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The Challenges of Consumer Protection in the Field of Sustainable Development and the Use of New Technologies

The information asymmetries between businesses and consumers always demand paternalist governmental intervention, an ex ante legislation in order to protect the weaker party. Both the public and the national legal environments follow economic changes in a flexible and effective way. However, new challenges are generated by new technologies and the constant change of business sectors. Commercial practices, the latest advances of commercial communications specifically, make dialogue and consultation necessary for legislators both at a community and national level. This study aims to discuss some of the future challenges, segments and issues that should be faced and tackled – while considering the situation of the European media policy.

1. The legal environment

According to the Opinion of the Economic and Social Committee, which was published in 2015 entitled Environmental, social and health claims in the single market¹ (Opinion of EESC 2015), the European Union cannot be claimed to have a comprehensive and transparent legal framework governing commercial communications. The Committee claims that this framework is 'unnecessarily complex, patchy, inconsistent and sometimes incoherent'.² There are several provisions discussing commercial communications such as the 2005/29/EC Directive concerning unfair business-to-consumer commercial practices (UCP)³, the 2006/114/EC Directive⁴, concerning misleading and comparative advertising, or the 2010/13/EU Directive concerning the provision of audiovisual media services

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¹ Opinion of the European Economic and Social Committee on 'Environmental, social and health claims in the single market' (own-initiative opinion) (2015/C 383/02) (Opinion of EESC 2015).

² Opinion of EESC (2015) 2.5.

³ Directive 2005/29/EC of the European Parliament and of the Council Of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No. 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive'; UCP).

⁴ Directive 2006/114/EC of the European Parliament and of the Council Of 12 December 2006 concerning misleading and comparative advertising (codified version).

(AVMSD)⁵. In Hungary, due to the results of implementation, normative consumer protection provisions of the mentioned Directives can be found in several acts, such as Act XLVII of 2008 on the Prohibition of Unfair Commercial Practices against Consumers, Act XLVIII of 2008 on Essential Conditions of and Certain Limitations to Business Advertising Activity, Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules of Media Content, Act CLXXXV of 2010 on Media Services and Mass Media, and Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices. One of the characteristics of the legislation is that business to consumer communication issues are included in Act XLVII of 2008 on the Prohibition of Unfair Commercial Practices against Consumers and Act XLVIII of 2008 on Essential Conditions of and Certain Limitations to Business Advertising Activity, however, Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices includes the legislation of business to business relationships and competition rules. Besides, provisions concerning commercial communication inducing the enhanced protection of the consumer, naturally appear in some sectoral areas (for instance Act CLXXXV of 2010 on Media Services and Mass Media and Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules of Media Content).

According to the Opinion of EESC (2015), the rapid development of the informational digital sector envisages the transformation of the legal framework for commercial communications with the aim of creating a more transparent and consistent framework by further developing the present legislation. It also claims that the legislation of online communication is included in various documents. In order to deal with this field in the long term, it is necessary and justified to create new conceptual frames.⁶

2. New methods to gain consumer confidence

Commercial communications and commercials in particular are important tools for the enterprises to advertise themselves, enhance the purchase of their products and the use of their services. Recently, commercial contents have gone through a considerable change parallel with the changes in the attitude of the consumers. Aggressive, violent, or self-serving commercials cause great antipathy in the consumers. Enterprises have to realize that changing consumer attitude makes it necessary for them to reconsider their PR and marketing policy. Therefore, they seek to supplement commercial contents with information raising public interest and responsibility. The new EU policy enhancing social responsibility of enterprises also contributed, claiming that communications are to be filled with a new content paying particular attention to consumer protection. The European Committee published a new direction in 2002 on corporate social responsibility, in which the EU expressed their wish to involve enterprises in the EU strategy of sustainable development.⁷

⁵ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 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: AVMSD) (codified version).

⁶ Opinion of EESC (2015) 2.7.

