Effectiveness of self- and co-regulation in the context of implementing the AVMS Directive

FINAL REPORT
A study prepared for the European Commission DG Communications Networks, Content & Technology by:

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Research to Progress

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List of Abbreviations

ASA Advertising Standards Authority
AV CEPS Charter on Responsible Alcohol Consumption Communications for Beverage Alcohol
CFREU Charter of Fundamental Rights of the European Union
CNAPA Committee on National Alcohol Policy and Action
DG Connect Directorate-General for Communications Networks, Content and Technology
DGP Digital Guiding Principles, Self-Regulation of Marketing
EEA European Economic Area
EASA Alliance European Advertising Standards Alliance
EUSAH European Union Information System on Alcohol and Health
ENSR European Network for Social and Economic Research
HFSS Foods high in fats, salts, and sugars
ICC International Chamber of Commerce
LPA legal purchasing age
MoU Memorandum of Understanding
MSD Audio-visual Media Services Directive
REFIT Regulatory Fitness and Performance programme
RMP Responsible Marketing Pact
SMEs Small and Medium sized enterprises
SROs Self-regulatory organisations
TEU Treaty on the European Union
USG User Generated Content
VoD Video on demand
WFA World Federation of Advertisers
WHO World Health Organisation
Executive Summary

Objective of the study

This study on the “Effectiveness of self- and co-regulation in the context of implementing the Audiovisual Media Services Directive” has been prepared for the Directorate General for Communications Networks, Content and Technology (DG Connect), of the European Commission. The study has been carried out by Panteia and VVA Europe Valdani, Vicari & Associati, in close cooperation with experts from the European Network for Social and Economic Research (ENSR).

The Audiovisual Media Services Directive (AVMS Directive) aims broadly speaking, to ensure the free circulation of audiovisual services in the Internal Market. As demonstrated by Article 4(7), the AVMS Directive encourages the development of self- and co-regulatory schemes to implement some of its provisions.

Article 4(7) of the AVMS Directive provides that “Member States shall encourage co-regulation and/or self-regulatory regimes at national level in the fields coordinated by this Directive to the extent permitted by their legal systems. These regimes shall be such that they are broadly accepted by the main stakeholders in the Member States concerned and provide for effective enforcement”.

The objectives of this study are to provide the Commission with:

1. A general description of the existing self- and co-regulatory structures in the EU Member States, in the selected areas, coordinated by the AVMS Directive.
3. Identification of best practice examples of self- and co-regulation systems in the two selected areas.

The two selected areas are 1) the protection of minors from harmful audiovisual content, and 2) audiovisual commercial communications, in both television broadcasting and in on-demand audiovisual media.

The overall analytical approach adopted was to carry out the assessments by evaluating the schemes using the Principles for Better Self and Co-Regulation, as well as additional enforcement stage criteria regarding complaints resolution and enforcements mechanisms. Criteria for best practices were then used to identify four examples of good practices. The main criteria on which the best practices were selected are effectiveness and stakeholder acceptance.

The information for this study is based on desk research and in-depth interviews with relevant stakeholders at the Member State level. In addition, a large number of European stakeholders from consumer and civil society groups, industry and media associations, media corporations, and interest groups related to regulating audiovisual media, were interviewed.

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Overview of self- and co-regulatory schemes

The following tables provide an overview of the self- and co-regulatory schemes identified which focus on regulating audiovisual commercial communications and those which focus on protecting minors from harmful audiovisual content.

In table 1 the self- and co-regulatory schemes which have a primary focus on the protection of children from harmful audiovisual content in both television broadcasting and in on-demand audiovisual media services are presented.

Table 2 presents the self- or co-regulation schemes with a primary focus on commercial communication in both television broadcasting and in on-demand audiovisual media services. This overview also includes codes with focus on advertising towards children, as well as alcohol advertising. Some of the schemes with a primary focus on commercial communications contain a general code and several more specific sub-codes which focus on, for instance, specific products such as alcoholic beverages, tobacco products and certain food products. These sub-codes have not been collected and assessed separately, but as part of the main scheme.

In the Member States that are not included in this table, no relevant self- and co-regulation schemes were identified.

Table 1  Self- or Co-regulation schemes with primary focus on protection of minors from harmful audiovisual content in both television broadcasting and in on-demand audiovisual media services

<table>
<thead>
<tr>
<th>Country</th>
<th>Name Scheme</th>
</tr>
</thead>
<tbody>
<tr>
<td>Germany</td>
<td>Voluntary Self-Monitoring Television (Freiwillige Selbstkontrolle Fernsehen (FSF))</td>
</tr>
<tr>
<td>Italy</td>
<td>Code TV and Minors (Codice TV e Minori)</td>
</tr>
<tr>
<td>Netherlands</td>
<td>Viewing Guide (Kijkwijzer)</td>
</tr>
<tr>
<td>Poland</td>
<td>Code of Good Practice on the Protection of Minors in On-demand Audiovisual Media Services (Kodeks dobrych praktyk w sprawie szczegółowych zasad ochrony małoletnich w audiowizualnych usługach medialnych na zadanie)</td>
</tr>
<tr>
<td>Portugal</td>
<td>Classification of TV programmes (Classificação de Programas de Televisão (RTP, SIC, TVI))</td>
</tr>
<tr>
<td></td>
<td>Agreement on the representation of violence in television (Acordo sobre a Representação da Violência na Televisão)</td>
</tr>
<tr>
<td>Romania</td>
<td>Deontological Code (Cod Deontologic)</td>
</tr>
<tr>
<td>Spain</td>
<td>Code of self-regulation for audiovisual contents and minors (Codigo de Autorregulacion de contenidos televisivos e infancia)</td>
</tr>
</tbody>
</table>

Note: Due to different definitions of self- and co regulation schemes and different study focus, the schemes identified in this study may vary from other studies.
<table>
<thead>
<tr>
<th>Country</th>
<th>Name scheme</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>Advertising Industry Ethics Code (Ethik-Kodex der Werbewirtschaft)</td>
</tr>
<tr>
<td></td>
<td>Annex to the Advertising Industry Ethics Code: Code of conduct of the Austrian broadcaster regarding inappropriate audiovisual commercial communication in connection with children’s programmes and food (Anhang zum Ethik-Kodex der Werbewirtschaft: Verhaltenskodex der österreichischen Rundfunkveranstalter hinsichtlich unangebrachter audiovisueller kommerzieller Kommunikation in Zusammenhang mit Kindersendungen und Lebensmittel)</td>
</tr>
<tr>
<td></td>
<td>Annex to the Advertising Industry Ethics Code: Communication Code of the Austrian Brewing Industry (Anhang zum Ethik-Kodex der Werbewirtschaft: Kommunikationskodex der österreichischen Brauverwaltung)</td>
</tr>
<tr>
<td></td>
<td>Self-commitment declaration: Resignation of private broadcasters to broadcast commercials interrupting children’s programmes (Selbstverpflichtungserklärung: Verzicht von Privatsendern auf Unterbrecherwerbung in Kinderprogrammen)</td>
</tr>
<tr>
<td>Belgium</td>
<td>Advertising Code of the Advertising Council (Reclamecode van de Raad voor de Reclame; Code de la publicité du Conseil pour la Publicité)</td>
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<tr>
<td></td>
<td>The Belgium Pledge</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>National Ethics Standards For Advertising And Commercial Communication In Bulgaria (НАЦИОНАЛНИ ЕТИЧНИ ПРАВИЛА ЗА РЕКЛАМА И ТЪРГОВСКА КОМУНИКАЦИЯ В Р БЪЛГАРИЯ)</td>
</tr>
<tr>
<td>Croatia</td>
<td>HURA’s Advertising Code (HURA Kodeks oglašavanja i tržišnog komuniciranja)</td>
</tr>
<tr>
<td>Cyprus</td>
<td>Cyprus Code of Communication Ethics (Κυπριακός Κώδικας Διεθνοστολογίας Επικοινωνιας)</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>The Code of Advertising Practice (Kodex reklamy)</td>
</tr>
<tr>
<td>Denmark</td>
<td>Code of Practice for Marketing of Alcoholic Beverages (Norm for markedsføring af alkoholholdige drikkevarer)</td>
</tr>
<tr>
<td></td>
<td>The Code of Responsible Food Marketing Communication (Kodeks for fødevarereklamer)</td>
</tr>
<tr>
<td>Estonia</td>
<td>Responsible commercial communication policy in children’s programmes (Vastutustundlik reklaamipoliitika lastesaadetes)</td>
</tr>
<tr>
<td>Finland</td>
<td>Ethical Code of the Council of Ethics in Advertising (Mainonnan eettinen neuvosto)</td>
</tr>
<tr>
<td>France</td>
<td>Rules of the ARPP (Règles de l’ARPP)</td>
</tr>
<tr>
<td>Germany</td>
<td>Code of conduct of the German Advertising Standards Council (Verhaltensregeln des Deutschen Werberat)</td>
</tr>
<tr>
<td>Country</td>
<td>Name scheme</td>
</tr>
<tr>
<td>----------------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Greece</td>
<td>Hellenic Advertising Communication Code</td>
</tr>
<tr>
<td></td>
<td>Self-Regulation for Commercial Communication of the Hellenic Association of</td>
</tr>
<tr>
<td></td>
<td>Brewers</td>
</tr>
<tr>
<td>Hungary</td>
<td>The Hungarian Code of Advertising Ethics</td>
</tr>
<tr>
<td>Ireland</td>
<td>ODAS Code of Conduct</td>
</tr>
<tr>
<td>Italy</td>
<td>Code of Marketing Communication Self-Regulation Italy</td>
</tr>
<tr>
<td>Lithuania</td>
<td>Lithuanian Ethics Code of Advertising</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>Deontological Code of Advertising in Luxembourg</td>
</tr>
<tr>
<td>Netherlands</td>
<td>Dutch Advertising Code</td>
</tr>
<tr>
<td>Poland</td>
<td>Television Broadcasters’ Agreement on the rules of distributing Advertisements</td>
</tr>
<tr>
<td></td>
<td>and Sponsor Recommendations regarding foodstuffs or beverages containing</td>
</tr>
<tr>
<td></td>
<td>ingredients whose presence in excess amounts in the daily diet is not</td>
</tr>
<tr>
<td></td>
<td>recommended</td>
</tr>
<tr>
<td>Slovak Republic</td>
<td>The Ethics Code of Advertising Practice</td>
</tr>
<tr>
<td>Slovenia</td>
<td>Slovenian Code of Advertising Practice (SCAP)</td>
</tr>
<tr>
<td>Spain</td>
<td>AUTOCONTROL Advertising Code of Conduct</td>
</tr>
<tr>
<td>Sweden</td>
<td>The Swedish Advertising Ombudsman</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>Broadcast Committee of Advertising Practice Code (BCAP Code)</td>
</tr>
<tr>
<td></td>
<td>The Committee of Advertising Practice Code (CAP code)</td>
</tr>
</tbody>
</table>

Note: Some of the schemes with the primary focus on commercial communication contain a general code and several sub-codes which focus on specific products such as alcoholic beverages, tobacco products and certain food products. These sub-codes have not been collected and assessed separately, but as part of the main scheme.
One of the first general observations made was that in general there is much more statutory regulation in place and consequently less self- or co-regulation for the protection of minors from harmful content audiovisual media. Protecting children across sectors is an important policy objective, and in the audiovisual media sector this observation is supported by the higher levels of governmental regulation. The vast majority of countries have self –or co-regulatory schemes in place for audiovisual commercial communications. The advertising codes of conduct differ in the level of detail in their rules and in their emphasis.

Assessing the self- and co-regulatory schemes
Based on the assessments carried out for the self- and co-regulatory schemes in place in the EU Member States, a criterion based analysis was carried out. The key results from this analysis are summarised below. The analysis follows the Principles of Better Self- and Co-Regulation which examines criteria regarding the conception and the implementation of schemes respectively, as well as the three additional enforcement stage criteria. These criteria are complaints resolution mechanisms, the outcomes of these complaints resolution mechanisms, and the sanctions used to enforce compliance with schemes.

Conception

Participants
Principles for Better Self- and Co- Regulation definition:

- *Except in cases where the competitive nature of an initiative makes this inappropriate, participants should represent as many as possible of potential useful actors in the field concerned, notably those having capacity to contribute to success.*

Good approaches for this criterion centre on a balanced representation of stakeholders. Ideally therefore consumer and civil society groups should be included in the conception of a self- or co-regulatory scheme along with the relevant industry and regulatory stakeholders.

The data collected for this study demonstrates that in most cases, the relevant private and business sectors were well represented. Media and broadcasting companies and advertising companies alike were almost always involved, with regulators also being present in many cases. However, the findings show that consumer and civil society groups were often not represented in the development of the majority of the schemes.

Openness
Principles for Better Self- and Co- Regulation definition:

- *Envisaged actions should be prepared openly.*
- *The preparatory phase should include the involvement of any interested parties: public authorities, enterprises, legislators, regulators and civil society. Public authorities should be ready to convene, moderate or observe, as most helps the process and is deemed appropriate.*
- *The initial blueprint, or “concept agreement”, for any action should be multi-stakeholder and developed in a concerted and collaborative way involving open exchange between interested parties. (some text omitted from overview).*

The definition for “openness” recommends an open and transparent approach to developing a self- or co-regulatory scheme. All participants should be involved and in a collaborative way.

There were rarely cases where participating stakeholders felt excluded or that information was being withheld (for whatever reason) during the development stage. While the end product, the final self- or co-regulatory scheme, was usually available.
online, or at least to signatories of the scheme, documentation of the development process was rarely available. Although there were some exceptions to this, the predominant approach in developing self- and co-regulatory schemes was that the group of stakeholders involved was relatively closed.

**Good Faith**

Principles for Better Self- and Co- Regulation definition:

- Participants of different sizes and types have different contributing capacities. The different capabilities of participants, including the situation of SMEs, and smaller non-profit organisations, should be taken into account when designing the envisaged action.
- Participants should bring to the preparatory process all information available to them that can contribute to a full analysis of the situation. Similarly, in launching an action, participants should ensure that their activities outside the action’s scope are coherent with the aim of the action.
- Both in developing and in executing self- and co-regulatory actions, participants are expected to commit real effort to success. They retain the possibility to withdraw, should the action fail to reach the agreed objectives.

Good faith as a criterion is based on the idea that participants make real efforts to commit to the scheme, according to their varying capabilities in a manner coherent with the goals of the scheme.

In practice, discovering whether real effort or commitment was made by the participants involved was somewhat difficult as the exact capacities of each stakeholder involved was not known. In some cases this was because schemes have been in existence for some time already (decades in many cases), and the details of the development of a scheme were not recalled. However, in general, based on the data collected there was no indication that the stakeholders involved felt disrespected or not taken seriously.

**Objectives**

Principles for Better Self- and Co- Regulation definition:

- The objectives of the action should be set out clearly and unambiguously. They should start from well-defined baselines, both for the issue on which change is being pursued and for the commitments that participants have made. They should include targets and indicators allowing an evaluation of the impact of the action undertaken.

In most cases a general policy goal or objective was provided as the guiding principle for a scheme. The objectives criterion however indicates that SMART formulated objectives should be developed, including targets and indicators to monitor and evaluate the performance. In few cases were objectives developed with specifically developed targets and indicators.

**Legal compliance**

Principles for Better Self- and Co- Regulation definition:

- Initiatives should be designed in compliance with applicable law and fundamental rights as enshrined in EU and national law. Participants are encouraged to have recourse to existing guidance provided by public authorities. In case of doubts, an assessment clarifying, inter alia, impact and complementarity with the acquis and with the Charter of Fundamental Rights should be conducted.

Legal compliance according to the definition above is upheld in the vast majority of the schemes. In most cases, the national regulatory approach is in compliance with European and national legal frameworks, and a large number of schemes are based on or connected with a specific law.
Implementation

Iterative improvements

Principles for Better Self- and Co- Regulation definition:
- *Successful actions will usually aim for a prompt start, with accountability and an iterative process of “learning by doing”. A sustained interaction between all participants is required. Unless the action covers a short time-span, annual progress checks should be made, against the chosen objectives and indicators, as well as any available broader background data.*

A number of schemes do not have any systems for iterative improvements in place. This lack of a systematic process for implementing improvements is in part related to the system of monitoring and evaluation in place for a scheme. Monitoring and evaluation provide feedback on the performance of a scheme.

Despite iterative processes not being universally implemented, this is not to say that they are lacking entirely. A common trend amongst those schemes with a system for making improvements is the use of consumer complaints as an indicator for compliance, as well as for identifying key areas of non-compliance. Other approaches include regular meetings with stakeholders to discuss the performance of a scheme and areas that are not regulated properly in the scheme. Although in many cases there are processes for identifying improvements or new areas of focus, these were not always carried out systematically or made explicit.

Monitoring

Principles for Better Self- and Co- Regulation definition:
- *Monitoring must be conducted in a way that is sufficiently open and autonomous to command respect from all interested parties. Each participant shall monitor its performance against the agreed targets and indicators. Monitoring results are shared by each actor for discussion with the participants as a whole, and are made public. A monitoring framework or template will be commonly agreed. The results of the monitoring will be aggregated where possible. This should be done in a way that is transparent and objective.*

The requirements sketched above for an appropriate monitoring system, according to the Principles for Better Self- and Co-Regulation, were in most cases not implemented fully in the schemes identified. There is often no system in place which specifically monitors the scheme objectives, and indicators and targets are often missing.

However, in most cases the schemes do have a form of monitoring in place, usually based on a complaints system. Complaints are often taken as the main indicator for the achievement of a scheme’s objective(s).

Evaluation

Principles for Better Self- and Co- Regulation definition:
- *Evaluation will allow participants to assess whether the action may be concluded, improved or replaced. The participants regularly and collectively assess performance not only against output commitments, but also as to impact. This should identify any short-fall in expected collective impact, any scope to improve the efficiency or effectiveness of the action, and any other desirable improvements.*

Few evaluation systems were in place which undertook regular assessments of the scheme, its performance, possible areas for improvement, as well as its broader impact. The fact that such formalised evaluation mechanisms are not common appears to be related in part to the lack of explicit and operationalised objectives with appropriate indicators and targets. The lack of a formal evaluation of a scheme also has other causes; in some cases there simply was not enough budget available for an evaluation. In other cases the schemes were designed and implemented some time...
ago, before the need for systematic evaluations was a prevalent part of policy making, or because the culture of evaluation is less established in a country.

Resolving disagreements
Principles for Better Self- and Co- Regulation definition:
- Disagreements inevitably arise involving either participants or others. As part of the iterative process of improvement, such disputes should receive timely attention, with a view to resolving them. These procedures may be confidential.
- In addition, complaints by non-participants should be submitted to a panel of independent assessors which consist of majority of non-participants. The outcome of their work is made public. Non-compliance should be subject to a graduated scale of sanctions, with exclusion included and without prejudice to any consequences of non-compliance under the terms of the Unfair Commercial Practices Directive.

In most of the schemes, there is a system for resolving disagreements, specifically a complaints resolution system. Systems for resolving complaints from participants in the scheme were not always present or formalised. In those cases with more formalised systems for resolving disagreements the basic process for handling complaints is the same for external (consumer) and internal (participant) complaints.

In the schemes where a complaints systems for non-participants is in place, there is also usually an adjudicating body in place for assessing and ruling on complaints. The composition of these adjudicating bodies is quite varied. Industry representatives tend to be present in the large majority of these bodies, with varying representation of regulators, legislators, independent experts, or consumer or civil society actors.

Financing
Principles for Better Self- and Co- Regulation definition:
- Participants to the action will provide the means necessary to fulfil the commitments. Public funders or others may in addition support the participation of civil society organisations lacking fully adequate means themselves to play their appropriate role. Such financial support should be made publicly known.

In many cases membership fees are the main source of financing. Some schemes receive government support. Offering services to participants of schemes for payment is also a source of financing for a number of self- and co-regulatory schemes. The provision of a copy advice for an advertisement for instance, can be an extra source of finance, as can the classification of a programme according to a classification system. Sanctions can also form a source of finance. A practice which is considered to be quite effective when financing schemes on commercial communications is the use of industry wide fees for participating advertisers and media companies. A proportionality element in determining the level of fees to be paid ensures fair contributions from the participants of the scheme.

Additional enforcement stage assessment criteria
Besides the Principles for Better Self- and Co-Regulation, additional enforcement stage criteria were used when assessing the self- and co-regulatory schemes. These criteria concern complaints resolution mechanisms, outcomes of complaints resolution, and sanctions.

Complaints resolution mechanisms
Consumer complaints resolution mechanisms are examined based on several aspects. These include the number of complaints received and their resolution and, ideally, the promptness of the compliance decisions made.
The information collected on the self- and co-regulatory schemes show that complaints are not always recorded with the same level of detail. In some cases, complaints resolution mechanisms are simply not a priority to implement more fully. This could be because compliance with the rules in place are generally high and no real need is felt to implement a complaints resolution system, or because only a few complaints are received. The number of complaints received is something of an ambiguous indicator; the reasons for the low number of complaints could be a favourable indication of high compliance but also an indication of low knowledge of the scheme amongst the public.

In most cases, complaints received are recorded and the number of complaints resolved is recorded as well. In many cases the information regarding complaints did not go into further detail beyond what was received and resolved; information on the sector or product group concerned, the nature or basis of the complaint, and the nature of the outcome or decision is not always recorded.

Outcomes of complaints mechanisms
This criterion examines the outcomes of the complaints resolution mechanisms. The understanding adopted here centres on the satisfaction with the complaints procedure, and whether the procedure contributes to better overall compliance with the rules of the self- or co-regulatory scheme in place.

The satisfaction with the complaints procedure is not often measured specifically. In those cases, the rate of resolution (number of complaints received versus number of complaints solved) is sometimes used as an indicator for the performance of the complaints resolution mechanism. In a similar vein, in some schemes the number of appeals made against an adjudicating body’s decision is used as an indicator of the outcome of the complaints system. The number of appeals is thought to provide insight into the level of satisfaction with the system.

An important point regarding complaints and satisfaction is that complaints made are first judged for their suitability. If the complaint does not have a good foundation, is missing information, or concerns something which does not breach the scheme in place, then no action is taken against and advertiser or broadcaster. From the perception of a complainant this can feel unsatisfactory. When examining statistics on complaints and satisfaction with their resolution, the number of complaints received, those which are accepted, and those which are ultimately resolved should all be considered.

Though dismissing a complaint due to lack of foundation could lead to an unsatisfied feeling for the complainant, sharing the response of the adjudicating body concerning the complaint can be very useful. By providing both parties involved in a complaint procedure with the reasoning for the decision, both parties can understand the reasoning behind the decision and this can improve consumer satisfaction. In the case of consumers this means that in many cases, consumers feel heard and not as though their complaints have fallen on deaf ears.

Sanctions
For this criterion, the presence and nature of sanctions and their enforcement are examined. Graduated sanctions which maintain an element of proportionality with the breach in compliance are usually considered to be an effective approach in enforcing a scheme. However, the nature of sanctions which are deemed appropriate by the industry and civil communities are quite culturally determined. The element of proportionality concerning breaches in compliance and the sanctions for these breaches is important here.
The types of sanctions which can be applied include the request for an adjustment of the audiovisual content or advertisement, naming, shaming and faming, exclusion from membership from a scheme or association, sanctions or fines, the withdrawal of the audiovisual content or suspension of the advertisement, or notifying public authorities to implement further judicial sanctions. In most cases, especially in schemes with less collaboration between private and public organisations, naming, shaming and faming are common enforcement instruments. This is largely due to the importance of reputation and a good public image; undermining this can be very damaging to a company or broadcaster.

**Best practices selected**

Based on the criteria of stakeholder acceptance and effectiveness respectively, four best practices are selected for this study. The practices selected scored well during the assessment on the criteria for stakeholder acceptance and effectiveness; however within this selection, two scored especially well on the former and two scored especially well on the latter criterion. A representative collection of best practices was sought which structured the protection of minors from harmful audiovisual content and those which regulated audiovisual commercial communications. The best practices are presented in table 3 below.

<table>
<thead>
<tr>
<th>Scheme regulating audiovisual commercial communications</th>
<th>Strong in overall Effectiveness</th>
<th>Strong in Stakeholder Acceptance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scheme on protecting minors from harmful audiovisual content</td>
<td>The Committee of Advertising Practice Code (CAP code), United Kingdom</td>
<td>National Ethics Standards for Advertising and Commercial Communication, Bulgaria</td>
</tr>
</tbody>
</table>

| Code of self-regulation for audiovisual contents and minors, Spain | Kijkwijzer, Netherlands |

**The Committee of Advertising Practice Code (CAP code), United Kingdom**

The Office of Communications (Ofcom) together with the private self-regulator for advertising communication, the Advertising Standards Authority (ASA), are the main initiators of the establishment of the Committee of Advertising Practice (CAP) Code. The objectives of the scheme are ultimately to make every advertisement shown in the UK responsible in order to protect consumers, notably children, and to improve the quality and trust in the advertising industry. The CAP is part of the ASA, which regularly revises its targets, and has quantitative and qualitative indicators in place to monitor the scheme’s performance. Every quarter, the ASA reports on its performance indicators to Ofcom. In addition, the ASA and the CAP publish an annual statement regarding the progress made towards achieving its objectives and targets. Complaints are generally handled by the ASA, which has produced a set of specific procedures governing the process. The ASA Council serves as an independent jury that is solely responsible for deciding if the Advertising Codes have been breached. There are several sanctions which can be employed by the ASA in different types of breaches with the CAP Code.

**Code of self-regulation for audiovisual contents and minors, Spain**

The scheme is initiated by the Ministry of Industry, Tourism and Trade with four major television networks. The aim of scheme is to promote further control over television contents and particularly to avoid harmful content reaching children. The development of the scheme involved public authorities, industries, consumers and civil society
groups. The scheme participants are the companies which produce television contents, and professionals of the information technology sector. The Code constitutes a classification system based on different age groups and programme contents. The Code includes a process for monitoring the application, where representative organisations of youth and children, of parents and educators, and of consumers and users are involved through the monitoring bodies. Although regular evaluations are carried out of the number of complaints received, the evaluations do not appear to cover progress of the scheme achieving its policy goals or its objectives. There are two monitoring organisations. The first is the Self-Regulation Committee (SRC) consisting of representatives from television networks. This body receives complaints from consumers and members alike and makes a ruling on the complaint. The second is the Joint Monitoring Commission (JMC) which then checks the complaint and ruling made by the SRC and in case of a breach, contact the SRC.

**National Ethics Standards for Advertising and Commercial Communication, Bulgaria**

The Code for National Ethics Standards for Advertising and Commercial Communication (henceforth, the Code), was initiated by the National Council for Self-regulation (NCSR). The Code is intended to promote responsibility and good practices in advertising and marketing communications in Bulgaria. The Code was developed in 2009 based on the ICC’s Consolidated Code of Advertising and Marketing Practices. It took the specifics of the advertising industry in Bulgaria into account, as well as recommendations from the advertisers, advertising agencies and media service providers. The content of the Code was consulted on with all relevant state authorities, including the state Council of Electronic Media (CEM) and the State agency for child protection (SACP).

The Committee for Post-Monitoring (CPM) is responsible for the monitoring. It has two main functions, monitoring the execution of the decisions issued by the Ethical Committee (EtC) or the Appeal Committee (AC), and monitoring advertising and commercial communications. According to the NCSR statutes, the decisions of the EtC or the AC are binding for the NCSR members.

**Kijkwijzer, Netherlands**

The Kijkwijzer is a code developed by the advertising industry in the Netherlands. The Kijkwijzer is a classification system for programmes on television. The Institute for the Classification of Audiovisual Media (NICAM) is the code owner of the Kijkwijzer. The objective is to promote the provision of information regarding the potential harmfulness of audiovisual products towards young people. It aims to do so by regulating the audiovisual sector itself by means of a classification system for programmes. NICAM itself also performs regular quality assessments of compliance with the rules. In addition, it regularly tests consumer perception and the use of the Kijkwijzer. The Media Authority (Commissariaat voor de Media) uses the results for the yearly evaluation of NICAM. The results of these evaluations are included in a letter to the government. These letters are also published on the website of the Media Authority. NICAM and the Kijkwijzer are evaluated every year by the Media Authority.
Résumé exécutif

But de l’étude
La présente étude sur « L’efficacité de l’autorégulation et de la corégulation dans le contexte de la mise en œuvre de la directive « Services de médias audiovisuels » » a été préparée pour la Direction générale des réseaux de communication, du contenu et des technologies (DG Connect), de la Commission européenne. Cette étude a été effectuée par Panteia et VVA Europe Valdani, Vicari & Associati, en étroite collaboration avec des experts de l’European Network for Social and Economic Research (ENSR - Réseau européen de Recherche sociale et économique).

La directive « Services de médias audiovisuels » (directive AVMS) vise d’une manière générale à assurer la libre circulation des services audiovisuels dans le marché intérieur. La directive AVMS encourage le développement de dispositifs d’autorégulation et de corégulation pour mettre en œuvre certaines de ses dispositions, comme le montre l'article 4, paragraphe 7.

L'article 4, paragraphe 7, de la directive AVMS stipule que « Les États membres encouragent les régimes de corégulation et/ou d’autorégulation, au niveau national, dans les domaines coordonnés par la présente directive, dans la mesure où leur ordre juridique le permet. Ces régimes doivent être conçus de manière à être largement acceptés par les principaux acteurs dans les États membres concernés et assurer une application efficace des règles ».

Les objectifs de la présente étude sont de fournir à la Commission:
1. une description générale des structures d’autorégulation et de corégulation existant dans les États membres de l’Union européenne, dans les domaines sélectionnés, coordonnés par la directive AVMS ;
2. une analyse de l’efficacité des systèmes d’autorégulation et de corégulation mis en place et de leur acceptation par les acteurs sur la base des principes assurant une meilleure autorégulation et corégulation ;
3. une indication d’exemples de meilleures pratiques de systèmes d’autorégulation et de corégulation dans les deux domaines sélectionnés.

Les deux domaines sélectionnés sont 1) la protection des mineurs contre des contenus audiovisuels préjudiciables et 2) les communications commerciales audiovisuelles, dans la radiodiffusion télévisuelle ainsi que dans les services de médias audiovisuels à la demande.

L’approche analytique globale adoptée a consisté à procéder aux évaluations en appréciant les dispositifs à l’aide des principes assurant une meilleure autorégulation et corégulation, ainsi que de critères supplémentaires pour la phase d’application concernant le règlement de plaintes et les mécanismes de contrôle. Les critères de sélection des bonnes pratiques ont alors été utilisés pour mettre en évidence quatre exemples de bonnes pratiques. Les principaux critères de sélection des bonnes pratiques sont l’efficacité et l’acceptation par les acteurs.

Les informations utilisées pour cette étude repose sur une recherche documentaire et sur des interviews approfondies d’acteurs concernés au niveau des États membres. En outre, un grand nombre d’acteurs européens appartenant à des groupes de consommateurs et à des groupes de la société civile, à l’industrie et des associations

de médias, à des sociétés de médias et à des groupes d'intérêt liés à la réglementation des médias audiovisuels ont été interviewés.

**Aperçu des dispositifs d'autorégulation et de corégulation**

Les tableaux suivants donnent un aperçu des dispositifs d'autorégulation et de corégulation qui s'attachent à réglementer les communications commerciales audiovisuelles et à protéger les mineurs contre des contenus audiovisuels préjudiciables.

Le tableau 1 présente les dispositifs d'autorégulation et de corégulation dont l'objectif premier est de protéger les enfants contre des contenus audiovisuels préjudiciables dans la radiodiffusion télévisuelle et les services de médias audiovisuels à la demande. Le tableau 2 présente les dispositifs d'autorégulation ou de corégulation centrés sur la communication commerciale dans la radiodiffusion télévisuelle et les services de médias audiovisuels à la demande. Cet aperçu comprend des codes encadrant la publicité qui s'adresse aux enfants ainsi que la publicité sur l'alcool. Certains de ces dispositifs centrés sur la communication commerciale contiennent un code général et plusieurs sous-codes plus spécifiques centrés, par exemple, sur des produits spécifiques comme les boissons alcoolisées, le tabac et certains produits alimentaires. Ces sous-codes n'ont pas été évalués séparément, mais dans le cadre du dispositif principal. Les États membres qui ne figurent pas dans ce tableau ne possèdent pas de dispositifs d'autorégulation ou de corégulation pertinents.

**Tableau 1** Dispositifs d'autorégulation et de corégulation dont l'objectif premier est de protéger les enfants contre des contenus audiovisuels préjudiciables dans la radiodiffusion télévisuelle et les services de médias audiovisuels à la demande.

<table>
<thead>
<tr>
<th>Pays</th>
<th>Dispositifs</th>
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<tbody>
<tr>
<td>Allemagne</td>
<td>Autocontrôle volontaire de la télévision (Freiwillige Selbstkontrolle Fernsehen (FSF))</td>
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<tr>
<td>Italie</td>
<td>Code relatif à la télévision et aux mineurs (Codice TV e Minorì)</td>
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<tr>
<td>Pays-Bas</td>
<td>Système de classification (Kijkwijzer)</td>
</tr>
<tr>
<td>Pologne</td>
<td>Code de bonne pratique pour la protection des mineurs dans les services de médias audiovisuels à la demande (Kodeks dobrych praktyk w sprawie szczegółowych zasad ochrony małoletnich w audiowizualnych usługach medialnych na zadanie)</td>
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<tr>
<td>Portugal</td>
<td>Classification des programmes de télévision (Classificação de Programas de Televisão (RTP, SIC, TVI))</td>
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<td></td>
<td>Accord sur la représentation de la violence à la télévision (Acordo sobre a Representação da Violência na Televisão)</td>
</tr>
<tr>
<td>Roumanie</td>
<td>Code de déontologie (Cod Deontologic)</td>
</tr>
<tr>
<td>Espagne</td>
<td>Code d'autorégulation pour les contenus audiovisuels et les mineurs (Código de Autorregulación de contenidos televisivos e infancia)</td>
</tr>
</tbody>
</table>

Note: Du fait des différentes définitions des dispositifs d’autorégulation et de corégulation et les différents points de focus de l’étude, les dispositifs identifiés dans cette étude peuvent varier par rapport à d'autres études.
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<th>Pays</th>
<th>Dispositifs</th>
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<tr>
<td>Autriche</td>
<td>Code de déontologie du secteur publicitaire (Ethik-Kodex der Werbewirtschaft)</td>
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<tr>
<td></td>
<td>Annexe du Code de déontologie du secteur publicitaire : Code de conduite de l'organisme de</td>
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<td></td>
<td>radiodiffusion télévisuelle autrichien concernant les communications commerciales audiovisuelles</td>
</tr>
<tr>
<td></td>
<td>inappropriées accompagnant les programmes pour enfants et concernant des denrées alimentaires</td>
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<td></td>
<td>(Anhang zum Ethik-Kodex der Werbewirtschaft: Verhaltenskodex der österreichischen Rundfunkveranstalter hinsichtlich unangebrachter audiovisueller kommerzieller Kommunikation in Zusammenhang mit Kindersendungen und Lebensmittel)</td>
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<td></td>
<td>Déclaration d’engagement : Renonciation d’organismes de radiodiffusion télévisuelle privés à</td>
</tr>
<tr>
<td></td>
<td>diffuser des messages publicitaires interrompant les programmes pour enfants (Selbstverpflichtungserklärung: Verzicht von Privatsendern auf Unterbrecherwerbung in Kinderprogrammen)</td>
</tr>
<tr>
<td>Belgique</td>
<td>Code de la publicité du Conseil pour la publicité (Reclamecode van de Raad voor de Reclame)</td>
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<td></td>
<td>Le Belgian Pledge</td>
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<tr>
<td>Bulgarie</td>
<td>Normes nationales d’éthique applicables à la publicité et à la communication commerciale en</td>
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<td></td>
<td>Bulgarie (НАЦИОНАЛНИ ЕТИЧНИ ПРАВИЛА ЗА РЕКЛАМА И ТЪРГОВСКА КОМУНИКАЦИЯ В РБЪЛГАРИЯ)</td>
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<td>Code d’éthique de la communication de Chypre (Κυπριακός Κώδικας Διαμοντολογίας Επικοινωνιάς)</td>
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<tr>
<td>République tchèque</td>
<td>Code de bonne pratique publicitaire (Kodex reklamy)</td>
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<td>Danemark</td>
<td>Code de bonne pratique pour le marketing des boissons alcoolisées (Norm for markedsføring af alkoholholdige drikkevarer)</td>
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<td></td>
<td>Code de communication responsable pour le marketing des denrées alimentaires (Kodeks for fodevarereklamer)</td>
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<tr>
<td>Estonie</td>
<td>Politique responsable de communication commerciale dans les programmes pour enfants (Vastutustundlik reklamipoliitika lastesaadetes)</td>
</tr>
<tr>
<td>Finlande</td>
<td>Code de déontologie du Conseil d’éthique de la publicité (Mainonnan eettinen neuvosto)</td>
</tr>
<tr>
<td>France</td>
<td>Règles de l’ARPP (Règles de l’ARPP)</td>
</tr>
<tr>
<td>Allemagne</td>
<td>Code de conduite du Conseil allemand des normes de la publicité (Verhaltensregeln des Deutschen Werberat)</td>
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<tr>
<td>Pays</td>
<td>Dispositifs</td>
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<tr>
<td>Grèce</td>
<td>Code hellénique de communication publicitaire (ΕΛΛΗΝΙΚΟΥ ΚΩΔΙΚΑ ΔΙΑΦΗΜΙΣΗΣ – ΕΠΙΚΟΙΝΩΝΙΑΣ (ΕΚΔ-Ε))</td>
</tr>
<tr>
<td></td>
<td>Autorégulation en matière de communication commerciale de l'Association hellénique des brasseurs (ΕΛΛΗΝΙΚΗΣ ΕΝΩΣΗΣ ΖΥΘΟΠΟΙΩΝ)</td>
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<td></td>
<td>Énoncé de principes et plan d'autorégulation (Δήλωση οικοδέσμευσης Μελών)</td>
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<tr>
<td>Hongrie</td>
<td>Code hongrois de déontologie publicitaire (Magyar Reklámetikai Kódex)</td>
</tr>
<tr>
<td>Irlande</td>
<td>Code de conduite des services de médias audiovisuels à la demande (ODAS Code of Conduct)</td>
</tr>
<tr>
<td></td>
<td>Code de normes applicables à la publicité et aux communications de marketing en Irlande (Code of Standards for Advertising and Marketing Communications in Ireland)</td>
</tr>
<tr>
<td>Italie</td>
<td>Code d'autorégulation en matière de communication de marketing en Italie (Codice di autodisciplina della comunicazione commerciale)</td>
</tr>
<tr>
<td>Lituanie</td>
<td>Lituanien Code de déontologie de la publicité (Lietuvos reklamos etikos kodeksas)</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>Code de déontologie de la publicité au Luxembourg (Reclamecode)</td>
</tr>
<tr>
<td>Pays-Bas</td>
<td>Code néerlandais de la publicité (Reclamecode)</td>
</tr>
<tr>
<td>Pologne</td>
<td>Accord conclu par les organismes de radiodiffusion télévisuelle sur les règles de diffusion d'annonces publicitaires et de recommandations de sponsors concernant des denrées alimentaires ou des boissons contenant des ingrédients dont la présence en quantités excessives dans l'alimentation quotidienne n'est pas recommandée (Porozumienie nadawców w sprawie zasad rozpowszechniania Reklam i Wskazan sponsorskich dotyczących artykułów spożywczych lub napojów zawierających składniki, których obecność w nadmiernych ilościach w codziennjej diecie jest niewskazana)</td>
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<td></td>
<td>Code de déontologie publicitaire (Kodeks Etyki Reklamy)</td>
</tr>
<tr>
<td>Portugal</td>
<td>Code de conduite de l’ICAP (Centre international des politiques en matière d’alcool) (Código de conduita do ICAP)</td>
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<tr>
<td>Roumanie</td>
<td>Code de bonne pratique publicitaire (Codul de practica in publicitate)</td>
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<tr>
<td>République slovaque</td>
<td>Code de déontologie publicitaire (Etický kodex reklamnej praxe)</td>
</tr>
<tr>
<td>Slovénie</td>
<td>Code slovénien de déontologie publicitaire (SCAP) (Slovenski oglaševalski kodeks)</td>
</tr>
<tr>
<td>Espagne</td>
<td>Code de conduite publicitaire en matière d'AUTOCONTRÔLE (Código De Conducta Publicitaria de AUTOCONTROL)</td>
</tr>
<tr>
<td>Suède</td>
<td>Médiateur en publicité suédois (Reklamombudsmannen (RO))</td>
</tr>
</tbody>
</table>
Une des premières observations générales est qu’il y a beaucoup plus de dispositions légales en place et qu’il y a par conséquent moins d’autorégulation ou de corégulation pour la protection de mineurs contre les médias audiovisuels présentant des contenus préjudiciables. La protection des enfants dans différents secteurs est un important objectif de la politique menée et, dans le secteur des médias audiovisuels, cette observation est soutenue par les niveaux élevés de réglementation gouvernementale. La grande majorité des pays ont mis en place des dispositifs d’autorégulation et de corégulation s’appliquant aux communications commerciales audiovisuelles. Les codes de conduite publicitaire diffèrent sur des points de détail pour ce qui est de leurs règles et des points où il est dit que

### Évaluation des dispositifs d’autorégulation et de corégulation

Sur la base des évaluations effectuées pour les dispositifs d’autorégulation et de corégulation mis en place dans les États membres de l’UE, une analyse a été faite sur la base de critères. Les principaux résultats de cette analyse sont résumés ci-dessous. L’analyse suit les principes assurant une meilleure autorégulation et corégulation, qui examine les critères concernant respectivement la conception et la mise en œuvre de dispositifs, ainsi que les trois critères supplémentaires relatifs à la phase d’application. Ces critères sont les mécanismes de règlement des plaintes, les résultats de ces mécanismes de règlement des plaintes et les sanctions utilisées pour faire respecter les dispositifs.

### Conception

**Participants**

Définition des principes assurant une meilleure autorégulation et corégulation :

- *Sauf dans les cas où le caractère compétitif d’une initiative ne le permet pas, les participants doivent représenter le plus grand nombre possible d’acteurs utiles potentiels dans le domaine concerné, et notamment ceux qui ont la capacité de contribuer au succès.*

Selon ce critère les bonnes approches sont axées sur une représentation équilibrée d’acteurs. Par conséquent, idéalement parlant, des groupes de consommateurs et des groupes de la société civile devraient être inclus dans la conception d’un dispositif d’autorégulation et de corégulation, ainsi que des membres de l’industrie et du secteur de la réglementation concernés.

Les données recueillies pour cette étude montrent que dans la plupart des cas le secteur privé et le secteur commercial concernés étaient bien représentés. Les médias et les sociétés de radiodiffusion et de publicité y ont presque toujours pris part, tandis que les organismes de réglementation étaient également présents dans de nombreux cas. Cependant, les résultats indiquent que, souvent, les groupes de consommateurs
et les groupes de la société civile n’étaient pas représentés lors de l’élaboration de la majorité des dispositifs.

**Transparence**

Définition des principes assurant une meilleure autorégulation et corégulation :

- Les actions projetées doivent être préparées en toute transparence.
- La phase préparatoire doit inclure le concours de toutes les parties intéressées : autorités publiques, entreprises, législateurs, organismes de réglementation et société civile. Les autorités publiques doivent être prêtes à convoquer, à diriger les débats ou à observer, de la façon qui contribue le plus au processus et qui est jugée appropriée.
- L’ébauche initiale, ou « projet d’accord » en vue de toute action doit émaner de plusieurs parties prenantes et être développée en concertation et en collaboration avec des échanges de vues ouverts entre les parties intéressées. *(partie de texte omise de l’aperçu)*.

La définition de « transparence » recommande une approche ouverte et transparente du développement d’un dispositif d’autorégulation et de corégulation. Tous les participants doivent y prendre part dans un esprit de collaboration. Rares sont les cas où des acteurs participants se sont sentis exclus ou ont eu l’impression que des informations leur étaient dissimulées (pour quelque raison que ce soit) pendant la phase de développement. Si le produit final, c’est-à-dire le dispositif d’autorégulation ou de corégulation final, était habituellement disponible en ligne, ou tout au moins aux signataires du dispositif, la documentation relative au processus de développement était rarement disponible. Bien qu’il y ait eu des exceptions, l’approche prédominante du développement de dispositifs d’autorégulation et de corégulation était que le groupe d’acteurs impliqués était relativement fermé.

**Bonne foi**

Définition des principes assurant une meilleure autorégulation et corégulation :

- Les participants d’importance et de type différents ont des capacités de contribution différentes. Les aptitudes différentes des participants, y compris la situation de PME et de petites organisations à but non lucratif, doivent être prises en compte lors de la conception de l’action envisagée.
- Les participants doivent fournir au processus préliminaire toutes les informations susceptibles de contribuer à une analyse complète de la situation dont ils disposent. De façon similaire, en lançant une action, les participants doivent s’assurer que leurs activités se déroulant en dehors du champ d’application de l’action sont en cohérence avec le but de l’action.
- Dans le développement tout comme dans l’exécution d’actions d’autorégulation et de corégulation, il est attendu des participants qu’ils fassent de véritables efforts pour en assurer le succès. Ils conservent la possibilité de se retirer, au cas où l’action ne parviendrait pas à atteindre les objectifs convenus.

La bonne foi en tant que critère est fondée sur l’idée que les participants font de véritables efforts pour s’engager au service du dispositif, selon leurs possibilités diverses, en cohérence avec les buts du dispositif. Dans la pratique, il a été assez difficile de découvrir si les participants ont fait de véritables efforts ou se sont véritablement engagés, étant donné que les capacités exactes de chaque acteur concerné n’étaient pas connues. Dans certains cas, cela était dû au fait que certains dispositifs étaient déjà en place depuis un certain temps (des décennies dans de nombreux cas) et que les détails du développement d’un dispositif n’étaient pas rappelés. Cependant, en général, sur la base des données recueillies, rien n’a indiqué que les acteurs concernés ont ressenti un manque de respect ou ont eu l’impression de ne pas être pris au sérieux.
Objectifs
Définition des principes assurant une meilleure autorégulation et corégulation :
- Les objectifs de l'action doivent être indiqués clairement et sans ambiguïté. Ils doivent partir de points de référence bien définis, à la fois pour la question selon laquelle le changement est recherché et pour les engagements pris par les participants. Ils doivent inclure les cibles et les indicateurs permettant d'effectuer une évaluation de l'impact de l'action entreprise.
Dans la plupart des cas, il a été fourni un but ou un objectif général de politique comme principe conducteur d'un dispositif. Le critère des objectifs indique cependant que les objectifs SMART doivent être développés, avec les cibles et les indicateurs destinés à surveiller les performances. Dans quelques cas seulement il a été fixé des objectifs dotés de cibles et d'indicateurs spécifiquement développés.

