

Transnational Convergence of Public Procurement Policy: A ‘bottom-up’ analysis of policy networks and the international harmonization of accessibility standards for information and communication technology

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This article seeks to examine how public procurement policies for information and communication technology (ICT), aimed at improving the accessibility of ICT for persons with disabilities, have converged internationally. Convergence, in this instance, refers to the international harmonisation or acceptance of common standards and norms. Distinguishing itself from the predominant authorship in the area, this article seeks to explore convergence from a ‘bottom-up’ perspective, by examining the influence of networks of public and private actors on the design of public procurement standards for accessible ICT. Specifically, it will seek to answer how these actors and networks (varying in their level of coordination) have contributed to policy design in a unique area, public procurement of ICT goods and services. The influence of these networks will be discussed through the use of policy documents and semi-structured interviews, to provide empirical support for examining this ‘bottom-up’ analysis and distinguish it from the standard ‘top-down’ model usually employed in this field. This article also focuses on the role of policy actors in the United States and European Union that participated in the harmonisation of public procurement policy and the legal norms and instruments that give these policies their legal effect.

Keywords: convergence, public procurement, policy networks

Introduction

This article examines the convergence – i.e., international harmonization – of public procurement policies, which has been shaped by the intervention of policy networks in both the United States (US) and European Union (EU). These interdependent networks of policy actors have utilised international standards to harmonize public procurement policies. Public procurement policies guide public agencies in contracting and purchasing goods and services from private and public sector actors, and in the US and EU, public procurement policies have been used to promote the accessibility of information and communication technology (ICT) by requiring compliance with standards. These policies have integrated in various ways the Web Content Accessibility Guidelines (WCAG), published by a non-governmental, not-for-profit standards organization, the World Wide Web Consortium (W3C). These guidelines act as an international standard for web accessibility and provide evidence of convergence in this article.² However, the aim of WCAG, to ensure the accessibility of web content, differs from the aims of public procurement policies in the US and EU, to ensure the accessibility of ICT.³ This article argues that, in effect, the W3C contributed to the international harmonization of public procurement policy by centralizing the application of WCAG to ICT. Public and private sector actors in the US and EU cooperated in the application of WCAG to ICT and adopted the principles and technical requirements of WCAG in the design of public procurement policy.

The accepted wisdom in examining public policy, suggests that implementation occurs as a ‘top-down’ process. In essence, this means that implementation research has focused on the role played by governmental and other State-based actors in the design and implementation of law and policy. These structural approaches follow standard hierarchical views of society, as States are the primary drafters of policy decisions and influential in processes related to policy convergence (Tenbücken and Schneider 2004, Wilensky 2002, Greve 1996). This article argues that a ‘bottom-up’ perspective provides a useful means for examining the convergence of policy areas at a global or transnational level. It uses public procurement policy as a specific example of how ‘bottom-up’ convergence can take place. This article therefore seeks to apply a ‘bottom-up’ approach to convergence by examining the role of policy actors involved in harmonizing public procurement policy objectives internationally, and attempts to provide further insights into this emergent method of analysis using qualitative data.

Convergence refers to the international harmonisation of policy objectives and their associated legal instruments. Greve (1996), Wilensky (2002), and Tenbücken and Schneider (2004) demonstrate that convergence is an increasingly prevalent phenomenon internationally, and Heichel, Pape, and Sommerer (2005) provide a useful framework for examining convergence as a bottom-up process by emphasising the influence of non-State actors on policy design.

The authors examine the mechanisms of convergence in relation to three analytic concepts, policy diffusion, policy learning and policy transfer. These analytic concepts refer variously to the spread of ideas in policy design. Braun and Gilardi (2006) examine the influence of ideas on policy design and argue that networks of interdependent policy actors contribute to policy diffusion and sometimes convergence. While Braun and Gilardi (2006) acknowledge the influence of State and non-State actors on policy diffusion, their article aims to provide a theoretical explanation for policy diffusion. As such, in order to compensate for the often-symbiotic nature of public-private partnerships within networks of interdependent policy actors, this article will incorporate and distinguish itself from previous research on convergence by adopting a ‘bottom-up’ method of analysis.

Ultimately, this article will attempt to demonstrate the convergence of ICT accessibility standards for public procurement by examining the relations of policy actors that have cooperated in using web accessibility standards to harmonize public procurement standards internationally. While the US and EU formally established diplomatic relations in 1990 (Paor and Quinn 2010), this article will attempt to inform future research and practice by demonstrating that public and private sector actors participated in an international network of policy actors and contributed to the ‘bottom-up’ convergence of public procurement policy in the US and EU.

The first section provides an analytic framework that uses concepts related to regulatory capitalism, policy networks and policy diffusion as a point of reference for the analysis, before detailing the empirical research methods, data and analysis. Next, it focuses on the field of public procurement for ICT in achieving public policy outcomes, whilst examining the interdependent relationships between public and private sector actors involved in designing public procurement

policies in the US and EU. The third section analyses the bottom-up mechanisms that have contributed to the convergence of public procurement policies in the US and EU. Lastly, the article discusses the implications of the results for research on regulatory capitalism, policy diffusion and policy networks, before concluding with a brief summary and providing recommendations for research and practice.

1.1 Framework and Methods

This section establishes the analytic framework within which a ‘bottom-up’ approach to convergence can be examined. This framework consists of three interrelated concepts: regulatory capitalism, policy networks, and policy diffusion.

1.1.1 Regulatory Capitalism

Regulatory capitalism at the most fundamental level tries to evaluate the way in which policy is created in a broad, social sense. This therefore goes beyond purely legal or regulatory instruments, to include ‘soft law’ instruments such as guidelines and other proscriptive but non-binding measures. Regulatory capitalism therefore provides a useful basis for examining public procurement policy as part of a regulatory approach to governance (Bevir 2010), not only because it is a relatively discreet and clear area of law and policy, but also due to its impact upon disabled users of ICT.⁴

Levi-Faur (2011) recognises the diverse and interdisciplinary conceptualisations and definitions of regulation, and refers to social regulation as ‘the ex-ante bureaucratic legalisation of prescriptive rules ... by social, business and political actors on other social, business and political actors’ (6). Within this framework, social regulation includes for example, voluntary codes of practice, professional codes of conduct and guidelines established by non-State actors as well as more traditional State-based laws and policies. This article adopts a broad conceptualisation of regulation, consistent with Levi-Faur (2011), and refers to social regulation as the design of legislative, financial or persuasive rules by State or non-State actors that attempt to encourage or force market actors to promote social outcomes.

Elsewhere Levi-Faur (2006) suggests that social regulation constitutes part of a broader phenomenon referred to as regulatory capitalism, which refers to a new form of governance and reflects ‘the intimate relations between regulation and capitalism, the diversity of governance regimes and sectoral variations, the interdependency between sectors, nations, and regions, or the multilevelness of policymaking and governance’. In particular, Levi-Faur (2005) argues that regulatory capitalism involves a ‘new division of labor between State and society’. Moran (2003) and Braithwaite (2006) for example, illustrate that efforts towards privatisation have converted State-based services into, sometimes highly regulated, market-based services. This shift from the public to the private sector has had the ancillary effect of transforming public sector administration towards a model that promotes ‘co-regulation’ between State and non-State actors. Co-regulation occurs ‘where responsibility for regulatory design ... is shared by the regulator and the regulatees’ (Levi-Faur 2011, 10). A clear example exists where non-State actors act as technical experts in the

design of standards for ICT and other products, which they are arguably best placed to understand. This then allows for the standardisation of these design rules to be disseminated widely across that particular market. An analogous form or variation of co-regulation exists in ‘concertation’, which refers to ‘cooperation among producer associations and other organized civil society groups in policy formulation and implementation’ (Ornston and Schulze-Cleven 2014, 2). For example, in the US, lobbying efforts by market actors including businesses, professional associations and interest groups, act as a form of concertation as lobbyists attempt to affect the design of public policy by influencing legislative or regulatory decision-makers. Concertation provides an opportunity for State actors to influence market actors and to remediate conflicts between groups of policy actors (Ornston and Schulze-Cleven 2014). Thus, regulatory capitalism has involved a new division of labour between the State and society, such as the participation of non-State actors in policy design.

