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The European Union (EU) is a unique supranational entity that has adopted an innovative approach to the challenges posed by its distinctive structure, by the convergence of communications technologies, and by the introduction of free market economics. In the process of transforming into a powerful union that preserves the sovereignty of its members, the EU has embraced the free flow of cross-border communications, market-oriented policies, each member state's unique cultural identity, and the need to create a European cultural identity.

EUROPEAN UNION: HISTORY AND POLITICAL STRUCTURE

The Rome Treaty of 1958, signed by France, Germany, Italy, Belgium, the Netherlands, and Luxembourg, created the European Economic Community (EEC). This treaty set the stage for the political unification of Europe into a single entity. During the 1970s and 1980s, Denmark, Ireland, the UK, Greece, Spain, and Portugal joined the EEC, increasing its membership to 12 nations. The Single European Act of 1987 streamlined the EEC's decision-making processes with the goal of creating a political union, not an economic one, and it introduced majority voting on a limited number of issues.

After the Soviet collapse in the early 1990s, the Maastricht Treaty of 1993 created the European Union. The EU's jurisdiction over economic assets was extended to a common foreign and defense policy and to cooperation in law enforcement, thereby trying to balance a central European power with individual national regimes. With Austria, Finland, and Sweden as its new member states in 1995, the "EU 15" adopted two key treaties: the Amsterdam Treaty (1999) and the Treaty of Nice (2001). Consequently, the EU was restructured in such a way as to further expand to the former Eastern bloc nations. By 2005, the EU had 25 members, as the EU 15 nations were joined by Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia. Two years later, its membership increased to 27 with the addition of Bulgaria and Romania.

The EU resembles a conventional federal state ([Tsebelis & Garrett 2001](#)), although it allows each of its member

states to maintain its national sovereignty. The Council of Ministers, which directly represents the member states, and the European Parliament, which is elected directly by the citizens of these states, both resemble a traditional bi-cameral legislature. The Commission of the European Communities, the EU's administrative branch, is in charge of drafting bills and enforcing legislation. The European Court of Justice (ECJ) functions as the judicial branch of the EU, charged with interpreting the emerging European law. Following the coming into force of the Lisbon Treaty in the fall of 2009, European regulatory processes were to be streamlined, as the Union was to further consolidate by appointing a president and the equivalent of a foreign minister ("High Representative of the Union for Foreign Affairs and Security Policy of the European Union"). Among the binding legal instruments of the Union are: (1) regulations, which take immediate effect and apply to all EU citizens; (2) directives, which apply to the member states and aim to harmonize the goals of national laws across the Union, while leaving individual member states with the means of achieving these goals at the national level; and (3) decisions, which apply to specific situations. In addition, the bodies of the EU may reach nonbinding resolutions and form common positions on different matters.

A COMMON REGULATORY HERITAGE

The basic assumptions underlying each European nation's communications law and policy were quite similar. With the exception of Luxembourg, all EU 15 members originally subjected their media and telecommunication industries to state control, believing that broadcasting was too important to be left to the whims of the free market (Levy 1999), and created national public service broadcasters (PSBs; → [Public Service Broadcasting: Law and Policy](#)). Because they considered telecommunications a natural monopoly and a public utility as well, they maintained control over telecommunications through state-owned post, telegraph, and telephone monopolies (PTTs; Sandholz 1993; → [Postal Service, History of](#); [Telegraph, History of](#); [Telecommunications: Law and Policy](#)).

All these PTT entities were governed by the public service principles, which derived from the absolute powers of monarchy, while recognizing no particular right for citizens (Garnham 2001). This shared ideology allowed the EU to emerge as a unifying force and for these highly politicized and central public institutions in the member states (see Blumler 1992) to play a critical role in determining future policy for the Union. The majority of the 12 countries that joined the Union in the 2000s, with the exception of Cyprus and Malta, were former authoritarian Soviet bloc regimes, in which the media and the telecommunication infrastructure were government-owned and -operated.

The EU's growing political clout in the 1990s brought about a *change in its public service-oriented policies* concomitant with the ideological revolution that saw most European nations, especially the EU member states, embrace more neo-liberal market-oriented policies, and with the technological revolution that saw the rapid introduction of new media technologies – cable and satellite transmission, digitization, and the Internet – completely transforming the industry. The rise of neo-liberalism notwithstanding, the Union also committed itself to create and maintain a common European culture, while respecting the cultural uniqueness of each individual member state, under Article 151 of the consolidated European Union Treaty.

TELEVISION WITHOUT FRONTIERS DIRECTIVE

The first and most significant initiative of the EU in its audiovisual policy was the 1989 *Television Without Frontiers directive* (TVWF; Hirsch & Petersen 1998), which was substantially revised in 1997 and in 2007, in response to the changing political, ideological, and technological realities of Europe. As its name suggests, the TVWF aimed not only to harmonize legislation across member states, but, more importantly, to unify the rules for television broadcasts across national borders, as "without frontiers" was seen as a basic element of European unity (Wheeler 2004; → [Television Broadcasting, Regulation of](#)).

