



## Limits to EU technocratic regulation?

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**Abstract.** This article has three main objectives. Firstly, it seeks to re-formulate the debate on technocracy in the European Union by drawing upon the concept of the EU regulatory state as developed by Majone (1996). Secondly, it illustrates the limits and tensions of a once politicised technocratic policy-making process by tracing the formulation of media ownership regulation. Although media ownership policy has been presented by the European Commission as a typical regulatory policy, it has followed a more politicised path than previous EU regulatory policies. This implies that media ownership policy does not follow the model of technocratic regulation presented by Majone in his characterisation of the EU regulatory state. Thirdly, the paper contributes to the debate on EU regulation by suggesting a new typology of regulatory policies in the EU. In the conclusion, it is argued that politicisation (which includes inefficiency and prolonged conflict) may be the price that the EU is forced to pay in its progress toward a more democratic polity.

## Introduction: does the EU continue to epitomise technocracy?

In public discussions on technocracy, the European Union (and particularly the European Commission) almost invariably takes the lead when notorious examples of technocracy are brought up. Nothing better illustrates the idea of a Moloch alienated from the ordinary citizen, yet endowed with extraordinary powers to change our daily lives, than the European Commission. In conceptualising the future development of European integration, two political scientists had no hesitation in addressing the fundamental European dilemma in the title of their paper: democracy or technocracy? (Wallace & Smith 1995). Since 1992, the European Commission has taken great pains to demonstrate that the European policy process is transparent and accountable (Lodge 1995), although it is not clear whether citizens need to be reassured of its process or its output. Indeed, citizens might continue to oppose policies such as standardisation and increasingly the single currency even if these policies were products of the most transparent policy process in the world.

Be that as it may, the fact remains that European public policy has to cope with the allegation of technocracy. But does technocracy manifest itself in the European Union policy process? More importantly, is the growth of technocratic policy in Europe unconstrained, or is there evidence of a crisis of tech-

nocratic policy-making even within the ‘paradise’ of European technocratic regulation, i.e., the single market? This article will address these two questions by re-conceptualising the popular discussion of technocracy in terms of regulatory policy, thus achieving more analytical precision, and by examining a case of regulatory ‘single market’ policy, namely media ownership regulation.

The case of media concentration policy will shed light on the constraints to technocratic regulation. The main point argued here is that previous studies on regulatory policy in the EU have not addressed precisely the conditions under which regulatory policy is *not* politically feasible. The case of media ownership regulation shows that the new generation of regulatory policies for the single market (media being one of those) is currently witnessing political obstacles that were not encountered in the ‘classic’ European policies for the single market. Mainly, these obstacles are related to the political salience of regulatory policies and to the structure of costs (see section three below). Indeed, a technocratic policy process is immediately endangered if technical and de-politicised discussions turn into debates over political concerns such as pluralism. Akin to this, a technocratic policy process is best administered by a closely tight policy community (Rhodes 1988; Richardson & Jordan 1978), and is hampered by the active involvement of MEPs, the media, national political parties, regions or Länder, and ultimately citizens.

This article is organised in four sections. Section one reformulates the problem of technocracy by using the literature on the European regulatory state. Section two will analyse the case study selected, i.e., media ownership regulation. Section three elaborates upon the evidence provided by the case study and offers theoretical suggestions for the understanding of technocratic regulation in the European Union. Finally, section four contains a brief conclusion.

## From technocracy to the EU ‘regulatory state’

The *sui generis* European Union (EU) polity has been described as a ‘regulatory state’.<sup>1</sup> Indeed, following the well-known three Musgravian functions of policy, it can be observed that the single most distinctive element of EU public policy is the emphasis on the allocative function of government, whilst macroeconomic stabilisation and redistribution have not progressed much. The EU as a polity is not characterised by the extraction of resources and by the development of the distributive and re-distributive public programmes associated with the welfare state. A process of integration reproducing the evolution of the welfare state at the national level is almost unthinkable for the EU. This is due to the lack of a fully-fledged European public finance,

based upon genuine extractive capacities of EU institutions, and due to the limited dimension of the Community budget (no more than 1.5 percent of the EU GDP). Re-distributional policy and production of so-called merit goods (e.g. basic education and low-cost housing for the poor) become impossible, given these constraints.

