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A Case of Over-Implementation:

EU Regulation of TV Sector

and Politicization of its Adaptation in the Italian System of Law

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Abstract:

In many publications of various kinds, the case of overconcentration of Italian TV sector is seen as a purely domestic issue, non-dependent on the EU perspective. We argue it's only partly true. The Italian case demonstrates that internal controversy which may be traced in European regulation of the TV sector lets national political actors misinterpret it using the notions of digitalization and common market for gaining domestic political influence. In the area of implementation studies, Italian 'digital switchover' may be interpreted as a voluntary over-implementation case. This paper aims at constructing a methodology for assessing the role of domestic and EU-level factors in cases of over-implementation provoked by domestic players.

THEORETICAL LINKAGE AND RESEARCH METHODOLOGY

Theoretical premises for over-implementation research

As many of today's researchers note, 'correspondence between EU policy objectives and policy outcomes' is 'the usual object of implementation studies' (Michelsen 2005: 4), while 'national executives hold a key position in both the decision-making and the implementation of European policies' (Boerzel 2003b: 3). This implies that both behavior of domestic policy makers and EU policy objectives need to be carefully investigated in all aspects and in close relation to each other.

Non-compliance / transposition / adaptation / implementation studies have in mind that the notion of compliance, in general, means smooth introduction of common or nationally-developed measures aiming at the results pre-defined by the EU objectives; member states are more or less free in defining measures but not results (Sack 2009). The natural process of unification of legislation requires coherence in several aspects, but there's still an overwhelming amount of non-compliance in the national law adaptation process. In current literature, the cases of non-compliance are divided into two broad categories: the cases of under- and over-compliance, or, rather, under- and over-implementation. Logic says that the cases of over-implementation may be just as dangerous for the EU strategy as under-implementation, or even more dangerous, since the lines of policy development in such cases are not predicted by the EU strategy. Over-implementation case, therefore, deserve both political and academic attention.

Contrary to this, in current research on EU law implementation, *over-implementation cases are rare to find*. Existing non-compliance research focuses much more on cases of 'under-implementation' (partial, subverted, untimely implementation etc.), since they are much more frequent and visibly obstruct the construction of common European spheres, including the public sphere. In theory, over-implementation cases are rather encompassed by wider explanatory schemes or perceived as non-significant for explanation of behavior of national policy makers, while in practice some member states have introduced the over-implementation monitoring bodies and procedures.¹

This is why, by far, *there is no comprehensive over-implementation theory* (or even concept) that would encompass at least a significant number of such cases. This is why we face the necessity of constructing a case study methodology based upon the findings of other areas of implementation studies. But beyond this, there is also a need to assess applicability of our findings for other over-implementation cases. This is why, besides particular results of situational analysis, we try to follow the general lines of actor-centered institutionalist approach and of recent multi-level governance research to offer wider implications of our findings.

Over-implementation case study needs to focus at least on three major questions.

1. The first, and probably most important, one is the question *what*: what may be identified as over-implementation? Today, there's still a need for a comprehensive definition of over-implementation; we cannot pretend to give it but we can suggest an approach towards one.

We may presuppose that, just as in the cases of under-implementation, non-compliance occurs in such areas as understanding of objectives, timely introduction of measures and/or consequences of the policy introduced, e.g.:

| In comparison with EU policy: | Under-implementation | Over-implementation |
|----------------------------------|--------------------------|-----------------------------|
| Understanding of objectives | Modest / partial goals | Over-reaching goals |
| Compliance with deadline | Not meeting the deadline | Setting an earlier deadline |
| Consequences in assessment by EU | Lack of planned results | Lack of predictability |

There may definitely be other factors that may distinguish under- and over-implementation; our research will try to focus upon the *causes and consequences* of over-implementation in a particular case.

2. The second basic question is *why*: what notions do the players that promote over-implementation have in mind? This question, though seemingly obvious in answering, is indeed rarely addressed in implementation studies, and answers to this question may vary, as other researchers show. Thus, determination of the causes which lie in the basis of non-compliance may be found in the works by Tanja A. Boerzel and her colleagues from the Social Science Research (ZEI) Centre in Berlin. The causes and remedies are identified as follows: '(1) Source of non-compliant behavior: *voluntary* (cost-avoidance) vs. *involuntary* (lacking capacity); (2) Logic of influencing non-compliant behavior: *rationalist* (changing actors' pay-off matrices) vs. *constructivist* (changing actors' preferences)' (Boerzel 2003: 3, emphasis by author).

On this basis, scholars have developed several dominant approaches to, or strategies of, assessment of (non)compliance among member states. These strategies focus on both domestic causes on non-compliance and relevant instruments used for elimination of incompatibility in regulation. Among those, as T.Boerzel identifies, there are '*sanctioning* (negative incentives), *capacity building* (positive incentives), *persuasion* (learning), and *legal internalization* (litigation)' (Ibid: 2, emphasis by author). The first two strategies refer to earlier-identified *enforcement* and *management* strategies (e.g. Chayes, Chayes and Mitchell, 1998: 39-62; Tallberg 2002). In compliance-through-management strategy, '[s]tates do not so much lack the willingness but the capacity <...> to comply. Or they are unclear about the required conduct since the rule is vague and ambiguous' (Boerzel 2003: 4). In these studies, the issue of *misinterpretation* is raised, though non-compliance is mostly perceived as a problem of 'involuntary defection' (Putnam 1988, Chayes&Chayes Handler 1993, Boerzel 2003b).

Another attempt to judge the players' motives may be found in Asensio 2008. In this work, J.C.Asensio tries to go beyond current transposition research that builds upon the notion of agenda-setters' and veto players' decisive role in implementation process (e.g. Tsebelis 1995, Swank&Steinmo 2002, Falkner 2003), but is still very much focused on causes of under-implementation: 'The higher their [veto players. – S.B.] number, the more difficult is modifying the *status quo* and the worse the timing of transposition' (Asensio 2008: 5). Asensio tries to create a comprehensive scheme of over-, under-, and strict implementation cases basing on motives of agenda-setters and veto players in relation to a particular directive. In his paper, the motives of political players are defined as (1) ideological (corresponding to their ideological platform) and (2) political (aiming at current dominance upon political scene).

J.C.Asensio has identified 9 types of interaction in between a particular directive, agenda-setter and veto player. Among those, there are three cases that might potentially lead to over-implementation. Schematically, they are described as (Ibid: 7-8):

Case (c) *Directive* ≤ *Agenda setter* < *Veto player*

Case (d) *Directive* ≤ *Veto player* < *Agenda setter*

Case (h) *Directive* < *Agenda setter* = *Veto player*

In the first two cases, 'the ideology of both agenda setter and veto player matches the directives'. Indeed, one of the two actors wants to do more than what the directive prescribes (cases (c) and (d)), although both want to over-implement (some aspect) of the directive. <...> In these cases, agenda setter preferences determine the final outcome'. In the third case, 'both agenda setter and veto player are ideologically aligned', and 'lead is generally taken by the agenda setter' as well (Ibid: 8). As B.Steunenberg argues, congruence and coherence between ideologically aligned agenda-setters and veto players appears when the issue is not salient enough or when there are previous coalition agreements (Steunenberg 2007: 32).

Though the 'veto player' methodology has been already heavily criticized and called 'sometimes-true theory' (Falkner et al., 2007), we see useful elements in J.C.Asensio's schemes of power distribution within the implementation processes. But there is still an issue not addressed in these two quite balanced schemes by Boerzel and Asensio.

It seems we need to know whether there is some non-ideological agenda-setting or veto playing beyond the Asensio's scheme (that is, less formally bound but actively involved players like lobbying groups or politicians with non-political purposes) and what their role may be in promoting (or blocking) over-implementation. Probably, over-implementation may also occur when veto playing is too weak to oppose articulated non-political aims as well, not just ideological or political ones. In this case, an 'EU notion' may play a *shielding role* in addressing needs of domestic players. In Boerzel's words, in case of involuntary misinterpretation, the responsibility for defection seems to be laid upon EU policy makers who do not clarify the rules enough, not upon the domestic interpreters. The

case of *voluntary misinterpretation*, though, seems to be omitted from the discussion, since the EU controlling bodies are naturally and widely perceived as capable of identifying such cases which would lead to sanctioning and raising costs for the incumbent elites. But we argue that *excessive promotion of implementation and taking preventive regulatory measures that respond to EU objectives* (and altogether could lead to over-implementation) may leave the national arena untouched by the EU control, at least temporarily. In other words, cases of over-implementation need to be checked for their ***shielding role***. Schematically, in line with Asensio's method, such cases may be described as:

Veto player < Directive + Agenda setter (neglect of veto playing, over-implementation of a directive)

Or

Veto player = Directive < Agenda setter (neglect of veto playing, use of a directive as a shield, under- or misimplementation promoted as over-implementation)

3. And the third question to address is *how*: what are the factors that create an opportunity of over-implementation? Whose role is the biggest in the whole case? Here, our research inevitably involves multi-level governance assessment, since we need to know what mechanisms on the EU level allow over-implementation and whether at all it is the EU level that creates chances for over-implementation. Then, we need to know the factors that not just allow but *directly lead* to over-implementation. This implies that we need to investigate the level of policy-setting *and* the level of domestic negotiation (agenda setting and veto playing: what national powers shape over-implementation decisions and what their purposes are), adaptation (legislative base and process before and during law change) and implementation (practical consequences for domestic players, further changes in legislation, further negotiation and blocking attempts etc.). We also need to know whether the EU level identifies the over-implementation case as such and how it reacts to it.

Research outline

Based on the three questions posed above, a rough hypothesis (or, rather, a research idea) can be formed.

1. We assume that over-implementation cases may represent the cases when an EU strategy is misinterpreted. Many cases may be based on non-intentional misinterpretation; in these cases, compliance strategies that involve clarification and other soft measures. But there may also be cases of *intentional misinterpretation*; in these cases, 'over-implementation' in both law and public discourse may be used to shield the real purpose of changes in legislation.

2. Over-implementation cases, we might assume, appear when there is a *condition for misinterpretation*, the one that allows misinterpretation of EU purposes in favor of domestic players. Thus, there is probability that the more 'domestic-oriented' implementation process is, the more probable intentional misinterpretation is.

3. Such a condition for misinterpretation should be searched for on the *level of EU regulation*, since domestic players may need to base their argument pro (or contra) over-implementation on appeals to some other vectors of *acquis communautaire* or on existing gaps in the EU regulation. In such cases, misinterpretation of one directive using the notion of other directives may indicate a *contradiction* in existing EU regulation on its various levels, including the level of goal-setting. We suppose that domestic actors play the crucial role in over-implementation, but their action cannot be possible without a gap in EU objectives that has allowed misinterpretation. To know to whom responsibility for misinterpretation goes, we need to define whether the EU policies themselves are (or are not) consistent and gap-free. Then, the national-level documents need to be compared to a set of EU policy documents to define the implementation gaps and the role played by the pro-European public discourse.

