

The Consumer Voice in Europe

REVISION OF THE AUDIOVISUAL MEDIA SERVICES DIRECTIVE (AVMSD)

BEUC Position Paper



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EC register for interest representatives: identification number 9505781573-45



Co-funded by the European Union

Ref: BEUC-X-2016-111 - 07/11/2016

Why it matters to consumers

Audiovisual services, be it traditional TV or online video on-demand platforms, are one of consumers' main sources of entertainment and information. Millions of consumers all across the EU enjoy watching movies, series, documentaries, sports and TV programmes. Thanks to digital technology, consumers can enjoy the content of their choice at anytime, anywhere and on different devices (TV, computers, tablets, smartphones, etc.). While for the younger generations, online media channels are increasingly substituting traditional television, TV still has a predominant spot in many homes.

No matter the type of service or platform consumers use to watch audiovisual content, they must be protected against excessive, hidden or inappropriate advertising. This is especially important when it comes to young vulnerable viewers, such as children.

Summary*

BEUC welcomes the Commission's proposal to review the Audiovisual Media Services Directive (AVMSD). The ways in which consumers access audiovisual content are shifting. Media convergence¹ and new online audiovisual platforms create challenges which require an update of the current Directive.

The Commission's proposal contains various positive elements, such as improvements in the protection of minors against harmful content and hate speech, or the impulse to promote European works and strengthen the independence of national media regulators.

Nevertheless, BEUC is seriously concerned by the provisions related to commercial communications. The revised rules proposed by the Commission would effectively lower the bar in terms of consumer protection. They could result in an overall increase in consumers' exposure to advertising. They also do not go far enough in terms of limiting marketing of unhealthy food and beverages to children.

Particularly worrying is the shift from an 'hourly limit' to a 'daily limit' for TV advertising and the reduction of the minimum time between commercial breaks for film and news programmes. This could notably result in more frequent advertising breaks and a higher concentration of advertising during peak-viewing hours.

Moreover, removing the general ban on product placement jeopardises the integrity of audiovisual content and increases the risk that consumers' are exposed to 'hidden' advertising. The proposal also fails to introduce any specific rules to regulate advertising on video-sharing platforms.

* Which? is not a signatory of this paper, except for those sections that relate to marketing of unhealthy food to children.

¹ The merging of previously distinct media technologies and media forms resulting from digitisation

BEUC calls for:

- Stronger measures to minimise the exposure of children to advertising of unhealthy foods and beverages in all traditional and online audiovisual media services. In particular:
 - Establishment of a clear preference for co-regulation over self-regulation. Industry codes of conduct should be subject to the review of national regulatory authorities and it must be ensured that there are efficient mechanisms for the compliance monitoring and enforcement of such codes.
 - Establishment of the use of the World Health Organisation (WHO) nutrient profile model as the official guidance to be used when defining which foods and drinks can/cannot be advertised.
 - Introduction of a ban on advertising for food and drink high in fat, sugar or salt on TV during children's peak viewing times.
 - Adoption of measures to limit exposure of children to advertising of unhealthy foods and beverages in video sharing platforms.
- Strict rules on commercial communications to avoid a negative impact on consumers' viewing experience and prevent exposure to excessive and/or hidden advertising. In particular:
 - Requirement that all programmes containing product placement are appropriately identified, with no exception or possibility for Member States to waive transparency requirements under any circumstance
 - Maintenance of the currently applicable 'hourly time limits' for TV advertising (i.e. maximum 20% of advertising in a given hour, instead of 20% daily limit proposed by the Commission).
 - Preservation of the minimum time between commercial breaks for films and news on TV at 30 minutes, instead of reduction to 20 min as proposed by the European Commission.
 - Inclusion of 'unhealthy food and beverages' in the list of products that cannot be placed in a programme.
 - Consideration of product placements, sponsorship announcements and other announcements made by the broadcasters in connection with their programmes and ancillary products as advertising time.

These demands focus on ensuring a high level of consumer protection regardless of the type of service or device that consumers choose to enjoy audiovisual content.

1. General Remarks

1.1. What problems do consumers face?

Audiovisual services, be it traditional TV or video on-demand, are one of consumers' main sources of entertainment and information. Millions of consumers all across the EU enjoy watching movies, series, documentaries, sports and TV programmes.