By contrast, regulatory policy is not constrained by a limited budget (Majone 1993). The production of re-distributive policy requires a considerable amount of financial resources, but the cost of producing regulation is negligible. The regulator needs only expertise and 'know-how' and bears only a small 'internal' cost, that is the rule-making cost. Put differently, technocratic policy is associated with a policy process wherein knowledge takes precedence over other resources. The substantial costs of regulations are borne by those firms and individuals who have to comply with them. In summary, budget constraints are not serious hurdles for regulatory policy; production costs of regulation are immensely lower than those of welfare policies; expertise is more valuable to the regulator than financial resources; and finally, the costs of regulatory policy are borne by firms and individuals. Therefore member states are not extremely sensitive to regulatory costs in the decision-making process: these costs do not impinge on public finance directly.<sup>2</sup>

In the EU regulatory state, the European Commission represents the major policy entrepreneur (Kingdon 1984) which promotes and initiates public policy. The expertise resources of this small but formidable (in terms of competencies) bureaucracy and the intimate knowledge that EU bureaucrats have of the regulated industries (Majone refers in his works to the notion of *copinage technocratique*) place the Commission in the ideal position for the production of regulation. The fact that the Commission is not directly accountable to the European electorate is an asset for the production of regulation. As explained by Majone (1996: 129):

Not being directly responsible to voters or to elected politicians, the Commission can take decisions which national governments and regulators would find politically too costly. For example, it has consistently taken a stricter pro-competition stance than national regulators such as the British Monopolies and Mergers Commission, the German Bundeskartellamt, or the French Conseil de la Concurrence.

However, this asset turns into a deficit, when issues of democratic legitimacy are taken into account. Non-majoritarian institutions such as the European Commission are well placed to produce regulatory policy, but not to produce consensus. Nevertheless, two factors have sustained the growth of the European regulatory state. The first is 'permissive consensus' (Lindberg & Scheingold 1970), and the second, low visibility, that is the lack of political salience of the EU policy-making processes. The typical EU directive is a technical document, often impenetrable even to the sophisticated citizen,

dealing with issues which do not stir emotions. Political parties, the mass media and social movements do not direct their energies and political resources towards such issues as, say, the common size of paper, the strength of load bearing materials or the standards required in food production.

The point to stress is that the *whole institutional set-up* of the European Community was designed in order to support the growth of the European regulatory state. *Copinage technocratique*, regulatory policy, incrementalism, and de-politicised technocratic debate among experts (or epistemic communities, see Haas 1992) represent the genetic code of European institutions. H. Wallace (1996: 22) has even asserted that the debate on the role of epistemic communities 'in some senses is a reprise of the Monnet approach to European integration'. W. Wallace (1996: 442), consistent with this argument, points out that 'the institutions were designed to stress administration and regulation, to minimise the visibility of the political choices at stake, and to operate on the basis of a permissive popular consensus'.

One of the arguments raised here is that the growth of the European regulatory state is not unconstrained. The point is rather trivial if limited to policies which represent a basic discontinuity in the EU. For example, it would be obvious to observe that the second and third 'pillars' – i.e., two major examples of discontinuity in European integration – are at odds with the genetic code of European institutions. But is technocratic regulation – this is the crucial problem – put under stress *even within the single market*, and if so, why? The rest of this article is dedicated to this theme. Accordingly, we now turn our attention to media ownership regulation, a case of regulatory policy which is facing huge difficulties in the EU policy process.

