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Comment

European mediamatics policies

Coping with convergence and globalization

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Growing convergence and globalization in the communications sector towards a changed societal communications system, which can be described as mediamatics¹ (media, telematics), poses far-reaching challenges to policy makers worldwide. This article provides an overview of convergence strategies in Europe, puts it in the context of related initiatives, and highlights the partially hidden power politics of convergence, which, alongside arguments on the functional level, forms a crucial factor in national and supranational developments. © 1998 Elsevier Science Ltd. All rights reserved.

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¹For a detailed analysis of the convergence phenomenon and the changed communications system see Latzer, M., *Mediamatik – Die Konvergenz von Telekommunikation*,

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Pressure for change

From a historical–analytical perspective, the electronic communications sector emerged subdivided into telecommunications and broadcasting (electronic mass media). The differences between these subsectors regarding technical and communication structures, societal functions and political management far outweighed the commonalities.² This traditional setting is now being changed by the convergence trend, which is linked with growing computerization in electronic communications, and results in the blurring of traditional boundaries. Analytically, the convergence trend can be subdivided into two steps (see Figure 1).

(1) the convergence of telecommunications with computers (informatics) toward telematics,³ and

(2) the convergence of electronic mass media (broadcasting) with telematics toward mediamatics.⁴

Digital technology, first established in the computer sector, can be regarded as the major link between the diverse subsectors of communications. It provides a common basis allowing cross-subsectoral combinations, mixes and substitutions for the contents, distribution channels and equipment. However, despite the focus of this article, convergence is not limited to the subsectors shown in Figure 1. Other branches, e.g. publishers, home-electronics companies and the software industry, are involved as well.

The growing realization of the first convergence step toward telematics by policy makers in the late 1970s and its changed economics resulted in a major political push for the liberalization of telecommunications markets, and has become

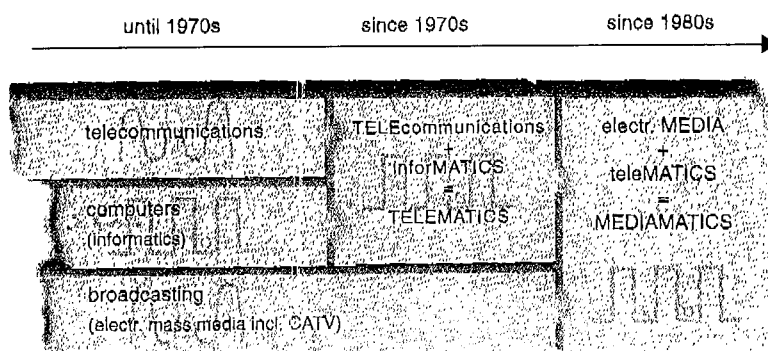


Figure 1. Convergence steps in electronic communications.

the central topic of EU telecommunications policy over the past decade.

The current convergence debate focuses on the second convergence step, toward *mediamatics*. On a technical and corporate level, it had already started in the 1980s and is now—with the usual time lag between technical/corporate and policy/regulatory changes—considered to be one of the major policy challenges for the coming years. To put it differently, we are currently within the time lag between a cognitive and an institutional paradigm shift: First, growing awareness of convergence leads only to a cognitive paradigm shift. Eventually, this results in an institutional paradigm shift in politics—understood as change of the dominant pattern in the way the communications sector is treated politically.

With the publication of the “Green paper on the convergence of the telecommunications, media and information technology sectors, and the implications for regulation”⁵ (COM 97, 623) in December 1997, the European Commission put the convergence topic at top of the EU communications policy agenda. A Europe-wide consultation process was launched on the appropriate regulation of the convergent communications sector and based on comments from the member states. The debate is intended to result in an action plan towards the

end of 1998. In Europe, this Green Paper can be seen as the major means of seeking a harmonized strategy with respect to convergence. Crucial incentives for regulatory change in the European Union come from two sources:

- First, there are diverse, growing *convergence problems*. New services no longer fit traditional categories, leading to unintended overlaps of the traditionally neatly divided fields of media and telecommunications policy. The resulting arbitrariness and interest-driven categorization is contentious as it combines with different regulations producing different preconditions for market development, caused—inter alia—by different market entry and content regulations. Examples are diverse internet-based services, teleshopping and video-on-demand. Moreover, almost all new and emerging services will be affected, leading to growing legal insecurity, growing investment risks, hampering the rapid development of the *mediamatics* markets.
- Second, with growing globalization being characteristic of *mediamatics*, pressure for change results from the *triadic competition* for the future *mediamatics* markets between the US, Japan and Europe. In particular because