4. In the end, we would like to define whether the over-implementation case depended purely on domestic political and administrative players, or whether there were other factors influencing the legislative process, and what implications the case may provide for the ongoing debate on EU TV legislation.

As it is evident from the formulation of the hypothesis, in case we succeed in testing it in this and other case studies, adaptation cases may in the future be used for testing the consistency of the level of value-setting in policymaking.

Thus, using situational analysis, we will examine:

- applicability of Italian case to other cases;
- the level of EU 'value setting' (consistency check);
- TV legislation in Italy before the arrival of directives to which the Italian regulation became subject;
- negotiations around the domestic legislative process in the time of most significant adaptation (= motives and actions of agenda setters and veto players in Italian media regulation);
- extralegislativ factors that may have played substantial role in decision-making on domestic level;
- the contents of Italian TV legislation implementing EU objectives and its further development;
- the level of 'misfit' after over-implementation took place;
- EU and domestic reaction to the over-implementation case.

Additional research methodology

One of the existing general implementation schemes may be found in Falkner et al., 2008: 8, Figure 1.1 (see Annex, Table 1a). This scheme reflects a wide-spread approach in implementation studies, when the 'EU component' is seen as a sort of ideal or non-arguable superstructure over a national implementation process. This implies, in its turn, that over-implementation cases need to describe domestic levels implementation only (which is doubtlessly done to make the national and comparative research more focused and substantial). Other research proposes interactive models of decision-making on the EU level and articulates the capacity of member states to shape the final forms of directives, not just to strategically oppose, promote, or neutrally follow their domestic implementation (Boerzel 2003b: 3; for the alternative scheme by Boerzel, see Annex, Table 1b). This line is often followed in 'Europeanization' studies.

Thus, one may distinguish between national-level & comparative implementation research methodology and multi-level governance research methodology. They both need to be used in over-implementation studies.

1. National-level research methodology. Some leading research literature provides us with relevant analytical frameworks for assessing the national level of implementation. For comprehensive reviews of the non-compliance studies based on comparative methodology and national data, see Falkner et al., 2004, Boerzel 2003a, Heinze et al., 2008; for short history of EU governance research debate, see Toemmel 2007: 2-4. Here, we'd like to draw in the methods particularly useful for over-implementation case studies.

First of all, the above mentioned works by Boerzel and Asensio provide analytical tools for assessing motives and predicting actions of domestic players.

Besides this, one of the interesting recent achievements in implementation studies is the 'worlds of compliance' methodology developed from empirical studies by Gerda Falkner and her research partners. The research group has first identified three 'worlds' (groups of countries) where similar implementation strategies (depending on types of national and European-level negotiations, forms of argumentation, administrative power distribution, political culture etc.) are used (Falkner et al., 2005, Falkner et al., 2007); these worlds are: a 'world of law observance', a 'world of domestic politics', and a 'world of neglect'. After studying new member states, the fourth 'world' was identified (Falkner & Treib, 2007: 15) under the name 'the world of dead letters'. For full description of the 'worlds' see Falkner et al., 2008; for short comparison of compliance models by Falkner et al. see Annex, Table 2.

This methodology possesses prognostic capacities in predicting the modes of behavior of decision-makers (both agenda-setters and veto players) in a particular EU member state at two stages (transposition and practical implementation), the stages that are both involved in understanding of over-implementation. But this methodology does not explain the factors that lie behind a particular political decision for over-implementation.

2. Multi-level governance research: administration-focused and value-based methods. As soon as scholars turn to two-level or multi-level analysis of power distribution, the discourse naturally shifts towards analyzing modes of power distribution, or, rather, the modes of governance/government. A concise evaluation of the recent research in this area may be found in Treib et al., 2005. As this work clearly shows, multi-level governance/administration theories focus on administrative and technical features of power distribution and base their research more on current objectives and involvement of public and private sectors into policy development, rather than on evaluation of fundamental EU principles and grade of their implementation. For over-implementation studies, the general use of such methodology would be crucial in determining the principal connection between the mode of governance, from one side, and possibility, frequency, and causes of over-implementation, on the other side. Such connection is far from being self-evident. The four modes of governance used in EU are summarized by Treib et al. according to legal instruments used and flexibility of implementation (see Annex, Table 3), and the second criterion demonstrates the high role that over-implementation might play in undermining different modes of governance.

But this methodology does not fit for a case study, where the research aim is to define one particular set of causes and consequences of one particular over-implementation case. We do not exclude, though, that the next stage of over-implementation studies would deploy this methodology.

More useful for a particular case study may be the research that focuses on both models of reaction of member states to EU decisions (the 'taking' stage, as T.Boerzel puts it) and models of shaping these decisions (the 'shaping' stage), since it provides deeper understanding of the factors that are relevant in both cases and thus are more likely to be involved in over-implementation (the 'taking' stage). The research by T.Boerzel (Boerzel 2003b: 10-11) provides us with a comparative scheme that unites the EU and national levels and creates models for 'taking' (leaders vs. laggards) and 'shaping' ('fence-sitters', 'foot-draggers', and 'pace-setters'). The comparative scheme for the 'taking' stage provided by Boerzel (see Annex, Table 4) helps in understanding of what political and administrative factors shape the picture in a particular country; the analysis provided in the same paper also clarifies that administrative factors show more relevance than political ones. The scheme also allows building hypotheses of conduct of domestic players, and case studies on over-implementation may be useful for proving (or otherwise) Boerzel's findings in a particular subject sphere (e.g. media studies) or even for bringing in other relevant factors to Boerzel's methodology.

Just as useful could be the works that combine the objectives-setting and policing level and the national implementation level. Here, the most-embracing are *subject-field studies* where research is focused on stages of strategic policy implementation starting from value- and objective-setting to implementation assessment and monitoring. The level of examination values vs. objectives is crucial

and is present in such studies for two reasons: 1) the common and stable values lay behind and define current objectives, and to assess the objectives and their implementations one needs to clarify the values level; 2) if the objectives contradict each other, one needs to know whether the values or their interpretation (objectives level) oppose each other. This level is, again, crucial for identifying gaps and contradictions on the stage of policy formulation, and case studies help define more exactly these gaps in different countries and 'worlds of compliance'.

We here rely on EU media and TV policy, TV regulation and media law implementation studies conducted by both EU institutions and independent researchers in and outside EU. Among those, one may name Iosifides 1997, Harcourt 1997, Vartanova 1997, Scheuer&Strothmann 2002, Ward 2001, Ward 2004, Ward 2005, Bykova 2004, and monitoring documents by European Commission including Green Papers on media pluralism and reports by EU bodies and independent research groups, like 'Transfrontier Television in the European Union: Market Impact and Selected Legal Aspects' (Strasbourg, 2004) and 'Television across Europe: Regulation, Policy and Independence' (Media Network Program of Open Society Institute and EU Monitoring and Advocacy Program, October 1, 2005).²

THE CASE CHOSEN: ITALIAN TV REGULATION DURING 'DIGITAL SWITCHOVER'

TV regulation in Italy: a trouble identified

On June 25, 2008, 'an investigation by the Monitoring Committee into an application to initiate a monitoring procedure with respect to the monopolization of the electronic media and possible abuse of power in Italy confirmed that Italy's media spectrum was clearly experiencing an anomaly in its television sector, with one of the highest levels of concentration on the national level in Europe. However, Italian citizens generally have access to a wide variety of information sources and content diversity across the media landscape. Therefore, the Assembly concluded that the anomaly in one of its electronic media sectors did not in itself warrant the initiation of a fully fledged monitoring procedure with respect to Italy but that the legislative developments in Italy should be followed in the Monitoring Committee's periodic reports.'

This quote from the PACE Resolution 1619 (2008) '*State of democracy in Europe. Functioning of democratic institutions in Europe and progress of the Assembly's monitoring procedure*' clearly states that the anomalous Italian TV sector had long been under intent observation from the EU side, and this eventually led to a legal monitoring procedure. Though the citation also states that pluralism of mass media in Italy is generally there, the Resolution does not clarify whether this pluralism comes from the TV sector or is ensured via other media. Meanwhile, in summer 2007, the European Commission warned Italy, threatening a heavy fine if it

would persist in not emending legislation so as to bring to an end a monopolistic situation endangering the development of a free and competitive market in the media field (see Recent policy issues and debates., 2008). Since then, the Italian legislation in TV sector, thanks to another governmental crisis and extraordinary parliamentary elections which led to the replacement of the ruling party coalition, has not been seriously amended.

This, in its turn, creates a 'point of no return' for a country which is one of the EU founding fathers: further prolongation of the current state of things in TV law can in a short-term perspective provoke not only closer monitoring but severe punishment (or, at least, such attempts) with the involvement of judiciary organs of the EU laid both on the state budget and on private entities. The monitoring procedure itself which goes parallel to similar procedures in 'new member' and candidate countries shows that the current system of television law in Italy is, at least in elements, incompatible with the EU strategies (PACE Resolution 1619 (2008)). The extent and potential resolution of this incompatibility is still in question today.

The case of Italian adaptation of the EU policy in TV regulation (especially in the area of the so-called 'digital switchover') may be perceived as an over-implementation case, because the articulation of national TV policy (including implementation strategy for 'digital switchover') was to reach the goals set by the EU before other member states do, namely by 2007 (*the factor of untimeliness*), and more fully than other member states, since the goals reached earlier leave space for further development (*the factor of over-reaching goals*). But this nationally articulated and legally introduced policy that we describe below *sharply contradicts* with the findings of the EU controlling institutions which have indicated non-compliance and have set a regular monitoring procedure. Thus, we need to check whether it was a real over-implementation case, or something else occurred. In this particular case, the questions of *why*, *how* and, most important, *what* about over-implementation stand in its full volume.

Italy: a 'special case' or a 'model state' for non-compliance assessment?

One would argue that, for many reasons, Italy is a special case in today's European Community and cannot be regarded as a model for assessment of non-compliance. For us, though, besides the fact that any country is a special case, there is a range of arguments that helps us regard the particular case of TV regulation in Italy to be more a typical than an outstanding one.

One of these arguments is how Italy-a-member-state is generally perceived in implementation studies and press involved in Europeanization discourse. Italy is often placed in the group of 'laggards' (Boerzel 2003b: 11-12), 'member states with the worst compliance record' (Sprungk&Dudziak 2007: 3-5), or countries not doing as well as they should (Falkner et al., 2005; for a recent opinion of *European Voice*, see Casey 2008). If experts outline a group of constant laggards (Greece, Belgium, France, and

several new member states), then Italy could be more similar to other non-complying countries than one may think. Thus, short examination of Boerzel's scheme (see Annex, Table 4) shows that Belgium is the member state where combination of political and administrative factors resembles Italy to the biggest extent, and Belgium is also often mentioned as a non- or slowly-complying member state.