As a consequence of this shared role for State and non-State actors, regulatory capitalism involves an ‘increase in delegation’ (Levi-Faur 2005). National governments have for example, increasingly delegated rule-making authority to independent regulatory agencies and standards organisations (Gilardi 2008, Jordana, Levi-Faur, and Marin 2009, Brunsson and Jacobsson 2000). In this respect, Timmermans and Epstein (2010) argue that standards organisations operate as non-State actors in close partnership with State actors. However, Mattli (2001) believes that this delegation on the part of State actors, in both law and practice, of standardisation processes to international standards organisations, often results in a legal obligation for States to use international standards.⁵ Such an obligation is often limited to rhetoric as these standards organisations do not typically possess a mechanism for sanctioning noncompliance, making any such outcomes largely voluntary in nature (Brunsson and Jacobsson 2000, Mattli 2001, Timmermans and Epstein 2010). Abbott and Snidal (2011) take a somewhat different view of this increasing drive to delegate, believing that it is essentially a political process, where State actors influence agenda setting, negotiation and enforcement, and non-State actors influence implementation and monitoring. Thus, regulatory capitalism has involved a general increase in delegation, such as the delegation of standardisation to national and international standards organisations, but within a relatively fluid structure and often with the ultimate authority remaining with State actors.

The fluidity of this structure invariably involves a greater ‘proliferation of new technologies [or instruments] of regulation’ (Levi-Faur 2005). Standards in design and production are simply another form of these, with standards serving a multiplicity of functions (Abbott and Snidal 2011, Egan 2001, Brunsson 2000, Brunsson and Jacobsson 2000, Hallström 2004, Timmermans and Epstein 2010). Werle (2002) in particular refers to standards as ‘technical rules concerning either the design of key attributes or components of a product or crucial elements of processes of production, operation or technology use’ (244). Standards guide behaviour and provide the basis for assessing behaviour, and despite ‘hav[ing] the normative character of a legal rule’, they still ‘depend on governments ... to become effective’ (245). Regulatory agencies can therefore generally use a standard persuasively by referring to a standard in recommendations or mandate

compliance with a standard by referring to it in legislation – where it is in their power to do so (Werle 2002). Timmermans and Epstein (2010) challenge the distinction between standards and social policies and confirm the argument made by Werle (2002) that standards rely on government acceptance. Thus, regulatory capitalism has involved the proliferation of new technologies of regulation, such as the use of standards as an instrument of social regulation.

Due to the increasingly diffuse nature of regulatory capitalism, policy actors must ensure that there is some degree of ‘formalisation of interinstitutional and intrainstitutional arrangements of regulation’ (Levi-Faur 2005),⁶ as without an accompanying structure to ensure some degree of compliance, it would likely lack any significant form of legitimacy. Institutionalisation of networks of public and private sector actors, particularly in the EU, contribute to the design, adoption and diffusion of standards (Post 2005, Maggetti and Gilardi 2011, Abbott and Snidal 2001, Austin and Milner 2001). Austin and Milner (2001) argue that the European Standards Organisations (ESO) in particular institutionalised the means for expanding networks and markets internationally through the design and implementation of international standards, with this process of formalisation and institutionalisation consolidating and ensuring the effectiveness of their decisions. Egan (2001) confirms the conclusions made by Austin and Milner (2001) that standardisation expands international networks and argues that ‘new regulatory strategies...institutionalised the participation of private ... organisations in the policy-making process’. Thus, regulatory capitalism has involved the formalisation of inter- and intra-institutional arrangements of regulation such as the institutionalisation of standards organisations that participate in designing regulatory policies.

Finally, regulatory capitalism involves a ‘growth in the influence of experts in general and of international networks of experts in particular’ (Levi-Faur 2005). Previous research demonstrates that the influence of experts and networks of policy actors on policy design by examining the procedures for recruiting individual and communities of technical experts to design national and international standards (Abbott and Snidal 2001, 2011, Austin and Milner 2001, Egan 2001, Hallström 2004, Maggetti and Gilardi 2011, Jacobsson 2000). The next section further details the influence of these international networks of actors on policy design.

1.1.2 Policy Networks

Just as regulatory capitalism provides an important basis for analysing a ‘bottom-up’ approach to convergence, the role played by policy networks enriches this even further (Bartley and Smith 2010, Djelic and Quack 2010, Metiu 2010, Rhodes 2006). It is worth noting that a single conceptualisation of policy networks has yet to emerge, however it is commonly accepted that policy networks operate as interdependent groups of State and non-State actors involved in the policy design process (Bartley and Smith 2010, Djelic and Quack 2010, Rhodes 2006). In the interest of brevity and completeness, it is this definition, which this paper adopts.

The relevance of using policy networks within an analysis such as this is supported by previous research. Börzel (1998) for example, believes that the influence exerted by policy

networks as a form of informal governance has a direct relationship to the outcome of policy decisions, and the way in which policies are designed. Marsh and Smith (2000) further argue that a bidirectional influence exists between the structure of a network and policy outcomes and between the interactions within a network and policy outcomes. In effect, the variety of actors involved in a network and the interactions among the actors involved in a network have a mutual influence on policy outcomes. Kisby (2007) extends the model established by Marsh and Smith (2000) by examining the influence of ideas in policy design and argues that the values of actors involved in policy networks influences policy design. Against this conceptual framework, this article examines the interactions of network members and the influence of the diverse values and identities of network members on policy design.

1.1.3 Policy Diffusion

In addition to the concepts of regulatory capitalism and policy networks, policy diffusion provides another analytic tool for examining the mechanisms of convergence, as it frames not just the instruments of regulation or the actors involved, but the spread of the results of the policy process – in an epidemiological sense (Jordana, Levi-Faur, and Marin 2009, Dahl, Skov, and Kasper 2006). In particular, Jordana, Levi-Faur, and Marin (2009) examine the mechanisms of diffusion and argue that ‘sectoral transfer’ acts as a channel of diffusion (i.e., ‘via actors operating at transnational level at the same sector’) (7). Therefore policies can be widely disseminated from one country to another by actors participating directly or indirectly in policy design. These policies will naturally travel within established networks, as well as within established sectoral institutions. Other authors such as Post (2005) suggest that the power dynamics within these networks and policy areas, along with the relationship between State and non-State actors can then influence the extent that diffusion occurs. Diffusion can also be influenced by ‘policy learning’, which Hall (1993) defined ‘as a deliberate attempt to adjust the goals or techniques of policy in response to past experience and new information’ (278). In this sense, policy actors can design new instruments based on previous experience in an effort to influence policy outcomes strategically, and non-State and international actors typically influence policy goals by contesting previously held assumptions about the efficacy of a particular policy approach.

