</sup> and the Spanish 1988 Law on private television.<sup>5</sup> These laws resulted in the appearance of commercial broadcasters which began to stress the need for deregulation to attract investment for new technologies. The new laws' manifold implications presented the Commission with a window of opportunity to introduce the Television Without Frontiers Directive.

In 1989, the Television Without Frontiers Directive required formal revisions to national broadcasting regulation. National media acts implementing the 1989 directive included: the French 1994 Broadcasting Law,<sup>6</sup> the German 1991 Inter-State Broadcasting Agreement,<sup>7</sup> the Italian 1990 Broadcasting Act,<sup>8</sup> the Spanish 1994 Televisión Sin Fronteras Law<sup>9</sup> and the British 1990 Broadcasting Act. At this point, national administrative cultures still played a large

Table 1 Media laws of selected EU member states

	1986–1989	1990–1994	1995–1998
France	1986 Press Law No. 86-1210 1986 Freedom of Communication Law No. 86-1067	1994 Broadcasting Law No. 94-88	1996 Information Superhighway Law No. 96-299
Germany	1987 Inter-State Agreement on the Regulation of Broadcasting	1991 Inter-State Agreement on the Regulation of Broadcasting	1996 Inter-state Agreement on the Regulation of Broadcasting
Italy	1987 Publishing Law No. 67	1990 Broadcasting Act No. 223	1997 New Media Act No. 249
Spain	1988 Law on private television	1994 Television Without Frontiers	1997 Law on digital television
UK		1990 Broadcasting Act	1996 Broadcasting Act

Source: compiled by the author. For a detailed overview of national laws, see <http://pcmlp.socleg.ox.ac.uk/knowhow/mediaown.html>

role in implementation at national levels. This was to change as the EU institutions expressed dissatisfaction with TWF implementation.

Deregulation occurred again at the end of the 1990s with: the French 1996 Information Superhighway Law,<sup>10</sup> the German 1996 Inter-State Agreement on the Regulation of Broadcasting, the Italian 1997 New Media Act,<sup>11</sup> the Spanish 1998 Law on digital television and the British 1996 Broadcasting Act. The content of these national laws was greatly shaped both formally by decisions of the ECJ and the European Commission and informally by European Commission policy proposals.

A full understanding of how this has occurred and in particular how formal decisions of the ECJ and MTF have mandated revisions to national laws requires an analysis of each national case. The following sections (4 through 8) of the article will provide such an analysis.

#### 4. GERMANY

The European Commission has had a significant say in both the governing of the German media market and the development of media policy at *Länder* level. This has occurred 'top-down' both directly, through decisions of the MTF, and indirectly, through Commission influence upon the formation of German broadcasting policy.

MTF decisions on mergers and joint ventures involving German media groups are numerous. Between 1994 and 1999, the MTF dealt with no less

than fourteen cases involving German groups. Six dealt with German companies seeking joint ventures externally to Germany.<sup>12</sup> Nine handled joint ventures taking place solely within the national market.<sup>13</sup> Four highly controversial national cases resulted in negative decisions by the MTF wherein concentrations were prevented.<sup>14</sup> During the last case (the proposed acquisition and joint control of the German pay-TV operator Premiere and BetaResearch by Bertelsmann and Kirch), the Commission first put informal pressure upon the German government and the Cartel Office to block the agreement at the national level. Only when the German government decided to approve the joint venture did the MTF open an investigation. Under Kohl's leadership, the German government at the time responded angrily to this decision. Despite this political resistance, the Commission prevented the joint venture under the EU Merger Regulation.<sup>15</sup>

To complement decisions of the MTF, the European Commission was able to indirectly influence policy formation at the *Länder* level. This was in the choice of the policy instrument used to regulate media ownership: audience share. Under the German 1996 Inter-State Treaty on Broadcasting, a new policy instrument was introduced: broadcasting companies are limited to a 30 per cent share of national audience through the television stations which they own. The idea for this policy instrument came from a one-hundred page study commissioned by Directorate-General XV (DG XV) and sent out to national authorities in 1993 (GAH 1993). Diffusion of the idea was aided by the organization of meetings in Germany by a European Commission head of unit, wherein national media experts discussed possible policy instruments. German state-level policy-makers were convinced of the utility of the policy instrument, and audience share was adopted as a key regulatory instrument in the 1996 inter-state treaty.<sup>16</sup>

There is no doubt that, in the case of Germany, a Europeanization of media policy has occurred. The EU institutions have had a direct hand in shaping the German media market, in particular the development of digital television. Through its decisions, the European Commission and the ECJ have halted media concentration in the German market. Through its suggestion of policy instruments, the European Commission presented its own solution to the regulation of media ownership at the national level. The following sections will investigate how similar processes have occurred within other EU member states.

