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Eszter BAKOS*

Co-regulation Regarding the Audiovisual Media Service Providers in Order to Ensure Minors' Protection**

Abstract: The audiovisual media services are changing significantly and quickly nowadays due to the technological development. New forms of advertising are appearing that make possible to get information about products and services more easily. Furthermore beyond traditional television broadcasting there are developing on-demand services providing access to wide range of programmes whenever viewers have leisure time and wishes to sit down in front of the screen. Nowadays children pass their major part of their free time watching television full of media productions and ads of different quality. Although the audiovisual media services are governed by the Audiovisual Media Service Directive (AVMSD, furthermore: Directive) within European Union, in my opinion legal frameworks do not seem to be enough to protect children from harmful media contents. In this way states and media service providers should consider to employ alternative approaches such as co-regulation in order to consumer protection as the Directive suggests it in its Preamble 44. Using this method of regulation public actors with the audiovisual media sector could provide flexible rules based on high experience and expertise that would be enforced by the state in case of not-performance or not appropriate performance. Taking into consideration of benefits of co-regulation in my paper I tend to present a system that could contribute to higher minors' protection against audiovisual media services.

Keywords: AVMSD, minors' protection, co-regulation, linear and non-linear audiovisual media services, media literacy

1. Scope of the audiovisual media services and their regulation by the European Union

The audiovisual media service is an umbrella term that includes the television broadcasting (linear), the on-demand (non-linear) audiovisual media service and the audiovisual commercial communications that latter are also a collective term covering particularly the television advertising and teleshopping, the sponsorship and the product placement. The Directive declares the general criteria for services that are to be met for considering them as audiovisual media service. These conditions are the followings

1. service as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union
2. which is under the editorial responsibility of a media service provider and
3. its principal purpose is the provision of programmes, in order to inform, entertain or educate, to the general public

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4. by electronic communications networks within the meaning of point (a) of Article 2 of Directive 2002/21/EC. (Article 1)

The European Parliament and the Council tried to define flexible and liberalized Community rules on all audiovisual media services that constitute minimum rules. Articles 12 and 27 in the Directive include the rules on linear audiovisual media services and on non-linear media services in order to protect minors. Difference between them that the first types of services are provided by a media service provider on the basis of a programme schedule and the second ones are provided by a media service provider for the viewing at the moment chosen by the user and at his individual request on the basis of a catalogue of programmes selected by the media service provider (Article 1). Regulation of traditional and modern audiovisual services could be summarized according to the following.

Table 1. Rules in order to protection of minors o non-demand audiovisual media services and television broadcasting¹.

	TELEVISION BROADCASTING	ON-DEMAND AUDIOVISUAL MEDIA SERVICES
contents that might <i>seriously</i> impair the physical, mental or moral development of minors	<i>FULL PROHIBITION</i> : do not include them in any programmes	to be only made <i>AVAILABLE IN SUCH A WAY</i> as to ensure that minors will not normally hear or see such on-demand audiovisual media services.
programmes which are <i>likely</i> to impair the physical, mental or moral development of minors	<i>ENCODING SELECTING TIME OF BROADCASTING TECHNICAL MEASURE</i>	NO LIMITATION

The Directive declares minimum rules on audiovisual commercial communications too that services are images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity. Such images accompany or are included in a programme in return for payment or for similar consideration or for self-promotional purposes (Article 1). So taking into consideration nature of advertising, the Directive seeks to provide competitive legal environment for media service providers and advertisers, and at the same time, to ensure minors' protection against certain forms of advertising technics and promotions of certain products. Detailed requirements on commercial communications are included in Articles 9, 10 and 11. Some of them were defined specifically in order to protect children from advertising of alcoholic beverages and to avoid physical or mental detriment of minors. Beyond the overall requirements against all forms of commercial communication, the Directive lays down further binding and optional rules on sponsorship, product placement, television advertising and teleshopping. For example, sponsored programmes must be identified as it is defined by the Directive but the sponsor's logo may be excluded from children programmes (Article 10).

