

**The Search for Good Governance: Network Europe and the Digital Revolution**

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# The Search for Good Governance: Network Europe and the Digital Revolution

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## ABSTRACT

This paper aims to investigate the impact of new information and communications technologies (ICTs) upon European Union (EU) governance. New ICTs have brought with them both opportunities and challenges for the study of European politics. The ever increasing volume and speed of transnational flow of digital communications have already become a significant factor contributing to the growing permeability of national borders within the European Union. It is argued in this paper that the ubiquity of digital technologies and the inter-connectivity of communications networks have presented the EU with an unprecedented opportunity for promoting the cause of integration – in many ways, the EU is fast evolving into a Network Europe, which is poised to become a new model of democracy in the 21<sup>st</sup> century. What remains to be answered is the question of whether or not this network model of democracy could be considered as a plausible alternative to the classical contention between governance by the nation state (the inter-governmental approach) and governance beyond the nation state (the supranational approach). Through a case study on the reform of electronic communications regulation in the European Union, this paper puts into test Network Europe's capacity of governance. More specifically, what regulatory and institutional changes have taken place at the EU level in response to the challenges posed by digital convergence? In what sense(s) and to what extent has digital convergence affected EU governance? What mode of governance does digital convergence favour, supranational, national or networked governance?

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## INTRODUCTION

New information and communications technologies (ICTs) have brought with them both opportunities and challenges for the study of democratic politics, including the politics of the European Union (EU). The many uncertainties associated with the information age have already prompted some commentators to claim that a 'crisis of democracy' is already a political reality: 'The nation-state, defining the domain, procedures, and objects of citizenship, has lost much of its sovereignty, undermined by the dynamics of global flows and trans-organisational networks of wealth, information, and power.'<sup>2</sup> On the other hand, optimists believe that '[s]ocial and political innovations ... could take advantage of ICT'.<sup>3</sup> The different views regarding the impact of the digital communications revolution means that '[n]o one knows what will be the last stage of cultural and political development in the information society'.<sup>4</sup> It is, therefore, 'vital to examine the complexities and contradictions in Western

attitudes toward unmediated distribution of information', especially '[w]hen we do not yet know what constitutes an ideal global Republic of Information'.<sup>5</sup>

When considering the relationship between ICTs and the EU, the alleged crisis of liberal democracy is not necessarily a negative factor to the course of European integration. Rather, the dynamics of new ICTs serves as an opportunity for reconsidering EU politics. The ever increasing volume and speed of the transnational flow of digital communications have already become a significant force in part responsible for the growing permeability of national borders. The pervasiveness of new ICTs, notably the Internet, has greatly facilitated the emergence of networked organisations and actions throughout Europe, and the flexible character of networks and their ability to deal effectively and efficiently with the different cultures that characterise the European landscape favour the role of networks in the European context.<sup>6</sup> Hardly surprising, '[n]etworks are considered a powerful tool to help solve many of the problems inherent in European governance. ... They will become increasingly important for European Governance'.<sup>7</sup>

The aim of this paper is to investigate the impact of new information and communications technologies upon regulation in the European Union. It argues that EU public policy on the European Information Society since the early 1990s represents a major factor in fostering the emergence of a Network Europe, which serves as the EU model of democracy in the 21<sup>st</sup> century. Regarding the capacity to govern and forms of regulation afforded by the emerging Network Europe, it is argued that digital convergence has not led to the migration of regulatory power from the member state level to the EU level. Meanwhile, digital convergence and cross-border provision of electronic services do not necessarily suggest the arrival of a single market. The European Commission has been left with no choice but exercising its coordination role in an attempt to fill the gap created by the absence of a EU level regulatory agency.

Methodologically, a new conceptual framework centred on Network Europe is proposed through a review of the current literature on the impact of new ICTs on the state in general and on European integration in particular. The theory of Network Europe is then applied to a case study on the regulation of digital convergence in the EU. The case study helps answer such questions as: What regulatory and institutional changes have taken place at the EU level in response to the challenges posed by digital convergence? In what sense(s) and to what extent has digital convergence affected EU regulation? What form of regulation over digital convergence is favoured, supranational, national or networked governance in the European Union?