Respect de la loi
Définition des principes assurant une meilleure autorégulation et corégulation :
- Les initiatives doivent être conçues dans le respect de la loi applicable et des droits fondamentaux inscrits dans la loi de l'UE et la loi nationale. Les participants sont encouragés à avoir recours aux orientations existantes fournies par les autorités publiques. En cas de doutes, il doit être procédé à une évaluation clarifiant, entre autres choses, l'impact et la complémentarité avec l’acquis et avec la Charte des droits fondamentaux.
Dans la grande majorité des dispositifs, il est veillé au respect de la loi conformément à la définition ci-dessus. Dans la plupart des cas, l’approche de la réglementation nationale a lieu dans le respect des cadres juridiques européens et nationaux et un grand nombre de dispositifs sont basés sur une loi spécifique ou liés à une telle loi.

Mise en œuvre
Améliorations itératives
Définition des principes assurant une meilleure autorégulation et corégulation :
- Les actions couronnées de succès viseront généralement un démarrage sans délai, avec reddition de comptes et avec un processus itératif d'apprentissage par la pratique. Une interaction permanente entre tous les participants est nécessaire. A moins que l'action ne couvre un bref laps de temps, des contrôles annuels des progrès doivent avoir lieu, par rapport aux objectifs et aux indicateurs choisis, ainsi qu'à de quelconques données de base à caractère général.
Un certain nombre de dispositifs ne comportent pas de systèmes d’améliorations itératives. Cette absence de processus systématique de mise en œuvre d’améliorations est en partie liée au système de surveillance et d’évaluation mis en place pour un dispositif. Monitoring et évaluation fournissent un retour d'information sur les performances d’un dispositif.
Bien qu'il n'ait pas été mis en œuvre de processus itératifs partout, cela ne veut pas dire qu'ils sont totalement absents. Une tendance commune aux dispositifs qui comportent un système visant à faire des améliorations est l'utilisation de plaintes de consommateurs comme indicateur de conformité, ainsi que pour mettre en évidence les principaux domaines de non-conformité. Comme autres approches, on peut citer les rencontres régulières avec des acteurs pour discuter des performances d’un dispositif et des domaines qui ne sont pas bien réglementés dans le dispositif. Bien qu'il y ait dans de nombreux cas des processus permettant de noter des améliorations ou de nouveaux domaines devant retenir l’attention, ceux-ci n’avaient pas toujours été exécutés de façon systématique ni rendus explicites.
**Monitoring**

Définition des principes assurant une meilleure autorégulation et corégulation :


Les exigences esquissées ci-dessus pour la réalisation d’un système de monitoring approprié, conformément aux principes assurant une meilleure autorégulation et corégulation, n’ont dans la plupart des cas pas été entièrement mis en œuvre dans les dispositifs indiqués. Il a été fréquemment constaté qu’il n’avait pas été mis en place de système contrôlant de façon spécifique les objectifs du dispositif et que les indicateurs et les cibles étaient souvent absents. Cependant, dans la plupart des cas, les dispositifs comportent une forme de monitoring, habituellement fondée sur un système de plaintes. Les plaintes sont souvent considérées comme le principal indicateur d’atteinte de l’objectif (des objectifs) d’un dispositif.

**Évaluation**

Définition des principes assurant une meilleure autorégulation et corégulation :

- L’évaluation permettra aux participants de déterminer si l’action peut être conclue, améliorée ou remplacée. Les participants évaluent régulièrement et collectivement les performances non seulement par rapport aux engagements de résultat, mais également en ce qui concerne l’impact. Cela doit mettre en évidence toute insuffisance dans l’impact collectif attendu, toute possibilité d’améliorer l’efficience ou l’efficacité de l’action et toutes les autres améliorations souhaitables.

Il n’avait été mis en place qu’un petit nombre de systèmes d’évaluation effectuant des évaluations régulières du dispositif, de ses performances, d’éventuels domaines d’amélioration, ainsi que de son impact au sens large. Le fait que de tels mécanismes d’évaluation formalisée ne soient pas communs semble en partie lié au manque d’objectifs explicites et opérationnalisés accompagnés d’indicateurs et de cibles appropriés. L’absence d’évaluation formelle d’un dispositif a aussi d’autres causes ; dans certains cas, le budget disponible était tout simplement insuffisant pour pouvoir faire une évaluation. Dans d’autres cas, les dispositifs avaient été conçus et mis en œuvre il y a quelque temps, avant que la nécessité de procéder à des évaluations systématiques ne soit devenue prédominante dans la définition des politiques, ou cela tenait au fait que la culture de l’évaluation est moins répandue dans un pays.

**Règlement des désaccords**

Définition des principes assurant une meilleure autorégulation et corégulation :

- Il survient inévitablement des désaccords avec des participants ou des tiers. Dans le cadre du processus itératif d’amélioration, de tels litiges doivent recevoir l’attention requise en temps voulu en vue de leur règlement. Ces procédures peuvent être confidentielles.

- En outre, les plaintes émanant de non-participants doivent être soumises à un jury d’évaluateurs indépendants, composé d’une majorité de non-participants. Le résultat de leur travail est rendu public. La non-conformité doit faire l’objet de sanctions échelonnées, dont l’exclusion, et sans préjudice de quelque conséquence que ce soit au titre de la directive sur les pratiques commerciales déloyales.

Dans la plupart des dispositifs, il existe un système de règlement des désaccords et en particulier un système de règlement des plaintes. Les systèmes de règlement des plaintes émanant de participants au dispositif n’étaient pas toujours présents ou
formalisés. Dans les cas comportant des systèmes de règlement de désaccords assez formalisés le processus de base du traitement des plaintes est le même pour les plaintes externes (de consommateurs) et internes (de participants). Dans les dispositifs comportant un système de plaintes s’adressant aux non-participants, il y a généralement aussi un organe d’arbitrage pour examiner les plaintes et prendre des décisions les concernant. La composition de ces organes d’arbitrage est assez variée. Des représentants de l’industrie tendent à être présents dans la grande majorité de ces organes, où organismes de réglementation, législateurs, experts indépendants ou acteurs représentant les consommateurs ou la société civile sont diversement représentés.

**Financement**

Définition des principes assurant une meilleure autorégulation et corégulation :

- Les participants à l’action fourniront les moyens nécessaires pour tenir les engagements. Les bailleurs de fonds publics ou autres peuvent en outre soutenir la participation d’organisations de la société civile ne disposant pas elles-mêmes de moyens parfaitement adéquats pour jouer le rôle qui leur incombe. Ce soutien financier doit être rendu public.

Dans de nombreux cas, les cotisations de membres constituent la principale source de financement. Certains dispositifs reçoivent un soutien du gouvernement. L’offre de services aux participants à des dispositifs en contrepartie d’un paiement est aussi une source de financement pour un certain nombre de dispositifs d’autorégulation et de corégulation. La fourniture de conseils préalables (« copy advice ») pour une publicité, par exemple, peut constituer une source de financement supplémentaire, de même que la classification d’un programme selon un système de classification. Les sanctions peuvent aussi constituer une source de financement. Une pratique considérée comme assez efficace lors du financement de dispositifs s’appliquant aux communications commerciales est l’utilisation pour les annonceurs et les sociétés de médias de droits s’appliquant à l’ensemble du secteur. Un élément de proportionnalité dans la détermination du niveau de redevances à payer assure l’équité des contributions faites par les participants au dispositif.

**Critères d’évaluation supplémentaires pour la phase d’application**


**Mécanismes de règlement des plaintes**

Les mécanismes de règlement des plaintes sont examinés en fonction de plusieurs aspects. Ceux-ci comprennent le nombre de plaintes reçues, leur règlement et, idéalement parlant, la rapidité avec laquelle les décisions ont été prises en matière de conformité.

Les informations recueillies sur les dispositifs d’autorégulation et de corégulation montrent que les plaintes ne sont pas toujours enregistrées de façon aussi détaillée. Dans certains cas, la poursuite de la mise en œuvre des mécanismes de règlement de plaintes n’est tout simplement pas une priorité. Cela peut être dû au fait que le respect des règles en place est généralement élevé et que le besoin de mettre en œuvre un système de règlement des plaintes n’est pas vraiment ressenti ou qu’il n’est reçu qu’un petit nombre de plaintes. Le nombre de plaintes reçues constitue un indicateur assez ambigu ; les raisons du faible nombre de plaintes pourraient
constituer une indication favorable du haut degré de respect des règles, mais aussi une indication du faible niveau de connaissance du dispositif parmi le public. Dans la plupart des cas, les plaintes reçues sont enregistrées et le nombre de plaintes réglées est également enregistré. Dans de nombreux cas, les informations relatives aux plaintes n'ont pas été plus loin que ce qui a été reçu et réglé ; les informations sur le secteur ou sur le groupe de produits concerné, la nature ou le fondement de la plainte et la nature du résultat ou de la décision ne sont pas toujours enregistrés.

*Résultats des mécanismes de plaintes*

Ce critère examine les résultats des mécanismes de règlement des plaintes. L'accord adopté sur ce point se concentre sur le niveau de satisfaction obtenu avec la procédure de traitement des plaintes et sur le fait de savoir si la procédure contribue à améliorer le respect des règles du dispositif d'autorégulation et de corégulation en place.

Le niveau de satisfaction obtenu avec la procédure de traitement des plaintes n'est pas souvent mesuré de façon spécifique. Dans ces cas, le taux de règlement (nombre de plaintes résolues par rapport au nombre de plaintes reçues) tient parfois lieu d'indicateur de performance du mécanisme de règlement des plaintes. Dans le même ordre d'idées, le nombre de recours contre la décision d'un organe d'arbitrage sert d'indicateur du résultat du système de traitement des plaintes. Le nombre de recours est perçu comme une indication du niveau de satisfaction obtenu avec le système.

Un point important concernant les plaintes et le niveau de satisfaction est que les plaintes sont d'abord jugées sur leur recevabilité. Si la plainte n'est pas bien fondée, qu'elle n'est pas complète ou qu'elle concerne un sujet qui ne porte pas atteinte au dispositif en place, aucune mesure n'est prise à l'encontre de l'annonceur ou de l'organisme de radiodiffusion télévisuelle. Du point de vue d'un plaignant, cela peut paraître insatisfaisant. Quand on examine les statistiques relatives aux plaintes et au niveau de satisfaction concernant leur règlement, il convient de prendre à la fois en considération le nombre de plaintes reçues, celles qui sont acceptées et celles qui sont réglées au final.

Bien que le rejet d'une plainte pour absence de fondement puisse susciter un sentiment d'insatisfaction chez le plaignant, il peut être très utile de partager la réaction de l'organe d'arbitrage concernant la plainte. Le fait de communiquer aux deux parties impliquées dans une procédure de traitement de plainte les arguments ayant mené à la décision permet à ces deux parties de comprendre le raisonnement qui sous-tend la décision, ce qui permet ensuite d'améliorer le degré de satisfaction du consommateur. Dans le cas de consommateurs, cela veut dire que dans bien des cas les consommateurs se sentent entendus et qu'ils n'ont pas l'impression que leurs plaintes ont été ignorées.

*Sanctions*

Pour ce critère, la présence et la nature des sanctions ainsi que leur application sont examinées. Les sanctions échelonnées, maintenant un élément de proportionnalité avec l'infraction aux normes, sont généralement considérées comme une approche efficace pour l'application d'un dispositif. Cependant, la nature des sanctions qui sont jugées appropriées par l'industrie et par les collectivités civiles est largement déterminée par des facteurs culturels. L'élément de proportionnalité concernant les infractions aux normes et les sanctions infligées à ces manquements est important à cet égard.
Les types de sanctions pouvant être appliquées comprennent la demande d’ajustement du contenu audiovisuel ou de la publicité, la mention, la dénonciation et la stigmatisation, l’exclusion d’adhésion à un dispositif ou à une association, des sanctions ou des amendes, le retrait du contenu audiovisuel ou la suspension de la publicité, ou la saisie des autorités publiques en vue de l’application d’autres sanctions d’ordre judiciaire. Dans la plupart des cas, et en particulier dans les dispositifs où il existe moins de collaboration entre les organisations privées et publiques, la mention, la dénonciation et la stigmatisation sont des instruments de coercition courants. Ceci est dû pour une large part à l’importance de la réputation et d’une bonne image auprès du public ; leur atteinte peut s’avérer très préjudiciable pour une société ou un organisme de radiodiffusion audiovisuelle.

Meilleures pratiques sélectionnées

Sur la base des critères respectifs d’acceptation par les acteurs concernés et d’efficacité, quatre bonnes pratiques ont été sélectionnées pour cette étude. Les pratiques sélectionnées ont réalisé un bon score lors de l’évaluation sur la base des critères d’acceptation par les acteurs concernés et d’efficacité ; cependant, parmi cette sélection, deux réalisent un score particulièrement bon sur le premier de ces deux critères et deux un score particulièrement bon sur le second. Un ensemble représentatif de bonnes pratiques structurant la protection des mineurs contre des contenus audiovisuels préjudiciables et réglementant les communications commerciales audiovisuelles a été recherché. Les meilleures pratiques sont présentées dans le tableau ci-dessous.

<table>
<thead>
<tr>
<th>Dispositif réglementant les communications commerciales audiovisuelles</th>
<th>Bon score en efficacité globale</th>
<th>Bon score en acceptation par les parties intéressées</th>
</tr>
</thead>
<tbody>
<tr>
<td>Code de la publicité, de la promotion des ventes et du marketing direct (Code CAP), Royaume-Uni</td>
<td>Code de la publicité, de la promotion des ventes et du marketing direct (Code CAP), Royaume-Uni</td>
<td>Normes nationales d'éthique applicables à la publicité et à la communication commerciale en Bulgarie</td>
</tr>
<tr>
<td>Dispositif sur la protection des mineurs contre les contenus audiovisuels préjudiciables</td>
<td>Code d'autorégulation pour les contenus audiovisuels et les mineurs, Espagne</td>
<td>Kijkwijzer, Pays-Bas</td>
</tr>
</tbody>
</table>

**Code de la publicité, de la promotion des ventes et du marketing direct (Code CAP), Royaume-Uni**


Chaque trimestre, l’ASA rend compte de ses indicateurs de performance à l’Ofcom. En outre l’ASA et la CAP publient une déclaration annuelle sur les progrès effectués vers la réalisation de leurs objectifs et de leurs cibles. Les plaintes sont généralement traitées par l’ASA qui a élaboré une série de procédures spécifiques régissant le processus. Le Conseil de l’ASA fait office de jury indépendant, dont la seule
responsabilité consiste à juger si les Codes publicitaires ont été enfreints. Il existe plusieurs sanctions pouvant être prises par l’ASA dans différents types d’infractions au Code CAP.

**Code d’autorégulation pour les contenus audiovisuels et les mineurs, Espagne**

Ce dispositif a été lancé par le Ministère de l’Industrie, du Tourisme et du Commerce en collaboration avec quatre grands réseaux de télévision. Le but du dispositif est de promouvoir un contrôle approfondi des contenus télévisuels et en particulier d’empêcher les contenus préjudiciables d’atteindre les enfants. Au développement du dispositif ont participé les autorités publiques, les industries, les consommateurs et des groupes de la société civile. Les participants au dispositif sont les sociétés qui produisent des contenus télévisuels et des professionnels du secteur des technologies de l’information. Le Code constitue un système de classification basé sur différents groupes d’âges et différents contenus de programmes. Le Code contient un processus destiné à en contrôler l’application, dans lequel des organisations représentant les jeunes et les enfants, les parents et les éducateurs, ainsi que les consommateurs et les utilisateurs participent par le biais des organismes de contrôle. Bien que des évaluations régulières du nombre de plaintes soient effectuées, les évaluations ne semblent pas porter sur les progrès accomplis dans la réalisation par le dispositif des buts de la politique menée ou de ses objectifs. Il existe deux organisations de contrôle. La première est le Self-Regulation Committee (SRC - Comité d’autorégulation), composé de représentants des réseaux de télévision. Cet organisme reçoit les plaintes de consommateurs aussi bien que de membres et rend une décision sur la plainte. La seconde est la Joint Monitoring Commission (JMC - Commission mixte de contrôle) qui vérifie alors la plainte et la décision prise par le SRC et qui, en cas de violation, contacte le SRC.

**Normes nationales d’éthique applicables à la publicité et à la communication commerciale, Bulgarie**


Le Committee for Post-Monitoring (CPM - Commission de Post-Monitoring) est responsable du contrôle. Cette commission a deux fonctions principales qui sont de contrôler la mise à exécution des décisions rendues par l’Ethical Committee (ETC - Commission d’éthique) ou par l’Appeal Committee (AC - Commission d’appel), et de contrôler les communications publicitaires et commerciales. Selon les statuts du NCSR, les décisions de l’EtC ou de l’AC sont contraignantes pour les membres du NCSR.

**Kijkwijzer, Pays-Bas**

Le Kijkwijzer est un code élaboré par le secteur publicitaire des Pays-Bas. Le Kijkwijzer est un système de classification des programmes de télévision. L’Institut
1 Introduction

This study on “Effectiveness of self- and co-regulation in the context of implementing the Audiovisual Media Services Directive” has been prepared for the Directorate General for Communications Networks, Content and Technology (DG Connect), of the European Commission. The study has been carried by Panteia and VVA Europe Valdani, Vicari & Associati, in close cooperation with experts from the European Network for Social and Economic Research (ENSR).

1.1 Study objectives

The Audiovisual Media Services Directive (AVMS Directive) aims broadly speaking, to ensure the free circulation of audiovisual services in the Internal Market. The AVMS Directive encourages the development of self- and co-regulatory schemes to implement some of its provisions, as Article 4(7) demonstrates.

Article 4(7) of the AVMS Directive provides that "Member States shall encourage co-regulation and/or self-regulatory regimes at national level in the fields coordinated by this Directive to the extent permitted by their legal systems. These regimes shall be such that they are broadly accepted by the main stakeholders in the Member States concerned and provide for effective enforcement”.

In connection with this provision, this study presents the status of implementation of relevant self and co-regulatory schemes in the 28 Member States in two selected areas: 1) the protection of minors from harmful audiovisual content, and 2) the regulation of audiovisual commercial communications.

These schemes are assessed using the Principles for Better Self- and Co-Regulation developed by the European Commission3, as well as additional enforcement stage criteria regarding complaints resolution and enforcements mechanisms. Finally, best practice examples for self- and co-regulatory systems are identified. The main criteria used for selecting these best practices were the effectiveness of the scheme and the stakeholder acceptance of the scheme.

The specific objectives of the study are to provide:

- A general description of the existing self- and co-regulatory structures in the EU Member States, in the selected areas, coordinated by the AVMS Directive.
- An analysis of the effectiveness of the self- and co-regulatory systems in place and their acceptance by the stakeholders, on the basis of the Principles for Better Self- and Co-regulation.
- Identification of the best practice examples of self- and co-regulation systems in the two selected areas.

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In the context of the study the following definition of self-regulation and co-regulation is applied:

**Self-regulation** constitutes a type of voluntary initiative which enables economic operators, social partners, non-governmental organisations or associations to adopt common guidelines amongst themselves and for themselves. **Co-regulation** gives, in its minimal form, a legal link between self-regulation and the national legislator in accordance with the legal traditions of the Member States. Co-regulation should allow for the possibility of State intervention in the event of its objectives not being met.

*Source: Audiovisual Media Services Directive, 2010.*

A further, broader aim of this study is to provide input for the European Commission’s Regulatory Fitness and Performance Programme (REFIT). REFIT is the European Commission’s Regulatory Fitness and Performance Programme aimed at assessing EU actions in place in order to eliminate regulatory burdens, and to simplify and improve the legislation. The programme involves the identification of burdens, inconsistencies, gaps, and ineffective measures related to EU legislation. As a result, the European Commission will be able to reduce regulatory costs and simplify the legislation by assessing, implementing and monitoring new initiatives.

The information for this study is based on desk research and in-depth interviews at national level and European level. The information at national level is collected by Panteia, VVA and members organisations of the European Network for Social and Economic Research (ENSR). The list of local partners is presented in Appendix 2. In addition, a large number of European stakeholders from consumer and civil society, industry and media associations, media corporations, and interest groups related to regulating audiovisual media, were interviewed by Panteia and VVA. The list of organisations is included in Appendix 3 to this report. Panteia and VVA thank all the organisations contacted for their contributions.

### 1.2 Assessment criteria

In addition to preparing an overview of relevant self-and co-regulation schemes, all schemes have been assessed and 4 best practices have been selected. The assessments have been made on the basis on the basis of the Principles for Better Self- and Co-Regulation developed by the European Commission as well as the three enforcement stage criteria. These principles and the three additional enforcement stage criteria were operationalised and applied to the schemes collected (see Appendix 1 for an overview of the assessments of all schemes).

#### 1.2.1 Principles for Better Self- and Co- Regulation

This section presents the Principles for Better Self- and Co- Regulation, and the additional enforcement stage criteria used for the assessment. As presented in table 4, a distinction is made between principles aimed at the conception of schemes, and principles aimed at the implementation of the schemes. The principles ‘participants’, ‘openness’, ‘good faith’, ‘objectives and ‘legal compliance’, refer to the

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4 In line with this definition internal company codes of conduct are not included in this study.

conception of the schemes. The principles ‘iterative improvements’, ‘monitoring’, ‘resolving disagreements’ and ‘financing’ focus on the implementation of the schemes.

### Principles for Better Self- and Co-Regulation

<table>
<thead>
<tr>
<th>1. Conception</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1.1. Participants</strong></td>
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<tr>
<td><strong>1.2. Openness</strong></td>
</tr>
<tr>
<td><strong>1.3. Good Faith</strong></td>
</tr>
<tr>
<td><strong>1.4. Objectives</strong></td>
</tr>
<tr>
<td><strong>1.5. Legal Compliance</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2. Implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>2.1. Iterative improvements</strong></td>
</tr>
<tr>
<td><strong>2.2. Monitoring</strong></td>
</tr>
</tbody>
</table>

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7 Though not in the Principles for Better Self- and Co-Regulation, these objectives should be defined according to SMART criteria (Specific Measurable Achievable Realistic Time-dependent).
The results of the monitoring will be aggregated where possible. This should be done in a way that is transparent and objective.

### 2.3. Evaluation
- Evaluation will allow participants to assess whether the action may be concluded, improved or replaced. The participants regularly and collectively assess performance not only against output commitments, but also as to impact. This should identify any short-fall in expected collective impact, any scope to improve the efficiency or effectiveness of the action, and any other desirable improvements.

### 2.4. Resolving Disagreements
- Disagreements inevitably arise involving either participants or others. As part of the iterative process of improvement, such disputes should receive timely attention, with a view to resolving them. These procedures may be confidential.
- In addition, complaints by non-participants should be submitted to a panel of independent assessors which consist of majority of non-participants. The outcome of their work is made public. Non-compliance should be subject to a graduated scale of sanctions, with exclusion included and without prejudice to any consequences of non-compliance under the terms of the Unfair Commercial Practices Directive.

### 2.5. Financing
- Participants to the action will provide the means necessary to fulfil the commitments. Public funders or others may in addition support the participation of civil society organisations lacking fully adequate means themselves to play their appropriate role. Such financial support should be made publicly known.

<table>
<thead>
<tr>
<th>Principles for Better Self- and Co-Regulation</th>
</tr>
</thead>
<tbody>
<tr>
<td>The results of the monitoring will be aggregated where possible. This should be done in a way that is transparent and objective.</td>
</tr>
</tbody>
</table>

### Besides these Principles for Better Co- and Self- Regulation, the following enforcement stage criteria are also used:

- the functioning of the complaint resolution mechanisms (including number of complaints received and their resolution; promptness of the compliance decisions (if envisaged by the system in place);
- their outcome;
- the existence of sanctions for non-compliance and their effective enforcement;

### 1.2.2 Identifying Best Practices

The identification of best practices requires clarifying what is understood by a best practice and outlining the criteria involved in identifying them. A set of additional screening criteria were applied to establish which practices are eligible for being best practices. These screening criteria are presented in table 2.

<table>
<thead>
<tr>
<th>table 5</th>
<th>Best Practice screening criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td>When searching, the following criteria should be borne in mind. To be a ‘best practice’:</td>
<td></td>
</tr>
<tr>
<td>- It should have clearly identifiable aims and objectives.</td>
<td></td>
</tr>
<tr>
<td>- It should be user-friendly and accessible.</td>
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<tr>
<td>- It should be adaptable and transferable.</td>
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<tr>
<td>- Its results should be identifiable and capable of evaluation.</td>
<td></td>
</tr>
<tr>
<td>- Over a range of relevant indicators, it should clearly out-perform other practices in terms of efficiency and effectiveness.</td>
<td></td>
</tr>
<tr>
<td>- It should be capable of being continuously improved.</td>
<td></td>
</tr>
</tbody>
</table>

A second set of criteria is developed to identify best practices. These criteria are presented in table 3.
### Best Practice criteria

<table>
<thead>
<tr>
<th>Best practice criterion</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reach</td>
<td>A large output and a relatively high reach of the target group, indicate something about 'popularity' and 'suitability' of an instrument.</td>
</tr>
<tr>
<td>Accessibility</td>
<td>Ease of access, red tape, etc.</td>
</tr>
<tr>
<td>Effectiveness/impact</td>
<td>Have the goals of the policy measure really been reached? Measuring the effectiveness of a policy measure requires clear, explicit and measurable objectives.</td>
</tr>
<tr>
<td>Efficiency</td>
<td>Costs benefit ratios and volume of administrative burdens. It is important to get an idea of the resources being allocated for a specific measure in relation to the effect obtained.</td>
</tr>
<tr>
<td>Evaluation</td>
<td>A proper assessment of effectiveness and efficiency of a policy instrument would only be possible if good evaluation studies are available.</td>
</tr>
<tr>
<td>Implementation issues/ administrative burden</td>
<td>If an instrument suffers from a lot of problems in the implementation process and leads to a lot of bureaucracy, this is not a recommendation for a good practice.</td>
</tr>
<tr>
<td>Transferability</td>
<td>The instrument should be adaptable and transferable. Good practices are considered as good on the basis of the economic, political, cultural and institutional framework of the country in which they are implemented. Therefore, it would be important to know why a particular measure was introduced and which circumstances were of influence on its results. Then, we might get an idea in which situations (sectors, countries) the measure is successful and in which situations it will probably not be successful.</td>
</tr>
</tbody>
</table>

*Source: Panteia*

### 1.3 Structure of this report

This report first provides an introduction to the general approach used in this study. Chapter 2 describes the scope of the study and the policy background to the area of audiovisual media services, the protection of minors from harmful audio-visual content, and audiovisual commercial communications. The chapter closes with a brief discussion of the policy background concerning self- and co-regulation of audiovisual media.

Chapter 4 provides an overview of the general regulatory approaches in place in the EU Member States for regulating audiovisual media. This provides an impression of which countries use what sorts of combinations of self- and co-regulation and statutory regulation to structure the protection of minors form harmful audiovisual content and to regulate audiovisual commercial communications. In addition, an overview is presented of the various self- and co-regulatory schemes in place in the Member States. Chapter 5 describes the results of the analyses of the assessments of the schemes and presents the best practices identified. Chapter 6 presents the concluding remarks.

Appendix 1 of the report includes descriptions of the assessments conducted for all the schemes. Appendix 2 gives an overview of the national and European organisations contacted. In Appendix 3 the research team is presented.
2 Scope and policy background

This chapter briefly introduces the AVMS Directive and some key points regarding the state of its implementation in the Member States. The key AVMS Directive provisions on the protection of minors from harmful audiovisual content, and on audiovisual commercial communications are also presented. Special attention is given to two product areas, namely alcohol and foods high in fats, sugars and salts (HFSS foods). These two product areas are referred to specifically in the AVMS Directive. Finally, further background information regarding self- and co-regulation is presented at the end of this chapter.

2.1 The Audiovisual Media Services Directive

The Audiovisual Media Services Directive (AVMS Directive) allows audiovisual media to be circulated freely within the internal market in keeping with key policy objectives. The scope of the directive covers all audiovisual media, regardless of how these are produced and provided to consumers.

Audiovisual media services

The AVMS Directive defines audiovisual media services in Article 1(a).

Article 1: (a) 'audiovisual media service' means:

(i) a service as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union which is under the editorial responsibility of a media service provider and the principal purpose of which is the provision of programmes, in order to inform, entertain or educate, to the general public by electronic communications networks within the meaning of point (a) of Article 2 of Directive 2002/21/EC. Such an audiovisual media service is either a television broadcast as defined in point (e) of this paragraph or an on-demand audiovisual media service as defined in point (g) of this paragraph;

(ii) audiovisual commercial communication;

The audiovisual media services covered by the directive include television broadcasts and on-demand audiovisual services, which are each defined as follows:

Article 1 (e): 'television broadcasting' or 'television broadcast' (i.e. a linear audiovisual media service) means an audiovisual media service provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule;

Article 1 (g): 'on-demand audiovisual media service' (i.e. a non-linear audiovisual media service) means an audiovisual media service provided by a media service provider for the viewing of programmes 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.8

It is generally relatively clear what is understood by "television broadcasting". However, given the rapid evolution in media and communication technology, the Directive provides further clarification on the definition of television broadcasting under recital (27): "Television broadcasting currently includes, in particular, analogue

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8 European Commission, Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive).
and digital television, live streaming, webcasting and near-video-on-demand, whereas video-on-demand, for example, is an on-demand audiovisual media service”.

The AVMS Directive applies to television broadcasts and on-demand audiovisual media services where providers have editorial responsibility for the content. To be covered by the Directive:

- services must have as their principal purpose the provision of programmes to inform, entertain or educate the general public and
- programmes should, be comparable, in form and content, to television ("TV-like").

The AVMS Directive does not apply to user generated content (UGC) in online video-sharing platforms (e.g. YouTube). Most recently, the ECJ\(^9\) clarified the "TV likeness" and "principal purpose" requirements.

Forms of media which are not part of the definition of audiovisual media include services where the principle purpose is not the provision of programmes and the audiovisual content is “merely incidental; to the service” and not its “principal purpose”.

**Major developments**

A number of broad, key developments have been observed in recent years regarding media and communication technologies. These developments in the audiovisual media sector, largely based on the rise of the internet, and new and social media, have changed the types of media channels and platforms used by consumers to view audiovisual media. These developments have a direct influence on the challenges faced by policy makers and how they can best regulate audiovisual media in the context of these developments.

The changing media environment is reflected in the revision of the AVMS Directive between 2005 and 2006 to incorporate the notions such as “video on demand” (VoD) in the regulatory framework for audiovisual media. Since then however, the nature of media channels, media devices, and how they are used have evolved even more, and this was recognised in the 2012 report by the EU Commission on the application of the AVMS Directive.\(^11\) The main challenges and areas for future attention identified in this application report continued to centre on the role of converging media and converged use of media amongst citizens. The traditional definitions and distinctions between media channels and devices are blurring; the regulatory framework of the AVMS Directive must therefore be closely monitored to examine how it performs in effectively regulating these evolving methods of receiving and delivering audiovisual media services.

### 2.2 Protecting minors from harmful audiovisual content

**2.2.1 Provisions on protecting minors from harmful content in the AVMS Directive**

The protection of minors is a prevalent aspect of the AVMS Directive. The main provisions on protecting minors in audiovisual media are established in Article 12 and Article 27 of the AVMS Directive. These two articles and their relevant sub-sections are presented in the boxes below.

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\(^9\) Judgment of the Court (Second Chamber) of 21 October 2015, New Media Online GmbH v Bundeskommunikationsministerium, Case C-347/14 (hereinafter, “New media Online GmbH” case).

\(^10\) AVMSD (recital 22)

CHAPTER IV - PROVISIONS APPLICABLE ONLY TO ON-DEMAND AUDIOVISUAL MEDIA SERVICES

Article 12
Member States shall take appropriate measures to ensure that on-demand audiovisual media services provided by media service providers under their jurisdiction which might seriously impair the physical, mental or moral development of minors are only made available in such a way as to ensure that minors will not normally hear or see such on-demand audiovisual media services.

CHAPTER VIII - PROTECTION OF MINORS IN TELEVISION BROADCASTING

Article 27
1. Member States shall take appropriate measures to ensure that television broadcasts by broadcasters under their jurisdiction do not include any programmes which might seriously impair the physical, mental or moral development of minors, in particular programmes that involve pornography or gratuitous violence.

2. The measures provided for in paragraph 1 shall also extend to other programmes which are likely to impair the physical, mental or moral development of minors, except where it is ensured, by selecting the time of the broadcast or by any technical measure, that minors in the area of transmission will not normally hear or see such broadcasts.

3. In addition, when such programmes are broadcast in unencoded form Member States shall ensure that they are preceded by an acoustic warning or are identified by the presence of a visual symbol throughout their duration.

The Directive provides rules regarding the type of content which children should not be exposed to while using audiovisual media services. It aims to ensure that children are not exposed to content which impacts their physical, moral or mental development.

Although the protection of minors from harmful content is established in the AVMS Directive, the concept of who qualifies as a "minor" in the EU and the idea of what is considered "harmful" audiovisual content vary across the Member States. Minors tend to be defined as individuals below 18 years of age. At the national level, further different age categories for children are used so that one definition for minors and for children is difficult to establish at the outset of this study. 12

There are certain types of content which are generally accepted as being seriously harmful to children and minors. Content on which there is relatively broad consensus regarding their harm to minors include pornography, and unnecessary brutal or gratuitous violence. In France, the UK and Slovenia for example, sexual perversion or degradation are also considered to be "seriously impairing" for a child. Germany and Poland also consider any content bearing an incitement to hatred based on sex, religion, or race as seriously impairing as well.

2.2.2 Policy responses to protecting minors from harmful audiovisual content

The rapid technological and media developments which characterise today's society have altered the types of media channels and platforms used by consumers to view audiovisual media.

In the context of a high degree of technological penetration, including high numbers of (personal) media devices (interactive TV, phones, laptops, tablets, etc.), the degree of exposure to media is high in general. Therefore different regulatory rules are in place to regulate audiovisual content. The more pervasive use of media devices and higher exposure to media mean that individuals have greater access to audiovisual content. This poses a regulatory challenge for adults and for protecting minors from harmful content in particular.

Within the Digital Agenda for Europe, the European Commission launched the Better Internet for Children Strategy in 2012. This programme involves the entire industry value chain and aims to provide children with both the digital skills and the tools to safely use, and benefit from using the internet. Awareness raising concerning the risks are emphasised amongst both parents and children. Media literacy is also promoted to make parents and minors more internet savvy. The strategy includes actions to create a safe environment for children through age-appropriate privacy settings, wider use of parental controls, and age rating and content classification.  

The EU Audiovisual Observatory presents an overview of the main types of instruments used to protect minors from both linear and non-linear media forms. This is shown in the tables below:

**Examples of protection tools required of linear service providers**

<table>
<thead>
<tr>
<th>Watershed restrictions + age rating/on screen icons</th>
<th>Technical access restrictions (filtering, PIN code, paywalls, other age verification systems)</th>
</tr>
</thead>
<tbody>
<tr>
<td>AT, BE (Fr), BG, CZ, DE, DK, EE, ES, FI, UK, EL, HU, HR, IE, IT, LT, LUX, LV, NL, PL, PT, RO, SE, SI, SK</td>
<td>AT, BE (Fr), BG, CY, DE, ES, FR, HR, IT, LV, RO, SE, SI</td>
</tr>
</tbody>
</table>

**Examples of type of content affected by restrictions on VOD services in the EU**

<table>
<thead>
<tr>
<th>Access restrictions for content likely to &quot;seriously impair&quot;</th>
<th>Access restrictions for content &quot;likely to impair&quot;</th>
</tr>
</thead>
<tbody>
<tr>
<td>AT, BE (Fr), FR, CY, CZ, DE, EE, ES, EL, HU, HR, IE, IT, LUX, LV, MT, NL, PL, PT, RO, SE, SI, SK</td>
<td>BE (Fr), BG, CZ, DE, ES, FR, UK, HU, HR, IE, NL, PL, PT, RO, SI</td>
</tr>
</tbody>
</table>

According to the 2015 report by the European Audiovisual Observatory on average, Member States regulate linear media more strictly than non-linear media. These tables show how the rules regarding content in linear media service are stricter, while non-linear services such as video on demand (VOD) services, do not have “restrictions” in the same sense. Restrictions for non-linear services are bound more to the nature of the content and do not appear to be enforced as strictly.

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13 European Commission, 2015, A European Strategy to deliver a Better Internet for our Children, [online], available at: https://ec.europa.eu/digital-agenda/node/286.

14 European Audiovisual Observatory, 2015, Comparative tables on the protection of minors in audiovisual media services, European Audiovisual Observatory, Strasbourg 2015.
Some instruments are commonly used when protecting minors from harmful audiovisual content made available through the internet or digital services. The EU Audiovisual Observatory categorises these instruments as follows:

- Initial age verifications in stores (using ID cards for instance), or points of physical delivery of content using in-depth checks of documentation provided in databases;
- Using PIN Numbers or codes which can be requested by the provider for a user to access content. Paywalls or credit card authorisations can also be used. Such codes to prevent unauthorised access to content can be implemented for day-to-day use.
- Broadcasting services can be provided using encryption technologies, where a special code or decryption key is needed to access certain content.
- Technical filtering systems can be used at the software or device level so as to block certain content.

These measures can be used in combination with other policy responses, such as statutory regulation, media literacy and awareness campaigns, and codes of conduct by producers of audiovisual content.\(^{15}\)

### 2.3 Audiovisual commercial communications

#### 2.3.1 Provisions on audiovisual commercial communications in the AVMS Directive

Article 1 of the AVMS Directive includes the definition of audiovisual commercial communication.

**Article 1(h) ‘audiovisual commercial communication’** means 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. Forms of audiovisual commercial communication include, inter alia, television advertising, sponsorship, teleshopping and product placement;

The main provisions on commercial communications are stipulated in Chapter III, Article 9(1), which concerns rules applicable to all audiovisual media services. Article 9(2) states that Member States should encourage implementation of codes of conduct for audiovisual commercial communications. Both articles are presented below:

**Chapter III – PROVISIONS APPLICABLE TO ALL AUDIOVISUAL MEDIA SERVICES**

**Article 9(1)**

1. Member States shall ensure that audiovisual commercial communications provided by media service providers under their jurisdiction comply with the following requirements:
   a. audiovisual commercial communications shall be readily recognisable as such. Surreptitious audiovisual commercial communication shall be prohibited;
   b. audiovisual commercial communications shall not use subliminal techniques;
   c. audiovisual commercial communications shall not:
      i. prejudice respect for human dignity;
      ii. include or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;

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\(^{15}\) Capello M. (ed.), The protection of minors in a converged media environment, IRIS plus, European Audiovisual Observatory, Strasbourg, 2015.
iii. encourage behaviour prejudicial to health or safety;
iv. encourage behaviour grossly prejudicial to the protection of the environment;
d. all forms of audiovisual commercial communications for cigarettes and other tobacco products shall be prohibited;
e. audiovisual commercial communications for alcoholic beverages shall not be aimed specifically at minors and shall not encourage immoderate consumption of such beverages;
f. audiovisual commercial communication for medicinal products and medical treatment available only on prescription in the Member State within whose jurisdiction the media service provider falls shall be prohibited;
g. audiovisual commercial communications shall not cause physical or moral detriment to minors. Therefore they shall not directly exhort minors to buy or hire a product or service by exploiting their inexperience or credulity, directly encourage them to persuade their parents or others to purchase the goods or services being advertised, exploit the special trust minors place in parents, teachers or other persons, or unreasonably show minors in dangerous situations.

**Chapter III – PROVISIONS APPLICABLE TO ALL AUDIOVISUAL MEDIA SERVICES**

**Article 9(2)**

Member States and the Commission shall encourage media service providers to develop codes of conduct regarding 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-fatty acids, salt/sodium and sugars, excessive intakes of which in the overall diet are not recommended.

**Chapter I – DEFINITIONS**

**Article 1**

i. ‘television advertising’ means any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment;
k. ‘sponsorship’ means any contribution made by public or private undertakings or natural persons not engaged in providing audiovisual media services or in the production of audiovisual works, to the financing of audiovisual media services or programmes with a view to promoting their name, trade mark, image, activities or products;
l. ‘teleshopping’ means direct offers broadcast to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment;
m. ‘product placement’ means any form of audiovisual commercial communication consisting of the inclusion of or reference to a product, a service or the trade mark thereof so that it is featured within a programme, in return for payment or for similar consideration.
Besides certain target groups, as minors, which require more specific regulations for commercial communications, the AVMS Directive also refers to specific products which face more specific regulatory rules. This is further discussed in section 2.4. For certain products, extra provisions are taken up in the AVMS Directive for added consumer protection. For alcohol for instance, Article 22, provides details as to how alcohol advertising specifically may occur (see section 2.4).

The application report of the AVMS Directive\textsuperscript{16} showed that there was some diversity in how strict the regulatory frameworks were across countries. Some countries ban all advertisements and commercial messages towards children, and some regulate the advertisement towards children only in the broadest sense, as part of the general consumer protection regulatory framework in the country (this is the case for instance, in Sweden and Luxembourg respectively).

The EASA Alliance considers the group of children aged 0 – 8 as an audience group which should be considered more in policy making in aid of protecting minors from commercial communications.\textsuperscript{17}

The 2013 the European Parliament Implementation Report for the AVMS Directive\textsuperscript{18} recognises the self- and co-regulatory approaches taken to limit the exposure of children to unhealthy foods specifically, as well as other voluntary industry approaches such as the EU pledge. The requirement to have an appropriate balance between voluntary and obligatory clauses is highlighted in connection with this point. Equally, the European Parliament also reaffirms the need to look closely at the current scope and mandate of the AVMS Directive. A revision of the AVMS Directive and new regulatory tools for greater protection of minors in the media is considered a necessity given the rapid media developments, and the converging media environment. The Parliament therefore encourages further development of self- and co-regulatory codes amongst media services providers to improve protection of children from commercial communications, especially online.

At the Member State level, the protection of children in the audiovisual media sector is carried out through both statutory and self- or co-regulatory approaches. At the technical, implementation level, websites and media providers take steps to safeguard children from inappropriate content. However, checks such as being asked to fill in one’s age can be circumvented relatively easily by minors. Children under the age of 12 may therefore be protected to a larger extent than minors, and this is an area for further consideration for policy makers.

2.3.2 Policy responses to regulating audiovisual commercial communications

Due to national competences regarding media and commercial communications, some commercial practices may not be allowed in a Member State while they are in others. In the event of citizens encountering non-compliant media forms from outside a country, a regulatory body might face logistical difficulties in identifying and tracing a producer of the commercial message. Besides this, the mandates of regulatory bodies tend to be nationally focused, so that even in the event that a producer of a non-compliant commercial communication can be identified, the possibilities for taking appropriate enforcement steps may also be limited.


\textsuperscript{17} EASA Alliance, 2014, EU PLEDGE SURVEY, Brussels, Belgium.

Besides the AVMS Directive, other policy initiatives have been set up which impact audiovisual commercial communications. The European Advertising Standards Alliance (EASA Alliance) has also carried out research into and prepared detailed guidelines on best practices related to a range of different components of marketing and advertising. Best practice guidelines have been released amongst others, for monitoring advertising, complaints handling, online advertising, digital marketing communications, jury composition, as well as on other aspects. The EASA Alliance also contains a committee which represents self-regulatory organisations (SROs) across European Member States. The EASA Alliance provides advice and support to these organisations in their self-regulatory activities.

Furthermore, the International Chamber of Commerce (ICC) developed a Consolidated Code for Advertising and Marketing Practices (henceforth the ICC Code) and revised this code in 2011. A new definition of marketing was developed to encompass the different forms advertising and media made possible by technological developments in communication technologies. This broader definition of marketing as involving any commercial communication has also been adopted by the EASA Alliance. The ICC has a leading position in the area of self- and co-regulation regarding advertising.

### 2.4 Product specific regulatory responses for audiovisual commercial communications

Article 9(2) of the Directives states that "Member States and the Commission shall encourage media service providers to develop codes of conduct regarding inappropriate audiovisual commercial communication, accompanying or included in children's programmes, of food and beverages containing nutrients and substances with a nutritional or physiological effect, in particular those such as fat, trans-fatty acids, salt/sodium and sugars, excessive intakes of which in the overall diet are not recommended."

The issue of protecting children from media messages regarding foods high in fat, salt or sugar (HFSS) has become an important part of EU policy. This is in part because of the pending review of the application of the AVMS Directive. This review is required by the Directive itself under Article 33 which states that regular reviews must take place.

Statistics demonstrate that obesity and overweight are distinct problems which children are becoming increasingly susceptible to. The foods which children are encouraged to eat however are also related to a certain extent, to advertising and marketing. For this reason various international organisations have developed initiatives to target how food is advertised and marketed towards children. Some of the key policy initiatives have been listed below:

- The WHO presented a Global Strategy on Diet, Physical Activity and Health in 2004. This strategy aimed to discourage food advertising messages for unhealthy foods. It stated that governments should work together with consumer groups and the private sector to develop a multi-sector approach to deal with the range of activities connected with marketing food to children.
- In 2006, the European Charter on Counteracting Obesity was signed by European Ministers to decrease the promotion of energy dense foods and drinks to children. This charter called for "the adoption of regulations to substantially reduce the extent and impact of commercial promotion of energy-dense foods and beverages,
particularly to children.” (paragraph 2.4.6). This Charter contained a specific call for codes on marketing food to children.

- The EU attention for this policy area has increased, evidenced by the 2007 White Paper by the European Commission on "a strategy for Europe on nutrition, overweight and obesity related health issues". This White paper stated that action was needed in this area and that voluntary initiatives at the national levels would be necessary.
- In 2007, the EU Pledge was signed by food and drink producers to change the way they advertise towards children under the age of 12.
- The EU Commission also hosted the European Platform on Diet, Physical Activity and Health, to draw together both private industry and consumer or health focus stakeholders. This forum was established to bring together actors to commit themselves to tackling the trends in European diets and lack of physical activity. Marketing of food and drinks formed a part of this.
- In 2008, several European Member States (15 in all) formed the WHO European Network on reducing food marketing pressure on children. This was chaired by the Norwegian Directorate of Health and in 2009, and presented a code on marketing food, and non-alcoholic beverages towards children.

Besides these policy initiatives, a broad range of organisations are active in the policy areas of food marketing aimed at children, or in related areas. Several international non-governmental organisations have also developed recommendations, codes or guidelines for the marketing of food to children. To mention a few, the WHO for instance, published a new set of 12 Recommendations in 2010 for the marketing of foods and non-alcoholic beverages to children. Consumers International went on to release a set of guidelines in 2011 on the monitoring of food marketing specifically.

The 2014 meeting of the EU Platform for Action on Diet, Physical Activity and Health focused especially on Article 9.2 of the AVMS, Directive, and its role in advertisements for HFSS foods aimed at children. Here too the issue of diverse regulatory approaches was raised and how effective these different approaches are given changing media forms, especially online media forms.\(^{19}\) The EU Commission has also recognised the increased protection required for minors on the internet.