⁷ Green paper - Promoting a European framework for corporate social responsibility./COM/2001/366.; COM (2006) 136; Corporate Social responsibility: Partners for progress, OECD. 2001.

The 2011 Responsible Business Package⁸ meant another milestone in order to enhance CSR, innovation, sustainability, competitiveness and consumer confidence. The European Committee provided a new, modern interpretation of CSR in 2011.⁹ The Commission puts forward a new definition of corporate social responsibility as “the responsibility of enterprises for their impacts on society”. Respect for applicable legislation, and for collective agreements between social partners, is a prerequisite for meeting that responsibility. To fully meet their corporate social responsibility, enterprises should have in place a process to integrate social, environmental, ethical, human rights and consumer concerns into their business operations and core strategy in close collaboration with their stakeholders.¹⁰

The Opinion of EESC (2015) puts an emphasis on communications achieved through product statements related to the protection of the environment, social and health issues, besides, the Opinion regards this issue – within the area of false communications – necessary to be dealt with in the future. The Opinion of EESC, of course, supports the existence of higher-quality products and services that are ethically produced, or which are distinguished by their better environmental and/or social performance, and the existence of environmental, social and health-related claims focusing this opinion on claims and marketing communications that are false, inaccurate or lead to confusion.¹¹ Nowadays, it refers to a trustworthy and responsible attitude if the products are produced with regard to environmental concerns. It may considerably enhance the sales of a market product. The Opinion of EESC (2015) raises attention to a possible danger caused by the misuse of such information. This phenomenon is called „greenwashing” which can be defined as the selective promotion of environmentally-positive information through advertising, giving consumers a distorted impression of the facts, in which these ‘green’ aspects are over-emphasised.¹²

The same phenomenon can be seen in the case of ethical and social claims as well, when the purchase of a product is presented as a social, charitable or solidarity-based act, which indirectly serves the interests of a social group struggling with particular social difficulties.¹³

Such indirect social allusion could be starving children, support of people suffering from illnesses, or contribution to provide a hospital with equipment that is included in the price of the product. Thus consumers may have the impression that they are becoming part of a charity event. In case of such communications, special attention must be drawn to false and inaccurate commercials due to the socially sensitive character of the field. This phenomenon is called „social washing” by The Opinion of EESC (2015).¹⁴

Communication of health related information in commercials is a similarly sensitive field. In numerous cases enterprises emphasize the product’s impact on health. The targeted consumers are mostly vulnerable people believing in recovery, so instead of average consumers, the characteristics of such vulnerable consumers must be considered when

⁸ Opinion of the Committee of the Regions on the ‘Responsible Businesses Package’ (2012/C 277/17)

⁹ Communication from the commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions A renewed EU strategy 2011-14 for Corporate Social Responsibility COM(2011) 681 final.

¹⁰ ib. 3.1.

¹¹ Opinion of EESC (2015) 2.12.

¹² ib.4.2.

¹³ ib. 5.1.

¹⁴ ib. 5.4.; 5.8.

dealing with the misleading or unfair nature of a commercial, for instance. The Opinion particularly points out that recently there has been a wave of consumer concern about healthy lifestyles, and the production of food, cosmetics, and other health-related products. The expansion of technology has also triggered the use of health-related claims in areas ranging from food and nutrition, to enhanced physical and cognitive functions.¹⁵

In the past few years in commercial life some significant elements have emerged such as sustainability, public and social interest as well as the orientation and convergence of global market perspectives along with a specific market behaviour and policy. Fair trade may operate only within the framework of ethical trade. According to the Opinion of EESC on Ethical Trade and Consumer Assurance Scheme (Opinion of EESC 2006) ethical trade is a narrower and more recent term than CSR. „Ethical trade in general is understood as a conscious attempt to adjust the trading activities (producing, retailing or purchasing) of a company, organisation or individual to reflect a set of ethical values. Ethics is a branch of philosophy concerned with human character and conduct. Ethical trade in this sense can therefore reflect a very wide ranging set of values; its scope can include a wide range of products and services (including financial services and tourism) based in any country, including member states of the EU. The opinion, when it is using this sense, will present the phrase as ‘ethical trade’.”¹⁶