## THE EMERGING NETWORK EUROPE

Peter Drucker once argued that '[w]e need strong, effective governments in the international sphere so that we can make the sacrifices of sovereignty needed to give us working supra-national institutions for world society and world economy'.<sup>8</sup> In other words, the best way to make supranational institutions work is to have strong and effective governments at the national level, because '[w]e can not hope to suppress the diversity of our society'.<sup>9</sup> But how can supranational institutions be made work through the hands of 'strong, effective governments'? The key lies in the shift from a hierarchical approach to a networking alternative.

The rapid increase of Internet usage and the widening impact of this new medium since the 1990s have caught the attention of policy makers in the EU. It has become clear that networking technologies, not necessarily 'hi-tech' as advocated by European technology policy, seem to hold the key to improving European competitiveness. The European Commission has finally realised that '[n]etworks are the arteries of the single market. They are the lifeblood of competitiveness, and their malfunction is reflected in lost opportunities to create new markets and hence in a level of job creation that falls short of our potential' and, therefore, '[t]he establishment of networks of the highest quality throughout the whole Community and beyond its frontiers is a priority task'.<sup>10</sup> Networks are not just about economic competitiveness; potentially, political implications are also associated with them. The ubiquity of digital technologies and the inter-connectivity of communications networks have presented Europe with an unprecedented opportunity to advance the cause of integration. Through communications networks, different parts of Europe and different aspects of social life are becoming increasingly inter-linked. For pro-Europeans, it is an enticing proposition that digital and networked communications would make the goal of European integration, to create an ever closer Union among the peoples of Europe, easier to achieve. For some policy makers, both technological and social networking would be advantageous to the future of the EU.<sup>11</sup> This perception, however, conflicts with the reality of the telecommunications market in Europe:

European telecommunications face considerable difficulties, notably the incompatibility and non-interoperability of the national telecommunications services' networks. The principal problem is not technological; it is the result of the structure

and organization of the market: the absence of telecommunications operators of a European stature and the non-existence of basic services at European level.<sup>12</sup>

The fragmented nature of telecommunications networks and services was already recognised by the European Commission in the mid-1980s as one of the major barriers to the development of the European common market. In its 1987 Green Paper, the Commission argued that the development of a common market for telecommunications services and equipment is a prerequisite for the creation of a dynamic European Community.<sup>13</sup> The Commission's view on the importance of telecommunications reform to the European common market was incorporated into the 1991 Maastricht Treaty. This Treaty has made specific stipulations about the development of 'Trans-European Networks (TENs)'. More specifically, Article 3 (n) and Article 29 (b, c and d) of the new Treaty call for the construction of Trans-European Networks including Trans-European Transportation Networks, Energy Networks and Telecommunications Networks. Through the Maastricht Treaty the European Commission's idea of promoting cross-border networking became legitimised.

In order to speed up the process of Europeanisation of telecommunications, the EU went further by setting a deadline, 1<sup>st</sup> January 1998, for the member states to liberalise their respective national market for voice telephony. However, in promoting liberalisation and trans-European networking for telecommunications, the European Commission has moved into a very sensitive area of policy making for the simple reason that telecommunications networks and services used to be owned and run by the member states and the latter could find it difficult to give up their national power of regulation. This was confirmed by a European Commission official, who was closely involved in the process of telecommunications liberalisation:

Between 1984 and today we have been working with the member states in developing progressively a regulatory environment based on full competition in all infrastructures and all services. ... [In] introducing full competition by 1<sup>st</sup> January 1998, you always have a lot of hesitation among the member states. Some of them say that it is going too fast and it is too much, whilst others saying it is too slow and too little. ... There were five countries which had a transition period granted. ... These were fiercely negotiated.<sup>14</sup>

Despite the controversies, EU measures of liberalisation and privatisation have reduced the degree of national control over telecommunications and built up momentum towards the Europeanisation of the communications industry.<sup>15</sup>

In translating the legislative provisions in the Maastricht Treaty in terms of developing the TEN-Telecom into policy and actions, the Delors White Paper coined a new phrase, a 'common information area',<sup>16</sup> which is basically an information age manifestation of what is usually called the 'common market' or 'single market' of the EU. As a system of information highways for the EU, a 'common information area' will involve: 1) the creation of digital information and communications infrastructures; 2) the development of services, such as electronic images, data bases, electronic mail; 3) promoting key applications including teleworking, teletraining, telemedicine and linked administrations.<sup>17</sup> To translate the vision of a 'common information area' into reality, the European Commission estimated in its 1993 White Paper that a total of €150 billion of investment would be needed by the year 2000, with the Community providing €5 billion over the same period from its budget for networks, from the Structural Funds and from the research programme.<sup>18</sup>

Marked by the Delors White Paper, a vigorous process of 'policy push' by European authorities, in particular the European Commission, towards achieving a European Information Society has taken place at the European level.<sup>19</sup> This effort reached its peak at the Lisbon summit of heads of the member states in March 2000, when the EU launched its Lisbon Strategy – to make the European Union into the most competitive knowledge-based economy in the world by 2010.