## Regulation of the single market? Rules for media ownership

In December 1992 the European Commission embarked upon a policy process to regulate for media ownership with a Green Paper entitled *Pluralism and Media Concentration in the Internal Market*.<sup>3</sup> The paper resembled many single market initiatives: it defined the issue of media concentration in terms of the internal market as it perceived that a 'disparity' of national anti-concentration laws could be seen to 'brake structural adjustment'; it called for the harmonisation of member states' media concentration rules; and it presented a technical discussion on possible policy instruments to be implemented. However, what to the Commission appeared a perfectly straightforward single market issue twisted itself out of control as the ensuing policy process became increasingly politicised.

From the very start the debate over media concentration began to take on a very political tone. Indeed the issue of media concentration was placed

onto the agenda of the European Union, not by the Commission but by the European Parliament. In 1984 shortly after the release of DG III's *Television Without Frontiers* (TWF) Green Paper, the EP produced a number of requests for media concentration legislation which could accompany a liberalising TWF directive. The European Parliament did not at all view media concentration as a problem of the market inefficiency; rather media concentration was seen politically as a threat to democracy, freedom of speech and pluralist representation. Along these lines, the EP produced three earnest demands to the European Commission during negotiations leading up to 1989 TWF directive: a 1985 EP Resolution,<sup>4</sup> a 1986 EP official request to the Commission; and the 1987 *Barzanti Report*.<sup>5</sup> Each requested that the Commission be granted the legal resources to safeguard media pluralism.

However, when the TWF was ratified by the Council in 1989 it contained no provisions for anti-concentration measures. The TWF Directive contains only one very limited technical measure which indirectly affects media concentration. This is that broadcasters must reserve 10% of their transmission time or alternatively at least 10% of their programming budget for European works by independent producers. This was designed to prevent concentration in the form of vertical integration of the industry, but in practice this provision has little teeth as adherence has often been circumvented by national broadcasters with no consequence.<sup>6</sup> In answer to the calls for pluralism, the Commission internal market argument advocated that liberalisation of the media industry would automatically produce pluralism and diversity.

The 1989 *Television Without Frontiers* directive typifies a single market regulatory policy. The directive established a legal framework for the cross border transmission of television programmes thereby creating a single audiovisual market. Herewith the Commission aims to strengthen the competitiveness of the national media industries thereby strengthening the European market against wider forces in the international market. However, the TWF's depoliticisation during the policy process was hard won by the Commission and it's consequential effects on the market by encouragement of European level mergers, acquisitions and joint ventures (see Humphreys 1997; Lang 1997) prompted further political demands for concentration control of the media industry. Immediately following the TWF ratification the European Parliament again took issue with the Commission over media concentration. No less than three Resolutions and a number of working papers were put out by the European Parliament between 1990 and 1992.<sup>7</sup> In response, the European Commission released its first Green Paper on the issue in 1992.<sup>8</sup>

In the 1992 Green paper, the Commission, as it had with TWF, framed media concentration as an issue of the internal market, but it realised that acceptance of the issue on these terms was not easy to attain. For this rea-

son, the Commission systematically sought support for the initiative from the other EU institutions (for discussion see Beltrame 1996) and interest groups. This deliberate wide consultation (culminating in an April 1993 public hearing) to gain support for the initiative served only to further enmesh the Commission in a wider debate of EU legislative competence in matters of democratic concern.

Official opinions were sought and given by the EP,<sup>9</sup> the Economic and Social Committee,<sup>10</sup> member states, national interest groups, national government departments and European federations.<sup>11</sup> In the Green Paper the Commission called for consultation papers from interest groups to consider three possible courses of action.<sup>12</sup> questionnaire was then sent out to interest groups which responded to the Green paper.

Later, two technical studies on possible policy instruments were sent to interest groups for comment; one on audience share measure, from a UK ad-hoc consultancy group Goodhall, Alexander & O'Hare (GAH) and the other on the definition of the controller from the European Institute for the Media (EIM). This concentration on technical issues was in the tradition of single market policy-making, the wide consultation was not. As a political scientist observing Commission single market initiatives has commented 'Policy integration is most successful when issues have been tackled in an incremental depoliticised manner driven by technical co-ordination, the logic of the problem, the politics of the experts and the availability of practical benefits to the participants' (Laffan 1997: 19). According to this single market formula, however, the issue at stake needs to remain depoliticised and kept within a closed circle of technical experts. The policy of media concentration, as one so obviously linked to democratic concerns, was not one to made behind closed doors and as the policy process progressed, it was dragged increasingly into the political arena. As Laffan continued 'As the Union is confronted with issues beyond the core of market integration, polity issues come to the fore' (1997: 19).