Italy, though, has unique political and administrative features, as any political culture does. Thus, Boerzel's scheme lets us presume that simultaneous high level of political legitimacy of EU and its policies and high levels of political and administrative fragmentation could allow 1) interpreting needs of domestic players in pro-European tone and 2) then disorganizing the opposition and using of both formal and informal channels of decision-making. Use of informal channels is supported by media vs. political systems research where Italy is described as a clientelist country (as defined by Hallin&Mancini 2004: 51-68).

Media vs. political systems research proves Italian typicality in another way, too. Italy is an 'old democracy' with unique levels of interlacing in between political, economic and media elites. A similar process of elite fusion that took place on transitive media markets of post-Communist new member states and neighboring CEE countries in 1990s is today called 'Italianization' in media research (Splichal 2001, Jakubovicz 2001). This viewpoint upon similarity of Italy and new member states is, in its turn, supported in 'worlds of compliance' research by Falkner and colleagues, who first put Italy to the 'world of domestic politics' (e.g. Falkner et al., 2005) where '[d]omestic concerns frequently prevail if there is a conflict of interests' and 'politicians or major interest groups even openly call for disobedience with European duties' (Falkner&Treib 2007: 4), but then moved Italy to the 'world of dead letters' where 'there is transposition into rather good domestic laws, with domestic politics being crucial, but countries lack proper institutions and processes for turning these laws into action' (Ibid: 15-16). The 'world of dead letters' is the one where many new member states are placed; the whole concept of this 'world' appeared after new member states have been studied in terms of their implementation procedures. This means that case studies in Italian media may be useful for explaining implementation difficulties in new member states.

Studying media regulation case may also be helpful for explaining and predicting non-compliance cases in other areas of policing in Italy, since the factors influencing decision-making in media regulation change may not be specifically of media origin; we, rather, expect it to be more of political and administrative origin, even if media is the zone where political, economic and technical regulation aims meet.

All these arguments let us insist that case study of over-implementation of EU objectives in recent Italian TV regulation may be proved useful as a model, rather than as an exception.

RESEARCH PAPER

For full research paper, see UACES 'Values and European Union' conference research papers' database. Here, we provide a shortened paper in order to shift the focus to theoretical implications of our research.

EU Regulation of TV sector: basic principles

We have detected three clusters of legislative principles in the European TV sector. The first cluster is composed of fundamental international principles which lay in the foundation of the EU, including the two most important ones. The first is the notion of common market which is interpreted as a border-free space where free movement of goods, services, capitals and people is ensured (Art.14 of the Roman Treaty). The second is the fundamental freedom of expression which, in its turn, is interpreted as a basic human right, and media are perceived as a natural source and force for expressing views and attitudes. This notion is ensured, on the international level, by Art.10 of the Convention for the Protection of Human Rights and Fundamental Freedoms and, on the European level, by the Art.11, §2 of European Union Charter of Fundamental Rights (Bulletin EU. 2000. №12. P.3).

The second cluster of EU TV regulation consists of the principles approved internationally but important for individual spheres of law enforcement only, like transparency requirements, copyright law and principles of authorship, recommendations on coverage of terrorism, media education initiatives and some other areas that affect the functioning of the TV sector.

But the most important for our research is the original supranational European law in TV sector, which we consider the third cluster. After a range of research efforts, we've identified seven basic principles enforced by 'hard' and 'soft' law:

| Law principle | Law enforcement |
|--|--|
| (1) <i>Ensuring freedom of expression as one of the basic human rights</i> | Adequate adaptation of one of the general international principles: freedom of expression on television is recognized as the principle of fundamental importance for the whole EU TV sector. |
| (2) <i>Ensuring transition of the TV sector to information society standards</i> | The EU policy on mass media is formed on the framework of the concept of information society (IS). Today, one can distinguish two major parts in transition of TV sector to the IS standards. They are: 1) 'the digital switchover' and 2) the convergence of traditional and new media formats towards a single communications market. Resolution of the issue of growing media concentration is put to dependence upon the development of information society. |
| (3) <i>Safeguarding democracy via the means of television</i> | Basic differentiation in between external (market) and internal (contents) pluralism is formulated. This differentiation is provided as a basis for judgment in disputes over media concentration and flaws of democracy on television. CE Directive 2002/21 demands member states to create monitoring and regulatory authorities in the communications sector and ensures their independence, impartiality, and transparency. |

| | |
|--|---|
| (4) <i>Promoting European-oriented TV content</i> | The measures for safeguarding European dominance in the media contents may be divided into direct and indirect ones. The direct measures are envisaged in the ‘Television Without Frontiers’ Directive of 1997 in the form of proportionate quotas of Europe-produced programmes (see the Directive for details). Indirect measures are based upon the market liberalization which is, here, understood as a tool for creation of pan-European media holdings strong enough to compete with the external media proprietors for the common European market space. |
| (5) <i>Ensuring market plurality of the TV sector</i> | Media pluralism is understood not just as pluralism of media content but also (and mainly) as pluralism of the mass media market. Liberalization of the European media market is also viewed as the means of its protection from foreign acquisition. Today, liberalization is viewed mainly as: 1) the ‘transfrontier’ notion; 2) absence of restrictions on media concentration on the national level (no special media law on concentration by far, and no EU TV antimonopoly body); 3) the principle of the country of origin implemented by the TWF Directives. For TV sector, this principle basically means that inside the EU any broadcasting organization is subject to only one juridical system (the national one). |
| (6) <i>Preserving public service broadcasting</i> | Special role of the public service broadcasting is the role of serving to fulfillment of democratic, social and cultural needs of the communal society; the second role is preservation of content pluralism. European Commission has a right to control the state aid in order to avoid misuse and excessive compensations. |
| (7) <i>Preserving cultural diversity in the European Community via the means of television</i> | The general outline of the policies currently implemented is, unsurprisingly, focused upon the cultural dimensions of contents diversity and on assimilation and lowering the tension in migrant groups and national and other minorities. |

As our research has shown,

1) the basic EU document that would provide the understanding of the EU policy towards television market and TV contents for the years 2000 has been TWF Directive 1997 amended in the year 2007. It directly embraces the principles (1) to (5) and creates a special focus upon the principle (7).

2) The main issue for the media regulation in 1990s when the basic configuration of the current media law was established was the form and purpose of market liberalization. This issue, in its turn, embraces questions of national media concentration, transition to information society, protection of European-oriented content and international competitiveness of EU media entities etc.

3) Principle (5) [*ensuring market plurality of the TV sector*] has a potential of contradicting with principle (3) [*safeguarding democracy via the means of television*], especially on the national level. This point of view expressed by both legislators and independent commentators is supported by the substantial growth of the speed and volumes of the EU media M&A deals in 1990s; in eventually led to creation of ‘EU-casting’ TV corporations. Table 5 (see Annex) shows the level of media concentration in 9 EU member states.

Regulation of TV sector in Italy: An Outline Prior to Year 2004

The overwhelming part of commentators (from journalists in and outside Italy, European Federation of Journalists' and Reporters Without Borders' rapporteurs, authors of Italian manuals on media law to OSCE and Venice Commission observers) agree that the so-called Gasparri Law introduced and adopted in Italy in 2004 was the point at which 'the complexity [of the regulation of radio&television sector] found its culmination' (Bianco 2007: 6) because no one Italian law on audiovisual sector 'had ever reached such a level of entanglement' (Ibid: 7). We hold it necessary to show how the picture had evolved before this controversial law, which is said to be the primary source of incompatibility with the European notions, was brought to life.

| Law principle | Law enforcement in Italian law system |
|--|--|
| (1) <i>Ensuring freedom of expression as one of the basic human rights</i> | Art.15 and Art.21 of the national Constitution (for detailed comments on the Articles, see Elementi..., 2008: 167-184). |
| (2) <i>Ensuring transition of the TV sector to information society standards</i> | <p>First, the digital switchover between 1990 and 2001 was welcomed by a number of founding laws.</p> <p>Before 2004, a special cluster of laws and provisions of regulatory bodies ensured the development of DTT; the main one is the Law N66 (2001) which created the notion of favoring the passage from analogous to digital broadcasting and even fixed the date for complete digital switchover for Italian analogous broadcasting on the beginning of 2006 – the date, since then, subject to constant prolongation.</p> <p>Telecommunications sector was also regulated according to the CE Directives, and here liberalization of the market was also the major trend. In 1997, the Laws 249 and 318 foresaw the establishment of concessions system. No convergence to a single communications market was foreseen by the Italian media law before 2003, but then the Law 249 (1997) introduced common norms for the markets of audiovisual and telecommunications services in terms of user access. In 2003, the Code of electronic communications (the Legislative Decree N259 (2003)) combined digital&cable television services with other means of electronic communications in terms of infrastructure.</p> |
| (3) <i>Safeguarding democracy via the means of television</i> | <p>First and foremost foundations for objectivity and independence of the TV sector were laid down in the Law 103 (1975). But, as many commentators note, this principle was never fully introduced to the Italian law due to constant political aggravation of the legislative process. Principles of distinguishing internal and external pluralism were established. The legislative activity of the Court never stopped before 2004 (Bianco 2007: 40). Its decisions effectively influenced the main laws introduced in 1990s. Another development corresponding with the European vision was the creation of the Authority for guarantees of communication (AGCOM). Specific Italian means of safeguarding political pluralism on TV is the normative complex applying to political communication during and outside the election periods. Specific Italian means of safeguarding political pluralism on TV is the normative complex applying to political communication during and outside election time ('Par condicio' law).</p> |

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| <i>(4) Promoting European-oriented TV content</i> | The process of securing the 20% limit of European-produced contents on the legislative level followed the general framework of the TWF Directives. |
| <i>(5) Ensuring market plurality of the TV sector</i> | Regulation of market plurality followed and conserved the disproportionate development of both national and local TV markets, favoring major players in contradiction with the rules of non-admission of dominant positions. In heavy tension between legislators and Constitutional Court, Italy took part in the three quite distinctive pan-European waves of regulation of media ownership (those of late 1980s, early 1990s and late 1990s) which correspond with the steps of EU regulation of this issue (Harcourt 1997; Annex, Table 6). But the regulation fixed the so-called ‘duopoly’ of two major players – state-controlled RAI and Mediaset controlled by Fininvest Group where Silvio Berlusconi was one of the major shareholders – rather than created a competitive market. |
| <i>(6) Preserving public service broadcasting</i> | The basic trend of market liberalization happily coincided in Italy with preservation of the Radiotelevisione Italiana (RAI), though it has been passing through privatization since 1995. Being after 1995 a formally private organization, RAI fell under the restriction of not collecting over 30% of revenues in the sector. |
| <i>(7) Preserving cultural diversity in the European Community via the means of television</i> | The principle did not get much attention of the legislators before 2004. |

Thus, this quick analysis of legislative initiatives of 1975-2003 may bring us to the conclusion that the development of Italian TV law system was coherent with the European goals and standards...