With regard to the flow of content across European borders, the directive advocated openness and minimal cross-border constraints, prohibiting member states from restricting retransmission of television signals from other member states (Article 2 in the original version of the directive; Article 2a in the amended version), with the exception of forbidden broadcasts that harm minors (Article 22) or incite hatred (Article 22a).

The concept of television without frontiers, however, was not always embraced by the EU member states, and the European Court of Justice intervened in several cases. In *TV10 SA v. Commissariaat voor de Media* – a case involving a ban on a channel aimed at the Netherlands – the court ruled that a member state could not be denied the right to ban broadcasting from a foreign territory when the sole purpose of this broadcasting was to bypass rules that would have applied had the broadcaster been operating within that state (Staetmans & Goemans

1995).

The court drew the opposite conclusion, however, in the case of VT4, a Flemish-language channel owned by Scandinavian shareholders and incorporated and licensed in the UK. The court found that the broadcaster was a British entity, and that there was no justification under Article 2 of the TVWF for blocking VT4's signal from being retransmitted on Belgian soil. The motivation for the ban on retransmission may explain the contradiction between the two rulings. While the ECJ ruled in favor of the ban in the Dutch case because of TV10's threat to the pluralism of Dutch broadcasting, the initial ruling against VT4 in Belgium was made in order to safeguard the monopoly of a single Flemish-language commercial broadcaster in Belgium (→ [Plurality; Concentration in Media Systems; Competition in Media Systems](#)). Indeed, in a third case – the criminal case of Paul Denuit, who was accused of violating Belgian legislation by retransmitting transborder commercial television stations whose distribution was prohibited by the state – the ECJ held that only under limited circumstances could a ban on the receiving market be justified. Even tax evasion was rendered a legitimate justification for “circumvention” in light of the goals of a common European community in later rulings (*Centros Ltd. v. Erhvervs- og Selskabsstyrelsen*). The 1997 amendment to the TVWF all but incorporated these rulings and further limited the ability of member states to block transfrontier broadcasts.

The TVWF, however, is more often cited for its role in safeguarding Europe against American cultural imperialism ([Middleton 2003](#); → [Americanization of the Media; Cultural Imperialism Theories](#)). Responding to the fear of American media influence, the directive created a quota system that insures a minimum level of original European content on European channels (Article 4). The minimum quota is at least half the programming, with 10 percent of it produced by people other than the broadcasters (Article 5). These quota provisions, however, have been a source of tension in negotiations surrounding the GATT (the General Agreement on Tariffs and Trade), which would insure the free flow of “services” but did not include cultural products within its jurisdiction ([Barendt 1996](#)).

THE CHALLENGE OF COMMERCIAL BROADCASTING

The fear of Americanization of audiovisual content stemmed from the introduction of commercial broadcasting into Europe, which also threatened the dominant position of the PSBs, the perceived guardians of culture that were closely aligned with their national governments. Consequently, the Fourth European Ministerial Conference on Mass Media Policy decided in 1994 to insure public service broadcasting's independence and to secure its appropriate funding framework, which enables it to fulfill its mission. A protocol appended to the Amsterdam treaty defined the mission of public broadcasting as “directly related to the democratic, social, and cultural needs of each society and to the need to preserve media pluralism.”

The legal dispute between commercial and public broadcasters centered on the articles of the treaty that called for fair competition in the Common Market and the meaning of “state aid,” under Article 87 of the Treaty, which prohibits it if competition is undermined or is likely to be so. The commercial television companies argued that the license fees collected by the states to support PSBs constituted such aid.

Under the Amsterdam protocol, the Commission and the ECJ adopted a balanced approach to this issue, limiting the allocation of “state aid” to television programming that fulfilled the public service remit of the PSBs and served the “democratic, social, and cultural needs of each society.” Public service programming decisions were left to the discretion of the member states, which were allowed to include among them entertainment and sports programs. Still, the organization of European public broadcasters, the European Broadcasting Union (EBU), had to change its membership criteria so that commercial broadcasters could join it and enjoy its collective purchasing power, which was seen as a threat to fair competition, in particular with regard to sports programming.

The principles that guide the Commission in addressing the grievances of commercial broadcasters about unlawful “state aid” are proportionality and transparency. Proportionality limits public funding to the fulfillment of the public service mission and considers whether any distortion of competition arising from the aid can be justified by the need to perform the public service. Transparency requires separation of public service from nonpublic service activities of the public broadcaster.