In October 1994 DG XV published a second Green paper entitled *Follow Up to the Consultation Process Relating to the Green Paper on 'Pluralism and Media Concentration in the Internal Market – an Assessment of the Need for Community Action'*.<sup>13</sup> In this paper, the Commission held steadfastly to argument of the internal market. Firstly, the paper argued that the responses to the 1992 paper were supportive of future legislation on media concentration.<sup>14</sup> In line with internal market logic the Commission pointed out in the Green paper that this shift of opinion in favour of European regulation is due to the industry's legal uncertainty on media concentration law which it considered a disincentive to Europe wide investment.

Secondly, this paper differed considerably from the first in that it noticeably concentrated upon the *information society*. In particular it is argued that national restrictions on media companies constrict the growth of the *information society* within the Single Market. As well as indicating the differing national regulatory systems for media concentration, it referred to shortcomings in national law for *new technologies* which it claimed is also leading to fragmentation of the internal market. In this respect, the Commission links media concentration to its more popular *information society* initiatives. (However, later drafts do not include provisions for *new technologies*). Indeed, the paper described itself in its opening pages as both a follow up to the 1992 Commission Green Paper and an initial response to the Bangemann report.<sup>15</sup> In anticipation of the Green paper, the Bangemann report in turn reciprocated its support of the media concentration initiative by referring to national media ownership rules as ‘a patchwork of inconsistency which tends to distort and fragment the market’ (European Commission 1994: 14) thereby reiterating internal market concerns stated in the first Green Paper. Thirdly, the paper concludes with a detailed discussion of policy instruments. In particular the emphasis is on the use of audience share measure.

As the Commission continued to define media concentration in terms of the single market,<sup>16</sup> the EP reacted tenaciously repeating its concerns for pluralism. Anticipating the release of the Green Paper, in its 1994 *Fayot/Schinzler Resolution*,<sup>17</sup> the EP voted in favour of tough restrictions on European media ownership. The Resolution urgently called for legislation to prevent European media companies from controlling too many media outlets and for measures to insure pluralism and diversity. These requests were strongly supported in official opinions by the Economic and Social Committee and the Committee of the Regions.

Of course, unofficially, Commission relations with the other EU institutions were much less succinct and even more intense. Intense, in particular, with the EP’s *Committee on Culture, Youth, Education and the Media*. Due to the high political sensitivity of the issue of media concentration and the fact that the EP had increased its powers following the 1992 Maastricht Treaty, it was particularly important for the Commission to gain the support of this committee, the strongest of the pluralist argument. The Commission tried to muster support informally for media concentration as an internal market initiative reasoning to the committee that, after consideration of the limited competencies of the EU, the internal market logic offered the only way in which a directive could be proposed (Beltrame 1996: 4).

In 1995, after much informal negotiation between representatives of this committee and representatives of the Commission, the two institutions struck a deal. In return for support of the internal argument,<sup>18</sup> the Parliament wanted

public commitment from the Commission for pluralist concerns. Accordingly, Commissioner Monti gave a speech before the Cultural Committee in which he declared himself to be personally in favour of an initiative which would seek to 'safeguard pluralism'. The Commission publicly repeated this view in a Commission communication to the EP in October. In return, the Cultural Committee withdrew a 1995 request for 'A Motion for a resolution on media concentration' which would have reiterated the pluralist issue. Following this, the EP remained mysteriously quiet on the issue of media concentration (until the October 1996 *Tongue* report) and no official response was given following the 1994 Green paper. Laffan has observed that 'there is a clear tension in the system between the Europeanisation of public policy making and the continuing importance of national representative democracy' (1997:20). The compromise silence of the European Parliament in this case is indicative of such tension.