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Computer und Rundfunk. Westdeutscher Verlag, Opladen, 1997. Latzer, M., Institutionalization of *mediamatics* regulation for converging markets, 89–106. In *Multi-media—Potentials and Challenges from an Economic Perspective*, ed., D. Elixmann and P. Kürble. WIK Proceedings, No. 5, Bad Honnef, 1997.

²See Latzer *op cit.* Ref 1.

³See Nora, S. and Minc, A., *L'informatisation de la société. Rapport à M. le Président de la République*. Paris, 1978.

⁴See Latzer *op cit.* Ref 1.

⁵See <<http://www.ispo.cec.be/convergence>>

of the developments in the US, the EU feels forced to act. The EU finds itself behind not only regarding the diffusion of internet services and the development of electronic commerce in general, but also regarding the realization of future-oriented regulatory reforms. Until now the US has followed the most progressive regulatory policy regarding convergence. US activities point in the direction of integration. Earlier plans to introduce its own regulatory chapter for converging services have finally been rejected. The US Telecommunications Act of 1996 embraces telecommunications, broadcasting and the so-called 'new media' and reduces cross-media and line-of-business regulations. Only the intention to harmonize content regulation by extending it to (individual) communication via the Internet and other interactive computer services in the Communications Decency Act of 1996 had to be withdrawn, because of heavy opposition by the Internet community and respective court decisions. A hands-off strategy has officially been proclaimed as regards the regulation of the Internet. However, there is intense policy activity by a range of federal institutions seeking to cope with issues from privacy to intellectual property rights. Altogether, there is a similar situation within the triad as there was earlier with liberalization and Information Infrastructure Initiatives. The US activities are a major driving force and orientation for comparable strategies in Europe and Japan.⁶

tently on its special status in European communications policy. Today, its influence and importance is not limited to member states, as the liberalization of telecommunications in Europe has made clear. For diverse reasons, other European countries have followed its recommendations and directives voluntarily. Several states, especially eastern European countries, are seeking EU membership. Others, like Switzerland, do not want to jeopardize their excellent business relations with EU member states. Altogether, this makes the communications policy of the EU the *single most prominent strategy* in Europe.

However, convergence and globalization issues are in the process of changing the structure and focus of the communications policy of the European Union. Until now, the neatly separated telecommunications and media (audiovisual) policies have concentrated on the harmonized liberalization of telecommunications markets and on public interest issues, and the protection and promotion of the European audiovisual industry derived from this.

European *telecommunications policy* started comparatively late, triggered by developments in the USA, in particular by the divestiture of AT&T in 1984, and by early liberalization efforts in the United Kingdom. After a 'Council Recommendation concerning the implementation of harmonization in the field of telecommunications' (84/549/EEC), the 'Green Paper on the Development of the Common Market for Telecommunications Services and Equipment' (COM 87, 290) initiated the official liberalization procedure and was followed by a series of detailed guidelines which then had to be transferred into national law by the member states. This harmonized step-by-step liberalization strategy proved successful and peaked in full market liberalization starting 1998. The

⁶For a politico-economic analysis of Japanese Information Infrastructure Initiatives in relation to EU and US strategies see Latzer, M., Japanese information infrastructure initiatives: a politico-economic approach. *Telecommunications Policy*, 1995, 19(7), 515–530.

Role and strategy of the European Union

Starting in the 1980s, the European Union has been working persis-

European Commission positioned itself as a major player in European and global telecommunications policy. Within Europe, it pushed regulatory reforms in countries, e.g. in Austria, which otherwise—for various reasons—would not have happened to such an extent or in this time frame.⁷ However, with the successful opening of markets, EU intervention has not stopped but has changed its focus. Interconnection and interoperability regulations are being introduced to foster effective competition. Alongside liberalization issues, public interest objectives are being followed in telecommunications as well, aiming at a harmonized strategy for universal services, consumer protection and privacy.