## 5. UNITED KINGDOM

As in Germany, the EU institutions have become involved in regulation of the British media market. Again, this has taken place both 'top-down', directly, through decisions of the MTF, and indirectly, through policy suggestions by the European Commission, and 'bottom up' through referral of national cases to the ECJ.



The present structure of the UK market is unique in Europe in that there is comparatively diverse ownership in the broadcasting market (although concentration between ITV companies has occurred in recent years) and a highly concentrated and polarized press market. Ownership of all national newspapers is concentrated in just seven hands with the four largest companies accounting for 90 per cent of sales (News International, Mirror Group, United News and Media, and Daily Mail and General Trust) (Bromley 1999). This has come about because the UK has no specific regulation relating to press ownership.

In contrast to its light-touch regulation of press markets, the UK has regulated ownership in broadcasting markets to a greater extent than other EU member states. Relatively few television channels have been permitted to broadcast at the domestic level, and ownership therein was tightly regulated. The 1989 Television Without Frontiers Directive changed all of this, mainly because it permitted satellite broadcasts from abroad. In the UK case, this meant chiefly allowing broadcasts by the Rupert Murdoch-owned BSkyB. Even though the Conservative government under Thatcher had supported the expansion of Murdoch's News International in the press market, it balked at allowing further Murdoch influence in broadcasting markets. Therefore, the UK 1990 Broadcasting Act which implemented TWF retained a tight hold over the regulation of foreign broadcasters. In this respect, the European Commission expressed dissatisfaction with UK implementation of TWF and informed the UK that it had failed to correctly transpose several articles. A disagreement between the UK and the Commission ensued, during which a series of letters were exchanged between Brussels and London.<sup>17</sup> As the dispute could not be settled informally, the Commission eventually took the UK to the ECJ over the issue in 1994. The Commission challenged the UK on two accounts: first, it objected to the criteria set out in section 43 of the 1990 Broadcasting Act which applied a different regime to non-domestic satellite services as that applicable to domestic satellite services. Second, and most importantly, it claimed that the UK had failed to fulfil its obligations under Articles 2(1), (2) and 3(2) of TWF by exercising control over broadcasts transmitted by a broadcaster that falls under the jurisdiction of another member state. The ECJ ruled in favour of the Commission and suggested a rewording of the 1990 Broadcasting Act,<sup>18</sup> by which time the UK 1996 Broadcasting Act was almost in place.

Apart from this direct influence upon UK broadcasting law, the European Commission, as in Germany, was successful in indirectly influencing the choice of a key policy instrument used in the UK 1996 Broadcasting Act – that of audience share. The new market measurement limits audience share of broadcasters to 15 per cent (for both television and radio stations). As in Germany, interviews confirm that civil servants adopted this idea directly from suggestions put forward by the European Commission in two internal studies (GAH 1993; EIM 1994) and a 1994 Green Paper on media ownership (European Commission 1994).<sup>19</sup> With the new instrument, there is now no

limit in the UK on ITV licence ownership, as long as the combination of company ownership and their corresponding licence-holding does not exceed 15 per cent.

As in Germany, the UK's media market has come under scrutiny from the MTF which has investigated four cases of dominant position within the British domestic market.<sup>20</sup> In two cases, British Telecom/MCI (1993) and BSkyB/British Digital Broadcasting (BDB) (1997), the Commission prevented market concentrations. Unlike its German counterpart, a UK regulatory body had referred these cases to the European level. As they were perhaps too politically sensitive to decide domestically, the UK Independent Television Commission in 1997 requested the Commission to exclude BSkyB from BDB.<sup>21</sup>

## 6. SPAIN

The European institutions have shown a keen interest in the development of the Spanish broadcasting market with a number of 'top-down' decisions which have in turn influenced the shape of Spanish media law. The present regulatory framework did not come about until the establishment of an independent media following the collapse of the Franco regime in 1975. The press market has grown rapidly since this time, as has the broadcasting market since its liberalization in 1988.

The 1980 Spanish broadcasting law established RTVE as a public service monopoly for both radio and television (from 1983, this included regional television as well).<sup>22</sup> It remained so until the 1988 Law on Private Television. The 1988 Law contained strict provisions on ownership and licensing. However, these never worked in practice; not only because the rules were not adhered to regionally (there were about 600 illegal local radio stations in Spain (de Mateo 1997)), but also because even the federal government decided to ignore them. In 1994 Spain's largest media group, PRISA, bought Spain's second largest media group, SER, an acquisition which the Spanish government at the time approved regardless of Spanish media ownership rules.

