

## CHAPTER ONE

Institutionalising Soft Governance in the European Information Society, in David Ward (ed), *the European Union & the Culture Industries: Regulation and the Public Interest*, London: Ashgate Law Series, 2008.

*Alison Harcourt*  
*University of Exeter, Department of Politics*

The use of ‘new’ or ‘soft’ governance by the European Union (EU) institutions has expanded dramatically in recent years. Soft governance is seen as a way to bypass political stagnation to further European integration presented by the traditional Community method. The traditional Community method refers to legislation initiated by the European Commission (EC), e.g. Directives, Regulations, Recommendations and Decisions, and ratified by the Council of Ministers and the European Parliament (EP). The policies covered by the traditional method have been mapped out by, and expanded through subsequent EU Treaties (namely the 1957 Rome, the 1987 Single European Act, 1992 Maastricht, 1997 Amsterdam and 2001 Nice Treaties).

By contrast, soft governance refers to non-binding agreements made between participating actors established outside the Community method. Policy is agreed upon in ‘soft’ policy fora e.g. EU committees, national regulatory authorities (NRAs) and industrial fora. In what is termed ‘committee governance’, market rules are agreed within committees of the EU usually in consultation with national experts and/or industry representatives. Similar agreements are made within NRA platforms through best practice and policy coordination. Self regulation is agreed within fora representing industry.

However, the EU approach is distinctive in that it is overly reliant on a soft governance approach to policy-making. There has been a dramatic increase in soft governance since the 2001 Lisbon Summit. At Lisbon, the European Council addressed the impasses presented to the traditional “community method” (formal Directives/Regulations, etc) and proposed the use of soft governance in application to policy areas not covered by the *acquis communautaire*, which would include communications policy. The Commission’s DG for Information Society responded to this call with the inclusion of the Council’s suggestions in its eEurope Action Plan. As a result, DG Information Society is increasing reliance on soft governance.

The present trend is towards the institutionalisation of soft governance by the European institutions. In this way, the EU has been able to overcome impasses at more formal levels and make progress in key policy areas such as the information society.

Since Lisbon, the Council of Ministers has established open method of coordination (OMC) committees which govern the eEurope initiative. In parallel, there has been a proliferation in EC committee governance in information society policy. The Directorate General for Information Society (DG Info Soc) operated 72 committees in 2006 alone. In addition, the EU has embedded financial provision for the establishment of European level NRA platforms into legislative packages such as the Regulatory Framework for Communications which agree on sector rules in coordination with the EC. In line with this, 'co-regulation' has been introduced at the European level wherein rules agreed upon by self-regulatory bodies are formalised through (soft or hard) legal instruments and overseen by co-regulatory fora. This Chapter investigates soft governance in information society policy. It argues that the use of soft initiatives has further anchored a technocratic style of governance within this particular policy sector.

### **Institutionalising soft governance**

In the mid-1990s, European integration hit a lull. Following a regulatory surge in the 1980s, by 1992 the production of legislation by the European institutions had slowed considerably due to resistance from member states concerned with red tape, implementation costs and resistance to increased political integration. At the 1992 European Council in Edinburgh, member states formally agreed to slow the growth in policy by limiting the number of initiatives per year. The political emphasis turned to subsidiarity and flexibility as was formalised later that year by the Maastricht Treaty. By 1997, only seven new directives were passed by the EU in a single year. The move was towards more effective and better regulation. A programme to monitor and accelerate policy implementation based upon the Sutherland reports produced during the mid-90s. This was followed by a series of Action Plans initiated at the 1997 European Council in Amsterdam. In preparation for the Lisbon Council, the Mandelkern Group (consisting of Ministers for Public Administration) introduced the 'better regulation' agenda at the EU level which became a core component of the Lisbon agenda. This was followed by the 'Better lawmaking' Action Plan which undertook to 'legislate less but better' (European Commission, 2002a). The European Convention on Institutional reform, following the Laeken Declaration, established a working group on the simplification of instruments and procedures. The Working Group recommended to the European Convention that the EU concentrate on implementation and simplification of existing EU law rather than the production of new legislation.<sup>1</sup> The aim of 'better regulation' is to slim down existing rules and remove administrative burdens through cost-effective regulation. At this time, 'regulatory impact assessments' were introduced at the European level.

Faced with this political mandate, the European institutions turned to 'new' or 'soft' governance to overcome impediments to regulatory expansion.<sup>2</sup> At the 2000 Lisbon Summit, the European Council proposed the use of soft governance in application to policy areas not covered by the *acquis communautaire*. It introduced the OMC method in an explanatory memorandum following the Lisbon meeting. The OMC method was to be

<sup>1</sup> <http://europa.eu.int/scadplus/leg/en/cig/g4000s.htm#s3>

<sup>2</sup> This has been discussed extensively in the academic literature (Heritier, 2001; De La Porte, 2002; Scott and Trubeck, 2002).

utilised in six policy areas which include information society policy.<sup>3</sup> The Council identified EU information society policy as covering broadband, e-Business, e-Government, e-Health, e-Inclusion, e-Learning and security policies. The OMC was designed to coordinate member states' policies through benchmarking, setting guidelines, targets and timetables, peer review monitoring and information exchange. Specifically, the explanatory memorandum stated that the OMC was responsible for:

- Fixing guidelines for the EU combined with specific timetables for achieving the goals which they set in the short, medium and long term
- Establishing, where appropriate, quantitative and qualitative indicators and benchmarks against the best in the world and tailored to the needs of different member states and sectors as a means of comparing good practices
- Translating these European guidelines into national and regional policies by setting specific targets and adopting measures, taking into account national and regional differences
- Periodic monitoring, evaluation and peer review organised as mutual learning processes; and
- A fully decentralised approach to be applied in line with the principle of subsidiarity in which the EU, the member states, the regional and local levels, as well as the social partners and civil society, will be actively involved, using varied forms of partnership. A method of benchmarking good practices on managing change will be devised by the EC networking with different providers and users, namely the social partners, companies and NGOs.<sup>4</sup>

Significantly, the Lisbon meeting set up the *Information Society Project* which aims to create a dynamic 'knowledge-based economy with more and better employment and social cohesion' by 2010. It named key issues such as e-government, e-democracy, e-voting, e-learning, e-culture, e-health, e-banking, e-education, e-media, e-security, e-banking, e-business, e-commerce and so on.<sup>5</sup> The idea for the e-initiatives had actually come from the EC which was preparing the ground for the launch of its eEurope initiative.<sup>6</sup> The following year, the Council published its 2005 eEurope Action Plan (2002b) under the OMC method.

The EC interpreted the OMC as a political move by the Council to encroach upon its own policy-making powers. This is because the OMC method is executed within the European Council thereby bypassing the EC and EP.<sup>7</sup> This interpretation is more than evident in the EC's 2001 White Paper on European Governance which responded to the Lisbon Summit. The Paper recognises the difficulties with traditional EC policy-making methods but insists on the continued use of the Community Method which has proved essential for European integration. If alternative methods are developed, it argued, it should be chiefly the EC, not the Council of Ministers, which should advance new

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<sup>3</sup> The six policy areas are the information society, research and development (R&D), enterprises, economic reforms, education, employment and social inclusion.

<sup>4</sup> European Council, Lisbon European Council Presidency Conclusions (23-24 March, 2000), para 37.

<sup>5</sup> On e-voting see Kies, 2002. For e-learning see Noam, (1995; 1998).