The policy of the EU places a strong emphasis on the implementation of ethical trade. According to the Opinion of EESC (2006) proliferating consumer assurance schemes seek to offer a range of ethical, social and environmental guarantees. Most seek to address one or a small number of issues specific to that product, such as fair trade, *organic* production, sustainable forests, environmental impact, child labour or animal welfare.¹⁷ According to the Opinion of EESC (2006) the Consumer Assurance Scheme is a system that allows and encourages consumers to play a part in ethical trade by purchasing goods and services that are produced in a way to achieve specific social or environmental outcomes, benefiting specific communities or society as a whole.¹⁸ As for commercial communications, reliability and the presentation of fair statements are highly significant, as misstatements may mean serious loss of prestige for the particular enterprise. (e.g. *Nike v. Kasky*)¹⁹

3. The protection of vulnerable and disadvantaged groups

Due to its significance, the protection of disadvantaged and vulnerable groups require a new identification that is closely related to the above mentioned. New PR methods aiming to gain customer confidence and new technologies including hidden and direct advertising should raise the regulators', supervisors' and self-regulatory bodies' attention in order to ensure the protection of such consumer groups.

¹⁵ Opinion of EESC (2015) 6.1.

¹⁶ 2006/C 028/5 Opinion of the European Economic and Social Committee on Ethical Trade and Consumer Assurance Schemes 9.

¹⁷ ib. 3.

¹⁸ ib. 9.

¹⁹ *Nike v. Kasky* 539 U.S.654 (2003).

Children and adolescents are a particularly vulnerable group of people who are targeted by commercials appearing on the internet and other new platforms, as the use of such platforms and their permanent 'presence' are specific to them. According to the 2012 resolution of The European Parliament on the impact of advertising on consumer behaviour (EP resolution), children and adolescents are especially vulnerable categories of people in view of their great receptiveness and curiosity, lack of maturity, limited free will and high potential to be influenced, especially through the use of new means of communication and technologies.²⁰

4. The emergence of new communication genres

It is significant to consider and emphasize the fact that it is not only the content that is constantly renewing but also the means of communication, besides, new genres arise, such as product placement that has been introduced in a specific way (prohibition, later authorization)²¹ following heated debates. In Hungary, product placement is applied not only in audio-visual media services but also in radio media services. Another example is split screen or virtual commercials which make it possible for them to appear parallel with the programmes. The latter is a form of communication taking advantage of digital technology by allowing products or commercials to be built in the edited content retrospectively. Examples also include promotional techniques such as branded content, emotional marketing and storytelling, or the so-called neuro-marketing applications, which were recognised by the Opinion 2015. Considering the possible dangers, the Opinion claims that these techniques, „while helping suppliers to achieve their business targets more effectively, hamper the public's rational decisions in relation to their purchasing decisions, uses and consumption, based on a real assessment of actual profits of goods and services and the appropriateness of their pricing.”²²

As for these contents, it is a really serious task to form an appropriate legislative framework or an effectively working social and self regulatory system. The main risk is that the consumer is unable to clearly differentiate between the edited and economic content. It must be realized the the main platforms have been engulfed by commercial messages. It is a serious challenge for the enterprises to raise consumers' attention and gain consumer confidence particularly after seeing so much misleading advertising. Consumer fatigue has encouraged enterprises to seek content related new techniques, and the application of new techniques in order to spread commercial messages has also appeared on the market. The application of such techniques has made the indication of commercial messages highly significant in order to avoid misleading the consumers. New advertising techniques using online surfaces and mobile phones also mean a new challenge. Personalized, behaviour-based internet commercials raise the issue of the protection of consumers and their privacy. They must not lead to the infringement of rules protecting

²⁰ Impact of advertising on consumer behaviour European Parliament resolution of 15 December 2010 2012/C 169E/08; A-K. (2010/2052(INI)) 28.