In 1994, Spain passed a law entitled *Televisión Sin Fronteras* which implemented the European TWF Directive. This introduced foreign competition to the Spanish market. From this time onwards, the MTF and the ECJ became active in shaping the development of Spanish media markets, particularly when it came to the development of digital television.

In 1996, the MTF prevented a Spanish media concentration in the *Telefónica/Canal Plus/Cablevisión* case.<sup>23</sup> This case concerned the setting-up of a joint venture, *Cablevisión*, by *Telefónica de España* and *Sogecable SA*, a subsidiary of *Canal Plus España*. The MTF found that the venture affected the supply of services to cable television operators and prevented new entrants to markets for pay and cable television. Originally, the companies had notified the acquisition to the Spanish Competition Defence Tribunal (TDC), which vetoed the joint venture, but it was overruled by the Spanish government.

After this, the Commission wrote to Canal Plus Espana requesting notification to the Commission (indeed, informally the Commission had to put up a considerable fight to wrench the decision away from the Spanish government). Following a negative decision by the MTF, Sogecable sought an annulment in the Court of First Instance and a suspension of the Commission's activities until the Court had determined whether the operation had a Community dimension. The Court did not suspend the MTF investigation (as it viewed this to be a substitution of the Commission's administrative activities) and supported the MTF decision.<sup>24</sup> In any case, just before the Court decision was announced, the operation was withdrawn owing to a change in government in 1996.

Canal Plus was therefore free to go it alone in the Spanish market, this time in digital satellite television. The conservative Spanish government, the Partido Popular, tried to prevent the launch of Canal Satélite Digital with two laws (Llorens-Maluquer 1998: 578–85).<sup>25</sup> The government stated that the laws were enacted to promote pluralism as they required the use of multicrypt (rather than simulcrypt) transmission and mandated the shared use of sports rights. As Canal Satélite Digital was using simulcrypt, this rendered their broadcasts illegal. The Commission opposed both laws as anti-competitive and contrary to the free movement of goods and threatened to challenge them in the ECJ. As Llorens-Maluquer details well, a long battle between the Commission and the Spanish government ensued resulting in a revocation by Spain of both laws (1998).<sup>26</sup> In a parallel development, CDS challenged one of the laws (Real Decreto Ley 1/97) in a Spanish court (Tribunal Supremo), which referred the case in turn to the ECJ. Long after the Real Decreto had been revoked, the ECJ ruled with the Spanish court, and against the Spanish government in January 2002.<sup>27</sup>

At the end of 1997 the Spanish government drew up a package of measures designed to ensure a total transition to digital transmission (linking the measures to a renewal of the broadcasting licences of the country's commercial terrestrial channels which expired at the end of 1999). The resulting 1998 Spanish Media Act embraced the European Commission-inspired convergence initiative (whereby restrictions on ownership in broadcasting have been removed).

## 7. ITALY

The case of Italy provides many examples of the 'bottom-up' mechanism of Europeanization. Italy's policy concerns have often spilled over on to the European level as it has often looked to Europe to solve difficult domestic disputes. The specific Italian problem of media concentration represents such a dispute. Italy has fairly successfully regulated media ownership of the press, but has failed to control increasing concentration in broadcasting. On the one hand, Italy has a comparatively pluralistic press market.<sup>28</sup> On the other hand,

the terrestrial broadcasting market is dominated by the private company, Mediaset, and the public broadcaster, RAI. The failure of Italian regulation to control excessive concentration in its broadcasting market has led domestic Italian politicians and Italian Members of the European Parliament (MEPs) to lobby the Commission to introduce European rules on media ownership. The first European Parliament (EP) report on media ownership was written by the Italian MEP, Roberto Barzanti.<sup>29</sup> This was followed by a deluge of EP reports<sup>30</sup> on media concentration, most of them resulting from the Committee on Culture, Youth, Education and the Media (CULT), membership of which was overwhelmingly Italian at the time.<sup>31</sup> This in-depth treatment of the issue of media ownership by the EP and a series of formal requests to the Commission led the European Commission to embark on a policy initiative for media ownership (Harcourt 1998).

In addition to the specific case of ownership, Italy has fundamentally provided ample opportunity for the ECJ to expand EU competence for media policy, again through the 'bottom-up' mechanism but in a more formal mode. Specifically, the willingness of Italian courts to refer media cases to the ECJ has enabled the Court to further its own competence in the media field. Three of Italy's regional courts, Biella, Lazio and Ragusa, have referred media cases to the ECJ. These cases have been particularly important for the progression of EU media policy.