<sup>6</sup> The Presidency conclusions of the Lisbon Council gave recognition to the eEurope proposal.

<sup>7</sup> In the traditional 'Community method', the Commission has a monopoly over the right of initiative, the Council of Ministers and EP adopt proposals, member states implement under observation of the EC that may refer a state to the ECJ. Under the OMC method, the European Council initiates, the national strategies of each member state are implemented by the state, and the EC can only coordinate and make recommendation to the member state.

approaches to governance. In particular, it objected to the use of OMC in areas already covered by the *acquis communautaire*, which would include information society policy.

But the 2001 White Paper is both reactive and opportunistic. The Lisbon agenda presented the EC a window of opportunity to enlarge its own regulatory sphere through the use of soft governance. DG Info Soc has long engaged in soft approaches to governance. The Lisbon agenda and the OMC greatly provided political *legitimacy* and *expansion* of these types of initiatives. With its White Paper, the EC embraced the i2010 initiative and commenced upon its eEurope programme. Since Lisbon, a growing number of committees have been operating within and around the European institutions dealing with information society policy.

### **Committee governance**

Research into committee governance is challenging. EU committees have for a long time operated invisibly. Within the EC, the names of experts and their nationalities are not publicised due to privacy laws. Their identity is unknown and there is no public information as to who is represented. In addition, procedures for their consultation are complex. Authors have argued that the system of committee governance and comitology is opaque and undemocratic and is undermining the role of the legislature (the EP) and distorting representation in the EU (Kohler-Koch 1998; Maurer and Larsson 2002). Empirical studies however have pointed to the high level of consensus found in committee governance which has led to a greater capacity for harmonisation and ultimately closer European union (Dehousse 2003).

Parallels between committee governance and technocratic governance can be drawn. Technocratic governance is recognised as a process taking place in relative isolation from public debate (Rhodes 1988; Jordan and Richardson 1979). A technocratic policy process is best administered by a closely-knit policy community which is hampered by the active involvement of MEPs, the media, national political parties, regions, and/or citizens. Politicisation of a policy initiative and democratic processes are seen as inefficient and could lead to the loss of support of industry as well. Technocratic policy-making is seen to lead to an increase in efficiency, but accountability may be lost in the process. Hence, the embrace of committee governance represents an easy transition from existing technocratic procedures.

The EC categorises committees as: ‘comitology committees’, ‘policy-making committees’, ‘social dialogue committees’, and ‘joint committees.’ Comitology committees are committees responsible for the implementation of EU legislation. Policy-making committees are those committees which operate within the EC. Social dialogue committees are fora for dialogue between industry and civil society representatives and joint committees are committees established by the EC through international and bilateral treaty negotiation.<sup>8</sup>

#### *Comitology committees*

Comitology committees are used for overseeing EC implementation of directives. Once adopted, EU legislation is implemented by the EC. However, the Council retains control

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<sup>8</sup> There were 170 such ‘joint’ committees in 2004.

through so-named comitology committees which consist of Council appointed experts from the member states which approve the EC's proposals for implementation. The committees must follow procedures referred to as comitology as outlined in the Comitology Decision (1999/468/EC) of 28 June 1999. There are three types of comitology committees: advisory, management and regulatory committees which operate according to the 'Standard Rules of Procedure' laid out by the EC in January 2001.<sup>9</sup>

The EP has long argued that comitology undermines the role of the EP and thereby deepens the democratic deficit in the EU (Hix, 2000; Dehousse, 2003). The Parliament has lobbied for greater representation of the EP in committee decision-making. Some changes have been made particularly following the *Rothmans* Court of First Instance ruling (Dehousse, 2003, 808). This promoted the 1999 Comitology Decision which introduced greater transparency by making documents publicly available and providing an annual report on committee meetings. However, it only publishes documents which are approved for the 'public repository' (i.e. COM, C and SEC documents). These are also the only papers that the EP is permitted to view. The 1999 Decision allows the EP to a 'right of scrutiny' on draft implementation papers and can express 'disapproval' by any changes to legislation made by the EC and Council in the comitology (implementation) stage. (However, the EP often argues that this role is so minor as to be negligible). Agendas are only made available to the public at the end of the year. Committee membership and opinions remain anonymous. Subsequent pressure for transparency (see below) led to the establishment of an on-line 'comitology register' in 2005: [http://europa.eu.int/comm/secretariat\\_general/regcomito/](http://europa.eu.int/comm/secretariat_general/regcomito/) The comitology register does not list comitology committees as such but provides information on agendas of comitology committee meetings, draft implementing measures, committee minutes and voting results.

In its 2001 White Paper on European Governance the EC requested amendments to the comitology procedure and questioned the need for 'management' and 'regulatory' committees. However, the 2004 draft of the Constitutional Treaty declares in Article I-35 that it is 'the Commission's intention to continue to consult experts appointed by the Member States ..., in accordance with its established practice.' Hence, the comitology procedure is well-ingrained and there is little impetus for institutional change.<sup>10</sup> The EP gained further ground with the last comitology revision in July 2006 with the EP being given the right to veto an adoption of legislation with a majority of members.<sup>11</sup>

### *Policy-making committees*

Only recently did the EC take some steps towards greater transparency of committee governance. Lobbying by members of the Parliament have been flanked by European level lobbying groups such as Alter-EU (Alliance for Lobbying Transparency and Ethics Regulation)<sup>12</sup>, EPACA (European Public Affairs Consultancies Association)<sup>13</sup>, SEAP (the

<sup>9</sup> (OJ C 38/3 of 06.02.2001, p. 3).

<sup>10</sup> The EP did however gain an advisory role in OMC committees from 2001.

<sup>11</sup> Council Decision of 17.07.06 amending Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission (2006/512/EC).

<sup>12</sup> ALTER-EU is a 'coalition of over 140 civil society groups, trade unions, academics and public affairs firms, calling for EU lobbying disclosure legislation, an improved code of conduct for European

Society of European Affairs Professionals)<sup>14</sup> and AALEP (Association of Accredited Lobbyists to the EP). Other interested parties, particularly from the UK, such as the UK Consumers' Association and UK House of Lord's European Communities Committee, have long stressed the overwhelming need for committee visibility. A significant push came post 2003 from the new accession states which have greatly been influenced by American thinking on transparency. Interestingly, some leading German academic lawyers, such as Neyer, Joerges, Sand, Voss, and Teubner, have argued against this, stating that the introduction of an 'American style Administrative Act' is faulted as it would hinder quality and efficiency in committee decision-making (Joerges and Neyer 1997, 247; Joerges, Sand and Teubner 2005; Joerges and Voss 1999). Academic debate aside, steps were finally taken to make the process at least more visible.

In 2004, pressure from the EP resulted in a commitment from the EC president, Barroso, to make public a database of expert committees. In September 2005, the EC made public its list of formal and informal expert groups which is available through a searchable database on-line: [http://europa.eu.int/comm/secretariat\\_general/regexp/](http://europa.eu.int/comm/secretariat_general/regexp/). The database lists the 'policy-making committees' which advise the EC according to the rules on expert groups.<sup>15</sup> The list gives details of the committees and their role and classifies members according to categories (e.g. competent national authorities, national administrations, scientists, academics, partitions, NGOs, industry representatives, etc). Some documents and meeting minutes are published on-line. However, names of those on committees are not published and the database excludes independent experts. The list is divided into 'formal groups' which are set up by EU legislation (e.g. in a Decision or a Directive), 'informal groups' which are set up by the EC DGs, 'permanent groups' which have existed for more than five years and 'temporary groups' which are set up *ad hoc* for a specific task (lasting less than five years).