In the academic community, the 'network society' theory in general has gained much attention. However, efforts in applying the theory to the study of European integration in the information age remain sporadic and there is a total lack of systematic articulation of the theory of 'Network Europe'.

Researchers began to try and address the potential impact of trans-European communications networks upon European competitiveness and the internal market in the 1980s, when, among others, the 'Eurogrid' idea was put forward as a 'a pervasive multination (or pan-Community or pan-European) broadband communications network ... for business, domestic and government users of all kinds.'<sup>20</sup> In an argument that the construction of information highways is essential to Europe's political integration, the Federal Trust foresees the emergence of a 'network Europe',<sup>21</sup> which is poised to supersede any traditional model of EU politics centred on hierarchies.<sup>22</sup>

Arguing that the state in the information age is a network state, Carnoy and Castells believe that the state functions as a network in which all nodes interact.<sup>23</sup> In a similar manner, the European institutions essentially constitute a ‘network state’ characterised by the sharing of authority along a network.<sup>24</sup> More recently, the European Commission argued that good governance in the EU may not be divorced from the creation of a ‘networked European Union’.<sup>25</sup> Such a networked EU is needed for managing an enlarged European democracy and dealing with complex cross-border risks – a task that will require all governments and administrations to interact more swiftly than in the current hierarchical mode.<sup>26</sup> ‘Network Europe’ represents a distinctive form of polity, the ‘networked polity’,<sup>27</sup> in which political and policy actors ‘do not follow a hierarchical path’.<sup>28</sup> Some are quick to announce that ‘[t]he traditional visions of Europe – as an embryonic federal state or as a free trade area which should steer clear of the political arena – are now outdated’<sup>29</sup>. These two approaches are neither appropriate nor adequate ‘for organising the complex set of relationships between the different component parts of the EU’.<sup>30</sup> A network solution, instead, would solve the problem of coordinating the highly decentralised organisations of the EU polity.

The concept of Network Europe is very much associated with the network architecture of and the power unleashed by digital communications. Network Europe has a number of features that are important to the study of the EU polity. First, in the emerging Network Europe the importance of *geographical boundaries* is receding, thanks to the mediation by digital and networked communications of social, economic and political affairs. The seamless and trans-border flow of digital information and communications has made the traditional definition of national borders and the differentiation between local and long-distance less meaningful. Writers on cosmopolitan governance are quick to stress that new communications technologies transcend the limitations of geographical settings.<sup>31</sup> To the ‘common information area’ of Europe, the password is just as important as the industrial age passport.

Second, in the emerging Network Europe, the traditional *institutional boundaries* between public administrations at different levels and between different administrative units at each level are becoming increasingly blurred. The development of e-government at national and sub-national levels and the launch of the pan-European e-government scheme by the European Commission promise eventually to link up all public administrations throughout the Union. On-line information sharing heralds the beginning of an end to the industrial age of off-line information compartmentalisation, which is characteristic of bureaucratic inefficiency.

Finally, the most important factor hindering the process of European integration is the sensitive issue of national sovereignty. A federalist model of the EU would eventually lead to the migration of political decision making power from the national centre of the member states to the European centre in Brussels. In contrast, Network Europe enables collective or common decision making without necessarily leading to the concentration of power in the hands of one centre. The technical architecture of networked communications is characterised by the independent existence and inter-linkage of constituent nodes. In a networked environment, all nodes are equally inter-connected with one another and a centre does not exist. This implies that *political boundaries* in Network Europe may be less clearly defined, compared to the traditional hierarchical structure of power relations.