This recent plenary meeting of the European Platform on Diet, Physical Activity and Health covered several issues specifically related to the AVMS Directive, protecting children, and particularly protecting children from unhealthy foods. The fact that children require more protection from commercial communications and marketing was raised, along with the fact that this should be done in a way which prevents children from persuading their parents to purchase items for them. The increasing purchasing power of children, combined with their on average, lower levels of media literacy, means they are more susceptible to being influenced by commercial communications. Added to this, children and their "pester power” also influence parents in their shopping choices.

During this meeting parental control and media literacy in the context of social media, the increasing use of images on packaging and menu cards, and designs and flavours were also mentioned as areas in need of further policy attention.\(^{20}\) Parental control is an important issue in the protection of minors. In the case of protection from

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commercial communications, this has become rather difficult given the convergence of media forms and rise of social media.

The meeting also discussed an update of the EU Pledge based on the 2013 monitoring results. Although the exposure of children to marketing and advertisements regarding food shows a consistent decline, the issue of expanding the Pledge was raised. This expansion in the scope of the EU Pledge, set for the end of 2016, seems in large part inspired by the need to cover more media given the converged and pervasive style of media use in contemporary society. The Pledge also seeks to address the use of licensed characters or role models in communications directed at children by ensuring the companies do not use such techniques.

**Alcohol**

Alcohol related harm is recognised by the Commission as a major public health issue in the EU. Alcohol consumption may lead to serious diseases, such as heart diseases, liver diseases, and types of cancer. Alcohol consumption is a serious risk during pregnancy and consumption of large amounts of alcohol can lead to dependence. Furthermore, there are risks of violence and (traffic) accidents.

Some of the key European Commission policy initiatives have been listed below:

- In 2006 the European Commission presented an EU strategy to support Member States in reducing alcohol related harm. The Communication focuses on misuse of alcohol and its harmful consequences. The Communication presents actions already in place and identifies good practices.
- The European Union Information System on Alcohol and Health (EUSAH) is a cooperation between the European Commission (EC) and the World Health Organization (WHO). Within the framework of the EU Public Health Programmes this cooperation sets out to monitor the trends and developments in alcohol consumption and alcohol-related harm in the EU. There are also monitoring systems at the Member State level.
- In 2007 the European Commission established the Committee on National Alcohol Policy and Action (CNAFA). The CNAFA has an essential role in implementing the EU Alcohol Strategy. The aim of the CNAFA is to encourage cooperation and coordination between Member States, and to contribute to further policy development between Member States and the European Union.
- In 2007 the European Alcohol and Health Forum was established. The Forum was a response to the European Commission initiative. Several (especially European) businesses and non-governmental organisations are members of the Forum. The aim of the Forum is to take action to protect European citizens from the harmful use of alcohol.

Besides these European policy actions initiated by the European Commission, there are several initiatives from European industry organisations relating to the initiatives of the European Commission. The European Beer Pledge is a voluntary initiative by Europe’s brewers to support EU Member States in reducing alcohol related harm. The European Beer Pledge aims to increase consumer knowledge of beer and its responsible consumption, to ensure responsible advertising and marketing, and to address alcohol misuse. In November 2005, Spirits Europe, the European organisation of producers of spirits, adopted the Charter on Responsible Alcohol Consumption (the CEPS Charter) including a list of commitments. In 2010 a new series of commitments

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was adopted: the Roadmap 2015: responsibledrinking.eu. The Roadmap is focussed on enhancing responsible commercial communication, encouraging responsible drinking, and engaging more stakeholders.

More specific to commercial communication and self- and co-regulation, there are several European initiatives in place at the industry, sector and company levels:

- **At the industry level:** in June 2015 the Responsible Marketing Pact (RMP) was launched by the leading producers cooperating in the World Advertising Federation (WFA). The RMP is an industry wide initiative at the company level. The Responsible Marketing Pact will create common standards supported by beer, wine and spirits producers throughout the EU. The standards aim at reducing visibility and minimising the appeal of alcohol marketing communications amongst minors. Leading producers, such as AB InBev, Bacardi, Brown-Forman, Carlsberg, Diageo, Heineken, Pernod Ricard and SAB Miller, are members of the WFA. The RMP includes commitments on three main pillars: (1) Social Media, (2) Appeal and (3) Placement.

- **At the sector level:** the three trade associations, spiritsEUROPE, The Brewers of Europe and Comité Européen des Entreprises Vins, all adopted sector specific guidelines to complement existing national codes, legislation, principles and self-regulation initiatives from the industry to promote responsible marketing communications. The sector specific guidelines are, respectively, the spiritsEUROPE guidelines for the development of marketing communications (2012), guidelines for responsible commercial communications for the brewing industry (2003), and the EU Wine Communication Standards (2009). These sector specific guidelines share very similar provisions with regard to targeting in terms of both placement and content.

- **At the company level:** leading producers of alcoholic beverages often have their own guidelines or codes of conduct for advertising. They follow the Digital Guiding Principles, Self-Regulation of Marketing Communications for Beverage Alcohol (DGP), and the Responsible Marketing Pact (RMP). Measures for the internal self-regulation with regard to advertisement placement generally consists of the application of the 70/30 rule, which states that ads may only be placed in media where at least 70% of the audience is expected to be above the legal purchasing age (LPA), and supporting national advertising SRO's in active markets.

### 2.5 Self- and Co-regulation of audiovisual media

This section draws together the main literature available on analysing self- and co-regulatory approaches. In order to properly study and evaluate the various self- and co-regulatory schemes in place across the EU it is important to be aware of the full range of factors which can influence the effectiveness of a given regulatory scheme.

In the case of self- and co-regulation, the development of the approach and the implementation of the approach form two key aspects which are important to consider when investigating the effectiveness of the regulatory approach.

During the research it became apparent that the distinction between self- and co-regulation is not always clear; different organisations and individuals use the terms differently. In this study self- and co-regulation is understood as follows:
Self-regulation constitutes a type of voluntary initiative which enables economic operators, social partners, non-governmental organisations or associations to adopt common guidelines amongst themselves and for themselves. Co-regulation gives, in its minimal form, a legal link between self-regulation and the national legislator in accordance with the legal traditions of the Member States. Co-regulation should allow for the possibility of State intervention in the event of its objectives not being met.


At times schemes which appear to be co-regulation, according to the definition above, are defined as self-regulatory schemes by the code owners themselves. Self-Regulatory Organisations (SROs) who have been mandated by the public authorities, or who have public authorities providing an enforcement back-stop, still identify as self-regulatory schemes. However, within the definition used in this study, these could be classified as co-regulatory, given the involvement of public authorities in developing and/or implementing the scheme. This means that some stakeholders report a self-regulatory scheme when this is perhaps not necessarily the case.

The approach taken in this study is to not make explicit distinctions between self- and co-regulatory schemes when collecting schemes. A guiding principle used when searching for schemes has been whether a private body has been involved in the development, monitoring or enforcement of the scheme. From this moment we can speak at the very least of a co-regulatory approach in that there is a collaboration of some form between public and private interests to achieve a public goal.

2.5.1 Developing and implementing self- and co-regulatory schemes

Several studies provide useful insights as to what must be considered in carrying out research regarding regulatory approaches relating to audiovisual media, with a focus on self- and co-regulatory approaches.

The 2006 study for the EU Commission on Co-Regulation in the Media Sector shows that co-regulation can, under certain circumstances be an effective regulatory approach. It provides for higher chances of industry accountability, faster paced decision making, and greater sustainability. Necessary criteria for successful co-regulation specifically include having a regulatory culture where such collaborative and innovative regulatory systems are more common. Having adequate incentives for industry to co-operate is important, and a common cause for such collaboration is the threat of further statutory regulation. Having sufficient means to conduct enforcement is also a key issue; sanctions must be adequate and proportional, and regulators should ideally be regarded as strong organisations. In co-regulatory systems the state must also be able to intervene somehow when the non-state regulatory processes fail.

The study indicates that countries with certification systems in place have a good process in place for a state to intervene because in cases of non-compliance the state can withdraw those certifications or trust marks. Furthermore, clear divisions of tasks and responsibilities in the co-regulatory process are important for the effectiveness of a system, as are having clear process objectives. Besides having clear policy objectives for the regulatory system, the regulating process itself must also have clear objectives. It is generally good for a regulatory system to be open, transparent and clear, but operationalising such criteria into process objectives is difficult and often not adequately done in the privately run component of the regulatory system.\[^{22}\]

\[^{22}\] European Commission, (2006), Final Study on Co-Regulation in the Media Sector, carried out by Hans-Bredow Institut for Media Research at the University of Hamburg, Germany.
A study by Panteia on how advertising concerning food aimed at children is regulated in 12 EU Member States, arrived at similar conclusions regarding the success factors behind regulatory approaches for this area. The process of how a regulatory approach is developed and implemented, are key aspects in determining how effective an approach is. The development process rests to large extent on the national context in a country, including political and societal will regarding a given policy issue, cultural norms (which influence what sort of regulatory systems, including which enforcement mechanisms, are deemed acceptable by stakeholders), economic considerations, the existing institutional and legal frameworks, and the role of technology. The actors involved in the development process are a key aspect as well; the stakeholders involved should represent the main interests at stake in the policy debate.

The success of the implementation of an approach in turn has much to do with how the regulatory system is monitored and enforced. Concerning monitoring and detection of incoherence with rules, a combination of reactive and proactive approaches would appear to be the most inclusive form of monitoring. Such an approach leads to the most opportunities for regulators to identify non-compliant marketing techniques. The actors and organisations involved in this process are again key. Research showed that the involvement of more independent authorities who are able to operate autonomously, showed some of the best results concerning monitoring and enforcement. The type of sanctions in place was also found to be especially important, though national level factors were found to play an important role in determining what sort of sanctions were deemed acceptable by stakeholders.  

In order to evaluate the regulatory approaches in this study in terms of the Principles for Self- and Co Regulation, understanding the process through which regulatory approaches were developed and implemented appears to be important. As such, the findings concerning contextual factors affecting the development of regulatory approaches are presented below. The regulatory approaches adopted in Member States for the protection of minors from harmful audiovisual content and audiovisual commercial communications, are subject to national level factors.

### 2.5.2 National contextual factors

The trigger for developing a regulatory approach often has its origin in the national context in a country. The nature of the self- and co-regulatory schemes in place across Europe is a product of their national environments and contexts. The key contextual factors which affect the nature of a self- or co-regulatory scheme are examined in this section.

The nature of the policy issue being discussed and the role which the respective issues of protecting minors from harmful content and of audiovisual commercial communication have in a country, influence the regulatory approach which is adopted. This in turn also affects the types of actors involved as will be explained below. The following contextual factors are identified as having a role:

- Political and social will;
- Cultural norms;
- Economic considerations;
- Existing legal frameworks;
- Technological developments.

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These contextual elements are presented in more detail below.

**Political and social will**: Whether a policy issue is targeted and considered as a new regulatory approach depends to a large extent on the context in a country. If there is a widely acknowledged problem, which has both political and social attention there is a larger chance of there being enough political will to alter or introduce new regulation for a given area.

If the issue of protecting minors in a given area, or advertising is not a salient issue in a society or at the political level, it is unlikely to mobilise sufficient political will from stakeholders to undertake the development of a new regulatory approach. Introducing new regulations when there does not appear to be a problem in need of solving may even have an adverse effect amongst both consumer and business interests in society.

Political will and support are also important in legitimising and convincing other stakeholders of the importance for more regulation. Therefore, it is important to ensure that there is enough political and societal appreciation of the issue and enough will to actually bring about a new regulatory approach.

**Cultural norms**: Closely connected to the point concerning the necessity of political and societal will, is the role which cultural norms play in a country. The cultural norms and values in a country’s society are important features in determining what constitute acceptable advertising and marketing practices, respect of personal freedom, respect for freedom of information or business freedom. Furthermore, cultural norms also affect how children and minors are viewed in a society and what sorts of practices are considered to be socially acceptable. It is therefore important, when developing a new regulatory approach, to be aware of what the public considers to be acceptable forms of advertising and marketing, especially towards children.

Therefore, getting an idea of where the boundary of acceptability lies appears to be a useful endeavour when developing a regulatory approach.

**Economic considerations**: Economic issues such as whether a regulation will inhibit competitiveness for the media industries and broadcasters affect the type of regulation which is ultimately adopted. If a regulation is very detailed or involves extensive monitoring and enforcement, the costs of the actual regulatory approach itself can form a determining factor in what type of regulation is adopted.

**Existing legal and institutional framework**: A country’s legal system also plays a role in the development of a national regulatory approach. Simply put, the regulatory culture and the legal and institutional set-up in a country will also help determine what types of regulations should be changed or added to achieve a given result. In the case of protecting children from harmful audiovisual content, existing broadcasting laws and marketing laws could all play a role in this regard. Though this is a fairly intuitive point to consider when developing a new regulation, working within existing institutional and legal frameworks as much as possible can make the acceptance of regulatory changes easier.

**Technological developments**: Finally, from a technological perspective, the nature of the media landscape in a country is also likely to influence the type of regulatory approach adopted for audiovisual media regulation. In the case of audiovisual media services, countries often have laws and regulations in place for traditional forms of media such as TV, radio and print. The internet and online video channels or satellite broadcasts can all form a regulatory challenge however. These media forms are
difficult to regulate as defining and monitoring them is problematic. The degree of internet penetration, internet connectivity and the prevalence of certain media forms in a country are likely to influence how the issue of advertising and marketing, as well as the production of potentially harmful audiovisual media content and children, are framed in policy debates. This consequently influences the style of regulation adopted. This challenge of converging media forms and the resulting definition and monitoring difficulties are common to all the countries studied. It is therefore especially important that these technological developments be considered when revising the regulation of the protection of minors from harmful audiovisual content, and audiovisual commercial communications generally.
3 Regulatory frameworks and descriptions of self- and co-regulatory schemes in place in the EU

3.1 Introduction

The aim of this chapter is to give an inventory of the extent to which self- and co-regulatory schemes have been implemented across the Member States for those areas of the AVMS Directive under study. For each Member State, this chapter therefore presents the general regulatory approach to regulating audiovisual media services. For each country the relevant self- and co-regulatory schemes have also been summarised based on key features and characteristics, and these are presented in this chapter as well. The complete assessments of the schemes are presented in Appendix 1.

The schemes have been categorised according to whether their primary focus is on audiovisual commercial communications or on protecting minors from harmful audiovisual content. Though many schemes include stipulations on both commercial communications and minors, the schemes have been categorised based on whether their prime function is the protection of minors from harmful content or the regulation of commercial communications in the media services covered by the AVMS Directive.

<table>
<thead>
<tr>
<th>Country</th>
<th>Schemes with primary focus on commercial communication</th>
<th>Schemes with primary focus on protection of minors from harmful content</th>
</tr>
</thead>
</table>

24 This study recorded self- and co-regulatory schemes which protect minors from harmful audiovisual content and schemes which structure audiovisual commercial communications. Some of the schemes with the primary focus on commercial communication contain a general code and several subcodes for e.g. specific products such as alcoholic beverages, tobacco products and certain food products. These sub-schemes have not been collected and assessed separately, but as part of the main scheme.
<table>
<thead>
<tr>
<th>Country</th>
<th>Schemes with primary focus on commercial communication</th>
<th>Schemes with primary focus on protection of minors from harmful content</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgium</td>
<td>The Belgium Pledge</td>
<td></td>
</tr>
<tr>
<td>Bulgaria</td>
<td>Advertising Code of the Advertising Council (Reclamecode van de Raad voor de Reclame; Code de la publicité du Conseil pour la Publicité)</td>
<td></td>
</tr>
<tr>
<td>Croatia</td>
<td>HURA’s Advertising Code (HURA Kodeks oglashaavanja i trzishnog komuniciranja)</td>
<td></td>
</tr>
<tr>
<td>Cyprus</td>
<td>Cyprus Code of Communication Ethics (Κυπριακός Κώδικας Δαντελλογίας Επικοινωνιας)</td>
<td></td>
</tr>
<tr>
<td>Czech Republic</td>
<td>The Code of Advertising Practice (Kodex reklamy)</td>
<td></td>
</tr>
<tr>
<td>Denmark</td>
<td>Code of Practice for Marketing of Alcoholic Beverages (Norm for markedsfoiring af alkoholholdige drikkevarer)</td>
<td></td>
</tr>
<tr>
<td>Estonia</td>
<td>Responsible commercial communication policy in children’s programmes (Vastutustundlik reklaamipolitika lastesaadetes)</td>
<td></td>
</tr>
<tr>
<td>Finland</td>
<td>Ethical Code of the Council of Ethics in Advertising (Mainonnan eettinen neuvosto)</td>
<td></td>
</tr>
<tr>
<td>France</td>
<td>Rules of the ARPP (Règles de l’ARPP)</td>
<td></td>
</tr>
<tr>
<td>Germany</td>
<td>Code of conduct of the German Advertising Standards Council (Verhaltensregeln des Deutches Werberat)</td>
<td>Voluntary Self-Monitoring Television (Freiwillige Selbstkontrolle Fernsehen (FSF))</td>
</tr>
<tr>
<td>Greece</td>
<td>Hellenic Advertising Communication Code (ΕΛΛΗΝΙΚΟΥ ΚΩΔΙΚΑ ΔΙΑΦΗΜΙΣΗΣ – ΕΠΙΚΟΙΝΩΝΙΑΣ (ΕΚΔ-Ε))</td>
<td></td>
</tr>
<tr>
<td>Country</td>
<td>Schemes with primary focus on commercial communication</td>
<td>Schemes with primary focus on protection of minors from harmful content</td>
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<td>-------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td></td>
<td>Self-Regulation for Commercial Communication of the Hellenic Association of Brewers (ΕΛΛΗΝΙΚΗΣ ΕΝΩΣΗΣ ΖΥΘΟΠΟΙΩΝ)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Statement of Principles and Self-Regulation Plan (Δήλωση αυτοδέσμευσης Μελών)</td>
<td></td>
</tr>
<tr>
<td>Hungary</td>
<td>The Hungarian Code of Advertising Ethics (Magyar Reklámetikai Kódex)</td>
<td></td>
</tr>
<tr>
<td>Ireland</td>
<td>ODAS Code of Conduct</td>
<td>Code of Standards for Advertising and Marketing Communications in Ireland</td>
</tr>
<tr>
<td>Italy</td>
<td>Code of Marketing Communication Self-Regulation Italy (Codice di atodisciplina della comunicazione commerciale)</td>
<td>Code TV and Minors (Codice TV e Minori)</td>
</tr>
<tr>
<td>Latvia</td>
<td>n.a.</td>
<td></td>
</tr>
<tr>
<td>Lithuania</td>
<td>Lithuanian Ethics Code of Advertising (Lietuvos reklamos etikos kodeksas)</td>
<td></td>
</tr>
<tr>
<td>Luxembourg</td>
<td>Deontological Code of Advertising in Luxembourg (Code de déontologie de la publicité au Luxembourg)</td>
<td></td>
</tr>
<tr>
<td>Malta</td>
<td>n.a.</td>
<td></td>
</tr>
<tr>
<td>Netherlands</td>
<td>Dutch Advertising Code (Reclamecode)</td>
<td>Viewing Guide (Kijkwijzer)</td>
</tr>
<tr>
<td>Poland</td>
<td>Television Broadcasters’ Agreement on the rules of distributing Advertisements and Sponsor Recommendations regarding foodstuffs or beverages containing ingredients whose presence in excess amounts in the daily diet is not recommended (Porozumienie nadawców w sprawie zasad rozpowszechniania Reklam i Wskazan sponsorskich dotyczących artykułów spożywczych lub napojów zawierających składniki, których obecność w nadmiernych ilościach w codziennie diecie jest niewskazana)</td>
<td>Code of Good Practice on the Protection of Minors in On-demand Audiovisual Media Services (Kodeks dobrych praktyk w sprawie szczegółowych zasad ochrony maloletnich w audiowizualnych usługach medialnych na zadanie)</td>
</tr>
<tr>
<td>Portugal</td>
<td>ICAP conduct code (Código de conduta do ICAP)</td>
<td>Classification of TV programmes (Classificação de Programas de Televisão (RTP, SIC, TVI))</td>
</tr>
<tr>
<td>Country</td>
<td>Schemes with primary focus on commercial communication</td>
<td>Schemes with primary focus on protection of minors from harmful content</td>
</tr>
<tr>
<td>-------------</td>
<td>--------------------------------------------------------</td>
<td>---------------------------------------------------------------------</td>
</tr>
<tr>
<td>Romania</td>
<td>The Code of Advertising Practice (Codul de practica in publicitate)</td>
<td>Agreement on the representation of violence in television (Acordo sobre a Representação da Violência na Televisão)</td>
</tr>
<tr>
<td>Slovak Republic</td>
<td>The Ethics Code of Advertising Practice (Etický kodex reklamnej praxe)</td>
<td>Deontological Code (Cod Deontologic)</td>
</tr>
<tr>
<td>Slovenia</td>
<td>Slovenian Code of Advertising Practice (SCAP) (Slovenski oglasevalski kodeks)</td>
<td></td>
</tr>
<tr>
<td>Spain</td>
<td>AUTOCONTROL Advertising Code of Conduct (Código De Conducta Publicitaria de AUTOCONTROL)</td>
<td>Code of self-regulation for audiovisual contents and minors (Código de Autorregulación de contenidos televisivos e infancia)</td>
</tr>
<tr>
<td>Sweden</td>
<td>The Swedish Advertising Ombudsman (Reklamombudsmannen (RO))</td>
<td></td>
</tr>
<tr>
<td>United Kingdom</td>
<td>Broadcast Committee of Advertising Practice Code (BCAP Code)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>The Committee of Advertising Practice Code (CAP code)</td>
<td></td>
</tr>
</tbody>
</table>

Note: Due to different definitions of self- and co regulation schemes and different study focus, the schemes identified in this study may vary from other studies.

### 3.2 Austria

**Regulatory framework**

National laws on commercial communications and the protection of minors from harmful content are quite comprehensive in Austria. The relevant laws are the ORF-act (Bundesgesetz über den Österreichischer Rundfunk – Federal Law on the Austrian Broadcasting Cooperation) for the public broadcaster (Österreichischer Rundfunk / Austrian national public service broadcaster), and the Audiovisual Media Services Act for private audiovisual media services. These acts regulate a broad spectrum of broadcasting aspects, including several provisions on commercial communications and the protection of minors from harmful content. The acts also restrict commercial communications for certain products, such as alcoholic products.

For commercial communications there are several relevant self- and co-regulatory schemes in place. These include the "Advertising Industry Ethics Code" (since 1974), the annex "Code of conduct of the Austrian broadcasters regarding inappropriate audiovisual commercial communication in connection with children’s programmes and food” (since 2010), the annex “Communication Code of the Austrian Brewing Industry” (since 2007), and the “Self-commitment declaration: Resignation of private broadcasters to air commercials interrupting children’s programmes” (since 2009). The Advertising Industry Ethics Code is relevant for all advertising, irrespective of the media used. The general goals of the Code of ethics are to monitor and correct erroneous publications and anticipate developments in the advertising industry which
impact legal regulations, as well as to avoid legal regulations in the areas of ethics and morals that are more subject to societal developments, thus requiring continuous adaptation of regulations. The annex on children’s programme and food, and the self-commitment declaration are both focused on the protection of minors. The general policy goal of the annex is to prevent children from exposure to commercial communications that may have a negative effect on their food habits. In signing the self-commitment declaration television broadcasters agree to renounce the interruption of children’s programmes with commercials.

Schemes

<table>
<thead>
<tr>
<th>Country</th>
<th>Austria</th>
</tr>
</thead>
<tbody>
<tr>
<td>Code name ENG</td>
<td>Advertising Industry Ethics Code</td>
</tr>
<tr>
<td>Code name NATIONAL</td>
<td>Ethik-Kodex der Werbewirtschaft</td>
</tr>
<tr>
<td>Name of the organisation in own language</td>
<td>Österreichischer Werberat</td>
</tr>
<tr>
<td>Name of the organisation in English</td>
<td>The Austrian Advertising Council</td>
</tr>
<tr>
<td>Year the scheme came into force</td>
<td>1974 (The Austrian Advertising Council was founded in 1974 and since then some form of the Advertising Industry Ethics Code has been in force)</td>
</tr>
<tr>
<td>Media covered</td>
<td>Television broadcast On-demand audiovisual media service Print, postcards, banner, catalogues, leaflets/brochures/flyers, posters, direct mail, CD-Covers, DVDs, internet/e-mail, radio, telephone, cell-phone, packaging</td>
</tr>
<tr>
<td>Primary focus</td>
<td>Commercial communication</td>
</tr>
<tr>
<td>Specific products covered?</td>
<td>A distinction is made between general rules of conducts and specific rules of conduct. The latter includes among others: specific rules on addictive substances (alcohol, tobacco) and on automotive vehicles.</td>
</tr>
</tbody>
</table>

General description of the scheme
The government, the media sector, the business sector, the legal sector, trade unions and representatives of various interest groups were involved in the development of the code. The code owner is the Austrian Advertising Council. The aim of the code is to establish a self-disciplinary mechanism for the advertising industry, to monitor and correct erroneous publications, to anticipate developments in the media, and to identify issues on the boundaries of the legal regulations. Specific challenges and goals that led to revision of the Ethics Code were to better react to gender discriminatory commercials (revision of the Ethics Code in 2009), introducing further guidelines that allow for protection of children and young people, as well as further guidelines that aim at avoiding statements and contents that represent and promote violence in commercials (revision of the Ethics Code in 2012). The code is not related to any national law. Since the relevant legislation is comprehensive, the code focuses on ethical and moral issues. The Austrian Advertising Council continuously monitors the code and uses “soft sanction measures” such as faming, shaming and blaming.
No evaluation has taken place or is planned. In the course of the reiterative feedback processes the Ethics Code was revised several times, however an external evaluation has not yet been considered.

<table>
<thead>
<tr>
<th>Country</th>
<th>Austria</th>
</tr>
</thead>
<tbody>
<tr>
<td>Code name ENG</td>
<td>Annex to the Advertising Industry Ethics Code: Code of conduct of the Austrian broadcaster regarding inappropriate audiovisual commercial communication in connection with children’s programmes and food</td>
</tr>
<tr>
<td>Code name NATIONAL</td>
<td>Anhang zum Ethik-Kodex der Werbewirtschaft: Verhaltenskodex der österreichischen Rundfunkveranstalter hinsichtlich unangebrachter audiovisueller kommerzieller Kommunikation in Zusammenhang mit Kindersendungen und Lebensmittel</td>
</tr>
<tr>
<td>Name of the organisation in own language</td>
<td>Der Fachverband für Telekommunikations- und Rundfunkunternehmungen, der Österreichische Rundfunk (ORF) und der Verband Österreichischer Privatsender (VÖP)</td>
</tr>
<tr>
<td>Name of the organisation in English</td>
<td>The Austrian association of telecom-broadcasting, the Austrian Broadcasting Corporation (ORF) and the Austrian Association of Private Broadcasters (VÖP)</td>
</tr>
<tr>
<td>Year the scheme came into force</td>
<td>2010</td>
</tr>
<tr>
<td>Media covered</td>
<td>Television broadcast On-demand audiovisual media service</td>
</tr>
<tr>
<td>Primary focus</td>
<td>Commercial communication</td>
</tr>
<tr>
<td>Specific products covered?</td>
<td>HFSS (high in fat, salt or sugar) food products</td>
</tr>
</tbody>
</table>

**General description of the scheme**

The Austrian Broadcasting Corporation (ORF), the association of telecom-broadcasting companies within the Austrian Economic Chambers, the Austrian Association of Private Broadcasters (VÖP), and the Association of Food and Beverage industries were involved in the development of the Code. The general policy goal is to prevent children from seeing commercial communication concerning HFSS food products that may have a negative effect on their dietary habits. The objective of the Code is as follows: As regards the special worthiness of the protection of children the organisations mentioned subscribe to the voluntary self-limitation in relation to audiovisual commercial communications accompanying or included in children’s programmes regarding foods and beverages containing nutrients and substances with a nutritional or physiological effect. The Code is related to the Austrian Broadcasting Corporation (ORF) Act and the Audiovisual Media Services Act. There is no monitoring mechanism in place and no external evaluation has been considered so far. Faming, shaming and blaming is the type of enforcement used.

<table>
<thead>
<tr>
<th>Country</th>
<th>Austria</th>
</tr>
</thead>
<tbody>
<tr>
<td>Code name ENG</td>
<td>Annex to the Advertising Industry Ethics Code: Communication Code of the Austrian Brewing Industry</td>
</tr>
<tr>
<td>Code name NATIONAL</td>
<td>Anhang zum Ethik-Kodex der Werbewirtschaft: Kommunikationskodex der österreichischen Brauwirtschaft</td>
</tr>
</tbody>
</table>
Name of the organisation in own language | Verband der Brauereien Österreichs  
--- | ---  
Name of the organisation in English | The Austrian Brewers Association's  
Year the scheme came into force | 2007  
Media covered | Television broadcast  
On-demand audiovisual media service  
Print, postcards, banner, catalogues, leaflets/brochures/flyers, posters, direct mail, CD-Covers, DVDs, internet/e-mail, radio, telephone, cell-phone, packaging  
Primary focus | Commercial communication  
Specific products covered? | Beer products  

**General description of the scheme**

The Austrian Brewers Association (representing the interests of its members – all Austrian Brewers - within the framework of the Professional Association of Food and Beverage Industries in the Austrian Economic Chambers) took the initiative and developed their own self-regulation code, in close cooperation with the Austrian Advertising Council and also in cooperation with the Professional Association of Advertising and Market Communication Industry within the Austrian Economic Chambers. Consumer organisations were not directly involved in the development process. The Code was introduced as an annex to the general Advertising Industry Ethics Code.

Within the framework of this communication code the Austrian Brewers Association and its members commit to a set of clearly defined principles. These include general rules concerning the social responsibility of commercial communications as well as specific rules on:

- children and young people (e.g. commercials for beer shall not animate children and young people below the age of 18 to drink beer);
- gender discrimination (beer commercials shall not discriminate women or men based on their sex);
- abuse (e.g. beer commercials shall not encourage or trivialise excessive or abusive beer consumption);
- violence (beer commercials shall not include violent presentations);
- security (beer commercials should not establish a connection between beer consumption and driving a vehicle);
- health and alcohol (e.g. beer commercials shall not contain statements of elimination, relief or prevention of illnesses based on the consumption of beer);
- performance (beer commercials shall not contain statements of improvement of the physical or psychological performance based on the consumption of beer).

As the Code is an annex to the general Advertising Industry Ethics Code complaint handling is taken care of by the Austrian Advertising Council.
<table>
<thead>
<tr>
<th>Country</th>
<th>Austria</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Code name ENG</strong></td>
<td><strong>Self-commitment declaration: Resignation of private broadcasters to broadcast commercials interrupting children’s programmes</strong></td>
</tr>
<tr>
<td><strong>Code name NATIONAL</strong></td>
<td><strong>Selbstverpflichtungserklärung: Verzicht von Privatsendern auf Unterbrecherwerbung in Kinderprogrammen</strong></td>
</tr>
<tr>
<td>Name of the organisation in own language</td>
<td>Der Fachverband für Telekommunikations- und Rundfunkunternehmungen und der Verband Österreichischer Privatsender (VÖP)</td>
</tr>
<tr>
<td>Name of the organisation in English</td>
<td>The Austrian association of telecom-broadcasting and the Austrian Association of Private Broadcasters (VÖP)</td>
</tr>
<tr>
<td>Year the scheme came into force</td>
<td>2009</td>
</tr>
<tr>
<td>Media covered</td>
<td>Television broadcast On-demand audiovisual media service</td>
</tr>
<tr>
<td>Primary focus</td>
<td>Commercial communication</td>
</tr>
<tr>
<td>Specific products covered?</td>
<td></td>
</tr>
</tbody>
</table>

**General description of the scheme**
The two participants, who developed the self-commitment declaration that every private broadcaster who signed the commitment renounces the interruption of children's programmes by commercials, were the Austrian association of telecom-broadcasting (trade association) and the Austrian Association of Private Broadcasters (VÖP).

All the members of the Austrian Association of Private Broadcasters and the Austrian association of telecom-broadcasting explicitly commit themselves to the protection of children and young people in children’s programmes. The Audiovisual Media Services Act, Art.44(3) states that children’s programmes can be interrupted by commercials once in a programmed period of at least 30 minutes. By signing the commitment, the private broadcasters renounce the interruption of children’s programmes by commercials entirely. The self-regulation therefore goes beyond the legal requirements. There is no formal monitoring system besides the complaints resolution mechanisms. All external complaints can be filed to the Austrian Advertising Council. The type of enforcement used is faming, shaming and blaming. Except for the possibility of external complaints there is no continuous control mechanism monitoring the compliance with the self-regulation scheme. No external evaluation has been considered so far.

### 3.3 Belgium

**Regulatory framework**
The regulatory system in Flanders and Wallonia can be described as statutory regulation with some elements of self- and co-regulation. Structural media regulations in Belgium almost exclusively target audiovisual broadcasting. The relevant act regarding commercial actions and the protection of minors from harmful content in audiovisual media in Flanders is the Act on Radio and Television Broadcasting, also known as the Flemish Media Decree (FLBA). The act contains regulations for advertising on radio and television, where the basic rule is that advertising should be clearly identifiable as commercial information and distinguishable from news information. The main broadcasting acts for Wallonia are the Act of February 27th,
2003 on audiovisual media services and the Act of July 14th, 1997 on the Belgian radio and television of the Wallonian Community. The acts include special rules for commercial communications directed at minors, for certain products (such as tobacco, weapons, alcohol and medicines), and for certain types of advertising (such as teleshopping). At the federal level, commercial actions are largely regulated by the Belgian Federal Act on Market Practices and Consumer Protection of April 6th, 2010.

The main Flemish regulatory body is the Vlaamse Regulator voor de Media – the VRM (Flamish Regulator for Media), and the main Wallonian regulatory body is the Conseil Supérieur de l’Audiovisuel - CSA (Superior Council for Audiovisual). At the federal level, the regulatory authorities cooperate in the Conference of Regulators for the sector of Electronic Communications (CRC), with the Belgian Institute for Postal and Telecommunication Services (BIPT), and the regulatory body for the German community (Medienrat). The responsibilities of the regulators are mainly to monitor compliance with audiovisual media regulations, especially related to the rules on advertising, the protection of minors, the protection of consumers, and the impartiality of information. The College d’Avis is a co-regulation organ that is integrated in the CSA whose main mission is, by its own initiative or at the request of the Government or the Parliament of the French Community, to offer opinions on any matter related to broadcasting, including commercial communication. One of the aspects covered by the College is the protection of minors.

The Belgian Advertising Council (Raad voor de Reclame Raad/ Conseil pour la Publicité) is set up in 1967 by associations representing the advertisement sector. The objective of the Council is to promote, valorise and defend commercial communications and its role in economic development. The members cover more than 80% of the advertisement market in Belgium. The Belgian Advertising Council Code consists of a general code (based on the ICC) and several specific codes on for instance, alcoholic beverages and food.

The enforcement of all the self- and co-regulatory codes in Belgium is carried out by the JEP, de Jury voor Eerlijke Praktijken inzake Reclame or “Le Jury d’Ethique Publicitaire” (JEP). The Advertising Ethics Jury (JEP) is the self-regulatory body of the advertising sector in Belgium. The JEP was set up in 1974 by the Belgian Advertising Council and its mission is to verify the compliance of advertising with the rules as laid down in the advertising codes and legislation. In 2008, the JEP set up an appeal body to deal with complaints. The JEP comprises representatives of various stakeholders such as industry and civil society and also collaborates with public advisory and regulatory bodies such as the Audiovisual Media Council, the Council of Youth, Sport and Media, the Consumers’ Council and the Federal Ministry of Public Health.

The federation of the food industry (FEVIA), COMEOS (the representatives of the Belgian trade and services) and the Union of Belgian Advertisers (UBA) took the initiative to set up the Belgium Pledge. The enterprises that signed this pledge have agreed to stop advertising food and drinks at minors under the age of 12 unless the products meet specific nutritional requirements. Moreover, communication about these products is also prohibited at elementary schools unless the products are used for educational purposes. In 2015, 41 companies had committed to the Belgian Pledge. The compliance of the Belgian Pledge is monitored by the Advertising Ethics Jury (JEP).
### Schemes

<table>
<thead>
<tr>
<th>Country</th>
<th>Belgium</th>
</tr>
</thead>
<tbody>
<tr>
<td>Code name ENG</td>
<td>Advertising Code of the Advertising Council</td>
</tr>
<tr>
<td>Code name NATIONAL</td>
<td>Reclamecode van de Raad voor de Reclame; Code de la publicité du Conseil pour la Publicité</td>
</tr>
</tbody>
</table>

**Specific or thematic codes under general code**

- **Sector codes:**
  - Covenant on advertising and marketing of alcoholic beverages
  - Advertising code for foods (Fevia)
  - Code of Advertising for motor vehicles, their parts and accessories (Febiac)
  - Advertising code for cosmetics and hygiene products (Detic)
  - Code of Ethics in Fundraising (VEF)
  - Code of Ethical and Responsible Advertising for companies that organise lottery games
  - GOF - Guidelines for SMS / MMS / LBS services

- **Inter sector codes:**
  - Environmental Advertising code

- **Rules and recommendations:**
  - Rules on the image of men
  - Rules for humour in advertising
  - Recommendations on the promotion of children's festivals (Sinterklaas, Christmas, Easter)
  - Rules on advertising on isolation, heating fuels and energies
  - Rules on medical references in advertising for bedding
  - Rules applicable to non-commercial advertising
  - Rules on advertising of slimming products

**Name of the organisation in own language**

- Raad voor de Reclame, Conseil pour la Publicité

**Name of the organisation in English**

- Advertising Council

**Year the scheme came into force**

- 1967

**Media covered**

- Television broadcast
  - On-demand audiovisual media service
  - All other media

**Primary focus**

- Commercial communication

**Specific products covered?**

- General code for advertising, specific codes for specific products: see before.

---

**General description of scheme**

The Code of the Belgian Advertising Council was developed by the Belgian Advertising Council (Raad voor de Reclame/ Conseil pour la Publicité) following the ICC code. The general Code aims to achieve the following objectives:
showing responsibility and good practice in advertising and marketing all over the world;
• improving the overall consumer confidence in marketing, respecting the privacy and preferences of consumers and ensuring special responsibility when it comes to marketing communication and children and young people;
• protecting the freedom of expression of those who are working with marketing;
• providing effective practical and flexible solutions, minimising the need for detailed public and/or inter-governmental legislation or regulations.

Next to the general code based on the ICC code, there are several specific codes, i.e. for alcoholic beverages and food. The commitment to the code is monitored by the Jury for Ethical Advertising Practice (JEP), which also handles the complaints for this specific code as well as for all other relevant codes related to advertisement activities in Brussels. When a consumer or enterprise sends a complaint to the JEP, the JEP will first contact the advertiser who is addressed in the complaint. The JEP provides the advertiser with the opportunity to reply to the complaint. Ultimately, the Jury of the JEP will decide if the advertisement complies with the law, relevant regulation and codes on the protection of consumers and minors. The Jury therefore decides what sort of action should be taken regarding the advertisement in question. In cases where the advertiser is not willing to adapt the advertisement, the JEP will approach the relevant media with the request to remove the advertisement. The code is not evaluated. The JEP prepares an annual monitoring report which focusses on the complaints.

<table>
<thead>
<tr>
<th>Country</th>
<th>Belgium</th>
</tr>
</thead>
<tbody>
<tr>
<td>Code name ENG</td>
<td>The Belgium Pledge</td>
</tr>
<tr>
<td>Code name NATIONAL</td>
<td>The Belgium Pledge</td>
</tr>
<tr>
<td>Name of the organisation in own language</td>
<td>FEVIA (de Federatie van de Voedingsindustrie), COMEOS (vertegenwoordiger van de Belgische handel en diensten) en UBA (Unie van Belgische Adverteerders) FEVIA (la Fédération de l’industrie alimentaire), COMEOS (représentant du commerce et des services en Belgique) en UBA (Union Belge des Annonceurs)</td>
</tr>
<tr>
<td>Name of the organisation in English</td>
<td>FEVIA (the Federation of the Food Industry), COMEOS (representatives of the Belgian trade and services industry) and UBA (the Union of Belgian Advertisers)</td>
</tr>
<tr>
<td>Year the scheme came into force</td>
<td>2012</td>
</tr>
<tr>
<td>Media covered</td>
<td>Television broadcast On-demand audiovisual media service All other media</td>
</tr>
<tr>
<td>Primary focus</td>
<td>Commercial communication</td>
</tr>
<tr>
<td>Specific products covered?</td>
<td>Food and drink</td>
</tr>
</tbody>
</table>

**General description of the scheme**
The Belgian Pledge is a joint initiative from FEVIA (the Federation of the Food Industry), COMEOS (representatives of the Belgian trade and services industry) and the UBA (the Union of Belgian Advertisers). The Pledge is based on the European Pledge and has the aim of promoting responsible advertising of food and drinks when aimed at children below 12 years of age. The goal of the Belgian Pledge is to give the relevant industry the opportunity to promote responsible behaviour in advertisements.
aimed at children younger than 12 years. The Belgian Pledge consists of two main commitments. Firstly, advertising about food and drinks aimed at children below 12 years on television, radio, press and internet (except for products which meet specific nutrition requirements) is prohibited. Secondly, no communication about food and drink products (except products which meet a specific nutritional standard) at elementary schools (except when the director asks for it or when it serves for educational purposes) is allowed. The Belgian Pledge is monitored on an annual base by an independent party with the required expertise. This party writes an independent report on whether the Belgian Pledge achieved its aims. The Belgian Pledge is a voluntary commitment and no sanctions are set for incompliance with its rules.

3.4 Bulgaria

Regulatory framework
In Bulgaria in general the practice of self- and co-regulation is limited. The relevant law in place for the regulation of audiovisual media services is the “Radio and Television Act” (RTA). The RTA applies to public and commercial media service providers and to linear and non-linear media services. It is harmonised with the European regulatory framework and the provisions of the AVMS Directive are transposed in the act. The specialised body that regulates media services in Bulgaria is the Council of Electronic Media (CEM). The CEM executes regular monitoring of content of media service providers and is responsible for licensing and registering of activities of media service providers.

The RTA regulates both the commercial communication practices and the protection of minors. The act also requires the Bulgarian media service operators to comply with more detailed national (ethical) codes of conduct and the decisions of two national self-regulatory bodies: the National Council for Self-Regulation (NCSR) and the National Council for Journalistic Ethics (NCJE). In their codes of conduct the media service providers have to incorporate, for example, rules for commercial communications, accompanying or included in children’s programmes for foods and beverages containing nutrients and substances with a negative nutritional or physiological effect when consumed in high amounts. The protection of minors is also strongly regulated by the Bulgarian government (as are the commercial communication practices).

The protection of minors from harmful content is both regulated by the RTA and the Child Protection Act. In addition to the supervision executed by the CEM, the State agency for child protection (SACP) executes controls and has the right to impose sanctions to media service providers that violate children’s rights. The RTA requires the CEM, in consultation with SACP, to elaborate and adopt criteria for protection of children from harmful media content. The RTA requires all media service providers to incorporate these criteria in their codes of conduct and to comply with them. All providers of media services (including CEM and SACP) yearly sign the “Agreement for application of the Criteria”.

Furthermore, next to the above mentioned national self-regulatory schemes, there are also self-regulatory schemes operational within sectoral branches as part of the NCSR Code, the National Ethics Rules for Advertising and Commercial Communications in Bulgaria.
Schemes

<table>
<thead>
<tr>
<th>Country</th>
<th>Bulgaria</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Code name ENG</strong></td>
<td>National Ethics Rules for Advertising and Commercial Communication in Bulgaria</td>
</tr>
<tr>
<td><strong>Code name NATIONAL</strong></td>
<td>НАЦИОНАЛНИ ЕТИЧНИ ПРАВИЛА ЗА РЕКЛАМА И ТЪРГОВСКА КОМУНИКАЦИЯ В Р БЪЛГАРИЯ</td>
</tr>
<tr>
<td>Name of the organisation in own language</td>
<td>НАЦИОНАЛЕН СЪВЕТ ЗА САМОРЕГУЛАЦИЯ</td>
</tr>
<tr>
<td>Name of the organisation in English</td>
<td>National Council for Self-regulation (NCSR)</td>
</tr>
<tr>
<td>Year the scheme came into force</td>
<td>2009</td>
</tr>
<tr>
<td>Media covered</td>
<td>Television broadcast On-demand audiovisual media service All other media relevant to commercial communications, radio, press, digital marketing, packaging etc.</td>
</tr>
<tr>
<td>Primary focus</td>
<td>Commercial communication</td>
</tr>
<tr>
<td>Specific products covered?</td>
<td>Frameworks for food and drink, alcoholic beverages, gambling etc. within the general code.</td>
</tr>
</tbody>
</table>

*General description of the scheme*

Founders of the National Council for Self-regulation (NCSR) included the following trade associations: the Bulgarian association of advertisers (BAA), the Association of the advertising agencies - Bulgaria (ARA), and the Association of the Bulgarian radio- and TV- operators (ABBRO). The NSCR developed the code on National Ethics Rules for Advertising and Commercial Communication in Bulgaria. The Code is intended to promote responsibility and good practices in advertising and marketing communications in Bulgaria; to enhance overall public confidence in marketing communication; to respect privacy and consumer preferences; to ensure special responsibility as regards marketing communication and children and young people; to safeguard the freedom of expression of those engaged in marketing communications; to safeguard the principles of the fair competition; to provide practical and flexible solutions; and to minimise the need for detailed governmental and/or inter-governmental legislation or regulations.

The Committee for Post-monitoring (CPM) is responsible for the monitoring. It has two main functions 1) monitoring the execution of the acts issued by the Ethical Committee (EtC) or the Appeal Committee (AC), and 2) monitoring advertising and commercial communications, at its own discretion or on request of the Board. According to the NCSR statutes, the decisions of the EtC or AC are binding for the NCSR members. EtC or AC decisions are not binding for representatives of the advertising industry which are not members of the NCSR. The board of the NCSR may advise non-members to voluntarily discontinue the violation of the Code. The Board may decide to publish a newsletter, press release or another form of announcement related to the decision made. If a member or non-member, fails to comply with the EtC or AC decision, the Board informs all NCSR members, NGOs, the relevant regulating authorities, and attach a copy of the decision and the related evidence. The national regulatory authority, the CEM, may impose financial sanctions, in case of non-compliance with the decisions of the EtC or AC related to audiovisual and radio commercial communications.
3.5 Croatia

**Regulatory framework**

In general the practice of self- and co-regulation is limited in Croatia. Audiovisual commercial communications and protection of minors from harmful content are strongly regulated by the government. The Electronic Media Act is the key legal act regulating commercial communication practices via the relevant audiovisual media and is completely in compliance with AVMS Directive. Furthermore, there is a special law (Law on Illegal Advertising) which regulates the individual components of advertising and communications in further detail.