Another corollary of policy diffusion and learning exists in the form of ‘policy transfer’ (Dolowitz and Marsh 2000, Newmark 2002, Dobbin, Simmons, and Garrett 2007). Dolowitz and Marsh (2000), characterize policy transfer as ‘knowledge about policies, administrative arrangements, institutions and ideas in one political setting ... used in the development of policies, administrative arrangements, institutions and ideas in another political setting’ (5). Policy transfer therefore lies on a *continuum* and may include the transfer of ‘policy goals, policy content, policy instruments, policy programs, institutions, ideologies, ideas and attitudes and negative lessons’ (8). For example, regulators may systematically assess public policies in other countries or jurisdictions and examine the efficacy of those policies. Dobbin, Simmons, and Garrett (2007) also argue that learning occurs when changes result from an understanding about the cause and effect of policy implementation. Consistent with Hall (1993), the authors suggest that policy diffusion results from

changing ideas. The authors argue that ‘socio-cultural linkages’ contribute to ‘psychological proximity’ (5). For example, countries typically find inspiration from countries with similar socio-cultural backgrounds.

1.1.4 Convergence

Drawing on these concepts, it is clear that policy diffusion and learning can result in the international harmonisation or convergence of public policy. Drezner (2001) defines convergence as ‘the tendency of policies to grow more alike, in the form of increasing similarity in structures, processes, and performances’. Previous research in the field of convergence has focused on the impact of globalisation (Drezner 2001, Tenbücken and Schneider 2004, Wilensky 2002), but others such as Heichel, Pape, and Sommerer (2005) conceptualise policy convergence within a framework that included policy diffusion, policy transfer and policy learning.

When applying convergence directly to policy networks, Drezner (2001) emphasises the role of ideas and actors in convergence processes. Knill (2005) also states that policy diffusion can lead to convergence through ‘common affiliations, negotiations and institutional membership’. Policy diffusion is therefore often an outcome of the interactions within networks of policy actors as they develop a ‘common definition of appropriate practices’ (Braun and Gilardi 2006). These common definitions will dissuade actors within the network, and even associated actors from affecting alternatives. In other words, policy networks contribute to convergence by defining the efficacy of a particular policy approach and establishing that approach as the default policy option. Finally, as suggested by Dobbin, Simmons, and Garrett (2007), policy norms emerge from policy networks and international organizations and contribute to public policy convergence by defining ‘economic progress and human rights’.

1.2 Methods, Data and Analysis

Having established the conceptual framework, this section specifies the empirical methodology adopted and the type of analysis conducted. This article focuses on public procurement policy as a case study for examining convergence because this particular policy approach has been shaped by the intervention of policy networks in both the US and EU. These networks have utilised web accessibility standards in order to harmonize public procurement standards internationally (Seawright and Gerring 2008).⁷ In particular, this case study aims to identify and demonstrate the importance of a ‘bottom-up’ approach to examining convergence so that it may be used in conducting further research, as well as enriching the literature on regulatory capitalism, policy networks and policy diffusion in a more general sense.

It is primarily qualitative in its approach, eschewing quantitative data as this would not be reflective of the contextual elements of the process and would instead provide an outcome-based, meta-analysis, which could not provide an in-depth examination of the mechanisms that affect the design of standards and how they converge over time. This qualitative data is primarily composed of semi-structured interviews conducted with nine elite stakeholders with intimate knowledge of the policy design process in the US and EU. These actors from the US, UK, Spain and Norway

were involved in policy networks as interest organizations, advocates, businesses, government agencies and subject matter experts and directly participated in the convergence and standardisation of ICT accessibility in the US and EU,⁸ which again provide a useful basis for examining the relevant mechanisms of convergence (Starke 2013). That these actors were involved in the particular case study being examined overcomes the usual limitations of qualitative research as unrepresentative, since they have first-hand knowledge of the issues being discussed within the case study. Interviews included questions related to standardization processes, approaches to public procurement policy, and the relationships among State and non-State actors internationally. Data from the interviews were then supplemented by publicly available policy documents including national and international laws, regulations and policies, government research and reports, standards and guidelines, and media reports.

In terms of analysis, this article uses ‘process tracing’ and thematic analyses. Process tracing, which typically uses theory to connect events and outcomes and demonstrates those connections using historical narratives, is used to examine the historical antecedents that led to convergence as an outcome of public procurement policy design (Checkel 2006). This approach differentiates the effects of convergence from the intrinsic mechanisms that contribute to convergence. In addition, the thematic analysis provided an opportunity to identify common patterns that relate to the convergence of public procurement policies in the interview and document data.

2.1 ICT Accessibility and Standardization in the US and EU

The US has a tradition for using social regulation to promote the rights of persons with disabilities (Halvorsen 2010). The legal obligations for ensuring ICT accessibility in public procurement in the US began with the broader antidiscrimination mandate in Section 504 of the Rehabilitation Act 1973. The Rehabilitation Act 1973 primarily aimed to provide rehabilitative services, education and training for persons with disabilities. However, Section 504 included what would later be considered ‘the catalyst for a new emphasis in the disability movement on disability rights’ (Burke 2002, 66). Section 504 requires that

No otherwise qualified individual with a disability in the United States, ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service

Section 504 of the US Rehabilitation Act 1973 also established an obligation for ‘reasonable accommodation’.

In 1986, the US government amended the Rehabilitation Act 1973, which included obligations for public agencies to provide accessible ICT. However, according to Noble (2002), ‘[a]lthough the 1986 law did commit federal agencies to using accessible technologies when possible, it lacked any real enforcement provisions’ (403).

In 1998, the US government again amended the Rehabilitation Act 1973, which ‘significantly expanded and strengthened the technology access requirements in Section 508’ (Noble 2002, 403). With the 1998 amendment, the US government established an obligation for public agencies to ‘develop, procure, maintain, or use’ accessible ICT, and additionally delegated the authority for ‘developing and keeping up to date accessibility standards that would be incorporated into the federal government’s procurement regulations’ to the US Access Board (US Access Board 2015b).

In 2000, the US Access Board published the Section 508 standards, which aimed to ‘address access to the various types of technologies covered, including computers, hardware, software, websites, and electronic office equipment’ (US Access Board 2015b).

Prior to the adoption of the Section 508 standards, the US government funded the development of the first web accessibility standards through the Trace Research and Development Center (Trace Center). The Trace Center aims to ‘prevent the barriers and capitalize on the opportunities [of ICT] ... to create a world that is accessible and usable by as many people as possible’ (Trace Center 2013). Contiguously, 27 other organizations published approximately 35 web accessibility related standards. These standards emerged from academic institutions, advocacy organizations, private enterprises (including IBM and Microsoft) and public agencies from the UK, US, Canada and Australia (Vanderheiden and Chisholm 1998).

In 1997, many of the policy actors involved in developing the early web accessibility standards, including IBM and Microsoft, recognized the authority of the W3C to develop international web accessibility standards (W3C 1997). According to the W3C (1997), ‘the launch of the Web Accessibility Initiative’ aims to ‘promote and achieve Web functionality for people with disabilities’ and is ‘[e]ndorsed by The White House and W3C Members’. The W3C (1997) goes on to state that the Web Accessibility Initiative will be ‘responsible for ... creating guidelines for the use of technologies’ and will collaborate with ‘government, industry leaders, Web developers, content providers, and non-profit organizations’.