Based on the understanding that, in a network society, geographical, institutional and political boundaries are reconfigured, the theory of Network Europe represents a new approach to the study of European integration and offers new insight into the modes and process of EU governance and regulation. It is worth noting that the notion of Network Europe being advanced here differs from the cosmopolitan thesis, which attempts to address the democratic deficit of liberal democracy by arguing that the nation state has been undermined by the trends towards globalisation and global governance.<sup>32</sup> On the contrary, the Network Europe theory suggests that the EU, instead of being detrimental to the national sovereignty of its member states, provides a new framework for networking and interaction between the sovereign member states on the one hand and between these states and the supranational institutions they have set up on the other. The impact of network externality can be more effective than the sum of the constituent members.<sup>33</sup> Bluntly put, the power relationship between the member states in a networking environment is not a zero-sum game; rather, the emerging Network Europe provides additional empowerment that cannot be derived from the unilateral actions by any single member state. What remain to be seen are the questions of how Network Europe actually works and what additionality it offers to the improvement or reform of European regulatory regime in the information age.

## REGULATORY IMPACT OF DIGITAL CONVERGENCE

The conversion of analogue contents, delivery process and display/access equipment into digital alternatives using the same computer techniques has enabled the traditionally separate information, communication and entertainment products, systems, and industries to come together and become integrated. This process of conversion is often called digital or technological convergence. With digital convergence, sectoral boundaries between computing,

telecommunications, consumer electronics and publishing industries are blurred, because ‘digital technology now allows both traditional and new communication services – whether voice, data, sound – to be provided over many different networks’.<sup>34</sup> What we are witnessing now is the emergence of an integrated digital ICT sector. According to the European Commission, the term digital convergence has two dimensions: the ability of different network platforms to carry essentially similar kinds of services or the coming together of consumer devices such as the telephone, television and personal computer.<sup>35</sup>

In its Green Paper on convergence the European Commission argued that the development of new services enabled by digital convergence could be hindered by the existence of a range of barriers, including regulatory barriers, at different levels of the market:

One view is that the development of new products and services is being held back by regulatory uncertainty – that existing rules were defined for a national, analogue and mono-media environment, but that services increasingly cut across different traditional sectors and geographical boundaries, and that they may be provided over a variety of platforms. This calls into question the underlying rationale beneath regulatory approaches in the different sectors affected by convergence.<sup>36</sup>

The rapid development of digital convergence has created an entirely new landscape on the technological frontiers of Europe. Within the new space, a technological or digital space, traditional EU legislations, mostly sector-specific, seemed to be increasingly inappropriate for the governance of a rapidly changing technological environment. The speed of technological change has surprised both politicians and law makers, a point frankly acknowledged by Martin Bangemann, a former European industry and enterprise Commissioner:

[I]f someone had predicted the attention the Information Society policy would be given only a few years ago, he or she would have been considered as cosmic in imagination or short on brains . . . the world needs to establish a new set of rules adapted to the capabilities of new technologies.<sup>37</sup>

This view was echoed more recently in a statement by Ofcom officials in charge of communications regulation in the UK: ‘[t]elecommunications is going from analogue to digital, just as surely as is broadcasting, and probably with even more significant consequences, though they are not as widely recognised or understood’.<sup>38</sup> In view of this legislative challenges posed by digital convergence, the European Commission published the 1999 Communications Review.<sup>39</sup> The central point of this document is that ‘[t]he

convergence of telecommunications, media and information technology sectors means all transmission networks and services should be covered by a single regulatory framework'.<sup>40</sup>

Based on the arguments and evidence presented in the Commission's 1999 Communications Review and its subsequent proposal,<sup>41</sup> the European Parliament and the Council of Ministers approved the overhaul of the sector-specific legislation consisting, in total, of 24 Directives with regard to different domains of information and communications technologies and replaced them with a single regulatory framework in March 2002. In an attempt to address the impact of digital convergence, the new regulatory framework is now issue-oriented and consists of a general Framework Directive and four specific Directives: the Authorisation Directive, the Access Directive, the Universal Services Directive and the Directive on Privacy and Electronic Communications. The legislative reform through the new regulatory framework represents the single most important move by the EU authorities towards harnessing the transition from 'the older analogue communication networks of the nation-state system', which was characterised by a 'few-to-many, space-bound, essentially hierarchical and unidirectional' process, to the digital systems made possible by the Net which 'promise many-to-many, de-territorial, horizontal and interactional patterns of information flow and communication'.<sup>42</sup>