The Italian *Sacchi* case<sup>32</sup> represented the first significant ECJ case dealing with the media industry. In 1974, a tribunal court of the small Italian town Biella asked the ECJ for interpretation of Articles 2, 3, 5, 7, 37, 86 and 90 of the Treaty of Rome. Essentially, it wanted to know whether the movement of goods within the Common Market applied to television signals. The ECJ ruled that 'in the absence of express provision to the contrary in the Treaty, a television signal must, by reason of its nature, be regarded a provision of services'. It added that 'trade in material, sound recordings, films, apparatus and other products used for the diffusion of television signals are subject to the rules relating to freedom of movement for goods'. As noted by many authors, the *Sacchi* ruling was extremely significant for the future development of EU media policy (Lange and Van Loon 1991: 66; Negrine and Papathanassopoulos 1990: 63; Humphreys 1996: 262; Harcourt 1998). The ECJ declared that broadcasting should be considered a tradeable service.<sup>33</sup> Therewith the media sector was established as ripe for the single market as it provided the European Commission with a basis for the TWF Directive.

The second Italian case concerned *Maria Salonia v. Giorgio Poidomani and Franca Baglieri, née Giglio* in 1980.<sup>34</sup> Again, an Italian regional court looked to the Luxembourg Court to solve a tricky domestic dispute. This was the regional court of Ragusa in Sicily (*Tribunale civile di Ragusa, Sezione civile, Ordinanza*). This was the third media case to be brought before the ECJ (after *Sacchi* and *Debauve*). At this point, the ECJ maintained a hands-off approach to the case which involved an exclusive rights agreement between the

Italian Federation of Newspaper Publishers and the United Federation of Trade Unions of Newsagents. The Sicilian court questioned whether the agreement constituted a dominant market position (via vertical integration) according to definitions under Article 85 of the Treaty of Rome. The Court ruled that there was no conflict with the Treaty as the agreement did not affect member states other than Italy. The discussion of this case at the European level, however, spurned the domestic Italian debate for a national competition law.

The third Italian case dealt with the reference for a preliminary ruling by the regional court of Lazio (*Tribunale amministrativo regionale del Lazio*) on the interpretation of the TWF Directive 89/552/EEC relating to broadcasting.<sup>35</sup> The Lazio court requested an interpretation of Article 17(1)(b) of TWF relating to regulation of television commercials.<sup>36</sup> The case, eventually decided in 1996, gave the Court an opportunity to interpret TWF's rules on advertising. This had significance for the 1997 amendment of the 1989 TWF Directive, Article 11 of which permits the insertion of a sponsor's name during television programming.

In addition to activities of the ECJ, the MTF has taken an interest in the Italian media market. Two MTF cases dealt with foreign investment in the Italian company Telepiu.<sup>37</sup> Telepiu had originally belonged to Berlusconi, but a sale was forced by an Italian Constitutional Court ruling on media concentration. Both competition cases were approved by the MTF allowing for the first time foreign ownership in the Italian domestic broadcasting market. After a series of share swapping, Telepiu is currently 100 per cent owned by the British group News International.

The necessity to implement the 1989 TWF Directive prompted Italy's first law on the regulation of private broadcasting. This was the 1990 Broadcasting Act of 6 August 1990. The law was largely based upon the French law on freedom of communication. However, the 1990 Italian Broadcasting Act lays down different ownership rules for national and regional television. Regarding ownership, the Act's provisions merely confirmed the market status quo (Mazzoleni 1999).

Italy's embrace of European policy solutions is most clearly demonstrated by its convergence initiative. In July 1997, the Italian parliament replaced the 1990 Act with its New Media Act. Significantly, Italian civil servants drafting the new law were substantially influenced by the convergence initiative promoted by DG XIII of the European Commission.<sup>38</sup> The Act establishes an Authority for Communications (*Autorita per le garanzie nelle comunicazioni*), which was set up in 1998. It replaces the Press and Broadcasting Authority and is situated within the new Ministry for Communications. It was the first regulatory authority in Europe to regulate both telecommunications and media under one roof. It issues both broadcasting licences and regulates telecommunications companies. The new Authority monitors media mergers and acquisitions taking place across all related media markets, including telecommunications and new services.<sup>39</sup>

## 8. FRANCE

France is dealt with last because of the symbiotic relationship between the media policies of France and the EU. As with Italy, the 'bottom-up' mechanism of Europeanization can clearly be demonstrated in the case of France. But whereas the 'bottom-up' mechanism has worked in a formal way in Italy through referrals by the courts, it has worked informally in France. Like Germany, France has taken a relatively hands-off approach to regulating media markets. This has allowed the establishment of a handful of large groups at the national level with both press and broadcasting interests.

Having observed other national cases (particularly Germany and the UK), the 'top-down' influence of the European institutions in determining French media policy would be expected to be high. However, a detailed examination of the French case shows 'top-down' European intervention to be negligible. Despite a high degree of market concentration and joint ventures between large French media groups, the ECJ and the European Commission's MTF have taken no interest in preventing further concentration in the French national market. This is quite exceptional, considering the high degree of cross-media holdings and the large size of French media groups. Havas and Hachette rank amongst Europe's top ten media firms (European Audio-visual Observatory 2001), Havas being Europe's number two media company.

