

Comments of the Secretary General of COMECE

on the

Green Paper of the European Commission concerning the Convergence  
of the Telecommunications, Media and Information Technology Sectors  
and their Effects on Regulatory Policy

A Step towards the Information Society

compiled by the Media Policy Working Group of ComECE

## Contents

<b>CONTENTS.....</b>	<b>2</b>
<b>I. OUR SELF-IMAGE.....</b>	<b>3</b>
1. COMECE .....	3
2. COMECE’S FUNCTIONS IN THE FIELD OF MEDIA POLICY.....	3
<b>II. CRITICAL REMARKS ON THE GREEN PAPER.....</b>	<b>5</b>
1. THE CONCEPT OF REGULATION.....	5
2. THE CONCEPT OF CONVERGENCE.....	6
2.1 <i>Technical convergence</i> .....	6
2.2 <i>Convergence of markets and services?</i> .....	6
2.3 <i>Convergence of utilisation?</i> .....	7
2.4 <i>Required differentiation of contents and dissemination technology</i> .....	7
3. COMMUNICATION IS MORE THAN (MERE) CONSUMPTION .....	7
4. THE DEFINITION OF “PUBLIC INTEREST” AND “SERVICES FOR THE GENERAL PUBLIC” .....	8
5. THE ROLE OF PUBLIC SERVICE BROADCASTING .....	9
6. SEPARATE LEGAL FRAMEWORK FOR DISSEMINATION TECHNOLOGY AND CONTENTS.....	10
<b>III. SUMMARY.....</b>	<b>11</b>

## **I. Our Self-Image**

### ***1. ComECE***

ComECE is the Commission of the Bishops' Conferences of the European Community. Its members include the fourteen Catholic Bishops' Conferences in the Member States of the European Union, and its General Secretariat is located in Brussels. ComECE's duties include observing the process of economic and political development within the EU, accompanying this process and reacting to it by taking appropriate action in order to contribute to the process of continued European integration.

This is one of the reasons why ComECE has taken up the Commission's invitation to all bodies, organisations and citizens of the European Union to examine the Green Paper and to contribute their comments to an extensive discussion of the issues surrounding the Green Paper.

### ***2. ComECE's functions in the field of media policy***

Culture and media are inextricably interconnected. It depends on the type of media and structures to what extent and in what forms a society creates its communication processes that are directed both inwards and outwards, how it communicates and imparts information to others. The media, however, are not just an instrument to organise culture, but rather they reflect the culture that they create themselves: the self-image and identity of a culture are apparent and can be determined in both their form and their contents. Examining culture implies studying the media and their structures.

This is particularly true at a time when our European cultures have a wide range of communication media at their disposal and in societies that are referred to as "information societies".

The Catholic Church, which itself has characterised European history and cultures considerably and still does so, considers it to be its duty to participate actively in these cultural self-reflection and formation processes. For the Church this also entails intensive dialogue with communication media.

For the Church this dialogue with the media in actual fact means analysing and evaluating the opportunities and risks of developments in the communications sector and then reconciling them with the anthropological prerequisites of a Christian philosophy of humanity and with the aims of a social community. In the Christian tradition attempts have always been made to perceive very carefully in what communication circumstances people live, what communication structures are applied to open up or to close different interpretation and formation opportunities for people's lives.

So the primary concern of the Catholic Church in developing the communication and media sector is not primarily technical and economic issues. Access to these developments is, moreover, from the dimension of perceptual culture and responsibility: to what extent do new technologies and communication services characterise our understanding of both ourselves and of the world? Are they primarily for the purposes of communication, interpersonal comprehension and the interests of social co-existence? It is evident that safeguarding of the individual's legitimate interests and preservation of the collective well-being are not mutually exclusive in this case, but are rather mutually conditional: protection of everyone's interests makes protection of the individual's interests possible.

Against this background the following analyses and remarks on the European Commission's Green Paper concerning the Convergence of the Telecommunications, Media and Information Technology Sectors and their Effects on Regulatory Policy must be understood.

## II. Critical remarks on the Green Paper

The purpose of the following remarks on the Green Paper is to present an analysis of the main concepts contained therein and evaluate it from the perspective of the above stated principles, after which a summary is presented subsequent to Chapter V of the Green Paper suggesting some principles for future regulations. The remarks do not aim to discuss the questions (1-9) contained in the Green Paper individually or to provide answers to these questions.