The protection of minors is regulated in several laws, such as the Electronic Media Act (elements from the AVMS Directive), the Media Act (e.g. provisions governing the publication of minors’ personal data), implementing Regulations for the Protection of minors, the Croatian Radio-Television Act (a few basic principles related to children and youth), and the Criminal Code. The private sector in Croatia is not specifically covered, but it is included in the existing regulatory framework and self-regulatory standards. Self–regulatory schemes further elaborate upon different areas of relevant national laws.

In Croatia there is one relevant self-regulatory scheme, namely the HURA (Croatian Association of Communications Agencies) Advertising Code. This code is relevant for both commercial communication and the protection of minors. The code came into force in 2010. HURA’s Advertising Code serves as a collection of standards and recommendations to the companies participating in commercial communications. By accepting the Code, HURA recommends its members and other market operators to apply its general rules and practices and its minimum standards. The HURA took the initiative to develop the scheme and is the code owner.

**Schemes**

<table>
<thead>
<tr>
<th>Country</th>
<th>Croatia</th>
</tr>
</thead>
<tbody>
<tr>
<td>Code name ENG</td>
<td>HURA’s Advertising Code</td>
</tr>
<tr>
<td>Code name NATIONAL</td>
<td>HURA Kodeks oglašavanja i tržišnog komuniciranja</td>
</tr>
<tr>
<td>Name of the organisation in own language</td>
<td>HURA - Hrvatska udruga reklamnih agencija</td>
</tr>
<tr>
<td>Name of the organisation in English</td>
<td>HURA - Croatian Association of Communication Agencies</td>
</tr>
<tr>
<td>Year the scheme came into force</td>
<td>2010</td>
</tr>
<tr>
<td>Media covered</td>
<td>Television broadcast On-demand audiovisual media service All media (internet, print, etc.)</td>
</tr>
<tr>
<td>Primary focus</td>
<td>Commercial communication</td>
</tr>
<tr>
<td>Specific products covered?</td>
<td></td>
</tr>
</tbody>
</table>
Consumer Protection Act. The main aim of the Code is to demonstrate responsibility and good practices in advertising and marketing communications, to increase public confidence in market communication, respecting the privacy and consumer wishes; to ensure accountability of marketing communications when aimed at children and young people; to safeguard the freedom of expression of participants of marketing communications (in accordance with the 19th Article of the International Agreement on Civil and Political Rights of the United Nations). In addition, the HURA’s Advertising Code aims to offer effective, practical and customised solutions that minimise the need to make state, sector or inter-state laws and regulations. The Assembly of the HURA is responsible for monitoring the implementation of the Code. In other words, the HURA is responsible for enforcing the scheme. The type of enforcement that is commonly used is faming, shaming and blaming. Other types of enforcement are the withdrawal of the disputed posts and public fines. As a rule, sanctioned parties implement the decisions of the body imposing the sanction, namely the HURA Court of Honour.

3.6 Cyprus

Regulatory framework
In Cyprus the practice of self- and co-regulation is generally limited. The main regulatory body is the Cyprus Radio Television Authority established under the Radio and Television Stations Law (from 1998). The Law provides the Authority with an independent position, thus freely regulating and controlling, among other things, audiovisual media services. The current Law was amended in 2015 and incorporates the EU AVMS Directive.

With regard to commercial communications, the Cyprus Radio Television Authority monitors, intervenes and gathers complaints of malpractices by the broadcasters. With the 2010 amendment of the Radio and Television Stations Law, self- and co-regulation was encouraged, which resulted in the establishment of the Cyprus Advertising Regulation Organisation (CARO). This organisation was established by advertisers, advertising agencies, and media as an independent non-profit body with the aim to ensure that advertisements are legal, decent, honest and truthfully in keeping with the Cyprus Advertisement Code.

The Cyprus Radio Television Authority also aims at protecting minors. It cooperates for example with the Commissioner for the Protection of Children’s Rights, an independent institution which deals exclusively with the rights of the child. The institution’s competences and obligations are prescribed by Law and aim at creating public awareness and sensitivity towards children’s rights on all fronts and at monitoring legislation.

Schemes

<table>
<thead>
<tr>
<th>Country</th>
<th>Cyprus</th>
</tr>
</thead>
<tbody>
<tr>
<td>Code name ENG</td>
<td>Cyprus Code of Communication Ethics</td>
</tr>
<tr>
<td>Code name NATIONAL</td>
<td>Κυπριακός Κώδικας Δεοντολογίας Επικοινωνίας</td>
</tr>
<tr>
<td>Name of the organisation in own language</td>
<td>Φορέας Ελέγχου Διαφήμισης</td>
</tr>
<tr>
<td>Name of the</td>
<td>Cyprus Advertising Regulation Organisation</td>
</tr>
</tbody>
</table>
organisation in English

<table>
<thead>
<tr>
<th>Year the scheme came into force</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Media covered</td>
<td>Television broadcast, On-demand audiovisual media service, All other media</td>
</tr>
<tr>
<td>Primary focus</td>
<td>Commercial communication</td>
</tr>
<tr>
<td>Specific products covered?</td>
<td>The Code makes specific reference to alcoholic beverages, beer and food and non-alcoholic beverages</td>
</tr>
</tbody>
</table>

**General description of the scheme**

The Cyprus Code of Communication Ethics was set up by advertisers, advertisement creators, and the media that undertake the placement or transmission of advertisements. Furthermore, the six main media groups in Cyprus, namely TV channels ANT1, MEGA, SIGMA, and all the media of groups ANT1, DIAS, Eidikes Ekdoseis, Politis and Phileleftheros were involved.

The objectives are to increase awareness of the Code; raise advertising standards; raise industry standards; adopt to technological environment; conform with the rule of Law; improve members’ images; ensure that the complaints mechanism is sufficient and efficient; and to provide protection to consumers. There is no direct link with national legislation, although the Radio and TV Act 7(I)/1998, as amended (article 32C, paragraph 7A) encourages, through the Cyprus Radio Television Authority, the adoption of self- or co-regulation by media service providers, individually or jointly.

The compliance with the Code is monitored through the Secretariat of the Board of Directors of the Cyprus Advertising Regulation Organisation. The Cyprus Advertising Regulation Organisation (CARO) is responsible for enforcing the scheme. If an advertiser does not comply with a decision, sanctions aim to remove offending marketing communications, for instance, by asking media to remove or refuse advertisements. Moreover, the CARO may proceed to inform government or public authorities of the issue. The processes and the scheme have been reviewed once (in 2013) and another review is expected in 2016.

### 3.7 Czech Republic

**Regulatory framework**

Self- and co-regulation is generally widely spread in the Czech Republic. The advertising market in the Czech Republic has been self-regulating since 1995 by means of the Czech Advertising Standards Council, the Rada pro reklamu (RPR). This is a non-governmental, non-profit organisation. The Council was established by clients, advertising agencies and the media for the purpose of enforcing the self-regulation of advertising. Based on membership of the Council, organisations voluntarily commit to adhere to the Code of Advertising Practice issued by the Council. Non-members can also choose to adhere to the issued Code on a voluntary basis. The Council’s Arbitration Committee is one of the governing bodies of the Czech Advertising Standards Council.

The Czech Republic has multiple laws that govern the legislative framework of commercial communication or advertising, including for example, the acts on Czech Television, the Civil Code and on Consumer Protection. In 2010 the legislative framework for self-regulation was defined by the ratification of the act on On-demand Audiovisual Media Services, which implemented the European Parliament and Council Guideline 2010/13. This guideline also incorporates a list of what audiovisual sales
messages must not contain, so that they avoid physically or morally endangering minors. Sales messages targeted at minors and promoting alcoholic beverages or which could morally endanger minors are prohibited in the Czech Republic. The approach is that signatory companies from different industry sectors agree to uphold and comply with the stipulations in the Code of Advertising Practice.

**Schemes**

<table>
<thead>
<tr>
<th>Country</th>
<th>Czech Republic</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Code name ENG</strong></td>
<td>The Code of Advertising Practice</td>
</tr>
<tr>
<td><strong>Code name NATIONAL</strong></td>
<td>Kodex reklamy</td>
</tr>
<tr>
<td>Name of the organisation in own language</td>
<td>Rada pro reklamu (RPR)</td>
</tr>
<tr>
<td>Name of the organisation in English</td>
<td>Czech Advertising Standards Council</td>
</tr>
<tr>
<td>Year the scheme came into force</td>
<td>1995</td>
</tr>
<tr>
<td>Media covered</td>
<td>Television broadcast On-demand audiovisual media service Other media covered: Periodicals and non-periodical publications, audiovisual productions, computer networks, carriers of audiovisual works, posters and leaflets.</td>
</tr>
<tr>
<td>Primary focus</td>
<td>Commercial communication</td>
</tr>
<tr>
<td>Specific products covered?</td>
<td></td>
</tr>
</tbody>
</table>

**General description of the scheme**
The Association of Czech Advertising Agencies and Marketing Communication (ACRA MK), the Association of Communication Agencies (AKA) and the Union of Publishers took the initiative to set up the Czech Advertising Standards Council, which developed the Code of Advertising Practice. The main objective of the scheme is to maintain the ethics of promotion, particularly advertising. There is no monitoring mechanism in place nor is an evaluation or review planned. The Council’s main purpose is to deal with external complaints concerning the non-compliance of advertisements with the Code of Ethics. The Czech Advertising Standards Council is authorised to initiate a so-called decision-making process in compliance with the Rules of Procedure of the Council if it receives a complaint against a specific advertisement. It can also do so at its own initiative if the Council becomes convinced that an advertisement may be in violation of the Advertising Code. In the case of non-compliance, faming, shaming and blaming is the general type of sanction applied. If the law has been violated, the case is passed on for legal sanctions to the Trade Licensing Office.

### 3.8 Denmark

**Regulatory framework**
In Denmark the practice of self- and co-regulation is, despite growing attention, still somewhat limited. Audiovisual content is regulated by the Act on Radio and Television Operation as well as a number of other executive orders enforced by the Radio and Television Board whose members are appointed by the Danish Minister of Culture. The Radio and Television Board is the most important actor in relation to implementation
of the AVMS Directive in Denmark. The AVMS Directive is mainly transposed into Danish law through the Act on Radio and Television Operation (i.e. the Broadcasting Act from 2011), and the executive orders on a) programme services on the basis of registration and on-demand audiovisual programme services (2010) and b) advertisement and sponsorship of programmes in radio, television and on-demand audiovisual media services as well as creation of sponsorships (2013).

There are multiple examples of Danish institutions that have implemented guidelines and guidance in respect to other directives or laws (of which some are related to the protection of minors and audiovisual commercial communications). Both the Consumer Ombudsman and the Press Council offer examples of these guidelines and guidance. The Consumer Ombudsman deals with matters concerning the interests of consumers, thus regulating advertising under the Marketing Act, and has the authority to draft guidelines in cooperation with industry and consumer organisations. The Press Council is an independent public tribunal dealing with complaints about mass media and press ethics according to the Danish Media Liability Act.

There are Danish examples of self-regulation relevant to the AVMS Directive. Firstly, there is the Code of Responsible Food Marketing Communication, which is a voluntary code established by the Forum for Food Advertising. It says not to advertise foods with high content of sugar, salt and fat in media targeting children below the age of 13. The Code effectively brought down the number of food ads from 1,500 in 2007 to 8 in 2013. The second example in Denmark is the establishment of an Alcohol Commercial Council with representatives from both industry and consumer organisations to monitor the compliance with the guidelines (Code of Practice for Marketing of Alcoholic Beverages). This Code was drafted by both industry and consumer organisations with support of the relevant ministries.

### Schemes

<table>
<thead>
<tr>
<th>Country</th>
<th>Denmark</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Code name ENG</strong></td>
<td>Code of Practice for Marketing of Alcoholic Beverages</td>
</tr>
<tr>
<td><strong>Code name NATIONAL</strong></td>
<td>Retningslinjer for markedsføring af alkoholholdige drikkevarer</td>
</tr>
<tr>
<td>Name of the organisation in own language</td>
<td>Alkoholreklamænævnet</td>
</tr>
<tr>
<td>Name of the organisation in English</td>
<td>The Alcohol Advertising Board</td>
</tr>
<tr>
<td>Year the scheme came into force</td>
<td>2000</td>
</tr>
<tr>
<td>Media covered</td>
<td>Television broadcast On-demand audiovisual media service All forms of marketing</td>
</tr>
<tr>
<td>Primary focus</td>
<td>Commercial communication</td>
</tr>
<tr>
<td>Specific products covered?</td>
<td>Alcoholic Beverages</td>
</tr>
</tbody>
</table>

**General description of the scheme**

The Code of Practice for Marketing of Alcoholic Beverages includes guidelines for the marketing of alcoholic beverages. The guidelines represent an ethical standard and include all forms of marketing of alcoholic beverages on the Danish market. The guidelines are designed in particular to protect children and adolescents. In addition,
the guidelines aim to be generally protective of consumers. The guidelines cover marketing of alcohol products with an alcohol content of 2,8% or higher. The guidelines focus on responsible marketing, the design and the content of marketing. The purpose of developing guidelines in cooperation with business organisations and consumer organisations, and the establishment of the Alcohol Advertising Board is to ensure that the guidelines will become an integrated part of the operator’s marketing activities. The goal is for companies to show responsibility and take both health and consumer concerns into account in their marketing activities.

<table>
<thead>
<tr>
<th>Country</th>
<th>Denmark</th>
</tr>
</thead>
<tbody>
<tr>
<td>Code name ENG</td>
<td>The Code of Responsible Food Marketing Communication</td>
</tr>
<tr>
<td>Code name NATIONAL</td>
<td>Kodeks for fødevarereklamer</td>
</tr>
<tr>
<td>Name of the organisation in own language</td>
<td>Forum for fødevarereklamer</td>
</tr>
<tr>
<td>Name of the organisation in English</td>
<td>Forum of Responsible Food Marketing Communication</td>
</tr>
<tr>
<td>Year the scheme came into force</td>
<td>2008</td>
</tr>
<tr>
<td>Media covered</td>
<td>Television broadcast  On-demand audiovisual media service  All forms of marketing</td>
</tr>
<tr>
<td>Primary focus</td>
<td>Commercial communication</td>
</tr>
<tr>
<td>Specific products covered?</td>
<td>Food products containing high quantities of sugar, salt or fat to children</td>
</tr>
</tbody>
</table>

General description of the scheme
The Forum of Responsible Food Marketing Communication was created amidst policy discussions on introducing governmental legislation in the area. The Danish Food and Drink Federation took the initiative to start the Forum and invited the branch organisations covering the entire food marketing value chain in Denmark.

The Code is not directly based on any governmental legislation, but has references to the Marketing Law, chapter 3 (Law number 1216 of 25. September 2013), which states that marketing aimed at children must be crafted with special consideration for the natural trust and impressionability of children. In addition, marketing aimed at children and young people under 18 years cannot legally make references to euphoric substances, including alcohol, nor use violence, fear or superstition as basis for marketing.

The advertisers bear the responsibility not to market unhealthy food products to children, and the organisations in the partnership bear the responsibility of monitoring their part of the value chain and to take action if breaches occur.

The Code ensures focus on marketing of food with a high sugar, salt or fats content in the media, or in parts of the media where the target audience is under 13 as this is not allowed. The Forum has opted to use the nutritional criteria from a previous official food guide developed by the Danish Veterinary and Food Administration. The Forum then used the red category, the unhealthiest category, to define which food products were not allowed to be marketed.
The organisations and media represented in the Forum have contributed to and agreed on the Code concerning food commercials aimed at children. Since the Code was signed, advertisements for food products with high sugar, salt or fats content have practically disappeared in children’s media.

### 3.9 Estonia

#### Regulatory framework
Practices of self- and co-regulation are limited in Estonia, as there are only a few self-regulatory schemes in place. The Estonian commercial communication through audiovisual media services and the protection of minors from harmful content are regulated by the Advertising Act, the Consumer Protection Act, the Media Services Act and the Child Protection Act.

An example of self- and co-regulation in Estonia is the Responsible commercial communication policy in children’s programmes. This policy was implemented by the Association of Estonian Broadcasters (AEB). They ensure that members of the AEB refrain from broadcasting commercials that invite children to the excessive consumption of food or the consumption of unhealthy food, during and around programmes that are aimed at children.

Additionally, there are developments in the area of advertising of alcoholic beverages on popular TV shows, and in developing a self-regulation system on the categorisation of films. Estonian broadcasters have an oral agreement not to show advertisements on alcoholic beverages during popular TV shows which are watched by both parents and their children before 21.00 o’clock. Moreover, the Estonian Public Broadcaster has started searching for the best age categorisation system for films. A possible categorisation system is currently under discussion. The members of the AEB are willing to adopt this categorisation system once ready.

### Schemes

<table>
<thead>
<tr>
<th>Country</th>
<th>Estonia</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Code name ENG</strong></td>
<td>Responsible commercial communication policy in children’s programmes</td>
</tr>
<tr>
<td><strong>Code name NATIONAL</strong></td>
<td>Vastutustundlik reklaamipoliitika lastesaadetes</td>
</tr>
<tr>
<td>Name of the organisation in own language</td>
<td>Eesti Ringhäälingute Liit</td>
</tr>
<tr>
<td>Name of the organisation in English</td>
<td>The Association of Estonian Broadcasters (AEB)</td>
</tr>
<tr>
<td>Year the scheme came into force</td>
<td>2012</td>
</tr>
<tr>
<td>Media covered</td>
<td>Television broadcast</td>
</tr>
<tr>
<td>Primary focus</td>
<td>Commercial communication</td>
</tr>
<tr>
<td>Specific products covered?</td>
<td>Unhealthy food</td>
</tr>
</tbody>
</table>

*General description of the scheme*

The trade organisation AEB initiated the scheme and developed the scheme. The actors involved in the scheme were AS Kanal 2, AS TV, OÜ Alo TV (Estonian private
broadcasters), and AEB (trade organisation). In accordance with the scheme, the members of the AEB refrain from broadcasting audiovisual commercial communications which invite children (younger than 12 years) to excessive consumption of foods which are not suitable for children, during and around programmes meant for children (namely, programmes where more than 50% of the watchers are younger than 12 years). The objective of this scheme is that there should be none of these commercials between and around children programmes. This target is achieved by the enforcement of the following principles. The commercial communications shown between children’s programmes:

- must not encourage or accept wrong eating habits or advocate unhealthy lifestyle;
- must not invite children for excessive consumption of food;
- must not use irresponsibly special offers;
- must not use high pressure of hard sell technics;
- must not use the copyright protected figures or popular public figures among children;
- must not be misleading or ambiguous in describing the food’s nutritional value.

The AEB itself is responsible for monitoring the scheme. This is only carried out when needed, namely based on consumer complaints. When actors do not comply with the code framing, shaming and blaming is the type of enforcement used as a consequence. The scheme has not been reviewed or evaluated yet, and no evaluation is planned. There have not been any problems with the scheme yet and therefore, an evaluation is not considered to be necessary by the stakeholders.

3.10 Finland

Regulatory framework

The main law regulating audiovisual commercial communication in Finland is the Act on Television and Radio Operations. The main law regarding the protection of minors is the Act on Audiovisual programmes. Regarding commercial communications the latter includes aspects such as, the recognisability of commercial communication, sponsorship and product placement, and the timing of advertisements. The Consumer Protection Act includes regulations on misleading advertising. Chapter 2 of the Act on Television and Radio Operations includes regulations on marketing; the commercial purpose must be clearly visible, and false or misleading information shall not be conveyed in marketing. On the basis of the Alcohol Act, advertising of strong alcoholic beverages is prohibited. Advertising of mild alcoholic beverages is allowed but under certain conditions. For instance, communications are not allowed to be aimed at children and can only be broadcasted after 21.00. There are different laws implementing the AVMS Directive in Finland and as a whole, four different ministries are involved with implementing the AVMS Directive, namely the Ministry for Culture and Education, the Ministry for Transport and Communication, the Ministry of Justice and the Ministry of Health and Social Affairs.

The national regulator for the audiovisual sector is the Finnish Communications and Regulations Authority (FICORA). FICORA is an agency under the Ministry of Transport and Communication which monitors the quantitative regulatory requirements concerning commercials on TV and radio. Amongst others, FICORA supervises advertising, sponsorship and product placement in television and radio operations, as well as in video-on-demand services. In addition, by commissioning surveys on a regular basis, FICORA monitors whether the marketing activities in the country fulfil the obligations imposed on it. These include the recognisability, duration and placement of advertising, as well as other themes such as changing media use by
consumers. FICORA actively discusses advertising and related rules and principles with
the sector, but they do not supervise advertising content. The Consumer Ombudsman
is part of the Finnish Competition and Consumer Authority, and is mainly responsible
for the supervision of the Consumer Protection Act and consumer protection related
laws. The Consumer Ombudsman deals with issues concerning comparative and
misleading advertising. Content is regulated through self-regulation as well as
relevant Ministries and the National Audiovisual Institute.
The National Audiovisual Institute (KAVI) is an institution under the Ministry of
Education and Culture. It is responsible for the promotion of audiovisual culture and
media literacy. A part of KAVI, MEKU (Media Education and Audiovisual Programmes
Unit), is responsible for setting up programme classification systems and systems with
different logos ensuring the protection of minors (For example: 18 for 18+
programmes or a spider for scary programmes). This classification system was
developed by the MEKU within the KAVI. KAVI trains and certifies employees from
enterprises so that companies themselves classify their programmes. Unless a
programme has been exempted from classification, all programmes must legally be
classified following this system. The MEKU monitors whether the certified classifiers
apply the classification system properly to media, and has a list of accepted
classifiers. Citizens and companies can appeal against wrongly classified programmes.

The main co- and self-regulatory scheme in Finland relevant to the AVMS Directive is
the code of the Ethical Code of the Council of Ethics in Advertising (Mainonnann
eettinen neuvoston Mainonnan eettinen (MEN)). Besides this self- or co-regulatory scheme, there is the
Mass Media Council, focussing on journalistic ethics, and the Board of Business
Practice, both of which regulate areas beyond the AVMS Directive’s scope. The Council
was already set up in the 1980s by the representative organisations of the
advertisement sector. In 2001, the body was renamed in the Council of Ethics in
Advertising. At that time the secretariat of the Council was placed permanently in the
Chamber of Commerce (Kauppakamarit). The chamber provides the office and the
secretariat staff. The code applied is the ICC Code which has been tailored to the
Finnish context.

Schemes

<table>
<thead>
<tr>
<th>Country</th>
<th>Finland</th>
</tr>
</thead>
<tbody>
<tr>
<td>Code name ENG</td>
<td>Ethical Code of the Council of Ethics in Advertising</td>
</tr>
<tr>
<td>Code name NATIONAL</td>
<td>Eettinen Koodi neuvoston Mainonnan eettinen</td>
</tr>
<tr>
<td>Name of the organisation in own language</td>
<td>Mainonnan eettinen neuvosto (MEN)</td>
</tr>
<tr>
<td>Name of the organisation in English</td>
<td>Council of Ethics in Advertising</td>
</tr>
<tr>
<td>Year the scheme came into force</td>
<td>1980s</td>
</tr>
<tr>
<td>Media covered</td>
<td>Television broadcasting, On-demand audiovisual services, All other media</td>
</tr>
<tr>
<td>Primary focus</td>
<td>Commercial communication</td>
</tr>
<tr>
<td>Specific products covered?</td>
<td></td>
</tr>
</tbody>
</table>

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General description of the scheme
In the early 1980s, the advertising sector in Finland set up its own body. In 2001, this body was renamed the Council of Ethics in Advertising and the secretariat was placed in the Central Chamber of Commerce. The aim of the approach is to assure that advertisements are ethically acceptable and this should be reached through the application of the International Chamber of Commerce (ICC) Code by the Finnish advertising industry. The Council follows the ICC code, so a specific development process was not required beyond adapting the ICC Code to the Finnish context. The Board of the Council handles the complaints, makes statements and remarks of its own initiative. Moreover, the Board stimulates the advertising sector to follow the ethical guidelines of the ICC code. At this moment, no independent evaluation or review of the Council has taken place or is foreseen.

3.11 France
Regulatory framework
In France the area of audiovisual media services can be said to be regulating by a mixture of statutory and self-regulation. All in all however, the protection of minors in audiovisual media is under statutory regulation by the CSA, the higher advertising council or Consell Supérieur de l'Audiovisuel. Audiovisual commercial communications on the other hand are structured by self-regulation through the ARPP, the Professional regulatory authority for advertising or Autorité de Régulation Professionelle de la Publicité. There are two major laws which are linked to and cover certain areas of audiovisual commercial communications. These are the Code de la consommation (Law of 26 July, 1993) for the protection of consumers and the Law n° 86-1067 of 30/09/1986 related to the freedom to communicate. Besides this the CSA has several Recommendations and Deliberations which help structure and guide the implementation of the laws.

The CSA has binding Recommendations and Deliberations on the protection of minors from certain content for different age groups. The protection of minors is therefore established in the rules of the state authority, and in the self-regulatory code of the ARPP when it concerns targeting minors within audiovisual commercial communications. Furthermore, there are certain self-regulatory codes for specific industries which also refer to the protection of minors in their clauses. These include the code for alcohol, for digital advertising and marketing (where protecting minors is an explicit and important aspect), and regarding food behaviour.

For audiovisual commercial communications the state authority, the CSA, provides broadcasters with licenses. Once granted the licenses are valid for several years. The ARPP (known as the BVP until 2008), monitors the content of advertisements of licensed broadcasters based on its self-regulatory scheme. If advertisements are not compliant with the advertising rules, the ARPP can report the advertisement and the independent judiciary arm, the JDP (the Jury de Advertising Ethics or Jury de Déontologique Publicitaire), issues a ruling and implements enforcement. In practice, the ARPP can also enlist the cooperation of the state regulator, the CSA, though this is not formally stated in the self-regulation scheme.

The regulation of audiovisual commercial communications however is further governed by various self-regulatory codes. The ARPP Rules consist of five categories of codes and guidance documents: general recommendations on advertising (6 supplementary codes to the ICC Code); thematic recommendations (9 codes, including a code on
advertising aimed at children); sectoral recommendations (26 sectoral codes); recommendations for support (3 codes); and doctrine sheets (4 sheets). In 2011, the ICC Code was taken up by the ARPP to harmonise and simplify the many self-regulatory rules for commercial communications.

**Schemes**

<table>
<thead>
<tr>
<th>Country</th>
<th>France</th>
</tr>
</thead>
<tbody>
<tr>
<td>Code name ENG</td>
<td>Rules of the ARPP</td>
</tr>
<tr>
<td>Code name NATIONAL</td>
<td>Règles de l’ARPP</td>
</tr>
<tr>
<td>Specific or thematic codes under general code</td>
<td>General recommendations on advertising (6 supplementary codes to the ICC Code)</td>
</tr>
<tr>
<td></td>
<td>Thematic recommendations (9 codes, including a code on advertising aimed at children).</td>
</tr>
<tr>
<td></td>
<td>Sectoral recommendations (26 sectoral codes):</td>
</tr>
<tr>
<td></td>
<td>• Alcool (Mise à jour le 20/04/2015), Alcohol</td>
</tr>
<tr>
<td></td>
<td>• Alimentation des enfants de moins de trois ans, Food for children under three years</td>
</tr>
<tr>
<td></td>
<td>• Alimentation pour animaux familiers, Food for pets</td>
</tr>
<tr>
<td></td>
<td>• Produits cosmétiques, Cosmetic products</td>
</tr>
<tr>
<td></td>
<td>• Automobile, automotives</td>
</tr>
<tr>
<td></td>
<td>• Deux roues à moteur, Two wheeler vehicles</td>
</tr>
<tr>
<td></td>
<td>• Immobilier – construction, Real Estate - Construction</td>
</tr>
<tr>
<td></td>
<td>• Immobilier - maisons individuelles, Real Estate - Villas</td>
</tr>
<tr>
<td></td>
<td>• Immobilier lexique, Real Estate glossary</td>
</tr>
<tr>
<td></td>
<td>• Produits pour l’horticulture et l’entretien des jardins, Products for horticulture and garden maintenance</td>
</tr>
<tr>
<td></td>
<td>• Emplois commerciaux, Business jobs</td>
</tr>
<tr>
<td></td>
<td>• Expositions, foires, salons et congrès, Exhibitions, fairs, shows and congresses</td>
</tr>
<tr>
<td></td>
<td>• Jeux d’argent, Money games</td>
</tr>
<tr>
<td></td>
<td>• Offre de travail à domicile, Work at home offers</td>
</tr>
<tr>
<td></td>
<td>• Sciences occultes, Occult sciences</td>
</tr>
<tr>
<td></td>
<td>• Services électroniques et télématiques à caractère érotique, Electronic and telematic services with erotic content</td>
</tr>
<tr>
<td></td>
<td>• Traitement de l’eau, Water treatment</td>
</tr>
<tr>
<td></td>
<td>• Produits financiers et d’investissement, et services liés, Financial and investment products and services</td>
</tr>
<tr>
<td></td>
<td>• Appel à la générosité publique, Appeal to public generosity</td>
</tr>
<tr>
<td></td>
<td>• Jeux promotionnels promotionnal, Games</td>
</tr>
<tr>
<td></td>
<td>• Jouets, Toys</td>
</tr>
<tr>
<td></td>
<td>• Livres, Books</td>
</tr>
<tr>
<td></td>
<td>• Méthodes de jeux, Games methods</td>
</tr>
<tr>
<td></td>
<td>• Objets de collection, Collectibles</td>
</tr>
<tr>
<td></td>
<td>• Publications de manuscrits, Publications of manuscripts</td>
</tr>
<tr>
<td></td>
<td>• Crédit à la consommation, Consumer credit</td>
</tr>
<tr>
<td></td>
<td>• Recommendations for support (3 codes)</td>
</tr>
<tr>
<td></td>
<td>• Doctrine sheets (4 sheets).</td>
</tr>
</tbody>
</table>

Name of the Autorité de Régulation Professionelle de la Publicité (ARPP)
<table>
<thead>
<tr>
<th>organisation in own language</th>
<th>Professional regulatory authority for advertising</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of the organisation in English</td>
<td>Professional regulatory authority for advertising</td>
</tr>
<tr>
<td>Year the scheme came into force</td>
<td>2011</td>
</tr>
<tr>
<td>Media covered</td>
<td>Television broadcast On-demand audiovisual media service All other media</td>
</tr>
<tr>
<td>Primary focus</td>
<td>Commercial communication</td>
</tr>
<tr>
<td>Specific products covered?</td>
<td>There are 26 sectoral codes (see above)</td>
</tr>
</tbody>
</table>

**General description of the scheme**

The current version of the Rules of the ARRP, are mainly developed by the SRO, the ARPP. Both the ARRP and the CPP, the Conseil Paritaire de la Publicité, a forum for dialogue between experts on advertising, can take the initiative to make adjustments to the scheme or its sub-schemes. Since 2011, the Rules of the ARRP are based on the International Chamber of Commerce (ICC) code. The mission of the ARPP is to “maintain high standards in terms of legal, honest and truthful advertising, which is in interest of both the consumers and the advertisers”. This mission for the ARPP gives some idea as to the general rationale and policy goals behind the self-regulatory scheme in place.

Besides this ICC Code, the French ARPP has developed a series of other accompanying codes and guidelines. The ARPP code is in fact divided into five categories of codes and guidance documents:
- general recommendations on advertising (6 supplementary codes to the ICC code),
- thematic recommendations (9 codes, including a code on advertising aimed at children),
- sectoral recommendations (26 sectoral codes),
- recommendations for support (3 codes),
- doctrine sheets (4 sheets).

The ARPP monitors its activities in several ways. The ARPP evaluates and keeps record of which complaints are admissible and which are not. Furthermore, there is a survey system in place where the ARPP sends out surveys at regular intervals to establish the evolution in society’s sensitivity and attention for certain issues. The rules of the ARRP are enforced by the ARPP itself and Jury de Déontologie Publicitaire (JDP). In the case of no changes to the advertisement in question, naming, shaming and blaming can be decided upon by the JDP and carried out by the ARPP. With respect to evaluation, the ARPP tracks its annual activity quite systematically and uses these reports, other studies, as well as monitoring reports and inputs from its complaints system to evaluate the performance of the Rules of the ARPP in guiding commercial communications. However, it is not publicly clear to what extent the objectives are achieved.
3.12 Germany

**Regulatory framework**

There is comprehensive legislation in Germany on the field of commercial communication and the protection of minors. Commercial communication via audiovisual media is regulated in the Interstate Treaty on Broadcasting and Telemedia 2010 (Rundfunckstaatsvertrag, RStV). The protection of minors in the media is regulated by the Interstate Treaty on the Protection of Minors in the Media (Jugendmedienschutz-Staatsvertrag: JMStV). Despite the comprehensive legislation there is also room for co- and self-regulation in Germany. For commercial communication there is the Code of Conduct of the German Advertising Standards Council (Verhaltensregeln des Deutsches Werberat). For the protection of minors the agreement for Voluntary Self-Monitoring Television (Freiwillige Selbstkontrolle Fernsehen (FSF)) was set up.

The Code of Conduct of the German Advertising Standards Council (Verhaltensregeln des Deutsches Werberat) consists of a general code and several specific codes for specific products or themes (for example commercial communications of alcoholic beverages). The Code focusses on advertisers taking the responsibility for ensuring good standards in advertising. The Code of Conduct applies to all sectors of industry and all media forms. The German Advertising Standards Council is the code owner. The Council is responsible for monitoring, complaints handling and enforcement. However, in cases where a breach of law is suspected, the case is passed on to the responsible public authorities.

Article 19 of the Interstate Treaty on the Protection of Minors in the Media (Jugendmedienschutz-Staatsvertrag: JMStV) states that organisations of self-regulation may be established for broadcast services and for tele-media services. In the context of this article the Voluntary Self-Monitoring Television (Freiwillige Selbstkontrolle Fernsehen (FSF)) has been officially recognised as the organisation of voluntary self-regulation for the classification of programmes shown by commercial broadcasters. Almost all commercial broadcasters in Germany are affiliated with the FSF. The FSF has around 100 experts for examining and classifying programmes of the members. The members (commercial broadcasters) only have to deliver their programmes to the FSF for examination and to follow the decisions passed by the FSF. The FSF is monitored and supervised by Commission for the Protection of Minors in the Media (Kommission für Jugendmedienschutz: KJM).

**Schemes**

<table>
<thead>
<tr>
<th>Country</th>
<th>Germany</th>
</tr>
</thead>
<tbody>
<tr>
<td>Code name ENG</td>
<td>Code of conduct of the German Advertising Standards Council</td>
</tr>
<tr>
<td>Code name NATIONAL</td>
<td>Verhaltensregeln des Deutsches Werberat</td>
</tr>
</tbody>
</table>
| Specific or thematic codes under general code | • German Advertising Standards Council - Rules on Advertising and its Appraisal  
• Code of Conduct of the German Advertising Standards Council against personal denigration and discrimination  
• Rules of Conduct of the German Advertising Standards Council on Advertising with and for children on radio and television  
• Code of Conduct of the German Advertising Standards Council |
General description of the scheme

The German Advertising Standards Council is an institution consisting of the 44 organisations of advertisers, the media, advertising agencies, the advertising professions and research establishments, who are all represented by the German Advertising Federation (ZAW). Its main objective is to promote responsible practices in commercial advertising and to identify and resolve grievances against advertisements. The German Advertising Council provides a mechanism for conflict settlement between the public and commercial advertisers. The Council draws up voluntary codes of conduct for advertising. These rules on advertising are focussed on social responsibility. While the objectives of the scheme are clear, specific targets and indicators are missing. Moreover, besides the monitoring of the number and nature of the complaints, there is no specific monitoring and evaluation system in place for tracking the scheme’s progress. When an advertiser fails to modify or discontinue an advertisement, the German Advertising Standards Council has the option of issuing a reprimand and of making the case public. However, in reality, this is rarely necessary.
Year the scheme came into force | 1993
---|---
Media covered | Television broadcast
| On-demand audiovisual media service
Primary focus | Protection of minors
Specific products covered? |

**General description of the scheme**
The audiovisual programmes in Germany are subject to voluntary self-regulation, the Voluntary Self-Monitoring Television (FSF). The Voluntary Self-Monitoring Television (FSF) is set up by private broadcasters. The FSF is focused on the protection of minors from TV programmes, which could be harmful to children. The protection of minors in the media is regulated in the Interstate Treaty (article 19) on the Protection of Minors in the Media (Jugendmedienschutz-Staatsvertrag: JMStV). The FSF is an officially recognised organisation of voluntary self-regulation which developed a classification system for programmes. The classification of programmes is carried out by independent experts prior to their transmission. The affiliates of the FSF have to follow the decisions regarding their programmes. In cases where affiliates do not follow the decisions, the FSF can impose a fine. However, this kind of enforcement has not been necessary to date.

The public supervisory authority is the Commission for the Protection of Minors in the Media (Kommission für Jugendmedienschutz: KJM). The KJM supervises the norms according to the Interstate Treaty on the Protection of Minors in the Media (Jugendmedienschutz-Staatsvertrag: JMStV). The Commission for the Protection of Minors in the Media (KJM) monitors the activities and programmes of the FSF in both an ex-ante (content) and ex-post (broadcasts) manner.

### 3.13 Greece

**Regulatory framework**
The relevant statutory laws in Greece are the Consumer Protection Act (1994), the Legal Regime of Private TV and Radio Broadcasting Law (1995), and the Presidential Decree on Audiovisual Media Services, which transposes the EU AVMS Directive (2010). The primary authority responsible for the development of media regulation in Greece is the General Secretariat of Information – Communication. The day-to-day regulation of the Greek broadcasting sector, (including monitoring and enforcement), is carried out by an independent administrative authority, the National Council for Radio and Television. This Council is composed of six committees amongst which an Ethics Committee that reviews the quality of programs and considers complaints by citizens. Amongst its functions, the Council issues recommendations, draws up guidelines for codes of conduct to be applied to new broadcasts, advertisements and entertainment programmes which are then taken up in national law.

Both commercial communications and the protection of minors are strongly regulated by the Greek government. For both areas there is also one main self-regulation scheme which includes, two industry specific codes as part of its annexes. The Hellenic Advertising and Communication Code (the main code) governs the content, presentation and promotion of advertisements and it applies to all industries and media forms. The Hellenic Association of Brewers’ Self-Regulation for Commercial Communication represents the brewers’ industry code of conduct (annex to the
Hellenic Advertising and Communication Code) which is aimed at both the social responsibility of brewers, and at deterring imprudent alcohol consumption. The Greek Federation of Spirits Producers’ Self-Regulation Code represents the spirit producers’ code of conduct (annex of the Hellenic Advertising and Communication Code) and it is aimed at improving consumer protection and responsible advertising concerning alcoholic beverages. Specific sections of this Code target minors as a vulnerable social group. All these codes are enforced by the Advertising Self-Regulation Council. In the case of the protection of minors (legal) regulations and directives are in place aimed not only at audiovisual commercial communications for alcoholic beverages, but also for confectioneries, teleshopping and toys.

Furthermore, in Greece there appears to be a close cooperation between the Secretariat General of Information and Communication, the National Council for Radio and Television, and the self-regulatory body (the Advertising Self-Regulation Council) in order to better implement these self-regulatory schemes as well as relevant national laws.

**Schemes**

<table>
<thead>
<tr>
<th>Country</th>
<th>Greece</th>
</tr>
</thead>
<tbody>
<tr>
<td>Code name ENG</td>
<td>Hellenic Advertising Communication Code</td>
</tr>
<tr>
<td>Code name NATIONAL</td>
<td>ΕΛΛΗΝΙΚΟΥ ΚΩΔΙΚΑ ΔΙΑΦΗΜΙΣΗΣ – ΕΠΙΚΟΙΝΩΝΙΑΣ (ΕΚΔ-Ε)</td>
</tr>
<tr>
<td>Name of the organisation in own language</td>
<td>Συμβουλίο Ελέγχου Επικοινωνίας – ΣΕΕ</td>
</tr>
<tr>
<td>Name of the organisation in English</td>
<td>Advertising Self-Regulation Council</td>
</tr>
<tr>
<td>Year the scheme came into force</td>
<td>2003</td>
</tr>
<tr>
<td>Media covered</td>
<td>Television broadcast, On-demand audiovisual media service, Outdoor advertising operators, radio, newspapers</td>
</tr>
<tr>
<td>Primary focus</td>
<td>Commercial communication</td>
</tr>
<tr>
<td>Specific products covered?</td>
<td></td>
</tr>
</tbody>
</table>

*General description of the scheme*

The initiative to develop the Hellenic Advertising Communication Code was taken by the Hellenic Association of Advertising-Communication Agencies and by the Hellenic Advertisers Association. Consumers, civil society groups, government ministries and public authorities were not involved in the development of the scheme. The main aim of the Code is twofold, namely keeping a “clean” advertising environment in order to consolidate consumer confidence, and to protect consumers. Specific objectives of the Code are:

- to show social responsibility and the proper functioning of the advertising industry;
- to increase public confidence;
- to ensure the respect for privacy and consumer preferences;
- to ensure greater responsibility in marketing communication directed to minors;
- to protect freedom of expression for those engaged in marketing communications;
- to grant practical and flexible solutions in the event of disagreement or complaints;
- to minimise the need for legislation and other government interventions.
The Advertising Self-Regulation Council does not carry out monitoring activities regarding the achievement of the Code’s objectives. Nevertheless, the Council monitors specific aspects such as the compliance rate with its decisions and rulings regarding non-compliant commercial communications. With respect to complaints, there is only one mechanism in place to address them: any complaint must be referred to the Advertising Self-Regulation Council which then informs the parties involved if they are found to be in breach of the scheme. The complaints are then analysed by a First Degree Committee which considers all the evidence provided by both parties and takes decisions. A Second Degree Committee exists for appealing. Following the decision of the First and/or the Second Degree Committee, the company in question withdraws the advertisement according to the time frames established in the Code. Failure to abide with the decision leads to the incursion of penalties provided by law, which are imposed by the National Council for Radio and Television.

<table>
<thead>
<tr>
<th>Country</th>
<th>Greece</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Code name ENG</strong></td>
<td><strong>Self-Regulation for Commercial Communication of the Hellenic Association of Brewers</strong></td>
</tr>
<tr>
<td><strong>Code name NATIONAL</strong></td>
<td><strong>ΕΛΛΗΝΙΚΗΣ ΕΝΩΣΗΣ ΖΥΘΟΠΟΙΩΝ</strong></td>
</tr>
<tr>
<td>Name of the organisation in own language</td>
<td>Αυτοδέσμευση στην επικοινωνία</td>
</tr>
<tr>
<td>Name of the organisation in English</td>
<td>Hellenic Association of Brewers</td>
</tr>
<tr>
<td>Year the scheme came into force</td>
<td>2004</td>
</tr>
<tr>
<td>Media covered</td>
<td>Television broadcast On-demand audiovisual media service Radio, press/magazine, posters/open air advertisement, packaging and promotion materials</td>
</tr>
<tr>
<td>Primary focus</td>
<td>Commercial communication</td>
</tr>
<tr>
<td>Specific products covered?</td>
<td>Beer products</td>
</tr>
</tbody>
</table>

**General description of the scheme**

The Hellenic Association of Brewers created its own self-regulation scheme, in close cooperation with the Advertising Self-Regulation Council, and by consulting the existing guidelines set by Brewers of Europe. The objectives of the Self-Regulation for Commercial Communication are:

- to promote responsible consumption and to mitigate the adverse effects of excessive consumption;
- to comply with the principles of social responsibility and good faith, which are adopted by all companies in the industry;
- to enhance consumer trust in Greek brewers.

This code establishes standards to increase the industry’s social responsibility and, given its membership with the Brewers of Europe, to promote responsible drinking across Europe. No monitoring activities are carried out on the achievement of the self-regulatory scheme’s objectives. There is one mechanism in place to address complaints, namely the mechanism of the Advertising Self-Regulation Council.
However, the members of the Hellenic Association of Brewers have never received a complaint about their advertising practices. The Hellenic Association of Brewers does not produce publicly available annual reports of its activities. An evaluation of the scheme has not been conducted since 2004 and the association has no evaluation planned for the near future.

<table>
<thead>
<tr>
<th>Country</th>
<th>Greece</th>
</tr>
</thead>
<tbody>
<tr>
<td>Code name ENG</td>
<td>Statement of Principles and Self-Regulation Plan</td>
</tr>
<tr>
<td>Code name NATIONAL</td>
<td>Δήλωση αυτοδέσμευσης Μελών</td>
</tr>
<tr>
<td>Name of the organisation in own language</td>
<td>ΣΥΝΔΕΣΜΟΣ ΕΛΛΗΝΙΚΩΝ ΑΠΟΣΤΑΓΜΑΤΩΝ &amp; ΟΙΝΟΠΝΕΥΜΑΤΩΔΩΝ ΠΟΤΩΝ – ΣΕΑΟΠ</td>
</tr>
<tr>
<td>Name of the organisation in English</td>
<td>Greek Federation of Spirits Producers</td>
</tr>
<tr>
<td>Year the scheme came into force</td>
<td>2003</td>
</tr>
<tr>
<td>Media covered</td>
<td>Television broadcast On-demand audiovisual media service Print, cinema, outdoor events, labelling, naming &amp; packaging, promotion, merchandising, sponsorship, product placement, direct marketing</td>
</tr>
<tr>
<td>Primary focus</td>
<td>Commercial communication</td>
</tr>
<tr>
<td>Specific products covered?</td>
<td>Spirits, cider and flavoured alcoholic drinks</td>
</tr>
</tbody>
</table>

**General description of the scheme**

The Greek Federation of Spirits Producers compiled a "Statement of Principles and Self-Regulation Plan". The Greek Federation of Spirits Producers produced this plan after consulting with the Hellenic Advertising-Communication Agencies Association, Hellenic Advertisers Association, the Ministry of Health and the Secretariat General of Information & Communication. The self-regulatory scheme mainly focuses on commercial communication aimed at young people. It pays particular attention to the issues related to alcoholic beverages’ advertisement and it promotes social sensibility on the topic. It includes most of the provisions of the European Forum for Responsible Drinking (EFRD) Common Standards. The Federation does not appear to carry out any monitoring activities to measure the progress being made towards the scheme's objectives. Moreover, the Federation does not produce publicly available annual reports of its activities. There is one mechanism in place to address complaints, namely the mechanism of the Advertising Self-Regulation Council. However, it seems that so far there were no complaints.
3.14 Hungary

**Regulatory framework**

In general self- and co-regulation is widely spread in Hungary. Self-regulation of audiovisual commercial communication has been an option for economic operators before the first legislative Hungarian Media Act was launched (in 1996), although self-regulation schemes were not yet in place. The current main law in Hungary is the Media Services and Mass Media Act (2010), incorporating advertising restrictions and the protection of minors in audiovisual media.