Liberalization in the *audiovisual sector* happened at the same time as that in telecommunications, but with much less influence and coordination by the EU. In this even more politically sensitive and influenced subsector of communications, the EU has traditionally focused on public interest issues and on the free circulation of services on the principle of subsidiarity. The major EU instrument in the audiovisual sector is the 1989 'Television Without Frontiers Directive' (89/552/EEC), amended in 1997 (97/36/EC), which coordinates national audiovisual policies regarding advertisements, teleshopping and—most contentious—the promotion of European programmes through quota regulations. Copyright and conditional access issues have been two other priority items on the European agenda for a harmonized regulatory framework for a common audiovisual market. For example, the framework for conditional access to digital television services broadcast is laid down in article 4 of the 'Directive on the use of standards for the transmission of television signals' (95/47/EC).

In the European *publishing sector*, the basic goals being followed are similar to those in the audiovisual sector. However, in this segment of the media market *self-regulatory* bodies prevail.

The convergence issue can be considered as more complex than liberalization, as EU Commissioner Bangemann stated in a speech in Venice last November⁸. The peculiarity of this area stems from the fact that it necessarily blurs long established and respected borderlines between European telecommunications and media policies.

As in the rest of the world, three distinct *regulatory models* for telecommunications, broadcasting and print have traditionally been applied.⁹ For telecommunications, the common-carrier model has been adapted from the mail and railway system. For broadcasting and print, specific models have been created. The major differences lie in the content and the market-access regulations. With diversity and freedom of publication as central policy goals, the print model has experienced far fewer restrictions than telecommunications and broadcasting, where market access (telecommunications and broadcasting) and content (broadcasting) are traditionally tightly regulated. In Figure 2, the classical common patterns and, at the same time, the major differences in the regulation of broadcasting and telecommunications are summarized.

The *information technology sector*, which can be considered as the link between telecommunications and the media sector in the convergence process, has no tradition of sector-specific regulation. At the EU level most notably, the general competition rules of the European Union apply.

The above-mentioned complexity of convergence policies and reforms stems from the fact that, in accordance with these differing

⁷On Austrian telecommunications policy see Latzer, M., *Telekommunikationspolitik*, 670–677, In *Handbuch des Politischen Systems Österreichs*, ed. H. Dachs, 3rd ed. Manz Verlag, Vienna, 1997.

⁸See <<http://www.ispo.cec.be/infosoc/promespeech/venice.html>>.

⁹See Pool, I., *Technologies of Freedom*. Harvard University Press, Cambridge/London, 1983.

Three classical regulatory models in communications

	Print	Common Carrier (telecommunications)	Broadcasting
Infrastructure Regulation	None	High	High
Content Regulation	None	None	High
Sender access	Open (1)	Open	Closed
Receiver access	Open	Closed (2)	Open

(1) Open in principle, but there are economic entry barriers.

(2) Differing from print and broadcasting, reception is only for selected addressees, (Telephone privacy)

Source: Adapted from Windhal, S. and McQuail, D., *Communication Models*, Longman, second edition, London, 1993, 211; based on Pool *op cit* Ref 9.

Figure 2. Three classical regulatory models in communications.

models, separate regulatory agencies¹⁰ have been established for telecommunications and broadcasting in most countries, different norms have been adopted, different authorities are responsible and the policy fields are dealt with in different parliamentary committees. Furthermore, direct political influence in these subsectors varies as well. It was strongly reduced in telecommunications during liberalization, but is still very strong in media matters. Altogether, we have entrenched organizations which now fear and fight any loss of power resulting from an overall reform.

The European Union itself is no exception to the structures described above. As in most of its member states, political responsibilities for the telecommunications and the audiovisual sector are separated, the focus of policies varies and also the extent of centralist intervention. Within the Commission, telecommunications is part of the responsibility of DG XIII (Telecommunications, Information Market and Exploitation of Research) and media are part of the agenda of DG X (Information, Communication, Culture, Audiovisual). In the European Parliament, telecommunications matters are essentially dealt with by the economic committee and media issues by the culture committee.

Because of the complexity of the convergence issue, the policy process of the Green Paper on Convergence is regarded as taking longer than in other cases. Currently, a five-year period is scheduled, which is considerably longer than was the case with green papers on topics like satellite communications (COM 90, 490), mobile and personal communication (COM 94, 145), cable television networks (COM 94, 440 and 682) or encrypted services (COM 96, 76).