In response, the W3C established the Web Accessibility Initiative (WAI) to improve web accessibility by providing information and guidance. The WAI aims to anticipate and promote international norms through consensus and broad participation of subject matter experts and industry. In 1997, the WAI established the Markup Guidelines Working Group to produce a standard to encourage the accessible design of web content (W3C 1998, 1999b, Ellcessor 2012). In 1998, the Markup Guidelines Working Group published the ‘WAI Accessibility Guidelines: Page Authoring’, which provided recommendations for improving web accessibility (W3C 1998, Vanderheiden et al. 1997). In 1999, the WAI reformed the Markup Guidelines Working Group as the WCAG Working Group. Later that year the WCAG Working Group published the first version of the WCAG (W3C 1999a, c).

Since publication of WCAG, alternative web accessibility standards such as the British Standard 8878 ‘Web Accessibility Code of Practice’ and the Section 508 standards have emerged. However, the dissemination of WCAG, largely by interest organizations, has

established WCAG as the preferred solution for ensuring web accessibility in practice (Power et al. 2012).

In the early 2000's the EU developed a series of action plans and persuasive policies aimed at improving ICT and web accessibility (Easton 2013). In 2005, the EU issued Mandate 376 (M 376) to establish ICT accessibility standards for public procurement. In 2010, the EU adopted the European Disability Strategy 2010-2020. The Disability Strategy recognised the low levels of ICT accessibility and compliance with web accessibility standards. In response, the European Commission (EC) published a legislative initiative for a European Accessibility Act aimed to encourage the harmonization of the EU market and the production of accessible goods and services (European Commission 2011).

Public procurement regulations for accessible ICT emerged in the EU after the publication of the Section 508 standards in the US. In 2014 the ESO published a voluntary public procurement standard, which aimed to provide '[a]ccessibility requirements suitable for public procurement of ICT products and services in Europe' (ETSI 2014).⁹ The standard was published by ETSI, which co-ordinates a wide variety of policy actors including national standards bodies, public agencies, private enterprises and advocacy organizations. According to Egan (2001), efforts by the EU '[t]o promote industry collaboration' and encourage collaboration 'in a number of high-technology areas' led to the creation of ETSI (147-148). The author states 'ETSI was set up along radically different organizational lines' than the other ESO as 'it allowed direct access for interested parties including postal and telecommunications authorities, operators of public networks, manufacturers, and other users' (149). The author goes on to enumerate the rapidly growing membership of ETSI stating that 'members are drawn from the twenty-one countries' and maintain a 'broader representation than that of CEN and CENELEC' (149).

In 2014, the EU adopted a new Public Procurement Directive, which repealed the prior 2004 Directive. According to Rice (this issue 2015), the 2014 Public Procurement Directive was designed to 'achieve amongst other things, the pursuit of the Europe 2020 objectives'.¹⁰ The author argues that the 2014 Public Procurement Directive 'significantly empowers procuring authorities to use quality criteria', for example, to assess the accessibility of ICT. The author further states that accessibility 'receives prominence in the ... new Public Procurement Directive ... is integrated and considered throughout its Articles'. According to Rice (this issue 2015), the Directive 'requires that where an existing directive, regulation or decision already contains mandatory accessibility requirements, these must be used by a procuring authority to define the accessibility requirements for the Technical Specification in any relevant procurement exercise'.

While the EC and pan-European disability rights organizations, such as the European Disability Forum (EDF), have endorsed WCAG as a means for making web content accessible to people with disabilities, the ESO have not directly adopted WCAG as a European standard, which differs from the adoption of WCAG as an ISO standard. The EDF acts as an interest organisation, financed by the EU to promote the rights of persons with disabilities. The EDF is an independent non-governmental organization that represents the interests of Europeans with disabilities, and has

long advocated for the use of public procurement policies as a means for achieving accessible ICT in the EU (European Disability Forum 2014, 2004). The EDF has also promoted WCAG as an approach to ensuring accessible web content

2.2 Public Procurement as Social Regulation: Approaches in the US and EU

Prior to the direct application of the analytic framework to the field of public procurement, it is of course necessary to establish not only what this means in a practical sense for the purposes of this article, but also its significance as a subject of analysis. It is contended that public policy acts as a form of ‘social regulation’ (McCrudden 2004) through which the needs of disabled persons can be provided for at a societal level, but within the model of regulatory capitalism. These needs have been met, in part, through the accessible design of ICT goods and services, which will act as specific policy objective within the broader approach to public procurement.

Public procurement within this ‘social’ context, constitutes public bodies and agencies that act as ‘active participants in the market itself, purchasing public works, supplies, and services’ and ‘at the same time regulating it [the market] through the use of its purchasing power to advance conceptions of social justice’ (McCrudden 2004). It is a market-oriented system, which presumes that market actors are central to economic and social life, and that the state can alleviate the burden faced by disabled persons through the regulation of market actors to provide accessible ICT goods and services (Hvinden and Halvorsen 2003).¹¹

Interviews conducted and utilised within this article lend support to this particular approach, where the State has an obligation to take an active role in the market for accessible ICT products, as ‘public procurement is the number one step you need to take ... that is a very fundamental thing because you cannot afford to have, in any country, to have taxpayer money being used to discriminate against people in your country’.¹² The interviews demonstrate that a ‘light-touch’ approach to regulation has been used in public procurement policy, wherein the State acts persuasively to encourage market actors to promote public policy objectives.¹³

In addition, public procurement acts as a financial incentive. An interview participant states,

*[public procurement acts as] a strong market incentive for companies because most companies aren't going to say well ok we'll design this set of products just for the federal government and then this other set for everybody else, economies of scale makes sense for them to do it once.*¹⁴

Economies of scale refer to cost advantages that come with an increase in the production of goods and services. The participant argues that due to the cost advantages associated with ‘economies of scale’, public procurement policies encourage market actors to provide a single accessible product or service that serves markets in both the public and private sectors (i.e., government agencies and consumers). However, this incentive only impacts products and services sold to the government.

A 1986 amendment of the Rehabilitation Act 1973, Section 508, required US public agencies to provide accessible ICT, and in 1987, the US government amended Section 508 to strengthen the provisions related to the public procurement of accessible ICT. The amendment authorized the US Architectural and Transportation Barriers Compliance Board (US Access Board) to develop standards for accessible ICT. Section 508 requires compliance with accessible ICT standards in government contracts.¹⁵ The same participant adds,

*The beauty of something like [Section] 508 and equivalent laws in other countries is, it's not actually a mandate on the private sector. So the industry cannot complain that it's being forced to make products any particular way. Instead, it's the government saying, 'You do what you want, but we're only going to buy, we're only going to use the tax payers money to buy products that meet these criteria. So it's up to you, if you don't want to sell to the US government, that's fine, but if you want to sell to the US government then it has to meet these criteria'.*¹⁶

Section 508 acts as a financial incentive for market actors to provide accessible goods and services. According to an interview participant,

*All 508 is setting rules for procurement by the federal government of what ICT the federal government's going to own and operate, so it's really actually very modest. ... It doesn't make sense for your IBM or your Microsoft or Adobe to have one product for the federal government and one product for the rest of the US and the rest of the world. So it really has worked from that perspective ... they make all of their stuff accessible because they want to sell it to the federal government ... They're doing it for the federal government, we might as well do it for everybody.*¹⁷

In the EU, public procurement policy encourages public agencies to include 'accessibility criteria for people with disabilities' in designing public procurement policies.¹⁸ In 2005, the EU issued a mandate (M 376) to the ESO to produce a public procurement standard for accessible ICT. Like Section 508, M 376 provides requirements for public agencies in producing and procuring accessible ICT.¹⁹

Though Section 508 and M 376 are different policy instruments (legislative and persuasive respectively), both policies regulate market actors in an attempt to encourage the provision of accessible ICT products and services. As clearly stated by an interview participant,

The purpose of the M 376 work is to enable public procurement of accessible ICT, and it comes back again to this idea that people don't develop inaccessible ICT deliberately, they develop it as lack of knowledge. And this view is ... the same for procurement, they don't procure inaccessible ICT deliberately, they do it because they don't understand the issues. So M 376 works to produce a

*standard that procurers, public procurers in Europe could use to give accessibility requirements in all of their relevant procurements, and the idea is that by making public procurements accessible that there's then a ripple down effect to general procurement or product development.*²⁰

Another participant confirms the perspective that M 376 acts as a regulatory policy stating, '[M 376] would be a huge incentive to any company who wanted to supply'.²¹ Both participants argue that M 376 acts as a regulatory policy by persuading and financially incentivising market actors to comply with ICT accessibility requirements. Therefore, the interviews suggest that, as public procurement policies, both Section 508 and M 376 functionally act to encourage market actors to provide accessible goods and services.