The current act offers the possibility for self-regulatory bodies to receive a mandate for legal enforcement on defined areas (i.e. on-demand media services and products of on-line and printed media - traditional TV services not included -). In order to gain this authority they must enter into a contract with the Hungarian Media Council. Currently four self-regulatory bodies have signed such a contract: the Advertising Self-Regulatory Board, the Association of Hungarian Electronic Broadcasters, the Association of Hungarian Content Providers and the Association of Hungarian Publishers. The Advertising Self-Regulatory Board, together with the Hungarian Advertising Association, has a leading role in developing and modifying the Hungarian Code of Advertising Ethics (first published in 1981 and continually revised). The Code is currently accepted by 22 Hungarian organisations and it contains general regulations and special rules on advertisements, as well as for advertisements published on digital devices. It covers television broadcasts, on-demand audiovisual media as well as all other media forms. However the Advertising Self-Regulatory Board can only regulate on-demand audiovisual media, printed media and other online media as part of the co-regulatory agreement.

For commercial communication and the protection of minors there are the Act on Media Services and Mass Communication, the Act on the Freedom of the Press and the Fundamental Rules of Media Content (both from 2010). This last act follows the principles of the AVMS Directive and applies these to all media content. Regarding audiovisual commercial communication, the law is aimed at regulating commercials of alcoholic beverages, subliminal advertising techniques (which are prohibited) and the prohibition of product placement in certain programmes such as in the news, political programmes or programmes intended for minors under the age of 14.

**Schemes**

<table>
<thead>
<tr>
<th>Country</th>
<th>Hungary</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Code name ENG</strong></td>
<td>The Hungarian Code of Advertising Ethics</td>
</tr>
<tr>
<td><strong>Code name NATIONAL</strong></td>
<td>Magyar Reklámetikai Kódex</td>
</tr>
<tr>
<td>Name of the organisation in own language</td>
<td>Önszabályozó Reklám Testület, together with the Magyar Reklámszővetség</td>
</tr>
<tr>
<td>Name of the organisation in English</td>
<td>Advertising Self-Regulatory Board, together with the Hungarian Advertising Association</td>
</tr>
<tr>
<td>Year the scheme came into force</td>
<td>1981</td>
</tr>
<tr>
<td>Media covered</td>
<td>Television broadcast On-demand audiovisual media service All other media</td>
</tr>
<tr>
<td>Primary focus</td>
<td>Commercial communication</td>
</tr>
</tbody>
</table>
Specific products covered? | The second chapter of the code contains special rules related to slimming products, healthcare products, cosmetic products, food, alcoholic beverages, and vehicles.

*General description of the scheme*

The first Hungarian Code of Advertising Ethics was established in 1981 by the Hungarian Advertising Association. The main purpose of the Hungarian Code of Advertising Ethics is providing professional and ethical norms for those engaged in advertising activities in Hungary. The code is based on the Code of the International Chamber of Commerce (ICC) and on the social and economic structure of that time and its resulting national circumstances. The ultimate objective of the code is to improve the image of the advertising sector. The Hungarian Code defines general rules, special rules and rules regarding advertisement published on digital devices. No operationalised objectives, targets or specifically defined indicators are in place to monitor the progress of the Code. Every six months the Advertising Self-Regulatory Board engages in proactive monitoring however and determines a topic to be assessed. After that it chooses a sample commercials related to the topic. The Board works out an evaluation system and takes an inventory of the problematic elements in the chosen commercials. For complaints resolution systems, a distinction can be made between complaints from competitors and complaints from consumers. Complaints from both parties are also subject to different procedures for dealing with the complaint. In case the complaint remains unsolved or the Board is not authorised to handle the complaint, the Media Council (Médiatanács) and court will manage the case. The sanction in place is faming, shaming and blaming.

### 3.15 Ireland

*Regulatory framework*

In Ireland a comprehensive legal framework regulates commercial communication practices via linear broadcasting and on-demand audiovisual services. The framework includes the Irish Broadcasting Act 2009 which regulates linear broadcasting and supporting legislation such as Statutory Instrument No. 258 of 2010 (and amended by Statutory Instrument No. 247 of 2012), which transposes the requirements of the AVMS Directive with respect to the regulation of on-demand audiovisual services.

In general self- and co-regulation is limited in Ireland, as self- and co-regulatory frameworks are confined to on-demand media services. Principles on self- and co-regulation are incorporated in the ODAS Code of Conduct. The ODAS Code of Conduct also includes principles relating to the protection of minors in relation to on-demand audiovisual services.

With regards audiovisual commercial communications, the Advertising Standards Authority for Ireland (ASAI) produced the Code of Standards for Advertising and Marketing Communications. This general code has a series of separate product specific sub-codes on for instance foods and non-alcoholic beverages as well as alcohol. Alcohol is regulated further still by the alcohol industry which set up a supplementary code to the ASAI Code, the ASAI and the public authorities. This voluntary, supplementary scheme, the Alcohol Marketing, Communications and Sponsorship Code of Practice, is monitored by the industry as well.
**General description of the scheme**

The national broadcasting organisation, the RTE, took the initiative to develop the scheme. Other organisations involved in the development of the scheme were enterprises, trade organisations, regulators, other interest groups and other participants. The main purpose of the On-Demand Audiovisual Services Group (ODAS) Code of Conduct is to cover all of demand audiovisual services made available by on-demand service providers regulated by the Republic of Ireland. The Code contains high level principles that member organisations are obliged to adopt in providing on-demand audiovisual services in relation to matters such as commercial communication, protection of minors, European Works and accessibility. The main principles of the code are:

- the content of on-demand services will not contain anything likely to incite hatred based on race, religion, nationality, etc.;
- content shall be labelled in such a way that consumers are made aware of the nature of the content in advance;
- commercial communications on such services shall be legal, decent, honest and truthful and shall not prejudice respect for human dignity, health or the protection of the environment;
- to comply with the decisions of the Broadcasting Authority and the Advertising Standards Authority as appropriate.

The ODAS is responsible for monitoring and meets at least once a year to review developments in relation to the Code of Conduct, and it also reviews the number of complaints received. However, no formal evaluation or review of the Code of Conduct has been carried out. All ODAS members shall accept complaints in writing from the members of the public resident in the Republic of Ireland regarding compliance with the Code. This shall be done by providing a point of contact for complaints on their company website or on that of the associated service. The Code includes a detailed description of the actions to be taken by its members in case of a complaint. The Code of Conduct specifies that where a consumer is not satisfied with the response to his/her complaint from an on-demand service provider which has subscribed to the Code that he/she can request the Broadcasting Authority of Ireland or the Advertising Standards Authority for Ireland to adjudicate depending on the nature of their complaint.
The sanction in cases of non-compliance used is membership suspension or exclusion. It is believed that the shame associated with being suspended from membership would be an effective method of enforcement.

<table>
<thead>
<tr>
<th>Country</th>
<th>Ireland</th>
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</thead>
<tbody>
<tr>
<td>Code name ENG</td>
<td>Code of Standards for Advertising and Marketing Communications in Ireland</td>
</tr>
<tr>
<td>Code name NATIONAL</td>
<td>Code of Standards for Advertising and Marketing Communications in Ireland</td>
</tr>
<tr>
<td>Name of the organisation in own language</td>
<td>Advertising Standards Authority for Ireland (ASAI)</td>
</tr>
<tr>
<td>Name of the organisation in English</td>
<td>Advertising Standards Authority for Ireland (ASAI)</td>
</tr>
<tr>
<td>Year the scheme came into force</td>
<td>1981</td>
</tr>
<tr>
<td>Media covered</td>
<td>Television broadcast On-demand audiovisual media service Digital (including online banners, websites, social platforms, text messages), print, outdoor, cinemas, leaflets/brochures and direct marketing</td>
</tr>
<tr>
<td>Primary focus</td>
<td>Commercial communication</td>
</tr>
<tr>
<td>Specific products covered?</td>
<td></td>
</tr>
</tbody>
</table>

**General description of the scheme**
The Advertising Standards Authority for Ireland was established in 1981. A more or less closed group was involved in developing the scheme. The advertising and media industry were primarily involved in establishing the ASAI Code, as were a few other stakeholders such as the Director of Consumer Affairs. The overarching aim of the Advertising Standards Authority for Ireland is to ensure that marketing communications in the media and sales promotions should be legal, decent, honest and truthful and should not mislead the consumer. There are no operational objectives specified in the ASAI Code of Standards for Advertising and Marketing Communications in Ireland. There are no targets either given the lack of concrete objectives. No monitoring system has been set up to directly measure the effectiveness of the scheme based on the objective for this scheme.

The ASAI responds to and monitors consumer complaints regarding commercial communications. Since 2006, the ASAI also carries out a structured monitoring programme of advertisements. Most complaints are suitable for dealing with informally, using well-established procedures. The Complaints Committee at each meeting reviews a sample of complaints dealt with by the Secretariat. A marketing communication which is in breach of the Code must be withdrawn or amended. The Code is reviewed every 3-5 years. The new Code which came into operation in 2016, is the result of a comprehensive review undertaken by the ASAI which involved a significant public consultation process with public authorities, consumer groups and industry organisations.

There has been no formal evaluation of the ASAI Code. However, in preparing the current (7th) edition of the Code, the ASAI undertook an extensive public consultation
regarding what might be included in the Code. The ASAI Code of Standards for Advertising and Marketing Communications in Ireland is perceived as being complementary to the legislative framework governing media provision and quite an effective mechanism. The strengths of the ASAI Code are that it is easy and no-cost for consumers to make a complaint about advertisements or promotions within the media. The Code is long established (1981) and has the support of the advertising and media publishing industry.

3.16 Italy

Regulatory framework
The area of commercial communication and protection of minors in audiovisual media in Italy is regulated by a combination of statutory legislation and self-regulatory schemes. The self-regulatory schemes in this area have been in place for a long period of time and were established prior to the EU Directive 2010/13/EU. In particular, there are two major codes regulating this area (further details below) as well as a number of smaller codes.

In the area of commercial communication, the Testo Unico della Radiotelevisione regulates inter alia the length of commercial breaks, the allowed lengths of commercial communication compared to lengths of programmes, telesales (protection of minors), requirements for sponsors, and the purchase of advertising space. In addition, the national consumer code establishes the consumer’s right to correct information, particularly in the context of commercial communication. The Code of Marketing Communication Self-Regulation Italy (Codice di Autodisciplina della Comunicazione Commerciale) is the self-regulatory scheme which was put in place in 1966 following the initiative by the industry. The Code has the purpose of ensuring that commercial communication is conducted as a service to the public with due consideration to the potential influence it may have on consumers. Some product categories are highlighted in the Code, including alcoholic beverages, cosmetics and hygiene products, food supplements and health foods, physical and aesthetic treatments, as well as medicinal products. In addition, one article is specifically dedicated to the protection of minors.

The protection of minors in audiovisual media is also regulated by the Testo Unico della Radiotelevisione through one dedicated chapter which mentions the restriction of commercial communication within specific time slots and establishes that caution must be made in regards to sports commentary. The same chapter establishes that the self-regulatory Code TV and Minors (TV e Minorì) becomes mandatory for all broadcasters as of 2004. The Code establishes a set of rules concerning the participation of children in TV broadcasts and the contents of TV programmes, providing for different rules applying to different time frames (watersheds).

Concerning commercial communication, there is limited collaboration with the public authorities. In certain areas agreements have been established (e.g. recent guidelines on nutrition in October 2015, focussing on minors and commercial communication in collaboration with the Ministry of Health). The review board of the Institute for Advertising Self-Regulation (Istituto dell’Autodisciplina Pubblicitaria - IAP) is in charge of the enforcement. Regarding the protection of minors, a collaboration between the review board (Comitato Media e Minori) and public authorities has been established by law since 2004. In this case, the review board is responsible for the investigation and handling of complaints, while both the review board and the Agency for Guarantee of
Communication (Agenzia per le Garanzie nelle Comunicazioni – AGCOM) can issue penalties (behavioural in the case of the review board, and economic sanctions in the case of AGCOM).

**Schemes**

<table>
<thead>
<tr>
<th>Country</th>
<th>Italy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Code name ENG</td>
<td>Code of Marketing Communication Self-Regulation Italy</td>
</tr>
<tr>
<td>Code name NATIONAL</td>
<td>Codice di autodisciplina della comunicazione commerciale</td>
</tr>
<tr>
<td>Name of the organisation in own language</td>
<td>Istituto dell'Autodisciplina Pubblicitaria</td>
</tr>
<tr>
<td>Name of the organisation in English</td>
<td>Advertising standards authority (institute of advertising self-regulation)</td>
</tr>
<tr>
<td>Year the scheme came into force</td>
<td>1966</td>
</tr>
<tr>
<td>Media covered</td>
<td>Television broadcast</td>
</tr>
<tr>
<td></td>
<td>On-demand audiovisual media service</td>
</tr>
<tr>
<td></td>
<td>All other media</td>
</tr>
<tr>
<td>Primary focus</td>
<td>Commercial communication</td>
</tr>
<tr>
<td>Specific products covered?</td>
<td>Alcoholic drinks, food supplements and dietary products, beauty treatments, medical products and cosmetic products; Services: training courses, financial services, organised travels, toys and gambling</td>
</tr>
</tbody>
</table>

**General description of the scheme**
The Self-Regulation Code of Marketing Communication was developed by the industry and elaborated by various associations of different actors from the advertising sector. While the industry was and still is, well represented, no consumer organisations were involved in the development of the Code. The objective of the Code is to ensure that commercial communication through all media are honest, true and correct. Currently, there are no evaluation processes in place, which appears to be linked to the absence of operationalised objectives, specifically defined indicators and a systematic monitoring system. Complaints can be lodged by anyone online, as long as they describe the reason for believing the Code has been breached. There is a review board in place within the Istituto dell'Autodisciplina Pubblicitaria (IAP), which investigates the complaint and takes a final decision except for in more complex cases. The more complex cases are forwarded to the Jury. The IAP review board uses faming, shaming and blaming as a sanction for companies in breach of the Code. The IAP can ask for a change of the content or the removal of the advertising material.

<table>
<thead>
<tr>
<th>Country</th>
<th>Italy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Code name ENG</td>
<td>Code TV and Minors</td>
</tr>
<tr>
<td>Code name NATIONAL</td>
<td>Codice TV e Minori</td>
</tr>
<tr>
<td>Name of the organisation in own language</td>
<td>Comitato di controllo Media e Minori</td>
</tr>
<tr>
<td>Name of the organisation in English</td>
<td>Review board Media and Minors</td>
</tr>
</tbody>
</table>
Year the scheme came into force | 1993 (new edition 2002)
---|---
Media covered | Television broadcast
Primary focus | Protection of minors
Specific products covered? | There are specific sections for alcohol, tobacco and drugs.

**General description of the scheme**

While the broadcaster association Federazione Radio Televisione (FRT) took the initiative to develop the Code TV and Minors, other actors such as the Mediaset network and associations for consumers, parents, families, users and teachers also participated in the development of the code. The Code aims to protect the rights and psychological and moral integrity of minors, with a particular attention and reference to the weakest age group (0-14 years). The general principals of the code mention the objective of improving the quality of the programs dedicated to minors, in order to assist families and the younger public in a correct use of the television, and of raising awareness of children’s needs among those producing programs. The objectives of the Code are not monitored and no regular evaluation has been conducted. Complaints can be lodged freely online by any person who suspects a breach of the Code. Upon the reception of a complaint, the Committee conducts an investigation. Once this has been done sanctions can be issued both by the Committee (behavioural sanctions) and by the Autorità per le Garanzie nelle Comunicazioni (AGCOM) for economic sanctions. The types of sanctions used are faming, shaming and blaming as well as public fines. AGCOM takes decisions on public fines and the review board on other matters.

### 3.17 Latvia

**Regulatory framework**

In Latvia in general the practice of self- and co-regulation is very limited, as there are no specific schemes in place for self- and co-regulation. In order to regulate audiovisual media Latvia depends on the national “Electronic Mass Media Law” which covers audiovisual media, as well as radio and to some extent the internet.

The topic of “General provisions for the production of audio an audiovisual commercial communications” is included in this “Electronic Mass Media Law” as well as “Restrictions on audio and audiovisual commercial communications in respect of minors”. The national law offers limited governmental legislation with regard to the protection of minors, but does incorporate provisions on retransmission permits, the prohibition to create on-demand services which might seriously impair the physical, mental or moral development of minors, commercial communication regulation with the prohibition of product placement in children’s programmes, and the prohibition to advertise premium rate telephone number services of a sexual nature in the programmes between the hours of 07.00 and 22.00. The responsible body for the implementation and monitoring of this law is The National Electronic Mass Media Council, which is a public authority in Latvia.

**Schemes**

n.a.
3.18 Lithuania

Regulatory framework

The regulatory culture regarding commercial communications is generally quite legally orientated in Lithuania. The regulation of commercial communication practices of audiovisual media services are regulated by various laws. For example, the Law on Advertising of the Republic of Lithuania: the Law on Provision of Information to the Public, the Law on Consumer Protection, the Law on Alcohol Control and the Civil Code of Lithuania. There are also international treaties of the Republic of Lithuania, as well as governing principles of humanism, equality, tolerance and respect.

With regard to the protection of minors, provisions on commercial communication procedures are established in most of the aforementioned laws, and in the Law on the Protection of Minors against Detrimental Effect of Public Information (2002). The main themes regarding the protection of minors involve: protecting the interests of minors (and society), the self-regulation and obligations of public information producers and others, the principles of adequacy, efficiency and proportionality of the liability measures. The implementation of these provisions is supervised by multiple actors, for example: the Lithuanian Radio and Television Council, the Lithuanian Radio and Television Commission, the Ministry of Culture, the Children’s Rights Ombudsman Institution and executive institutions of municipalities. The protection of minors is thus strongly regulated by the Lithuanian government.

Furthermore, there is statutory regulation in the field of both commercial communication and the protection of minors focused on specific products, which involve (among others): the Foodstuffs Advertising Scheme, the Alcohol Advertising Scheme, the Tobacco Advertising Scheme and the Medical Products Advertising Scheme.

Regarding self-regulation, there is one main relevant scheme in place in Lithuania which is related to the AVMS Directive. The Lithuanian Code of Ethics Advertising was set up by the self-regulatory organisation, the Lithuania Advertising Bureau and it aims to promote ethical advertising in Lithuania.

Schemes

<table>
<thead>
<tr>
<th>Country</th>
<th>Lithuania</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Code name ENG</strong></td>
<td>Lithuanian Ethics Code of Advertising</td>
</tr>
<tr>
<td><strong>Code name NATIONAL</strong></td>
<td>Lietuvos reklamos etikos kodeksas</td>
</tr>
<tr>
<td>Name of the organisation in own language</td>
<td>Lietuvos reklamos biuras</td>
</tr>
<tr>
<td>Name of the organisation in English</td>
<td>Lithuanian Advertising Bureau</td>
</tr>
<tr>
<td>Year the scheme came into force</td>
<td>The Bureau was established in 2006, the Code is based on the ICC Code which was established in 2011.</td>
</tr>
<tr>
<td>Media covered</td>
<td>Television broadcast</td>
</tr>
<tr>
<td>Specific products covered?</td>
<td>Commercial communication</td>
</tr>
<tr>
<td>All other media</td>
<td></td>
</tr>
</tbody>
</table>
General description of the scheme
The Lithuanian Ethics Code of Advertising was set up by the Lithuanian Advertising Bureau. This Bureau is the self-regulatory organisation for advertising in Lithuania and was set up by advertising agencies, media and advertisers in 2006. The Ethics Code is based on the ICC Code and its aim is to develop the advertising sector in Lithuania and to improve the institutional basis for ethical self-regulation in advertising management, fair competition, ensuring consumer protection and the general public interest against the negative impact of advertising.

These general objectives stipulated in the Code are not further operationalised into concrete, measurable objectives. There are no specific indicators defined, nor any targets for the Code to work towards. The implementation of the Code is monitored by examining the number of received complaints, information about the violated articles of the Code and the number of investigated cases, and the results and application of enforcement actions. Areas for improvements within the scheme are identified by the Lithuanian Advertising Bureau, specifically by its General Assembly of Members, its Board, or Arbitration Commission.

Improvements to the scheme are usually proposed by public authorities or by industry representatives. While the Lithuania Advertising Bureau conducts monitoring and publishes reports on its activities and complaints, regular, formal evaluations of the scheme’s effectiveness and impact do not appear to be carried out. The Lithuanian Advertising Bureau handles complaints resolutions and copy advices. Complaints have been declining since 2006 and the main sanctions employed are naming and shaming, and where this is not sufficient, formal warnings or the removal of the offending advertisement from the media platform in question. The scheme appears to work relatively well, but its impact on advertising in Lithuania is difficult to determine without regular evaluation.

3.19 Luxembourg
Regulatory framework
Luxembourg is a small Member State and as a result many sectors are directly regulated by the government. Audiovisual commercial communications and the protection of minors in audiovisual media services are regulated by the government through the "Règlements Grand Ducaux". The Autorité Luxembourgeoise Indépendante de l’Audiovisuel, i.e. the Luxembourgish Independent Authority for Audiovisual services (ALIA), regulates the application of the legislation. ALIA receives and deals with complaints regarding possible breaches of the law. ALIA is in charge of monitoring the correct implementation of legislation in television broadcasting, on-demand audiovisual services and cinema, as well as audio media services. ALIA has the power to sanction breaches of the law regarding these services, which is mainly done in the form of naming and shaming.

The Conseil de la Publicité (Council for advertising, CPL) established a Deontological Code in 2009, regulating advertising in all types of services (e.g. audiovisual, radio, media), with specific sections on for instance children, alcohol and health products. CPL counts between 70 and 80 members, made of broadcasters, industry associations and advertising agencies. The Code’s application is carried out by the Commission pour l’Ethique en Publicité (Commission for ethical advertising, CLEP), which holds nine members elected by the CPL.
The CPL and CLEP are self-regulating advisory bodies. They do not have the power to enforce the Code, and the CLEP cannot sanction breaches. The CLEP receives complaints (about four a year) from the general public as well as from NGOs, and addresses them by contacting the broadcasters and asking them to modify or remove the advertising material. If the party refuses to do so, the CLEP can involve the media, telling them to refuse or suspend the content, however they have never had to resort to this. The Code was revised in 2015 so as to take online behavioural advertising into account.

Schemes

<table>
<thead>
<tr>
<th>Country</th>
<th>Luxembourg</th>
</tr>
</thead>
<tbody>
<tr>
<td>Code name ENG</td>
<td>Deontological Code of Advertising in Luxembourg</td>
</tr>
<tr>
<td>Code name NATIONAL</td>
<td>Code de déontologie de la publicité au Luxembourg</td>
</tr>
<tr>
<td>Name of the organisation in own language</td>
<td>Conseil de la Publicité (CPL)</td>
</tr>
<tr>
<td>Name of the organisation in English</td>
<td>The Advertising Council</td>
</tr>
<tr>
<td>Year the scheme came into force</td>
<td>January 2015</td>
</tr>
<tr>
<td>Media covered</td>
<td>Television broadcast, On-demand audiovisual media service, All other media</td>
</tr>
<tr>
<td>Primary focus</td>
<td>Commercial communication</td>
</tr>
<tr>
<td>Specific products covered?</td>
<td>There are specific sections on children, alcohol, health products, banking products and insurances, as well as sales promotion.</td>
</tr>
</tbody>
</table>

General description of the scheme

The Advertising Council, the Conseil de la Publicité (CPL), was the initiator and main developer of the scheme. The CPL elaborated the Code with the aim of maintaining and improving consumer trust in the industry, the communication sector and the market in general. There appears to be no system in place for monitoring the Code objectives; no operationalised objectives have been established and no indicators are available for assessing the progress being made by the scheme towards its objective. The Commission Luxembourgeoise pour l’Éthique en Publicité (CLEP) receives complaints, particularly from consumers and NGOs, regarding the Code. The CLEP can also file complaints themselves if they come across an advertisement which could be in breach of the Code. Complaints can be lodged via a series of channels though anonymous complaints are not considered. If the advertising content is found to be in breach of the Code, the CLEP asks the accused party to either modify or remove it. If the party refuses to do so, the CLEP can involve the media, telling them to refuse or suspend the content. The CLEP does not hold any legal power to sanction offenders of the Code.
3.20 Malta

Regulatory framework

Statutory regulation is the only regulatory framework governing the audiovisual commercial communications and the protection of minors in Malta. Neither self- nor co-regulatory schemes are in place within the country.

The two main regulators of the audiovisual sector are the Broadcasting Authority (BA) and the Malta Communications Authority. The Broadcasting Authority is responsible for the regulation of audiovisual commercial communication as well as the protection of minors from harmful broadcast content (television and radio). Following the implementation of the AVMS Directive, the BA is also responsible for non-linear media services in Malta. The members of the Broadcasting Authority are appointed by the President of Malta on the advice of the Prime Minister, and after consulting the Leader of the Opposition.

The Broadcasting Act (1991, recently amended in 2011) is the core basis of the legal framework that regulates the audiovisual environment. Nevertheless, the Broadcasting Authority together with either the Prime Minister or the Minister for Culture can enact subsidiary legislation (regulations and codes).

The Broadcasting Authority is also in charge of the enforcement of the Broadcasting Act and it can warn, fine and suspend broadcasters’ licences or programmes that transgress (Broadcasting Act, 1991).

From its implementation in 2010, the "Broadcasting Code for the Protection of Minors" (S.L. 350.05 - the Broadcasting Act) provides the guidelines related to the protection of minors in audiovisual commercial communications. Alcoholic beverages, confectionery, gambling, medicines, teleshopping and tobacco commercial communication practices are regulated by several articles of the Code and additional guidelines are set down by the BA as well.

Previous activities by the state to implement more self- or co-regulation in this direction were reported as unsuccessful mainly due to insufficient collaboration with the industry. This required the Maltese government to step in. This could be due to the fact that there is not so much tradition of self- and co-regulation in the media and advertising sector in Malta.

Recently, self-regulatory scheme initiatives in the field of the protection of minors have been introduced by cable services and digital terrestrial TV providers: they offer some measures of blocking channels and parental guide options. However, these cannot be considered as major initiatives.

Schemes

n.a.
3.21 Netherlands

Regulatory framework

In the Netherlands co- and self-regulation plays a prominent role in the legislative framework. This is also the case for commercial communication and for the protection of minors via television and on-demand television. The Media Act (Mediawet) is the legal framework for commercial communication and the protection of minors via audiovisual media. The Act sets requirements for both public and commercial broadcasters, although there are some differences in the requirements for public broadcasters and those for commercial broadcasters. On commercial channels more advertising is allowed than on public channels. Two relevant schemes of co- and self-regulation are in place: the Dutch Advertising Code (Nederlandse Reclame Code) for commercial communication (including protection of minors in commercial communication) and the “Kijkwijzer” or viewing guide for the protection of minors in audiovisual media.

About 50 years ago the advertising industry took the initiative to develop the Dutch Advertising Code (Nederlandse Reclame Code). All relevant trade organisations and NGO’s (such as the Consumers Association) were involved in the development of the specific codes. The Dutch Advertising Code consists of a general part and a number of special codes applying to advertising of specific products or services. The general part contains general rules and standards for advertising, such as: “advertisements may not be misleading or untrue” and “advertising must not be gratuitously offensive or at odds with good taste and decency”. There are three groups of specific codes: for products and services that need social responsibility (alcohol, food, environmental claims); for the way in which advertising is disseminated; and industry specific codes. The Dutch Advertising Code is a general code for all advertisements, not only via audiovisual media. The Dutch Advertising Code Authority (Stichting Reclame Code) is the code owner and is responsible for monitoring, complaints handling, and enforcement.

For the protection of minors in broadcasts the “Kijkwijzer” (Watch Wiser or Viewing Guide) was developed. NICAM is the code owner and is responsible for monitoring, complaints handling and the enforcement of the viewing guide. The “Kijkwijzer” is a classification system for programmes which warns parents and educators of children up to a certain age whether a television programme or film may be harmful. NICAM developed the classification system together with relevant stakeholders, scientists and experts. The broadcasters classify their programmes themselves and therefore coders from companies are trained by NICAM.

Schemes

<table>
<thead>
<tr>
<th>Country</th>
<th>Netherlands</th>
</tr>
</thead>
<tbody>
<tr>
<td>Code name ENG</td>
<td>Dutch Advertising Code</td>
</tr>
<tr>
<td>Code name NATIONAL</td>
<td>Nederlandse Reclamecode</td>
</tr>
<tr>
<td>Specific or thematic codes under general code</td>
<td>• Advertising code for alcoholic beverages 2014</td>
</tr>
<tr>
<td></td>
<td>• Letter box advertising, door-to-door sampling and direct response advertising code</td>
</tr>
<tr>
<td></td>
<td>• Advertising code for the use of the postal filter 2015</td>
</tr>
<tr>
<td></td>
<td>• Code for the distribution of unaddressed printed advertisements</td>
</tr>
<tr>
<td></td>
<td>• Code for distribution of advertisements by e-mail 2012</td>
</tr>
</tbody>
</table>
About 50 years ago, the advertising industry took the initiative to develop the Dutch Advertising Code. The general code was developed based on the International Chamber of Commerce (ICC) Code. Specific codes were developed at later stages. All relevant trade organisations and NGOs were involved in the development of the specific codes. The Dutch Advertising Code Authority promotes responsible advertising aimed at ensuring the reliability and credibility of advertising. The codes serve as instruments to achieve the goals set. The aim of the authority is a 100% compliance rate (meaning that 100% of advertisers follow the recommendations of the Dutch Advertising Code Authority). The compliance system is monitored by the Dutch Advertising Code Authority. Therefore, the authorities follow the violations and the judgements made. The general code is based on the ICC and the EU Directive on Unfair Commercial Practices and therefore, changes to the ICC Code or the Directive may cause adjustments in the general code. The specific codes include processes for evaluation and adjustments which are carried out once a year or once every two years. Everyone can submit a complaint via the online complaint form or by mail. The chairman, the Advertising Code Committee and the Board of Appeal of the Dutch Advertising Code Authority are responsible for the complaints handling. For television, the effective sanction is to remove the commercial from television. Furthermore, decisions are made public on the website of the Dutch Advertising Code Authority.
### General description of the scheme

The Kijkwijzer is a code which was developed by the audiovisual sector. The Kijkwijzer is a classification system for programmes broadcast on television and on-demand services. The Institute for the Classification of Audiovisual Media (NICAM) is the code owner of Kijkwijzer. "The foundation (NICAM) sets itself the general aim, without making a profit, to promote the provision of information as to the potential harmfulness of audiovisual products created by the audiovisual sector towards young people by means of classification, as well as the performance of all further actions related or beneficial to the above, in the broadest possible sense." The most important act for NICAM and the Kijkwijzer is the Media Act. The Media Act prohibits broadcasters from broadcasting programmes that are harmful to young people under the age of 16. Every year NICAM checks around 50 classifications for television on correctness. The Media Authority (Commissariaat voor de Media) uses the results for the annual evaluation of the NICAM. The results of these evaluations are included in a letter to the government. These letters are published on the website of the Media Authority. NICAM and the Kijkwijzer are evaluated every year by the Media Authority (Commissariaat voor de Media). A commonly used sanction is the order to amend a classification. Furthermore, the Complaints Committee can impose a penalty.

### 3.22 Poland

**Regulatory framework**

In Poland the audiovisual media services are regulated to a large extent by law, namely through the Broadcasting Act of 1992. This Act covers broadcasting media and is supplemented to a certain extent by self-regulatory codes. Though the state has a strong role in regulating the audiovisual media sector in Poland, schemes of self-regulation on advertising, are being increasingly recognised and introduced.

In Poland there is a co-regulatory code, the Television Broadcasters’ Agreement on the rules of distributing Advertisements and Sponsor Recommendations regarding foodstuffs or beverages containing ingredients whose presence in excess amounts in the daily diet is not recommended. This code regulates commercial communications on
food aimed at minors. The National Broadcast Council and the Union of Associations of Advertising Council are both involved in developing, monitoring, and complaints handling regarding this code.

The Code of Good Practice on the Protection of Minors in On-demand Audiovisual Media Services was introduced in June 2014 with the aim of protecting minors in on-demand audiovisual media. The national law regulating the broadcasting sector indicates in Article 47.e that bodies delivering VOD services are forbidden to disseminate services which spread content which could be detrimental to the physical, psychological and moral development of minors. As such the Interactive Advertising Bureau Polska (IAB Polska), representing 200 companies, developed the Code of Good Practices in the protection of minors in VOD Poland. The objective of the scheme is to ensure the protection of minors in VOD, based to a large extent on the requirements of the AVMS Directive. The National Broadcasting Council monitors the compliance with the code twice a year. The code is considered relatively effective in that between 70 and 80% of the VOD market is thought to be covered by this code.

The Code of Ethics in Advertising from the Union of Associations Advertising Council is a code on advertising in general, irrespective of the distribution channel of the advertisement.

**Schemes**

<table>
<thead>
<tr>
<th>Country</th>
<th>Poland</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Code name ENG</strong></td>
<td>Television Broadcasters’ Agreement on the rules of distributing Advertisements and Sponsor Recommendations regarding foodstuffs or beverages containing ingredients whose presence in excess amounts in the daily diet is not recommended</td>
</tr>
<tr>
<td><strong>Code name NATIONAL</strong></td>
<td>Porozumienie nadawców w sprawie zasad rozpowszechniania Reklam i Wskazan sponsorskich dotyczących artykułów spożywczych lub napojów zawierających składniki, których obecność w nadmiernych ilościach w codziennej diecie jest niewskazana</td>
</tr>
<tr>
<td>Name of the organisation in own language</td>
<td>Związek Stowarzyszen “Rada Reklamy” and Krajowa Rada Radiofonii I Telewizji</td>
</tr>
<tr>
<td>Name of the organisation in English</td>
<td>Union of Associations Advertising Council and National Broadcasting Council</td>
</tr>
<tr>
<td>Year the scheme came into force</td>
<td>January 1st 2015</td>
</tr>
<tr>
<td>Media covered</td>
<td>Television broadcast</td>
</tr>
<tr>
<td>Primary focus</td>
<td>Commercial communication</td>
</tr>
<tr>
<td>Specific products covered?</td>
<td>Food and beverages (of which over consumption is not recommended as part of the daily diet).</td>
</tr>
</tbody>
</table>

**General description of the scheme**

Public authorities, enterprises (the six largest Polish TV broadcasters), trade organisations were all included in developing the scheme. The objective is that broadcasters take the responsibility to not show advertisements or sponsor indications aimed at children, including the issues connected to the food and drinks products containing ingredients, whose presence in above average amounts in the daily diet is
not recommended. Though there is a core objective, there are no operationalised objectives for this scheme, nor have any indicators or targets been defined. The code owner, the National Broadcasting Council, sets the informal target that they expect there to be no advertising aimed at children concerning unhealthy food and drinks. The monitoring of the scheme is carried out by the National Broadcasting Council. The monitoring system is of an ongoing nature and monitors the general performance of the scheme. However, no evaluation of the scheme has been conducted yet. The process of handling complaints is the same for internal as well as for external complaints. Up to this point, no complaints have been received which related to this scheme. In cases of non-compliance, sanctions do exist for this scheme but these do not appear to have been used during the short life span of the scheme. The sanctions include stopping the advertisement, removing the advertisement from a specific time slot, informing all broadcasters that an advertisement does not comply with the national Nutritional Criteria for appropriate foods and public fines.

<table>
<thead>
<tr>
<th>Country</th>
<th>Poland</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Code name ENG</strong></td>
<td><strong>Code of Good Practice on the Protection of Minors in On-demand Audiovisual Media Services</strong></td>
</tr>
<tr>
<td><strong>Code name NATIONAL</strong></td>
<td><strong>Kodeks dobrych praktyk w sprawie szczególowych zasad ochrony maloletnich w audiowizualnych usługach medialnych na zadanie</strong></td>
</tr>
<tr>
<td>Name of the organisation in own language</td>
<td>IAB Polska</td>
</tr>
<tr>
<td>Name of the organisation in English</td>
<td>IAB Polska (Interactive Advertising Bureau) (IAB)</td>
</tr>
<tr>
<td>Year the scheme came into force</td>
<td>June 2014</td>
</tr>
<tr>
<td>Media covered</td>
<td>On-demand audiovisual media service</td>
</tr>
<tr>
<td>Primary focus</td>
<td>Protection of minors</td>
</tr>
<tr>
<td>Specific products covered?</td>
<td></td>
</tr>
</tbody>
</table>

**General description of the scheme**
The Interactive Advertising Bureau – IAB Polska, supported by the National Broadcast Council (a public authority), initiated and developed the scheme. The overarching rationale of the Code of Good Practice on the Protection of Minors in On-demand Audiovisual Media Services in Poland is to prevent minors from encountering inappropriate content on the internet, and under the code, this specifically means VOD services. This Code is based on the national law, the Broadcasting Act, which assumes that the state can, but is not obliged to design technological solutions through which the VOD deliverers will fulfil the requirement to “proper qualification and marking of the VOD services with regards to its minors’ damaging capacity”. The National Broadcasting Council (Krajowa Rada Radofonii I Telewizji) monitoring process has an on-going character and is developed by the National Broadcasting Council as one of its duties, as indicated in the Broadcasting Act (Dec. 29, 1992, with further amendments; Article 6.2.5a), in the framework of the media monitoring tasks. No evaluation has been conducted nor is one planned. The sanctions for this scheme centre on public fines which are applied by the National Broadcasting Council (NBC). The enforcement procedure is shared by the NBC and the IAB Polska.
<table>
<thead>
<tr>
<th>Country</th>
<th>Poland</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Code name ENG</strong></td>
<td>Code of Ethics in Advertising</td>
</tr>
<tr>
<td><strong>Code name NATIONAL</strong></td>
<td>Kodeks Etyki Reklamy</td>
</tr>
</tbody>
</table>
| If relevant: specific or thematic codes under general code | • Standards of Food Advertising Aimed at Children Under 12  
• Beer Advertising Standards |
| Name of the organisation in own language | Związek Stowarzyszeń "Rada Reklamy" |
| Name of the organisation in English | Union of Associations Advertising Council |
| Year the scheme came into force | 2006 |
| Media covered | Television broadcast  
On-demand audiovisual media service  
All other media |
| Primary focus | Commercial communication |
| Specific products covered? | General code for advertising, specific codes for specific products: see before. |

**General description of the scheme**

The Code of Ethics in Advertising is owned by the Union of Associations Advertising Council, the "Rada Reklamy". This organisation consists of several industry associations representing the advertising industry. The code is applicable to all kinds of advertisement and sponsorship practices, regardless of the media channel used (press, audiovisual media etc.). According to the Statutes of the Union of Associations Advertising Council (Związek Stowarzyszeń Rada Reklamy), the code is "the basic document specifying standards which, in the opinion of the Council Members, are consistent with good market practice and contribute to the quality of advertising". As such, since 2006 the Code has been the core element of the self-regulation system in the advertisement branch. The main mechanisms within the self-regulation scheme are:

- the complaints handling process (conducted by the Committee of Advertising Ethics), and
- the monitoring of the complaints.

The Committee of Advertising Ethics of Związek Stowarzyszeń "Rada Reklamy" (Union of Associations Advertising Council) is responsible for the enforcement. In case of breaches of the Code rules, the Committee requests the advertisers to change the advertisements with the aim of remedying the infringement.
3.23 Portugal

Regulatory framework

Self- and co-regulation is widely spread in Portugal. The current model of audiovisual media in Portugal is based on a state-appointed, public and independent regulator for Social Communication (ERC). A salient duty of the ERC is to promote co-regulation and stimulate adoption of self-regulation mechanisms in institutions. The ERC oversees all media services and bases its actions on the legislation in the Television Law, the Code of Advertising (Decree-law 330/90), and the ERC’s own statutes. Self-regulation in the field of commercial communication concerns the Code of Conduct of the Civil Institution for Self-discipline of the Media (ICAP), including specific codes for, amongst others, advertisements of foods and beverages directed at children, and alcoholic beverages.

The main legislation on the protection of minors are the Law on Television and On-demand Audiovisual Services (e.g. age classification of programmes), the Decree-law 330/90 Code of Advertising (e.g. advertising in schools) and the Endangered Children and Youths Protection law (e.g. limits the use of minors in advertising). There are also self-regulatory codes or agreements in place for television and on-demand audiovisual systems. Three Portuguese broadcasters (RTP, SIC and TVI) have regulated violence in programmes through warning signs (Agreement on the representation of violence in television 1997) and the classification of television programmes (2006). The largest self-regulatory code is that of the Instituto Civil de Autodisciplina da Comunicação Social (ICAP), which contains a series of sub-codes.

Schemes

<table>
<thead>
<tr>
<th>Country</th>
<th>Portugal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Code name ENG</td>
<td>ICAP conduct code</td>
</tr>
<tr>
<td>Code name NATIONAL</td>
<td>Código de conduta do ICAP</td>
</tr>
<tr>
<td>Specific or thematic codes under general code</td>
<td></td>
</tr>
<tr>
<td>• Self-regulation on product placement, production props and prizes, Acordo de Auto-regulação em Matéria de &quot;Colocação de Produto&quot; e &quot;Ajudas à Produção e/ou Prémios&quot;</td>
<td></td>
</tr>
<tr>
<td>• Self-regulation of sponsorships, Acordo de auto-regulação em Matéria de 'Menções de Patrocínios'</td>
<td></td>
</tr>
<tr>
<td>• Self-regulation of commercial communication concerning food and beverages directed to children, Código de Auto-regulação em Matéria de Comunicação Comercial de Alimentos e Bebidas dígitas a Criança,</td>
<td></td>
</tr>
<tr>
<td>• Good practice guide on digital marketing and online behavioural advertising, Guia de Boas Práticas de Comunicações de Marketing Digital e Publicidade Comportamental Online no âmbito da Auto-Regulação</td>
<td></td>
</tr>
<tr>
<td>• Self-regulating code on commercial communication on alcoholic beverages, Código de Auto-Regulação da Comunicação Comercial em matéria de Bebidas Alcoólicas</td>
<td></td>
</tr>
</tbody>
</table>

<p>| Name of the organisation in own language | ICAP - Instituto Civil de Autodisciplina da Comunicação Social |
| Name of the organisation in English | ICAP - Civil Institution for Self-discipline of the Media |
| Year the scheme came | 1991 |</p>
<table>
<thead>
<tr>
<th>Country</th>
<th>Portugal</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Code name ENG</strong></td>
<td><strong>Classification of TV programmes</strong></td>
</tr>
<tr>
<td><strong>Code name NATIONAL</strong></td>
<td><strong>Classificação de Programas de Televisão (RTP, SIC, TVI)</strong></td>
</tr>
<tr>
<td>Name of the organisation in own language</td>
<td>RTP, SIC and TVI</td>
</tr>
<tr>
<td>Name of the organisation in English</td>
<td>RTP, SIC and TVI (the three existing digital terrestrial television channels)</td>
</tr>
<tr>
<td>Year the scheme came into force</td>
<td>2006</td>
</tr>
<tr>
<td>Media covered</td>
<td>Television broadcast</td>
</tr>
<tr>
<td></td>
<td>On-demand audiovisual media service</td>
</tr>
</tbody>
</table>

**General description of the scheme**

The Code of Conduct of the Instituto Civil de Autodisciplina da Comunicação Social (ICAP) has been developed by industry organisations and trade organisations. No government or public regulators were involved in developing the scheme, nor any civil society group or consumer groups. The main objectives of the ICAP are:

- to prevent the misconduct, negligence, abuse, and misuse of advertising and media professionals,
- to show responsible and good practices in advertising and other commercial communications,
- to strengthen the public trust in commercial communication; to respect consumer privacy and preferences; to ensure a special responsibility towards commercial communication directed to children and youths,
- to safeguard the freedom of expression of people involved in commercial communication,
- to present effective practices and flexible solutions; to minimise the need of detailed state legislation and regulations,
- to foster self-regulation and good practices by the various involved agents,
- to strengthen the ethical component in the different commercial communication fields without prejudice the law.

The objectives of the scheme are monitored, although it remains unclear which specific indicators are used to measure how progress is being made towards these objectives. Moreover, no evaluation has been carried out and no evaluation has been planned yet. The ICAP mainly receives complaints from actors from the industry and from individuals. Furthermore, the ICAP provides ex-ante Copy Advices to advertisers. Conflict resolution is carried out by an Ethics Jury (EJ). Individual entities such as consumer associations as well as corporate entities may present a complaint whenever they feel that a commercial communication does not comply with ethical or legal rules. Whenever the EJ considers ethical rules to have been breached it requires the amendment of the advertisement in question, or the removal of the campaign. The EJ can also use faming, shaming and blaming, and membership suspension or exclusion.
### General description of the scheme

The stakeholders involved in developing the Classification scheme include public authorities, namely the ERC, (the national media regulator that oversees media activities, audiovisual, radio, press, etc.), and the three main, largest television operators in Portugal (RTP, SIC and TVI). There is a guiding principle in place indicating that an age classification scheme should be set up and implemented. The classification of television programmes aims at making a guide for selecting age appropriate shows available to consumers and educators. The classification scheme is based on the Television and On-demand Audiovisual Services law of 2007. This law advocates setting up self- or co-regulatory schemes to contribute to the appropriate development of children. The self-regulation specifies a classification of four age categories corresponding to four age levels (All; over 10; over 12; over 16) that should be applied by multidisciplinary committees for each channel, covering eight major classification factors: thematic content, language, nudity, sex, aggression/violence, role models, fear, drugs (including alcohol and tobacco). There is no system for monitoring compliance with the classification system. The ERC, as the enforcement body for the classification system, can implement sanctions in the form of naming and shaming, and public fines. No evaluations have been made for this scheme and none are planned.