Out of around forty media cases handled by the ECJ, none of them dealt with French companies.<sup>40</sup> Similarly, only three cases (out of sixty-odd cases dealing with the media sector) considered by the MTF have dealt with French companies. In all three cases, MTF decisions led to the expansion of French groups. In 1991, the MTF investigated the involvement of the French companies Générale des Eaux and Canal Plus, in a joint venture with ABC and W H Smith in 1991. The joint venture in sports broadcasting, which was considered by the MTF owing to the sheer size of the groups involved, was approved in the first consultation round without revision.<sup>41</sup> In the second case, the MTF did actually prevent Canal Plus from forming an alliance with the Spanish telecommunications company, Telefónica.<sup>42</sup> This was during the Spanish race to introduce digital television (as detailed above). However, this MTF decision allowed Canal Plus to singularly launch Spain's first digital satellite television in January 1997 (under its subsidiary, Canal Satélite Digital), defying the political pressure of the incumbent Spanish government (Llorens-Maluquer 1998: 582). Without the support of the European Commission, this would not have been possible. In the third French case, the MTF investigated the digital satellite television venture between the French television company TF1 and the utility company Lyonnaise des Eaux. The joint venture between the two large French companies was approved without constraint on 10 March 1999 (for details, see *European Voice*, 17 March 1999: 23).

The justifications for non-intervention by the Commission cannot easily be justified by economic considerations if a comparison with the German decisions is made. However, perhaps the 'European' behaviour of French groups is

looked upon favourably by the European Commission. The French broadcasting group Canal Plus was once considered the most 'European' of European groups, having co-operative subsidiary holdings in most member states and allocating importance to the production of European content.

The indirect influence of the EU institutions upon French media laws is also negligible. In its 1994 law, France introduced a new policy instrument: audience reach,<sup>43</sup> but audience share was not considered. The 1996 Information Superhighway Law (No. 96-299) is not revolutionary. In 1997, the French government drew up a revision of the 1994 Broadcasting Law. However, this was never put to the vote owing to a change in government in June of that year.

Despite this reluctance by the institutions to introduce 'top-down' reform to French media policy, 'bottom-up' mechanisms can be observed. In contrast to the lack of formal intervention by the EU institutions, informal feedback from the French to the European level is lively. Relations between the French Ministry for Culture and the European Commission are reportedly cosy (Collins 1994; Trautmann 1998). Proponents of French cultural policy have been successful in influencing European policies, particularly regarding the promotion of European production. Content laws as governed by the Conseil Supérieur de l'Audiovisuel (CSA) are relatively stringent in France, particularly regarding requirements for French content.<sup>44</sup> This fact has been relatively significant for Europe. The 'French lobby' (Belluzzi 1994) was successful in

Table 2 Summary of the largest European media firms

<i>Country (established)</i>	<i>Publishers</i>	<i>Broadcasters</i>
France	Havas, Hérsant, Hachette	Canal Plus, TF1
Germany	Bertelsmann, Heinrich Bauer Verlag, Alex Springer Verlag	Kirch
Italy	Rizzoli, Mondadori, Monti	Mediaset, Cecchi Gori Communications
Luxembourg		CLT, SES
Netherlands	Reed Elsevier, Reuters, Walters Kluwer, VNU	NetHold, Polygram
Spain	Grupo Prisa, Prensa Espanola, Editorial Planeta	Antena
UK	Granada, News International, Pearson, Reed International plc, United News and Media	BSkyB, Cable and Wireless, Capital Radio, Carlton, EMAP, Granada, Thorn EMI plc, Virgin

Source: European Audio-visual Observatory 2001

requiring a minimum of 49 per cent European content in both the 1989 and 1997 TWF Directives.

## 9. CONCLUSION

This article has shown that there is clear Europeanization in member state media policies. The European institutions (the European Commission, EP and ECJ) have been shown to be major catalysts of Europeanization. The individual actions of these institutions have played a decisive role in shaping both the present state of national media markets and the direction of national media policies. This has occurred through two mechanisms of Europeanization. The first (top-down) mechanism has acted first as a direct constraint upon national policies. This occurred with the introduction of the 1989 TWF Directive which exacted Europeanization through direct implementation by EU member states. Decisions of the Commission's MTF and the ECJ further chiselled away at national regulation of media markets.