Confident of its support from the other EU institutions, after six years of consultation, a proposal for a Directive on media concentration was submitted to the College of Commissioners by Commissioner Monti on July 24, 1996. The draft was widely agreed upon in principle, with objections mainly to policy instruments. These, from Commissioners Brittan and Bangemann, were anticipated by the Monti cabinet (European Voice, 07.97). The draft was reconsidered by the Chefs du Cabinet and resubmitted on September 4, 1996. Initially, a major objection was raised during the September 4 meeting and this was not anticipated by the Monti cabinet. The objection came from Commissioner Oreja and it was on grounds of pluralism.<sup>19</sup> The unexpected nature Oreja's objection was perhaps a political oversight by the Monti cabinet.

The reasons why the pluralism argument reappeared are indeed political. The submission of the media concentration draft was badly timed politically as it coincided with the renewal of the 1989 *TWF* directive. The 1996 ratification of the *TWF* directive became so politically loaded as it went through the new Maastricht-established co-decision procedure that it took one year of negotiation between the Council and the EP before an agreement was reached. The EP had made 44 amendments to the directive in February 1996. All of the EP amendments were rejected by the Council of Ministers in its summer 1996 sitting.<sup>20</sup>

Significantly, the amendments were mostly linked to democratic issues: content of programming, protection of minors against harmful programmes, advertising rules and extending the scope of the directive to new services. Commissioner Oreja held the *TWF* portfolio and was in agreeance with the Cultural Committee over amendments to the directive. The rejection by the Council of the inclusion of these provisions seriously cast into doubt the Commission's promise of commitment to pluralist concerns. Accordingly,



Commissioner Oreja objected to the September media concentration draft because the directive would not be based on principle of pluralism, but on the internal market. Soon afterwards, in October 1996, the European Parliament published the *Tongue* report on *Pluralism and Media Ownership* which seriously criticised the Commission's submission to the College. In particular its suggestion of audience share was denigrated as 'fail(ing) to take into account of pluralism content controls'.

The issue became even more politically heated following this development. The summer rejection of *TWF* led to a second reading by the European Parliament at which 314 votes were needed to *modify* the Council decision. Only 290 votes were attained and *TWF* was ratified including only a fraction of the original changes suggested by the European Parliament.<sup>21</sup> The vote represented the closest vote the EP has ever come to overturning a Council decision under the co-decision procedure – without actually overturning it.

The problem of a lack of democratic legitimacy in the EU was made most apparent by this decision. Indeed, objectively, the example seems extreme. As with all single market directives, this was a policy designed by a non-elected opaque decision-making body (the Commission) and voted in under qualified majority (to which the UK and Denmark voted no). Added to this, the EP, an elected body, even with a large majority, was unable even to *influence* the decision of the Council. Particularly because the amendments to the *TWF* had involved issues of democratic relevance, the reality of the near miss horrified MEPs on the cultural committee. For this reason, support by the European Parliament for a media concentration initiative based solely upon internal market principles is highly unlikely.

The definition of the policy issue of media concentration by the Commission did not function as planned. Typical of single market initiatives, the media concentration initiative relied heavily upon technical arguments and policy instruments and the logic of the internal market, as if broader concerns were of no matter. Unavoidable politicisation of the issue as one of fundamental importance to the future destiny of democracy and of primary interest to the ordinary citizen, halted the initiative in its tracks. This politicisation has pervaded the Commission itself, as cleavages have cut across the DGs. It may turn out that regulation of the media industry does not mean regulation only of the media *market* but requires the constitutionalisation of certain issues.

It very difficult to conceptualise media concentration policy in terms of a single market. The issue has proved itself to be too visible, too salient an issue to require a quiet solution by technocratic policy-makers. Perhaps it is no longer possible to talk about purely technical integration in terms of the single market. Indeed the question arises of whether regulatory policy is conformist or whether different regulatory policies comprise different systems of policy

making. This could be a significant impasse for the Commission because, as Laffan argues, ‘the single market is by far the most important strand in the Union’s panoply of economic instruments’ (Laffan 1997: 11).