The enactment of the new regulatory framework is credited to the groundwork by the European Commission. Throughout the process of promoting legislative reform for telecommunications since the mid-1980s, the European Commission has published a number of public policy documents, of which the two Green Papers issued in 1987 and 1997 are landmark publications. They represent two major assaults by the European Commission on the existing and established regulatory structure for telecommunications in the EU. Whilst the 1987 Green Paper paved the way for reforming the nationally oriented telecommunications sector to suit the need for developing the common market, the 1997 Green Paper on convergence analysed the gap between the existing sector-specific regulatory structure and the new technological environment created by digital convergence. In other words, the primary concern of the Commission expressed in its 1987 Green Paper was overcoming the barriers associated with national borders that were hindering the development of the 'common market'. The Commission's concern changed 10 years later, when it published the Green Paper on convergence, to the sectoral borders that were hindering the creation of 'a common information area' in the information age. The removal of both types of borders would require fundamental legislative and institutional changes.

## DIGITAL CONVERGENCE VS INSTITUTIONAL DIVERGENCE

The European Parliament's initial enthusiasm for a single European Regulatory Authority is hardly surprising. Despite the policy and legislative push towards the development of Trans-European Networks and the call for 'a common information area', the communications services market in Europe remains to a large extent fragmented. The process of liberalisation and market opening up has indeed created a group of 'European' mobile phone operators, such as Vodafone and T-Mobile, and each of these companies have operational branches in almost every member state. All second generation (2G) mobile phone operators throughout Europe use the same European technology, i.e., the GSM (Global System of Mobile communications) standard. On the other hand, if a customer uses the same service, for example Vodafone or T-Mobile, in different member states for cross-border communication, he or she will be charged at an international roaming rate, which is usually significantly higher than the rate applicable to calls originated and terminated within the borders of a member state. Undoubtedly, the mobile phone service providers are exploiting the loopholes created by national borders in the 'common information area' to the highest extent at the expense of user interest. The MEPs are among the most 'mobile' groups of EU population who often cross national borders and they are also experiencing the inconvenience and high cost associated with the fragmented market. The MEPs' plight was viewed by some European Commission officials with sympathy: 'We have many colleagues, including the European Parliamentarians, who live partly in their constituency home, partly in Brussels and partly in Strasbourg. They [have to] buy three GSM [SIM] cards.'<sup>43</sup>

In view of the fragmentation of mobile communications service provision along national borders, the European Commission would like to see communications service providers being treated as truly pan-European operators:

We [The European Commission] argue that we are in favour of Vodafone becoming what we call a pan-European operator, because it would allow them to provide attractive packages to users, whereby the use of the network in a country other than the one where you took your subscription should ensure it would be cheaper than international roaming. So for us [the European Commission] it is important to seek pan-European operators, both in data communications and in mobile [communication] as to overcome these far too high international tariffs.<sup>44</sup>

Given the fact that pan-European operators are already taking the advantage of digital convergence by offering electronic services, be it voice, data or internet cross national borders,

it seems an ideal solution that these companies are regulated by not just a common regulatory framework but also a single regulatory authority at the EU level. The political reality, however, might not necessarily favour such an argument. In fact, the point about who should regulate digital convergence in Europe remains controversial.

Generally speaking, regulations are needed ‘in order to correct distortions, guarantee the basic economic rights and to promote objectives such as consumer protection or the quality of environment.’<sup>45</sup> The adoption of the new regulatory framework helps answer the question of *how* digital convergence should be regulated in Europe. But the issue of *who* should regulate digital convergence remains politically controversial. From a technological point of view, ‘digital convergence undermines both the rationale for, and the feasibility of, most nationally based broadcasting-specific [and other media and communications sector-specific] regulation.’<sup>46</sup>

In addition to digital convergence, other factors, such as the global liberalisation of telecommunications under the auspices of the World Trade Organisation (WTO) and the fast growth of the Internet network, also contribute to the uncertainties of the nationally and sectorally based regulatory regimes: ‘The rapid emergence of a liberalized global communications market and popular use of the Internet have brought into question traditional means of national regulation.’<sup>47</sup>

In response to the challenges posed by digital convergence, which was poised to diminish both sectoral boundaries between different domains of ICTs and state boundaries defining individual national markets of communications, the Bangemann Group was created at the demand by the Council of Ministers to look into the issues related to the global information society. Led by Martin Bangemann, the Bangemann Group made a range of policy recommendations to the Council of Ministers in 1994, one of which is that an authority should be established at European level, whose terms of reference will require prompt attention.<sup>48</sup> Undoubtedly, this was a strong argument in favour of the creation of a single European Regulatory Authority to take on the challenges posed by digital convergence and the trans-Europeanisation of communications flow. The Bangemann Report recommended creating a single ERA on the ground that ‘[t]he Group is convinced that technological progress and the evolution of the market mean that Europe must make a break from policies based on principles which belong to a time before the advent of the information revolution’.<sup>49</sup>