### *1. The concept of regulation*

A negative perception of regulations is presented in the Green Paper. Regulation is primarily associated with “restriction of freedom” and “obstacles to development”, although it is rightly stated that the complex nature of the regulations in the relevant areas is considerable due to the partly major differences in regulations in place in the Community (in particular Chapters III and IV *passim*).

The perception of regulations would probably be more differentiated and thus more positive if the Green Paper even contained an attempt to define the meaning and function of regulations more accurately, also in the area of telecommunications, media and IT.

We agree with the Green Paper that regulations are not a means to an end in themselves, but rather always exist to serve certain values and aims that should be maintained or implemented. They are instruments within the framework of regulatory policy, which is determined by the same values and standards. It is thus curious that the Green Paper hardly reflects on this central role of values and standards as the basis for a regulatory policy framework. This is particularly applicable to the regulations referring to public interest stated in Chapter IV.3 (and the concomitant values) and those implicit in the stated values contained in the general remarks of the Green Paper.

As already described above, individual freedom and collective well-being are relative to each other. Freedom can only exist where it is upheld and determined by values. Regulations serve to secure and make freedom possible: freedom of speech, freedom of assembly, freedom of choice etc. They are determined by values and aim to achieve certain objectives: the promotion, preservation and protection of the collective well-being and the public interest; protection of the individual under various aspects (such as protection of consumers, data and young persons); the promotion of cultural and regional diversity, social coherence, free participation in the social communication process etc.

Consequently, the principles of regulation must observe the protection and promotion of these fundamental values and objectives and must be derived from them – whilst preserving an equilibrium between individual freedom and collective well-being. Fundamental principles include, amongst others, the transparency of the regulation process and the underlying interests, consideration of the special features of the sectors and areas to be regulated, subsidiarity of regulation levels, mechanisms and authorities. The concrete regulatory policy framework must be deduced from the objectives and principles of regulation.

Determination of objectives and principles of regulation is a fundamental aim of politics, which must assume a control function in this respect. Politics cannot escape this directing objective by referring to the normative power of technological development and “self-regulation of the market”, especially when the market values are completely different from the values and objectives of the

community. In addition to promoting economic perspectives, politics must also essentially perceive the ethical and regulatory policy dimensions and appear and act as the advocate of fundamental and human rights.

The principles for future regulation stated in the Green Paper under point V.1 such as proportionality, calculability, subsidiarity and transparency are correct and necessary. Regulation may not, however, be left exclusively to self-regulation of the individual sectors. Even if forms of self-control are an important component of regulation, which must be promoted, independent regulatory bodies are still a major factor: however, they should not be contingent only on government intervention (governed by economic interests), but should also be socially legitimised at the same time.

## ***2. The concept of convergence***

The concept of convergence central to the Green Paper is not defined by the authors, but rather is only paraphrased (I.1, page 1) and applied very differently subsequently. This gives rise to a lack of clarity, particularly with regard to different objects to which this concept is applied in the Green Paper.

### **2.1 Technical convergence**

The use of the concept of convergence is most distinct with regard to “technical convergence” – as homogeneity of channels/transmission methods and/or network platforms that have been made possible by the digitalisation of images, language and data. In this case it should also be taken into account that despite digital technology – also due to the concomitant costs for establishing an appropriate, extensive infrastructure – analogue transmission methods will continue to exist for the foreseeable future.

It is also evident to accept a certain degree of technical convergence regarding the increasing merging of terminal equipment although the Green Paper itself concedes that this convergence “[is] today much more removed than network convergence” (page 1).

### **2.2 Convergence of markets and services?**

The Green Paper goes on to apply the concept of convergence to the utilisation, markets and services and also contents in order to conclude the necessity for convergence of legal regulations. This conclusion appears to be premature for several reasons at least: it is doubtful whether the phenomena of horizontal and vertical integration and/or concentration, i.e. the economic penetration and linking of suppliers on the telecommunications, media and information technology markets (page 7 and table 1, page 8), described in the Green Paper may really be described and conceived as “convergence”. The Green Paper itself maintains that the changes in the individual branches are “in themselves no proof of convergence” (I.2, page 4). It admits that “despite the far reaching consensus concerning the concept of technological convergence, there is little certainty concerning the probability and/or point in time of complete convergence of services and markets” (I.4, page 9). Nevertheless, as the Green Paper continues, the impression of convergence in these areas is repeatedly created with regard to the claimed necessity of revising the regulations.