### General description of the scheme

The Agreement on the representation of violence in television was developed by the three major television companies, the RTP, SIC and TVI. The main aim of this scheme is to enable consumers of television programmes to select shows that are age appropriate and to serve as a guide for viewing television content. Therefore the scheme seeks to minimise the exposure of children and other minors to television programmes with inappropriate contents (e.g. pornography and violence). The national public authority, the ERC, is formally in charge of monitoring the compliance and performance of the classification scheme, but in practice there are no systematic monitoring systems in place. For internal disputes amongst signatories there are no systems in place for resolving disputes. Complaints should be submitted to the ERC, who must hear the offender. Should the ERC consider the plaintiff to be right, the ERC

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<table>
<thead>
<tr>
<th>Country</th>
<th>Portugal</th>
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<tbody>
<tr>
<td>Code name ENG</td>
<td>Agreement on the representation of violence in television</td>
</tr>
<tr>
<td>Code name NATIONAL</td>
<td>Acordo sobre a Representação da Violência na Televisão</td>
</tr>
<tr>
<td>Name of the organisation in own language</td>
<td>RTP, SIC and TVI</td>
</tr>
<tr>
<td>Name of the organisation in English</td>
<td>RTP, SIC and TVI (the three existing digital terrestrial television channels)</td>
</tr>
<tr>
<td>Year the scheme came into force</td>
<td>1997</td>
</tr>
<tr>
<td>Media covered</td>
<td>Television broadcast On-demand audiovisual media service</td>
</tr>
<tr>
<td>Primary focus</td>
<td>Protection of minors</td>
</tr>
<tr>
<td>Specific products covered?</td>
<td>Protection of minors</td>
</tr>
</tbody>
</table>
promotes a conciliatory understanding between the parties or simply pronounces a solution. ERC decisions must be followed by the offenders and their executive directors are personally responsible for implementing the rulings. Both the plaintiff and the offender have the right to appeal to a court of law. The types of sanctions used are indirect in nature, namely naming, shaming and blaming. However, no entity monitors this and the enforcement responsibility is not legally assigned to any official body. No evaluations have been carried out, nor are any planned.

3.24 Romania

Regulatory framework

In Romania statutory regulation of the audiovisual media sector is quite established. The main law regulating both audiovisual commercial communication and the protection of minors in audiovisual media is the Audiovisual Law (2009). The national regulator for the audiovisual sector is the National Audiovisual Council of Romania (CNA). The CNA encourages the sector to adopt self-regulatory measures. The Romanian Advertising Council (RAC) is the independent non-governmental organisation involved in self-regulation of advertising. The CNA and RAC have signed a protocol to be able to discuss complaints and to come to the right decisions in line with legislation.

One of the most important self-regulatory codes in Romania for audiovisual commercial communications is the Romanian Advertising Council’s (RAC) Code of Advertising Practice. This code was introduced to establish a common basis for advertising rules in Romania, promoting good behaviour amongst media companies across the sector. Prior to this code there was no overall standard for advertising regulation and this gap was filled with the RAC Code. The media covered by this code include television broadcasting, as well as cinema, radio, printed material, packaging, online and telephone communications. The code contains general rules of conduct and specific rules for specific aspects or specific products (e.g. alcoholic beverages).

Another relevant code in the Romanian audiovisual landscape is the Deontological Code or Cod Deontologic, developed by the Romanian Associations for Audiovisual Communications (ARCA). ARCA represents the private sector for Romanian broadcasting companies and its code deals with television and radio broadcasting. The code covers the content of the programmes broadcast and does not focus on commercial communications. The aim behind developing this code was to further supplement the Audiovisual Law with more specific clauses and stipulations regarding broadcasting practices, so as to provide additional guidance to broadcasters.
**Schemes**

<table>
<thead>
<tr>
<th>Country</th>
<th>Romania</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Code name ENG</strong></td>
<td>The Code of Advertising Practice</td>
</tr>
<tr>
<td><strong>Code name</strong></td>
<td>Codul de practica in publicitate</td>
</tr>
<tr>
<td><strong>Name of the organisation in own language</strong></td>
<td>Consiliul Roman pentru Publicitate</td>
</tr>
<tr>
<td><strong>Name of the organisation in English</strong></td>
<td>Romanian Advertising Council (RAC)</td>
</tr>
<tr>
<td><strong>Year the scheme came into force</strong></td>
<td>1999</td>
</tr>
<tr>
<td><strong>Media covered</strong></td>
<td>Television broadcast, Cinema, radio, printed material, packaging, online, social, telephone</td>
</tr>
<tr>
<td><strong>Primary focus</strong></td>
<td>Commercial communication</td>
</tr>
<tr>
<td><strong>Specific products covered?</strong></td>
<td>Beer, alcohol, food, food supplements, cosmetics, food and drink products high in fat or salt or sugar for children</td>
</tr>
</tbody>
</table>

**General description of the scheme**

The Romanian Advertising Council (RAC) and its 70 members took the initiative to develop the Code of Advertising Practice. The members encompass most industry sectors in Romania, as well as industry associations and advertising agencies. The RAC Code of Advertising Practice consists of three chapters and is supplemented by Annexes for specific sectors (such as for alcohol).

The main objectives of the Code are:
- to protect consumers’ interest,
- to protect the general public interest against any negative consequences of communication,
- to ensure the necessary framework for fair competition in the market.

The RAC has an Ethics Committee which is in charge of handling complaints from both consumers and industry members who encounter cases of non-compliance with the RAC Code. The Ethics Committee consists of five members, who have a legal or a marketing background, and are independent of the parties involved in the complaint. Sanctions for non-compliance with the Code range from naming and shaming to membership exclusion.

Monitoring is not formally conducted, although RAC members do provide feedback regarding areas of improvement for the Code. The recommendations are approved by the General Assembly before being integrated into the Code by the Technical Committee. The evaluation of the Code is carried out through the improvement process used for the Code. This is conducted every two years, and consists of the analysis of the complaints received, and a review of RAC members’ comments and suggestions. However, the impact of the Code is not formally assessed through systematic evaluations.
### General description of the scheme

The Romanian Association for Audiovisual Communications (ARCA) and its members developed the Deontological Code. The goal of the Code was to add more specific rules to what was already established in the national legislation (the law, Penal Code and Civil Code), so as to be able to deal with specific issues more efficiently. During the conception of the Deontological Code, all existing national legislation on broadcasting was taken into account. Furthermore, the Code was created to provide additional rules for more ethical broadcasting in Romania, and does not duplicate existing legislation.

Informally, compliance is monitored through the fact that the Code is promoted on the broadcasters’ website, which means that the broadcaster must adhere to it. This is especially true for broadcasters who are ARCA members. However, the extent of actual practical compliance with the rules of the Code cannot be established as there is no formal monitoring system in place. The performance of the Code therefore cannot be judged systematically. ARCA has no legal power to sanction offences against the Code and regarding a possible breach of the Code.

### 3.25 Slovak Republic

#### Regulatory framework

Slovakian advertising market has been self-regulating since 1995 by means of the Slovak Advertising Standards Council, which was established by clients, advertising agencies, and the media for the purpose of enforcing self-regulation of advertising. Through their membership with the Council, members commit voluntarily to the Ethics Code of Advertising Practice. Non-members have the chance to voluntarily adhere to this Code in an informal manner.

The Slovakian legislative framework for commercial communication practices consists of various laws, such as the Act on Advertising, the Act on Consumer Protection, and the Civil Code. The governmental legislation on audiovisual commercial communications is regarded as limited however, as the Act on Advertising only restricts advertising in the required scope, so that advertisements are not in conflict with the constitution or any other legislation. For the protection of minors, the European Parliament and Council Guideline 2010/13 was implemented during the Amendment of the Slovakian Act on Television and Radio Broadcasting. The Act
stipulates restrictions on audiovisual advertising messages in order to prevent the physical or moral endangerment of minors, such as the prohibition of advertisements for alcoholic beverages.

**Schemes**

<table>
<thead>
<tr>
<th>Country</th>
<th>Slovakia</th>
</tr>
</thead>
<tbody>
<tr>
<td>Code name ENG</td>
<td>The Ethics Code of Advertising Practice</td>
</tr>
<tr>
<td>Code name NATIONAL</td>
<td>Etický kodex reklamnej praxe</td>
</tr>
<tr>
<td>Name of the organisation in own language</td>
<td>Rada pre reklamu (RPR)</td>
</tr>
<tr>
<td>Name of the organisation in English</td>
<td>The Slovak Advertising Standards Council</td>
</tr>
<tr>
<td>Year the scheme came into force</td>
<td>1995</td>
</tr>
<tr>
<td>Media covered</td>
<td>Television broadcast</td>
</tr>
<tr>
<td></td>
<td>On-demand audiovisual media service</td>
</tr>
<tr>
<td></td>
<td>All other media</td>
</tr>
<tr>
<td>Primary focus</td>
<td>Commercial communication</td>
</tr>
<tr>
<td>Specific products covered?</td>
<td></td>
</tr>
</tbody>
</table>

**General description of the scheme**
The Ethics Code of Advertising Practice was developed by public authorities, enterprises, trade organisations and other interest groups. The Slovak Advertising Standards Council’s primary goal is to maintain the ethics of promotion and advertising in particular. For the purpose of achieving this goal the Code of Ethics for advertising was implemented. The culture of evaluation in the Slovak Republic is at a very low level. Therefore, there is no monitoring mechanism or evaluation system in place. The Council’s main function is dealing with external complaints concerning the non-compliance of advertisements with the Code of Ethics. The Slovak Advertising Standards Council is only authorised to initiate a decision-making process in compliance with the Rules of Procedure of the Slovak Advertising Standards Council. The sanction used in cases of non-compliance is faming, shaming and blaming. If there is a violation, the case can be handed over to legal action.

**3.26 Slovenia**

**Regulatory framework**
Before 2000 the area of advertising in Slovenia was mostly self-regulated. After joining the EU, the legal regulation increased due to the need to transpose EU legal acts into national legislation. The main acts in the area of commercial communication (also incorporating the protection of minors) are: the Mass Media Act (2006, amended in 2011), the Audiovisual Media Services Act (2011), the Digital Broadcasting Act (2007, amended in 2014), and the Radiotelevizija Slovenija Act (2005, amended last in 2014). Self-regulation in advertising was also upgraded through the Slovenian Code of Advertising Practice (SCAP, 2009), following the first general advertising code adopted in 1994. The SCAP was developed by the National Code Task Force, coordinated by the Slovenian Advertising Chamber (SOZ), and involved governmental bodies and NGO’s.
The self-regulatory SCAP complements national legislation and regulates the whole advertising space, including commercial communications and the protection of minors. It is a voluntarily adopted document. Next to the SCAP, the National RTV Code (adopted in 2000 by the national Radio and Television Company) offers a code of conduct for the national public broadcast company as a whole, introducing ethical criteria for advertisements. In Slovenia private TV broadcasting providers and on-demand service TV providers must adopt their own internal codes of advertising which do not conflict with the relevant laws or the Advertising Code. All the aforementioned laws and codes focus on commercial communication practices and also incorporate the protection of minors (although there are no schemes established exclusively for the protection of minors in audiovisual media).

**Schemes**

<table>
<thead>
<tr>
<th>Country</th>
<th>Slovenia</th>
</tr>
</thead>
<tbody>
<tr>
<td>Code name ENG</td>
<td>Slovenian Code of Advertising Practice (SCAP).</td>
</tr>
<tr>
<td>Code name NATIONAL</td>
<td>Slovenski oglaševalski kodeks</td>
</tr>
<tr>
<td>Name of the organisation in own language</td>
<td>Slovenska oglaševalska zbornica - SOZ</td>
</tr>
<tr>
<td>Name of the organisation in English</td>
<td>The Slovenian Chamber of Advertising.</td>
</tr>
<tr>
<td>Year the scheme came into force</td>
<td>2009</td>
</tr>
<tr>
<td>Media covered</td>
<td>Television broadcast On-demand audiovisual media service All other media</td>
</tr>
<tr>
<td>Primary focus</td>
<td>Commercial communication</td>
</tr>
<tr>
<td>Specific products covered?</td>
<td>The Code explicitly mentions alcoholic beverages, tobacco and tobacco products, medical products and devices, food and non-alcoholic beverages, health and beauty products and motor vehicles. Services are represented by gambling and games of chance. The Code also mentions political advertising.</td>
</tr>
</tbody>
</table>

**General description of the scheme**

The Slovenian Code of Advertising Practice (SCAP) was developed by the Code Task Force, an ad-hoc group, which was coordinated by the Slovenian Advertising Chamber (SOZ). The objective of the Code is ensuring that advertising:
- is unlimited in its constructive creative freedom within the boundaries of the protected rights of third parties,
- follows the moral and principles of honesty and fairness,
- is responsible to individuals, groups and the society as a whole, with special attention given to the characteristics of highly vulnerable groups (e.g. children and minors),
- respects the fundamental principles of fair competition,
- is aesthetic in its form of presentation and conforms to the requirements of the cultural environment,
- is to the least possible extent additionally regulated by mandatory provisions adopted by public authorities,
- is respectful towards the Slovenian language.
The achievement of the Code objectives is not monitored systematically. The SOZ itself has no financial and human resources available to carry out systematic monitoring. The Code is partially monitored by the Slovenian Consumers Association. The same holds true regarding evaluation. However, the SOZ collects comments from its members, follows the legislation, and monitors the implementation of the Code through the work of the Advertising Arbitration Court. Disputes between actors involved in the Slovenian Code of Advertising Practice are addressed by the Advertising Arbitration Court. The Court rules on complaints concerning compliance of published advertisements with the Code and imposes measures in accordance with its Rules of procedure. Sanctions used are faming, shaming and blaming, judicial sanctions and public appeal to withdraw or suspend the advertisement. The Advertising Arbitration Court has no legislative power and therefore, its decisions have no legal consequences.

3.27 Spain

Regulatory framework

The practice of self- and co-regulation in Spain is well established. The main laws affecting commercial communications in Spain are the General Law on Advertising (approved in 1988 and regularly updated), the Spanish General Law of Audiovisual Communication (which was revised in 2012 to enable a more flexible management of audiovisual communication of public services at autonomous level), and the Law on Unfair Competition (amended in 2009) which modifies the legal regime of unfair competition and advertising to improve consumers’ and users’ protection. The last two laws both encourage the development of self-regulation systems by securing the right for service providers to establish free self-regulatory schemes.

All three of the aforementioned laws thus regulate commercial communication in Spain. The Spanish General Law was enforced to unify previously uncoordinated legislation and to adapt regulations to the latest changes in the audiovisual communication field which did not have a clear legal framework. The law includes for example, the adaptation of audiovisual communications content to constitutional rights with a strong focus on children and people with disabilities. The protection of minors is also incorporated in this law.

Furthermore, several self-regulation codes are in place for regulating commercial communications and the protection of minors. For example, the AUTOCONTROL Advertising Code of Conduct regulates commercial communications, and includes several sectoral codes (i.a. Code of Co-Regulation of Food and Beverage Advertising Directed at Children, Prevention of Obesity and Health, also known as the Paos Code). Additionally, with regard to the protection of minors, there is the Code of self-regulation for audiovisual contents and minors.
### Schemes

<table>
<thead>
<tr>
<th>Country</th>
<th>Spain</th>
</tr>
</thead>
<tbody>
<tr>
<td>Code name ENG</td>
<td>AUTOCONTROL Advertising Code of Conduct</td>
</tr>
<tr>
<td>Code name NATIONAL</td>
<td>Código De Conducta Publicitaria de AUTOCONTROL</td>
</tr>
</tbody>
</table>
10. Advertising on medicines for the general public: Code of Ethics for the promotion and advertising of drugs authorised without medical prescription not financed by the National Health System and other products for health self-care from the Association for Health Self-care (ANEPF - Asociación para el Autocuidado de la Salud) (2007).


<table>
<thead>
<tr>
<th>Name of the organisation in own language</th>
<th>Asociación para la Autorregulación de la Comunicación Comercial (AUTOCONTROL)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of the organisation in English</td>
<td>Spanish Association for Self-regulation of Commercial Communication (AUTOCONTROL)</td>
</tr>
<tr>
<td>Year the scheme came into force</td>
<td>1996</td>
</tr>
<tr>
<td>Media covered</td>
<td>Television broadcast, On-demand audiovisual media service, All media that deal with advertising</td>
</tr>
<tr>
<td>Primary focus</td>
<td>Commercial communication</td>
</tr>
<tr>
<td>Specific products covered</td>
<td>Code for Advertising Practice (General Code). There are 26 agreements with public authorities, 14 agreements with sectoral organisations and 16 sectoral codes for specific products (see above).</td>
</tr>
</tbody>
</table>
General description of the scheme
The code was developed in 1996 by AUTOCONTROL, the Spanish advertising self-regulation organisation. The main objective of Spanish Advertising Code of Conduct is to establish the ethical rules that apply to all advertising communication activities, making all advertisement activities shown in Spain legal, honest, fair and truthful. The Code constitutes a general advertising code of conduct, with some 26 sub-agreements and 14 sectoral agreements. The objectives do not include targets, and no indicators were defined to measure and monitor the performance of the Code. The institution responsible for monitoring the Advertising Code of Conduct is AUTOCONTROL itself. There are three main tools for carrying out the monitoring process: voluntary prior control based on the issuing of Copy Advice, the complaints resolution system and ruling of the Advertising Jury, and the sample based monitoring activities where all advertisements in a given sector or during a given period are checked. The Advertising Jury is an independent body in charge of solving complaints submitted on advertising issues. Its decisions are binding for AUTOCONTROL members. The main sanction applied by the Advertising Jury in relation to the Spanish Advertising Code of Conduct is “name and shame”, which consists basically of making the resolution public (thus having a negative impact on the advertiser’s image).

The Monitoring Commission of the Code holds an annual meeting and they revise the Code and decide if it is necessary to introduce modifications or adjustments. The monitoring and evaluation systems in place are considered to be highly effective in achieving the scheme’s objectives. This is justified by the fact that there is a very high participation in voluntary pre-launch control services (requests for Copy Advice), which facilitates the application of the Code and existing legislation, reducing the number of complaints and sanctions.

<table>
<thead>
<tr>
<th>Country</th>
<th>Spain</th>
</tr>
</thead>
<tbody>
<tr>
<td>Code name ENG</td>
<td>Code of self-regulation for audiovisual contents and minors</td>
</tr>
<tr>
<td>Code name NATIONAL</td>
<td>Codigo de Autorregulacion de contenidos televisivos e infancia</td>
</tr>
<tr>
<td>Name of the organisation in own language</td>
<td>Principales cadenas de televisión españolas</td>
</tr>
<tr>
<td>Name of the organisation in English</td>
<td>The main Spanish television networks</td>
</tr>
<tr>
<td>Year the scheme came into force</td>
<td>2005</td>
</tr>
<tr>
<td>Media covered</td>
<td>Television broadcast</td>
</tr>
<tr>
<td>Primary focus</td>
<td>Protection of minors</td>
</tr>
<tr>
<td>Specific products covered</td>
<td></td>
</tr>
</tbody>
</table>

General description of the scheme
The scheme was initiated by the Ministry of Industry, Tourism and Trade with four major television networks. The development of the scheme involved public authorities, industries, consumers and civil society groups. The scheme lists a series of objectives and rules which it wishes to implement in the sector. However, there are no operationalised objectives provided. There are two monitoring organisations. The first is the Self-Regulation Committee (SRC) consisting of representatives from television networks. This body receives complaints from consumers and members alike and
makes a ruling on the complaint. The second is the Joint Monitoring Commission (JMC) which then checks the complaint and ruling made by the SRC and in case of a breach, contacts the SRC. The JMC also has the mandate to approach operators where the breaches regarding the content or timing persist. The monitoring mechanism for the Code keeps track of how many complaints are received, what the cause was, and how these were resolved. The first response of the SRC and JMR is to engage in a dialogue with the non-compliant party to remedy the breach. When this does not work, sanctions in the form of public fines are implemented. These are enshrined in the General Law on Audiovisual Communication and are enforced by the public authority. Evaluations are carried out on the number of complaints received; the evaluation does not appear to cover progress of the scheme achieving its policy goals.

### 3.28 Sweden

**Regulatory framework**

A broad legal framework is in place in Sweden, where the main law concerning commercial communications is the Radio and Television Act (2010), which implements the AVMS Directive. The Swedish Broadcasting Authority enforces the regulations set for commercial actors broadcasting from Sweden (local cable organisations in Sweden are not allowed to broadcast any audiovisual commercial communications besides their own future broadcasts). The Radio and Television Act also regulates the protection of minors. The public Swedish Consumer Agency which is led by the Consumer Ombudsman, is responsible for monitoring the content of advertisements on television and on-demand TV, and carries out the regulation regarding advertisements directed at children. The legal framework incorporates various requirements regarding the protection of minors through audiovisual media services. In Sweden audiovisual commercials aimed at children below the age of 12 are completely forbidden by law, while advertisements for alcoholic beverages and tobacco products are not allowed in television broadcast or on-demand TV. There are also far-reaching legal requirements set for public broadcasting of movies (such as cinema broadcasts).

The Swedish government thus strongly regulates audiovisual commercial communications and consequently also the protection of minors. The Swedish Advertising Ombudsman is an industry self-regulatory organisation set-up to monitor commercial communications as a supplement to the existing legal regulations.

**Schemes**

<table>
<thead>
<tr>
<th>Country</th>
<th>Sweden</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Code name ENG</strong></td>
<td>The Swedish Advertising Ombudsman</td>
</tr>
<tr>
<td><strong>Code name NATIONAL</strong></td>
<td>Reklamombudsmannen (RO)</td>
</tr>
<tr>
<td>Name of the organisation in own language</td>
<td>Reklamombudsmannen</td>
</tr>
<tr>
<td>Name of the organisation in English</td>
<td>The Swedish Advertising Ombudsman</td>
</tr>
<tr>
<td>Year the scheme came into force</td>
<td>2009</td>
</tr>
</tbody>
</table>
| Media covered | Television broadcast  
On-demand audiovisual media service  
All types of media are covered |
Primary focus: Commercial communication

Specific products covered?

---

**General description of the scheme**

Public authorities, trade organisation, consumers’ organisations and enterprises were involved in the development of the scheme. The objectives of the Swedish Advertising Ombudsman, the Reklamombudsmannen (RO), are:

- provide the general population, businesses, authorities and other organisations information and guidance in ethical questions regarding marketing,
- provide copy advice to the funders of the foundation,
- partake in public debates and information events which regard ethics in marketing,
- in obvious cases judge if a marketing practice is compatible with the rules of RO,
- in all other cases refer complaints to the RO jury for review,
- make presentations of cases for the RO jury.

There is no formal monitoring system in place to examine the progress of the scheme. Moreover, there has not been any formal evaluation yet. There are only annual reports for the RO’s activities. When a complaint is received, a judgement is made on whether it is well founded. If this is the case, the advertiser in question is approached for comment by the RO and the Jury must decide on the appropriateness of the advertiser’s response. If the non-compliant behaviour is not remedied, the Jury makes a decision. In each scenario, all parties are informed and decisions are made public.

Faming, shaming and blaming is the type of enforcement used.

3.29 **United Kingdom**

**Regulatory framework**

The regulation of commercial communication and the protection of minors in audiovisual and on-demand media in the UK are carried out through a system of statutory as well as self- and co-regulation.

Generally speaking, the regulation of commercial communication is under the direct responsibility of the Advertising Standards Authority, which under the provisions of the Communications Act (2003), is given regulatory powers by the state regulator – the Office of Communication (Ofcom). On the one hand, the Advertising Standards Authority for Broadcast (ASA (B)) and the Broadcast Committee of Advertising Practices (BCAP) are the two main bodies responsible for broadcast advertising regulation, which is implemented through the BCAP Code. On the other hand, the Advertising Standards Authority (ASA) and the Committee of Advertising Practice (CAP) are in charge of regulating commercial communication in on-demand ‘TV-like’ media through the CAP code. The two Committees are responsible for writing the codes, while the ASA has enforcement powers. Both the CAP and the BCAP Codes (the Advertising Codes) contain sections specifically related to the protection of children, as well as to food, alcohol, e-cigarettes, etc. The protection of minors from inappropriate audiovisual content in the UK is regulated through several schemes that can be described as both statutory and self- or co-regulatory.

Broadcast content (television and radio) follows the Broadcasting Code and is enforced by the Office of Communication (Ofcom). All licensed broadcasters must comply with the rules laid down in the Code which aim to assure the protection of under-eighteens.
**Schemes**

<table>
<thead>
<tr>
<th>Country</th>
<th>United Kingdom</th>
</tr>
</thead>
<tbody>
<tr>
<td>Code name ENG</td>
<td>Broadcast Committee of Advertising Practice Code (BCAP Code)</td>
</tr>
<tr>
<td>Code name NATIONAL</td>
<td>Broadcast Committee of Advertising Practice Code (BCAP Code)</td>
</tr>
<tr>
<td>Name of the organisation in own language</td>
<td>Advertising Standards Authority (ASA)</td>
</tr>
<tr>
<td>Name of the organisation in English</td>
<td>Advertising Standards Authority (ASA)</td>
</tr>
<tr>
<td>Year the scheme came into force</td>
<td>2004</td>
</tr>
<tr>
<td>Media covered</td>
<td>Television broadcast Radio broadcast</td>
</tr>
<tr>
<td>Primary focus</td>
<td>Commercial communication</td>
</tr>
<tr>
<td>Specific products covered?</td>
<td>Alcohol, Food, Medicine, E-cigarettes, Gambling, etc. (including advertising of those products to under 18s)</td>
</tr>
</tbody>
</table>

**General description of the scheme**

The regulator, the Office of Communications (Ofcom), together with the SRO, the Advertising Standards Authority (ASA), were the main initiators for the establishment of the Broadcast Committee of Advertising Practice Code (BCAP Code). The principles of the BCAP Code are that advertisements should not mislead or cause serious or widespread offence or harm, especially to children or the vulnerable. The ASA has seven core objectives which are taken as more concrete objectives for the ASA Advertising Codes, including the BCAP Code:

- make every UK ad ‘a responsible ad’,
- protect the vulnerable, particularly children, from inappropriate offensive, harmful or misleading advertising,
- continue to implement the strategy Having More Impact: Being More Proactive,
- improve management and empower and equip employees,
- increase awareness of, and confidence, the ASA,
- help industry comply with the Advertising codes,
- begin to implement and update IT strategy.

ASA and Ofcom have a shared responsibility to monitor the performance of the BCAP Code. In order for Ofcom to monitor the system, ASA reports regularly on pre-agreed Key Performance Indicators. Moreover, a major evaluation by Ofcom is conducted every 10 years. In addition, ASA also conducts its own reviews on the effectiveness of the scheme. Complaints are generally handled by ASA. It has produced a set of procedures governing the handling and resolution of complaints. With a few exceptions, the procedures for internal and external complaints are almost the same. The ASA is a non-statutory body and as such, it cannot impose fines. Nevertheless, this does not appear to be affecting the effectiveness of the rules’ enforcement by the SRO. If broadcasters are repeatedly found to be in breach of the Code, broadcasters can be referred to Ofcom by the ASA. The latter, could in turn impose fines and even withdraw their licence to broadcast.
<table>
<thead>
<tr>
<th>Country</th>
<th>United Kingdom</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Code name ENG</strong></td>
<td>The Committee of Advertising Practice Code (CAP code)</td>
</tr>
<tr>
<td><strong>Code name NATIONAL</strong></td>
<td>The Committee of Advertising Practice Code (CAP code)</td>
</tr>
<tr>
<td>Name of the organisation in own language</td>
<td>Advertising Standards Authority (ASA)</td>
</tr>
<tr>
<td>Name of the organisation in English</td>
<td>Advertising Standards Authority (ASA)</td>
</tr>
<tr>
<td>Year the scheme came into force</td>
<td>1961; 2011 (extended online remit)</td>
</tr>
<tr>
<td>Media covered</td>
<td>On-demand audiovisual media service Non-broadcast media (e.g. print and cinema)</td>
</tr>
<tr>
<td>Primary focus</td>
<td>Commercial communication</td>
</tr>
<tr>
<td>Specific products covered?</td>
<td>Alcohol, Food, Medicine, E-cigarettes, Gambling, etc. (including advertising of those products to under 18s)</td>
</tr>
</tbody>
</table>

**General description of the scheme**

The statutory regulator, the Office of Communications (Ofcom), together with the SRO of advertising communication, the Advertising Standards Authority (ASA), were the main initiators for the establishment of the Committee of Advertising Practice Code (CAP Code). The seven core objectives of the ASA are:

- make every UK ad ‘a responsible ad’,
- protect the vulnerable, particularly children, from inappropriate offensive, harmful or misleading advertising,
- continue to implement the strategy Having More Impact: Being More Proactive,
- improve management and empower and equip employees,
- increase awareness of, and confidence in, the ASA,
- help industry comply with the Advertising codes,
- begin to implement and update IT strategy.

Apart from the frequent reviews aiming to assess the goodness of fit of the scheme undertaken by Ofcom approximately every two years, the ASA reports on its performance indicators on a quarterly basis. In addition, the ASA and CAP publish an annual statement about the progress being made towards achieving its objectives and targets. Complaints are generally handled by the ASA, which has produced a set of specific procedures governing the process. With a few exceptions, the procedures for internal and external complaints are almost the same. The ASA Council serves as an independent jury that is solely responsible for deciding if the Advertising Codes have been breached. There are several CAP sanctions, which can be employed in different circumstance: issue alerts to its members to withhold access to advertising, withdraw trading privileges and pre-vetting of marketing materials. As a measure of last resort, ASA can refer cases for further sanctions to Trading Standards or Ofcom.
4 Analysis

4.1 Introduction

Besides creating an overview of the self- and co-regulatory schemes in place in EU Member States, this study also has the objective of assessing these schemes. The goal of the assessment is to establish the effectiveness and the level of stakeholder acceptance using the Principles for Better Self- and Co-Regulation and additional enforcement stage criteria. As described in chapter 2, the first group of principles refer to the conception phase. These principles include: participants, openness, good faith, objectives and legal compliance. The second group focusses on the implementation phase and these principles include: iterative improvements, monitoring, resolving disagreements and financing. For each self- or co-regulatory scheme identified for this study, an assessment was carried out by applying these principles and the enforcement stage criteria. The assessment for each scheme is presented in Appendix 1.

The chapter presents a criterion based analysis on how these principles are applied in practice in the self- and co-regulatory schemes identified. This is followed by a discussion of the additional enforcement stage criteria and how these are applied in practice. Common approaches and interesting or particularly effective approaches to implementing each criterion are provided in the analysis as well. The latter part of this chapter, presents four best practice cases.

4.2 Criterion based analysis

4.2.1 Conception

Participants
Principles for Better Self- and Co- Regulation definition:
Except in cases where the competitive nature of an initiative makes this inappropriate, participants should represent as many as possible of potential useful actors in the field concerned, notably those having capacity to contribute to success.

The definition of this criterion indicates that as many useful stakeholders should be involved in the conception of a self- or co-regulatory scheme as possible. This means that in practice, for schemes developed in the context of the AVMS Directive, stakeholders from media and broadcasting companies, and advertising industries should ideally be represented, along with public authorities, regulators, civil society, and consumer protection groups. Where specific products or sectors receive extra focus within a regulatory scheme, actors from these sectors should naturally be represented too so that all relevant stakeholders are involved. Concerning the protection of minors from harmful audiovisual content, the presence of consumer or civil society groups are considered to be especially relevant.

A number of the self-and co-regulatory schemes identified have already been in place for decades. In these cases establishing how they were conceived proved to be problematic. Current representatives of the code owners and stakeholders do not remember which actors were involved in the conception phase of the scheme. In these cases, the stakeholders’ involvement in the other aspects of the scheme, such as their role in iterative and improvement processes, are considered instead (see next section on the Implementation phase).
In addition, it should be noted that assessing and analysing the criteria participants, openness and good faith, separately is somewhat complicated as these criteria are closely related to one another. The activities taken to reach these criteria are overlapping.

The data collected for this study demonstrate that in most cases, the relevant private business sector was well represented in the conception phase. Media and broadcasting companies and advertising companies alike were almost always involved, with regulators being present in many cases as well. However, the findings show that consumer groups and civil society organisations were often not represented in the conception phase.

An example of a scheme in which also consumers groups and civil society organisations are included in the conception phase is found in Bulgaria. In the *National Ethics Rules For Advertising And Commercial Communication In Bulgaria*, an open approach was adopted towards developing the scheme. The code was developed in 2009 based on the ICC Consolidated Code of Advertising and Marketing Practices. It took the specifics of the advertising industry in Bulgaria into account, as well as recommendations from advertisers, advertising agencies, and media service providers. In 2009 the code was presented to relevant business associations – employers’ organisations, and branch associations. The content of the code was consulted on with all relevant state authorities, including the Council of Electronic Media (CEM) and the State Agency for Child Protection (SACP). Meetings and public events for the presentation of the code were also carried out, including meetings with and presentations to a specialised Parliament committee, and the Commission for Consumer Protection. A media campaign was also carried out and all relevant documents were available on the internet site of the NCSR. These activities together reflect the inclusion of all relevant stakeholders in developing the code for the Bulgarian context.

In the *Romanian Code of Advertising Practice* (the *Codul de practica in publicitate*) several product codes have been developed within the general advertising code. As such, representatives from most of the relevant business sectors in Romania, such as alcohol, food, cosmetics or telephone companies, as well as industry associations and advertising agencies, were all involved in the development of the scheme. This assured a sufficient level of stakeholder representation and contributed to the successful development of the code.

**Openness**

*Principles for Better Self- and Co- Regulation definition:*

- **Envisaged actions should be prepared openly.**
- **The preparatory phase should include the involvement of any interested parties:**
  - public authorities, enterprises, legislators, regulators and civil society. **Public authorities should be ready to convene, moderate or observe, as most helps the process and is deemed appropriate.**
- **The initial blueprint, or “concept agreement”, for any action should be multi-stakeholder and developed in a concerted and collaborative way involving open exchange between interested parties.** (some text omitted from overview).

The definition for “openness” suggests an open and transparent approach to developing a self- or co-regulatory scheme. All relevant stakeholders should be involved and the scheme developed should be reached in a collaborative manner with these stakeholders. In practice for this study, indications of an open approach to
developing a self- or co-regulatory scheme include having documents readily available for the different stakeholders involved. Besides information sharing and provision amongst stakeholders, stakeholders who wish to be involved should be able to access the negotiations for a scheme’s development for the development process to be considered open.

In a significant number of schemes, the industry stakeholders took the initiative to develop a self- or co-regulatory scheme, meaning that the rule of the scheme were developed by those actors which would have to follow them.

In some cases schemes were based on the ICC Consolidated Code for Advertising and Marketing Practices. As such, the existing principles from the ICC Code were used as a basis and tailored to the national context in a given Member State. Therefore there was less room for an extended development process for self- or co-regulatory schemes when these were based on the ICC Code.

As was mentioned under the criterion 'participants' other relevant stakeholders are often consulted and informed on the developments of the scheme. There were rarely cases identified in which the relevant stakeholders felt excluded or that information was being withheld (for whatever reason) during the development stage. While the final form of the self- or co-regulatory scheme was usually available online or at least to signatories of a scheme, documentation on the development process was rarely available.

In some cases the scheme owners organised workshops, meetings and public events to further include a broad variety of stakeholders. Such measures seek to involve both the industry, the relevant stakeholders as well as other interested parties, thus contributing to the openness regarding the conception of a self- or co-regulatory scheme. As described, this was the case for example in the National Ethics Rules For Advertising And Commercial Communication In Bulgaria.

During the development of the Hungarian Code for Advertising (Magyar Reklámetikai Kódex), besides the involvement of industry member associations in the development of the code, the Advertising Self-Regulatory Board was in constant consultation with the sector and the public through the organisation of events, workshops, presentations.

**Good Faith**

Principles for Better Self- and Co- Regulation definition:

- **Participants of different sizes and types have different contributing capacities.** The different capabilities of participants, including the situation of SMEs, and smaller non-profit organisations, should be taken into account when designing the envisaged action.
- **Participants should bring to the preparatory process all information available to them that can contribute to a full analysis of the situation.** Similarly, in launching an action, participants should ensure that their activities outside the action's scope are coherent with the aim of the action.
- **Both in developing and in executing self- and co-regulatory actions, participants are expected to commit real effort to success.** They retain the possibility to withdraw, should the action fail to reach the agreed objectives.

Good faith as a criterion is based on the idea that stakeholders involved in the development process represent all relevant organisations, including small ones, and
that these stakeholders make real efforts to commit to the development and the execution process. The requirement that participants are expected to commit real effort to success to both the development and implementation is a relative statement and quite broad. In practice, discovering whether real effort or commitment was made by the participants involved was somewhat difficult to establish as the exact capacities of each stakeholder involved was often not known.

However, in general, as concluded for the two previous criteria, 'participants' and 'openness', the necessity to involve all relevant stakeholders is generally recognised in the development of schemes. In addition, there were almost no indications that stakeholders involved felt disrespected or not taken seriously.

**Objectives**

Principles for Better Self- and Co- Regulation definition: *The objectives of the action should be set out clearly and unambiguously. They should start from well-defined baselines, both for the issue on which change is being pursued and for the commitments that participants have made. They should include targets and indicators allowing an evaluation of the impact of the action undertaken.*

Concrete and unambiguous objectives, operationalised for monitoring and evaluation are rarely in place. This is not to say that no objectives are stated in the self- and co-regulatory schemes, but rather that in most cases a general policy goal or objective is set. In some cases, this general goal is the code owner’s organisational aim. In the cases where more specific objectives are in place these often have the form of rules or guidelines for behaviour.

The objectives criterion also states that indicators and targets should be defined for the objectives to be used in evaluating the scheme. In the vast majority of the self- and co-regulatory schemes, no indicators and targets are specifically established for monitoring and evaluating the scheme objectives. According to the Principles for Better Self- and Co-Regulation this then suggests that the vast majority of the self- and co-regulatory schemes do not fulfil the "objectives" criterion.

In most cases, the scheme owners indicate that the complaints system is used for monitoring. Complaints are often taken as the main indicator for the achievement of a scheme’s objective(s). Though the link with the achievement of the main objective is not always clear, complaints can provide insight into the general performance of the schemes (see the next section on monitoring).

In very few schemes operationalised objectives, with specifically developed targets and indicators had been developed. For example the *Estonian Code on Responsible commercial communication policy in children’s programmes (Vastutustundlik reklaamipoliitika lastesaadet)* owned by the Estonian Association for Broadcasters (AEB), prohibits members from broadcasting audiovisual commercial communication which encourages children to excessive consumption of food or products which are unsuitable for children, during programmes meant for children. These programmes are defined as programmes where more than 50% of the viewers are less than 12 years old. The target of this scheme is absolute: no commercials of this kind should be broadcast. In this case the objective is also a target in itself.

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25 Though not in the Principles for Better Self- and Co- Regulation, these objectives should be defined according to SMART criteria (Specific Measurable Achievable Realistic Time-dependent).
Good approaches regarding the development of sound objectives were found in the United Kingdom. Though, the ASA uses its organisational objectives as the objectives for the CAP (Committee of Advertising Practice) Code and the BCAP (Broadcasting Committee of Advertising Practice) Code, the ASA also defines both qualitative and quantitative indicators and targets so as to be able to measure the progress being made towards the objectives which were established for the scheme.

**Legal compliance**

**Principles for Better Self- and Co- Regulation definition:**

*Initiatives should be designed in compliance with applicable law and fundamental rights as enshrined in EU and national law. Participants are encouraged to have recourse to existing guidance provided by public authorities. In case of doubts, an assessment clarifying, inter alia, impact and complementarity with the acquis and with the Charter of Fundamental Rights should be conducted.*

Legal compliance according to the definition above was upheld in the vast majority of the schemes identified in this study. In most cases, the national regulatory approach is in compliance with European and national legal frameworks. The majority of the schemes identified were based on or connected with a specific law.

There were no reports of breaches with legal regulations in the schemes identified. In some cases the legal compliance is immediately clear as a law stipulates the creation of a self- or co-regulatory scheme and/or body.

This is the case for instance in the German Voluntary Self-Monitoring Television, *(Freiwillige Selbstkontrolle Fernsehen (FSF)).* The protection of minors in the media is regulated in the Interstate Treaty on the Protection of Minors in the Media *(Jugendmedienschutz-Staatsvertrag: JMStV).* Article 19 of the treaty states that organisations of voluntary self-regulation may be established for broadcast services and for tele-media services. The FSF is an officially recognised self-regulatory organisations.

**4.2.2 Implementation**

**Iterative improvements**

**Principles for Better Self- and Co- Regulation definition:**

*Successful actions will usually aim for a prompt start, with accountability and an iterative process of "learning by doing". A sustained interaction between all participants is required. Unless the action covers a short time-span, annual progress checks should be made, against the chosen objectives and indicators, as well as any available broader background data.*

In practice this criterion means that a self- or co-regulatory scheme should have a systematic process in place for identifying areas for improvement or adjustments to the scheme to achieve the set objectives. The assessment of the need for adjustments should be made with regularity, and preferably on an annual basis. The assessments should be carried out in close cooperation with the relevant participants of the scheme.

Based on the analysis, it appears that a portion of the schemes do not have any systems for iterative improvements in place. A common trend amongst those schemes with a system for making improvements is the use of consumer complaints as an indicator for compliance, as well as for identifying key areas of non-compliance. Those
subjects or issues on which complaints are most often received can serve as indicators for the main problem areas within a scheme.

Other approaches include regular meetings with participants to discuss the performance of the scheme and to establish which areas the scheme is not regulating properly. In some schemes these regular meetings only take place with the members of the self-regulatory body owning the code, sometimes arranged during the annual members’ assembly. In other cases, other stakeholders and non-members are also participating in such meetings. In addition, meetings are organised with thematic groups of stakeholders to discuss improvements on certain parts of the schemes and discuss how specific issues can be remedied.

An important point to note here is that while such discussions take place to identify areas for improvement in a scheme, the schemes assessed in this study show varying levels of formalisation. Although in many cases there were processes for identifying improvements or new areas of focus, these processes are not always carried out systematically or made explicit.

The French self-regulatory scheme draws on a diverse range of information and stakeholder input to assess and adjust the scheme. The Rules of the ARPP (Règles de l’ARPP) form a scheme which regulates advertising. The ARPP is a private self-regulatory body, recognised by the public authorities. The organisation consists of 4 categories of members, namely: advertisers, advertising agencies, media companies, and other relevant members (trade unions, legal offices, associations...), representing more than 1,000 enterprises. This accounts for around 80% of the advertising carried out in France in terms of value. Both the ARPP and the Conseil Paritaire de la Publicité (CPP, the Joint Council for Advertising) can take the initiative to adjust the Rules. The CPP is a forum for dialogue and cooperation between representatives of civil society (consumers associations and environmental associations) and representatives of the advertising industry. The CPP consists of 18 members; 9 professionals and 9 members of associations. In this way through both the ARPP and the CPP, a relatively diverse set of professional and industry interests are involved. As an additional source of information for the organisation, regular surveys are held amongst the public to establish the major societal concerns regarding audiovisual media.

Another scheme that includes a balanced iterative process which considers multiple sources of information is that of the Austrian Advertising Industry Ethics Code (Ethik-Kodex der Werbewirtschaft). In this scheme the reiterative process takes place every three years and is based on an analysis of complaints, a continuous communication with stakeholders, working groups on specific topics, and discussions with members of the code owner, the Advertising Council (Österreichischer Werberat). A meeting with the members is organised twice a year. Since 2007 there have been two major revisions of the Advertising Industry Ethics Code in 2009 and in 2012, as well as some amendments in 2014.

When the code is adapted the interest groups and experts of the respective areas are invited to participate in working groups to discuss the latest developments in specific fields. After gaining input from these interest groups and experts, further internal discussions concerning the applicability of the collected feedback to the advertising industry take place in the Advertising Council and in its member meetings. If relevant, legal experts participate as well. The revised guidelines are then adopted by the members. The final decision regarding the amendments is taken by the Advertising Council.
The United Kingdom adopts an even more encompassing approach in its *BCAP Code* (the Broadcast Committee of Advertising Practice Code). ASA and Ofcom share the responsibility to monitor the performance of the Code. In line with the Memorandum of Understanding (MoU) between Ofcom, the ASA, and the Broadcast Committee of Advertising (BCAP), and Basbof (which manages membership fees for the ASA), monthly meetings take place to discuss the performance of the scheme. Areas for improvement are identified through research, reviews, consultations and surveys. As required by the Memorandum of Understanding customer satisfaction surveys are run every six months, and an annual awareness survey is published in ASA’s annual report.

**Monitoring**

Principles for Better Self- and Co- Regulation definition: *Monitoring must be conducted in a way that is sufficiently open and autonomous to command respect from all interested parties. Each participant shall monitor its performance against the agreed targets and indicators. Monitoring results are shared by each actor for discussion with the participants as a whole, and are made public. A monitoring framework or template will be commonly agreed. The results of the monitoring will be aggregated where possible. This should be done in a way that is transparent and objective.*

Broadly speaking the requirements for this principle are that monitoring is carried out in an open and autonomous manner, to measure the performance of a scheme based on established indicators and targets, within an agreed upon framework. The self- and co-regulatory schemes identified generally do not have a monitoring system in place. There are usually no operationalised objectives with specific indicators and in place for the collected self- and co-regulatory schemes. As is described in the section on the criterion ‘objectives’ above, in most of the schemes monitoring the progress towards achieving a scheme’s objective are rarely monitored systematically.

The only quantitative indicator that is often monitored to assess the performance of the scheme is that of consumer complaints. Using complaints as an indicator can be very useful, but is not enough in itself to base a monitoring system on which adheres to the requirements set out in the Principles above. The use of complaints as an indicator is discussed in more detail in table 7.

In any case, in those schemes where the performance is monitored, the scheme’s progress towards the set objectives, are often not monitored explicitly. As such most monitoring systems in place for the self- and co-regulatory schemes identified do not fulfil all of the requirements for a monitoring system as they are stipulated in the Principles for Better Self and Co Regulation.
Complaints as an indicator

Complaints are often used as an indicator to measure the performance of a self- or co-regulatory scheme. Complaints however form a relatively ambiguous indicator. Low levels of complaints can be seen as an indication that there are low levels of non-compliance with the self- or co-regulatory scheme in place. An increase in complaints however, can be seen as a positive outcome as it might suggest that the public is aware of the existence of the scheme and the possibility to submit a complaint.

Besides this, the nature of the complaints and how they are recorded vary across schemes, meaning that the adequacy of the number of complaints as an indicator can also vary. In most schemes, only well-founded complaints are accepted and reviewed by a judiciary body. It also introduces a bias in the number of complaints received versus the number of complaints resolved. Furthermore, when a claim has been judged and an outcome has been recommended by the judiciary body, this is often taken as to be the resolution of a complaint, with little actual insight as to how satisfied the complainant is with the outcome.

Complaints form an important source of information for monitoring the performance of a scheme. That being said, using complaints to monitor the progress being made towards set scheme objectives to specifically measure the effectiveness of a practice should be done with caution. Other indicators could be used to supplement this element to generate better data for monitoring and evaluating the effectiveness of a scheme.

There were some cases however, where the schemes identified had a sound monitoring system in place. In these cases objectives are present for the scheme, with targets and indicators. These indicators are measured in a systematic manner and reported on. This is the case in for instance, the United Kingdom’s BCAP Code. This is one of the few schemes identified with objectives, targets and indicators in place as well, hence the presence of a more formalised monitoring system as well for the BCAP Code.