Extralegislati ve Conditions for TV Regulation: Politicization of Legislative Process

...In reality, the legislative process in media sphere and its legal consequences are aggravated by unduly high levels of media concentration and heavy politicization of the decision-making process. There are five extralegislati ve conditions that were shaping the scene of legislative process before 2004:

1. The so-called ‘duopoly’ (RAI and Mediaset) in TV ownership at both national and local level;
2. Unresolved conflict of interests directly connected to the figure of Silvio Berlusconi and his family, absence in Italian law of any mechanisms capable of resolving this conflict, and strong opposition of the ruling majority to introducing those mechanisms;
3. Fall of political independence of RAI that took place during its privatization;
4. Politicization of and unfair market conditions for the digital switchover, since Mediaset possessed much bigger resources for digitalization and thus put to risk the extensive liberal growth of digital TV space;

5. Personalization of political communication on the 'Par condicio' basis (complete abolition of political advertising and promotion of talk shows and TV debates) in favor of party&coalition leaders.

This was the political and legislative climate before the adoption of the Gasparri Law.

The Gasparri Law: A Case of Too Much Compatibility

Developed by the pro-Berlusconi 'technical' government of 2003 and presented to the Parliament by the Minister of Communications Maurizio Gasparri, after certain debate the future Gasparri Law passed the Parliament in autumn 2003. Vetoed by the President of Italian Republic Carlo Adzeglio Ciampi, it returned to the Parliament and after slight amendment passed it again in May 2004 while the President could not intervene for the second time (otherwise he probably would).

Promoted as open to the future and fully European-oriented, this law used the notion of information society as a background for fostering market convergence and the notion of market liberalization (through its extensive growth) as the basis for blurring the growth of existent dominant players. Here's the analysis of the most controversial propositions of the Law in terms of both their contradiction with the EU regulation and favoring the dominant players.

| Principles | Provisions of the Gasparri Law | Arguments in favor of introduction | Concerns expressed by the OSCE Representative, CE Venice Commission and other commentators |
|-------------------------------------|---|--|---|
| Principle (2) [information society] | The concept of an "integrated communications system" (SIC) instead of 'relevant markets' is introduced. The umbrella term was coined to establish a revenue threshold and is considered to include a wide range of media pursuant to Article 15 (3): 1) national and local broadcasting including broadcasters funded by pay-per-view, advertising, license fees, sponsorship and teleshopping revenue streams; 2) any type of publishing (newspapers, magazines, books, electronic publishing); 3) cinema, television and music production and distribution; and 4) any form of advertising (including outdoor advertising) as well as | The reason for widening of the definition of the media market is the fact that all the different markets which are connected to television are gradually converging to form a single one. The SIC is therefore designed to allow the expansion of these markets, particularly in view of digitalization. In this context, the threshold of 20% of the channels (or programme output) will be capable of avoiding concentrations. | 1) the new permissible thresholds of number of channels or output and of revenue are not going to put an end to the duopoly RAI/Mediaset, but instead they will strengthen it. 2) It is true that more channels will be available; however, the primary beneficiary of this will be Mediaset, which will expand even further. 3) The widening of the SIC will make it virtually impossible for Mediaset to fall within the concept of "dominant position". 4) The main effect of the widening of the media market is the widening of the publicity share, which has resulted in Mediaset being allowed to continue to use the frequencies occupied by Rete 4 instead of passing them to Europa 7, thus frustrating the effects of the relevant judgments of the Constitutional Court. 5) The concept of SIC as an economic indicator of market share considerably dilutes the effectiveness of instruments used to protect external pluralism based on share of revenues "on |

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| | revenues from the Internet. | | individual markets”: a company could have extremely high degrees of revenue shares in individual markets, whilst at the same time remaining below the 20% threshold for the whole sector. 6) SIC also appears to be at odds with the definition of media markets that the European Commission has employed in its competition-related decisions involving the television sector. The application of SIC is likely to allow for the transferral, to a large extent, of the current levels of concentration in the national television market to digital platforms. As a consequence, the duopoly of Mediaset and RAI will continue in the digital television sector: in addition, with the changes brought about in this Law, this will be within the legal parameters set by. |
| Principle (5) [market liberalization] | Pursuant to Article 15 (2), any one company may not earn more than 20% of the revenues of the whole media sector that is included in the concept of SIC. | The law applies a single threshold to the whole media market. 20% figure is lower than the previous provisions | This norm directly contradicts with the CM Recommendation (99)1 which says that ‘companies which have reached the permissible thresholds in a relevant market should not be awarded additional broadcasting licenses for that market’. |
| | Maximum threshold of 20% of national channels that a broadcaster is allowed to operate is established. The Art.15 also establishes limits on market share for national radio and television broadcasters once the frequency plan for digital terrestrial television has become operational. Article 15(2) complements Article 15(1) and sets out the concept of the integrated communications system that establishes a threshold for market share based on revenue share. | | 1)The framework for establishing the 20 percent limit of market share is (in the translation that we have used) ambiguous (more than one method of calculation of ‘20%’ is justified by the Law). 2) Many of the newly available channels are likely to have very small audience shares. Thus the threshold protecting media pluralism, as measured by 20% of channels, is not a clear indicator of market share. 3) This threshold is no unambiguous indicator of balance and pluralism in the television and radio market as a whole. Larger companies will enjoy greater purchasing power, significant advantages over other providers, and an unlimited share of the audience, if this scheme is put in place. |
| | Cross-media provisions are contained in Article 5 (g1) and (g2) and Article 15 (4) and (6). Pursuant to Article 15 (6) television broadcasters who operate more than one national network may not own shares of newspaper companies until the end of 2010. Newspaper publishers will be allowed to enter the television market with the | 1) Market convergence is a natural process, and Italy should be a leader in the application of relevant rules. 2) The law might encourage newspapers to invest in the local television sector. | 1) The current duopoly will extend to digital services. 2) Cross-ownership rules are in fact considerably liberalized in favor of existing large players. As a TV proprietor, Mediaset could enter the print media market in 2010; as press proprietor, Mediaset could enter TV and radio market by the end of 2008. |

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| | introduction of the Law. New norms of advertising volumes on national channels are introduced | | 1) The norm contradicts with the norms of TWFD 1997. 2) Teleshopping spots are not included into overall calculation of as volumes. |
| Principle (6) [preserving PSB] | Article 20 names RAI-Radiotelevisione italiana Spa as the company to which “the general public television broadcasting service franchise shall be granted to for a period of 12 years” – i.e. until 2016. | 1) Privatization of RAI was approved at a national referendum. 2) RAI needs reforming to withstand the challenges of the digital era. 3) The prospective privatization should lead to a lesser degree of politicization of RAI. 4) private investors will have a genuine opportunity of becoming shareholders of RAI. The Board of Governors will be partly composed of private individuals. | 1) RAI has so far been the sole public service licensee by virtue of a series of conventions with the Italian Government. The latest convention of 1994 has a duration of 20 years, i.e. it will expire in 2014, two years before the expiry of the new franchise. It is unclear whether this state of affairs is affected by the present law. 2) Interest in the purchase of shares will be low. It will be more interesting to purchase small private networks. In addition, the likely investors will be entrepreneurs belonging to the political area of the Prime Minister. Their representatives on the Board of Governors will, in the view of the representatives of the opposition, therefore be in line with the current majority. 3) There is the possibility that the Governors representing the private shareholders will belong to the political parties of the majority. 4) Methods of funding RAI (setting the level of the licence fee for only a year; possible contracts with public authorities for paid services) are not fully consistent with the Recommendation No. R(96) 10. |
| | Article 16 (2f) says “the right of the company holding the franchise to take economic decisions, including decisions as to the organization of the firm”. | | This does not seem to guarantee the full institutional independence and autonomy of the public service broadcasting organization. This, in its turn, contradicts with the Recommendation No. R(96)10 on the Guarantee of the Independence of Public Service Broadcasting (‘member states include in their domestic law... provisions guaranteeing independence of PSB’) |
| | The Director General of RAI is appointed by the Chairman of the Board and the Minister of Economic Affairs. | The end of ‘lottizzazione’ system | The role of the parliamentary commission in programme matters and the manner of developing the service contracts, with strong government participation might also be problematic. Governmental intrusion contradicts with the Appendix to Committee of Ministers’ Rec. (2000)23 “on the independence and functions of regulatory authorities for the broadcasting sector”. |
| | The public broadcaster is subject to control by a parliamentary commission for the general direction and | | The commission has, and appears that it will retain, extensive powers and competencies vis-à-vis RAI, including some decision-making powers concerning programming and finance. |

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| | surveillance of radio-television services. | | |
| | Article 17 defines the system of allocation of airing time dedicated to government. | Article 17 ensures that the allocation takes place in an appropriate manner. | Article 17 appears to be formulated in too vague terms, which seems insufficient to rule out potential abuse by the government of the right to obtain free air time. The duty to provide free air time simply “on request” of the Presidency of the Council of Ministers could turn the public broadcaster into a mouthpiece of the government. This contradicts with the CM Recommendation(99)1. |

Thus, in assessment of the EU-entitled commentators, the Gasparri Law has appeared to be:

- contradicting with both national and European law, including the TWFD 1997;
- reproducing, hiding, and shielding, rather than eliminating ‘the three main worries’: the duopoly, the high concentration in commercial television, and the political domination of RAI;
- favoring existing dominant players and potentially extending the current status quo to the digital broadcasting market;
- inconsistent in terms of preserving independence of PSB;
- incapable of resolving controversial cases similar to Europa 7 case, when the frequencies that had to pass to ‘Europa 7’ broadcaster via a tender procedure remained under Retequattro because of the ‘frozen’ law.

If OSCE Representative just foresaw that the Law ‘is likely to function as another ‘*photocopy*’ legislation’ (Visit to Italy., 2005: 9), other commentators expressed considerably higher concerns. Some have noted that ‘[a]mending the Gasparri Law, by loosening the existing duopoly and by establishing the conditions of a more pluralistic media system, is presently one of the utmost priorities of the centre left government (Sector specific legislation..., 2008). The then RAI director Lucia Annunziata said that destruction of the RAI Directors’ Board may put the broadcaster under a significant risk.

Being extremely complicated, the Gasparri Law was the next year simplified and systematized and took the shape of the Law N177 (2005) named ‘Testo unico della radiotelevisione’. Since then, the text has not been seriously amended. Among the several draft laws dealing with the radiotelevision system and with the reform of RAI put forward by Minister Gentiloni of Prodi’s 2006 government, the most noteworthy was the one adopted by the Cabinet at the end of 2006. This draft law, again, required both RAI and Mediaset to give up one of their three networks by transferring it to TDT in order to make analogue frequencies available for new incoming actors (Brogi 2007). By 2008, though, the hypothetical Gentiloni reform ‘finished in a box’ after the resignation of Romano Prodi (Longo&Piana 2008).