In my opinion this possibility should be chosen because "by using sponsorship logo in children programmes it could be identified later easy and it could seriously affect children's 'purchasing habits'"(Gellén, 2010, p. 46). Furthermore, product placement is only usable in permitted programmes or without any payment. Children programmes are not included in permitted ones but only in the first case and the Directive allows this type of audiovisual commercial communications in the second case, namely without paying (Article 10). I consider

this facility a huge contradiction of the Directive, because products presented in children programmes have equal effects on minors' consuming habits regardless of paying. This is an other point beyond sponsorship that requires stricter rules to be adopted. As regards television advertising and teleshopping, children's programmes may be interrupted by them once for each scheduled period of at least 30 minutes, provided that the scheduled duration of the programme is greater than 30 minutes (Article 20). Furthermore, television advertising and teleshopping for alcoholic beverages may not be aimed specifically at minors or, in particular, depict minors consuming these beverages (Article 22).

Above mentioned binding rules have to be implemented in laws but their detailed and possible stricter contents, furthermore, frameworks of their application in practise can be worked out by alternative regulatory approaches. Beyond these normative rules the Directive defines two proposals in order to higher level of minors' protection and safe media using. The first one refers to "inappropriate audiovisual commercial communications, accompanying or included in children's programmes, of foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular those such as fat, trans-fat acids, salt/sodium and sugars, excessive intakes of which in the overall diet are not recommended". In this field, the media service providers should be encouraged to develop conduct codes by Member states and of course by the European Commission (Article 9). Second one is connected with media literacy that should be safeguarded and enhanced by audiovisual regulatory policy (Communication from the Commission, 2003). These issues not being ruled by the Directive must be dealt within co- or self-regulation taking into consideration children's right to healthy physical, mental and moral development.

2. Co-regulation

2.1. About co-regulatory schemes in general

Beyond above presented obligatory rules member states and concerned sectors such as audiovisual media service providers or advertisers are allowed to adopt more detailed and stricter ones within co- or self-regulation, for example in field of minor consumers protection. Taking into consideration children media consuming habits, their vulnerability and needs for safe, the Directive encourages this possibility in order to ensure higher level of protection that as a public interest objective could be achieved more easily with support of the service providers themselves (Preamble 44). In my opinion in field of minors' protection co-regulatory schemes should be used. What is co-regulation and why is it beneficial?

Legal instruments could not be effective in all sectors to be regulated because they are un-flexible, difficult to change and they are not supported by the most experienced and competent professionals. Furthermore, state regulation does not provide effective balance of competing rights and public goals because of rigidity of traditional legislation, contrast between national enforcement and global nature of new information and communication networks and the very limited involvement of the concerned players (Lievens, 2007). The audiovisual media sector is also such a field that are developing continually and new services are emerging. In this way at the same time two aspects, opposite interests have to be taken into consideration. Namely service providers shall be provided competitive environment while consumers have the right to proper protection against harmfuls of these services. The latter justifies the need for legal, minimum binding provisions but the mentioned shortcomings make important to involve the

audiovisual media sector to adopt updated, flexible, easy to modify rules in order to balance the interests among consumers and service providers. Thus, implementing the Community rules Member States have to keep in mind the possibility of co-regulation that is in fact *legal link between the self-regulation and the national legislator* as the Directive defines it in its Preamble 44. So, co-regulation – despite of simply self-regulation – allows the public authority to intervene if its aims are not or are not properly performed. This aspect makes this form of alternative regulations beneficial, mainly in field of children’s protection because “state intervention is particularly justified in order to minors” (Gellén, 2010, p. 47). Issue of children’s protection is connected with fundamental right, so public guarantees must be retained, but the detailed rules may be worked out by the industry itself.