The ways in which consumers access audiovisual content are shifting. Media convergence and the emergence of new online content platforms have blurred the lines between the different types of audiovisual services. Many viewers are turning to online on-demand services, yet the traditional TV still has a predominant spot in many households across the EU.

Slightly different consumer protection rules apply depending on the type of audiovisual service ('linear' services such as traditional TV or 'non-linear' services such as online on-demand platforms)². It can be justified to maintain some difference in the regulatory regime for different audiovisual services, e.g. the existence of quantitative advertising limits for traditional TV but not for on-demand services, but certain gaps in the current legal framework leave consumers exposed.

The amount of advertising is a specific element of concern from a consumer protection perspective. The current Audiovisual Media Services Directive (AVMSD) has helped limiting the overall amount of advertising to which consumers are exposed when watching traditional television. It has also established a series of general requirements that apply to advertising in all audiovisual media services that fall under the scope of the directive. However, it is necessary to revise these rules to adapt to the new media era.

Also, the AVMSD rules have proven insufficient to address problems related to advertising of unhealthy food to children. Consumers are also particularly exposed when it comes to advertising on online video-sharing platforms, which typically falls outside of the scope of the directive.

1.2. What is needed?

The AVMSD rules must be reviewed to ensure a high level of consumer protection regardless of the type of service that consumers choose to enjoy audiovisual content.

It is particularly necessary to protect consumers against excessive or hidden advertising, with special attention to the protection of children when it comes to inappropriate advertising.

2. BEUC Position

2.1. Advertising of unhealthy food and beverages to children (Article 9.2)

We welcome and fully support the objective of reducing exposure of children to advertising of unhealthy foods and beverages. However, we consider that the proposed measures set out in the draft law do not go far enough to adequately protect children's rights, health and well-being.

Although childhood obesity is a multifactorial phenomenon, marketing unhealthy food and drinks to children has consistently been found to play a major role in youth obesity³. Today in Europe one in three children is either overweight or obese. We must urgently address this issue using the most effective policy tools available.

² Both traditional broadcasters and online video on demand platforms fall under the scope of the current Directive to the extent that they have editorial responsibility over the content that they show. The Directive has a graduated approach. Video on demand services are regulated more lightly whereas a tighter regime applies to traditional television broadcasting.

³ Marketing of foods high in fat, salt and sugar to children: update 2012-2013, World Health Organisation Regional Office for Europe, 2013, http://www.euro.who.int/_data/assets/pdf_file/0019/191125/e96859.pdf

We have long been calling for stricter rules to mitigate the harmful effects of advertising foods high in fat, sugar and salt to children. Several of our members have launched on-going campaigns to raise awareness about the continuous and unregulated marketing of unhealthy food and drinks targeting children⁴. BEUC is also carrying out a specific campaign on this issue (["Food marketing to children: Game Over"](#))

Food and drink companies sell their products in all EU countries and apply identical marketing strategies across the EU. Therefore it is critical to ensure that adequate rules are in place at EU level. Co-regulation could help address the issue, but self-regulatory codes of conduct alone have so far proven rather ineffective. Marketing of unhealthy food and beverages to children is widespread despite the fact that such codes exist in many Member States.

The criteria used in voluntary codes of conduct, such as the "EU pledge"⁵, are too lenient to ensure that children are protected. The nutrition criteria used to determine what can and cannot be marketed are inadequate and allow very unhealthy products to be advertised to children. As a minimum food companies should align with national and international public health authorities' guidance i.e. WHO Europe nutrient profiles model published last year. Also, often it is not a specific product that is advertised but a brand that mainly sells products that would fall under the 'unhealthy' food category.

Another loophole in these type of codes is the conditions set out to define what marketing to children is. Marketing is only restricted when children are thought to be 'directly' and 'primarily' marketed, while most of the advertising has shifted to TV family programmes and online tools including 'advergaming', social media and video sharing platforms. In addition, children are usually defined as under 12 years old while public health authorities and regulatory bodies across Europe define them as minors under the age of 16 and WHO Europe defines them as persons below 18.