The Green Paper on Convergence is formulated in a cautious manner. Issues are analysed but it consciously avoids reaching conclusions. A lot of questions are posed for public comment, seeking answers from governments and especially from industry. Three basic options are provided regarding the future regulatory development. Characteristic of the cautious approach, it includes the strategy of more or less maintaining the status quo:

- Build on current structures: Leaves in place the current vertical regulatory structure, subdivided into telecommunications and audiovisual/broadcasting.
- Develop a separate regulatory model for new activities, to co-exist with telecommunications and broadcasting regulation.

¹⁰Exceptions are the USA, Canada, Switzerland and Japan.

- Progressively introduce a new regulatory model to cover the whole range of existing and new services.¹¹

Even before the end of the five month consultation period in April 1998, there has already reportedly been a strong response to the Green Paper from the member states. National discussions on the convergence issue have been launched in nearly all the member states.

The Green Paper was jointly proposed by commissioners Martin Bangemann (DG XIII) and Marcelino Oreja (DG X). However, within the common strategy on the convergence issue, DG XIII is the *major driving force* for reforms, whereas DG X is rather reserved and more prone to maintain the status quo. The reasons are that, for the audiovisual sector, the policy of the Commission might change drastically, as broadcasting is increasingly being treated as an economic rather than a cultural good. This implies that more and more strategies and policy instruments originally developed for telecommunications will be applied. Altogether, the centralist influence of the EU may increase and its orientation is likely to change. The outcome of current reforms has to be seen in this perspective as well. The decision between the basic policy options listed above is greatly influenced by the anticipated power-political consequences of these strategies.

Embedded in information society strategy

The subtitle of the Green Paper, 'Towards an Information Society Approach', already points to the fact that the whole convergence topic is embedded within the European Information Society Initiatives. Hence, the Green Paper on

Convergence should be analysed as part of this overall strategy which—inter alia—aims at job creation, economic growth and consumer choice. It should, in particular, be understood in combination with initiatives to encourage the growth of electronic commerce. The Communication on 'A European Initiative in Electronic Commerce' (Com 97, 157) was published in 1997. Again, it has to be analysed in combination with US President Clinton's 1997 'Framework for Global Electronic Commerce'¹² and also as a reaction to the fact that 'At this stage, the US has built a substantial lead over Europe'.¹³ The creation of a favourable regulatory framework is an essential part of this initiative and includes the aim of building an adequate framework for convergent markets. Furthermore, solutions are being sought regarding encryption, digital signature and electronic payments. A Communication from the Commission entitled 'Ensuring Security and Trust in Electronic Communication' (COM 97, 503) lays out the policy challenge of digital signatures and encryption. According to the timeframe laid down in this Communication, proposals for further action, e.g. a directive on digital signatures, is planned for the second quarter of 1998, and by the year 2000 a common framework for cryptography will be put in place throughout the Union.¹⁴

Finally, the Green Paper on Convergence is considered as major input for the upcoming review of the EU telecommunications policy in 1999.

Combined with Globalization

The global nature of developments is acknowledged both in the initiative for Electronic Commerce and in the Green Paper on Convergence, where the question of the need of

¹¹For an analysis of strategic policy options in regard to convergence and an argumentation for an integrated regulatory model for mediamatics see Latzer *op cit* Ref 1.

¹²See <http://www.whitehouse.gov/WH/New/Commerce/read.html>.

¹³See Communication on a European initiative in Electronic Commerce, COM 97, 157.

¹⁴See Communication on Ensuring Security and Trust in Electronic Communication, COM 97, 503.

further action at international level in the light of convergence is explicitly posed (chapter IV.5). So far, there have been differing degrees of cooperation between the major players at the international level, such as the OECD, ITU, WTO and WIPO, focusing on convergence and globalization problems as well.