²¹ AVMSD 11. cikk.

²² Opinion EESC (2015) 2.11.

personal data and privacy. Mostly, such commercials induce a review on the effectiveness of consumer protection provisions related to commercial communications.²³

Due to the use of new platforms, the well-known issue of hidden advertising should be considered from a new perspective. This is a longstanding issue, as the prohibition of surreptitious advertising is a fundamental tenet of media law. Due to its nature, it prohibits the publication of economic content because it would mislead consumers. On the other hand, it includes new hazards, as enterprises are attempting to place hidden or surreptitious advertisements using new advanced technologies in order to target consumers. The 2012 Resolution of the EP on the impact of advertising on consumer behaviour discusses this issue under the heading 'Issues arising from the development of the internet and new technologies'.

It denounces the development of 'hidden' internet advertising in the form of comments posted on social networks, forums and blogs, the content of which is difficult to distinguish from mere opinion (an opinion of an enterprise, product or service). If they are not based on an objective source, there is a risk that consumers will make wrong decisions. It often happens that certain business operators finance directly or indirectly any action to encourage the dissemination of messages or comments appearing to emanate from consumers themselves when in reality these are messages of an advertising or commercial nature. In case it proves to be true, it is regarded as unfair commercial practice and market behaviour. The resolution suggests the emergence of forum observers/moderators who are alert to the dangers of hidden advertising, as well as the development of information campaigns aimed at warning consumers of these 'hidden' forms of advertising.²⁴

Also, the protection of consumers must be dealt with as a highly significant field on the internet, in case of bluetooth applications and e-mail systems. The protection of consumers' privacy deserves particular attention against the new forms of aggressive commercials.

5. Promoting consumer awareness

However, the primary goal is still to promote consumer awareness and this process must be started during childhood years if possible. There are numerous programmes to ensure the learning process (eg. Media Smart in the UK). According to the Opinion of EESC (2006), even the economic and social committee is seeking to encourage 'a consumer awareness programme, from early years, through mainstream education and extending into lifelong learning, on the capacity of consumers to influence social and environmental dynamics through informed purchasing'.²⁵ Obviously, aware consumer behaviour must not end with the mere awareness of economic contents and their rational and appropriate assessment when making purchasing decisions, as future consumers may contribute to supporting new environment-related technologies by choosing and purchasing products that have been produced using those technologies, besides, due to enhancing social sensitivity,

²³ Impact of advertising on consumer behaviour European Parliament Resolution of 15 December 2010 on the impact of advertising on consumer behaviour 2012/C 169E/08; (2010/2052(INI)); A-K.

²⁴ *ib.* 17–18.

²⁵ Opinion of EESC (2006) 7.

they will be able to make decisions related to social issues parallel with commercial decisions. The 2006 Opinion claims that 'CSR focuses on supplier-driven processes whereas 'ethical trade' involves a broader remit and includes consumer-driven initiatives.'²⁶ Therefore, the harmony between possible corporate promises and consumer behaviour is highly significant, and particular attention must be paid to unfair commercial practices that might mislead consumers. Thus, CSR may only create an ethical commercial environment capable of growth if being in harmony with environment friendly and aware consumer behaviour. Guarantees providing consumers with environmental and social information such as product labelling, trade marks, PR materials and advertising, are highly significant in commercial policy.