Authors of the Bangemann Report also warned that ‘[d]isparate national regulatory reactions carry a very real threat of fragmentation to the internal market [in the information age].’<sup>50</sup> The

ERA recommendation would seem to be a sensible idea that, if implemented, might fill in a major institutional gap in terms of EU governance of digital and trans-border communication. Among others, the European Parliament was amongst the enthusiasts and ‘insisted on a European regulator’, as indicated by a policy insider in Brussels.<sup>51</sup>

The argument for establishing a single European Regulatory Authority, however, has not gone down well and has met with strong political opposition. The UK government, for one, was cautious and reluctant in conceding any additional regulatory power to Brussels. In a response to the European Commission’s 1997 Green Paper on convergence, the Department of Trade and Industry (DTI) and the Department of Media, Culture and Sports (DMCS) made the government’s position very clear:

The choice of options for developing the regulatory framework must largely be for Member States to determine, in the light of their particular regulatory history and market circumstances. In the case of the UK, the UK Government believes that an evolutionary, rather than revolutionary, approach will in general be most suitable. The most appropriate approach is likely to entail an adaptation of the existing frameworks so as to cope with change and to deal with new services – recognising that the adaptation may need to be more extensive in some areas than others.<sup>52</sup>

On the one hand, the UK government recognised the significant changes in technologies and their impact upon the regulatory structure. On the other hand, however, it insisted that the options for the development of a regulatory framework should be left for the national governments to determine, rather than for Brussels to dictate. The British government also preferred an evolutionary approach in adapting the existing regulatory structure, rather than a revolutionary approach to regulatory change. Regarding a specific question raised in the Commission’s Green Paper on convergence ‘Will convergence require a reassessment of regulatory responsibilities at a national, Community or international level, and, if so which areas?’, the UK government’s response was:

There is a key Community role in promotion of further liberalisation, so that competition and market forces have increasingly free play, within a set of national frameworks for safeguarding consumer interests and addressing issues such as those associated with national culture. Detailed regulation is best done at Member State level, where National Regulatory Authorities (NRAs) are close to the dynamic and complex national markets, which are not uniform across Europe<sup>53</sup>

Whilst recognising the importance of EU level policymaking in terms of promoting liberalisation and market competition, the UK government had no hesitation in defending the power of member states. It is, in the UK government's view, the NRAs, rather than a single European Regulatory Authority, that will be the appropriate regulatory bodies, despite the impact of digital convergence and Europeanisation of the communications market. Largely due to pressure from the member state governments, the European Commission, in its 1999 Communications Review, made a policy U-turn by suggesting that:

The Commission considers at this stage that the creation of a European Regulatory Authority would not provide sufficient added value to justify the likely cost. ... The issues identified that might be better dealt with at EU level can be addressed through adaptation and improvement of existing structures.<sup>54</sup>

To help justify its changed policy position, the European Commission solicited an external study report, which concluded that the establishment of a single ERA was not necessary because the well established tools, in particular competition law, at the EU level were already adequate to resolve problems associated with fragmented authority of regulation.<sup>55</sup>

Apart from the fairly well-established competition policy at the EU level, the 'existing structures' of communications regulation are very much characterised by the decision-making power of institutions at the national level. So long as national regulatory authorities exist and function, national borders will continue to have the potential to divide the 'common information area' into fragmented national markets and commercial service providers will be able to take advantage of this by creating and maintaining international tariffs of service charge. As a matter of fact, the European Commission was well aware of this issue:

The [European] Parliament has bitterly complained, because they [the Parliamentarians] of course do a lot of international roaming' and the opinion of the European Commission was that European operators, such as Vodafone, 'have used the situation to maintain their high rates of what we call international tariffs or cross-border tariffs because we obviously have borders inside the European Market. So there is a difference between national communications and cross-border communications [in the EU].<sup>56</sup>