### *Social dialogue committees*

The 2000 White Paper Reforming the Commission<sup>16</sup> obliged the EC to provide lists of interest groups involved in formal consultation. The 2001 White Paper on European Governance<sup>17</sup> recommended publication of these lists. In March 2005, Commissioner Siim Kallas announced a European Transparency Initiative. As part of this, the European institutions are to clarify the rules for consultation of interest groups and make the process more transparent. As a result, in 2005, the CONNECS database of 'civil society' organisations was published on line.<sup>18</sup> The database provides two things: a list of committees which are set up for formal consultation by the EC which are labelled 'consultative bodies' (including social dialogue committees) and a list of independent interest groups which is labelled 'civil society organisations.' The EC states that formal consultation is made with 'trade unions, employers' federations, NGOs and CBOs

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Commission Officials, the EC to terminate cases of privileged access and undue influence granted to corporate lobbyists.'

<sup>13</sup> An association of 30 established in 2005.

<sup>14</sup> SEAP defines itself as 'the professional organisation for European Affairs Professionals' set up in 1997.

<sup>15</sup> Official procedure was established in (C(2005)2817 and SEC(2005)1004.

<sup>16</sup> (COM (2000) 200 of 1.3.2000).

<sup>17</sup> (COM (2001) 428 of 25.7.2001).

<sup>18</sup> [http://europa.eu.int/comm/civil\\_society/coneccs/index\\_en.htm](http://europa.eu.int/comm/civil_society/coneccs/index_en.htm)

(community-based organisations) and religious organisations.’ Informal consultation groups are defined as ‘non-profit making civil society organisations.’ Although the database claims to list ‘civil society’ groups, upon examination, both lists (formal and informal) reveal a sizeable representation of industry and industrial associations perhaps reflecting the groups that the EC has chiefly consulted to date. However, the registration of civil society groups (non-industry) is growing. This move towards transparency has also been welcomed by industry as well as civil society groups.

### **Committee governance in information society policy: between the technical and political**

DG Info Soc regulates telecommunications, audiovisual (broadcast and radio) and ‘eEurope’ policies under one roof. Expert groups have been operating within DG Telecommunications since the early 1980s, but the policy was not defined as the information society until the 1994 *Europe and the global information society* report.<sup>19</sup> Until 1994, information society policy primarily comprised solely of telecommunications and e-commerce policies, but today encompasses a wider range of policy areas including audiovisual policy, Internet, broadband, privacy, copyright and e-Europe policies. In 1999, DG Info Soc was established (formally DG Telecommunications) which, over time, annexed other DGs’ units. In 2005, DG Info Soc absorbed the ‘media’ unit of DGs Education and Culture which deals with the Television without Frontiers revision.

DG Info Soc is a large Directorate General spread out between Brussels and Luxembourg which consumes one-fifth of the EC’s annual budget. Under the Barroso Commission, DG Info Soc was re-organised into eight units.<sup>20</sup> A ‘Media Task Force’ was set up to gauge the impact of initiatives upon the public interest. The DG oversees audiovisual and communications policies, the i2010 initiative and the Lisbon strategy. The newer policies arose from the ‘eEurope’ initiative which claims to aspire to goals of social inclusion and defeating the ‘digital divide’ as well as economic growth. As such, it has taken on boarder social and public interest policy goals. However, the legacy of DG Telecommunications which long engaged in technocratic approaches to policy-making and promotion of large industry is more than evident. DG InfoSoc operates 72 committees dealing with the information society. Examination of many of these committees shows a substantial input from European industry.

This DG has practiced soft regulation since the mid-90s. Examples of this are the 1995 *Data Protection* Directive and the 2000 *Electronic Commerce* Directive which outline ‘codes of conduct’ for national governments. Another example is found in the Annex of the 1998 Council *Recommendation on the protection of minors and human dignity* which stipulates ‘Indicative guidelines for the implementation, at national level, of a self-regulation framework for the protection of minors and human dignity in on-line audiovisual and information services.’ The guidelines contain legal recommendations and

<sup>19</sup>The Bangemann report (1994d) was a report of the (Bangemann chaired) Council of Ministers Higher Level Group, entitled *Europe and the global information society* as the submitted to the European Council for its meeting in Corfu on 24-25 June 1994.

<sup>20</sup> Audiovisual, Media and Internet, Electronic Communications Policy, Lisbon Strategy and Policies for the Information Society, Converged Networks and Services, Digital Content and Cognitive Systems, Emerging Technologies and Infrastructures, Components and Systems, and ICT addressing Societal Challenges.

codes of conduct and monitoring mechanisms. Another example is the EC *Action Plan on safer use of the Internet* (1999). The EC advanced these and other initiatives through regular reviews and progress reports.

## **2002 Regulatory Framework for Communications**

Following the Lisbon agenda, DG Info Soc was able to greatly expand its use of soft governance particularly under its Regulatory Framework for Communications. Recognising that committees can make great strides in forwarding EU level policy consensus, the EC wrote provisions for the establishment of a number of committees and co-regulatory fora into the directives. The 2002 Regulatory Framework for Electronic Communications and Services consisted of five directives and one Decision (the *Framework Directive*, *Authorisation Directive*, the *Access Directive*, the *Universal Service Directive*, the *Data Protection Directive* and the *Radio Spectrum Decision*). In order to guide implementation, DG Info Soc set up the ‘Communications Committee’ and planned a High Level Communications Group.<sup>21</sup> A number of other committees were provided for within the individual Directives to implement the new regulatory framework.

The Communications Committee (COCOM) began operation on 24 April 2002 and was meant to replace (but has not yet replaced) the pre-existing ONP Committee and Licensing Committees which were operating under the 1998 regulatory package for telecommunications. The Communications Committee ‘assists the Commission in carrying out its executive powers under the new regulatory framework and the Regulation on the.eu Top Level Domain.’ It is a comitology committee concerned with the implementation of the regulatory framework for communications and operates in accordance with the Council Comitology Decision. The committee also acts as a platform for the exchange of best practice between regulatory agencies. The Communications Broadcast Issues Subgroup (CBISS) is a sub-group of the Communications Committee (COCOM). The sub-group deals specifically with broadcasting policy issues which fall under the new regulatory framework prior to discussion in COCOM.

The regulatory framework provided for a ‘High Level Communications Group’ (HLCG). Meant to be made up of EC functionaries, NRA representatives, telecoms operators, user organisations and standardisation bodies, it was to function as an advisory group at the European level. It was meant to replace the existing ‘High Level Regulators Group’ (HLRG). The High Level Regulators Group was originally established in 1992 as a forum for ministerial representatives, but evolved into a meeting of NRAs. Under telecommunications policy, it advised the ONP and Licensing committees of the EC. The NRAs were opposed to the institutionalisation of the HLCG and instead preferred to rely on the existing Independent Regulators Group (IRG) and European Committee for Telecommunications Regulatory Affairs of the European Conference of Posts and Telecommunications (ECPT/ECTRA).

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<sup>21</sup> These were to replace the pre-existing Open Network Provision (ONP) Committee and Licensing Committee.