At the International Level

However, in a speech in Venice in September 1997, Commissioner Bangemann had already given a first answer regarding the necessity of further international activities, when he argued the need for 'An International Charter for Global Communications'. Policy makers have to admit that they can no longer act independently of each other. In particular, Bangemann sees the need for an international framework going beyond the EU to expand the Internet, to establish a virtual space for business, a virtual legal space and a virtual space for learning. Furthermore, he is opposed to the stance that no regulation other than self-regulation is needed regarding the Internet. The new model of regulation is to take into account convergence, globalization, and the nature of the Internet.¹⁵

At the beginning of 1998, on the joint initiative of Commissioner Bangemann (DG XIII) and his colleague Leon Brittain (DG I, External Relations), the Commission launched an international debate by publishing a communication on 'The Need for Strengthening International Coordination' (COM 98, 50) on how to improve coordination of world-wide policies affecting the fast developing global 'on-line' economy in general and electronic commerce in particular. DG X is not one of the initiators as its interest in further centralized market influence is very limited. It has to be borne in mind that the WTO agree-

ments do not apply for broadcasting either.

In the Communication on International Coordination, the idea of an 'International Charter', understood as a legally non-binding multilateral understanding, is further developed. In order to minimize power-political struggles, the Commission stresses that no international supervisory authority would be required under such a solution. The issues to be tackled in the Charter range from inter-operable technical (e.g. domain name systems) to legal solution (e.g. tax, jurisdiction, copyright, labour law, consumer protection, trademarks, content). According to the Commission, such an 'International Charter', which would also coordinate public and private sector interests, could be adopted by the end of 1999.

At the EU Level

At the EU level, Bangemann further argued in his Venice speech that a 'European Communications Act' and a 'Single European Regulatory Authority for Communications' might one day prove necessary.¹⁶ This discussion is not totally new. Some years ago, a supranational regulatory authority had already been proposed in the context of the development toward a *Common Information Area* (CIA).¹⁷ However, the initiative was dropped after a while and has now returned as part of the intensified convergence and globalization debate. Nevertheless, a Common European Communications Act and a single regulator for mediamatics are very sensitive issues in Europe, not so much because of the question of whether this would be the best institutional framework for the development of the information society, but more because of the implied shift of power between member states and the EU, and between

¹⁵See <<http://www.ispo.cec.be/infosoc/promespeech/venice.html>>.

¹⁶See <<http://www.ispo.cec.be/infosoc/promespeech/venice.html>>.

¹⁷See Turner, C., *Trans-European networks and the common information area. Telecommunications Policy*, 1995, 19(6), 501-508.

telecommunications and media institutions. Furthermore, communications policy is a central part of the *Internal Market* strategy and its current reform debate touches some core problems of European integration. What are the basic objectives of the European Union? Is further centralization of power legitimized in general? To what extent is the European integration process economically driven by functional considerations or by the proclaimed practical necessity of being globally competitive? To what extent is integration a generic political goal of strengthening centralized power structures in a political union?¹⁸

Not surprisingly from a political science point of view, the powerful players within the European Communications Policy Network have different points of view. The Commissioner is the one who pushes most for a single institution, Representatives of the Commission are more reserved. The European Parliament argues for more power for the EU—and in particular for more power for the Parliament compared to the Commission. The member states and the European Council—which is dominated by the single interests of the member states—are rather more selective regarding centralization of power initiatives. In general, the loss of national sovereignty and the feared uneven distribution of economic advantages caused by supranational solutions complicate their political realization.

National Strategies

Despite the above-described worldwide commonalities of traditional regulatory models for the subsectors of electronic communication (see Fig. 2), the detailed institutional settings and hence the scale of convergence problems vary

widely within the EU member states. Different starting positions for regulatory reform not only stem from different institutional settings but also from different political cultures in general. Altogether, the preconditions for the realization of different policy choices provided in the Green Paper vary considerably between individual member states.

Political responsibilities for telecommunications and the audiovisual sector are variously split between federal ministries (e.g. for telecommunications and terrestrial broadcasting) and between federal, state and local authorities (e.g. for CATV). For example, this results in the open question of whose responsibility the fully integrated broadband networks will come under. In every country, the list of organizations already involved in the regulation of the convergent mediamatics market is long, and for transnational activities the list of involved regulatory organizations is correspondingly even longer.

Analysis of national policy reforms reveals different strategies. Again, the specific starting positions have to be borne in mind: for example, it makes a difference whether responsibilities for telecommunications and broadcasting are split between federal ministries, as in Austria, or whether they are split between the federal government and the federal states (Länder), as in Germany. Seen politically, it can be argued that Germany and Belgium have the most difficult starting positions for the realization of a reform that will integrate and bundle the responsibilities for mediamatics.