This 'top-down' mechanism has also worked indirectly. The article observed how the European Commission acted as a policy entrepreneur, by suggesting policy models and solutions to the national administrations. Suggestion and discussion of policy instruments formulated at the European level (the example given was of audience share) undoubtedly had an indirect influence upon policy formation at national levels. In this way, the Commission can be seen to have steered the course of debate over the deregulation at the national level. Hence, policy convergence was politically engineered. This convergence was reinforced through the combined effect of the actions of the EU institutions: the Court, the Commission and the Parliament.

The 'bottom-up' mechanism was also seen to work in two ways: formally and informally. In the first (formal) case, national courts gave the ECJ opportunity to determine the direction of national policies through their referral of media cases to the European level. In the second (informal) case, the mechanism involved a more subtle process which involved communication, dialogue and learning. An example given of this was the 'French lobby' having influenced the direction of EU media policy. This example is consistent with the emphasis on socialization mechanisms as one of the two main factors producing Europeanization (Börzel and Risse 2000). Through this mechanism, changes have been induced in preferences that go beyond the idea that Europeanization is merely superimposed on static preferences.

But can one really talk of policy convergence? The issue is topical in the debate on Europeanization, as different positions about differential or converging Europe witness (Héritier 1998; Héritier and Knill 2001; Schneider 2001). Looking at the evidence presented in this article, it is argued here that a definite pattern of policy convergence has indeed emerged. Key overhauls of national media policies can be distinctly marked as occurring around the mid-1980s, the early 1990s and the mid-1990s. Liberalizing acts in the mid-1980s required the regulation of media markets. As detailed, these acts were the



French 1986 Press and Freedom of Communication Laws; the German 1987 Inter-State Agreement on the Regulation of Broadcasting, the Italian 1987 Publishing Law, and the Spanish 1988 Law on commercial television.

Deregulation of privatized markets occurred when national laws were revised to implement the 1989 TWF Directive: with the French 1994 Broadcasting Law, the German 1991 Inter-State Agreement on the Regulation of Broadcasting, the Italian 1990 Broadcasting Act, the Spanish 1994 Television Without Frontiers Law and the British 1990 Broadcasting Act.

The last stage of regulatory convergence occurred at the end of the 1990s which saw the French 1996 Information Superhighway Law, the German 1996 Inter-State Agreement on the Regulation of Broadcasting, the Italian 1997 New Media Act, the Spanish 1998 Law on digital television and the British 1996 Broadcasting Act. By suggesting the adoption of certain policy instruments for national legislation, the Commission created the preconditions for diffusion and legitimized its policy suggestions through dialogue with national administrations. Both the British 1996 Broadcasting Act and the German 1996 *Länder* Broadcasting Treaty contained a new policy instrument suggested in two Commission studies (1993 and 1994) and a 1994 Green Paper. Italy's 1997 New Media Act created a new joint authority for both media and telecommunications as recommended by the Commission's 1997 convergence Green Paper. The 'convergence' initiative has since been embraced by Spain, Switzerland, Slovenia and most recently the UK (in 2002 with the creation of OFCOM).

The mid-1990s laws were shown to be affected through formal decisions of the ECJ and MTF. The UK Act had to include revisions as directly stipulated by the ECJ. Spain had to allow for greater sector liberalization than desired by its national government. Apart from the five countries under examination in this chapter, media acts were introduced in Austria, Denmark, France, Greece, Holland, Luxembourg, Portugal, Sweden solely during the years 1996 and 1997. These acts show similar effects of Europeanization.<sup>45</sup> There is little doubt that policy convergence, promoted by the actions of the European institutions, is under way.

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## NOTES

- 1 *European Audio-visual Conference: Challenges and Opportunities of the Digital Age*, 6–8 April 1998, Birmingham.
- 2 Loi no. 86-1067 du 30 septembre 1986 Relative à la liberté de communication; Loi no. 86-1210 du 27 novembre 1986; Complétant la loi no. 86-897 du 1er août