### Theoretical implications: whither EU regulation?

One conclusion of this article is that actors conflict over the definition of policy choice. Commissioners such as Monti seek to define media ownership regulation as a component of the single market, whilst members of the EP and Commissioners such as Oreja would prefer a definition rooted in the political paradigm of pluralism. This makes us suspicious of the conventional one-to-one correspondence between EU regulatory policy and technocratic policy-making.

One way of seeing through the mist of analytical suspicion is to situate media ownership regulation in the wider theoretical framework of regulatory policies. As mentioned, Majone emphasises the growth of regulatory policy, whilst the case study presented here sheds light on the limitations and difficulties of EU technocratic regulation.<sup>22</sup> Has the EU regulatory policy process become tougher and steeper, or, alternatively, could it be argued that media ownership regulation is somewhat different from the policies analysed by Majone? Presumably, both propositions are true: ‘permissive consensus’ is no longer an available resource and member states have learnt that the consequences of EU policies can be far-reaching and unforeseen. What seems at first glance a piece of useful regulation for the single market can turn out to be a serious erosion of sovereignty.

However, we prefer to draw attention to the second question as it has more theoretical potential. Essentially, our aim is to break down the monolith of EU regulatory policy and show how different types of regulation trigger diverse policy-making processes. This is consistent with the theoretical literature on regulation. Authors working on the theory of regulation – most notably Wilson (1980) and Gormley (1985–86) – have indeed argued that there is a relationship between politics and *different* regulatory types.

Following Gormley (1985–86), who suggested a typology of regulatory policies for the analysis of the American political system, further analysis could be done on the games played in different regulatory arenas. Gormley presented a four-fold typology based upon two dimensions, i.e., salience and complexity. In order to add clarity to the otherwise elusive concept of salience, it could be argued that the former dimension does not refer to salience *per se* (every policy is ‘salient’ in the eyes of some actors) but, more pertinently, to the public visibility of a policy. A highly salient policy is therefore a policy in which public opinion, mass media, political parties and

mass movements are active: put succinctly, it is a policy ‘with a public’. By contrast, more ‘technocratic’ policies are processed in relative isolation from the public debate. With respect to the EU, direct corporate tax policy provides a paradigmatic example of the shift from a policy without a public (1989–1994) to a policy with a public (1995–1999). Under Commissioner Scrivener (1989–1994), EU corporate tax policy was based on the tax neutrality approach, that is, on proposals for the selective elimination of cross-border fiscal distortions in the single market. Politicisation was avoided by discussing proposals on the basis of their contribution to a more neutral fiscal playing field (Radaelli 1997). This policy was hence hardly visible. The Commission was confident that low salience would avoid political rows over tax sovereignty. But ironically, the Commission became the victim of its own success. The degree of politicisation remained low, but so did the political resoluteness to coordinate taxation. A period of inertia ensued, so much so that Commissioner Monti (1995–1999) has sought to re-kindle political attention in tax policy matters.

Is there a second important element of differentiation, apart from salience? All EU policies tend to be rather ‘complex’ and, accordingly, the second dimension suggested by Gormley is not very useful for the analysis of EU regulatory policy. However, a crucial dimension can be originated by the question of ‘who bears the cost’. Majone has argued that member states do not bear the cost of regulation, at least in the first instance. Media concentration policy conforms to this argument (no economic costs are borne by states when media concentration thresholds are established), with the important qualification, however, that states bear *political* costs when they have to curtail the dominant position of their publicly-owned televisions.