Many promises made in the "EU pledge" have not translated into action and there is no accountability mechanism to spur better compliance. Therefore, at the very least strict monitoring of industry compliance with the rules that are agreed with national authorities should be in place (i.e. co-regulation where industry pledges are given national authorities' stamp of approval).

To effectively protect children from advertising of unhealthy food and beverages we need stricter rules detailing how, where and when it can be shown, as well as which food and drinks can and cannot be advertised. Such criteria should not be defined by the industry alone. The publication of a unique set of [nutrient profiles](#) by WHO Europe backed by the 28 Member States to restrict marketing to children has shown that an EU approach is feasible. In the long term, if co-regulation proves insufficient, mandatory EU wide rules covering all forms of digital media should be developed to protect minors from advertising of unhealthy foods.

With these considerations in mind, we propose to make the following amendments to the Commission's proposal:

- Co-regulation should be favoured over self-regulation. As opposed to self-regulation, co-regulation would entail a certain degree of national authorities' involvement as well as compliance and enforcement mechanisms. Co-regulatory codes of conduct should also be subject to a public consultation open to consumer

⁴ Consumentenbond campaign 'Stop ongezonde kindermarketing' <https://www.consumentenbond.nl/acties/kindermarketing/>>

Test-Achat campaign 'No junk food 4 kids' <http://www.test-achats.be/alimentation/aliments/dossier/no-junk-food-4-kids>

⁵ EU-wide industry code to restrict marketing to children

organisations and other civil society organisations whose primary objective is protecting children's health and well-being.

- The World Health Organisation's (WHO) nutrients profile should be explicitly referenced in the articles of the Directive – and not only in the recitals - as the official guidance to be used when defining which foods and drinks can/cannot be advertised to children. For example, according to the EU Pledge it is ok to advertise yoghurts to children if they contain maximum 13.5 gr of sugar per 100 gr. According to the WHO nutrients profile the limit should be 10 gr of sugar per 100 gr. These type of criteria should be aligned at EU level on the basis of the WHO nutrients profile.
- A ban on advertising for food and drink high in fat, sugar or salt on TV during children's peak viewing times should be introduced.
- Measures to limit exposure of children to advertising of unhealthy foods and beverages in video sharing platforms should be adopted.

2.2. Product Placement (Article 11)

The Commission's proposal to remove the general ban on product placement risks jeopardising the integrity of audiovisual content and increasing consumers' exposure to 'hidden' advertising. The general ban on product placement that is currently in place must be maintained and the applicable exceptions and how they are implemented in practice could be revised. Overall, we must ensure that product placement does not have negative consequences affecting the quality of audiovisual content and exposing consumers to surreptitious advertising.

There must be limited possibilities to use product placement and strict transparency obligations (Article 11.3.c) must apply whenever product placement does feature in a programme. In this sense, we welcome the inclusion in the Commission proposal of a broad list of types of programmes where product placement is forbidden. We support the inclusion of "programmes with a significant children's audience", as opposed to just "children's programmes". There are certain types of programmes such as talent shows which would not fall under the category "children's programmes" but enjoy great popularity among children. However, the criteria to determine what would eventually qualify as "a significant children's audience" should be clarified.

Article 11.3 sets out the transparency requirements which apply whenever product placement is contained in a programme. However, we consider that the transparency requirements should impose that all programmes that contain product placement are appropriately identified, with no exception.

Any liberalisation of current rules must be restrictive and comply with the AVMSD objective of ensuring the protection of viewers consuming audiovisual media services. In particular it must meet at least the following demands:

- Better define what is covered by the category 'programmes with a significant children's audience'. We believe that this should cover for example, talent shows and popular sports events that are shown at a time of the day when it is highly likely that children will be watching. It should be taken into account not only the percentage of children in the audience but also the number of children in the audience.
- Delete the second paragraph of Article 11.3.c and thus require that all programmes containing product placement are appropriately identified, including those programmes that have not been commissioned or produced by the media service provider itself or a company affiliated to it.

- Expand the types of products that cannot be 'placed' in a programme, listed in Article 11.4, to also include unhealthy food and beverages.
- Foresee a simple mechanism for the possible future inclusion of other types of programmes on the list of programmes where product placement is not allowed.

