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**Ensuring the Protection Needed for Children to
Appropriate Intellectual, Spiritual, Moral and Physical
Development in the Field of Audiovisual Media
Services¹**

Today's content and form of media services are increasingly raising issues of quality and generating challenges, which solution requires a high level of attention and competence from legal and professional regulators, as well, because the statutory regulation itself does not provide proper protection against harmfuls of new media environment. So the media sector also shall undertake commitments cooperating with the state (co-regulation) and/or independently (self-regulation). In this regard, the Paper tends to demonstrate how the Hungarian national legal and professional regulators seek to protect minors' healthy development in field of media as their constitutional obligation under the minimum requirements of the European Union. Beyonds the Paper tries to present such progressive measures that were agreed by other Member States in order to prevent underages from harmful media effects.

Protection of minors needed to their healthy development in general

The New Hungarian Constitution declares: „All children have the right to receive the protection and care which is necessary for their satisfactory physical, mental and moral development”². It is different from the former one that mentioned who was obliged to provide this protection.³ These provisions declare protection and care of children as one of their rights that includes obligations for other people opposite such norms that imply expressed conduct possibilities for children.⁴

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² New Hungarian Constitution, Article XVI.

³ § 67 (1) „In the Republic of Hungary, all children have the right to receive the protection and care of their families, and of the State and society, which is necessary for their satisfactory physical, mental and moral development.” (Act XX of 1949 in the Constitution of The Republic of Hungary)

⁴ Endre, BÍRÓ: *Rights of children as a new branches of law. Children's material and children's procedural law*. In: Endre Bíró (ed.): *Branches of law is borning [...]* On the children's rights and their enforcement in Hungary. Foundation Knowledge of Law, Budapest, 2010. 6.

In fact, protecting the healthy development of minors is a moral norm that existed before and independently from the legal regulations, but nowadays it received its quality of legal basic value because of its legal regulation.⁵ Taking its importance into consideration, constitutional declaration and binding force deriving from the European constitutionality and general European principles, it shall be provided in all fields of our life.

The legal history of protecting children goes back to the Geneva Declaration of the Rights of the Children adopted 26 September 1924 by League of Nations Assembly. Later, some provisions aimed at children's benefit were declared by the Universal Declaration of Human Rights in 1948, but at first, specifically the Declaration of the Rights of the Child no. 1386. (XIV) adopted 20 November 1959 by the General Assembly of the United Nations dealing with minors. Its Preamble refers to the children's physical and mental underdevelopment that makes special guarantees and care required in legal protection. It calls upon parents and the whole society to recognise children's rights set forth and strive for their observance by legislative and other measures in accordance with the seven principles declared by the Declaration. The second principle states that "the child shall enjoy special protection and shall be given opportunities and facilities by law and by other means to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner, and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interest of the child shall be paramount consideration". Furthermore, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights also address children's rights in more provisions despite of their generality, but the first comprehensive international document defining children's rights, taking their special capabilities into consideration, was the Convention on the Rights of the Children adopted 20 November 1989 in New York. It determines such effects from what children shall be protected by the state or family and declares that children's best interest shall be taken into account in connection with exercising or enforcing several rights.⁶

Finally, it shall be mentioned that the protection of minors appears in Article 24 of the Charter of Fundamental Rights of the European Union as well. Similarly to the Hungarian tradition, it states that „children shall have the right to such protection and care as is necessary for their well-being”, but in addition to these provisions, the Charta also requires that „in all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration”.

The Hungarian Constitutional Court has dealt with the former § 67 (1) several times. In its Decision no. 79/1995. (XII.21.), it was noted that this provision is about the children's fundamental rights and defines the general requirements and statutory tasks in connection with protection and care of minors. The Court found that the protection and care are obligations of the family, state and society, in this order. In field of media, parents' liability is in fact very significant, because of incorrect classifications or lack of extensive and overall media education, for example. Parents are required to co-watch media services and explain their meanings. Beyonds the state in broader sense⁷ shall determine guarantees of enforcing children's rights, create and operate the institutional system of child protection by using

⁵ Antal, ADAM: *The plurality and competition of values. Law – values – moral.* Foundation for Human Rights Centre, Budapest, 2006. 54.

⁶ Barnabás, HAJAS – Balázs SCHANDA: *Rights of children.* In: András Jakab: *Commentary to the Constitution.* Publisher Századvég, Budapest, 2009. 2385.

⁷See: Decision no. 434/E/2000. The state should be understood in a broader way, including public and municipal authorities, so the enforcement of law is as significant as the legislation.

legislative and other administrative measures. Finally, the society itself is not defined by the Constitutional Court, so it may include educational institutions, social communities and civil organizations that, being in contact with children, are obliged to protect their healthy development.