The shift of argument from one in favour of a single ERA in the mid-1990s to another of the NRAs in the late 1990s suggests a high degree of political tension between two opposing approaches to EU governance, the supranationalist approach *vis-à-vis* the

intergovernmentalist approach. Because ‘member states want to retain their own sovereignty over their own frequency space’, it is undeniable that ‘there is a certain tendency to give back responsibilities to the member states’.<sup>57</sup> Therefore, the reality of European telecommunications liberalisation and regulatory reform would seem to be far more complicated than the view that on 1<sup>st</sup> January 1998 the century-old tradition of state telecommunications came to an end in Europe and a single market replaced a system of separate telecoms markets.<sup>58</sup>

To be sure, the new regulatory framework establishes a harmonised framework of regulation for electronic communications networks and services, covering a wide range of networks (such as fixed line and mobile telephone networks, the Internet, cable TV and terrestrial broadcasting networks). However, it does not cover services such as broadcast content, electronic commerce services and telecommunications terminal equipment.<sup>59</sup> It is obvious that the EU wanted to steer the new regulatory framework away from sensitive areas such as broadcast content, where the exercise of editorial control is often needed and this differs from one member state to another, and electronic commerce, where the issue of taxation over digital goods is most controversial.

#### IS ‘NETWORK EUROPE’ A SOLUTION?

The ill-fated argument for the establishment of a single European Regulatory Authority has not brought to an end of the European Commission’s search for new methods to improve and reform the EU’s governance structure in the information age, although a member of the Commission remains cautiously positive:

I think the consensus is that we will not have a United States of Europe. But we do have member states that are committed to work together on the single market and, I will say, coherent policies [are] to arrive as open and as competitive as possible. It always remains to be seen to what degree you have to coordinate policies.<sup>60</sup>

Given that any proposal to transfer more regulatory power from the member state level to the supranational level would prove sensitive and could be politically controversial, the European Commission seems to have successfully fostered a new approach towards EU governance. This new approach marries the legislative power (accorded to EU institutions by the EU Treaty) at the supranational level and the power centres of the member state. What lies at the centre of this new approach is the creation of a dynamic networking environment, which

enables policy actors from the member states to interact with each other and with the EU institutions. This new approach recognises that, despite the fact that the national parliaments in Europe have been markedly reconfigured in terms of powers and tasks during the last 10-20 years, they are still crucial nodes in the network society connecting global, transnational, national and subnational political centres.<sup>61</sup>

While the new regulatory framework established on the basis of the European Commission's 1999 Communications Review has moved away from the earlier recommendations of the Bangemann Report on the single ERA, EU level governance has not been sacrificed and the NRAs have not been left alone. Rather, according to the EU's new regulatory framework, the NRAs and their respective member states are legally obliged in the following ways: 1) Member states shall ensure that their NRA (or NRAs) shall carry out the regulatory tasks specified in the new regulatory framework; 2) All NRAs should be required to cooperate with each other and with the European Commission; 3) This cooperation could take place, *inter alia*, in the Communications Committee and/or in a group of national regulators.<sup>62</sup>

In addition to the above requirements, the new legislation also stipulates that the NRAs need to gather information from market players on behalf of the European Commission to allow the latter to fulfil its obligations under Community law. The NRAs need to consult all interested parties, in particular the European Commission and other National Regulatory Authorities, on proposed draft decisions and seek their comments before adopting a final decision.<sup>63</sup>

The detailed specifications in the EU's new regulatory framework promise to ensure that the NRAs are not just member state regulatory authorities but also constituent actors of a trans-European mechanism of regulation. This mechanism is manifested in the establishment of a number of policy and regulatory networks including the European Regulators Group (ERG), the Communications Committee (Cocom), the Radio Spectrum Committee (RSA), the Radio Spectrum Policy Group (RSPG) and the Working Party on the Protection of Individuals with regard to the Processing and of Personal Data. Each of these policy networks consists of the relevant authorities from and representing the member states. Common to all of these networks is the crucial role of the European Commission:

The Commission could play the role of the network animator, structuring it, managing conflicts, providing the interaction tools, technical assistance and ensuring all respect the few basic common rules agreed by all, on which the network is based. It could even be steering it by providing an integrating 'vision' for the network or anticipating possible crisis.<sup>64</sup>

In pursuing the new approach of governance of digital communications, the European Commission has reserved two principal roles for itself to play: to monitor and enforce the implementation and application of EU legislations; to ensure and coordinate trans-European cooperation among the National Regulatory Authorities in the member states. With the number of member states increased from 15 to 25, the EU has to coordinate policies and act as one bloc, yet live with the political reality of bargaining between the member states,