The European Regulators Group (ERG) was established by a 2002 EC Decision under the regulatory framework.<sup>22</sup> The ERG acts as a forum for NRAs which oversee telecommunications and media markets. The ERG was designed to replace the ‘Independent Regulators Group’ (IRG) which was the pre-existing voluntary group comprised of representatives from NRAs. However, since this time, the NRAs continue informal meetings within the IRG in addition to meeting formally within the ERG. Usually both groups meet back-to-back usually with the same delegates attending. The IRG is concerned with the implementation of the Regulatory Framework for Electronic Communications and Services and meets four times a year.<sup>23</sup>

A number of technical standards have been agreed under the Regulatory Framework which are formalised in a 2006 Decision.<sup>24</sup> These are organised under the following categories: transparent transmission capacity; publicly offered user interfaces; interconnection and access; services and features; numbering and addressing; quality of service and broadcasting services. Examples of technical standards agreed under ‘broadcasting services’ are the DVB-MHP standard<sup>25</sup> for interoperability in interactive television; and the WTVML standard for a lightweight Microbrowser for interactive television applications.

Radio spectrum is considered to be an ‘electronic communications service’ which is covered under the 2002 regulatory framework. Radio spectrum policy does not just cover radio but all modes of wireless transmission, from cellular phones, CB radio, terrestrial television broadcasts, ADSL modems, telephones, to satellite positioning systems. The framework builds upon pre-existing regulation, namely the 1999 Radio and Telecommunications Terminal Equipment (R&TTE) Directive<sup>26</sup>. The EC set up a number of committees to deal with radio spectrum under the 2002 framework. These were the Radio Frequency Identification (RFID) Impact assessment and recommendations group (dissolved January 2006), the Radio Spectrum Committee, and the Radio Spectrum Policy Group.

The Radio Spectrum Committee (RSC) was established under the Radio Spectrum Decision. The RSC is a comitology committee operating through the through advisory and regulatory procedures in accordance with the Council Comitology Decision. The Radio Spectrum Committee interacts with the Radio Spectrum Policy Group. The Radio Spectrum Policy Group (RSPG) was also created under the Radio Spectrum Decision. It operates internationally to the EC and is comprised of member state representatives, EC

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<sup>22</sup> The ERG runs in parallel to the European Council’s Communications Committee set out in Articles 22 of the Framework Directive. The Communications Committee is composed of national Ministries or NRAs of the Member States.

<sup>23</sup> The IRG and ERG operate in parallel to the pre-existing NRA platforms in the communications sector which operate *externally* to the Commission: the European Platform of Regulatory Authorities (EPRA) (broadcasting), the European Radiocommunications Committee (ERC) (radio), and the European Committee for Telecommunications Regulatory Affairs (ECTRA) (telecommunications).

<sup>24</sup> Commission Decision of 11/XII/2006 ‘List of standards and/or specifications for electronic communications networks, services and associated facilities and services, replacing all previous versions’ (Text with EEA relevance). Brussels, 11/XII/2006, C (2006) 6364 final.

<sup>25</sup> This standard is Multimedia Home Platform (MHP) developed by the Digital Video Broadcasting (DVB) which is a consortium of industry.

<sup>26</sup> This replaced the 1998 Directive and national approval regulations. Infrastructure is covered separately by the 1989 Electromagnetic Compatibility (EMC) Directive 89/336/EEC and the 1972 Low Voltage Directive (LVD) 73/23/EEC.

and EP functionaries, the European Conference of Postal and Telecommunications Administrations (CEPT)<sup>27</sup> and the European Telecommunications Standardisation Institute (ETSI). The RSPG advises the EC on radio spectrum policy.

The RSC is very active. Thus far, it has agreed upon spectrum harmonisation for Radio Local Area Networks (RLANs) which provide wireless broadband access for computers and portable devices and on spectrum harmonisation for short range radars in cars. The committee is now working to develop common standards for GSM and third-generation mobile communications; the use of spectrum for hearing aids (under the European Radio Messaging System (ERMES)); harmonising national regulation on high speed short range communications and imaging applications (that using Ultra-Wide Band (UWB)); and technology, harmonisation of frequency bands for Short Range Devices (low-power, low-cost equipment); harmonising the use of spectrum for Terrestrial Flight Telecommunications System (TFTS), and providing additional spectrum for third-generation mobile communications (by 2008). The Committee also represents the EU in international fora such as the International Telecommunication Union (ITU) and the World Radio Conference.

In all of these initiatives, the RSC has adopted a “market-based approach”. The EC is proposing that spectrum should be subject to market tradability (the buying or selling of frequency bandwidth) through the EU. For example, in 2006, the EC proposed that one third of spectrum below 3GHz (that suited for terrestrial communication) should be privatised and managed by the market. Operators would be given the right to trade frequency rights in a given spectrum band for terrestrial services and to use those frequencies in a flexible manner. This policy initiative provides a stark contrast in the ways in which committee governance operates to democratic governance. The EU’s policy proposal – agreed upon within a committee - is based upon the developing UK policy model of a spectrum trading system. By comparison, the UK policy was enacted in Parliament, namely, under the 2003 Communications Act, following extensive public consultation built upon an independent review.

The 2002 Regulatory Framework also set up the e-Communications Consultation Task Force (eCCTF). The first key task was to agree upon relevant market definition.<sup>28</sup> The Committee now exists to monitor member state conformity to European regulation. Under Article 7 of the Directive on electronic communication services, it requires a notification procedure for new regulatory initiatives at the national level which effect incumbent telecommunications operators.<sup>29</sup> A number of decisions have been made under Article 7. For example, in 2004, the eCCTF disagreed with Ofcom’s proposal to impose differential regulatory obligations on 2G and 3G mobile operators. By contrast, it did not dispute the notification made by the German regulatory authority, BNetzA, in another decision; thereby allowing wholesale access to Deutsche Telecom’s VDSL-based access network.

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<sup>27</sup> CEPT holds the Electronic Communications Committee (ECC) comprised of radio- and telecommunications regulatory authorities of the 45 CEPT member countries.

<sup>28</sup> Commission Recommendation 2003/311/EC of 11 February 2003 on relevant product and services markets within the electronic communications sector susceptible for ex ante regulation in accordance with the Framework Directive (‘the Recommendation’), OJ L 114, 8.5.2003, 45.

<sup>29</sup> Institut belge des services postaux et des télécommunications (IBPT).

## Audiovisual policy

DG Info Soc is presently revising its Television without Frontiers Directive resulting in the Audiovisual Media Services Directive (AVMS). The AVMS and the regulatory framework for communications are inexplicitly linked. The EC pursued two streams of liberalisation: networks on the one hand and content on the other. Beginning in the late 1980s, two landmark Directives, the *Television without Frontiers* and *Open Network Provision*, established the backbone of the EU communications policy framework. The 1990 *Open Network Provision* (ONP) Directive provided open access to telecommunications services and networks based upon the principle of non-discrimination and the elimination of exclusive rights. The 1989 *Television without Frontiers Directive* provided for capital mobility within Europe for services previously confined to national markets – television and radio signals. The ‘regulatory framework for communications’ is presently expanding the scope of network liberalisation in Europe whereas the AVMS loosens requirements for content carried on those networks. Hence, the AVMS Directive can be seen as a part of a general framework of market liberalisation in operation by DG Info Soc.