For the United Kingdom’s BCAP Code, (the Broadcast Committee of Advertising Practice Code), ASA and Ofcom have shared responsibility to monitor the performance of Code. The monitoring framework is commonly agreed through the Memorandum of Understanding (MoU) between Ofcom, the ASA, and the Broadcast Committee of Advertising (BCAP), and Basbof (which manages membership fees for the ASA). According to the MoU, the effectiveness of the scheme should be assessed based on the scheme’s ability to demonstrate that it is reaching its set targets in relation to broadcast advertising. In order for Ofcom to monitor the system, the ASA and BCAP regularly report on pre-agreed Key Performance Indicators. Performance data is sent to Ofcom on a quarterly basis. To assure the transparency of the process ASA and BCAP publish an annual statement every year in October. The statement sets out ASA’s performance for the past period, as well as its objectives and targets for the forthcoming calendar year. These often go beyond what is required from them under the MoU.

There are other schemes however, which though not entirely in keeping with the requirements set out in the Principle, do have diverse, systematic and thorough monitoring systems. These monitoring systems focus on the performance of the scheme as a whole and do not focus as strongly on the achievement of objectives. Instead a variety of information sources are used to examine the scheme performance.
This is the case for instance in the French ARPP Rules (Règles de l’ARPP). This set of rules includes many sub-codes, including 26 sectoral codes and 9 thematic codes. The monitoring of this rather vast scheme involves a series of different activities. The ARPP monitors the advertising activities of its members and analyses the number of voluntary Copy Advices which advertisers request before disseminating their advertising material. The number of compulsory ex-ante checks for advertisements appearing on television is also checked. The requests and the responses concerning the copy advices are both monitored. The complaints received are also monitored. The ARPP evaluates and keeps record of which complaints are admissible and which are not (they cannot for instance be made anonymously and if crucial information is missing the complaint is dismissed). Whether the complaints are well-founded or not is monitored, whether they were accepted, the chief causes for complaints, and the sectors which complaints refer to are all recorded. There is also a survey system in place where the ARPP sends out surveys at regular intervals to establish the evolution in society’s sensitivity and attention for certain issues. These surveys and their findings act as inputs for adjustments of the ARPP’s codes and the overall assessment of how these codes are performing. The ARPP therefore has a series of indicators in place for monitoring the code, but the connection with monitoring the operational objectives is not clear.

In a similar vein, the Hungarian Code of Advertising Ethics (Magyar Reklámetikai Kódex) does not monitor how the scheme performs in reaching the objective specifically. However, it does regularly set up assessments for compliance of the advertising industry with rules on specific topics related to the code. Every six months the Advertising Self-Regulatory Board determines the topic to be assessed. A sample of advertisements connected to this topic is then collected and the problematic elements in these chosen advertisements is analysed. The report with the results is sent to the National Media and Info-communications Authority. The results and lessons learned are also discussed in workshops with the members. This monitoring system is agreed upon with stakeholders and the results are shared with stakeholders and the public.

**Evaluation**
Principles for Better Self- and Co- Regulation definition:
_Evaluation will allow participants to assess whether the action may be concluded, improved or replaced. The participants regularly and collectively assess performance not only against output commitments, but also as to impact. This should identify any short-fall in expected collective impact, any scope to improve the efficiency or effectiveness of the action, and any other desirable improvements._

Using the definition of the criterion “evaluation” presented above, it becomes clear that in many of the self- and co-regulatory schemes identified, a formal evaluation process was not in place. While annual reports are developed, almost two thirds of the schemes collected had no formal evaluation system in place in line with the requirements for this criterion. Only a few evaluation systems were in place which undertook regular assessments of the scheme, the broader impact of the scheme, as well as its performance, and possible areas for improvement. The fact that such formalised evaluation mechanisms are not common appears to be related in part to the lack of explicit and operationalised objectives with accompanying indicators and targets, as described above.
Furthermore, the lack of a formal monitoring system to measure the progress of a scheme towards its objectives makes conducting formal and regular evaluations difficult. In many schemes, complaints from consumers are used as the main indicator for compliance with a scheme and for assessing the scheme’s effectiveness. This approach appears to have various possible causes. Evaluations in the sense prescribed by the Principles may not be strongly rooted in the culture of a country, or was not part of the regulatory culture when the scheme was first developed. Furthermore, financial means may not be available to conduct a formal evaluation, nor is it always stipulated in code owner rules that an evaluation must be carried out independently by a third party. As such, using complaints to gauge the performance of a scheme is an option, as explained earlier (table 7). However, using complaints as a basis for assessing scheme performance does not constitute an evaluation in the sense prescribed by the Principles for Better Self and Co Regulation.

Schemes which do have more formalised evaluation systems in place include the Hungarian Code of Advertising Ethics (Magyar reklámethikai Kódex), the Romanian Code of Advertising Practice (Codul de practica in publicitate) and the Dutch Advertising Code (Reclame code). Each of these schemes conducts regular evaluations every few years.

Good approaches to conducting evaluations can be found in the UK schemes for the BCAP Code and the CAP Code. For both these schemes the monitoring of the schemes is done regularly. The monitoring provides input for the assessments of how the scheme is performing and as to its broader policy impact. Further good approaches can be found in the Spanish Advertising Code of Conduct which regulates advertisements in Spain and the Belgian Pledge on food advertising. In these schemes third parties are also involved in conducting the evaluation of the scheme. In the case of the Belgian Pledge a component of the evaluation is carried out by a third party, the University of Ghent. In the first quarter of 2010 independent monitoring took place of advertising in primary schools, carried out by Gent University. TV spots were analysed by the organisation “Mindshare” and the JEP analysed websites.

In the case of the PAOS Code, a sub-scheme of the Spanish Advertising Code of Conduct targeting food advertisements aimed at children, AUTONCONTROL produces annual reports of its activities. These reports are then examined by the AUTONCONTROL Monitoring Commission. The Monitoring Commission examines the activities and where relevant identifies new areas for adjustment. The annual reports of AUTONCONTROL also contain information on the nature of the complaints received. As complaints can be submitted by any type of organisation, this entails quite a broad source of complaint types. Besides this, other parties also evaluate the PAOS Code more formally, such as the Spanish Agency of Consumption, Food Safety and Nutrition (AECOSAN) which monitors the advertising aimed at children under 15 on the internet, as well as the compliance of advertisements with the NAOS Strategy.

Resolving disagreements
Principles for Better Self- and Co- Regulation definition:
Disagreements inevitably arise involving either participants or others. As part of the iterative process of improvement, such disputes should receive timely attention, with a view to resolving them. These procedures may be confidential. In addition, complaints by non-participants should be submitted to a panel of independent assessors which consist of majority of non-participants. The outcome of their work is made public. Non-compliance should be subject to a graduated scale of
sanctions, with exclusion included and without prejudice to any consequences of non-compliance under the terms of the Unfair Commercial Practices Directive.

In most of the schemes examined in this study, there is a system for resolving disagreements, specifically a complaints resolution system. Systems for resolving complaints from participants in the scheme are not always present or formalised and therefore do not constitute a fully implemented system for resolving disagreements. In those schemes with more formalised systems for resolving disagreements the basic process for handling complaints was often the same for external (consumer) and internal (participant) complaints. This is the case for instance, in the Code of the Belgian Advertising Council, the National Ethics Rules For Advertising And Commercial Communication In Bulgaria, the Portuguese Agreement on the Representation of Violence on TV (Acordo sobre a Representação da Violência na Televisão), the Slovenian Code of Advertising Ethics (Slovenski oglāševalski kodeks), and the Code of conduct of the German Advertising Standards Council (Verhaltensregeln des Deutschen Werberat). In these cases a consumer or participant can launch a complaint and the same procedure for handling the complaint is followed, regardless of what sort of actor launches the complaint. This similarity in complaints handling processes may to some extent be attributable to the fact that complaints can be made easily with an online form, and that consumers and businesses alike are more aware that the possibility of making complaints exists. A quick search online can usually lead an individual to the appropriate complaints page.

With regards to complaints systems for non-participants of a scheme, where these systems are present, there are adjudicating bodies in place for assessing and ruling on complaints. The composition of these adjudicating bodies is quite varied however. Industry representatives tend to be present in the large majority of these bodies, with varying representation of regulators, legislators, independent experts, consumer, or civil society actors. Those practices which are considered to be good approaches involve independent assessors, the majority of whom are not participants of the scheme. Independent experts or members of civil society or consumer groups should therefore ideally be represented in these adjudicating bodies.

Several self- and co-regulatory schemes have a more balanced composition of stakeholders in their complaint handling bodies. In the case of The Hungarian Code of Advertising Ethics (Magyar Reklámetikai Kódex) a distinction is made between complaints from competitors and complaints from consumers. In both cases, consumers or competitors can fill in an online complaint form on the Advertising Self-Regulatory Self-Regulatory Board’s (Önszabályozó Reklám Testület) homepage. Where participant complaints are concerned, the Board approaches the producer of the advertisement in question and steps are taken to modify the advertisement. In the case of consumers, the complaint is forwarded to the advertiser, but three independent experts relevant to the case are also asked to form their opinion on the case. The Board then makes its decision and takes appropriate steps regarding the advertisement in question.

In the case of the Spanish Code of self-regulation for audiovisual contents and minors (Código de Autorregulación de contenidos televisivos e infancia) complaints can also be made by both consumers and industry members. The system for resolving agreements involves a two tiered approach. The SRC (Self-Regulation Committee) receives and handles complaints and the JMC (Joint Monitoring Commission) analyses these complaints and the rulings made by the SRC. There is a more independent,
second body which checks the complaints handled. Explicit criteria have been established for judging the complaints received as well. The JMC can approach operators in cases of continued breaches of the Code and the CNMC (a public agency) can implement sanctions in the form of fines.

Under the Estonian Responsible commercial communication policy in children’s programmes (Vastutustundlik reklamipoliitika lastesaadetes) scheme, a complaint is handled by a committee consisting of 2 participants of the scheme, and at least one independent expert. They must respond to the complaint within 2 weeks starting from the date of receiving the complaint.

**Financing**

Principles for Better Self- and Co- Regulation definition:

*Participants to the action will provide the means necessary to fulfil the commitments. Public funders or others may in addition support the participation of civil society organisations lacking fully adequate means themselves to play their appropriate role. Such financial support should be made publicly known.*

The level and distribution of financing of self- and co-regulatory schemes is often not publicly available. Several common approaches of financing the schemes exist. For instance, in many cases the membership fees are the main source of financing. This is the case for instance, in the Czech Code of Advertising Practice, the Slovakian Ethics Code of Advertising, and the Swedish Advertising Ombudsman.

In other schemes additional public financial support is available as well. This was found to be in the case in the Italian Code of marketing communication Self-regulation, (Codice di atodisciplina della comunicazione commerciale).

Another source of finance is the (administrative) fees received from the services offered to companies. The provision of a copy advice for an advertisement for instance, can be an extra source of income for a scheme operator, or the classification of a broadcast according to a classification system. The fines to be paid in case of sanctions can also form a source of finance.

In some cases the scheme does not involve high implementation costs and little to no extra financing is needed due to the support of third parties. This is the case for instance, in Finland’s Code of the Council of Ethics in Advertising (Mainonnan eettinen neuvosto (MEN)). The Finnish Chambers of Commerce (Kauppakamarit), holds the secretariat of the Council. In the case of the Italian Code for TV and Minors scheme (Codice TV e Minori), public assistance in terms of staff and offices within the Ministry of Economic Development is provided.

A practice which is considered to be quite effective is the use of member fees for advertisers and participants of the schemes, where the fee is made proportionate to each member based on either the advertiser’s size or as a levy on advertisements. The proportionality element introduces fair contributions from the participants of the scheme. In the Netherlands for instance, the Dutch Advertising Code (Reclame code) adopts a system of proportional fees when advertising, based on the advertiser’s total advertising budget. In the United Kingdom, for both the CAP Code and the BCAP Code a similar approach to financing is adopted; an advertising levy of 0.1% for advertising space costs exists. The Advertising Standards Board of Finance (Asbof), a body
independent of the ASA, collects the fees. This guarantees that the anonymity of the contributors is preserved, which in turn protects the independence of ASA.

4.2.3 Additional enforcement stage criteria

Besides the Principles for Better Self and Co Regulation, several additional enforcement stage criteria were used when assessing the self- and co-regulatory schemes. These criteria include:

- Complaints resolution mechanisms;
- Outcomes of complaints resolution mechanisms;
- Sanctions.

These criteria partly overlap with the Principles which have been discussed above. The understanding of each of these criteria and the information collected in relation to them are presented in the following paragraphs.

Complaints resolution mechanisms

Consumer complaints resolution mechanisms were examined based on several aspects. These include the number of complaints received, their resolution and, ideally, the promptness of the compliance by participants with the decisions made.

The information collected on the self- and co-regulatory schemes show that complaints were not always recorded with the same level of detail by the regulatory body for the scheme in question. In some cases, complaints resolution mechanisms were simply not a priority for the regulatory body to implement more fully. This could be because compliance with the rules in place were generally high and no real need for a complaints resolution system was felt, or because few complaints were received generally regarding the scheme. This was the case for instance in the Belgian Pledge and the Estonian Code for Responsible commercial communication policy in children’s programmes.

For the Belgian Pledge there does not appear to be any complaint system in place for either internal disagreements amongst signatories, nor external complaints from consumers. The code structures advertisements concerning food which are shown amongst others, on television and in schools. The compliance rates are 99.4% for television and 97.5% for schools respectively. Given that there do not appear to be any complaints resolution mechanisms, there are no concrete outcomes listed for complaints resolution mechanisms of this scheme. For the Estonian Code for Responsible commercial communication policy in children’s programmes, the council of the AEB (the representatives of the participants and at least one independent expert) should answer within 2 weeks (starting from the date of receiving the complaint), when receiving a complaint. Beyond this there are no further guidelines on how to handle a complaint, nor does there appear to be any urgency to implement a more detailed system. The reasons for the low number of complaints could be a favourable indication of high compliance with the rules in place, or an indication of low knowledge of the scheme. In any case, there appears to be little impetus to further develop the Estonian complaints resolution system.

In most of the self- and co-regulatory schemes collected, complaints received are recorded and the numbers of complaints resolved are also recorded. In many cases the information regarding complaints did not go into further detail beyond what was received and resolved; information on the sector or product group concerned, the nature or basis of the complaint, and the nature of the outcome or decision was often not recorded.
There were however, some notable exceptions regarding the level of detail recorded concerning complaints received. In the case of the Swedish Advertising Ombudsman (Reklamombudsmannen), the nature of the complaints is recorded as are the outcomes of the complaints. The most common are complaints regarding sexually discriminatory commercial advertisement. In 2014, 664 complaints were received, of which 285 were solved. The complaints system is also detailed enough to indicate that for 2014, the complaints entered do show a skewed reality as many complaints regarded the same commercial.

The Slovenian Code of Advertising Practice (Slovenski oglaševalski kodeks) also records deeper information for its complaints. The most common types of complaints in 2014 and 2015 included complaints filed by legal persons, in most cases competitors (nine complaints), while four complaints were filed by consumers. Most complaints related to misleading advertising, often with elements of direct or indirect comparative advertising. Most complaints concerned advertising of food products, followed by telecommunication services.

In the case of the Dutch Advertising Code (Reclamecode), the Dutch Advertising Code Authority is responsible for the complaint handling (the chairman, the Advertising Code Committee and the Board of Appeal). All decisions of the Advertising Code Committee and the Board of Appeal are accessible by third parties. Most complaints are about subjective norms (animals, religion, etc.). For television and on-demand television the numbers of complaints were 649 in 2012, 497 in 2013, and 576 in 2014.

Having timely responses to submitted complaints is also an important aspect of a complaints resolution system. There is an intuitive appeal in quick complaints resolutions. Research has shown that damage can be done quickly with an inappropriate commercial communication or audiovisual media services bearing harmful content. In the case of advertising campaigns, these tend to last for a few weeks. If complaints resolution takes too long, the time span of the advertising campaign can already have passed by the time a response is taken by the regulatory authority regarding the complaint.

While not every self – or co-regulatory scheme has a complaints resolution system, in those cases where such a system was present, rules on response times varies. Where time limits on rulings are specified, the advocated response time to complaints varies from a matter of days to a matter of months. The time allowed for a complainant to make an appeal against the decision of the adjudicating body, and the time which an advertiser or broadcaster has to adjust the media content also varies.

For instance, in the French ARPP Rules system, consumers can make their complaints to the Jury of Advertising Ethics (Jury de Déontologique Publicitaire (JDP)). The JDP is an independent authority which handles consumer complaints regarding non-compliant advertisements. The JDP receives complaints and, if they are admissible, the JDP examines the complaint. The JDP meets frequently and has sessions were a series of complaints are examined consecutively. The JDP meets several times a month to ensure that complaints are dealt with in less than a month. Most complaints are settled in 10 days and there is a fast-track procedure of 48 hours. The JDP decisions are published and can be tracked.

In the Swedish Advertising Ombudsman (Reklamombudsmannen, RO), a complaint is received and a judgment is made of whether it is well founded. If this is the case, the
advertiser in question is approached for comment by the RO and the RO Jury must decide on appropriateness of the advertiser’s response. If the non-compliant behaviour is not remedied, the jury makes a decision. In each scenario, all parties are informed and decisions are made public. In every scenario an appeal can be made against the decision within 4 weeks.

In the case of the Romanian Code of Advertising Practice, the complainant and the accused parties are both notified once the decision has been made. The accused then has 5 days to implement the decision, and can ask RAC for advice on how to do this, whether they are members or not.

**Outcomes of complaints mechanisms**

This criterion examines the outcomes of the complaints resolution mechanisms. The understanding adopted here centres on the consumer satisfaction with the complaints procedure and whether the procedure contributes to a better overall compliance with the rules of the self- or co-regulatory schemes in place.

It became apparent from the schemes collected that the satisfaction of consumers with the complaints procedure is not often measured specifically. In those cases where the number of complaints received are recorded compared to the number of complaints resolved, the rate of resolution is at times used as an indicator for the outcomes of the complaints resolution mechanism. In a similar vein, in some schemes the number of appeals made against an adjudicating body’s decision were used as an indicator of the outcome of the complaints system and thought to provide insight into the level of consumer satisfaction with the system.

In the case of the Slovenian Code of Advertising Practice (Slovenski oglaševalski kodeks), there is a more detailed system in place for monitoring consumer satisfaction with the complaints handling procedure. The SCAP records the number of complaints received and those which are resolved in a satisfactory manner. Data shows that from the perspective of the complainants the response of the Court is generally satisfactory. This was not always the case and the satisfaction with the decision based on the number of complaints received increased from 30% in 2013 to 65% in 2015.

Another case where the self- or co-regulatory scheme makes a more detailed analysis of satisfaction with complaints made is the Swedish Advertising Ombudsman (Reklamombudsmannen). The number and nature of complaints are collected so that all complaints are read and handled. The Ombudsman writes a personalised answer to every actor who files a complaint with the organisation. Out of the complaints which were admissible, 46% of the resolved cases in 2014 resulted in a “conviction” of the commercial.

An interesting observation here is that though dismissing a consumer’s complaint due to lack of foundation could lead to an unsatisfied feeling, sharing the response of the adjudicating body concerning the complaint can be very useful. By providing both parties involved in a complaint procedure with the reasoning for the decision, both complainant and the organisation being complained against, can understand the reasoning behind the decision. In the case of consumers this means that in many cases, consumers feel heard. As such the practice, also adopted here by the Swedish Advertising Ombudsman, of writing a letter to each complainant, is reported as having a positive effect on consumer satisfaction with the scheme in place.

An important observation regarding complaints and consumer satisfaction is that complaints made are first judged for their suitability. If the complaint does not have a
good foundation, is missing information, or concerns something which does not breach the scheme in place, then no action is taken against and advertiser or broadcaster. From the perception of a consumer this can feel unsatisfactory. When examining statistics on complaints and satisfaction with their resolution, the number of complaints received, those which are accepted, and those which are ultimately resolved should all be borne in mind.

A sub-code of the Code of Belgian Advertising Council is the Belgian Advertisement Code on Food (the FEVIA Code), and this scheme highlights this issue. This code, part of the larger Code of the Belgian Advertising Council and within this scheme, complaints by consumers and enterprises can be submitted via an internet form. After the JEP receives a complaint they will first contact the advertiser who is addressed in the complaint. The JEP offers the advertiser the opportunity to reply to the complaint. Ultimately the JEP will decide if the advertisement must be banned or not. The complaints are not always resolved in a satisfactory manner, but this partially based on the nature of the complaints. Some complaints are not well-justified and therefore the JEP cannot make any comments on the complaint so that the complaint cannot be resolved.

**Sanctions**

For this criterion, the presence and nature of sanctions and their enforcement are examined. Graduated sanctions which maintain an element of proportionality with the breach in compliance are usually considered to be effective in enforcing a scheme. However, the nature of sanctions which are deemed appropriate by the industry and civil communities are quite culturally determined. Previous research demonstrates that the threshold of acceptability of different types and levels of sanctions must be borne in mind, the element of proportionality is important here. On the one hand, if sanctions are not strict enough or do not carry enough impact they may not be effective tools for achieving compliance with a code. On the other hand, sanctions which are seen as too heavy or extreme can create resentment amongst industry, undermine the collaborative spirit of the self- or co-regulatory scheme, or excessively restrict the activities of the industry.

The types of sanctions which can be applied include the request by the regulator for an adjustment of the audiovisual content or advertisement, naming, shaming and faming, exclusion from membership from a scheme or association, sanctions or fines, the withdrawal of the audiovisual content or suspension of the advertisement, or notifying public authorities to implement further judicial sanctions. In most cases, especially in schemes with less collaboration between private and public organisations, naming, shaming and faming are common enforcement instruments. This is largely due to the importance of reputation and a good public image; undermining this can be very damaging to a company or broadcaster. However, it can also be a weak mechanism depending on the social pressure attached to such naming, shaming and blaming. There is much diversity in how well this sanction works as an enforcement mechanism.

An important point to make here is that in most schemes, the decisions made by the adjudicating body or self-regulatory organisation, are usually respected. A common approach is that the code owner approaches the advertiser or broadcaster concerning the case of non-compliance, often based on a complaint. In most cases the company
attempts to adjust the advertisement or broadcast to make it compliant. When this
does not happen, the code owner can undertake further action.

An interesting case regarding enforcement is that of the JEP in Belgium. The *Jury for
Ethical Advertising Practice (JEP)* (Jury voor Eerlijke Praktijken inzake Reclame/Le
Jury d’Ethique Publicitaire), monitors the code and handles complaints for the
Advertisement Code on Food (also known as the FEVIA Code, a sub-code of the *Code
of the Belgian Advertising Council*), and it does so for all other relevant codes related
to advertisement actions in Belgium. The JEP makes an annual report, but only the
complaints are summarised there. After the JEP receives a complaint they will first
contact the advertiser who is addressed in the complaint. The JEP offers the advertiser
the opportunity to reply to the complaint. In case the advertiser is not willing to adapt
the advertisement, the JEP will approach the relevant media with the request to
remove the advertisement.

Research conducted throughout this study indicates that a combination of softer and
harder sanctions is a good approach to enforcing compliance with schemes. Having a
legislative backstop or more concrete sanctions in place for continued breaches of
compliance tends to give a self- or co-regulatory scheme more proverbial teeth.
Though such heavier measures are by no means the first resort for a regulator,
information collected indicates that having a stricter enforcement tool works well.
Examples of such mixes of softer and harder sanctions were found in, amongst others,
the *National Ethics Rules For Advertising And Commercial Communication In Bulgaria*,
the *Portuguese ICAP Code of Conduct*, the *Italian Code on TV and Minors*, and the
*Slovenian Code of Advertising Practice*. *Copy Advice* systems were also often
employed as can be seen in the examples below; such systems where a regulatory
body checks the content of a programme or advertisement before its dissemination
helps to reduce the need for enforcement in a preventative manner.

The *National Ethics Rules For Advertising And Commercial Communication In Bulgaria*
has an Ethical Committee (EtC) and an Appeals Committee (AC). If a member or non-
member, fails to comply with the EtC or AC decision, the Board of the NSCR informs
all NCSR members, NGOs, and the relevant regulating authorities, and attach a copy
of the decision and the related evidence. The national regulatory authority – the CEM -
may impose financial sanctions, in case of non-compliance with the decisions of the
EtC or AC. The enforcement approach has been shown to be effective. The target
industries tend to comply with decision of the EtC or AC. Since the start of the
implementation of the scheme there have been only two cases of non-compliance with
the decision of the EtC.

The *Portuguese ICAP Code of Conduct* has an Ethics Jury (EJ) which handles conflict
resolution. Deliberations of this jury are based on ICAP’s Codes, applicable legislation
and other statutory norms. Whenever the EJ considers ethical rules to have been
breached, whether regarding the ICAP’s Code of Conduct or the Law in force, it
requires the amendment of the advertisement or removal of the campaign. The EJ can
also introduce faming, shaming and blaming and membership suspension or exclusion.
The use of the Copy Advice system also helps advertisements become more compliant
in a preventative manner by offering a check of an advertisement beforehand.

In Italy, the *Code on TV and Minors* uses faming, shaming and blaming, as well as
public fines. The public authority AGCOM (Agency for Guarantee of Communication) is
responsible for parts of the enforcement. Once a case has been investigated by the
review board, which includes actors of different types (Comitato Media e Minori), the review board may decide on a penalty when it falls under the competence of the code (behavioural sanction: e.g. moving content to another time slot). If not, AGCOM takes over the case and takes a decision on the sanction based on national legislation, where the sanction is of an economic nature only. The review board also recommends how to change the broadcasting content, or whether it needs to be removed. The sanctions in place help to ensure compliance with the Code effectively. The industry is aware of the consequences of violating of the Code, and the Code is generally respected.

In the *Slovenian Code of Advertising Practice (SCAP)* the sanctions used include faming, shaming and blaming, judicial sanctions and other types of enforcement measures. These other types of sanctions include public shaming (e.g. press release), a request for corrigendum, public appeal to withdraw or suspend the advertisement, notifying responsible authorities for further measures, for example, the Market Inspectorate in case where possible violation of a legal act is discovered. The Advertising Arbitration Court has no legislative power. Therefore, its decisions have no legal consequences. Despite this, the decisions of the Court are respected. For instance, in case of a justified complaint, the advertiser is invited to withdraw the advertisement, and it has never happened that the advertiser has not respected such a decision.

### 4.3 Identifying Best Practices

This section briefly explains the main criteria used in selecting best practices before presenting the 4 best practices selected.

#### 4.3.1 Stakeholder acceptance and effectiveness

In identifying best practices this study uses two main guiding criteria, namely that of effectiveness and of stakeholder acceptance. Both these criteria are based on the Principles for Better Self- and Co-Regulation and the additional enforcement stage criteria: complaints resolution mechanisms, their outcomes, and the use of enforcement and sanctions.

**Stakeholder acceptance** is based on the participants' involvement and their representativeness in the development process of a self- or co-regulatory scheme. For this criterion therefore, the research team examined those schemes where the performance along the participants, openness and good faith criteria from the Principles for Better Self and Co-Regulation were generally good.

Just as the stakeholder acceptance criterion is based on the performance of schemes across certain criteria from the Principles for Better Self- and Co-Regulation, this is the case when assessing **effectiveness** of schemes as well. In this case the performance of schemes regarding the criteria of evaluation, reiterative improvements and the implementation approach will be taken as building blocks for the assessment of a scheme's effectiveness. In addition, the additional enforcement stage criteria are considered as well.

The information collected for each of these aspects is mainly of a qualitative nature, relying on expert feedback and stakeholder input as to the effectiveness and overall impact of the scheme in achieving its objectives and policy goals.
In selecting best practices, a balance has been sought between schemes which focus on protecting minors from harmful audiovisual content on the one hand, and those which structure audiovisual commercial communications on the other.

The following best practices have been selected:

<table>
<thead>
<tr>
<th>Audiovisual Commercial communication</th>
<th>Best practice for effectiveness</th>
<th>Best practice for stakeholder acceptance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Protection of minors from harmful audiovisual content</td>
<td>The Committee of Advertising Practice Code (CAP Code), United Kingdom</td>
<td>National Ethics Standards for Advertising and Commercial Communication, Bulgaria</td>
</tr>
<tr>
<td>Protection of minors from harmful audiovisual content</td>
<td>Code of self-regulation for audiovisual contents and minors, Spain</td>
<td>Kijkwijzer, Viewing Guide, Netherlands</td>
</tr>
</tbody>
</table>

4.3.2 Best practice 1 on Effectiveness of a self- and co-regulatory scheme on audiovisual commercial communication

The Committee of Advertising Practice Code (CAP code), United Kingdom

Description of the practice
In the United Kingdom self- and co-regulation are quite prevalent and this is especially the case for the media sector. The state regulator is Ofcom, the Office of Communications. Ofcom works in a collaborative manner with the Advertising Standards Authority (the ASA), an independent self-regulatory body. The ASA is responsible for monitoring and enforcing the codes of practice for the broadcast and non-broadcast media (which includes VOD). Regarding broadcast media there is a co-regulatory approach. Ofcom, the autonomous regulator, monitors broadcast media together with the ASA. The relevant code here is the UK Code of Broadcast Advertising (BCAP). There is thus a system of co-regulation between government sanctioned organisations and the advertising industry. For non-broadcast media, there is a system of self-regulation, under the supervision of the ASA. For non-broadcast media, the Committee of Advertising Practice (CAP) writes and enforces a Code for advertising practice, the CAP Code.

Scope: The CAP Code represents a self-regulatory scheme in the area of commercial communication on non-broadcast media. The ASA acts as the sole regulator. The CAP is responsible for writing the code which applies, among others, to online, video-on-demand, and cinema advertising (CAP, 2015). From 2011 onwards the remit of the CAP was also extended to cover online media.

The CAP code applies to the following (CAP, 2015):

a) "advertisements in newspapers, magazines, brochures, leaflets, circulars, mailings, e-mails, text transmissions (including SMS and MMS), fax transmissions, catalogues, follow-up literature and other electronic or printed material
b) posters and other promotional media in public places, including moving images
c) cinema, video, DVD and Blu-ray advertisements
d) advertisements in non-broadcast electronic media, including but not limited to: online advertisements in paid-for space (including banner or pop-up advertisements and online video advertisements); paid-for search listings; preferential listings on price comparison sites; viral advertisements (see III l); in-game advertisements; commercial classified advertisements; advergames that feature in display advertisements; advertisements transmitted by Bluetooth; advertisements distributed through web widgets and online sales promotions and prize promotions

e) marketing databases containing consumers’ personal information

f) sales promotions in non-broadcast media

g) advertorials (see III k)

Advertisements and other marketing communications by or from companies, organisations or sole traders on their own websites, or in other non-paid-for space online under their control, that are directly connected with the supply or transfer of goods, services, opportunities and gifts, or which consist of direct solicitations of donations as part of their own fund-raising activities."

**Objectives:** The ASA has seven core objectives which are also used as the objectives for the CAP Code, (ASA and CAP, 2015). The objectives are to:

1. ‘Make every UK ad a responsible ad’;
2. Protect the vulnerable, particularly children, from inappropriate offensive, harmful or misleading advertising;
3. Continue to implement the strategy Having More Impact: Being More Proactive;
4. Improve management and empower and equip employees;
5. Increase awareness of, and confidence in, the ASA;
6. Help industry comply with the Advertising codes;
7. Begin to implement an updates IT strategy.

**Resolving complaints:** The ASA is responsible for the resolution of complaints. It has produced a set of procedures governing the handling and resolution of complaints (in accordance with Section 325 of the Act). If a competitor wants to complain, they must first raise their concerns with the advertiser. According to ASA’s Complaint Handling Procedures, the complaint must be supported by sufficient detail regarding the advertisement in question, and the medium in which it appeared. A five day period should be allowed for the competitor to respond. In the cases where no response is received or no agreement could be reached the complainant can submit the complaint to the ASA.

The ASA Council is the independent jury which is solely responsible for deciding if the advertising codes have been breached. Both advertisers and complainants can request a review of the ASA Council decision if they disagree with the outcome. Both sides have 21 days from the day the final decision is announced to ask the Independent Reviewer of ASA Adjudications to review the case. If the Independent Reviewer accepts the request for a review after considering any additional evidence it can demand the Council to reconsider the ruling (ASA, 2015b).

**Financing:** The ASA is funded through an arm’s length arrangement which guarantees its independence. A separate body, the Advertising Standards Board of Finance (Asbof) collects fees from the industry in the form of 0.1% levy on the cost of buying advertising space. This way ASA is not aware which companies are contributing and how much.
**Good Practice eligibility**

As a first analytical step, the practice must be examined according to the good practice screening criteria which determine if a practice is eligible to be examined as a best practice. The CAP Code fulfils all of these screening criteria as can be seen below.

<table>
<thead>
<tr>
<th>Good practice criteria</th>
<th>Explanation</th>
</tr>
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<tbody>
<tr>
<td>The practice should already be in place.</td>
<td>The Committee for Advertising Practice Code (CAP Code) came into force in 1961 originally, but in 2011 the remit of the organisation was extended beyond non-broadcast media to online media as well. The CAP Code is fully implemented.</td>
</tr>
<tr>
<td>It should have clearly identifiable aims and objectives.</td>
<td>The aims of the CAP Code uphold the objectives of the ASA as a whole. The CAP Code itself upholds the seven objectives of the ASA. These are concretely defined and will be examined in more detail in the evaluation of the CAP Code as a best practice below.</td>
</tr>
<tr>
<td>It should be user-friendly and accessible.</td>
<td>The CAP Code is also considered to be quite accessible for industry parties to implement and follow, just as it appears to be understandable to its indirect target group, namely consumers. Consumers appear well aware of the ASA as the organisation for complaints regarding advertisements. This suggests that the CAP Code is user friendly for both the direct target group (the advertising industry) and the indirect target group the CAP Code seeks to protect as well (consumers).</td>
</tr>
<tr>
<td>It should be adaptable and transferable.</td>
<td>The revision of the remit of the CAP Code to include online media in 2011 demonstrates that this scheme is a relatively adaptable one. Though the CAP Code is transferable, the monitoring and enforcement systems in place are quite detailed and far-reaching, which may reduce its transferability to other countries.</td>
</tr>
<tr>
<td>Its results should be identifiable and capable of evaluation.</td>
<td>The CAP Code has several objectives, namely those of the ASA. The CAP Code has established indicators for measuring the progress towards these objectives and these indicators are of both a quantitative and a qualitative nature. These indicators are monitored continuously and covered in the annual reviews produced by the ASA on the CAP Code.</td>
</tr>
<tr>
<td>Over a range of relevant indicators, it should clearly out-perform other practices in terms of efficiency and effectiveness</td>
<td>The scheme is thought to be effective in achieving both its concrete objectives as well as its broader policy goals. Quantitative indicators such as the number of complaints received, the speed and nature of the resolution, indicators on the public’s satisfaction with the scheme, and the assessment of compliance with the CAP Code are all monitored. Based on these and more indicators, the scheme is considered effective by the stakeholders involved in the scheme. Furthermore, the ASA and the CAP Code are financed by the industry at 0.1% of the price of an advertisement, meaning that the companies pay the same proportion. This is considered an efficient approach to financing.</td>
</tr>
<tr>
<td>It should be capable of being continuously improved.</td>
<td>The scheme is also evaluated and reviewed regularly, not to mention the research commissioned by the ASA on new and emerging issues in the field; this ensures that the CAP Code and its implementation is kept up to date and relevant.</td>
</tr>
</tbody>
</table>

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27 See Chapter 2 of this report
All in all therefore, the CAP Code fulfils all the initial good practice criteria. Based on these screening criteria, the following sections examine how the CAP Code scores as a best practice.

**Assessment according to best practice criteria**

**Reach:** A large output and a relatively high reach of the target group, indicate something about ‘popularity’ and ‘suitability’ of an instrument.

The reach of the CAP Code can be considered broad from two perspectives. Since 2011 the remit was extended to cover all online media as well, thus giving the CAP Code a wide reach in terms of media forms which it covers. Therefore, the reach is relatively broad in that it covers all non-broadcast media.

From the perspective of the direct target group, namely the industry and the advertising companies, the reach of the CAP Code is broad as all advertisers and companies advertising fall under the coverage of the CAP Code.

As the ASA is the one-stop-shop for complaints from both industry and consumers, the reach of the regulator in monitoring and enforcing this scheme is good.

**Accessibility:** Ease of access, red tape, etc.

The CAP Code seems to be quite accessible. The Code and guidance documents as well as research from the ASA are all presented on its website and on that of the CAP. The CAP Code is thus easily accessible for companies and industry which must implement the Code. Besides this, the ASA also provides copy advice services for advertisers, enhancing the accessibility of the CAP Code.

The indirect target group, consumers, can also access the scheme. This is evidenced in the fact that of the complaints made to the ASA regarding the CAP Code, some 95% come from consumers. As such the CAP Code can is quite accessible.

**Effectiveness/impact:** Have the goals of the policy measure really been reached?

Measuring the effectiveness of a policy measure requires clear, explicit and measurable objectives.

The CAP Code is considered to be quite effective both in achieving its objectives and in leading to a broader impact on the advertising sector.

The ASA and the CAP also have broader policy objectives, such as making all advertisements responsible, having more impact, helping the industry to comply with the advertising codes and increasing awareness and confidence in the ASA. For such broader policy goals, indicators and monitoring is also carried out. The ASA reports on its performance indicators on a quarterly basis. Additionally, ASA and CAP publishes an annual statement every year in October. The statement sets out ASA’s performance for the past period and its objectives and targets for the forthcoming calendar year.

Quantitative indicators include:
- Complaint response times;
- Trend data on complaints received and handled;
- Trend data on upheld complaints and complaints leading to sanctions.
Qualitative:
- Policy initiatives and activity (including in those socially important areas where few complaints may be received);
- Assessment of compliance in particularly contentious areas;
- Research undertaken (including public attitude surveys to determine the public's satisfaction with the degree and effectiveness of regulation);
- Code changes and rule reviews;
- Assessment of internal performance;
- Reports to Ofcom on significant external criticisms of the regulatory regime;
- Assessment Reports by Ofcom to self-regulatory system.

Based on the fact that compliance is generally high with the CAP Code, the monitoring and enforcement of this scheme is considered to be effective. Regarding the complaints received for VOD, 95% of complaints come from consumers and tend to focus on the appropriateness of the content of the media forms. This suggests that the ASA and the CAP Code are known amongst the public. The scheme has also won the support of the industry and this contributes to making it a sustainable form of regulation that reduces the need for governmental intervention. Research conducted points to the fact that the scheme is effective in achieving its objectives. Bringing the regulation of advertising under one roof has led to sufficient benefits and has allowed both businesses and consumers to reach to ASA as a one-stop-shop.

Efficiency: Costs benefit ratios and volume of administrative burdens. It is important to get an idea of the resources being allocated for a specific measure in relation to the effect obtained.

The scheme is cost effective. One of the reasons is that this is an industry funded scheme which means that tax payers' money is spared. Additionally, the size of ASA and the fact that it regulates advertising across all media channels allows it to enjoy economies of scale. Given the mature nature of the UK advertising industry and the range of activities carried out by the ASA regarding the CAP Code, the budget is not very high which suggests that the scheme is capable of delivering good value for money.

Evaluation: A proper assessment of effectiveness and efficiency of a policy instrument would only be possible if good evaluation studies are available.

The ASA conducts regular reviews and evaluations of all of its advertising codes and its own internal performance. A regular review is conducted therefore of the CAP Code to check how ‘fit’ it still is as a regulation to structure the online media and non-broadcast media. The ASA also conducts annual reviews of its own internal processes, has monthly meetings with Ofcom to discuss contentious or emerging issues in the market, and has annual meetings with Ofcom to discuss performance as a whole. Besides this the ASA conducts its own research to ensure that emerging issues or covered and taken up in adjustments to the scheme.

Implementation issues/ administrative burden: If an instrument suffers from a lot of problems in the implementation process and leads to a lot of bureaucracy, this is not a recommendation for a good practice.

The instrument, the ASA, the Cap and the CAP Code have been in place for several decades and are well established. As such there are few implementation issues regarding the organisation and running of the CAP Code. The UK system for regulating commercial communication has developed over many years and its success is largely
due to key decisions taken at the right point of time, starting with ASA’s decision to introduce the industry levy and become better recognised by the general public. This led to higher complaint rates which was a difficult experience for the industry, nevertheless, in the long term it strengthened consumer trust in advertisements and led to greater benefits for the industry.

Regarding the implementation and burden for the target group, namely advertisers, the rate of compliance is high, suggesting that implementing the CAP Code does not raise major issues for the industry.

That being said, an issue which may involve more implementation issues for the ASA and the CAP code is the emergence of online media. There are challenges that lie ahead in relation to how well the regulatory scheme will be able to respond to the advancement of digital marketing. Online ad blockers may pose a risk to funding of the scheme as if companies stop advertising no levy will be applied.

**Transferability:** The instrument should be adaptable and transferable. Good practices are considered as good on the basis of the economic, political, cultural and institutional framework of the country in which they are implemented. Therefore, it would be important to know why a particular measure was introduced and which circumstances were of influence on its results. Then, we might get an idea in which situations (sectors, countries) the measure is successful and in which situations it will probably not be successful.

Regarding the financial, human and organisational resources this approach appears to have a neutral level of transferability. The ASA and CAP are long established bodies, developed and extended over the years and as such, are quite strong regulatory bodies. This is also related to the size and nature of the UK media landscape. This is quite developed and as such, has a more developed regulatory system to which more human and financial resources are committed.

A central body for monitoring and enforcing compliance is required. In the case of the UK, the ASA and the CAP are funded by advertising levies from broadcasters and advertisers. The collaboration with different organisations to enforce compliance is an efficient way of working which is cost-saving and gives the self-regulatory sanctions more strength as well.

The co-regulatory approach is also relatively efficient as the costs and administrative burden are shared amongst different organisations. The role of the ASA in regulating both statutory broadcast regulations and non-broadcast regulations also centralises the regulatory activities to some degree within Ofcom. This can also be considered an efficient way of organising the regulation of marketing. This collaborative approach to regulation has a certain intuitive appeal.

4.3.3 **Best practice 2 for effectiveness of a self- and co-regulatory scheme on protection of minors from harmful audiovisual content**

**Code of self-regulation for audiovisual contents and minors, Spain**

**Description of the practice**
In 2005, the Ministry of the Presidency, the Ministry of Industry, Tourism and Trade and the four major Spanish Television networks (Spanish RTV, Antena 3, Gestevision Telecinco and Sogecable) signed an agreement to promote self-regulation regarding
television content, particularly in relation to children. As a result, a Code for regulating audiovisual contents and minors was developed. The National Commission on Competition and Markets (CNMC), part of the public Audio-visual Authority was involved in developing this scheme, as were 6 television networks, 2 consumer groups and 3 other civil society interests groups. The development of the scheme involved all relevant stakeholders, including consumer groups, civil society groups for child protection, religion and family values.

The Code provides a self-regulatory scheme for managing the content of television programming. Participants of this scheme are the television companies which produce television contents and professionals from the information technology sector. The principles of the Code of self-regulation for audio-visual contents and minors are based on the Spanish Constitution, specifically on Article 39.4, which establishes the special protection of minors’ rights. Additionally, this self-regulatory scheme is based on General Law 7/2010 of 31 March, on Audiovisual Communication. This law guarantees audiovisual media services providers the right to self-regulation, and attributes the audiovisual authority the function of checking the conformity of the codes with current legislation.

The Code includes a process for monitoring the application of the code to audio-visual content broadcast on television. The monitoring process includes representatives from organisations for youth and children, of parents and educators, and of consumers and users.

The Code of self-regulation for audio-visual contents and minors sets protected viewing times for children. The Code also provides an age rating classification system for audio-visual products, based on the age classification established by the Institute of Sciences and Audio-visual Arts (‘Instituto de las Ciencias y Artes Audiovisuales’). The classification of television programmes takes place through a digital codifying system. The digital codifying system involves the indicative symbols (consisting of a number, the years of age and a brief sound), which classifies programme contents according to the age rating system for audio-visual products. The Code provides indicative symbols (signage) which can be assigned to show what sort of content is present in a programme and for which age group the content is suitable.

There are two organisations which conduct the monitoring for this scheme. The first is the Self-Regulation Committee (SRC) consisting of representatives from television networks. This body receives complaints from consumers and members alike and makes a ruling on the complaint. The second is the Joint Monitoring Commission (JMC) which then checks the complaint and ruling made by the SRC and in case of a breach, contact the SRC. The JMC is composed by equal numbers of members from the television network and social organisations. The JMC also has the mandate to approach operators where the breaches in the content or timing persist. The monitoring mechanism for the Code keeps track of how many complaints are received, what the cause was, and how these were resolved. The first responses of the SRC and JMR are to engage in a dialogue with the non-compliant party to remedy the breach. When this does not work, sanctions in the form of public fines are implemented. These are enshrined in the General Law on Audio-visual Communication and are enforced by the public authority. The National Commission on Competition and Markets (CNMC) is part of the public authority, and it acts as the Secretariat of the Joint Monitoring Commission and works together
**Scope:** The Code of self-regulation for audiovisual contents and minors covers all content which is shown on television broadcasts which are aimed at minors. The Code sets protected viewing times for children. For this purpose, all content is classified according to what is appropriate for different age groups. In practice the content classification for the television programs is as follows:

1. Especially recommended programs for children;
2. Programs for all ages;
3. Programs not recommended for children under 7 years;
4. Programs not recommended for children under 12 years;
5. Programs not recommended for children under 16 years;
6. Programs not recommended for children under 18;
7. X programs classified by their content of pornography or gratuitous violence.

The scope of this scheme is therefore quite wide as all television programmes must be checked and classified within the scheme.

**Objectives:** The scheme lists a series of objectives and rules which it wishes to implement in the sector. However, there are no operational objectives provided.

The code has been developed with the objective of making different values compatible, such as freedom of expression, personal rights, prohibition of violence, discrimination and intolerance, and protection of children and youth.

The main goals of the Code are as follows:

- To improve the protection of children as television viewers in their legally established ‘protected times’;
- To avoid unjustified broadcast messages or unsuitable scenes for children during the protected viewing times (sex, explicit violence and others);
- To ensure privacy, dignity and security of minors when they appear or are mentioned on TV;
- To promote parental control and adequate information about television content;
- To spread widely and regularly the contents of the Code through televisions, during spaces with large audience.

When signing the Code of self-regulation for audiovisual contents and minors, TV networks assume their own responsibility in the protection of minors and the self-regulation of television content. The Code is the strategy selected by the sector to strengthen self-regulation on television content and protection of children and youth.

According to the research conducted, the Code has not established specific operational objectives for the self-regulations scheme. However, a series of rules and guidelines are provided to help achieve the goals of the Code. Specifically, it can be said that in order to achieve its broader goals, the Code focuses particularly on the following issues:

- Minors and television programming during the protected time slot (between 6:00 am and 22:00 pm) (‘Programación televisiva en horario protegido’),
- Minors and television programming during the time slot of enhanced protection (‘Franjas de protección reforzada’),
- Classification, signage and television broadcasting.

