

THE CHALLENGES OF
HARMONISING LAWS IN THE EU

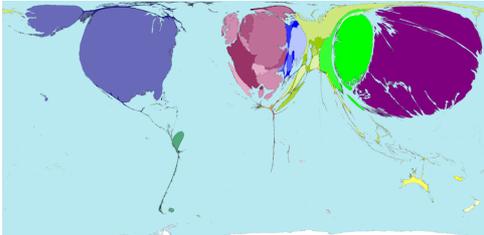
Legal Response to Technology and Innovation

TWO CONCEPTS

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HARMONISATION
KNOWLEDGE ECONOMY

Knowledge-based society



EU27 innovators

- Sweden
- Denmark
- Germany
- Finland

Europe

- Switzerland outperforms EU27
- Norway underperforms

World innovators

- US, Japan and South Korea
- All three outperform EU27

What role does having the same legal system play in this?

Integration through law



Integration through law



The idea

- The core of an efficient market is access to justice, unhindered by different laws = rules need to be harmonized
- An efficient modern economy is based on knowledge and innovation
- Knowledge and innovation do not happen in systems which are tightly regulated

The idea

- **Knowledge and innovation do not happen in systems which are tightly regulated**

The idea

- Knowledge and innovation do not happen in systems which are tightly regulated
- The EU is becoming an ever more regulated system

HARMONISATION

Harmonisation

- Full harmonisation: no space for Member States
- Partial harmonisation: Member States can keep their own laws

Mechanisms for achieving integration through law

- Prohibitions
- Harmonisation

Problems with too much EU prohibition

- Affects welfare
- Affects main EU purpose of stimulating economies

Harmonisation

- National rules are brought closer together
- Not the same as unification, i.e the rules are not 100% the same

Economic justification for harmonisation?

- The usual argument: transaction costs
- Other arguments

Cost of EU harmonisation

- **New rules, new practices:** direct costs
- **Entrenched interests:** bureaucracies not willing to adapt
- **Loss of legal coherence:** contradictory and unstable systems
- **Lack of innovation:** systems without local variations are less likely to innovate and adjust - no jurisdiction competition

The mechanism for preserving diversity

- **Mutual recognition:** a product/service lawfully marketed in one EU state must be admitted into another
- **Subsidiarity:** The EU does not intervene unless it is necessary

In reality...

- Subsidiarity often ignored
- More and more EU laws "full harmonisation" measures, not leaving any space for Member States' own laws (and therefore no space for mutual recognition)

WHAT DOES THE EU SAY ABOUT KNOWLEDGE AND INNOVATION?

Lisbon Strategy

- Drafted in 2000, term 2000-2010
- Meant to make the EU "the most competitive and dynamic **knowledge-based economy** in the world capable of sustainable economic growth with more and better jobs and greater social cohesion", by 2010

Lisbon Strategy

- Innovation
- "Learning economy"
- Social and environmental renewal

2009 review

- A complete failure
- Why?
- Voluntary nature, lack of strategy

2020 Strategy

- Less ambitious
- Innovation Europe: access to finance
- Digital Europe: faster broadband, more e-commerce

Conclusion

- The EU has done little to create conditions for an **EU based** knowledge economy
- Is it doing anything to help a **nation-based** knowledge economy?

Conditions for innovation - Enablers

- **Firm**
 - Investment
 - Entrepreneurship
 - Intellectual Property
- **Non-firm**
 - Human resources
 - Finance

Two important points

- Knowledge moves to where demand is highest and barriers lowest (think Florence in Medici times!)
- A fragmented environment in itself is not a problem for innovators
- Paradoxically, a non-fragmented, harmonized one, may be a problem

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THE IMPACT ON KNOWLEDGE AND INNOVATION

1 Intellectual Property Laws

Some features of our digital economy

- Digital convergence
- Open innovation
- User-generated content
- Know-how/trade secrets
- Cultural commons

The law response?

- Utilitarian property-based protection:
 - Tighter IP laws
 - Longer terms
 - Tougher enforcement

Tighter IP laws

- Very few exceptions, no "fair use"
- Access protection and copy protection in addition to regular copyright
- Laws not suitable for the digital world

Longer terms

- Copyright duration: life of author + 70 years
- If I die in 2013, my works become public domain in 2083

Tougher enforcement

- Civil enforcement: high damages, difficult procedures
- Criminal enforcement: fines, prison

Empirical evidence for harm

- In the wake of the *Napster* ruling
 - Less desire to experiment
 - Less entrepreneurship
 - Fear of litigation

Community patent system

- Present system: one application (Munich), 27 separate patents
- 2011 proposal for a unitary patent system: one application, one patent

2 Human Resources

Some features

- Free movement of workers
- Social security in another EU state
- Families covered

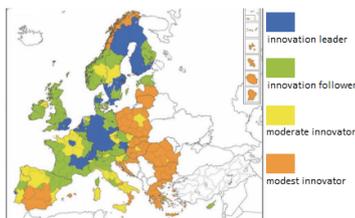
Human resources needed for a knowledge-based economy

- Labor mobility:
 - Low (50% of that in the USA)
- Skills (education, co-operation...)
 - gap between EU27 innovators and non-innovators

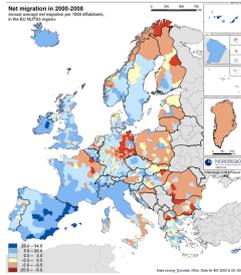
Other resources needed

- business sector investment in R&D
 - EU: new firms do not play a role in the high-tech sector

EU Innovation map



Net EU migration



CONCLUDING REMARKS

What does the EU **think** it needs to do to boost innovation?

- Write laws that support innovation
- Invest in knowledge

What does the EU **actually** need to do to boost innovation?

• **Turn knowledge into innovation**

- De-regulate
- Have a decentralized, self-renewing policy
- Include social innovation
- Introduce new financing models