### 2.3 Convergence of utilisation?

From the point of view of the consumer the effect of convergence on the utilisation and contents appears to be the most specific. The Green Paper has, in our opinion, wrongly ignored these two aspects. With regard to these two areas, we should rather refer to complementarity (supplementing) of the phenomena than convergence (matching). With regard to the utilisation it does not appear to be decided at all whether existing terminal equipment (radios, televisions, video recorders, telephones, computers/Internet connections) are really to be replaced by a single, global piece of terminal equipment. It is more probable that different features can be used simultaneously and alternately. Predictions concerning possible changes to the media utilisation pattern and the willingness of households to accept new technology or to continue investing in information and communication technology are too uncertain to be able to serve as arguments for a completely revised regulation of the areas concerned.

### 2.4 Required differentiation of contents and dissemination technology

One matter for further confusion is the lack of a clear differentiation between regulations affecting “contents” and regulations relating to “dissemination technologies”. In our opinion no conclusions may be made concerning either convergence of these two areas or concerning the need for harmonisation of the different regulations applicable to different contents and/or supplies and thus referred to in the Green Paper as obstacles, due to the fact that different suppliers from the classic area of transmission are also committed to offering contents. Despite the existing interrelations between suppliers of transmission modes and suppliers of contents – radio needs transmission and therefore also telecommunication – different regulation mechanisms are required, which are produced from the specific tasks and requirements of the particular specialised area (cf. below, point 6).

### 3. *Communication is more than (mere) consumption*

The understanding of communication that forms the basis for the Green Paper is not referred to explicitly anywhere in the Green Paper itself. However, the understanding of communication inherent to the Green Paper can, however, be deduced from the understanding of “services on offer” directed at an “individual consumer”, who has the freedom to select between “different services”, which is used in the Green Paper: **communication** is understood primarily as **transaction**. Compared to this understanding of communication, which is limited to the consumer’s freedom of choice, the Christian social doctrine has always stressed the reciprocal relation between communication, community and freedom. According to Christian understanding, freedom for political, economic and cultural activity can only evolve in the context of community and communication. (Economic) freedom not only permits unrestricted activities in this social area, but also obliges people to serve the other members of the community. Such freedom, which is understood both individually and socially to the same extent, in responsibility may be referred to as communicative freedom from a Christian perspective.

The main shortcoming of the Green Paper is its one-sided and almost exclusive manner of viewing and understanding communication from the perspective of the consumer, according to the example of telecommunication. **Communication may not, however, be reduced to consumption**, nor may it become the exclusive object of the market.

Both the classic mass media and also the Internet open up other opportunities for communication than those that are determined exclusively by the market logic: not the supply of (purchasable) services to individual consumers, but rather the opening of a forum for encounter, exchange and

communication. To remain with this image: not the character of supply and consumption of a supermarket is decisive, but rather the understanding of the market as a public forum. The traditional market takes place here, where on the one hand buying and selling are performed according to the laws of supply, demand and competition, however on the other hand free encounter, free discussion, free play and free communication are possible.

The existence of such a “public area free of the compulsion to consume” is an essential element of social life and democracy – if citizens are not to be reduced to mere consumers. So it appears to be contradictory to leave securing of this area, which is free of the compulsion to consume, public and in principle accessible to all, exclusively to market forces and its legalities.

#### **4. The definition of “public interest” and “services for the general public”**

Within the scope of the chapter on the legal challenges of the phenomenon of convergence the Green Paper devotes one section to regulations in the public interest, in particular public service broadcasting, data protection and protection of private life, protection of young persons and protection of cultural diversity. The Commission must be given due praise that it has not merely brushed over these issues. The interests of the Church and the European Commission converge here.

The question that both the Church and the European Commission are asking is as follows:

How can the objectives of public interest be maintained and secured in an environment of technological innovation? Can the suggestions to change the regulations be reconciled with these objectives?

On the basis of contracts securing the objectives of public interest is one of the most important tasks facing the European Commission. The Green Paper designates the following specific examples as objectives of public interest i.a.:

- “Supply of the public with services of general interest to guarantee both social and regional cohesion in the community” (III.2, page 21)
- “The purpose of a general commitment to providing universal services (for basic supply) is that certain services are on offer at reasonable prices” (IV.3, page 35)
- “The protection of private life and data protection” (IV.3, pages 35, 37)
- “Cultural diversity” (IV.3, page 35), which is stated explicitly as one of the tasks contained in the contracts
- “Protection of minors and preservation of public law and order” (IV.3, pages 35, 36, 38).