To sum it all up protecting children from various harmful effects of the world and ensuring their rights are such duties that must be provided by the whole society. Children, among other things, are to be prevented from all forms of abuse, violence and brutality. This right creates a multipolar relationship, where the bound parties may have different interests, but they are obliged to act and not to abstain.⁸ Failing this duty, the mistreatment can be realized in form of either active or passive behaviour, for example breaching legal obligations, or missing parental control. The former Hungarian Radio and Television Board found/established breaching § 67 (1), when a TV show violated the provision of media law aimed at protecting children, that was incompatible with the Constitution as well. In its decision no. 1357/2009. (VI.30.) the former media authority stated that the mentioned constitutional provision was injured by presenting the alleged rape of two twelve year-old children as their discussion in undemanding and irresponsible way. Moreover, the authority noted that the programme broadcasting such an unconstitutional message was impairing mental development of minors under sixteen.

In fact, children's rights are realized or injured in specific sectoral-professional legal relations.⁹ Considering this, in the next part, it will be shown how children's right to protecting their healthy development is provided in the field of media services.

Protection of underages in the field of audiovisual media services

The Audiovisual Media Service Directive – separated minimum rules, possibility of co- and self-regulation, and promotion of media literacy

As Hungary is the member of the European Union, regulating the audiovisual media services shall be performed in accordance with the Audiovisual Media Services Directive of the European Parliament and the Council (Directive).¹⁰ Beyond defining minimum rules, it allows national regulators to adopt more detailed and/or stricter provisions.

The Directive establishes the concept of audiovisual media service set out in Article 1, that declares the criteria of this service as follows:

- is 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 its principal purpose is the provision of programmes, in order to inform, entertain or educate, to the general public and
- it is provided by electronic communications networks within the meaning of point (a) of Article 2 of Directive 2002/21/EC.

According to the Directive, the audiovisual media service includes the television broadcast (linear), the on-demand audiovisual media service (non-linear) and the different forms of the audiovisual commercial communication. So taking the broad scope of the concept

⁸ HAJAS – SCHANDA, 2009. 2387.

⁹ BÍRÓ, 2010. 5.

¹⁰ 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) (09. 10. 2011.)

into consideration, the Paper only focuses on the linear and non-linear audiovisual media services.

Articles 12 and 27 include the requirements of linear and non-linear audiovisual media services in order to protect minors. The different regulations can be explained by the character of these services: television broadcast is provided by a media service provider on the basis of a programme schedule, while the on-demand media service is provided by a media service provider for the viewing 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. Rules on these services could be summerized according to the following.

	TELEVISION BROADCASTING	ON DEMAND MEDIA SERVICES
contents that might <i>seriously</i> impair the physical, mental or moral development of minors	<i>FULL PROHIBITION</i> : do not include them in any programmes	to be only made <i>AVAILABLE IN SUCH A WAY</i> as to ensure that minors will not normally hear or see such on-demand audiovisual media services
programmes which are <i>likely</i> to impair the physical, mental or moral development of minors	<i>ENCODING SELECTING TIME OF BROADCASTING TECHNICAL MEASURE</i>	NO LIMITATION

Table 1. Rules in order to protect minors or non-demand audiovisual media services and television broadcasting. http://ec.europa.eu/avpolicy/reg/tvwf/protection/index_en.htm (10/10/2011)

These binding rules have to be implemented in laws, but their detailed and/or stricter contents, their application in practise can be worked out by alternative regulatory approaches in form of self- and/or co-regulation. Beyond defining these provisions, the Directive keeps in mind that the regulation of audiovisual media services does not provide sufficient protection for underages in itself. Children's media consuming is becoming more and more intensive and skilful, and that makes media literacy for everybody, particularly for minors, inevitably. So the Directive encourages development of media literacy in all sections of society where progress shall be followed closely. There is no doubt that to understand media operation, and to take advantage of its all benefits, avoiding its harms, and various audiovisual media services of different quality, all justify the promotion of media literacy. But notwithstanding the significance of this new literacy, "legislative obligation does not arise, since the Directive only declares that media literacy should be promoted in all sections of the society, and its progress should be followed closely".¹¹ This way, Member States are not obliged by legislative duties, but they should take all necessary steps to promote media education and encourage audiovisual media service providers to participate in it by the continuing education of teachers and trainers, organizing trainings aimed at children from a very early age, and national campaigns aimed at citizens.

¹¹ Éva SIMON: *Regulating on demand audiovisual media services*. Communication Research Institute, Budapest, 2008. 21.

Protection of minors in the field of audiovisual media services in national context

Hungary implemented the minimum rules of the Directive by the Act CIV of 2010 on the freedom of the press and the fundamental rules on media content, and Act CLXXXV of 2010 on media services and mass media.