In these circumstances, AGCOM remains the only regulatory body in the field that could pose both restrictions and fines onto the major players. The practice,

though, shows that here the effect is also under question. Thus, after long delays, in July 2005 the Authority felt obliged to inflict a heavy fine both on RAI and Mediaset for over-reaching the 20% threshold in the previous years. Needless to say both companies appealed the decision (Sector specific legislation..., 2008).

European Answer: Growth of Tension

If in Italy the level of criticism towards the Gasparri Law seemed high, it was even higher in the EU. From 2003 to 2007, PACE, OSCE and other legislative bodies took more and more strict measures to resolve the 'three worries'.

In 2003, an initiative PACE group recommended to investigate the possible monopolization of the electronic media and abuse of power in Italy. In April 2004, parallel to investigation process, a EP Resolution 'on risks of violation, in the EU and especially in Italy, of freedom of expression and information' was published. Both documents first resulted into a Report of the Committee on Culture, Science and Education on monopolization of the electronic media and possible abuse of power in Italy (Doc. 10195. 3 June 2004; two Opinions added in June 2004) and then into the PACE Resolution 1387 (2004) 'Monopolization of the electronic media and possible abuse of power in Italy.' This most important Resolution has underlined that 'the Parliamentary Assembly cannot accept that this anomaly be minimized on the grounds that it only poses a potential problem' and also asked the Venice Commission to give an opinion on the compatibility of the Gasparri Law and the Frattini Law with the standards of the Council of Europe in the field of freedom of expression and media pluralism.

In the same 2004, PACE issued a Report (Doc. 10029. 12 January 2004) and Recommendation 1641 (2004) on public service broadcasting; Italy was one of the major focuses for these documents. Similarly, Italy became an object of heavy criticism for at least three international journalist organizations: RSF, IFJ, and International Press Institute in Vienna.

2005 was the year of major criticism issued by the monitoring bodies. The Venice Commission, in response to the PACE request, issued over 10 documents which altogether resulted into the official Opinion, highly critical towards both Gasparri and Frattini Laws. The same year, OSCE Representative published a report named 'Visit to Italy: Gasparri Law' where he officially recommended Berlusconi to hand over his media assets to a blind trust while being in power.

As a result, in 2006 a group of PACE deputies has applied to initiate a monitoring procedure 'concerning the monopolisation of the electronic media and the possible abuse of power in Italy' (Motion for a resolution. Doc. 10811. 24 January 2006). The procedure started soon. Though in 2008 PACE 'concluded that the anomaly in one of its electronic media sectors did not in itself warrant the initiation of a fully fledged monitoring procedure with respect to Italy' (Resolution 1619

(2008)), its legislative developments will be followed in the Monitoring Committee's periodic reports.

In 2007, action took place. The case of Centro Europa 7 was resolved in favor of the company who was the legitimate license holder (Judgment of the Court (Fourth Chamber), 31 January 2008, Case C-380/05). Then, in July, the European Commission warned Italy, threatening a heavy fine if it would persist in not emending legislation so as to bring to an end a monopolistic situation endangering the development of a free and competitive market in the media field. In the end, in December, the European Commission sent Italy a letter of formal notice for violating EU advertising rules under the Television without Frontiers Directive (Brogi 2007). Thus, today almost all the legislative possibilities for resolution of the situation are exhausted; the next step would be juridical enforcement of the EU legislation in Italy.

CONCLUSION: POSSIBLE CONCEPTUAL IMPLICATIONS

Our findings allow us partially prove what we hypothesized.

Our main finding is that EU policy towards TV regulation, more precisely regulation of TV digitalization, seeks to implement into legislation two core European values: market pluralism of media (an 'economic' value) and political pluralism (a 'political' value). This corresponds with the bipartite nature of media product and media industry. But the two values have high potential for internal controversy. The general problem of this particular Italian case is that contradiction between principle (5) and principle (3) remains in the EU unresolved on the national level: that is, market liberalization directed against non-European intruders let European-scale market players create threats to democratic processes conditioned current digitalization process and by weakness of local elites. This weakness leads to potential impossibility of resolution of the market concentration and political pluralism of media issues without direct intervention from the EU side. More than that, digitalization of TV and regulation of 'digital switchover' potentially deepen this controversy, rather than destroy it.

On the level of policy-setting, we've demonstrated that there was a much-discussed gap in European policy objectives. This gap:

- 1) has left some space for misinterpretation in terms of definition and timing of digital switchover;
- 2) has created a national-level market liberalization trend that potentially allows misinterpretation for the purposes of further monopolization of national media markets and, thus, still has inevitable political implications.

On the national level, we've found that veto playing on the level of presidency, parliament, and pressure groups was blocked by a complex of legal, economic, and administrative factors. This meant that agenda setters (namely, pro-Berlusconi parliamentary coalition, ministers of the relevant government, and their supporters)

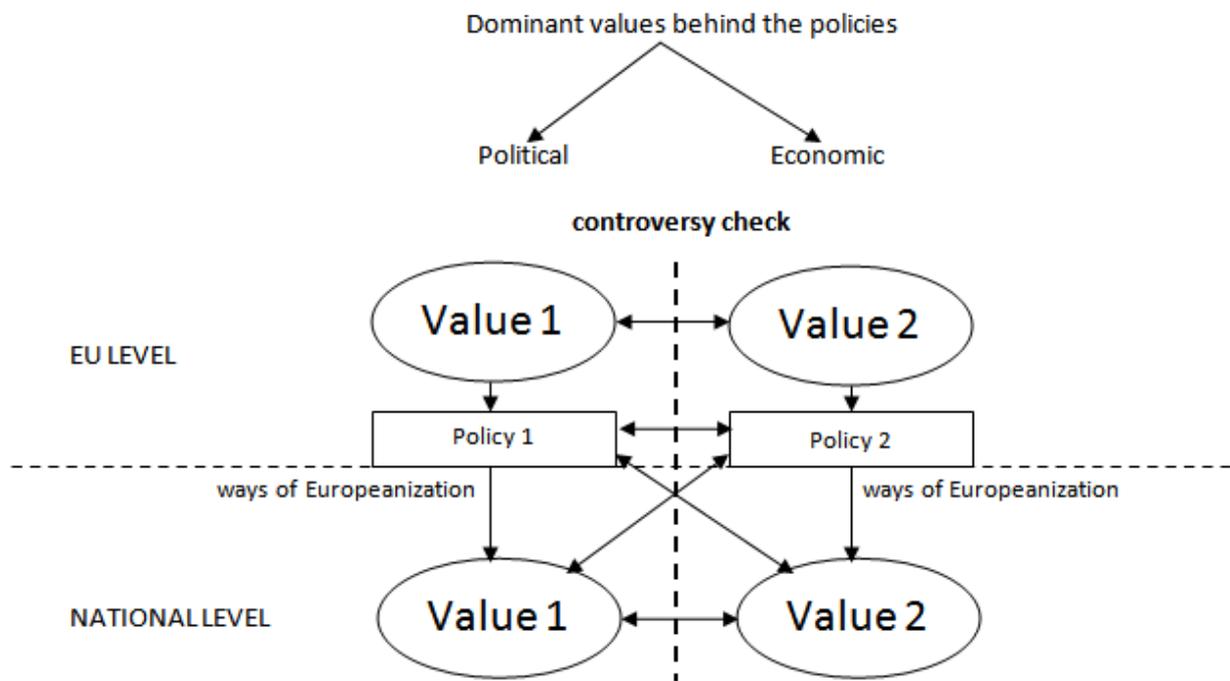
went rather in a majoritarian way than in a consensual one. The discussion in Italy and the subsequent legislation took shape of one of our schemes proposed above:

Veto player = Directive < Agenda setter: in shaping the legislation, both veto players' demands and objectives of a directive are blocked and/or misinterpreted.

Our analysis allows us calling the Gasparri case 'a case of too much compatibility', or a *pseudo over-implementation* case: two of the EU basic intentions (market liberalization and digital switchover) that were said be a cornerstone for a comprehensive national law in the TV sector were in fact misinterpreted. This misinterpretation, in its turn, may as well be interpreted as having different *scopes*: from just 'trying too hard' to 'photocopying' previous legislation without real change to the situation on the market or, more likely, 'tailor-making' in favor of large market players, namely Mediaset. The current duopoly both contradicts with the principle of preserving democracy and supports the free market ideology; throughout last 25 years, national legislation proves to be a weak shield for both external (duopoly) and internal (conflict of interest and political influence) media pluralism. And though the case may look as an over-implementation one, being in reality a *pseudo* case, it supports the viewpoint of Falkner and colleagues who have moved Italy to the 'world of dead letters' together with new member states.

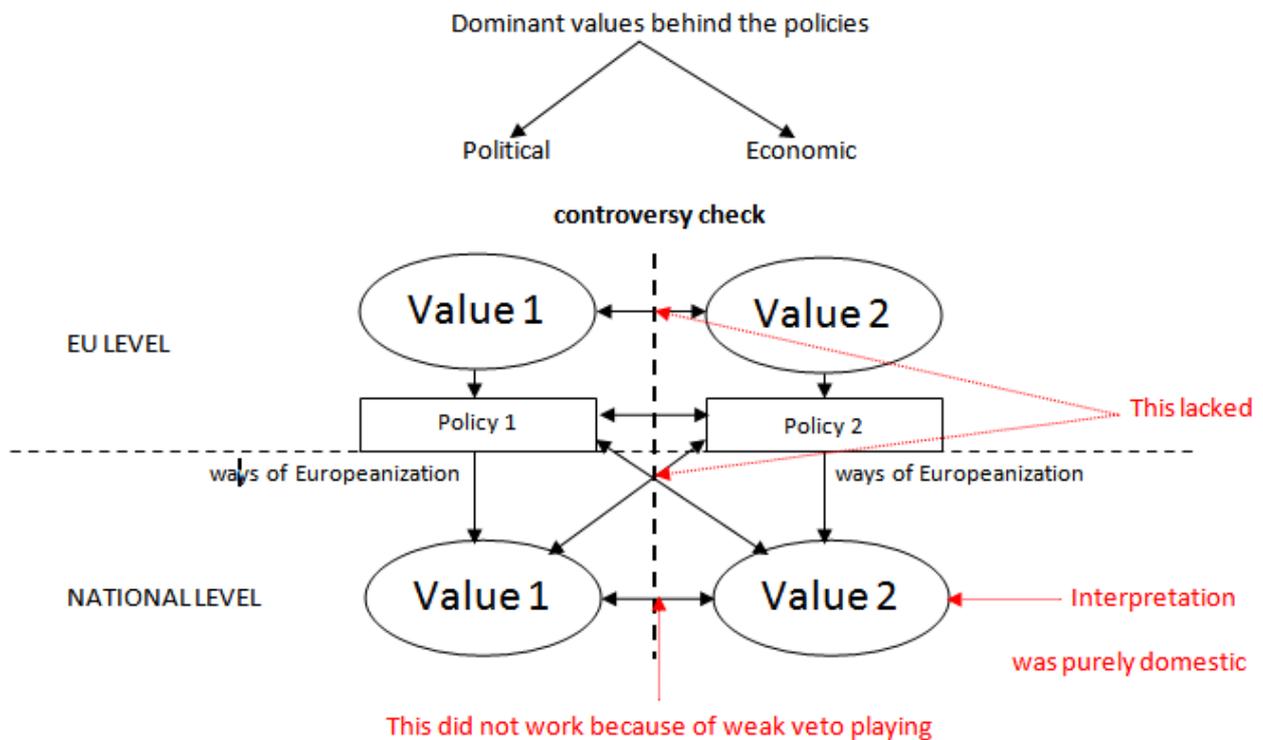
We also may add some words to the 'leaders and laggards' categorization by Boerzel 2003. Our case completely (though paradoxically) proves her putting Italy to the laggards' group and the expectations that political and administrative fragmentation along with high levels of EU legitimacy would play an important role in obstructing the timely 'taking' of policies. T.Boerzel focuses on political and administrative factors; we would suggest that such factors as fusion of elites and amount of conflicts of interests (and how a country is dealing with it) may also prove worth considering.