The main indicators of the scheme are the number of complaints received and solved. The type of complaint can be considered as a qualitative indicator of the scheme.
Although regular evaluations are carried out of the number of complaints received, the evaluation does not appear to cover the progress of the scheme in achieving its policy goals or its objectives.

**Resolving complaints:** In order to guarantee the fulfilment of the Code, the following steps have been established:

- First of all, the Self-Regulation Committee, which acts in the first instance, compiles raised concerns and handled complaints. If necessary, claims on the implementation of the code are presented as well.
- After that, the Joint Monitoring Commission, revises the conclusions and results concerning the complaints composed by the Self-Regulation Committee. In case they detect breaches with the Code, the Joint Monitoring Commission informs the Self-Regulation Committee, so that they can initiate the appropriate process to remedy the breach.
- If the Joint Monitoring Commission confirms that one of the signing companies continues not to comply with the code, it can directly call the operator to ask it to respect the rules.
- In case the operator does not obey, the Joint Monitoring Commission will publicly report the breach. If the breach appears to be an infringement of legislation, the JMC or SRC will inform the public authorities so that they can start the corresponding sanction procedure.

As it has been explained, citizens (parents, educators, consumers, users, associations...) can introduce complaints or claims through a specific website ([www.tvinfancia.es](http://www.tvinfancia.es)). These complaints or claims must be answered by the Self-Regulation Committee. The evaluation of the contents claimed is based on four main areas: social behaviour, conflictive issues, violence and sex.

**Financing:** The Code apparently does not generate any costs and as such, there is no publically available information on the budget for this scheme.

**Good Practice eligibility**

As a first analytical step, the practice must be examined according to the good practice screening criteria which determine if a practice is eligible to be examined as a best practice. The CAP Code fulfils all of these screening criteria as can be seen below.
**Good practice criteria** | **Explanation**
---|---
The practice should already be in place. | This scheme is already in place, having been introduced in 2005.
It should have clearly identifiable aims and objectives. | The scheme has a series of goals for the Code to achieve with more pragmatic guidelines on how signatories of the Code can achieve these goals, as well as the problems the Code aims to address. However, operationalised objectives, with indicators and targets are not developed for this scheme.
It should be user-friendly and accessible. | The Code is made accessible through a central website. Any TV broadcaster can join the Code and any consumer can gather information regarding the Code. Both parties can also launch complaints via this website as well, making the Code accessible. The guidelines on achieving the aims of the Code also make it user-friendly.
It should be adaptable and transferable. | The Code consists of a classification system and an internal monitoring framework. It is considered to be a highly transferable code with low to no operating costs.
Its results should be identifiable and capable of evaluation. | Annual evaluations take place and third parties also carry out studies on the Code. As such the Code can be considered to be capable of evaluation.
Over a range of relevant indicators, it should clearly out-perform other practices in terms of efficiency and effectiveness | Evaluations are carried out regularly and third parties also review the effectiveness of the Code in achieving broader policy aims. Regarding every day performance and its larger impact, the Code is considered to be effective and efficient by different stakeholders.
It should be capable of being continuously improved. | Regular, annual meetings are held between the managing and monitoring organisations to review the performance of the Code. Evaluations are conducted annually as well and based on this, areas of improvements are identified. The last adjustment took place in 2014.

**Assessment according to best practice criteria**

**Reach:** A large output and a relatively high reach of the target group, indicate something about ‘popularity’ and ‘suitability’ of an instrument.

The direct target group of the scheme, TV operators and media companies, are reached with this scheme. However, 6 of Spain’s larger television networks signed the Code, thus not involving all of the members of the direct target group.

**Accessibility:** Ease of access, red tape, etc.

The Code has been written in an explicit and systematic manner with criteria for judging audiovisual content aimed at children. Potential members can sign up with relative ease.

Furthermore, the TV companies who signed the Code created a website in order to make communication between stakeholders easier ([http://tvinfancia.es/tvinfancia](http://tvinfancia.es/tvinfancia)). The website started one year after the signature of the agreement, and its aim is to provide information on the Code and to offer stakeholders a simple and easy channel for suggestions and complaints. The website contains the most important information concerning the Code of self-regulation for audiovisual contents and minors, as well as important documents (such as agreements signed, the Code of the Self-regulation and the guiding criteria for the classification of television programmes), stakeholders involved, and evaluation reports.
At the same time, via this website, it is possible to access to an online form to make a complaint about the content of television programmes, the time of broadcasting and the age classification. These suggestions or complaints can be made by the general public. All in all therefore, the Code appears to be quite accessible to both consumers and the target group.

**Effectiveness/Impact:** Have the goals of the policy measure really been reached? Measuring the effectiveness of a policy measure requires clear, explicit and measurable objectives.

The Code establishes a scheme for the classification of television contents by operators, where the participants are the companies which produce television contents, and professionals of the information technology sector. At the same time, the Code includes a process for monitoring the application, where representative organisations of youth and children, of parents and educators, and of consumers and users are involved.

According to the Audiovisual Branch of the CNMC, the main objective of the Code is to be effective on the protection of minors, and this aim is achieved by this Code without any cost and promoting the participation of the different stakeholders. It is a voluntary act by TV networks and it has introduced relevant improvements on television contents.

The scheme is deemed effective by stakeholders. This is in part because TV companies agree together with other stakeholders how to make their media content appropriate to children. There is a point of origin approach which appears to be effective as the content aimed at children is improving in quality. That being said, there are no concrete analyses regarding the impact of the scheme however.

From a monitoring and enforcement perspective, the self-regulation system is a soft law mechanism. It is not obligatory or binding and the fulfilment of the rules depends on the willingness of each member. This Code is a responsible response by TV channels and it entails a public, voluntary commitment. This initiative has been positively appreciated by associations of TV viewers.

The involvement of different stakeholders, television networks, consumer associations, and the audiovisual authority are aspects which make this practice successful. Indeed the impact appears to be positive according to the associations of TV viewers.

**Efficiency:** Costs benefit ratios and volume of administrative burdens. It is important to get an idea of the resources being allocated for a specific measure in relation to the effect obtained.

There is little information available on the financing of this scheme and as such judgments on the efficiency of the scheme are difficult to make.

**Evaluation:** A proper assessment of effectiveness and efficiency of a policy instrument would only be possible if good evaluation studies are available.

The Joint Monitoring Commission of the Code holds regular meetings where members analyse the implementation of the Code. At the end of each year this Commission elaborates a report which shows which activities were carried out during the previous year, as well as the complaints and suggestions made by the different stakeholders which are part of the JMC (such as involved consumer organisations, the Consumers’ and Users’ Council, the Federation of Consumers’ and Users’ of Media Associations;
and other interest groups, the Spanish Confederation of Fathers and Mothers of Students Associations, the Catholic Confederation of Associations of Students’ Fathers and Family Fathers, and the Platform for Children) concerning the contents and the schedules of television programmes.

Although regular evaluations are carried out of the number of complaints received and to which TV companies these apply, the evaluations do not appear to cover progress of the scheme towards achieving its policy goals or its objectives. There is no formal and regular system for evaluating the scheme and as such, the impact of the scheme is not evaluated regularly.

Independent experts indicate that the Self-Regulation Code is a clear manifestation of social responsibility. From this perspective the scheme is effective in achieving some its broader policy goals. However, experts also identify several problems, such as the fact that:

- the Code is the result of legislation which persuades the industry to create self-regulatory rules.
- the website (tvinfancia.es) which serves as a communication tool with stakeholders, is not always up to date and it is not very well known.
- official monitoring data differs from alternative evaluations.

On balance however, the Code is considered to be effective and has a positive impact on the protection of minors from harmful audiovisual content shown on television.

**Implementation issues/ administrative burden:** If an instrument suffers from a lot of problems in the implementation process and leads to a lot of bureaucracy, this is not a recommendation for a good practice.

There do not appear to be any major implementation issues regarding the scheme. Discussions are being held on whether the scope should be extended to cover content which can be viewed on mobile phones and personal devices. Additionally, having an external body checking complaints may also provide a more objective system, but these changes have not been implemented in the scheme. However, a main problem is that the number of complaints received is limited, because the Code does not seem to be well-known.

Other considerations and areas to focus on for improvement include the coverage of the scheme. The National Commission on Competition and Markets indicates that one of the limitations or handicaps of the Code is the lack of regulation of TV broadcast during the rest of the day (from 22:00 pm to 8:00 am), as well as the lack of revision of the contents of other TV networks which have not signed de Code (such as paid television, on-demand audio-visual media telecommunications, etc.), even though these companies are a minority, and the largest TV companies in Spain have signed the Code.

**Transferability:** The instrument should be adaptable and transferable. Good practices are considered as good on the basis of the economic, political, cultural and institutional framework of the country in which they are implemented. Therefore, it would be important to know why a particular measure was introduced and which circumstances were of influence on its results. Then, we might get an idea in which situations (sectors, countries) the measure is successful and in which situations it will probably not be successful.
The scheme is relatively easy to transfer. Most EU Member States have self-regulatory organisations in place as well as a public media authority. Setting up a body such as the Joint Monitoring Commission and other relevant bodies could involve extra administrative and financial resources if introduced in another country but there is little insight into the level of resources which would be required to do so.

The Code of Self-regulation of content and minors could be easily transferred to other Member States. The scheme requires a voluntary agreement or commitment by the members; each member is responsible for their own resources. Given the low costs and administrative burden involved, this is considered to be a transferable scheme.

4.3.4 Best practice 3 for stakeholder acceptance of a self- and co-regulatory scheme on Audiovisual Commercial Communication

National Ethics Standards for Advertising and Commercial Communication, Bulgaria

Description of the practice
Bulgaria does not have a long tradition in self-regulation. Self-regulation started to develop during the last ten years as a result of international co-operation projects of the Bulgarian business associations, and partly as a result of implementation of EU funded pre-accession programmes.

Audio-visual commercial communications are regulated by the Radio and Television Act (RTA). The Act regulates audio-visual and radio media services which are broadcast on both public and commercial media service providers in Bulgaria. The RTA is harmonised with the European regulatory framework and it transposes the provisions of the AVMS. The Council of Electronic Media (CEM) is an independent organisation which regulates media services in Bulgaria. It is a legal entity with an independent budget. The CEM is responsible for licencing, registering and supervising activities of the media service providers. It executes regular monitoring of the content of media service providers. It can issue warnings and obligatory instructions, impose fines and revoke licences of media services providers.

The National Ethical Standards for Advertising and Commercial Communication in Bulgaria is owned by the National Council for Self-regulation (NCSR). The NCSR is the self-regulation organisation for advertising and other commercial communications in Bulgaria and is responsible for the elaboration, revision and application of the self-regulatory code. The NCSR was founded by the Bulgarian Association of Advertisers (BAA), the Association of the Advertising agencies (ARA) and the Association of the Bulgarian radio- and TV-operators (ABBRO). The Code is based on the International chamber of commerce (ICC) Consolidated Code of Advertising and Marketing Communications Practices.

Besides the founders of the scheme, other organisations were involved in its development indirectly though consultations. These included trade organisations, enterprises and consumer organisations. The content of the Code and Rules of procedures were consulted with all relevant state authorities, including CEM and SACP (the state consumer protection agency).

The governing body of NCSR is the General assembly, which consists of its regular members. The NCSR is governed by a Managing board, supported by a Secretariat.
The NCSR is chaired by an independent professional. The key principles of work are independence, impartiality and transparency.

The NCSR has different levels of membership which impact the access and role of stakeholders in developing and adjusting the code. The NCSR has regular and associated members. Regular members are trade association with substantial share in the industry. They participate in the work of the General assembly and have voting right. The associated members are legal entities and individuals, who share the aims of NCSR, accept its statutes, declare willingness to work for implementation of its objectives and pay a membership fee; they participate in the General Assembly with no voting rights. Moreover, there are honorary members (invited for their noticeable contribution and support to the achievement of the objectives of the Council).

Various committees are set up to ensure the implementation of the Code:

- The main function of the Ethical Committee (EtC) is to review complaints and to decide on conformity of the communications with the provisions of the Code. The Ethical committee has a 3-year mandate and consists of 13 members: six well known professionals from the advertising industry (two from each sector, namely, advertisers, agencies and media sector), and seven independent professionals, such as scientists, legal experts and NGOs representatives.
- The Expert group for Code Interpretation interprets the code and clarifies the definitions and meanings of its provisions. The expert group has a chair and two members.
- The Appeal Committee (AC) reviews appeals, related to refusal to start procedure, discontinuation of an opened procedure or decisions of the Ethical committee. The AC consists of a chair and 12 members and takes a decision with the majority of the participating members.
- The Committee for Post-Monitoring (CPM) follows up execution of the decisions of the EtC or AC, and monitors the advertising and commercial communications – at its discretion or on request of the Board. The CPM has five members and is managed by a chair.

The NCSR reviews complaints submitted by consumers, trade organisations (members and non-members alike), regulatory bodies (mainly the CEM) and NGO’s. It can also initiate cases on its own initiative. Upon request, the NCSR provides copy advice services – a confidential, non-binding pre-publication advice to advertisers, agencies or media to check whether an advertisement adheres to the Ethical Code and relevant legislation.

**Scope:** The Code (National Ethical Standards for Advertising and Commercial Communication in Bulgaria) applies to all forms of advertising and other commercial communications, including television, video-on-demand, radio, teleshopping, print and press, posters, internet (banners, pop-ups), direct mail, sales promotions, email and SMS text, cinema commercials, etc.

In addition to the main code, more detailed rules for specific product groups are included, such as a framework for food and drinks advertising, ethical rules for gambling advertising, rules for on-line advertising, and criteria for protection of children from harmful content.
Objectives: The code is intended:

- to demonstrate responsibility and good practice in advertising and marketing communication in Bulgaria;
- enhance overall public confidence in marketing communication;
- respect privacy and consumer preferences; ensure special responsibility as regards marketing communication and children or young people;
- safeguard the freedom of expression of those engaged in marketing communication;
- to safeguard the principles of the fair competition; provide practical and flexible solutions;
- minimise the need for detailed governmental and/or inter-governmental legislation or regulations.

Resolving complaints: Every individual, legal entity or state organisation can submit a complaint to the NCSR. A complaint is a written document, taking the form of a claim, plea or request, concerning any form of commercial communication, which gives proof of a breach of the ethical rules or indicates a possible breach that requires further investigation. All complaints are handled free of charge, and the NCSR has an online complaints facility. The NCSR can open a complaint procedure on its own initiative as well, and applies the same procedure as with complaints from individuals or legal entities.

The complaints are reviewed by the Ethical Committee within one month after the complaint registration. This deadline may be extended by one month, in case, the complexity of the case requires more time for the collection of evidence. If new circumstances are available or if there are omissions in the procedure, both the claimant and the defendant have the right to appeal to the Appeal Committee. All decisions or adjudications of the Ethical Committee are published on the website with a link to the advertisement.

Financing: In the period 2012-2014, nearly 95% of the funding came from membership contributions from the members (advertisers, media companies and broadcasters). The annual budget is approximately €15,000. This budget is very low and no financial means are available for active promotion of the code and for monitoring.

Good Practice eligibility
As a first analytical step, the practice must be examined according to the good practice screening criteria which determine if a practice is eligible to be examined as a best practice.

<table>
<thead>
<tr>
<th>Good practice criteria</th>
<th>Explanation</th>
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</thead>
<tbody>
<tr>
<td>The practice should already be in place.</td>
<td>The practice has been in place since 2009.</td>
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<tr>
<td>It should have clearly identifiable aims and objectives.</td>
<td>The objectives of the scheme are mentioned above. The objectives are clear, yet they do leave room for discussion.</td>
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<tr>
<td>It should be user-friendly and accessible.</td>
<td>The scheme is quite accessible. The National Council for Self-regulation (NCSR) has a user-friendly website (in the Bulgarian and English language), including the text of the code, an explanation of the complaint handling system, and an electronic form for complaint submission. This makes the scheme accessible to the target group (advertisers) and the</td>
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<tr>
<td><strong>Good practice criteria</strong></td>
<td><strong>Explanation</strong></td>
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<tr>
<td>indirect target group (consumers).</td>
<td>It should be adaptable and transferable. The scheme is considered easily transferable to other countries. The scheme is based on the ICC Consolidated code of advertising and marketing communications and EASA Advertising self-regulatory charter and Best practice recommendations. Similar schemes are applied in several EU Member States. Furthermore, the NCSR regularly meets to review the Code in place to check if it needs adjusting.</td>
</tr>
<tr>
<td>Its results should be identifiable and capable of evaluation.</td>
<td>There have not been any evaluations yet. However, there is a monitoring committee responsible for monitoring the results. Due to the limited budget monitoring activities are limited to internal activities of the NCSR and its members.</td>
</tr>
<tr>
<td>Over a range of relevant indicators, it should clearly out-perform other practices in terms of efficiency and effectiveness</td>
<td>The scheme is considered effective and efficient based on the broader policy impacts it achieves, and based on the activities it is able to carry out within budget available. However, it is difficult to state definitively that this scheme performs much better than other schemes without a more formal evaluation.</td>
</tr>
<tr>
<td>It should be capable of being continuously improved.</td>
<td>The NCSR regularly reviews the code’s provisions, to ensure that they reflect the latest developments in the context, the new marketing techniques and communication technologies. The code was adopted in September 2009 and between then and September 2015, the Code underwent six revisions. Overall, the amendments are mainly focused on adding of new detailed provisions (such as Rules for online behavioural advertising and adjustment). The amendments reflect lessons learned in the implementation of the code, the change of context and new European initiatives.</td>
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**Assessment according to best practice criteria**

**Reach:** A large output and a relatively high reach of the target group, indicate something about ‘popularity’ and ‘suitability’ of an instrument.

Founders of the NCSR are the following trade associations: Bulgarian association of advertisers (BAA), the Association of the advertising agencies - Bulgaria (ARA) and the Association of the Bulgarian radio- and TV- operators (ABBRO).

Advertising and commercial communications across all media forms are covered by the code, so that all advertisers are covered by the scheme. This gives the Code a good reach.

**Accessibility:** Ease of access, red tape, etc.

There appear to be no accessibility issues surrounding this Code. An open and accessible attitude appears to have been adopted while developing this Code, evidenced in the efforts to consult with non-industry stakeholders during its inception such as the CEM and SACP. All relevant documents for the Code can be found online and the website of the NCSR is available in both English and Bulgarian so that foreign advertisers can consult the Bulgarian advertising rules. Furthermore, the copy advice service offered by the NCSR helps advertisers to check and better understand how their advertisement complies with the Code. These factors all promote accessibility of the Code.
Effectiveness/impact: Have the goals of the policy measure really been reached?

Measuring the effectiveness of a policy measure requires clear, explicit and measurable objectives.

As described, there are no formalised, operational objectives, and there exists no monitoring framework for measuring the progress of the Code objectives. No evaluation has been carried out yet. However, from the perspective of its broader policy impact, the scheme is effective in raising professional standards of the industry. The issued decisions by the Ethical Committee on the submitted claims contain a detailed interpretation of the applicable standards, which raises awareness of the rules as these decisions are made public. The detailed guidelines on specific issues (for example sexual stereotyping) also contribute to raising industry standards and to the prevention of communications that violates interests of consumers. An important factor for ensuring compliance with standards is the copy advice service that is provided.

There is a clear trend of a reduction in number of claims, which relates to improved knowledge on standards and improved copy advice services. According to research conducted for this scheme, there is a noticeable progress in reducing the appeals for alcohol advertisements, misleading communications, and improving taste and decency standards.

The main strengths of the scheme are:

- Effective complaint handling system, everyone can file free complaints online, by mail or fax and the pace of decision making is high. In 90% of the cases, the Ethic Committee issues a decision within one month.
- The Code targets all forms of commercial communications and ensures coverage of new technologies and ways of marketing;
- Flexibility of amendment of code provisions and the rules of procedure; the procedure allows for prompt inclusion of new provisions or detailed guidelines.
- Based on the analysis reviewed complaints or the monitoring of the industry developments, NCSR issues detailed guidelines on specific issues to keep the Code as relevant and to help members apply Code rules. The Code is driven by practitioners and responds fast to new technologies(for example online behavioural advertising).
- Broad coverage of all relevant market players. The founding members of the NCSR are trade associations, which cover over 200 companies (advertisers, advertising agencies, media) with the largest market share. Members of ABBRO are almost all national, regional and local audio-visual commercial media service providers.
- Independence and professionalism of the Ethic Committee the Appeal Committee ensures the credibility of the scheme and creates stimulus for compliance.
- The legal framework requiring all audio-visual media service operators to comply with the Code and provision of graduated sanctions in case of non-compliance.

Efficiency: Costs benefit ratios and volume of administrative burdens. It is important to get an idea of the resources being allocated for a specific measure in relation to the effect obtained.

As explained the scheme is fully funded by the contributions of the members of the NCSR. The costs of running of the scheme are quite low, which, however, partly relate to the failure to execute, sustained, broad promotion, beyond what was done at the scheme’s inception. The monitoring and evaluation of the effects of the scheme have therefore also not been publicly promoted.
The efficiency is boosted by fast review of the claims, which may not be achieved through a legal procedure.

**Evaluation:** A proper assessment of effectiveness and efficiency of a policy instrument would only be possible if good evaluation studies are available. There are no provisions for external evaluation and no evaluations have been carried out or planned. Not having a systematic evaluation process in place for measuring the progress of a scheme towards established objectives, as well as a scheme’s broader policy impacts is quite common across self- and co-regulatory schemes in place in EU Member States.

**Implementation issues/ administrative burden:** If an instrument suffers from a lot of problems in the implementation process and leads to a lot of bureaucracy, this is not a recommendation for a good practice. The main issue concerning implementation is that the annual budget of the NCSR is very low, which prevents active public promotion and monitoring. The budget of the scheme is constrained by the limited financial resources of the members, which are the main contributors to the budget.

**Transferability:** The instrument should be adaptable and transferable. Good practices are considered as good on the basis of the economic, political, cultural and institutional framework of the country in which they are implemented. Therefore, it would be important to know why a particular measure was introduced and which circumstances were of influence on its results. Then, we might get an idea in which situations (sectors, countries) the measure is successful and in which situations it will probably not be successful.

The NCSR is considered easily transferable to other Member States. The scheme is based on the ICC Consolidated code of advertising and marketing communications and EASA Advertising self-regulatory charter and Best practice recommendations. Similar schemes are applied in other EU Member States. The main barriers for transferring it to other Member States are a possible lack of recognition of the role and effectiveness of self-regulation, an inappropriate legislative framework for self-regulation, and a lack of strong trade associations willing to found a self-regulation organisation.

4.3.5 **Best practice 4 for stakeholder acceptance of a self- and co-regulatory scheme on protection of minors from harmful audiovisual content**

**Kijkwijzer, Netherlands**

**Description of the practice**
In the Netherlands, the Media Act restricts broadcasters from broadcasting programmes that are harmful to young people under the age of 16.

The classification system for programmes (Kijkwijzer) is developed by the Institute for the Classification of Audio-visual Media (NICAM, Nederlands Instituut voor de Classificatie van Audiovisuele Media). NICAM was accredited by a government decision on the 22nd of February, 2001. NICAM is an independent non-profit organisation, and is responsible for the supervision of its members, namely producers of television programmes. The Media Authority (Commissariaat voor de Media) is responsible for the supervision of non-members.
The Kijkwijzer warns parents and educators of children whether a television programme or film may be harmful. Kijkwijzer does this with age recommendations (All Ages, 6 years, 9 years, 12 years and 16 years) and pictograms with the reason for the recommendation. Pictograms indicate whether violence, fear, sex, discrimination, drugs and/or alcohol abuse, or coarse language can be encountered in piece of audiovisual content. In the case of television, the Kijkwijzer age categories are linked to broadcasting time slots.

In the Netherlands, the Kijkwijzer, or classification scheme, was developed in collaboration by NICAM with the broadcasting industry, and relevant stakeholders and scientists. Kijkwijzer is a classification system for audiovisual materials. For the classification approach, a questionnaire is developed. The media enterprises are themselves responsible for the classifications of programmes. NICAM develops the questionnaire and trains people within media enterprises in applying the classification code to their material. All broadcasters are affiliated with the system; broadcasters with a Dutch license are for whom membership is compulsory as well as broadcasters with a foreign license (for whom membership is voluntary). The Institute for the Classification of Audio-visual Media (NICAM) has an advisory body in which all types of interest groups are represented (education, ethnic groups, parents, elderly people, etc.).

**Scope:** The Kijkwijzer is a classification system for audiovisual media on television broadcasts and on-demand audiovisual media. Other media forms covered by the Kijkwijzer include film, video and DVDs. All Dutch broadcasters must apply the scheme giving it a wide scope.

**Objectives:** The objective of NICAM is to promote the provision of information on audio-visual products on their potential harmfulness to young people by means of classification by the industry itself. To achieve this objective NICAM developed the classification system, the Kijkwijzer.

**Resolving complaints:** There is a well-functioning complaints handling system. Anyone who identifies a possible breach of the Kijkwijzer rules can submit a complaint to NICAM. Relevant complaints are handled by NICAM or by an independent Complaints Committee. Only a small number of complaints have to be handled by the Complaints Committee. For television, the numbers of complaints was 140 in 2012, 172 in 2013, and 164 in 2014. Most complaints concern the broadcasting times of certain programmes. In principle, all complaints are handled and resolved. In general complainants are satisfied with the complaints handling. Complaints handling is fast, and complainants receive quick answers and their complaints are taken seriously. In nearly all cases decisions are followed by the broadcasters.

**Financing:** The Kijkwijzer is financed by the government (50%) and by the organisations of the broadcasters (50%). The yearly budget of Kijkwijzer is €750,000. In addition, the media companies have their own internal costs, in particular for the classification of the programmes within their companies.

**Good Practice eligibility**
As a first analytical step, the practice must be examined according to the good practice screening criteria which determine if a practice is eligible to be examined as a best practice.
### Good practice criteria

<table>
<thead>
<tr>
<th>Good practice criteria</th>
<th>Explanation</th>
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<tbody>
<tr>
<td>The practice should already be in place.</td>
<td>The practice has been in place since 2001.</td>
</tr>
<tr>
<td>It should have clearly identifiable aims and objectives.</td>
<td>There is a general objective from the code owner (NICAM). The classification system (Kijkwijzer) has been developed to achieve this objective.</td>
</tr>
<tr>
<td>It should be user-friendly and accessible.</td>
<td>The scheme is quite accessible. NICAM has a user-friendly website, including the age groups, the pictograms used, and explanations of the system.</td>
</tr>
<tr>
<td>It should be adaptable and transferable.</td>
<td>The scheme is considered easily transferable. The model of training coders and developing pictograms for different types of content is easy transferable to other countries. Only the criteria should be adjusted to the national norms.</td>
</tr>
<tr>
<td>Its results should be identifiable and capable of evaluation.</td>
<td>NICAM and the Kijkwijzer are evaluated every year by the Media Authority (Commissariaat voor de Media).</td>
</tr>
<tr>
<td>Over a range of relevant indicators, it should clearly out-perform other practices in terms of efficiency and effectiveness</td>
<td>The scheme is considered as quite effective and efficient. The Kijkwijzer is used by 90% of the parents. Additionally, lots of children use Kijkwijzer. The results of surveys among parents show that parents are very satisfied with Kijkwijzer.</td>
</tr>
<tr>
<td>It should be capable of being continuously improved.</td>
<td>The Kijkwijzer is adjusted regularly. In 2001 is started with Kijkwijzer 1.0 and current version is Kijkwijzer 10.0. Important adjustments were adding new ages (6 and 9). Improvements are made following technological developments, scientific insights and remarks from coders.</td>
</tr>
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</table>

### Assessment according to best practice criteria

**Reach:** A large output and a relatively high reach of the target group, indicate something about ‘popularity’ and ‘suitability’ of an instrument.

All broadcasters are affiliated with the system, broadcasters with a Dutch license (compulsory), as well as broadcasters with a foreign license (voluntary).

**Accessibility:** Ease of access, red tape, etc.

The classification system is transparent. The Kijkwijzer and procedures are easily accessible on the website of NICAM. It is easy to submit a complaint. The pictograms used to depict the classifications and different types of content are easy to understand for parents and for children.

**Effectiveness/impact:** Have the goals of the policy measure really been reached?

Measuring the effectiveness of a policy measure requires clear, explicit and measurable objectives.

The Kijkwijzer is considered to be quite effective. Kijkwijzer is used by 90% of the parents. Additionally, lots of children use Kijkwijzer. The results of surveys among parents show that parents are very satisfied with Kijkwijzer.

Key strengths of the Kijkwijzer are:
- simplicity and the use of easy to understand pictograms,
- all audio-visual products are classified,
- fast correction mechanism,
- dynamic (fast adjustments to scientific insights, needs from parents and audio-visual developments),


- transparency.

A weakness is that Kijkwijzer is quite often interpreted as helping to indicate that programmes are 'suitable for' certain groups. That is a misinterpretation as the Kijkwijzer is an indication of the risk which programmes pose for children based on their content.

**Efficiency:** Costs benefit ratios and volume of administrative burdens. It is important to get an idea of the resources being allocated for a specific measure in relation to the effect obtained.

There is a small budget. Stakeholders abroad often refer to the scheme as a very cheap system. NICAM continues to work towards better efficiency, for example through more automation of classification.

**Evaluation:** A proper assessment of effectiveness and efficiency of a policy instrument would only be possible if good evaluation studies are available.

NICAM and the Kijkwijzer are evaluated every year by the Media Authority (Commissariaat voor de Media).

**Implementation issues/ administrative burden:** If an instrument suffers from a lot of problems in the implementation process and leads to a lot of bureaucracy, this is not a recommendation for a good practice.

The Kijkwijzer is a simple and practical instrument for informing parents of possible harm which programmes code pose for their children. For the coders of the broadcasters, practical questionnaires are available online and coders are trained by NICAM.

**Transferability:** The instrument should be adaptable and transferable. Good practices are considered as good on the basis of the economic, political, cultural and institutional framework of the country in which they are implemented. Therefore, it would be important to know why a particular measure was introduced and which circumstances were of influence on its results. Then, we might get an idea in which situations (sectors, countries) the measure is successful and in which situations it will probably not be successful.

The model of training coders within NICAM and the use of pictograms is easy transferable to other countries. However, the exact classification criteria should be adjusted to the national norms.
5 Concluding remarks

Based on the desk research, national level data collection and national and EU stakeholder interviews, this final section draws together the main findings generated from this study and main future challenges identified.

5.1 Main findings

- One of the first general observations made is that there is much more statutory regulation in place and consequently less self- or co-regulation for the protection of minors from harmful audiovisual content. Protecting children across sectors is an important policy objective and in the audio-visual media sector this observation is supported by the higher levels of governmental regulation for this area. This is not to say that there are no self- or co-regulatory schemes in place focussing primarily on the protection of minors from harmful audiovisual content. Schemes focussing on this area tend to take the form of media classification systems for television broadcasts though more specific codes focussing on children are in place as well.

The vast majority of countries have self– or co-regulatory schemes in place for audiovisual commercial communications. The advertising codes of conduct differ in the level of detail in their rules and in their emphasis. Some schemes have a more ethical or deontological focus, whereas other schemes have more pragmatic, specific rules in place for commercial communications, such as rules on content. The schemes relating to commercial communications are often based on, or in line with the ICC code.

- Legal compliance according to the definition as set in the Principles for Better Self- and Co-Regulation, is upheld in the vast majority of the schemes. In most cases, the national regulatory approach is in compliance with European and national legal frameworks. In most cases, a country’s regulatory approach to structuring audiovisual media consists of broad statutory regulation such as a law on broadcasting or on audiovisual media, which is then complemented with more specific rules in a self- or co-regulatory scheme. The majority of the schemes identified are based on or connected with a specific law.

- Another general observation is that in many schemes, issues such as the specification of formal objectives and specified targets and indicators are generally not formalised and are kept implicit. Where goals and objectives were formulated, these generally do not follow the EU’s SMART criteria. Indeed, in EU policy making28, practices should have clearly identifiable aims and objectives which are SMART: specific, measurable, achievable, realistic, and time-dependant. Having such objectives helps to better monitor and assess the effectiveness and impacts of practices, and allows policy makers to compare practices. Establishing baselines, targets, and indicators in an explicit manner are requirements from the Principles for Better Self- and Co-regulation which help to evaluate a scheme and improve it if needed.

• Often the processes of **monitoring** and **implementing improvements**, are present but are not formalised or made systematic in manner prescribed by the Principles for Better Self- and Co-regulation. Complaints are collected in most of the schemes, and monitoring of the complaints does take place. However, from the perspective of the Principles, these processes are not fully formalised. Therefore according to the Principles for Better Self- and Co-Regulation many schemes do not fully adhere to the various requirements for the different criteria on monitoring and implementing improvements.

• Informal discussions on future areas of improvement, monitoring of effectiveness and impacts do perhaps not generally follow the requirements set out in the Principles. Nonetheless, the observation was made that many processes in place are simply not formalised and implemented systematically. Despite iterative processes not being universally implemented in self- and co-regulatory schemes, this is not to say that they are lacking entirely. A common trend amongst those schemes with a system for making improvements was the use of consumer complaints as an indicator for compliance, as well as for identifying key areas of non-compliance. Those subjects or issues on which complaints were most often received can also serve as indicators for the main problem areas within a scheme or within the areas of protecting minors from harmful content, or commercial communications. Other approaches include regular meetings with stakeholders to discuss performance of a scheme and which areas the scheme is not being regulating properly. Other schemes go beyond internal stakeholder discussions regarding the performance of a given self- or co-regulatory scheme and how best to remedy any issues encountered. Although in many cases there were processes for identifying improvements or new areas of focus, these were not always done systematically or made explicit.

Furthermore, there appears to be much sharing of information and experiences amongst Member States and the various self-regulatory organisations (SROs) and scheme owners. This is facilitated to a large extent through organisations such as the EASA Alliance, its best practice recommendations, and its system for cross-border complaints. Besides this, information collected shows that informally, there is also knowledge exchange and collaboration between countries.

• **Good approaches to developing a self- or co-regulatory scheme centre on a balanced representation of stakeholders.** Ideally all relevant stakeholders should be involved in the conception of a self- or co-regulatory scheme. In practice this means that stakeholders from media and broadcasting companies and advertising industries should be involved in the development phase of the scheme, along with public authorities, regulators, civil society, and consumer protection groups. Where specific products or sectors receive extra focus within a regulatory scheme, representatives from these areas should naturally be represented as well so that all relevant stakeholders are involved. In most cases, the relevant private business sector was well represented. Media and broadcasting companies and advertising companies alike were almost always involved, with regulators also being present in many cases. However, the findings show that consumer groups and civil society organisations were often not represented in the development of the majority of the schemes identified and analysed.
In some cases, indications were found of an open approach to developing a self- or co-regulatory scheme, evidence by for instance, having documents readily available for the different stakeholders involved. Besides open information sharing and provision amongst participants (through the internet), stakeholder access to the negotiations should not be restrictive for a development process to qualify as an open approach. In some cases the scheme owners undertook workshops, meetings and public events to further include a variety of stakeholders. Such measures seek to involve both the industry and the public, thus contributing to the openness regarding the conception of a self- or co-regulatory scheme.

Various stakeholder types were also involved in the implementation phase. Activities include regular meetings with stakeholders to discuss performance of a scheme and which areas of the scheme are not regulating properly. The relevant stakeholders are also often involved in the organisation in the board through membership of the general assembly and participation in committees. In some schemes various stakeholders are involved for example, in the handling of complaints in the adjudicating bodies.

A majority of the schemes examined in this study indicate that in practice, **enforcement activities** are rarely needed as the recommendations or decisions of a self-regulatory organisation (SRO) are usually respected. The role of public opinion in promoting compliance with self- and co-regulatory schemes in both the protection of minors from harmful content, and in commercial communications should not be underestimated. Evidence from both industry stakeholders, regulators and other interest groups all point to the value which media, advertising and broadcasting companies attach to a good public image. Regulators and policy makers should not underestimate the fact that it is very much in industry stakeholders’ own interests to comply with the rules they helped to set up in the first place. The development of these rules also centres to a large extent on what are deemed to be acceptable advertising and broadcasting practices in a given country or region. For the business sector consumer trust is one of the main assets to be secured.

Public opinion and its role in bringing about compliance amongst industry regarding self- and co-regulatory codes is also important in its contribution to generating political will and support for a scheme. Evidence collected indicated that as a general rule, having political will and support for a self- or co-regulatory scheme is a success factor in promoting compliance. The indirect backing of the political level adds importance to an issue, as well as further legitimacy and authority for a scheme.

A frequent observation which connects with the importance of political will and support is that a legislative backstop of some variety can be an important success factor in promoting compliance with a self- or co-regulatory code. Even where the threat of governmental sanctions or interference is distant, the fact that the government condones compliance with a given scheme adds legitimacy and importance to that scheme. In a similar vein, non-compliance with a scheme implies a stronger sense of breaching the agreed upon principles and rules. Both regulators, NGOs and industry stakeholders point to the importance of political will and a legislative backstop in self- or co-regulatory schemes.
The information collected on the self- and co-regulatory schemes shows that complaints are not always recorded with the same level of detail by the body dealing with complaints. In some cases, complaints resolution mechanisms are simply not a priority for the self-/co-regulatory body to implement more fully. This can be because compliance with the rules in place is generally high and no real need is felt for a complaints resolution system, or because few complaints have been received generally regarding the scheme.

Having timely responses to submitted complaints is also an important aspect of a complaints resolution system. There is an intuitive appeal in quick complaints resolutions as the exposure of the public to the inappropriate media content, be it general content or a commercial communication, is lower with a quick response to complaints. Research has shown that the damage can be done quickly with an inappropriate commercial communication or audiovisual media services bearing harmful content. In the case of advertising campaigns, these tend to last for a few weeks. If complaints resolution takes too long, the time span of the advertising campaign can already have passed by the time a response is taken by the self-/co-regulatory body regarding the complaint.

While not every self- or co-regulatory scheme has a complaints resolution system, in those cases where such a system was present, rules on response times varied. Where time limits on rulings were specified, the advocated response time to complaints varied from a matter of days to a matter of weeks or months.

It became apparent from the schemes collected that the satisfaction of consumers with the complaints procedure is not often measured specifically. In those cases where the number of complaints received is recorded, compared to the number of complaints resolved, the rate of resolution is at times used as an indicator for the outcomes of the complaints resolution mechanism. Similarly, in some schemes the number of appeals made against an adjudicating body’s decision is used as an indicator of the outcome of the complaints system and is thought to provide insight into the level of consumer satisfaction with the system.

An important observation here regarding complaints and consumer satisfaction is that complaints made are first judged for their suitability. If the complaint does not have a good foundation, is missing information, or concerns something which does not breach the scheme in place, then no action is taken against an advertiser or broadcaster. From the perception of a consumer this can feel unsatisfactory.

- For the schemes identified, the presence and nature of sanctions and their enforcement was examined. Graduated sanctions which maintain an element of proportionality with the breach in compliance are usually considered to be an effective approach in enforcing a scheme. However, the nature of sanctions which are deemed appropriate by the industry and civil communities are quite culturally determined. In most cases, especially in schemes with less collaboration between private and public organisations, naming, shaming and faming are common enforcement instruments. This is largely due to the importance of reputation and a good public image; undermining this can be very damaging to a company or broadcaster. However, it can also be a weak mechanism depending on the social pressure attached to such naming, shaming and blaming. There is much diversity in how well this works as an enforcement mechanism. Evidence collected
throughout this study indicates that a combination of softer and harder sanctions is a good approach to enforcing sanctions. Having a legislative backstop or more concrete sanctions in place for continued breaches of compliance tends to give a self- or co-regulatory scheme more proverbial teeth. Although such heavier measures are by no means the first resort for a self-regulatory body, information collected indicates that having a final, stricter enforcement frontier works well.

In connection with the enforcement of rules implemented for both broadcasting and advertising, there is a cultural element which determines what sort of practices are considered socially acceptable and which ones are less accepted. This cultural element also extends to what sort of rules are therefore appropriate to ensure broadcasting and advertising which adhere to national norms and values. Consequently a national culture, specifically the regulatory culture, influences what sort of enforcement mechanisms are put in place. Public faming and shaming may be sufficient in some countries to promote compliance while in other countries, fines or removal of certain content from its dissemination channel or platform are considered more effective and acceptable by both the public and the industry. This is not always the case however, as sanctions ought to maintain a degree of proportionality with the breach in compliance and what is considered as proportional can vary across national contexts. This idea of proportionality and appropriateness of certain types of sanctions is a fairly culturally determined idea.

- Several common approaches to financing of schemes are identified. In several cases the scheme relies solely on membership fees as the source of financing. In other schemes the financing comes from membership fees as well as public funds. Offering services to participants of schemes for payment is also a source of financing for a number of self- and co-regulatory schemes. The provision of a copy advice for an advertisement for instance, can be an extra source of finance for a scheme owner, or the classification of a broadcast according to a classification system. A practice which is considered to be quite effective when financing self- and co-regulatory schemes on commercial communications is that of industry wide fees for advertisers and participants of the schemes. The proportionality element introduces fair contributions from the participants of the scheme. The level and distribution of financing of self- and co-regulatory schemes was in the majority of schemes not publicly available.

- Using the definition of the criterion “evaluation” provided in the Principles for Better Self and Co Regulation, it becomes clear that in many of the self- and co-regulatory schemes identified, a formal evaluation process is often not in place. While annual reports are developed, more than half of the schemes collected have no evaluation system in place in line with the requirements for this criterion.

Complaints are often used as an indicator for assessing the performance of a self- or co-regulatory scheme and used in monitoring the achievement of a scheme’s objective. However, the exact connection between external complaints monitoring and the achievement of a scheme’s objective are usually not explicitly defined; complaints are sometimes used as a catch-all indicator for a scheme instead of a concrete monitoring system of the achievement of specific objectives (where specific objectives are also not defined often in the schemes encountered across the EU28). Using complaints to gauge the performance of a scheme however, does not constitute an evaluation in the sense prescribed by the Principles for Better Self- and Co-Regulation.
Few evaluation systems are in place which undertook regular assessments of the scheme, indicated possible areas for improvement, and pointed to a scheme’s broader impact. In general these are mainly carried out for schemes that were developed more recently. A large number of schemes were developed decades ago and at that time including the requirement of conducting evaluations was not common. Other reasons for not carrying out evaluations are that a country does not have an established evaluation culture or that the budget of the code owner is not sufficient to carry out a proper evaluation.

The assessment of the effectiveness and impact of the schemes is based on the performance of schemes across certain criteria from the Principles for Better Self- and Co-Regulation. Besides stakeholder acceptance, the criteria of evaluation, reiterative improvements and the implementation approach are taken as building blocks for the assessment of a scheme’s effectiveness. Since the objectives are often not SMART formulated, nor are targets or indicators determined, it is hard to assess the effectiveness of a scheme. Furthermore, evaluations are hardly carried out. This means that the information collected for each of these aspects is mainly of a qualitative nature, relying on expert feedback and stakeholder input as to the effectiveness and overall impact of the scheme in working towards its objectives and policy goals.

5.2 **Main future challenges**

The main future challenges regarding the regulation of audiovisual media stem from the online environment. Though regulating online activity and content goes beyond the scope of the AVMS Directive, the media forms and contents made available by the internet, including audiovisual media, are a central regulatory challenge. Concerning audiovisual media disseminated via internet facilitated services it is more difficult to know which content is reaching who, when, and how. Which audiences are being reached by which content, using which devices or online platforms is especially difficult in the online sphere. While regulating content online goes beyond the scope of audiovisual media specifically, on-demand services are difficult to regulate for similar reasons. Regarding the specific scope of this study, an important challenge to face in future remains the regulation of protecting minors from harmful audiovisual content accessed through on-demand services, and audiovisual commercial communications disseminated on the same channels.

What has been the case until now is a stronger regulatory approach when it comes to linear media forms compared with non-linear media services. The assumption that consumers make more of an autonomous choice regarding what they watch in the case of non-linear services appears to be undergoing a revision. It is becoming more evident that harmful content as well as advertisements can be pervasive online, also within on-demand audiovisual media services. Additionally, linear media is easier to regulate as producers and supplies or content and advertisements can more easily be found, monitored and regulated in the offline world.

A point to bear in mind when regulating audiovisual media content online is that parental supervision of children is more difficult to exercise. With linear media such as television broadcasts on a family television for instance, parents can more easily monitor what children watch. With the advent of many personal media devices, together with on-demand media services and even streaming of audiovisual content,
parental supervision of what a child watches becomes more difficult. Technical instruments and tools can be implemented for on-demand media services and for the internet to protect children from harmful audiovisual content. However stakeholders interviewed for this study indicate that to implement such protective tools, parents must be aware that these tools exist and know how to use these tools. If parents are less technologically or media literate, they are less able to use such tools. Experts therefore speak of protection divide regarding the protection of minors from harmful audiovisual content when this content is made possible using the internet.

The issue of awareness raising regarding the different technological instruments available for controlling access to content by parents and users is an important challenge. The issue here is that though these instruments are available, if people do not know about them or how to use them, they naturally cannot implement such protective technologies. In the case that people are aware of these technical forms of protection, getting people to use them is the next step, and this too remains a challenge according to EU stakeholders. There have been initiatives at both EU and Member State levels to improve and promote digital and media literacy amongst children, but also amongst parents to respond to the aforementioned protection divide which can occur.

The process of providing audiovisual content online from producer to user is complex and identifying ownership and responsibility for audiovisual content is difficult. Therefore, a full value chain approach is advocated by certain media companies and EU stakeholders in order to regulate all actors involved in delivering online content. However, given the complexity of the value chain, establishing rules and guidelines for such an approach is challenging.

There are also regulatory approaches which are based on the point of origin principle for audiovisual content and commercial communications. In these cases the producers of content ought to ensure the content they produce for dissemination is compliant with the relevant regulatory rules. This helps ensure that regardless of how such content is distributed and used, that the content itself is compliant. This is especially useful when regulating commercial communications. Regarding the protection of minors, some content produced is by nature aimed at older audiences, and not producing such content would be a competitive disadvantage to media companies. However, minors and other users can also choose to consciously seek out content which is potentially harmful or aimed at older age groups; circumventing technical instruments in place or searching online for certain content is something which is difficult to regulate against.

In a similar vein, connected to the fact that minors can circumvent certain protections against harmful audiovisual content online more easily, is the issue of user generated content. In the online sphere producing, using, and interacting with media is much easier and quicker to do. Media and content can also be sent and disseminated more easily across a range of channels and thus, harmful audiovisual media with regards to minors can still be accessed. Furthermore, users can create or alter content which is harmful themselves. Beyond more points of access to harmful content, users can produce it and cannot be regulated under the AVMS Directive as users fall beyond the scope of the Directive. User generated content therefore forms a regulatory challenge for the future when considering audiovisual media.
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