However, the US and EU's approach to the use of standards in support of public procurement policies differ. While the US includes standards for accessible ICT in legislation, the EU approach typically refers to standards in legislation. In this respect, an interview participant argues that

*... there's still the issue with the US that the technical requirements are built into legislation, and it makes the whole thing inflexible and difficult to work with, where the European approach ... with a technical standard and then legislation that refers to that technical standard is much more flexible. It means things can evolve ... the initial development is potentially much faster, much more open, much more transparent, and future updates on the technical side are much easier cause you're updating a technical document, not legislation.*²²

In further contrast, the interviews suggest that while the EU uses standards to promote the development of legislative initiatives, the US used the Section 508 amendment of the Rehabilitation Act as a legislative basis to then develop standards for ensuring accessible ICT in public procurement.²³

2.3 Policy Network for Accessible ICT in Public Procurement

This section focuses on the network of policy actors that participated in the design of public procurement policies in the US and EU and focuses on the application of WCAG to ICT and the design of the M 376 standard.

The policy network for ICT broadly encompasses public and private sector actors from the US and EU including regulatory agencies, legislators, interest organisations, standards organisations and private enterprises and developed through concerted efforts to apply WCAG to ICT. These efforts emerged from the parallel development of M 376 and an update to the Section 508 standards, referred to as the 'Section 508 refresh'. In the US, a regulatory agency, the US Access Board, maintains responsibility for producing the Section 508 ICT accessibility standards. In 2008, the US Access Board initiated the Section 508 refresh, and during the development of

these new standards, it attempted to apply WCAG to ICT (US Access Board 2014).²⁴ This provided the basis for policy actors in the US and EU to cooperate in harmonising public procurement policy.

Parallel with the Section 508 refresh, the EC submitted M 376 to the ESO. M 376 requested that the ESO ‘harmonise and facilitate the public procurement of accessible ICT products and services by identifying a set of functional European accessibility requirements for public procurement of products and services in the ICT domain’ (European Commission 2005). However, the EC maintained direct involvement in the development of M 376, unlike the strict form of regulatory capitalism outlined previously, which promotes the ‘arms-length’ direction and facilitation of market actors. According to an interview participant,

*[the EC] were really involved they'd been looking at all the drafts ... all the different reports ... they had clear ideas of what they wanted to do, what they wanted the mandate to become at the end, so they were really active in participating ... they attended meetings ... they provided comments on the different drafts, they participated in the final decision meetings .. They always were really active in the process.*²⁵

The EC participated in the development of the M 376 standard in part to promote the use of WCAG in public procurement policy.²⁶

In order to promote a diversity of interests, the EC also encouraged the ESO to provide a public consultation during the design of the M 376 standards.²⁷ The contributors to the M 376 consultations included the EDF. As a result, the Commission again took a more active role in the construction of this policy network by influencing its composition. According to an interview participant, ‘EDF ... only had observer status ... they had plenty to say and during earlier ... meetings, with early drafts of the documents, they certainly commented on this every time’.²⁸ Another participant confirms the participation of EDF stating, ‘we had involvement from the EDF ... at least one expert from EDF, nominated by EDF, or proposed by EDF and accepted’.²⁹ The participants argue that although EDF participated in M 376, the procedural rules of standardisation at the ESO precluded the direct involvement of the EDF in designing the M 376 standard. It did however allow for policy learning, in that the input and experience of these actors were capable of influencing the policy approach in view of the larger network.

Ultimately, the ESO controlled the M 376 standardisation process. According to an interview participant, ‘CEN [and] CENELEC were looking at sort of the process, procedural side of things, so understanding how procurement works, understanding how ICT aspects of procurement could work’.³⁰ The participant further states, ‘the ETSI work package was, the biggest part of it by far, was the [standard]’.³¹ The participant argues that the ESO divided the responsibility for developing M 376 and delegated the design of the standard to ETSI. According to an interview participant,

ETSI really pushed hard to be the ones to writing the standard. ... ETSI is different than the other two organizations. ... The members of CEN and

*CENELEC are the national standards bodies, ... so they don't have direct membership. They only have national membership. ETSI on the other hand has direct membership, typically from industry. So companies are members of ETSI, and in addition to that the national standards bodies are members. ... So that they have a stronger industry viewpoint than CEN and CENELEC.*³²

The participant argues that ETSI represents the interests of market actors to a greater extent than CEN and CENELEC.

ETSI justified leading the design of the M 376 standard due to the competencies of ETSI members. According to an interview participant,

*... because ETSI had the highest preponderance of technical expertise generally, I think in terms of standardization, in terms of the technology, I mean obviously all of the stuff in the [standard] has to make sense from an accessibility point of view, but it absolutely also has to make sense from the point of view of the technology.*³³

Another interview participant further states, ‘in the mandate there was really strong interest from industry and not only from industry in Europe, but industry internationally, especially from the United States’.³⁴ The participants argue that ETSI provided market actors with the opportunity to influence standardization in the EU. This influence by transnational actors such as IBM and Microsoft may also have stymied the influence of EDF, in that these actors would likely form a more permanent part of the policy network, whereas the EDF was artificially placed within it by the Commission and on a temporal basis.

Despite the use of different policy instruments in the US and EU, the different degrees of intervention exhibited by the State (or in the case of the EU, the supranational government), and the development of separate policy networks involved in Section 508 and M376, the convergence of public procurement policies in the US and EU largely emerged from the participation of the W3C – an international organization. As stated previously, the US Access Board initiated the application of WCAG to ICT as part of the Section 508 refresh. According to an interview participant, ‘the W3C got involved and was effectively in charge of trying to bring that [the application of WCAG to ICT] to realisation and moderately rapidly we got together a Task Force’.³⁵

In 2012, the W3C established the WCAG2ICT Task Force to ‘develop documentation describing how to apply WCAG 2.0 and its principles, guidelines, and success criteria to non-Web [ICT]’ (W3C 2012). The WCAG2ICT Task Force included the US Access Board, the W3C, and members of ETSI involved in designing the M 376. The WCAG2ICT Task Force – made up mostly of members from the US and EU – also included ICT accessibility technical experts, public procurement specialists (e.g., representatives from the US Department of Homeland Security and Social Security Administration), interest organizations, multinational corporations from the

technology sector (e.g., Microsoft and IBM), and experts in the design and implementation of standards. According to W3C (2012), the members of the WCAG2ICT Task Force represented ‘people with expertise not only in Web technologies, but also those with platform-specific [i.e., ICT] accessibility expertise’. While the W3C (2012) mentioned “key stakeholders such as developers, evaluators, accessibility experts, researchers, procurement experts, and end users”, and proposed to collaborate with US Chief Information Officers Council (i.e., responsible for ICT in the US federal government), M 376 Secretariat (i.e., Spain’s national standards body) and ETSI, the EC was not directly involved in the WCAG2ICT Task Force.