In cases similar to this, a question may be raised what the means for averting the misuse could be. Policymakers naturally need to assess 'borders between values' in order to identify where one value/objective may contradict with another value/objective on the EU level, but the results of our research show that such an analysis is not enough. Our research shows that the more 'national' and 'political' the subject field and its product are by their nature (e.g. national media product), the more regulation and controversy checks its regulation requires. And this controversy check should start not at the level of policy but at the level of values, even of most profound and basic values. In cases of over-implementation, one may need a 'controversy cross-check scheme' for evaluating potential gaps in legislation:



This scheme allows free interpretation of Europeanization, that is, national mechanisms of adaptation of EU regulation, but poses a question of controversy cross-check and its mechanisms.

If we judge the Italian case by this scheme, we could clearly mark the gaps identified by our research:



In conclusion, we would like to note that there are several additional arguments both for and against stricter pan-European regulation of media pluralism.

For Italy, there are several arguments for greater level of outer control besides the abovementioned low competence of the local legislative process. One of them is 'natural adaptability' of other media sectors, newspapers in the first hand, to government reshuffles and the conflict of interest. Results of interviewing 6 leading political journalists and newspaper editors conducted by us in June 2008 in Rome and Bari proves the viewpoint that the newspaper sector was following the campaign with a feeling of inescapability of Berlusconi and in summer 2008 was already adapting to conformity with his governing (Bodrunova forthcoming: 57-58).

Another point is that, as experience of other member states shows, arrival of non-European media holders does not necessarily lead to political intrusion or cultural poorness of the media acquired. German and Spanish TV sectors provide examples of the opposite (see Litvinenko forthcoming, Kurysheva 2009), since the new proprietors see their main goal as heightening revenues and thus 'play the local card'.

An argument against European control of national markets is rather anti-European in its nature. The fact is that today the duopoly is eroding in a natural way, but not with the growth of local players but with Sky becoming the third major player on the integrated market. Thus, the audience share of RAI+Mediaset fell from over 90% in 1990s to 84% in 2007, the difference occupied by Murdoch's Sky platform. Though this vector of development corresponds with the notion of market plurality and 'natural regulation' of the market inadequacies, such a situation contradicts with the EU position on safeguarding European-oriented TV production. So, by far, the dilemma here remains as the choice between an inevitable Berlusconi and a newcoming Murdoch.

BIBLIOGRAPHY

Books, articles, research papers

Asensio J.C. When 'progressive' law hits home: the transposition of the Anti-discrimination Directives in Austria, Germany and Spain. Paper presented at the Fourth ECPR Pan-European Conference on EU Politics, 25 to 27 September 2008, University of Latvia, Riga, Latvia. PAvailable at: <http://www.jhubc.it/ecpr-riga/virtualpaperroom/092.pdf>.

Berlusconi in a box // The Economist. 14 September 2006. Available at: http://www.economist.com/world/europe/displaystory.cfm?story_id=7912736.

Bianco R. Diritto delle comunicazioni di massa. Roma-Bari: Laterza, 2007.

Boccali D. Antitrust: regolamento di attuazione degli artt. 81 e 82 trattato CE // http://www.key4biz.it/News/2003/10/11/Media/Antitrust_regolamento_di_attuazione_degli_artt.html.

Bodrunova S. Foreign journalism in 21st century: Italy. Student manual (manuscript). Accepted for publication in St.Petersburg State University Press, January 2009.

Boerzel T.A. (a) Guarding the Treaty: The Compliance Strategies of the European Commission. Paper presented at the annual meeting of the American Political Science Association, Philadelphia Marriott Hotel, Philadelphia, PA, Aug 27, 2003. Available at: http://www.allacademic.com/meta/p64265_index.html.

Boerzel T.A. (b) Shaping and Taking EU Policies: Member State Responses to Europeanization. Queen's Paper on Europeanization No 2/2003. P.3. Available at: <http://www.qub.ac.uk/schools/SchoolofPoliticsInternationalStudiesandPhilosophy/FileStore/EuropeanisationFiles/Filetoupload,38412,en.pdf>.

Brogi E. Europe, Italy and broadcasting and communications rules // 17 December 2007. Available at: <http://www.teutas.it/audiovisivo/disciplina-europea/41-disciplina-europea/73-europe-italy-and-broadcasting-and-communications-rules.html>.

Bykova A. Mass media in the conditions of the European Integration // Global Journalism: European Segment. Ed. by Puyu A.S. St.Petersburg State University Press, 2009.

Bykova A. Mass media of the EU member states. St.Petersburg State University Press, 2004.

Call for EU rules on media concentration and pluralism // Available at: <http://www.euractiv.com/en/infosociety/call-eu-rules-media-concentration-pluralism/article-137649>.

Casey Z. Italy, Greece are EU's biggest laggards // European Voice. 2008. November 18. Available at: <http://www.europeanvoice.com/article/2008/11/italy,-greece-are-eu-s-biggest-laggards/63096.aspx>.

Chayes A., Chayes Handler A. On Compliance // International Organization. 1993. Vol.47, Issue 2. Pp.175-205.

Chayes A., Chayes A.H., Mitchell R.B. *Managing Compliance: A Comparative Perspective // Engaging Countries: Strengthening Compliance with International Environmental Accords*. Ed. by Weiss E.B., Jacobsen H.K. Cambridge, Mass.: MIT Press, 1998.

Crisis in Italian Media: How Poor Politics and Flawed Legislation Put Journalism Under Pressure. Report of the IFJ/EFJ Mission to Italy. 6-8 November 2003. Available at: <http://www.ifj.org/pdfs/Italy%20Mission%20Final.pdf>.

Elementi di diritto dell'informazione e della comunicazione. Napoli, 2008. P.133.

Falkner G. Comparing Europeanisation Effects: From Metaphor to Operationalisation. *European Integration online Papers* 7(13). 2003. Available at: <http://eiop.or.at/eiop/texte/2003-013a.htm>.

Falkner G, Hartlapp M., Leiber S., Treib O. *Complying with Europe: EU Harmonisation and Soft Law in the Member States*. Cambridge University Press, 2005. Chapter 15.

Falkner G, Hartlapp M., Leiber S., Treib O. Non-Compliance with EU Directives in the Member States: Opposition through the Backdoor? // *West European Politics*. 2004. Vol.27, Issue 3. Pp.452-473.

Falkner G, Hartlapp M., Treib O. Worlds of Compliance: Why Leading Approaches to EU Implementation Are Only "Sometimes-True Theories" // *European Journal of Political Research*. 2007. Vol.46, Issue 3. Pp.395-416.

Falkner G., Treib O. Three Worlds of Compliance or Four? The EU15 Compared to New Member States. *Political Science Series №112*, Institute for Advanced Studies, Vienna. 2007. Available at: http://www.ihs.ac.at/publications/pol/pw_112.pdf.

Falkner G., Treib O., Holzleithner E., Causse E., Furtlehner P. *Compliance in the Enlarged European Union: Living Rights Or Dead Letters?* Ashgate Publishing, 2008.

Hallin D.C., Mancini P. Italy's television, Italy's democracy // *OpenDemocracy Project*. 18 July 2001. Available at: http://www.opendemocracy.net/media-publicservice/article_59.jsp,

Hallin D.C., Mancini P. *Modelli di giornalismo*. Roma – Bari: Laterza, 2004.

Harcourt A. The European Commission and regulation of the media industry // *Media&Law*. Edition of the Moscow Media Law&Policy Institute. Available at: http://www.medialaw.ru/laws/other_laws/european/e-eh.htm.

Heinze T., Kalbhenn A., Knill Ch. Compliance in the European Union. What Do Configurational Comparative Methods Tell Us? Paper prepared for the 2008 APSA Annual Meeting, August 28–31, 2008, Boston. Available at: http://www.allacademic.com//meta/p_mla_apa_research_citation/2/8/0/3/8/pages280387/p280387-1.php.

Iosifides P. Pluralism and media concentration policy in the European Union // *Javnost – The Public*. 1997. Vol.4, Issue 1. Pp.85-104.

Jakubovicz K. Rude Awakening: Social and media change in Central and Eastern Europe // Javnost – The Public. 2001. Vol.8, Issue 4. Pp.59-80.

Journalists of two channels are going for a strike // Rian.Ru. 2003. March 06. Available at: <http://www.1917.com/WM/06-03/1055962339.html> [in Russian].

Kurysheva Yu. Spain: Legal and political aspects of integration of national media into EU information space. Author's abstract of PhD dissertation. St.Petersburg State University, 2009.

Litvinenko A. Foreign journalism in 21st century: Germany. Student manual (manuscript). Accepted for publication in St.Petersburg State University Press, March 2009.

Longo A., Piana L. A Mediaset non basta la tv // L'Espresso. 2008. 4 May. Available at: <http://espresso.repubblica.it/dettaglio//1998427>.

Media Landscape – Italy // European Journalism Centre. Available at: http://www.ejc.net/media_landscape/article/italy/.

Michelsen J. Implementing EU regulations in old and new member states – the case of organic farming. Paper prepared for Midwest Political Science Association Annual National Conference, April 7-10 2005, Chicago, Illinois, Section 5: European Politics, session 9. P.4. Available at: http://www.allacademic.com//meta/p_mla_apa_research_citation/0/8/6/6/5/pages86656/p86656-4.php.

Murialdi P. La Storia del Giornalismo Italiano. Roma, 2004.

Passigli S. The Politics and Legislation of Conflict of Interest in Italy. Available at: <http://users.ox.ac.uk/~hine/seminarpapers/Passigli%20paper%201.doc>.

Putnam R. Diplomacy and Domestic Politics. The Logic of Two-Level Games // International Organization. 1988. Vol.42, Issue 2. Pp. 427-460.

