

STUDY ON THE IMPACT OF
ADVERTISING AND TEleshopping ON
MINORS

(99/S 139-102855)

Realised by INRA
Under the legal direction of
BIRD & BIRD Brussels

**For the European Commission
DG EAC**

MARCH 2001

TABLE OF CONTENTS

I. INTRODUCTION

1. Executive Summary
2. List of correspondents

II. REPORTS

A. National reports

1. Austria
2. Belgium
3. Denmark
4. Finland
5. France
6. Germany
7. Greece
8. Iceland
9. Ireland
10. Italy
11. Liechtenstein
12. Luxembourg
13. Netherlands
14. Norway
15. Portugal
16. Spain
17. Sweden
18. United Kingdom

B. International report

International and European regulation and self-regulation

III EXCELL TABLES

A. National tables

1. Austria
2. Belgium
3. Denmark
4. Finland
5. France
6. Germany

7. Greece
8. Iceland
9. Ireland
10. Italy
11. Liechtenstein
12. Luxembourg
13. Netherlands
14. Norway
15. Portugal
16. Spain
17. Sweden
18. United Kingdom

B. Comparative table

* * *

EXECUTIVE SUMMARY

1. The context

The Television without Frontiers Directive (Council Directive 89/552/EEC as amended by Directive 97/36/EC of the European Parliament and of the Council) lays down the legal framework for television broadcasting within the European Union. A number of provisions in the “TVWF” Directive, as adopted in 1989, related to the protection of minors, notably Article 16, which laid down a set of rules concerning advertising and minors. When the Directive was reviewed, the Commission undertook to carry out a study on the impact of television advertising and teleshopping on minors, in the context of the next review of the Television Directive, in accordance with Article 26 thereof.

The TVWF Directive develops, in respect of the television broadcasting sector, the principles underlying Article 49 of the EC Treaty, namely the freedom to provide broadcasting services. In this respect, the Directive co-ordinates Member State legislation in a certain number of areas including advertising, sponsorship, teleshopping, the protection of minors and public order¹.

Chapter IV of the Directive concerns commercial communications (advertising, sponsorship and teleshopping) and sets basic requirements aiming at consumer protection. It includes in particular an Article dedicated to the particular relationship between minors and consumption, either as consumers in their own right or as participants in such decisions within their family units. These rules are implemented and completed within the Member States, in accordance with the individual traditions and cultures that exist.

2. The methodology used

The study on the impact of TV advertising and teleshopping on minors was carried out by International Research Associates (**INRA**) in collaboration for legal issues with the law firm **Bird & Bird**, for the 18 Member States of the European Union and the European Economic Area, and, for each country, in collaboration with a national law firm (a complete list is annexed to the study).

¹ Explanatory memorandum, OJ supplement 5/86

The aim of the study was to identify and describe the national provisions on advertising provided in legislation, regulation and self-regulatory codes, which are applied to advertising in each State for the protection of minors. In addition, the national system for the handling of complaints was described fully, covering administrative, legal and self-regulatory measures.

For most countries it was possible to identify and to comment upon official proposals of law. In this respect, the information received from professional associations in the advertising sector was very helpful, as were the comments made by national authorities, who had been sent the draft reports by the Directorate General Education and Culture.

Finally in each national report the consultants indicated the way in which the provisions of the TVWF Directive (unofficial consolidated version), have been implemented in national legislation concerning TV advertising and teleshopping directed at minors. Nevertheless, in view of the Commission's objectives and to enable comparison, the reports also cover other media such as radio, press, outdoor advertising, cinema, and Internet.

The study was carried out, realised and presented using an identical layout for each of the countries studied to achieve a harmonised readable approach, and facilitate comparison.

Therefore, as well as the main definitions and general rules in the field of advertising and teleshopping directed at minors, each national report contains the regulation by sector and by media, as well as an identification of specific marketing techniques. Moreover, each national report is preceded by a summary, which gives the essential characteristics of the country in question. An Excel table has been drawn up, using the same layout for each country, as well as a comparative table for the 18 States studied.

Finally a report has been drawn up on European and international regulation and self-regulation concerning advertising directed at minors.

3. The objective of the study

The study is split into two parts.

Part one:

The first part concerns the situation in each of the Member States and the EEA Members. It provides a complete account of the legislation, regulation and other administrative practices in the Member States in respect of advertising and teleshopping to children. It charts the evolution of such provisions from 1988 (i.e. prior to the adoption of the

Television without frontiers Directive) to the present. It includes information on any debate that took place and the principles on which such provisions are based.

In particular the study addresses the following points:

- The underlying principles that apply to national legislation on television advertising and teleshopping
- In respect of national legislation (which includes all legislative or administrative instruments etc) the study seeks to highlight any differences in treatment between different media (for example between television and the press)
- The study describes all the information regarding the age limits that apply in respect of television, and whether differences exist between television and other media.
- The study analyses the texts of the various self-regulatory codes
- The study identifies the existence and handling of any complaints regarding both the legislation and the codes referred to in the previous sections.

Part two:

The second part of the report concerns the legislation that applies at European and International level, and examines the links and contradictions that exist between the application of the different instruments that apply to this activity.