The AVMS Directive was proposed on December 13, 2005 and is expected to be approved in the first half of 2007 under the German presidency. The most significant modification of the new directive is the liberalisation of cross-border broadcasts of on-demand services (such as the downloading of films and programming via satellite, cable and the Internet). AVMS extends the country of origin principle to on-demand services (labelled as non-linear services). At the same time, it extends the existing Television without Frontiers requirements on content and advertising to new service providers. These requirements have been loosened. The directive allows for more advertising breaks within: films made for television (excluding series, serials, light entertainment programmes and documentaries), cinematographic works, children’s programmes and news programmes (every 35 minutes); it liberalises new forms of advertising (allowing for split-screen, virtual and interactive advertising and product placement); abolishes the daily limit on television advertising; and drops all restrictions on teleshopping. Hence, new service providers will be subject to stricter regulation than before, but a service provider need only apply for authorisation in one member state – in order to gain access to the whole of the EU market. The EP proposed a further loosening of the advertising limit to 30 minutes (for films made for television; cinematographic works, children’s programmes and news programmes) rather than every 35 minutes proposed by the EC. The EC’s proposed Directive has been revised to include this.

The proposed AVMS Directive has a strong soft governance component. Even though the Directive aspires to the EC’s Communication on Better Regulation for Growth and Jobs in the EU which calls for ‘less’ regulation, it is clear from the statement below that the EC views self- and co-regulation as a realm for expansion of European policy. The proposal text of the Directive states that:

Both, co- and self-regulation instruments, implemented in accordance with different legal traditions of member states can play an important role in delivering a high level of consumer protection. Measures aimed at achieving public interest objectives in the emerging audiovisual media services sector will be more effective if they are taken with the active support of the service providers themselves. Thus self regulation constitutes a type of voluntary initiative, which enables the economic operators, social partners, non-governmental organisations or associations to adopt common guidelines amongst

themselves and for themselves. Member states should, in accordance with their different legal traditions, recognise the role which effective self-regulation can play as a complement to the legislation and judicial and/or administrative mechanisms in place and its useful contribution to the achievement of the objectives of this Directive. However, while self-regulation might be a complementary method of implementing certain provisions of this Directive, it cannot constitute a substitute for the obligation of the national legislator. Co-regulation gives, in its minimal form, a 'legal link' between self-regulation and the national legislator. Co-regulation gives, in its minimal form, a 'legal link' between self-regulation and the national legislator in accordance with the legal traditions of the member states.

Similar to the 2002 package of directives, the AVMS will set up a Contact Committee under Article 23a which will be 'composed of representatives of the competent authorities of the member states. It shall be chaired by a representative of the EC and meet either on his initiative or at the request of the delegation of a member state.' Committee function will be a) to facilitate implementation 'through regular consultation on any practical problems arising from its application, and particularly from the application of Article 2 (b)' to deliver Opinions on member state implementation (c) to act as a 'forum for an exchange of views ... pursuant to Article 4 (3)' (d) 'discuss the outcome of regular consultations which the Commission holds with representatives of broadcasting organisations, producers, consumers, manufacturers, service providers and trade unions and the creative community'; (e) to 'facilitate the exchange of information between the member states and the Commission on ... the development of regulatory activities ... as well as relevant developments in the technical field' and (f) 'to examine any development arising in the sector on which an exchange of views appears useful.'

Along with other amendments, the EP injected another instrument of self-regulation, namely a code of conduct for children's advertising. Under Chapter II, 'member states and the Commission should encourage audiovisual service provider to develop a code of conduct regarding children's programming containing or being interrupted by advertising, sponsorship or any marketing of unhealthy and inappropriate foods and drinks such as those high in fat, sugar and salt and of alcoholic beverages.'

To complement AVSM revision, in December 2006, the EP and the Council adopted a Recommendation on the Protection of Minors and Human Dignity and on the Right of Reply<sup>30</sup> in December 2006 building on an earlier 1998 Council Recommendation. A notable addition to the 1998 version is the recommendation that 'industry should develop positive measures, such as harmonisation through cooperation and the exchange of best practices between the regulatory, self-regulatory and co-regulatory bodies of the member states.' The EC's role is outlined in the Recommendation as 'facilitat(ing) and support(ing) the formation of networks by self-regulatory bodies and the experience exchange between them so as to assess the effectiveness of codes of conduct and approaches based on self-regulation in order to ensure the best possible standards for the protection of minors.' Under this Recommendation, the EC is now considering the introduction of a 'European free-phone number and generic second level internet domain name reserved for monitored sites committed to respecting minors and their rights.' This initiative was preceded by the

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<sup>30</sup> [http://ec.europa.eu/comm/avpolicy/reg/minors/index\\_en.htm](http://ec.europa.eu/comm/avpolicy/reg/minors/index_en.htm)

Safer Internet Action Plan which prepared the way for the EC's 2005 Safer Internet Decision.<sup>31</sup>

Another parallel initiative was agreed in 2006. The European Charter for the Development and the Take-up of Film Online was agreed upon by industry in May 2006 at the Europe Day of the 59th Cannes Film Festival. The EC used the Cannes event to seek approval of key stakeholders from the film, content, telecommunications and Internet service industries. The Charter was initiated and strongly promoted by Commissioner Viviane Reding. The EC is following this up with a proposal for a Charter on Content Online, a public consultation of which was held in the latter part of 2006. A Communication is to be adopted in the latter half of 2007.

In addition to these measures, the EC has used soft measures to accomplish other goals in audiovisual policy. For example, the EC has been attempting to harmonise 'digital rights managements' (DRM) for the legal distribution of digital content building up on its 2001 Directive on the harmonisation of copyright and related rights in the Information Society.<sup>32</sup> This is discussed in a formal 'contact committee' (the 'Copyright in the Information Society' committee) created by Article 12 of the 2001 Directive. Digital content is no different to any other kind of content and subject to the existing European and national agreements on copyright. The EC's aim with this policy was two-fold: firstly it wished to agree upon on a common European identification standard for digital content.<sup>33</sup> For example, the International Standardisation Organisation (ISO) has identified standards for existing content (e.g. ISBN for books, ISWC for music, ISRC for sound recordings, and ISAN for films). Secondly, the EC wished member states to agree on common technology which will manage the copying of digital. The argument is that digitalisation has greatly increased the risk of privacy as data (both personal and copyrighted) can be reproduced so quickly and easily.

Through its committee, the EC attempted to have member states agree on software that can instantly levy fees on users at the moment of copying onto e.g. personal computers, CD-ROM or DVD burners, or mobile phones. This software would be able to identify the activity, refer to the regulations under which it could be used and enforce them. The content would have a 'digital signature' which could be scrambled, encrypted, 'watermarks' or 'digitally wrapped' with rule requirements. The EC identified a number of companies and industry consortia which provide such software.<sup>34</sup> The idea, most likely, was to guarantee that a European company was chosen over a foreign competitor. Despite having established a High Level Group on Spectrum Management comprised of key industry players who would be utilising this software<sup>35</sup>, industry did not agree that standards should be established by the European institutions. Following lobbying,

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<sup>31</sup> Safer Internet Decision of the EP and of the Council of 11 May 2005 establishing a multi-annual Community Programme on promoting safer use of the Internet and new online technologies Decision 854/2005/EC.

<sup>32</sup> Directive 2001/29 of 22 May 2001.

<sup>33</sup> E.g. the UK-based International DOI Foundation, has developed a Digital Object Identifier (DOI) which identifies and classifies digital content (e.g. under author, date, country of origin, etc.).