The W3C provided more than a technical or administrative means for applying WCAG to ICT. According to another participant,

[The] W3C formed the [WCAG2ICT Task Force] largely at the behest of the M 376 team, in that [Task Force], a member of the [US] Access Board took part as an individual, so we believe, via osmosis, the next draft of [Section] 508 is likely to be very close in principle and I hope in detail to the M 376 standard.³⁶

Another interview participant confirms that the WCAG2ICT Task Force acted as a transnational mechanism for collaboration between policy actors in the US and EU.

In my naiveté, I thought we would have close discussions with the US Access Board. They were developing theirs, we were developing ours, but because of the legal status of the US Access Board, we've had no formal discussions with them at all. In practice, every question we had, had to go by the EC, which really didn't make a lot of sense. Luckily, I made contact with one person and ... again they're very cautious about what they say, but in the WCAG2ICT Task Force, they did say that, for example, they wouldn't be quoting, they wouldn't be putting WCAG in their standard, they'd just refer out to it.³⁷

The participants argue that the WCAG2ICT Task Force provided a means for policy actors in the US and EU to cooperate in designing public procurement policies.

However, the WCAG2ICT Task Force also included market actors and interest organisations.³⁸ An interview participant further specifies,

We had the EC, people from the [US] Access Board participating in some of the parallel activities of the WCAG2ICT Task Force ... people from the [US] Access Board were presenting their reviews, especially from the ... refresh of the [Section] 508 process.³⁹

The participants argue that the WCAG2ICT Task Force centralised an international network of policy actors from the US and EU and provided a basis for the convergence between Section 508 and the M 376 standard. The outcome of this process, is that a network of public and private sector actors from the US and EU, despite their slightly variant models in establishing and managing their

own regional networks, established a policy network utilising the W3C to enhance cooperation in the design of public procurement policies by centralising the application of WCAG to ICT.

The next section provides an analysis of two mechanisms that have contributed to convergence. First, the analysis demonstrates that WCAG diffused as a default policy solution to achieving web accessibility; thereby, overcoming other viable policy alternatives. Second, the analysis demonstrates that the W3C, through the WCAG2ICT Task Force acted as a catalyst for convergence by providing an opportunity to transfer knowledge about public procurement policies in the EU and US among network actors.

3.1 Convergence of Public Procurement Policy

Whilst the previous section sought to deal with the role of WCAG2ICT Task Force in creating convergence, this process had also begun, in part due to the diffusion of WCAG internationally. This means that whilst the WCAG2ICT Task Force played a pivotal role in forwarding the objectives of its particular policy network, it did not operate in isolation. The complex and diffuse nature of these networks means that there will often be some overlap, in the ways they act and goals they seek to achieve. Often, one network will build upon and learn from the work of another. According to one interview participant, ‘WCAG ..., it’s been massively disseminated and it’s also adopted ... across all European Member States’.⁴⁰ While they argue that WCAG has diffused throughout the EU, Member States have largely adopted WCAG as a public sector accessibility standard. Another participant believes ‘...conformance with [WCAG] for publicly procured websites and public websites in general ... that was ... more or less the default position. That was the common denominator position’.⁴¹ If this is the case, the WCAG acts as an international standard for web accessibility in the public sector, although this is perhaps primarily the case in the EU versus the US.

WCAG has further diffused to and directly influenced the M 376 standard, with an interviewee claiming that ‘[M 376] it’s directly copying WCAG’,⁴² although there is some disagreement as to whether or not it is directly copying WCAG or if ‘[M 376 is] based on WCAG ... principles’.⁴³ Whilst there may be some confusion on the extent of its influence, ‘in the body of the [standard] ... there’s an annex ... of WCAG actually included.’⁴⁴ Thus, the participants argue that policy actors in the EU have adopted the policy content and goals of WCAG in the M 376 standard.⁴⁵

In order to adopt the policy content and goals of WCAG as a requirement in public procurement policies, policy actors in the EU used the WCAG2ICT Working Group Note (W3C 2013). According to an interview participant,

The actual fundamental text of the Working Group Note, how we say this particular success criteria should be used in ICT, the text of that is the same ... fundamentally it’s exactly the same ... you can argue it’s a cut and paste,

reformat job, putting the text of the Working Group Note actually into the [M 376 standard].⁴⁶

The participant argues that policy actors in ETSI, responsible for the design of the M 376 standard, based the design of the standard on WCAG by copying the WCAG2ICT Working Group Note.

However, the WCAG2ICT Working Group Note also provided a basis for harmonising public procurement policy in the US and EU. According to the same participant, ‘the Working Group Note ... was developed specifically with the purpose of allowing the European effort, the [M 376 standard], and future efforts to update Section 508 [the Section 508 refresh]⁴⁷ to actually use the material’.⁴⁸ The participant argues that the use of the WCAG2ICT Working Group Note extended beyond providing a basis for applying WCAG to ICT and contributed to the transnational harmonisation of public procurement policy.

In addition to the adoption of WCAG in the EU, WCAG formed the basis of public procurement standards in the US as, ‘a lot of [Section 508] was actually based on WCAG in many ways, because there’s a lot of fundamental principles there, which you could apply to all sorts of technology’.⁴⁹

This is confirmed by another participant who opines that

‘WCAG is an international standard, which is publicly derived and vetted and available and ... [Section 508 is] looking to harmonise with it or the latest movement is to incorporate it by reference directly’.⁵⁰

The interrelated and interdependent nature of actors within policy networks is affirmed by another participant, stating ‘a lot of people who are on WCAG... were on our [Section] 508 committee, so there’s a lot of cross pollination’.⁵¹

In other words, the participants argue that the policy content and goals of WCAG have diffused to Section 508, and occurred through the interactions between the US Access Board and the W3C. This again demonstrates the reflexive nature of policy networks and policy design, as established actors ensure that international standards are used when the actors participate in designing public procurement standards.

Cooperation between policy actors in the US and EU involved an international organisation, the W3C, as an intermediary. According to an interview participant, ‘working via a third-party like W3C actually proved very effective, because ... it would have been impossible to get the same degree of consistency’.⁵² The participant argues that as an international organisation, the W3C provided a means for harmonising public procurement policies in the US and EU. In addition, the convergence of US and EU public procurement policy provides a basis for further harmonisation, internationally. According to another participant, ‘with common technical requirements in the US and Europe, we are well placed to roll out globally’.⁵³ The participant argues that the convergence of US and EU public procurement policy can influence the design of public procurement policies

internationally. Thus, this section demonstrates that the convergence of public procurement policy in the US and EU relied on the diffusion of WCAG and cooperation among policy actors via an international standards organisation, the W3C.

4.1 Implications for Regulatory Capitalism, Policy Networks and Policy Diffusion

While this article does not deny the influence of top-down structural influences on policy convergence, it has attempted to demonstrate that public procurement policies have converged largely due to the efforts of different policy actors involved in standardisation, and in line with a ‘bottom-up’ approach to convergence. Although there is the potential for the convergence that has already occurred to change further in the future, it does not diminish the significant role of the policy actors and networks that are driving this process – especially considering that previous ‘top-down’ approaches to examining convergence have to a large extent ignored bottom-up mechanisms. The results demonstrate that five factors contributed to the convergence of public procurement policies in the US and EU.