The previous example of tax neutrality illustrates a policy where economic costs are born directly by states. Tax neutrality, in fact, entails the elimination of double taxation on cross-border trade and investment. Domestic revenue authorities – not companies – suffer the consequences of this type of tax coordination. The cost structure of fiscal neutrality is not opaque, but indeed extremely clear to member states taking decisions in the Council of Ministers: less double taxation of corporate income means less revenue. This is an important reason for the lack of significant progress under Commissioner Scrivener. The current shift of the Commission towards an approach based on the attack on harmful tax competition (Radaelli 1998) has re-structured tax coordination by magnifying the gains for member states. The fight against tax avoidance and special tax regimes prevents countries from poaching other countries’ tax bases. It has also a higher political visibility than the old approach of tax neutrality, as illustrated by the confrontation between Germany

*Table 1.* Regulatory policies in the European Union

	Low salience	High salience
Costs borne by states	Tax neutrality (1989–1994)	EU-rest of the world trade tariffs Common energy policy
Costs borne by societal actors	Standardisation	Media ownership regulation Harmful tax harmonisation (1995–1999)

and the UK in Winter 1998 over how far should tax coordination go. These considerations lead to the four-fold typology suggested in Table 1.

In Table 1, the two dimensions making a difference in the dynamics of regulatory policy games refer to the presence of a public debate (i.e., policies are distinguished in policies ‘with a public’ and policies ‘without a public’) and to the actors who bear the cost in the first instance. In tax neutrality costs are borne in the first instance by state structures, whilst in other regulatory policies costs are borne by societal actors. The table portrays different regulatory games: the game of regulation is more easily played in policy areas such as standardisation where there is no public debate and state structures do not bear the cost of regulation. The presence of high saliency can force EU policy-makers to accept an issue onto the agenda, provided that costs fall upon societal actors. Media concentration policy is certainly on the agenda of the EU, but this article has described how difficult it is to reach agreement even though the Commission, the EP and the majority of member states perceive the need for EU action.

When high saliency is combined with costs falling upon state structures the regulatory game is easily stymied, as shown by the difficulty of regulating tariffs on trade between the EU and the rest of the world. The internal market for energy and more generally the common energy policy is representative of a policy area which has gradually gained visibility because of its repercussions on security and environmental policy (Haaland 1996): not surprisingly, progress has been slow in this policy characterised by an increasing degree of salience, in which economic costs are borne by public-owned industries (with the exception of countries in which the energy market has been liberalised) and political costs (in terms of security) borne by states. In conclusion, the point emphasised here is that the political structure of regulatory policy in the EU deserves more attention. The typology proposed here is nothing more than an initial step in this direction, of course, and should be considered as a device for stressing the need to explore different regulatory arenas in the EU.

## Conclusion

If the EU is becoming a polity, political conflict cannot be avoided. Of course, experts, bureaucrats, pressure groups and highly technical policy issues are bound to remain central features of the EU policy process, but the smooth making of regulatory policies has been substituted by political conflict. Our analysis of media ownership regulation shows that, notwithstanding a powerful attempt of the European Commission to limit the media ownership regulatory process to technocratic issues, contestation and political concerns over pluralism and democracy have now become rife in this policy area.

The arguments raised in section three above suggest that technocracy can continue to operate in certain regulatory policies, but not in others. How can this trend toward politicisation be assessed, in conclusion? We argue that the trend illustrates a shift along the trade-off between efficiency and democracy. Technocratic regulation is undoubtedly more efficient: regulation is produced among experts in a highly consensual style. By contrast, regulating for media pluralism engenders contestation and even periods of policy stalemate, so much so that we are still waiting for a formal proposal of the Commission for a directive to be adopted by the Council. But what is lost in terms of efficiency is gained in terms of democratic policy-making. Nobody has ever argued that democracy is the most efficient device for producing public policy: indeed, the democratic choice is advocated for very different reasons (Dahi 1989). In this sense, inefficiency and prolonged conflict may be the price that the EU is forced to pay in its progress toward a more democratic polity.

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## Notes

1. Majone (1994), see however Caporaso (1996) on different conceptualisations of 'state'.
2. Of course, the implementation stage of regulatory policy has implications for public finance and public administration. However, these costs are discovered by states in the medium term, when learning processes illuminate implementation costs that were not politically visible in the decision-making stage. An example of this is Richardson's study

on EU water policy-making which illustrates the opacity of the cost structure, particularly in the earlier stages of the policy process (Richardson 1995).