2.3. Commercial communications on linear TV (Article 20 and Article 23)

We are concerned by the weakening of the rules that limit the amount and frequency of advertising on traditional television. This is very likely to result in a higher concentration of advertising during peak-viewing hours, with the consequent negative impact on consumers' viewing experience and an excessive increase in consumers' exposure to advertising.

TV broadcasters argue that it is not in their interest to abuse the possibility of introducing more frequent commercial breaks in their programming, as this could make viewers turn away from their channels. However, given that advertising is the most important source of revenue for the majority of broadcasters, we fear that it will be very hard for them to avoid going as far as they can to maximise advertising profit. Relaxing the quantitative advertising limitations effectively lowers the level of consumer protection. It could also result in a 'race to the bottom' involving all TV channels whose business model relies on advertising.

To avoid this we propose to:

- Maintain the existing 'hourly time limits' unaltered in Article 23 and reject the Commission's proposal to shift towards 'daily limits'. If daily limits would be introduced there should at the very least be an additional hourly limitation during 'prime time' and peak viewing hours for children (e.g. on top of the 'daily limits', the proportion of advertising within a given clock hour during 'prime time' shall not exceed 20%). Broadcasters should also provide more information to viewers with regard to the amount and duration of commercial interruptions during an emission.
- Delete Article 23.2. Product placements, sponsorship announcements and other announcements made by the broadcasters in connection with their programmes and ancillary products shall count as advertising time.
- Maintain Article 20.2 unaltered, thereby keeping the minimum time between commercial breaks for films and news at 30 minutes instead of reducing it to 20 minutes as it has been proposed by the Commission.

Moreover, we fully support that Member States remain free to require media service providers (both linear and non-linear) to comply with more detailed or stricter rules with regard to commercial communications. This is the rule now under the AVMSD and remains the case in the Commission's review proposal (Article 4a paragraph 1).

2.4. Video-Sharing Platforms (Chapter IXa)

BEUC regrets the complete absence of rules related to commercial communications on video-sharing platforms.

Advertising on video-sharing platforms remains largely unregulated, except for some general rules emanating from horizontal legislation such as the Unfair Commercial Practices Directive (UCPD) and the Directive on Advertising and Sponsorship of Tobacco Products.

Given the popularity that services such as YouTube have amongst children, we call for the introduction of specific measures to protect them from excessive or inappropriate advertising on this type of platforms. At the moment, such platforms largely rely on self-regulation and the terms of use of the platform as such and this is not enough, particularly when there is advertising placed on videos which are specifically targeted at children⁶.

For these reasons we call for:

- Requirements to ensure that video-sharing platforms adopt adequate measures to prevent the exposure of children to inappropriate advertising, both in terms of quantity and content of the advertising.
- Minimum harmonisation instead of full harmonisation, in line with the rest of the directive's provisions on advertising. This would allow Member States to adopt further measures to ensure a higher level of protection in their countries.

2.5. Promotion of European Works (Article 13)

BEUC supports the Directive's overall objective of promoting European works. Consumers want to have access to the widest possible choice of audiovisual content and European works also are an important element to promote cultural diversity. On-demand audiovisual media services shall contribute to the achievement of this objective accordingly.

2.6. Accessibility (Article 7 – deleted)

BEUC is concerned by the deletion of Article 7 related to the accessibility of audiovisual media services to people with visual or hearing disabilities. Without prejudice to the forthcoming European Accessibility Act, the AVMSD should include strict requirements to oblige Member States to ensure that disabled people can access audiovisual media services.

2.7. National media regulators, ERGA and the country of origin principle

BEUC welcomes the reinforcement of the independence of audiovisual media regulators and the reinforcement of the role of the European Regulators Group for Audiovisual Media Services (ERGA). Independent and plural media in Europe will be ensured only if ERGAs are truly independent from political and economic influence.

Given the cross-cutting impact of digital technologies and the many challenges created by the raise of online platforms, it is also very important to make sure that media regulators cooperate closely with their counterparts from other areas such as data protection, consumer protection, competition and telecommunications.

We welcome as well the efforts to reinforce and simplify the rules related to the application of the country of origin principle for media service providers.

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⁶ E.g. 'YouTube for Kids' is available in the UK and Ireland since November 2015 and launched in Spain in July 2016