- 1986 portant réforme du régime juridique de la presse et la loi no. 86-1067 du 30 septembre 1986 relative à la liberté de communication.
- 3 1987 Staatsvertrag über den Rundfunk im vereinten Deutschland.
  - 4 Legge 25 febbraio 1987 n. 67 – *recante disciplina delle imprese editrici e provvidenze per l'editoria*.
  - 5 Ley 10/1988, de 3 de mayo, de Televisión Privada. B.O.E. núm. 108 de 05-05-88.
  - 6 Loi no. 94-88 du 1 février 1994. Modifiant la loi no. 88-1067 du 30 septembre 1986 relative à la liberté de communication.
  - 7 1991 Staatsvertrag über den Rundfunk im vereinten Deutschland.
  - 8 Legge 6 agosto 1990, n. 223. Disciplina del sistema radiotelevisivo pubblico e privato.
  - 9 Ley 25/1994 Televisión Sin Fronteras de 12 de Julio, amended by 22/1999 de 7 de Junio.
  - 10 Loi no. 96-299 du 10 avril 1996 relative aux expérimentations dans le domaine des technologies et services de l'information (1) J.O. Numero 86 du 11 Avril 1996, page 5569.
  - 11 New Media Act No. 249. Legge 01.07.97, n. 249.
  - 12 Kirch/Richemont/Telepiu Decision (Case No. IV/M.410, OJC 225/04, 13.08.94); Bertelsmann/News International/Vox Decision (Case No. IV/M.489, OJC 274/06, 01.10.94), Vox (II) (Case No. IV-M.525, OJC 57/06, 07.03.95); Kirch/Richemont/Multichoice/Telepiu (Case No. IV/M.584, OJC 129/07, 16.06.95), Bertelsmann/CLT (Ufa), Case No. IV/M.0779, OJC 364/05, 04.12.96), Betaresearch/Bertelsmann/Kirch (1998).
  - 13 MSG Media Service (Case No. IV/M.469, OJL 364, 09.11.94); N-TV (Case No. IV/M.810, OJC 366/05, 05.12.96); Bertelsmann/Burda/Springer Hos MM (Case No. IV/M.972, 15.09.97); Bertelsmann/Burda Hos Lifeline (Case No. IV/M.973, 15.09.97); Deutsche Telekom/Betaresearch (Case No. IV/M.1027, 27.05.98); DF1/Premiere (Case No. IV/M.993, 01.06.98); Bertelsmann/Burda/Futurekids (Case No. IV/M. 1072, 29.01.98). Havas/Bertelsmann/Doyma (Case No. IV/M.800, 27.08.98).
  - 14 MSG Media Service (Case No. IV/M.469, OJL 364, 09.11.94), Deutsche Telekom/Betaresearch (Case No. IV/M.1027, 27.05.98), and DF1/Premiere (Case No. IV/M.993, 01.06.98.), Betaresearch/Bertelsmann/Kirch (1998).
  - 15 The Commission justified referral based upon linguistic market considerations.
  - 16 The concept of audience share was created by Federal Communications Commission (FCC) consultant William Shew in the study *Measures of Media Concentration* (American Enterprise Institute) commissioned by News International and sent to the European Commission in 1989 (Harcourt 2003).
  - 17 The Commission sent a letter to the United Kingdom on 03.11.92 inviting it, according to Article 169 of the Treaty, to set out its views on the criticisms raised by the Commission. The UK replied in a letter of 10.02.93. The Commission then wrote back with a reasoned opinion on 30.09.93, to which the UK responded by letter on 25.01.94.
  - 18 Case C-222/94 Commission of the European Communities v. United Kingdom of Great Britain and Northern Ireland 1996 [30.04.96, ECR I-4025] failure to implement Directive 89/552/EEC.
  - 19 The NERA study (assessing audience share), commissioned for the UK Department of National Heritage, came after the Commission studies (NERA 1995).
  - 20 1993 BBC/BSkyB/Football Association Case No. IV/33.145 and IV/33.245 [OJC 94/6, 03.04.93]; 1993 British Telecom/MCI Case IV/M.353 [OJC 259/03, 27.08.93], 1997 British Telecom/MCI (II). Case No. IV/M.856 [14.05.97]; 1997 BSkyB/British Digital Broadcasting Case IV/M. 300.