Loss in consumer confidence is a serious threat of the system to enterprises and it may lead to a similar loss of purchasing power. Therefore in such commercial communication environment, enterprises must seek to avoid deception as enterprises acting ethically make consumer feel they have done something together for a good cause, whereas deception leads to the consumers' complete disappointment, as they might feel their confidence has been abused. Therefore, it is highly significant to credibly assess the quality of consumer guarantee systems and to form high level frameworks.²⁷

Consumer awareness must be enhanced against new means of communication, consumers must be informed about and aware of them. In case of minors it is highly significant to consider and filter out unsolicited behaviour patterns (such as nutritional disorders, anorexia nervosa). Therefore, the appearance of the models employed in commercials must not convey harmful messages related to age and weight.²⁸

Regarding consumer awareness, a critical approach must be formed by consumers against the media and media contents. It is essential for consumers to be aware of their rights related to commercials and techniques to protect their privacy on the internet.

It must be claimed that enterprise and product related information should be user friendly from the perspective of consumers. It is also significant for them to have easy access to information about socially responsible enterprises and their products. Therefore, terminology must be clear and consistent,²⁹ so it is highly significant that the information exchange process should be comprehensible for average consumers. However, this activity and the appropriate operation of commercial communications is important for enterprises as well as attuning commercials to consumer demands. CSR is essentially a sustainable approach including economic growth with social and environmental considerations.³⁰ This will only work in an appropriate way if consumer demands are satisfied through providing transparent and credible information.

²⁶ ib. 1.10.

²⁷ ib. 2.6.-2.8.

²⁸ EP resolution 31.

²⁹ EP resolution 34.

³⁰ Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — A renewed EU strategy 2011-14 for Corporate Social Responsibility' COM(2011) 681 final 2012/C 229/15 (4.2.2.) See on that: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions a renewed EU strategy 2011-14 for Corporate Social Responsibility COM(2011) 681 final.

Summary

Along with the promotion of consumer attitude and awareness, CSR including an ethical commercial system may operate effectively. It is necessary to take advantage of opportunities provided by new info-communicational technologies and methods. It is particularly significant that guarantee systems protecting consumers should be controlled at a high level and they should provide adequate guarantee. In case of such coordination, a consumer may gain a position of a particularly responsible consumer by choosing a product with a specific environment related or social aim. On the other hand, as for such communications fair trade principles are yet to be considered, for instance the characteristics of average consumers or the characteristics of target consumers in order to avoid unfair commercial practices. It is therefore necessary to provide adequate information on guarantee systems which must be made transparent and comprehensible thus enhancing consumer confidence. According to the EP Resolution, particular attention must be paid in cooperation with national advertising authorities and self-regulatory bodies, to misleading advertising, including online, in specific sectors such as the selling of food products, pharmaceuticals and medical care.³¹

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A FOGYASZTÓVÉDELEM KIHÍVÁSAI A FENNTARTHATÓ
FEJLŐDÉS ÉS AZ ÚJABB TECHNOLÓGIÁK HASZNÁLATA
KÖRÉBEN

(Összefoglalás)

A vállalkozások és a fogyasztók között meglévő információs aszimmetria az állam részéről mindenkor egy paternalista, beavatkozást, ex ante jogi szabályozást igényel a gyengébb fél védelme érdekében. Mind a közösségi, mind a hazai jogi környezet rugalmasan és hatékonyan követi a gazdasági szféra változásait. Az új technológiák, az üzleti szektorok változásaiból adódó kihívások azonban mindig újabb és újabb kihívásokat generálnak. A kereskedelmi gyakorlatok, különösen a kereskedelmi kommunikációk fejlődésének újabb és újabb kihívásai a jogalkotókat együttgondolkodásra készíteti mind közösségi, mind hazai szinten. A tanulmány ezek közül kíván néhány, a jövőben kihívást és kezelést igénylő szegmensre, problémakörre rávilágítani. Mindezek során a szerző érinti a vállalkozások társadalmi felelősségvállalása körében megvalósuló kommunikációt, az etikus kereskedelem feltételeit, a hátrányos helyzetű, sérülékeny fogyasztó védelmét, valamint az új kommunikációs műfajok kihívásait.

³¹ EP resolution 25.