<sup>34</sup> The Commission listed them back in 2002 in a staff working paper as Secure Digital Music Initiative, Microsoft Digital Asset Server (DAS), IBM Electronic Media Management System, InterTrust, Liquid Audio, ContentGuard, Info2Clear, TV Anytime, Digital Video Broadcasting Group.

<sup>35</sup> GESAC, IFPI, Vivendi, Eurocinema, FEF (Federation of European Publishers), the BBC, France Telecom, Vodafone, FastWeb, Philips, Nokia, Alcatel, Siemens, HP, the New media council and BEUC.

particularly by the music industry, the EP attempted to put an end to the EC's imitative in December 2006 with its Report 'Towards a European policy on the radio spectrum' in which it argues that the EC should let the market decide on this issue and not adopt a specific standard.<sup>36</sup> The market is choosing other options e.g. key players, such as Murdoch's BSkyB, have adopted Microsoft software for DRM management for downloading football games in the UK. In January 2007, however, the US Senate proposed a bill<sup>37</sup> making digital rights management software mandatory in podcasts and Internet radio broadcasts. The bill does not specify a standard but those lobbying for the bill support the use of Samsung and Pioneer software.

## i2010

Lisbon legitimised the EC's 'e-Europe' initiative which was renamed 'i2010.' Following the Lisbon Summit, DG Info Soc published its eEurope Action Plan<sup>38</sup> as established in an EC Communication.<sup>39</sup> The EC's High Level Group, chaired by Wim Kok, produced the November 2004 paper 'Facing the Challenge - The Lisbon strategy for growth and employment.' Then on June 2005, the EC announced its 'i2010 - A European Information Society for growth and employment' initiative which is to run for five years.<sup>40</sup> The aim is to create a 'market-oriented regulatory framework for the digital economy.' Closer reading of the description of programme reveals an old-style 'European champion' strategy to implementation, the goal of which is to 1) promote 'European champions' (both private-sector and state) to compete with the 'US and Japan' and 2) to provide services through public sector funding. i2010 created a number of initiatives to be executed through committee governance. Committees operating under i2010 including the: eEurope Advisory Group, the e-Accessibility Expert Group, e-Communications Consultation Task Force (eCCTF), eEurope+ Statistical Working Group, e-Government Research and Development, e-Health working group, e-Safety Forum, and eTen.<sup>41</sup> All of these committees' fora have produced and are forwarding soft initiatives.

The eEurope Advisory Group established by the Modinis Rules Decision<sup>42</sup> which overviews e-initiatives and information exchange across policy areas. It further monitors the progress of the eEurope 2005 Action Plan. The e-Advisory Group established a number of sub-committees: the e-Health committee, the benchmarking committee, e-Accessibility, Broadband, and e-Government.

<sup>36</sup> 'Towards a European policy on the radio spectrum' 18.12.2006. A6-0467/2006. Committee on Industry, Research and Energy. Rapporteur: Fiona Hall.

<sup>37</sup> Platform Equality and Remedies for Rights Holders in Music Act.

<sup>38</sup> [http://europa.eu.int/information\\_society/eeurope/index\\_en.htm](http://europa.eu.int/information_society/eeurope/index_en.htm). This includes a number of e-initiatives such as the eEBO (eContent Exposure and Business Opportunities) and eContent initiatives.

<sup>39</sup> European Council and European Commission (2000), *eEurope 2002. An information society for all—Action plan prepared for the European Council of Feira, June 19–20, 2000*. [http://europa.eu.int/information\\_society/eeurope/action\\_plan/actionplantext/index\\_en.htm](http://europa.eu.int/information_society/eeurope/action_plan/actionplantext/index_en.htm)

<sup>40</sup> Communication 'i2010 - A European Information Society for growth and employment' COM (2005) 229 Final Issue Paper.

<sup>41</sup> E-Ten (Trans-European Telecommunications Networks) is a funding programme which runs from 2004 - 2009. It funds 'trans-European e-services in the public interest.' These administered through the Trans-European Telecommunications Networks Financial and Guidelines Committee.

<sup>42</sup> Modinis Rules Decision 2256/2003/EC of 17.11.2003 (OJ 23.12.2003, L 336, pp. 1-5).

The e-Accessibility committee works alongside the e-Accessibility Expert Committee set up by the High level Group on the Employment and Social Dimension of the Information Society. It coordinates standardisation with a number of European standardisation bodies such as CEN, CENELEC, ETSI, the Joint Technical Committee Broadcasting (CENELEC/ETSI/EBU) and other coordination groups ICTSB and DATSCG. A number of pan-European wide standards have been agreed through this expert group. In consultation with CENELEC, the expert group agreed standards on the usability of IT-based electrical products for people with special needs including design and technology. CENELEC is now working on technical standards for 'Digital TV and interactive services' and on 'Access for All to broadcast and video applications.' With ETSI, the following standards were agreed: requirements of Assistive Technology Devices in ICT, speech-Recognition-Voice User Interfaces, generic User Command, Control and Editing Vocabulary for ICT products and Services; the Multimodality of Icons, Symbols and Pictograms; guidelines on design for ICT Products and Services; European alphanumeric characters; assignment for the 12-key telephone pads and multi-modal interaction, communication and navigation. Together with the ICT Standards Board (ICTSB), a federation of European standards organisations, DG Info Soc set up coordination for standardising 'Design for All' assistive technology together with industry and the European Disability Forum (EDF) and the Association for the Advancement of Assistive Technology in Europe (AAATE). Under its 2006-7 work plan, the EC identified possible co-regulatory measures based upon standards agreed.

The e-Government committee was also named in the Modinis Rules Decision. Operating within DG Info Soc, the group set up an e-Government observatory, established codes of good e-Government practices; and benchmarking including an 'e-Government index.' The group also produced a number of documents such as the preparation work for: a 2005 Ministerial Declaration made by EU Ministers on e-Government in Manchester;<sup>43</sup> a Directors General of Public Administrations meeting on the accessibility of public sector web sites;<sup>44</sup> drafted the Council of the EU conclusions on e-Government for all Europeans,<sup>45</sup> and the Declaration made by EU Ministers on e-Inclusion<sup>46</sup> to ensure the 'accessibility of all public websites by 2010 through compliance with the relevant W3C common web accessibility standards and guidelines.' Most recently, the group published its 'i2010 e-Government Action Plan: Accelerating e-Government in Europe for the Benefit of All' in April 2006. Along with the European Public Administration Network (EPAN), the OMC group is to draft 'specifications for multi-platform service delivery strategies allowing access to e-Government services via a variety of channels, e.g. digital TV, mobile and fixed telephone and other interactive devices' in 2008. It has recommended the funding of research projects and support from Structural Funds. Two other committees operate within DG Info Soc relating to e-Government: the Legal Barriers in e-Government group which exchange information on e-Government legal and organisational barriers in support of the corresponding Modinis study; and the Identity Management in e-Government group which facilitates 'the exchange of information, experience and good practice in the area of e-Government

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<sup>43</sup> <http://www.egov2005conference.gov.uk/documents/proceedings/pdf/051124declaration.pdf>

<sup>44</sup> 5-6 December 2005, Newcastle.

<sup>45</sup> Luxembourg, 8-9 June 2006.

<sup>46</sup> 11 June 2006, Riga.

services and enablers e.g. identity management and other related issues such as interoperability and the economics of government.’