First, public sector actors in the US and EU adopted similar policy goals for public procurement and aimed to persuade and financially incentivise market actors to provide accessible ICT goods and services. The adoption of similar policy goals initiated a movement towards convergence.

Second, private sector standards diffused internationally and were adopted in different ways by both the US and the EU. In particular, the W3C, a private sector standards organisation, published WCAG as a standard for promoting web accessibility. Public sector actors in the US and EU adopted WCAG directly and indirectly in public procurement policy.

Third, public sector actors in the US and EU then initiated public procurement reform efforts. The EC issued M 376 in an effort to establish public procurement criteria for ICT accessibility in the EU. Contiguously, the US Access Board initiated the Section 508 refresh in an effort to update ICT accessibility standards for public procurement in the US. Despite different policy approaches, both the EC and US Access Board promoted the use of WCAG in M 376 and the Section 508 refresh.

Fourth, this led to an international network of public and private sector actors coalescing to design ICT accessibility requirements for public procurement policies and cooperated in the application of WCAG to ICT.

Fifth and finally, an international organisation provided a basis for the convergence of public procurement policies. The W3C centralised the administration and technical application of WCAG to ICT by establishing the WCAG2ICT Working Group and provided the network of policy actors with an opportunity to harmonise public procurement policies. The WCAG2ICT Working Group produced a Working Group Note on the application of WCAG to ICT and the content of the Working Group Note served as a basis for public procurement policy reform in the US and EU. Thus, despite the top-down hierarchical authority of public sector actors in the US and EU,

convergence occurred due to the bottom-up cooperation between public and private sector actors in the US and EU.

This article argues that the WCAG2ICT Task Force successfully promoted convergence because the WCAG2ICT Task Force involved policy actors from both the US and EU responsible for designing ICT accessibility standards for public procurement. In addition, US State actors had an incentive to adopt harmonized standards to promote US multinational corporations in the technology industry (e.g., Microsoft and IBM), which were also involved in both the WCAG2ICT Task Force as well as in ETSI. These multinational corporations wanted to ensure products purchased by the US government would be available to EU governments. Lastly, the W3C provided a process (i.e., the WCAG2ICT Task Force) where actors involved in designing public procurement standards in both the US and EU could openly collaborate while at the same time limiting intervention and potential delays by either the US or EU governments.

The results of this case study demonstrate the potential for extending models of regulatory capitalism, policy networks and policy diffusion further, and provide a useful basis for confirming whether or not regulatory capitalism captures a transformation of public policy as argued by Levi-Faur (2011). It would of course be beyond the scope of this article and the qualitative data used to confirm these theories outright, but they do lend further credence to the validity of this theoretical framework.

Levi-Faur (2011) argues that regulatory capitalism involves a new division of labour between State and society.⁵⁴ However, previous research has yet to examine fully, the influence of international organisations in co-regulation or concertation. The results of this article indicate that public and private sector actors cooperated in the design of ICT accessibility standards for public procurement and that the W3C provided a basis for establishing cooperation among policy actors including regulators, interest organisations, multinational enterprises and international standards organisations in the application of WCAG to ICT. The application of WCAG to ICT provided an indirect means for policy actors in the US and EU to harmonise the design of public procurement policies.

As highlighted previously, Levi-Faur (2011) argues that regulatory capitalism involves the proliferation of new technologies or instruments of regulation. Other such as McCrudden (2004) believe that public procurement policies provide a social regulatory approach for improving social outcomes (McCrudden 2004). It is was therefore the task of this article to use qualitative data in order to demonstrate the link between public procurement – as a form of social regulation – to specific legislative, financial or persuasive policy instruments (McCrudden 2004). Whilst the limited nature of this research cannot demonstrate this link unequivocally, the inferences it draws and the persuasiveness of the interviewees and their role in these processes lays the foundation for further research to investigate these links more closely. Public sector actors in the US and EU have used public procurement policies as both financial and persuasive policy instruments. Public procurement policies in the US and EU persuade market actors to provide accessible ICT goods and services by using public agencies as a mechanism for compliance. In addition, public

procurement policies in the US and EU use the purchasing power of the government to financially incentivise market actors to provide a single accessible ICT good or service for both the public and private sectors, albeit with different models used in both jurisdictions. Thus, this article extends previous research and argues that public procurement policies act as both a persuasive and financial policy instrument by regulating market actors in order to improve social outcomes.

In respect to the proposition that regulatory capitalism involves the formalisation of inter- and intra-institutional arrangements of regulation, while previous research has demonstrated the influence of policy networks on the design and diffusion of standards, the results of this article infer and give weight to the hypothesis that a network of public and private sector actors have influenced the design and diffusion of private sector standards to public procurement policies in the US and EU (Abbott and Snidal 2001, Austin and Milner 2001, Maggetti and Gilardi 2011, Post 2005). The policy network involved in applying WCAG to ICT used the policy content of WCAG in the WCAG2ICT Working Group Note. Thus, the Working Group Note provided the basis for harmonising ICT accessibility standards for public procurement in the US and EU.

The results of this case study also provide a useful basis for confirming previous research on policy networks within this field. Policy networks act as a mechanism of governance consisting of interdependent State and non-State actors (Börzel 1998), and this article attempted to demonstrate that a network of policy actors contributed to the design of public procurement policies in the US and EU. A policy network emerged in an effort to harmonise international standards for ICT accessibility. The W3C centralised the policy network and contributed to the diffusion of WCAG to public procurement policies in the US and EU.

Finally, the results of this case study provide a useful basis for confirming previous research in policy diffusion. Policy diffusion can contribute to convergence (Knill 2005), and the data within this case study supports the conclusion that an international policy network contributed to policy convergence in the US and EU. Public and private sector actors cooperated in the harmonisation of US and EU public procurement policies. The W3C provided an organisational basis for diffusing policy content from WCAG to public procurement policies in the US and EU.

Conclusion

It was the intention of this article to adopt an approach diverging from the existing literature, and demonstrate that via a bottom-up approach, public and private sector actors can contribute to convergence of public procurement policy in the US and EU by participating in international policy networks. It also demonstrates that a bottom-up perspective, emphasising the influence of policy networks on policy design, provides a useful approach for examining convergence.

Future research could examine the influence of national standards bodies on policy convergence by continuing to explore the use of national and European standards to initiate legislation in the EU, and examine the conflicts that emerge in co-regulatory processes by exploring the interactions within policy networks involved in standardisation.

Finally, this article attempts to provide useful recommendations for regulators and interest organisations involved in policy design, and suggests enhancing transnational cooperation by promoting international organisations as a means for communicating ideas and influencing policy design.

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² Web accessibility refers to the design of web content to be usable by persons with disabilities. According to Blanck (2014) web content refers to ‘digital information derived from human and machine operations and transferred to users by various means’ (18).

³ Web accessibility differs from ICT accessibility because the web provides a narrower policy objective. While ICT accessibility includes a range of consumer and business electronic hardware, systems, applications and services, the web includes only web-based applications and content. While the article acknowledges the influence of the International Organisation for Standardisation (ISO) in adopting WCAG as an ISO standard, ISO has adopted WCAG only as a web accessibility. This article argues that while contributing to international harmonization, the ISO standard has not influenced the design of public procurement policies to the same extent as WCAG. However, recent technological trends, such as the ‘Internet of Things’, may blur the lines between accessible web content and ICT, and the W3C has initiated new efforts to anticipate the accessibility barriers that may result from this trend (W3C 2015).