4. The main findings of the study

- The study shows that the provisions of the Directive provide an adequate and flexible framework for Member State rules in this area. It is worth noting the extensive use of self-regulation in this area, both in respect of the rules applied and the complaints procedures available.
- There is a clear difference between the regulation of television and other media, with television being more heavily regulated than other media (it is worth noting that there are not always specific rules concerning minors for other media).
- There are a remarkable number of differences at Member State level, ranging from the age limits in definitions (that vary in addition within a Member State for different activities) to specific provisions on certain sectors (for example on financial activities or alcohol

advertising). This demonstrates that the Directive's approach is the most appropriate providing an adequate and flexible framework, which Member States have completed with reference to their different cultures and traditions.

- The number of complaints is extremely low, and has not increased significantly throughout the period covered by the study, showing that the Directive, as implemented in the Member States works effectively.
- There are a limited number of proposals in certain Member States, whose aim would appear to be mainly to clarify the application of existing legislation; it is worth mentioning in this respect the adoption of self-regulatory codes concerning the Internet.
- The study shows which Member States have taken measures that are more restrictive than those of the Directive; only one Member State has a total ban on advertising aimed at minors², one has a ban on toy advertising from 7.00 a.m. to 10.00 p.m.³, whilst a small number of Member States have legal⁴ or voluntary⁵ restrictions on advertising around children's programming. A large majority of Member States do not restrict advertising aimed at children but do provide for detailed rules as to the content of such advertising (for example: no advertisement may encourage children to enter strange places or to converse with strangers; the use of personalities known to children may be forbidden or restricted; advertisements for sweets should feature a toothbrush symbol on the screen). These rules are effected both through regulation and self-regulation.

* * *

BIRD&BIRD BRUSSELS

² Sweden

³ Greece

⁴ Belgium (Flemish Community), and Italy

⁵ Denmark

Annex:
List of Correspondents

AUSTRIA

Schonherr Barfuss Torggler &
Partners
Dr. Guido Kucsko
Tuchlauben 13 – 1014 Wien
Tel +43 1 534 37
Fax +43 1 533 25 21

GERMANY

Price Waterhouse Coopers
Michael Schmittmann
Berlina Allee 15, D-40212
Dusseldorf
Tel +49 89 512420
Fax + 49 89 51242110

DENMARK

Gorrissen Federspiel Kierkegaard
Cartsen Malby
HC Andersens Boulevard 12
K – 1553 Kobenhavn V
Tel +45 33 41 41 41
Fax +45 33 41 41 33

FINLAND

Castren & Snellman
Pekka Sirviö
Erotttajankatu 5A – PO Box 233 Fin
00131 Helsinki
Tel +358 9 228 581
Fax +358 9 601 961

FRANCE

Bird & Bird
Alexandre Vuchot
Centre d’Affaires Edouard VII
3 Square Edouard VII
750009 Paris
+33 1 42 68 60 00
+33 1 42 6860 11

GREECE

Scandamis C.S
Prof. Scandamis
5 Koumbari Str
106 74 Athinai
Tel +301 3612191
Fax +301 3617671

ICELAND

Adalsteinsson & Partners (LOGOS)
Mr. Vilhjalmsson
Borgatun 24
IS-105 Reykjavik
Tel +354 5400300
Fax +354 5400301

ITALY

Studio Legale Carnelutti
Nicolo Bastianini
Via Principe Amedeo 3 - 20121
Milano
Tel +39 2655851
Fax +39 265585585

IRELAND

Mc. Cann FitzGerald
Mrs Grace Smith Craigmore
Gardens 5
Blackrock –
Dublin
+353 1 829 0000
+353 1 829 0010

LIECHTENSTEIN

Wanger Advokatbüro
Dr. Markus Wanger
Landstrasse 36
FL-9490 Vaduz
Tel + 423.237 52 52
Fax + 423.237.52.53

LUXEMBURG

Le Goueff Avocats
Stéphane Le Goueff
9 Avenue Guillaume – 1651
Luxembourg
Tel +352 44 37 37
Fax +352 44 37 38

NETHERLANDS

Steinhauser Hoogenraad
Lisette Heslenfeld
Van Heenvlietlaan 198 – 1083 CM
NL – Amsterdam
Tel +31 20 3013030
Fax +31 20 3013040

NORWAY

Advocatfirmaet Selmer DA
Asbjorn Berg
PB 1324 Vika
N-0112 Oslo
Fax +47 2 3116501

PORTUGAL

Jalles Advogados
Isabel Jalles
Av. Alvares Cabral 34-6°
P-1250-018 Lisboa
Tel +351 21 388 40 95
Fax +351 21 388 19 55

SPAIN

Martinez Lagae & Asociados
Santiago Martinez Lagae
Serrano 25 –
28001 Madrid
Tel +34 91 426 4470
Fax +34 91 577 37 74

SWEDEN

Advokatfirman VINGE
Ulf Ohrling
N. Ericsonsgatan 17- PO Box 11025
SE-404 Göteborg
Tel +46 31 722 35 00
Fax +46 31 722 37 00

UK

Bird & Bird
Morag Macdonald
90 Fetter Lane
UK London EC4A 1JP
Tel +44 20 7415 6000
Fax +44 20 7415 6111