These objectives stated in the Green Paper are also of major significance for the Church. The question raised in the Green Paper whether “the phenomenon of convergence represents a confirmation or a challenge for the methods that are currently applied to achieve the public interest in the areas of telecommunications, media and IT” is also a decisive issue for the Church.

It cannot be the Church’s responsibility to respond to all aspects of this question: however, it is the Church’s duty to stress that all new suggestions for regulation of the telecommunications, media and IT sectors must support and promote achievement of the above stated objectives effectively. It is doubtless legitimate for the European Commission to offer those sectors affected by the Green Paper the opportunity to make full use of the new technologies. It is likewise legitimate to examine the role and significance of existing regulations (IV.1, page 22). At the same time, however, it seems doubtful to us whether the proposals for extensive market orientation and self-regulation of



the sectors listed in the Green Paper can actually prevent that “public interests being undermined by economic priorities” (IV.4, page 39).

The Green Paper itself sustains these doubts by proposing specifically that in the allocation of transmission frequencies (which, despite digitalisation, are still restricted) those frequency users, who contribute to greater economic added value, are to be given preferential treatment over other frequency users (IV.2.4, page 32). It is exactly this type of discrimination that contradicts the above stated objectives of public interest.

This type of discrimination contributes to increasing the gap in knowledge between “information rich” and “information poor”. It helps exclude the supply of cultural, informative, social or educational contents without direct economic added value. It contributes towards social exclusion instead of towards social cohesion.

It is also contrary to the recommendation of the European Media Ministers’ Conference in Thessaloniki in December 1997 that the new communication and information services should be universally accessible to each individual at a reasonable fee and irrespective of geographic location (“Services for the General Public”, as these are called). In doing so, basic services at national, regional and local levels will have to be determined particularly in the areas of information, education, consultation and culture to which each individual should have access.

### ***5. The role of public service broadcasting***

The Green Paper only examines the role of public service broadcasting in future communication order at a few points (cf. in particular IV.3; IV.2.6).

The “cultural importance” of public service broadcasting is recognised with a reference to the protocol concerning public service broadcasting in the Treaty of Amsterdam, which states “that public service broadcasting in the Member States [is linked to] the democratic, social and cultural requirements of each society and also to the requirement... to preserve pluralism in the media”. Likewise, the right of the Member States to finance public service broadcasting adequately in their own way established in the protocol “as long as this is in keeping with the regulations contained in the EC Treaty” is also established. In addition, taking into account technological convergence, expansion of the functional mandate of public service institutions is encouraged in view of new activities and access to media users and additional new sources of income are considered.

It is all the more surprising that the current system of public service broadcasting then appears to be challenged extensively: demands are made openly to check regularly “to what extent the desired objectives can already be achieved by normal market activities”, “whether the stated objectives are also justified in view of the new communication and media environment”, and “whether organisations other than those to date may be entrusted with these obligations”. In addition the fear is expressed that “cross-subsidising” of new services may be practised by means of the broadcasting licence fees, which place other market participants at a disadvantage. It is a negative sign that the ideologically loaded concept of “compulsory fees” is used quite freely in connection with pricing issues (IV.2.6) with regard to the financing of public service broadcasting.

Particularly in view of the general tendency towards commercialisation in the whole media and communication sector, the importance of public service broadcasting is growing as it is not only compelled to operate for profit, but rather has a certain mandate for programmes and is able to keep alive the importance of broadcasting as a cultural asset. We believe that in a converging environment the range of cultural, informative, social and educational contents may not be pushed out into a ghetto. Pluralistic societies, where the objectives of behaviour, moral concepts and philosophies of life differ greatly between different groups, require forms of communication that permit understanding via standards and rules of co-existence common to the group, via central

problems in society and appropriate solutions and to which minorities and socially and financially disadvantaged groups also have access. Considering the increasing fragmentation of media on offer depending on specific, closely defined target and interest groups, the significance of integration, forum and model functions of public service broadcasting is even still growing.

Also with regard to the dangers of media concentration that cannot be ignored, especially in the area of television, strong public service broadcasting makes an indispensable contribution to securing pluralism and freedom of speech.

For this reason, preservation of a strong and functional public service broadcasting system in Europe must be an established element of all European media and communication policies. In this instance support in principle for public service broadcasting does not at all exclude the necessary criticism of its concrete manifestation; on the contrary it challenges this if the ideal and reality are too different.