Related to this, the Public Sector Information Group (PSI Group) coordinates implementation of the 2003 PSI Directive on the re-use of public sector information which deals with the way public sector bodies should advance and re-use their information resources.<sup>47</sup> The PSI group set up with the MEPSIR project which has defined a methodology to measure the re-use of Public Sector Information (PSI) in the EU and compare this to its use in the USA. In 2004, it also drafted a proposal for a directive establishing an infrastructure for spatial information in the Community (INSPIRE).

The e-Health committee was set up in June 2005 and was replaced by the i2010 subgroup on e-Health in 2006. Meetings are held circa three times a year back-to-back with DG SANCO’s health systems committee. Core members are drawn from national telecommunications ministries which consult interest groups and industrial associations who are organised under the e-Health Stakeholders’ Group. The committee agreed upon the e-Health Action Plan which is being implemented by DG Info Soc by means of the MODINIS budget. Actions include the documenting of best practice and benchmarking, and the development of integration and interoperability of health information systems and electronic health records and professional mobility. Another committee deals with Advanced Broadband e-Health Applications and Services.

The e-Safety Forum was established by the 2003 e-Safety Communication.<sup>48</sup> The Forum is a formal, temporary group operating within the EC. The forum in turn operates 13 working groups.<sup>49</sup> Each of the groups is led by key representatives from European industry. For example, the Digital Map working group is led by representatives from Teletlas and Navteq and are creating a ‘Digital Map Database.’

In 2005, the EC also published its Communication on Digital Libraries<sup>50</sup> under i2010. The Communication set up a High Level Group which agreed upon a number of initiatives the most salient of which is the funding of a ‘European Digital Library.’ Following Google’s Library project<sup>51</sup> the EC is funding the digital scanning of books. In doing so, it is, in essence, matching private sector with public finance. The High Level Group has also released a Communication on digital libraries of scientific and scholarly information; a Recommendation on digitalisation and digital preservation; and initiated funding of the digitalisation of European literary and audiovisual cultural heritage.

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<sup>47</sup> Directive 2003/98/EC of 17 November 2003 was published in the Official Journal (L345/90) on 31 December 2003.

<sup>48</sup> COM(2003)542 final of 15.09.2003.

<sup>49</sup> Accident Causation Data working group (WG) led by Michael Hollingsworth, ACEA; Communications WG led by Uwe Daniels, Bosch; Digital Maps WG led by Ad Bastiaansen, Teletlas Yannis Moissidis, Navteq; eCall Driving Group led by Michael Nielsen, ERTICO led by Dr. Wolfgang Reinhardt, ACEA; Heavy Vehicles led by Dr. Jürgen Trost, DaimlerChrysler; Human-Machine Interaction led by Annie Pautie, INRETS, Alan Stevens, TRL and Christhard Gelau, BAST; International Co-operation led by Jacob Bangsgaard, ERTICO; Real-Time Traffic and Travel Information led by Dr Heinz Friedrichs, Bosch; Research and Development led by Ulf Palmquist, EUCAR; Road Maps led by Risto Kulmala, VTT and Hans-Jürgen Mäurer, DEKRA; User Outreach led by Johann Grill, FIA; ICT for Clean Mobility; and Service Oriented Architecture.

<sup>50</sup> Communication on Digital Libraries COM (2005) 465.

<sup>51</sup> Google’s ambition is to scan every book ever published and make it available and searchable on-line.



Also related to i2010, under the directive on privacy and electronic communications,<sup>52</sup> a ‘contact network of spam enforcement authorities’ (CNSA) was set up comprising of national authority representatives to facilitate the exchange of information, experiences and good practices in the fight against spam in accordance with ITU recommendations in this area. The network concurred a voluntary agreement for a common procedure for dealing with cross-border complaints on spam.

### **Consultation with industry and civil society groups**

EC initiatives in the information society field have relied heavily on agreement between key private actors. The EC established a number of High Level Groups comprised of industrial leaders to steer the European agenda. The first High Level Group was the Bangemann Group that was composed of 20 European industry leaders and set up in 1994 and the second group was established in 1995. It was the Bangemann Group II that attained industry consensus on the 2002 regulatory framework for communications. This was succeeded by the High Level Group chaired by Wim Kok in 2003. The EC has also encouraged the establishment of European federations with which it could hold dialogue with industry. Examples of these in the 1990s were the Digital Video Broadcasting Group (DVB), the European Telecommunications Platform (ETP) and the European Telecommunications Network Operators’ Association.<sup>53</sup> The EC liaised with these groups informally to agree on standard-setting.<sup>54</sup> The EC still has such relationships with a number of industry groups today. With this, the EC is encouraging self regulation and co-regulation. Indeed, the EC is seeking to legitimise existing self regulatory bodies, to cement them at the European level, and to establish new bodies perhaps based upon national models.

The MHP Implementation group (MHP Multimedia Home Platform) was set up to implement the MHP standard in conjunction with EC committees. In 2006 it had 82 members from industry. Under its 2002 regulatory Framework Directive, the EC recommends, but does not impose, the DVB-MHP API standard for interoperability in interactive television. In 2006, the EC decided not to mandate a compulsory standard for API but encourage the use of MHP. The MHP standard is in use by European Broadcasters Union (EBU) and its members (the European association of public service broadcasters) and the Nordig Consortium (of Nordic broadcasters and communications operators in Denmark, Finland, Sweden, Norway and Iceland). However, other API standards are more commonly used by private industry. The Open TV API standard (developed by the US group Liberty Media) is used by the following European operators: Télévision Par Satellite (TPS) and Noos interactive services in France, BSkyB and

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<sup>52</sup> Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector. 12 July 2002.

<sup>53</sup> Industry group for European electronic communications network operators established in May 1992 ‘to establish a constructive dialogue between its member companies and decision-makers.’

<sup>54</sup> For example, the DVB agreed a number of standards on: the transmission of satellite services (DVB-S), cable (DVB-C), terrestrial (DVB-T), service information (DVB-SI), and videotext (DVB-TXT) for European markets. It in turn established the DAB (Digital Audio Broadcasting) standard for radio broadcasting, the compression standard for digital television (DVB -MPEG 2), the DVB – CSA (Common Scrambling Algorithm) for scrambling and two standards for decoders (used in set-top boxes,) multicrypt and simulcrypt.

British Interactive Broadcasting's (BIB) in the UK, Sweden's Telia, Denmark's Tele Danmark Kabel, Italy's Stream, Spain's Via Digital and the PrimaCom cable network in Germany. Canal+ uses MediaHighway (which was developed by Canal Plus). Betanova was developed by BetaResearch and is used by Premiere in Germany and Austria.

The Embedded Systems European Technology Platform coordinates a 'European industrial strategy for the area of embedded systems' and 'better coordination between member states.'<sup>55</sup> It liaises with DG Info Soc's European Technology Platform in Embedded Systems Committee. The Networked Electronic Media (NEM) group, funded by Eurescom, was set up in 2005 to 'focus on an innovative mix of various media forms, delivered seamlessly over technologically transparent networks, to improve the quality, enjoyment and value of life.' It deals with convergence of broadband, mobile and new media services. Essentially, it lobbies for European funding to be put into the high tech field. On the steering committee sit 24 European telecoms companies, the EBU and the BBC. Recipients of funding however are mainly universities.

