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## **An Overview and Comparison of Rules, Regulations and Policies affecting advertising to children in the Netherlands, UK, Spain and Sweden**

### **EXECUTIVE SUMMARY**

The study began with the perception that there were diverging regulatory situations governing television advertising and children in the Netherlands, Spain, Sweden and the UK. Operating within an set of minimum standards and certain degree of harmonisation agreed in the EU Directives, these countries present different attitudes to advertising, television and the protection of minors, which show in their national interpretation of agreed minimum standards. The reasons for the divergences may be found in the national regulatory traditions across Member States, in their television and advertising market structures, and political and cultural national objectives, in which the regulation of children's television advertising takes place.

First, the four countries have very different television traditions. They are committed to a semi-regulated marketplace for commercial television, the preservation of a national audio-visual industry and some level of public service broadcasting. Commercial (advertising-funded) television channels appeared in the 1950's in Spain and the UK, while the Netherlands only accepted advertising on television a decade later. Private television, as a result of deregulation, did not occur until the early 1990's in the Netherlands, Spain and Sweden. A common trait could be found between the regulation of children's advertising on cable/satellite private television in the UK, on private television in the Netherlands and on all television systems in Spain. In all three countries, children's television advertising is allowed, although regulated. Swedish commercial television is strictly regulated, and advertising to children under twelve is prohibited.

Advertising and media regulation varies according with national economic political and objectives. The degree to which each of the four countries is committed to develop a television industry, one to be financed by advertising, while at the same time protecting a public service broadcasting system, may account for differences in regulation of television advertising in general, and of that aimed at children in particular.

Strong differences occur in the development stages of each of the national television markets (high penetration of cable and satellite in the Netherlands, Sweden and UK, but almost absent in Spain); television ownership patterns (public vs private broadcasters); the way public

service television is paid for (mixed-funded public television vs. licence fee financing) and competitive environments of television advertising and airtime selling practices (high discounts in Spain). Regulatory frameworks for advertising and television are also varied across the four countries: laws, statutory action and self-regulation play different roles in each of the Member States. In Spain, the introduction of a second level of legislation at the regional level makes regulation and enforcement of these even more complex.

Public service broadcasters in the four countries are of different nature: in the UK and in Sweden public channels do not accept advertising revenue, although in the UK advertising-funded private terrestrial channels have a public service remit. Dutch and Spanish public service broadcasters are advertising-funded, but in Spain no licence fee is paid. Public broadcasters are therefore more dependent on advertising expenditure than Dutch public broadcasters, where they are mainly funded by a licence fee, or than terrestrial private channels in the UK. Public broadcasters still hold strong market positions, especially in the UK and in Spain, both in audience and in advertising expenditure terms. Advertising-funded public broadcasters in each of the four countries but Spain, exist in highly competitive but regulated environments. In Spain, public broadcasters compete under the same rules as private broadcasters for a share of advertising expenditure, while at the same time accepting State subsidies. Therefore, public broadcasting systems do not participate in the television market in the same way across the four countries.

Television share of advertising expenditure is high in Spain and in the UK, compared with that in the Netherlands and in Sweden, but still lower than that of the press. Spanish and UK consumers are historically more used to advertising on television than Dutch and Swedes, which introduced advertising as a source of finance for television later. Viewing times are also different: higher in Spain and the UK, whereas Dutch and Swedish children watch less television on average. Watching by Swedish children is by far the lowest in the four countries.

Concerning the regulation of children's advertising, the common assumption that Sweden applies the strictest measures of any Member State does not necessarily hold. In Sweden there is a ban on advertising to children under twelve for commercial broadcasters, and of scheduling advertising around children's programmes, and in this sense, there is a similarity in treatment with the Dutch regulation of public service broadcasters. It appears that Dutch regulators are committed to protect their public service broadcasting by strictly regulating advertising transmitted on it, and particularly advertising in relation to children. Dutch public broadcasters are banned from selling sponsorship of children's programmes, and from inserting advertising within children's programmes. Therefore, it is not only in Sweden where prohibitions exist; the difference, however, lies in the nature of broadcaster to which the measure applies (Dutch public broadcasters vs Swedish private broadcasters). The Dutch measure preserves the public broadcasting system from commercial interests. The Swedish measure responds to the "unfair" nature of advertising aimed at children. The spirit of the latter affects all broadcasters, irrespective of their ownership or means of distribution, as well as advertisers.

Media regulation provides rules for the scheduling, frequency and amount of advertising since such measures affect directly broadcasters' finances. Advertising regulation usually tackles content issues, and it affects the advertiser directly, and the media indirectly, depending on the type of measure. A total product ban affects the media as much as the product category in terms of investment and media revenue.

At the European level, advertising content is regulated mainly in the Misleading and Comparative Advertising Directive. The TWF Directive contains certain provisions that affect the content of advertising to children, but the criteria to interpret those content issues are not clarified. It is not surprising to observe that national regulations of advertising to children that directly affect television revenues tend to be well enforced and effective across the four Member States: amount and scheduling of advertising aimed at children, frequency of breaks, and sponsorship provisions. On the other hand, content issues concerning children's advertising, such as violent or indecent content, are difficult to measure: advertising content issues and their regulation are underlined by national political, cultural and economic policy aims, and these usually conflict.

In countries where television advertising was already heavily regulated before the implementation of the first TWF Directive, the European text has had limited impact. This impact mainly applies to the legitimisation and regulation of certain practices, such as the sponsorship of children's programmes. This is the case in the UK where sponsorship was not allowed until the early 1990s. In countries where advertising on television was not strictly regulated, as in Spain, the European text and its implementation laws provided for a regulatory framework in which consumer and industry interests could develop, by way of filling a void in national advertising regulations.