Our appeal for the preservation of public service broadcasting does not exclude recognition of the dual broadcasting system in place in most Member States comprising public service and commercial – and also Church – stations.

## ***6. Separate legal framework for dissemination technology and contents***

In questions concerning regulation, as already stated in point 2.4, a clear differentiation must be made between the dissemination technology/infrastructure and the contents disseminated with the aid of this infrastructure. In the latter case a further differentiation must be made between private communication and public communication (such as broadcasting). Contents relevant to journalism must be taken into account specifically.

Regulation of the infrastructure mainly concerns technological and economic issues with regard to standards and free access and can thus be left to market influences under certain circumstances (such as exclusion of monopolies).

The objective of regulating the contents comprises more and is more differentiated. It is thus the role of broadcasting law to secure broadcasting as a medium and a factor for formation of individual and public opinion, as a medium for social and cultural integration, as an educational factor and a guarantee of diversity of opinion, amongst other things. Respect of the person and of human dignity and also protection of minorities and young persons must be ensured.

Regulation of contents, especially when they refer to broadcasting, must also observe their own objectives and functions that are inherent to the classic mass media within democratic societies. These include in particular the functions of information, formation of opinion and criticism and control. Regulations serve to secure and defend these functions, which have a formative role within the community.

The Green Paper's endeavours for as great a diversity of contents as possible must be upheld in principle. At the same time, however, the question must be permitted whether in this case the diversity of different contents, which is desirable per se, (and which is linked in the Green Paper to the demand for further market opening) is being confused with the diversity of supplies with basically the same contents (which makes market opening understandable for competitive reasons, however improbable as a means of increasing diversity).

### III. Summary

The Green Paper's difficult process of formation becomes evident given the inconsistency of arguments and unexpected juxtaposition of subjects (thus point IV.3 appears to have been inserted at a later stage in the public's interest). It attempts to bring together the very divergent interests and focuses of the two Directorates General (on the one hand DG XIII – Telecommunications and, on the other hand, DG X – Culture, Audio-visual Media), which it succeeds in doing only partly. Despite all the inconsistencies, the conspicuous restrictions on the two following perspectives appear to us to be irreconcilable with the meaning of public interest contained in the Green Paper:

- from being a responsible citizen, who is committed to public welfare and society, the individual is reduced to a consumer merely committed to individual (economic) interests;
- the commodities committed to public welfare and the public interest, such as the media, become objects of trade between individual suppliers and individual consumers.

We wonder whether this is a coincidental, isolated phenomenon or whether it is not a trend of future EU policy in this area.

The principles, which are to form the basis for future regulation of the communication sector and which are touched upon only briefly and almost casually in the Green Paper (V.1, page 42), are of primary importance for the Church. We suggest the following re-evaluation:

1. Universal participation in the information society must be secured for all. To guarantee this the social dimension of the information society must be analysed further and taken into account more closely as a central element in a regulatory policy corresponding to the phenomenon of convergence, also in the area of educational and labour market policy.
2. Future regulatory attempts should meet with the needs of users and not restrict them to the role of consumers. The Green Paper rightly sees the need here to strike a balance between legitimate individual interests and general public interest.
3. Regulation is not an end per se, but rather serves to achieve objectives and secure values, both in the interest of the individual and also in the interest of the community. A broad social dialogue must take place about the values and objectives of the communication order in future, in which not only economic and technical aspects should be predominant. Decisions concerning regulations should be taken in a democratically legitimised manner, transparently, in accordance with distinct criteria and within a calculable framework on the basis of subsidiarity.
4. Independent regulatory authorities, which are more than pure self-regulatory bodies of the sectors concerned, on the one hand, and, on the other, are more than pure government regulatory bodies, are of key importance. The social legitimisation of these bodies, the transparency of their procedures and a subsidiary structure are key features.
5. Each regulation must make a clear differentiation between the different values of dissemination techniques or infrastructure, on the one hand, and the contents, on the other hand, and must fulfil the different objectives, tasks and laws of the different areas.

In particular care must be taken that the specific objectives of the classic media areas that are relevant to journalism are also preserved in future in a democratic Europe, that is dependent on responsible citizens.

An evaluation of concrete regulation models will have to adapt to realisation of these guiding principles. At the present moment in time, on the basis of these principles, we plead for a “conservative” continuation of the existing regulatory policy framework, as continuation of this is best able to take into account the uncertain predictions concerning future developments.

Brussels – April 1998

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