The expansion into cultural and social policy by DG Info Soc under the i2010 agenda has meant that a wider number of groups are consulted on a regular basis. There are three 'formal' consultation committees listed in the CONNECS database for 'information society policy', namely: the Comité de dialogue sectoriel 'Télécommunications', the Radio Spectrum Policy Group (RSPG), and the Satellite Action Plan Regulatory Working Group (SAP-REG). The Comité de dialogue sectoriel 'Télécommunications' has two members: ETNO, the European Telecommunications Network Operators' Association representing industry, and UNI- Telecom representing unions. The Radio Spectrum Policy Group is a NRA association. The Satellite Action Plan Regulatory Working Group has many members, including ETNO (again), the European Association of Satellite Operators, the Mobile Satellite Users Association and other groups representing industry.<sup>56</sup> Hence, of the 'formal' 'civil society' groups consulted in the Comité, most of them are made up of representatives from industry. For information society policy, the database lists 54 'informal' 'civil society' groups. Even though they are meant to represent civil society, a great number of these groups actually represent industry. This is unsurprising in itself but one has to wonder why the EC defines private sector groups as 'non-profit making civil society organisations'?

A number of other industry groups are consulted regularly under i2010. The EC established the 'Produits et ingénierie des services à l'horizon 2010' committee to collaborate on technology and methodology for product development in manufacturing. It

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<sup>55</sup> It has three working groups: Application Drivers for Embedded System Design Research (headed by Hugo De Man – IMEC); Technology Challenges for Future Intelligent Embedded Systems (led by Andrea Cuomo, Corporate Vice President, General Manager Advanced System Technology STMicroelectronics); and Governance (represented by Jan van den Biesen - VP Philips Research). Governance: Debriefing from the Working Group.

<sup>56</sup> European Telecommunications Office, Telia, Eutelsat, Debitel, Hughes Spaceway, Alenia Aerospazio, Alcatel Space Industries, Euroconsult, Telecom Italia, Telespazio Spa, Elsacom Spa, Astrium-Space, New Skies Satellites NV, MCS Europe, Telenor Satellite Services, Eutelsat, Pegasus Development Corporation, Global VSAT Forum, Telia AB, Ellipso Inc, DASA, Covington and Burling, ERO, Telenor, Inmarsat, DETECON GmbH, LE GOUEFF Avocats, Alcatel Space, Skybridge LP, France Telecom, Squire Sanders and Dempsey LLP, GE International, BT, Compagnie des Signaux, Hogan and Hartson LLP, Tele Danmark A/S, Alcatel/Skybridge, GE Americom, Telespazio Spa, BT Global, Comsys, Hispasat SA, DeTeSat, Swedish Space Corporation, Radiocommunications Agency, Teledesic Communications SPAIN SL, Teledesic Belgium, ECTEL, EUROSPACE, KPN Satcom, Inmarsat, CISI.

collaborates with IMS (Intelligent Manufacturing Systems) which is a private platform on which industry, governments and academia to cooperate internationally. The Single European Electronic Market (SEEM) discussion group was set up in 2002 following a workshop on the Single European Electronic Market organised by DG Info Soc's Electronic Commerce Unit. It exists to promote ICT research in Europe. The National IST Directors for RTD forum also advises the EC on research in the ICT sector. The EC also set up the New Working Environments group established to provide advice on the policies affecting new working environments. This group is comprised of EC functionaries and industry representatives. It has two subgroups: the Aspects Stratégiques (national administration representatives) and the Aspects Techniques (practitioners). DG Development set up the 'member states' experts on Information Society and Development' to coordinate, with member states, European policy on the growth of the information society in developing countries and WSIS policy.

Dialogue with industrial groups is flanked by the creation and decentralisation of European level agencies that have long been in operation and cooperation with the European institutions. The European Radiocommunications Office (ERO) was established in Copenhagen in 1991. The ERO houses the Electronic Communications Committee (ECC) of CEPT. As mentioned earlier, CEPT organises the Electronic Communications Committee (ECC) which is in dialogue with the EC and comprised of radio and telecommunications regulatory authorities of the 45 CEPT member countries. The ECC replaced the European Committee for Telecommunications Regulatory Affairs (ECTRA) and the European Radio Communications Committee (ERC) in 2001. Other agencies include the European Union Satellite Centre<sup>57</sup> which was established by a 'joint action' of the European Council in 2001<sup>58</sup> in Madrid; the European Telecommunications Standards Institution (ETSI); CENELEC;<sup>59</sup> CEN;<sup>60</sup> EICTA<sup>61</sup> and the European Space Research and Technology Centre (ESTEC).

To complement policy advice provided by industry groups and civil society organisations, DG Info Soc has established a number of European research institutes. The Joint Research Centre (JRC) which seeks to provide policy support to the EC 'to provide autonomous and Europe-wide expertise to improve understanding of the links between technology, the economy and society. It comprises of eight research institutes located in five different EU member states.<sup>62</sup>

## Conclusion

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<sup>57</sup> <http://www.eusc.org/>

<sup>58</sup> Council Joint Action of 20 July 2001 on the establishment of a European Union Satellite Centre (2001/555/CFSP).

<sup>59</sup> European Committee for Electro-technical Standardization (CENELEC) was created in 1973 as a result of the merger of CENELCOM and CENEL.

<sup>60</sup> The European Committee for Standardization (CEN), was founded in 1961 by the national standards bodies in Europe.

<sup>61</sup> The European Information & Communications Technology Industry Association was formed in 1999 and merged with EACEM (European Association of Consumer Electronics Manufacturers) 2001 to form the European Information, Communications and Consumer Electronics Technology Industry Associations. The group consists of 36 national digital technology associations.

<sup>62</sup> The Institute for Reference Materials and Measurements (IRMM), the Institute for Transuranium Elements (ITU), the Institute for the Protection and the Security of the Citizen, the Institute for Environment and Sustainability, the Institute for Health and Consumer Protection (IHCP), the Institute for Energy (IE) and the Institute for Prospective Technological Studies (IPTS).

Europe's path towards soft governance in 'information society' policy seems to be set. This is disconcerting, particularly in a policy area which claims to work towards the promotion of European integration and building of civil society in Europe. Key variables missing from the soft governance model are transparency, legitimacy and democratic input to policy making processes. Since the 2005 European Transparency Initiative, the EC has taken some steps towards greater transparency of committee governance, however processes remain opaque and lack consultation requirements. Although this lack of transparency may be resulting in greater efficiency, it essentially lacks legitimacy and accountability. Transparency is particularly important considering that the EU is already suffering from a democratic deficit. In addition, soft governance and self regulation are essentially weak instruments of control as they are neither binding nor legally legitimate and do not hold up in Court.

Although highly technical, the choice of a standard usually favours one company over another. Closer examination of the standards chosen pin point to the promotion of key European industries over foreign competitors. This result reflects the style of decision making i.e. the consultation of European industry and European associations only which closes the door to non European actors in the process. This interest in supporting European champions can compromise effective market regulation. The difficulty in earmarking standards is of course that by the time standards have been agreed upon, the market will have chosen different standards or moved on to newer technology.

A related argument can be made about supporting European industry. As companies operate in global markets, it is difficult to identify a company as 'European.' Although a company may be employing and paying tax in Europe today, it does not necessarily mean that it will be doing so tomorrow. Ownership should count as less of a factor in regulation, as the idea of regulation is to hold companies accountable to the public interest through efficient regulatory requirements, rather than to favour one company over another based upon investment decision making. The 'European champion' policy of the EC is outdated. It should move towards transparency and effective market regulation in a globalised digital economy. However, political factors seem to hold weight.

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