3. COMM (92) 480 'Pluralism and Media Concentration in the Internal Market', 23.12.92.
4. PEDOC A2-102/85, 30.09.85.
5. PEDOC A2-246/87, 08.12.87 (in which the EP suggested two 1987 amendments for media concentration to the draft Directive *TWF*).
6. Even so this small provision has been Consistently bombarded by US representatives to the WTO table and to Brussels as a barrier to trade. See Agence Europe (1997) 'Resumption of WTO negotiations is positive but several problems remain to be solved – clarification of EU position on audio-visual services' January 18, 1997. Also in an interview with European Voice 25–31.07.96, US representative to the EU Vernon Weaver states 'I will not be shy about defending key US industries, such as the audio-visual industry, against new protectionist measures, however packaged'.
7. 1990 Resolution on Concentration in the Media [PEDOC A3-293/294/90, OJC 68, 19.03.90J; 1990 Resolution on Media Takeovers and Mergers [PEDOC B3-345/368/3801391190, OJC 68, 15.02.90J; 1992 Resolution on Media Concentration and Diversity of Opinions [PEDOC A3-153192, OJC 284, 02.11.92J; 1990 *Albor Motion for Resolution on Concentration of information* [PEDOC B3-455/90J; 1990 *Ferri Motion for Resolution on Anti-trust Legislation for the Media* [PEDOC B3-842/90J; 1990 *Ortega Motion for Resolution on Local Television in Europe* [PEDOC B3-721191J; 1991 *Titley and others Motion for Resolution on Importance of Diversity in the Media* [PEDOC B3-894191J; 1991 *Titley and others Motion for Resolution on Tendency Towards the Concentration of Ownership in the Media Industry* [PEDOC B3-895/92J].
8. COMM (92) 480 'Pluralism and Media Concentration in the Internal Market' 23.12.92.
9. The European Parliament Resolution (1994) 'Pluralism and Media Concentration' A3-0435/93 was in favour of harmonisation.
10. The Economic and Social Committee (1993) 'Opinion on Commission Green Paper' 93/C 304/07 was also in favour of harmonisation.
11. This deliberate wide consultation was in line with the new policy of encouraging greater transparency within the Commission which was agreed upon at the 1992 Edinburgh summit. Before the transparency policy, the Commission only officially invited European federations to place their views. Of course, as organisations and groups were now represented both nationally and at the European level, they could be represented two or more times.
12. These were simply: 1 no action, 2 transparency action, 3 harmonisation action.
13. COM (94) 353 final, 05.10.1994, Follow Up to the Consultation Process Relating to the Green Paper on 'Pluralism and Media Concentration in the Internal Market – an Assessment of the Need for Community Action'.
14. In total, three Commission questionnaires were sent to interested parties. Written responses to the first are compiled in a five volume Commission document XV/9555/94.
15. The Bangemann report was a report of the (Bangemann chaired) Council of Ministers Higher Level Group, entitled *Europe and the global information society* as submitted to the European Council for its meeting in Corfu on 24–25 June 1994.
16. On the politics of 'framing' in EU media ownership regulation see Harcourt (1998).
17. PEDOCA3-435193, 05.01.94.
18. This acceptance of the Commission's internal market argument by MEPs was confirmed in interviews by Harcourt with three members of the Cultural Committee.

19. In an interview with Harcourt in 1996, a Commission official stated 'Oreja was a surprise, we didn't expect Oreja'.
20. See Agence Europe 17.09.1996 'Council explains its rejection of parliaments amendments to its common position on television without frontiers'.
21. The decision went to conciliation stage and eventuated in the *Television Without Frontiers Directive 97/36/EC*. 30.06.97, OJ L 202, 30.07.97.
22. Caporaso (1996) is another author who draws attention to the limits to the EU regulatory state.

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