Radio e tv per la comunicazione pubblica: intervista a Enrico Menduni // 2006. 23 February. Available at: http://www.comunicatoripubblici.it/index.html?id=165&n_art=664.

Recent policy issues and debates // Italy / The Council of Europe/ERICarts 'Compendium of Cultural Policies and Trends in Europe', 9th edition. 2008. Available at: <http://www.culturalpolicies.net/web/italy.php?aid=423>.

Sack D. Europeanization and Public Policy Studies. Speech given at the 3rd Summer School 'European Union Studies: Methodological Opportunities and Limits', St.Petersburg, June 30, 2009.

Scheuer A., Strothmann P. Media Supervision on the Threshold of the 21st Century: What are the Requirements of Broadcasting, Telecommunications and Concentration Regulation? // IRIS plus. 2002. Issue 2. P.7.

Sector specific legislation // Italy / The Council of Europe/ERICarts 'Compendium of Cultural Policies and Trends in Europe', 9th edition. 2008. Available at: <http://www.culturalpolicies.net/web/italy.php?aid=538>.

Smith S. When journalism went bad // The Progressive Review. Available at:
<http://prorev.com/essaysmedia.htm>.

Sorrentino C. Il giornalismo in Italia: Aspetti, processi produttivi, tendenze. Roma, 2003.

Splichal S. Imitative revolutions: Changes in the media and journalism in East-Central Europe // Javnost – The Public. 2001. Vol.8, Issue 4. Pp.31-58.

Sprungk C., Dudziak M. The implementation of European Environmental Law: Analyzing the Interplay of Culture, Capacity and Power. Paper prepared for the Annual Meeting of the American Political Science Association, August 30 - September 3, 2007.

Steunenberg B. A Policy Solution to the European Union's Transposition Puzzle: Interaction of Interests in Different Domestic Arenas // West European Politics. 2007. Vol.30, Issue 1. Pp.23-49.

Swank D., Steinmo S. The New Political Economy of Taxation in Advanced Capitalist Democracies // American Journal of Political Science. 2002. Vol.46, Issue 3. Pp.642-655.

Tallberg J. Paths to Compliance: Enforcement, Management, and the European Union // International Organization. 2002. Vol.56, Issue 3. Pp.609-643.

Television across Europe: Regulation, Policy and Independence. Report by Media Network Program of Open Society Institute and EU Monitoring and Advocacy Program. October 1, 2005. Available at:
<http://www.cominit.com/en/node/243110>.

Televisione, telefonia e banda larga, la relazione del Garante // 2007. 27 July. Available at:
http://www.comunicatoripubblici.it/index.html?id=165&n_art=3226.

The Regulation of the Media in Italy // AGCOM. Available at:
http://www.agcom.it/eng/reports_docs/resp_reg.htm#01#01.

Toemmel I. Modes of governance in the EU. Paper presented for the EUSA-Conference, Montreal, 2007. Available at: <http://www.unc.edu/euce/eusa2007/papers/toemmel-i-12g.pdf>.

Treib O., Baehr H., Falkner G. Modes of Governance: A Note Towards Conceptual Clarification. EVROGOV – European Governance Paper. November 17, 2005.

Tsebelis G. Decision Making in Political Systems: Veto Players in Presidentialism, Parliamentarism, Multicameralism and Multipartyism // British Journal of Political Science. 1995. Vol.25. Pp.289-325.

Urina N. Mass media of Italy // Moscow State University Bulletin. 'Journalism' Series. Issue 3'1999. P.59.

Urina N. Mass media of Italy // Moscow State University Bulletin. 'Journalism' Series. Issue 5'2002. P.47.

Vartanova E. The Northern model at the end of the century: press, radio and TV of the North European countries in between state and market regulation. Moscow, 1997.

Ward D. A Mapping study of media concentration and ownership in ten European countries, 2004. Available at: www.mediamonitor.nl.

Ward D. Media concentration and pluralism: regulation, realities and the Council of Europe's standards in the television sector. CDL-UDT (2005)004. Trieste, Italy, 24 – 28 January 2005. Available at: [http://www.venice.coe.int/docs/2005/CDL-UDT\(2005\)004-e.asp](http://www.venice.coe.int/docs/2005/CDL-UDT(2005)004-e.asp).

Ward D. The Democratic Deficit and European Union Communication Policy. An Evaluation of the Commission's Approach to Broadcasting // Javnost – The Public. 2001. Vol.8, Issue 1. Pp.75-94.

Zaccaria R. Diritto dell'informazione e della comunicazione. Roma, 2007.

Documents of major relevance

Application to initiate a monitoring procedure concerning the monopolization of the electronic media and the possible abuse of power in Italy. Motion for a resolution. Doc. 10811. 24 January 2006. Available at:

<http://assembly.coe.int/main.asp?Link=/documents/workingdocs/doc06/edoc10811.htm>.

Charter of Fundamental Rights of the European Union // Bulletin EU. 2000. №12. P.3.

Commission clarifies application of State aid rules to Public Service Broadcasting, 2001. IP/01/1429. Available at:

<http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/01/1429>.

Comparative study on the impact of control measures on the television advertising markets. REPORT: ITALY. Brussels, June 2005. Available at:

ec.europa.eu/avpolicy/docs/library/studies/2003/44_03_co_it.pdf.

Concentration of media power. Motion for an order. Doc. 9462. 14 May 2002. Available at: <http://assembly.coe.int/main.asp?Link=/documents/workingdocs/doc02/edoc9462.htm>.

Council Directive of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (89/552/EEC)

Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission. Available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31993L0083:EN:HTML>.

Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation). Full text, explanatory notes, and additional complex of documentation is available at:

<http://ec.europa.eu/comm/competition/mergers/legislation/regulations.html>.

Council Regulation (EC) No [1435/2003](#) of 22 July 2003 on the Statute for a European Cooperative Society (SCE). Full text and explanatory notes available at: <http://europa.eu/scadplus/leg/en/lvb/l26018.htm>.

Council Regulation (EEC) No [2137/85](#) of 25 July 1985 on the European Economic Interest Grouping (EEIG). Full text and explanatory notes available at: <http://europa.eu/scadplus/leg/en/lvb/l26015.htm>

Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE) // Official Journal of the European Communities. L 294. 2001. 10 November.

Decreto Legislativo N259 '*Codice delle comunicazioni elettroniche*'. 1 Agosto 2003. Available at: http://www.agcom.it/L_naz/cod_comunicaz_dl259_03.htm.

Delibera 9/99. Approvazione del regolamento concernente la promozione della distribuzione e della produzione di opera europee. Available at: http://www.AGCOM.it/provv/D9_99.htm.

Directive 95/47 of the European Parliament and the Council of 24 October 1995 on the use of norms for transmission of television signals. In Italian available at: http://www.agcom.it/L_com/95_47_CE.htm#01.

Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities.

Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society. Available at: http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&numdoc=32001L0029&lg=EN.

Disposizioni per la parità di accesso ai mezzi di informazione durante le campagne elettorali e referendarie e per la comunicazione politica'. Available at: http://www.agcom.it/L_naz/L_220200_28.htm.

European Convention on Transfrontier Television. Strasbourg, 5 May 1989. Text amended according to the provisions of the Protocol (ETS No. 171) which entered into force, on 1 March 2002. Available at: <http://conventions.coe.int/Treaty/EN/Treaties/Html/132.htm>.

European Court of Justice Sentence on the British Telecommunications Case (1985).

Final report on the information of the citizen of the EU: obligations for the media and the institutions concerning the citizen's right to be fully and objectively informed. The European Institute for the Media. August 2004. P.120. Available at: www.epra.org.

Freedom of expression in the media in Europe. Report of the Committee on Culture, Science and Education. Doc. 9640 revised. 14 January 2003. Available at:

<http://assembly.coe.int/main.asp?Link=/documents/workingdocs/doc03/edoc9640.htm>.

i2010 - A European Information Society for growth and employment. Available at:
http://ec.europa.eu/information_society/eeurope/i2010/index_en.htm.

Indicators for media in a democracy. Report of the Committee on Culture, Science and Education. Doc. 11683. 7 July 2008 (available at:
<http://assembly.coe.int/main.asp?Link=/documents/workingdocs/doc08/edoc11683.htm>).

Information society and a digital world. Report of the PACE Committee on Science and Technology. Doc.8400. 6 May 1999. Available at:
<http://assembly.coe.int/main.asp?Link=/documents/workingdocs/doc99/edoc8400.htm>.

Investigation of the possible monopolization of the electronic media and abuse of power in Italy. Motion for a recommendation. Doc. 9947. 1 October 2003. Available at:
<http://assembly.coe.int/main.asp?Link=/documents/workingdocs/doc03/edoc9947.htm>.

Italy - Annual Report 2003 // Reporters Without Borders. Available at:
http://www.rsf.org/article.php3?id_article=6521.

Judgment of the Court (Fourth Chamber), 31 January 2008, Case C-380/05, Centro Europa 7 Srl v. Ministero delle Comunicazioni e Autorità per le garanzie nelle comunicazioni. Available at:
<http://merlin.obs.coe.int/iris/2008/3/article5.en.html>.

Monopolisation of the electronic media and possible abuse of power in Italy Report of the Committee on Culture, Science and Education. Doc. 10195. 3 June 2004. Available at:
<http://assembly.coe.int/main.asp?Link=/documents/workingdocs/doc04/edoc10195.htm>.

Opinion on the compatibility of the laws "Gasparri" and "Frattini" of Italy with the Council of Europe standards in the field of freedom of expression and pluralism of the media. Adopted by the Venice Commission at its 63rd Plenary Session (Venice, 10-11 June 2005). Strasbourg, 13 June 2005. Available at: [http://www.venice.coe.int/docs/2005/CDL-AD\(2005\)017-e.asp](http://www.venice.coe.int/docs/2005/CDL-AD(2005)017-e.asp).

Pluralism and Media Concentration in the Internal Market: An Assessment of the Need for Community Action. Mission of the European Communities COM(92)480 final. Commission Green Paper. Brussels, 23 December 1992. P.46.

Protocol on the system of public broadcasting in the Member States // Official Journal of the European Communities. C 340/109. 10 November 1997.

Public service broadcasting. Report of the Committee on Culture, Science and Education. Doc. 10029. 12 January 2004. Available at:
<http://assembly.coe.int/main.asp?Link=/documents/workingdocs/doc04/edoc10029.htm>.

Recommendation 747 (1975) '*on press concentrations*' which, though, does not include TV and has not become an example for TV sector legislation.

Recommendation 748 (1975) '*on the role and management of national broadcasting*'. Available at:
<http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta75/EREC748.htm>.

Recommendation 926 (1981) '*on questions raised by cable television and by direct satellite broadcasts*'. Available at:

<http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta81/erec926.htm>.

Recommendation 1067 (1987) '*on the cultural dimension of broadcasting in Europe*'. Available at:

<http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta87/EREC1067.htm>.