Each of the countries in this study addresses the protection of minors and the regulation of television advertising in a different way. The differences can first be found in the traditional mode of specific media regulation, whether by law, regulation or administrative action, which affects the level of detail in the rules that govern children's advertising on television.

The interpretation of the provisions in the European legal texts is left to national regulators. Where the broadcasters are responsible for compliance with the laws, such as in the UK and in Spain, the control slips from the regulatory level to the broadcasters. In the presence of clear criteria set by regulators or the industry, for example in the UK, broadcasters themselves interpret both scheduling and content provisions, exerting a self-regulatory control. In the absence of such clear criteria, for example in Spain, subjective concepts, i.e. content issues for the protection of minors, are difficult to control. When the advertisers are responsible for compliance with the laws, for example in the Netherlands and Sweden, content difficulties are resolved by the intervention of self-regulatory bodies and their rules: the Dutch Advertising Code or the new approved guidelines in Sweden for the interpretation of the ban on advertising to children.

Watershed restrictions tend to lose effectiveness in the light of audience figures, as a great deal of children's watching is done in the evenings. Such restrictions assume that children do not watch at adult times or adult content. The regulatory answer is usually to apply time restrictions to "difficult" content, in order to transform it into "adult" advertising, since these measures are easier to control than the amount of violence on screen, for example. Especially problematic are the diverging interpretations of concepts such as "minors", "taste and decency", "misleadingness" or advertising "harmful" to children. On the other hand, what children watch at those times is the responsibility of the parents.

The majority of complaints and infractions in the four countries fall under the concept of misleadingness (lack of important information in advertisements, toys that are portrayed doing what the toy does not really do, lack of separation between advertising and

programming etc.). Misleadingness is a content issue, and when clear criteria are not provided at the regulatory level, its interpretation is left to subjective guidelines. The degree of what constitutes misleadingness varies, according to national interpretations, from the one where captions with price and other important information are measured (in the UK) to the one that labels all advertising aimed at children as potentially misleading (in Sweden).

In the Netherlands and Spain there seems to be a lower level of political debate around the content of children's advertising. In the UK, food advertising to children and the type of the food that is advertised is an important consumer issue, and is at the centre of both the public and political debate. In Sweden the debate is centred on the fact that all advertising to children is considered to be potentially misleading because it plays on children's inexperience, and therefore, it is unethical to advertise to children. However, following the same argument, prohibition to advertise to other groups of society could occur: women or ethical minorities, to the extent that advertising may be labelled as inherently "unfair".

Self-regulation in children's advertising exists in the four countries, but plays a very different role in each of them. The differences in the impact of self-regulation depend on whether the rules have been developed by the industry alone or in consultation with the consumer associations. This is the case in the Netherlands, in which the Dutch Code of Advertising is drawn up in consultation with the consumer association, but at the same time it is legitimised in the Law. In Spain, the Code of Toy Advertising, although a product-specific code, is controlled by the consumer associations and its impact is greater than other industry codes where consumers have no input or role. Although a self-regulatory agreement, the Spanish code is largely applied by toy manufacturers and the resolutions of the consumer association's commission are well accepted by toy advertisers. Yet, it is the legitimisation of the self-regulatory system in which consumer associations participate, as it is the case in the Netherlands, that makes control fully effective. In any case, the role of consumer associations in the enforcement of content rules governing children's advertising is central. The effectiveness of self-regulatory systems can be undermined to the extent that advertisers, in particular foreign importers and retailers of products that target children, and that advertise on television, do not necessarily adhere the voluntary guidelines of their own industry.

The four countries have markedly different regulatory frameworks for television advertising to children. In the Netherlands, scheduling restrictions are detailed and strict for public broadcasters. Content provisions are detailed for some categories of products, such as alcohol or confectionery, otherwise, the ICC guidelines apply; in Spain, the legal regulation of advertising to children lacks the necessary detail and does not provide sufficient guidance to either advertisers or to enforcers; in Sweden, the legal ban on advertising to children may be considered effective, but its effectiveness is somewhat restricted by the presence of satellite television, and of business practices, such as scheduling advertising after a watershed or targeting the family. Finally in the UK, rules are detailed, easy to enforce, and quick to amend. The UK has a unique system that allows, through statutory codes, the application of flexible guidelines. The compliance with the guidelines is enforced by a body set up by broadcasters. Advertising to children is allowed in the UK, but is heavily constricted by detailed rules that try to avoid legal bans. Yet, such a system would be inappropriate in Spain since it could always be labelled as "overregulation" or "censorship" in the presence of a double source of finance for public broadcasters under the same legal rules; in Sweden, such a system would probably be welcomed by advertisers and television channels, since it allows for advertising to children under detailed circumstances.

The forthcoming revision of the TWF Directive will no doubt reflect conflict in the national approaches to children's television advertising. In the context of the Single Market, the provision for a level playing field in television advertising to children encounters its main difficulties in advertising content issues. These reflect cultural, economic and political national attitudes to advertising, television and the protection of minors, and these attitudes do not necessarily converge across all Member States. Public broadcasters are likely to have an interest in how the European television marketplace in which they operate is regulated. In the medium term, one challenge for them is to determine their potential to act as a counterbalance to Single Market aims and pursue European cultural diversity within the EU audio-policy objectives. This study shows that the differences between the four Member States in their legal traditions, and in the stages of development of their television advertising markets, make it difficult to share a common set of rules on children's television advertising, especially concerning advertising content.