The ECJ held in the *Altmark* ruling (2003) that state funding of public service broadcasters, including through license fees, is not “state aid” if it meets four conditions: (1) the recipient has actually and clearly defined public service obligations to fulfill; (2) the compensation is calculated on the basis of parameters that have been established in advance in an objective and transparent manner; (3) the compensation does not exceed the necessary costs incurred while carrying out the public service obligations; and (4) the level of compensation is based on a cost analysis conducted by a well-run organization or by tendering out the responsibility for the

particular public service obligation.

The challenge from commercial television in the EU is also addressed by the TVWF in regulating advertising. The TVWF stipulates that in “fully and properly” protecting the interests of consumers as television viewers, television advertising must comply with minimum rules and standards. Article 10 of the directive states that television advertising must be distinguished from programming by visual and acoustic means, and it prohibits any form of subliminal or surreptitious advertising. Further, Article 20 limits advertising on television to 20 percent of transmission time per day. Advertising of tobacco products and prescription drugs is not allowed, while advertising of alcoholic products and advertising directed at children are limited (→ [Advertising Law and Regulation](#)).

INTRODUCING COMPETITION IN TELECOMMUNICATIONS

Fear of external influences as a motivator for EU communication law was not limited to the fear of American content. Increasingly concerned about possible economic colonization by the US and Japan, which had been far more successful in employing information society technologies ([Schneider 2001](#)), the European Commission took control of telecommunications policymaking in the 1990s, and revolutionized the European political structure and regulatory landscape ([Sandholz 1998](#)). The first cross-European liberalization policy was not introduced until 1988. By 1990, however, the EU discerned a nexus between growth in the information sector and global economic competitiveness, and it linked this to its liberalization policies. In 1993, it set 1998 as the deadline for its full liberalization of voice telephony, allowing member states and incumbent PTTs a lengthy period of adjustment ([Waverman & Sirel 1997](#)).

The concept of an → “*information society*,” introduced by the Clinton-Gore administration of the US, was quickly integrated into the European discourse ([Servaes & Burgelman 2000](#)), and its principles, namely the predominance of market forces, became the central focus of a major EU-commissioned policy report, known as the Bangemann report ([Anttiroiko 2001](#)). The report's publication coincided with the debate over telecommunications liberalization in Europe, in which the European Commission asserted itself as a supranational governing body ([Sandholz 1998](#)).

The initial European regulatory framework of 1997 was supplanted in 2003 by a new regulatory framework consisting of five directives. One issue that the Commission deemed a top priority, however, was resolved by 2000, when it adopted the regulation on unbundled access to the local loop to enhance Internet access.

The 2003 regulatory framework had two unique features: technological neutrality and preference to competition law over telecommunications law. The technology-neutral approach of the EU allows rejection of the legacy regulation that created different legal arrangements for different technologies, in favor of a new framework that first identifies what services are provided by the technologies and then harmonizes the rules regarding those services, regardless of the technologies involved. The EU's option for competition law limits specific communications law provisions (ex ante regulations) only to those product markets that are deemed uncompetitive.

In November 2009, the Union agreed on a package of reforms in the telecommunications sector. The amended framework gave more tools to national regulators to enforce competition in their distinct markets but at the same time shortened significantly the list of markets subject to ex ante regulations. A new European telecommunications regulator was set up, to be called the Body of European Regulators of Electronic Communications (BEREC).

THE NEW AUDIOVISUAL FRAMEWORK

In December 2008, the Audiovisual Media Services Directive (AVMSD) came into force, replacing the TVWF. Member states were to incorporate it into national law by the end of 2009.

The AVMSD retains the basic principle of the TVWF, namely the free flow of audiovisual products across Europe. On the basis of the principle of technological neutrality, however, the new directive distinguishes “linear audiovisual media services” (analog and digital television, live streaming, webcasting, and near-video-on-demand) from “nonlinear audiovisual media services” (on-demand services). Because “nonlinear services” are distinct from “linear services” in the user's choice and control, and in their impact on society, the directive imposes lighter restrictions on them. Newspapers and magazines do not fall into the jurisdiction of the directive.

The new directive focuses in much more detail on “commercial communication,” which it redefines. It eases some of the restrictions on advertising at the same time as requiring more regulation of food advertising in children's programming, and it tries to define “product placement” and the limitations on it, an area that was previously chaotic (Schejter 2006). At the same time it guarantees more access to news events for news providers.

SEE ALSO: → [Advertising Law and Regulation](#) → [Americanization of the Media](#) → [Communication Law and Policy: Europe](#) → [Competition in Media Systems](#) → [Concentration in Media Systems](#) → [Cultural Imperialism Theories](#) → [European Court of Human Rights](#) → [Information Society](#) → [Plurality](#) → [Postal Service, History of](#) → [Public Service Broadcasting: Law and Policy](#) → [Telecommunications: Law and Policy](#) → [Telegraph, History of](#) → [Television Broadcasting, Regulation of](#)

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