- 21 See Raymond Snoddy, 'UK: EU raises doubts on digital TV licence bid', *Financial Times*, 4 June 1997.
- 22 Ley 4/1980 de 10 de Enero (B.O.E. no. 11, de 12.01.80) and Ley 46/1983 de 26 de diuembre.
- 23 1996 Case No. IV/M.0709 [OJC 228/05, 07.08.96].
- 24 1996 Case T-52/96 Sogecable SA v. Commission of the European Communities [12.07.96, ECR 0797].
- 25 1997 Real Decreto Ley 1/97 incorporation of the EC Directive 95/47/CE; and 1997 Ley 17/97 (conversion into law of the decree law) Regulation of the Emission and Retransmission of Competitive Sport (Reguladora de las Emisiones y Retransmisiones de Competiciones Deportivas).
- 26 Ley 1/97 amends Leys 1 and 16/97 with the changes mandated by the Commission.
- 27 Case C-390/99 Canal Satélite Digital v. Spain 2002 [22.01.02].
- 28 Although there has been significant concentration in ownership of dailies (which are concentrated in the hands of around eleven national companies), this concentration is not as high as in other EU member states.
- 29 Barzanti Report. PEDOC A2-246/87, 08.12.87.
- 30 1985 Resolution [PEDOC A2-102/85, OJC 288, 11.11.85]; 1986 EP official request to the Commission; and two amendments to the draft Directive *TWF* in the *Barzanti Report* [PEDOC A2-246/87, 08.12.87, OJC 13, 18.01.88]. 1990 Resolution on Media Takeovers and Mergers [PEDOC B3-345/368/380/391/90, OJC 68, 15.02.90]; 1992 Resolution on Media Concentration and Diversity of Opinions [PEDOC A3-153/92, OJC 284, 02.11.92]; 1992 Resolution on Media Concentration and Pluralism of Information [PEDOC A3-153/92, 16.09.1992]; 1990 *Albor Motion for Resolution on Concentration of Information* [PEDOC B3-455/90]; 1990 *Ferri Motion for Resolution on Anti-trust Legislation for the Media* [PEDOC B3-842/90]; 1990 *Ortega Motion for Resolution on Local Television in Europe* [PEDOC B3-721/91]; 1991 *Titley and others Motion for Resolution on Importance of Diversity in the Media* [PEDOC B3-894/91]; 1991 *Titley and others Motion for Resolution on Tendency Towards the Concentration of Ownership in the Media Industry* [PEDOC B3-895/92].
- 31 Italian membership of the EP's Committee on Culture, Youth, Education and the Media (CULT) at the time included: Monica Stefania Baldi (EPP), Umberto Bossi, Alessandro Fontana (EPP), Giancarlo Ligabue (EPP), Cristiana Muscardini, Carlo Ripa di Meana (EUL), Aldo Arroni (EPP), Roberto Barzanti (PES), Gerardo Bianco (EPP), Luciana Castellina (EUL), Marco Cellai, Maria Paola Colombo Svevo (EPP), Giacomo Leopardi (EPP), Luigi Moretti, Luisa Todini (EPP), and Luciano Vecchi (PEE).
- 32 Case 155/73 Tribunale civile e penale di Biella [30.04.74, ECR 0409 – 0433].
- 33 The ECJ also acknowledges in this ruling that member states could exempt public service broadcasters from this rule. At least, the ruling states that under Article 90(1) of the Treaty of Rome 'nothing prevents Member States, for considerations of public interest, of a non-economic nature, from removing radio and television transmissions, including cable transmissions, from the field of competition by conferring on one or more establishments an exclusive right to conduct them'.
- 34 Case 126/80 *Maria Salonia v. Giorgio Poidomani and Franca Baglieri, née Giglio*, 16.06.81, ECR 1584.
- 35 Joined cases C-320/94, C-328/94, C-329/94, C-337/94, C-338/94 and C-339/94 *Reti Televisive Italiane SpA (RTI) (C-320/94), Radio Torre (C-328/94), Rete A Srl (C-329/94), Vallau Italiana Promomarket Srl (C-337/94), Radio Italia Solo Musica Srl and Others (C-338/94) and GETE Srl (C-339/94) v. Ministero delle Poste e Telecomunicazioni* [12.12.96, ECR I-6471].

- 36 The Court interpreted Article 17(1)(b) as permitting the insertion of the sponsor's name or logo at times other than the beginning and/or the end of a television programme.
- 37 The Kirch/Richemont/Telepiu Decision, Case No. IV/M.410 OJC 225/04, 13.08.94 and the Kirch/Richemont/Multichoice/Telepiu Decision, Case No. IV/M.584 OJC 129/07, 16.06.95.
- 38 Styles, Paul, *et al.* (1996) Public Policy Issues Arising from Telecommunications and Audiovisual Convergence. Report for the DG XIII, KPMG, September. European Commission (1996) *Telecommunications and Audio-visual Convergence: Regulatory Issues*, Luxembourg: DG XIII; European Commission (1996) *Note on the Status of Work on the Regulatory Implications of the Convergence Between Telecommunications and Audiovisual Sectors*, Luxembourg: DG XIII.
- 39 See 'I Media nuova frontiera dell'Authority antitrust', *Il Sole*, 24 Ore, Friday 05.03.99.
- 40 *Debauxe* and *Denuit* were Belgian cases.
- 41 ABC/Générale des Eaux/Canal Plus/W H Smith [Case IV/M.110, 10.09.91].
- 42 Case No. IV/M.0709 1996 [OJC 228/05, 07.08.96].
- 43 See Article 15 of Law No. 94-88.
- 44 Along with the 1994 broadcasting law, France brought in the 1994 'la loi Toubon'. The 1994 law forbids public bodies and companies engaged in public activities to use an English expression where there is a French equivalent. It was passed in reaction to the flood of US popular culture into France. The law also requires all advertising to be in French.
- 45 E.g. Ireland adopted audience share in 2001. See also Svenska Dagbladet, Sweden 05.11.97 for EP influence on the formation of the Swedish media law.

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