Despite some political efforts for an integrated solution, and despite arguments from academia, the *German* strategy finally chosen prolongs and consolidates separation of regulatory organizations and political responsibilities. Alongside telecommunications and broadcasting,

¹⁸For the discussion of these general EU issues and on the debate on the need for a European Constitution see ed. R. Bellamy, V. Bufacchi and D. Castiglione, *Democracy and Constitutional Culture in the Union of Europe*. Lothian Foundation Press, London, 1995. Puntcher Riekman, S., *Demokratie im supranationalen raum*. 69-110. In *Integration Durch Demokratie. Neue Impulse für die Europäische Union*, eds. E. Antalovsky J. Melchior and S. Puntcher Riekman. Metropolis, Marburg, 1997.

the categories of teleservices (under federal responsibility) and media services (the responsibility of the federal states) have been introduced for new services. A federal teleservices law and a media services treaty between the federal states (*Staatsvertrag*) form the legal basis for the new categories. The proclaimed political goal of creating legal and planning certainty for the prospective mediamatics market does not seem to be achievable in this way. Quite the reverse, categorization problems could intensify, as not only will there be such problems between tele- and media services but also between the new and the old categories.¹⁹ It seems that in Germany the strategy followed will be to achieve the integrated approach, perceived to be necessary, through extended coordination efforts rather than through organizational mergers. Altogether, the political conflict over responsibilities between the federal and the federal state level seems to be the primary factor in designing the new regulatory structure. In this respect, the current categorization trials somehow recall the introduction of the 'value-added services' category in the 1980s, which was a result of the liberalization process. As was the case then, categorizations are in the first place based on political considerations and not on objectively sustainable distinctions.

A different strategy was chosen in *Italy* by the decision for an integrated Media and Telecommunication Authority in 1997. In the *UK*, where mediamatics regulation is basically being split between Oftel (Office of Telecommunications) and ITC (Independent Television Commission),²⁰ the restructuring of Oftel into an integrated *Ofcom* (Office of Communications) was proposed in order to use growing synergies between telecommunications and broadcasting regulation and is currently under debate. In

the meantime, a compromise on the regulation of digital broadcasting has been found. Oftel regulates the infrastructure for digital (satellite and terrestrial) broadcasting including the question of conditional access systems, but not the broadcast content. In several other EU member states similar discussions on integrating regulatory reforms have started, however with no visible solutions so far.

Résumé

In reaction to growing convergence and globalization, some basics of European communications policy, e.g. the traditional separation of telecommunications and audiovisual/media regulation, are in a process of destabilization and hence in an accelerated state of flux. Final results of the current debates are not yet predictable, however, developments are appearing in outline. In Europe, the European Commission—and in particular DG XIII—has taken the strategic lead in this debate, basically with the publication of the Green Paper on Convergence and the Communication on the Need for Strengthening International Coordination. The major pressure to act stems from growing convergence problems, and in particular, from policy and market developments in the US.

The current European debate can be boiled down to the following basic strategic questions which need to be decided in order to create an appropriate regulatory framework for mediamatics:

- Incremental or radical change of the regulatory framework?
- Degree of integration of telecommunications and media regulation on organizational level and on the level of norms?
- Appropriate mixture of self-regulation and prescriptive regulation?

¹⁹See Doll, R., *Rechtsfragen im Spannungsfeld von Telekommunikations- und Medienrecht* (Teil II). *WIK Newsletter*, 1996, (25), 3–5.

²⁰However, a list of other organizations are involved as well. For example, the Department of National Heritage is responsible for public broadcasting and the Office of Fair Trading (OFT) is in charge of regulatory issues for electronic commerce.

- Sector specific or general regulations?
- Is competition regulation sufficient on its own?
- Appropriate mixture of central, supranational regulation and regulation by the nation states?

Interviews with policy makers suggest that the awareness of advantages of a specific policy option on a functional level, e.g. for a radical change toward an integrated approach to mediamatics, is not necessarily the crucial factor for

future policies. The anticipated power-political consequences of various options also deserve special attention. Audiovisual/media regulation, in particular, is confronted with crucial changes with the growing dominance of economic over cultural/political considerations. However, the starting positions for regulatory reform vary widely between the member states, as do the anticipated gains and losses that the various reform options hold in store for the long list of players.