Recommendation 1089 (1988) on improving community relations. Available at:

<http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta88/erec1089.htm>

Recommendation 1277 (1995) on migrants, ethnic minorities and media. Available at:

<http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta95/erec1277.htm>.

Recommendation 1589 (2003) '*Freedom of expression in the media in Europe*'. Available at:

<http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta03/erec1589.htm>

Recommendation 1641 (2004) '*Public service broadcasting*'. Text adopted by the Assembly on 27 January 2004 (3rd Sitting). Available at:

<http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta04/EREC1641.htm>.

Recommendation 1674 (2004) '*Challenges facing the European audiovisual sector*'. Text adopted by the Standing Committee, acting on behalf of the Assembly, on 7 September 2004. Available at:

<http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta04/erec1674.htm>

Report on migrants, ethnic minorities and media. Doc. 7322. 9 June 1995. Available at:

<http://assembly.coe.int/main.asp?Link=/documents/workingdocs/doc95/edoc7322.htm>

Resolution of the European Parliament on '*risks of violation, in the EU and especially in Italy, of freedom of expression and information (Article 11(2) of the Charter of Fundamental Rights)*'. 22 April 2004. Available at: <https://lists.firenze.linux.it/pipermail/e-privacy/2004-June/001447.html>.

Resolution of the Parliamentary Assembly of the Council of Europe 1387 (2004) '*Monopolization of the electronic media and possible abuse of power in Italy*'. Text adopted by the Assembly on 24 June 2004 (23rd Sitting). Available at:

<http://assembly.coe.int/Documents/AdoptedText/ta04/ERES1387.htm>.

Resolution of the Parliamentary Assembly of the Council of Europe 1619 (2008) '*State of democracy in Europe. Functioning of democratic institutions in Europe and progress of the Assembly's monitoring procedure*'. Text adopted by the Assembly on 25 June 2008 (24th Sitting). Available at:

<http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta08/eres1619.htm>.

Right of national minorities to create and use their own media in the Council of Europe member states. Motion for a recommendation. Doc. 9151. 28 June 2001. Available at:

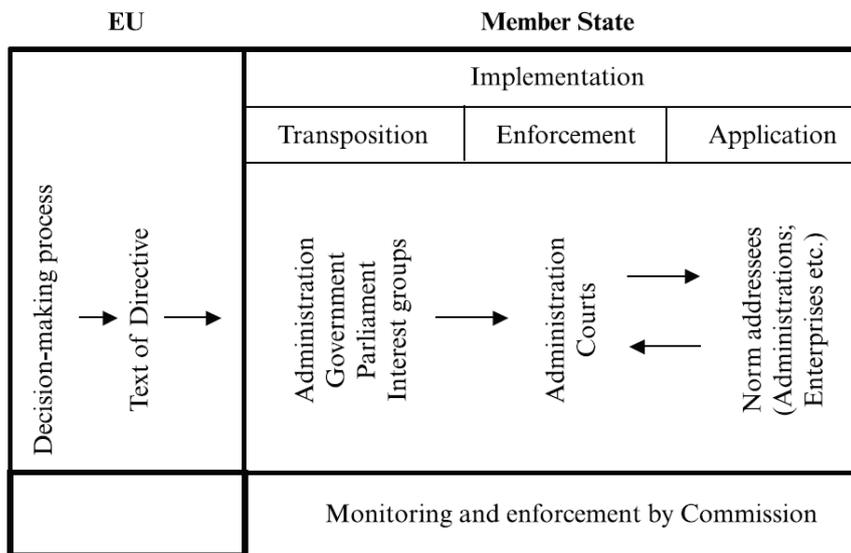
<http://assembly.coe.int/main.asp?Link=/documents/workingdocs/doc01/edoc9151.htm>,

The initiative E-Europe. An Information Society For All. COM (1999) 687 final // European Union on-line: [http://europa.eu.int/ISPO/docs/policy/docs/e_europe/COM\(99\)_en.pdf](http://europa.eu.int/ISPO/docs/policy/docs/e_europe/COM(99)_en.pdf).

Visit to Italy: The Gasparri Law. Observations and Recommendations by The OSCE Representative on Freedom of the Media Miklós Haraszti. 7 June 2005. Available at: www.osce.org/documents/pdf_documents/2005/06/14949-1.pdf.

ANNEX

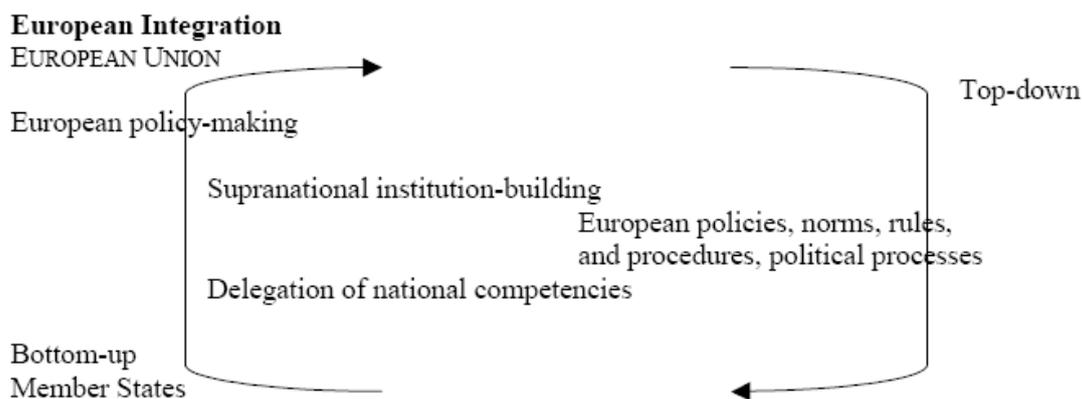
Table 1. Falkner model vs. Boerzel model of implementation process



a) Figure 1.1 Stages and actors of the implementation process

Source: Falkner G., Treib O., Holzleithner E., Causse E., Furtlehner P. Compliance in the Enlarged European Union: Living Rights Or Dead Letters? Ashgate Publishing, 2008. P.8.

Bottom-up and Top-Down



b) Europeanization

Source: Boerzel T.A. Shaping and Taking EU Policies: Member State Responses to Europeanization. Queen's Paper on Europeanization No 2/2003. P.3. Available at: <http://www.qub.ac.uk/schools/SchoolofPoliticsInternationalStudiesandPhilosophy/FileStore/EuropeanisationFiles/Fileupload,38412,en.pdf>.

Table 2. Four 'worlds of compliance': methodology developed by Falkner et al.

| | World of Law Observance | World of Domestic Politics | World of Dead Letters | World of Trans- position Neglect |
|---|------------------------------------|---|---|--|
| Process pattern at stage of trans- position | + | o | o | - |
| Process pattern at stage of practical implementation | + | + | - | +/- |
| Countries | Denmark, Finland, Sweden (3) | Austria, Belgium Germany, Nether- lands, Spain, UK (6) | Ireland, Italy, Czech Republic, Hungary, Slovakia, Slovenia (6) | France, Greece, Luxembourg, Portugal (4) |

+ = respect of rule of law; o = political pick-and-choose; - = neglect

Source: Falkner G., Treib O. Three Worlds of Compliance or Four? The EU15 Compared to New Member States. Institute for Advanced Studies, Vienna, Political Science Series №112. 2007. P.15.

Table 3. Typology of four modes of governance by Treib et al.

| | | Legal Instrument | |
|----------------|----------|---------------------------------|--------------------|
| | | Binding | Non-binding |
| Implementation | Rigid | Coercion | Targeting |
| | Flexible | Framework Regulation | Voluntarism |

Source: Treib O., Baehr H., Falkner G. Modes of Governance: A Note Towards Conceptual Clarification. EVROGOV – European Governance Paper. November 17, 2005. P.22.

Table 4. 'Taking EU policies' by T.Boerzel: political and administrative factors shaping domestic decision-making and policing in EU member states

| Member states | laggards | | | | | | | | | | leaders | | | | |
|------------------------------|----------|---|---|---|----|---|---|----|---|---|---------|----|---|----|----|
| | EL | P | I | E | AU | B | F | IR | D | L | UK | FL | S | NL | DK |
| Political fragmentation | . | m | H | l | l | h | m | m | m | m | l | h | l | h | m |
| Political Resources | l | l | H | m | l | m | h | l | h | l | h | l | l | m | l |
| Political Legitimacy-EU | h | h | H | m | l | m | m | m | m | h | l | l | l | m | l |
| Administrative fragmentation | m | m | H | h | m | h | l | m | m | l | m | l | l | m | l |
| Administrative resources | l | l | m | l | m | m | m | m | m | m | m | h | h | m | h |
| Administrative legitimacy | l | l | L | l | m | l | m | m | m | h | m | h | h | h | h |
| Issue Salience | l | l | m | l | h | l | m | l | h | m | m | h | h | h | h |
| Socio economic development | l | l | l | l | h | m | m | l | h | h | m | m | h | m | h |

l: low, m: medium, h: high, .: missing

Source: Boerzel T.A. Shaping and Taking EU Policies: Member State Responses to Europeanization. Queen's Paper on Europeanization No 2/2003. P.11.

Table 5. Media concentration in Europe

| Country | Regional press | National press | Television | Radio |
|---------------------------------|----------------|----------------|-------------|-------|
| Belgium (Flemish community) | 87,9 | No data | 74,4 | 90,8 |
| Belgium (Francophone community) | 92,3 | No data | No data | 70,9 |
| France | 46,7 | 70,0 | 80,7 | 59,1 |
| Germany | 27,9 | 87,4 | 90,9 | 56,8 |
| Italy | No data | 44,8 | 88,7 | 58,7 |
| Luxemburg | 96,5 | No data | No data | 71,6 |
| Netherlands | 88,1 | 98,2 | 84,6 | 69,0 |
| Spain | 47,3 | No data | 71,4 | 76,6 |
| Sweden | 45,5 | No data | 79,4 | 81,0 |
| United Kingdom | 51,6 | 70,6 | 69,9 | 72,3 |

0 to 35: low-level concentration

36 to 55: mid-level concentration

56 to 100: high-level concentration

Source: Data taken from: Ward D. A Mapping study of media concentration and ownership in ten European countries. 2004. Available at: www.mediamonitor.nl.

Table 6. Italian participation in the three waves of pan-European regulation of media ownership

| Country | 1986 - 1989 | 1990-1994 | 1995 - 1998 |
|----------------|--|-----------------------------------|---|
| Italy | 1981 Act No 416 on regulating dominant position in publishing (amended in 1984 and 1987) | 1990 Act No. 223 Broadcasting Act | 1997 Act No. 249 New Media Act (establishing new authority for convergence in 1998) |

Source: Adapted from: Harcourt A. The European Commission and regulation of the media industry // Media&Law. Edition of the Moscow Media Law&Policy Institute. Available at: http://www.medialaw.ru/laws/other_laws/european/e-eh.htm.