⁴ While researchers continue to debate the meaning of governance, Bevir (2010) conceptualizes governance as a ‘pluralistic pattern of rule ... less focused on state institutions, and more focused on the processes and interactions that tie the state to civil society’ (1). Research on governance in the US and EU, further posits that governance ‘signals a shift away from the monopoly of traditional politico-legal institutions, and implies either the involvement of actors other than classically governmental actors, or indeed the absence of any traditional framework of government’ (2).

⁵ Mattli (2001) quotes the World Trade Organization’s Agreement on Technical Barriers to Trade stating ‘where technical regulations are required and relevant international standards exist or their completion is imminent, Members shall use them, or the relevant parts of them, as a basis for their technical regulations’.

⁶ Levi-Faur (2005) draws his conceptualization of institutions from previous research by North (1990) and considers political, social and economic institutions as formal and informal constraints that structure and guide human interactions.

⁷ Case study methods provide a useful basis for conducting an in-depth exploration of a contemporary phenomenon in context. Case studies provide detailed explanations of the processes that cause a particular phenomenon (Boix and Stokes 2007). By detailing causal processes, case studies can identify new variables and hypotheses (George and Bennett 2005, Mitchell 1983). The results of case studies allow investigators to expand and generalize theories (Yin 2013). Thus, rather than generalizing statistically by ‘enumerating frequencies’, case studies generalize to ‘theoretical propositions’ (Yin 2013).

⁸ The interview guide focused on accessibility as a technological, social and political phenomenon and included questions related to the role of ICT Accessibility in the public and private sectors; the relationships among policy actors; and the role of standards in achieving accessibility.

⁹ The ESO consist of three standards organizations, the European Committee for Standardization (CEN), European Committee for Electrotechnical Standardization (CENELEC) and European Telecommunications Standards Institute (ETSI). CEN and CENELEC consist of the national standards bodies in Europe and maintained responsibility for investigating the procedural aspects of public procurement policy. ETSI consists of both the national standards bodies in Europe and market actors.

¹⁰ According to the European Commission (2011), the Europe 2020 targets include, among other things, ‘at least 20 million fewer people in or at risk of poverty and social exclusion’.

¹¹ See the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101-12213 (2000) and the Twenty-First Century Communications and Video Accessibility Act of 2010, 47 U.S.C. § 613) in the US and a review of European legislation on accessibility by the Academic Network of European Disability Experts (ANED) published at <http://disability-europe.net/content/aned/media/ANED%202012%20-%20Task%204%20-%20accessibility%20report%20final.doc>

¹² Interview with a US private sector accessibility expert (Participant ID 06).

¹³ ‘If the government’s not leading by example, nobody is going to do it’, interview with a US private sector accessibility expert (Participant ID 06). The participant argues that public procurement acts as a persuasive example for market actors.

¹⁴ Interview with a US public sector accessibility expert (Participant ID 08)

¹⁵ An interview with an EU private sector accessibility expert (Participant ID 07) confirms the regulatory approach of Section 508 stating, ‘In Section 508, they said, “We’re not going to buy it unless it does this.”’

¹⁶ Interview with a US public sector accessibility expert (Participant ID 08)

¹⁷ Interview with a US standards expert (Participant ID 05).

¹⁸ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC.

¹⁹ In this respect, '[M] 376 is all about procurement and only about procurement, it's basically saying this is what people procuring contracts which fall under European contract procurement laws need to do. So it's about making sure that things happen at the inception of contract provision', interview with an EU standards expert (Participant ID 02).

²⁰ Interview with an EU standards expert (Participant ID 04).

²¹ Interview with an EU private sector accessibility expert (Participant ID 07).

²² Interview with an EU standards expert (Participant ID 04).

²³ '...the EU is afraid of producing a new law because of protests from the member states. They instead make a Mandate and they send it to the standardization bodies, and say "ok make a standard on this and this, and then we will refer to it and say that it is good when they confirm it". This will open the way for new legislation. So my good bet is that [M 376] is the start of an EU legislation on accessible ICT', interview with an EU standards expert (Participant ID 11).

²⁴ 'The US changed to say lets apply WCAG to everything', interview with an EU standards expert (Participant ID 10).

²⁵ Interview with an EU standards expert (Participant ID 03).

²⁶ 'The commission was very keen for us to put everything, more or less to reproduce WCAG. They wanted a one-stop shop, and we tried as much as was feasible. Therefore, they would have liked to see the whole of WCAG in [the M 376 standard]', interview with an EU standards expert (Participant ID 10).

²⁷ 'The commission asked the ESOs to have an open process. So they asked ... to provide public trust you need to provide [documents] on the web so anyone can get them so anyone can comment on them. And [the EC] were even asking metrics of how many drafts you've made, how many comments you've received, how many replies you've provided and things like that. So the [European] Commission really asked for a truly open process that was open to anyone, even outside the standards organizations', interview with an EU standards expert (Participant ID 03).

²⁸ Interview with an EU standards expert (Participant ID 10).

²⁹ Interview with an EU standards expert (Participant ID 03).

³⁰ Interview with an EU standards expert (Participant ID 10).

³¹ Interview with an EU standards expert (Participant ID 10).

³² Interview with an EU standards expert (Participant ID 03).

³³ Interview with an EU standards expert (Participant ID 10).

³⁴ Interview with an EU standards expert (Participant ID 03).

³⁵ Interview with an EU standards expert (Participant ID 10).

³⁶ Interview with an EU standards expert (Participant ID 04).

³⁷ Interview with an EU standards expert (Participant ID 10).

³⁸ According to an interview with an EU standards expert (Participant ID 10), the WCAG2ICT Task Force included, '... quite a broad range of people ... expert consultants, a lot of people involved in the development of WCAG itself were involved and that included industry people ... we had bodies representing end user communities'.

³⁹ Interview with an EU standards expert (Participant ID 03).

⁴⁰ Interview with an EU private sector accessibility expert (Participant ID 09).

⁴¹ Interview with an EU standards expert (Participant ID 10).

⁴² Interview with an EU standards expert (Participant ID 11).

⁴³ Interview with an EU standards expert (Participant ID 04).

⁴⁴ Interview with an EU standards expert (Participant ID 10).

⁴⁵ An analysis of the M 376 standard, the WCAG2ICT Working Group Note and the WCAG 2.0 reveals that Sections 9.2, 10.2 and 11.2, related to web content requirements, non-web document success criteria, and non-web software success criteria echo the success criteria provided in the Working Group Note, which was based directly on WCAG 2.0 success criteria for levels A and AA.

⁴⁶ Interview with an EU standards expert (Participant ID 10).

⁴⁷ The interview participant's assertion, that the Section 508 refresh will utilize the WCAG2ICT Working Group Note is supported by documentary evidence. While the Section 508 refresh has yet to be concluded, according to the US Access Board 'the Web Content Accessibility Guidelines (WCAG), is incorporated into the [proposed] rule and applied to web-based content as well as to offline documents and software' (US Access Board 2015a, c).

⁴⁸ Interview with an EU standards expert (Participant ID 10).

⁴⁹ Interview with an EU standards expert (Participant ID 10).

⁵⁰ Interview with a US standards expert (Participant ID 01).

⁵¹ Interview with a US standards expert (Participant ID 01).

⁵² Interview with an EU standards expert (Participant ID 10).

⁵³ Interview with an EU standards expert (Participant ID 04).

⁵⁴ Previous research has demonstrated that co-regulation or concertation involves cooperation among State and non-State actors in policy design (Levi-Faur 2011, Ornston and Schulze-Cleven 2014).