Analyzing deeper co-regulation the following can be said about it. It is a cooperation between public and not public bodies in order to achieve public aims. In this way states have influence on regulatory processes determining frames which contributes to effective and agreed results. Faster decision-making, clear legal basis and division of work all are the beneficial characters of this regulatory solution. In general, operation of such a system is significantly affected by the regulatory culture of each states, their encourages towards the industry and the available public sources because in case of co-regulation the state itself empowers a not public body providing it competences that would be revoked if the involved party fails to perform effectively. At the same time, we should keep in mind that choosing co-regulation shall be properly considered by Member States because some field to be regulated is not possible to use, but in case of minors’ protection and regulation of advertising, linear and non-linear services could be effective. So, if implementation of Community Law, the binding rules of Directive, remaining state intervention and general requirements of co-regulation are ensured, nothing limits admissibility of this method and within these circumstances the Directive also encourages Member States to establish co-regulatory system (Preamble 44).

Table 2. Comparison of regulatory schemes².

	<i>State regulation</i>	<i>Co-regulation</i>	<i>Self-regulation</i>
<i>Advantages</i>	subjects of control do not remove themselves from the scope of regulation, democratic and transparent control, constitutional guarantees, appropriate tools for imposing sanctions	appearance all advantages of state regulation, increase of acceptance of rules, regulation expenses are paid by the industry and not by taxpayers	flexible, rules are agreed by subjects of commitments, increase of willingness to respect norms
<i>Disadvantages</i>	demanding, it is not usable in practise in all case, requires lot of efforts to be agreed by concerned, not flexible, difficult to modify	complex, requires carefully legislation	it is not workable in lack of bodies adopted generally, making and enforcing norms are not transparent, actors having greater market power may abuse with it during making norms, subjects can remove themselves from norms, lack of guarantees

2.2. Proposed system of the co-regulation between states and the audiovisual media sector

During development co-regulation state authorities having competence in field of media, media regulation should be the starting point. They should make contract with all, commercial and public audiovisual media service providers and encourage them strongly to draw up a conduct code and undertake commitments in order to children's protection against harmfuls of audiovisual media services. Although, the term of conduct code refers to voluntary rules, thus to self-regulation of audiovisual service providers themselves or in corporation with other sectors, such as advertisers (European Commission), my proposed system is different. Different because states implement the minimum rules determined by the European Union, define their own legislative frameworks and public aims, but state intervention would remain as a "safety net" (Lievens, 2007, p. 323) in case of completely not or not properly performance of rules and aims defined together with the industry. In this way, state authorities would have competence to impose sanctions and enforce obligations if the audiovisual media service providers do not complete their duties undertaken in conduct codes or if rules adopted by them do not provide children's protection. So in fact public bodies would exercise continuous monitoring over the audiovisual sector. This cooperation would be beneficial as by maintaining this intervention and developing a consensually working mechanism between states and the audiovisual media service providers over-regulation by laws can be avoided. Furthermore, importance of involvement of the audiovisual sector can be supported in several ways. In fact, the service providers know their services most of all and "achieving public policy goals (such as minors' protection), in this way developing guarantees of high level in order to consumer protection is more effective if service providers support them actively" (Gellén, 2010, p. 47).

After the contact of involved parties we look at the conduct codes. They should address and lay down detailed rules and commitments on linear and non-linear media services, on commercial communications and on media literacy. As I see, the audiovisual commercial communications are a more complex issue because advertisers are also significant actors of this field who define the frames how they promote their product and services for consumers. Naturally, audiovisual media service providers may take advantage of adopting stricter rules than are determined by the Directive. For example, they may prohibit sponsorship logo or all product placement in children programmes. Or they may exclude completely the television advertising and teleshopping from children programmes, may prohibit promoting the so-called HFSS products and other specific goods such as slimming products or toys around and in children's programmes.

Since the literature also justifies the effectiveness of co-regulation as it remedies most of weaknesses of the state legislation and self-regulation (Lievens 2007), I try to outline what and how the audiovisual media service providers should regulate more detailed in a conduct code beyond state provisions laying down in laws implementing the Community requirements. Now in my Paper I focus on linear and non-linear audiovisual media services and on media literacy.