In principle we all would like to have a European approach to such strategic issues as broadband, ICT and how you use these technologies in other areas. So the principles are there, and at the same time we see enormous reluctance – very often from the UK – to do something in common with regard to spectrum harmonisation. So, there is no need to deny that there is always this balance to strike between national sovereignty and a common approach. But I think these five directives [the new regulator framework] are a fantastic example of a common approach with maximum flexibility to adapt to the needs at the national level.<sup>65</sup>

The need to achieve regulatory harmonisation at the EU level whilst respecting the diversity and sovereignty of the member states makes Network Europe a rather practical proposition. In fact, in policy circles ‘much credence is lent to networking because of its nature’ and, as a policy instrument ‘it [networking] is extremely appealing both because promoting it involves very little change to the *status quo*, and because it seems solely to involve benefits with very few costs.’<sup>66</sup> More specifically, the Network Europe approach has two advantages associated with it. First, compared to the idea of setting up a single European Regulatory Authority, the trans-European mechanism of regulation involving the National Regulatory Authorities proves less politically sensitive because it does not lead to the reduction of national sovereignty. Second, the European Commission does not need to spend heavily in order to achieve trans-European regulation of digital communications for the simple reason that ‘[n]ational regulatory authorities should be in possession of all the necessary resources, in terms of staffing, expertise, and financial means, for the performance of their tasks’.<sup>67</sup>

## CONCLUSION

The evidence presented suggests that the information age is witnessing an important process of change in EU politics: the development of Network Europe. Although equipped with a wide range of legislative power, it is not a federal state or nation state in a conventional sense.

Rather, it suggests that the source of power is derived from the processes and mechanisms of trans-European networking amongst national authorities on the one hand and between these authorities and EU institutions on the other. Furthermore, a member state does not have to lose its identity or sovereignty, although, ‘the power of flow’ within a networked polity takes precedent over ‘the flow of power’ in a traditional and hierarchical form of polity.<sup>68</sup>

Through a case study on the regulation of digital convergence, it has been argued that neither the inter-governmentalist approach, as manifested in the traditional National Regulatory Authorities (NRAs), nor the supranationalist approach, as embodied in the argument for a single European Regulatory Authority (ERA), is a viable solution. Instead, the transformation of the EU polity into a Network Europe dictates that a network approach towards the regulation of digital convergence proves not only cost-effective in an economic sense but also politically less contentious.

At a time when the search for ‘a new post-democratic agenda’<sup>69</sup> in the European policy and academic communities proves not easier than the search for the ‘holy grail’, the theoretical framework of Network Europe presented in this paper serves at least as an alternative perspective towards the understanding of the legislative complexity of the EU polity in the age of digital convergence. The politics of Network Europe remains for the time being characterised by a number of dynamic factors including, among others, an on-going process of technological convergence, a politically necessary arrangement of institutional divergence in regulation and the bizarre reality of market fragmentation in the provision of electronic services. As far as the European Commission is concerned, ‘we are only at the start of the learning curve with respect to the use of networks as tools for public policies’.<sup>70</sup>

## NOTES

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<sup>2</sup> M. Castells, *The Power of Identity*, (Oxford: Blackwell, 1997), p.342.

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<sup>4</sup> Feeman and Louçã, *As Times Goes By*, p.331.

<sup>5</sup> M. Price, *Media and Sovereignty: The Global Information Revolution and Its Challenge to State Power* (Cambridge, Mass.: MIT Press 2002), p.28

<sup>6</sup> European Commission, ‘Networking People for a Good Governance in Europe’, White Paper on Governance Work Area No. 4 Coherence and cooperation in a Networked Europe, (Brussels, 20 August 2001).

<sup>7</sup> European Commission, ‘Networking People for a Good Governance in Europe’, p.4

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- <sup>29</sup> Leonard, *Network Europe*, p.16.
- <sup>30</sup> Leonard, *Network Europe*, p.20
- <sup>31</sup> D. Held, *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance* (Cambridge: Polity Press, 1995).
- <sup>32</sup> D. Held, *Models of Democracy* (Cambridge: Policy, 1996).
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- <sup>35</sup> European Commission, *Green Paper on the Convergence*, p.1.
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- <sup>47</sup> Aragón, Grewlich and Pietrantonio, ‘Competing Telecommunications and Cyber Regulation’, p.1.
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