The fundamental rules aimed at protecting children from traditional and on-demand media services could be found in Article 19 of the Act CIV of 2010 but the „detailed rules on the protection of minors against media content are laid down in separate legislation”.¹² The Act makes a distinction between linear and non-linear services in line with the Directive. So if the later services damage materially the intellectual, spiritual, moral or physical development of minors, especially by displaying pornography or extreme or unreasonable violence, they may only be granted to the general public in a manner that prevents minors from accessing such contents in ordinary circumstances, but linear media services may not include such materially damaging media contents. These television services only can publish likely damaging elements in a manner that ensures by the selection of the time of broadcasting or by the means of technical solution, that minors do not have the opportunity to listen to or watch such contents under ordinary circumstances.

So this Act does not provide any detailed requirements on how the minimum rules shall be applied in practise. It is set out in Act CLXXXV of 2010. This Act makes classifying linear media services binding with some exceptions that shall be performed by the media service providers.¹³ The current Act divides media contents into six categories, introducing the category of „not recommended for audiences under the age of six” with the purpose of protecting of the youngest from the media contents being fear-causing and violence. Furthermore, programmes must be broadcasted in line with watershed corresponding to their category. The watershed is obligatory for such media contents, as well - preview of programme, sport programme or the commercial communication – that are not binded by the classification. At the same time, it shall be mentioned that in case of encrypted forms of programme using watershed is disregarded for programmes, previews, commercial communications, social advertisements and sport programmes in line with the Directive, if the applied code or technical solution can prevent the accessibility of underages to the programmes.¹⁴ In addition to the watershed, the rating of the programme shall be communicated at the beginning of the programme, and a sign corresponding to the rating shall also be displayed in the form of a pictogram in one of the corners of the screen in such a way that would be clearly visible throughout the whole programme.¹⁵

The Act requires using classification for on-demand media services, as well, but only the Categories V and VI are to be applied. It means that the legislator considers harmful such programmes that may impair the physical, mental or moral development of minors seriously, particularly because they are dominated by graphic scenes of violence or sexual content, and these may seriously impair the physical, mental or moral development of minors, particularly because they involve pornography or extreme and/or unnecessary scenes of violence. These media services can be broadcasted only if the on-demand media service providers use effective technical solutions to prevent minors from accessing them.

¹² Article 19 (5).

¹³ Article 9 (1) „A media service provider providing linear media services shall assign a rating to each and every programme it intends to broadcast in accordance with the categories under Paragraphs (2) to (7) prior to broadcasting, with the exception of news programmes, political information programmes, sport programmes, previews and advertisements, political advertisements, teleshopping, social advertisements and public service announcements.”

¹⁴ Article 10 (6).

¹⁵ Article 10 (1), (2), (4).

It is visible that only the minimum EU requirements and the framework of their application are defined at a legislative level, but in some cases, stricter expectations are required, such as using watershed and pictograms at the same time as a general rule. Stating frameworks alone creates the possibility to regulate several issues in documents of lower level, and apply co- and/or self-regulation involving the media industry.

Other national initiatives ensuring protection of minors: Recommendations of the Media Council, and co- and self-regulation

Sharing regulation between the legislator and media industry can be justified by several reasons, if the rules do not have to be implemented in laws by the Member States. The main reason of using alternative regulatory schemes is providing the balance between competing interests and the public policy goals, that is impeded in several cases because of the disadvantages of state regulation.¹⁶ Furthermore alternative schemes are supported because of „a growing political control crisis in communications, caused by a combination of convergence, globalization, liberalization and rapid technological change.”¹⁷ At the same time, we must keep in mind that although the self-regulation – seems flexible, co-regulation is emphasized because of the concerns in relation with the former nowadays. So, a well-established co-regulation can ensure – the protection of minors in a very effective way, because of the involvement of the most interested parties, including the civil sector, using their competences and maintaining the state enforcement ultimately in case of failing duties.¹⁸

Recommendations of the Media Council

The Media Council adopted its *Recommendation on effective technical solutions used in case of linear and on-demand media services in order to protect minors* in June 2011, cooperating with the media sector and after a public hearing. The document does not have any binding force, but it can be applied in official cases and decisions, because of the legal competence of the Council. Its aim is to inform television and on-demand media service providers on effective technical solutions that may be used in order to limit the availability of media contents being harmful to minors.

So the Recommendation helps all media service providers in performing their legal duties, deriving from the Act CLXXXV.

The Recommendation was developed according to principals such as different effective technical solution according to the platforms, because of their special technical skills, with the active participation of media service providers and involvement of adults, parents and guardians, finally enhancing the media literacy of minors. So, it includes filtering solutions for all forms of television and the Internet, but makes distinctions between analogue and digital cable TV, digital satellite, internet protocol and digital terrestrial television services, and furthermore, between media services provided via mobile and internet networks.

The Recommendation notes that it is necessary to provide time for service providers for preparation to perform their relevant duties properly, and points out that the technical solutions can be effective if media service providers are monitoring how a method or ap-

¹⁶ Eva LIEVENS: Protecting children in the new media environment: Rising to the regulatory challenge? *Telematics and informatics*, 2007. 24. 316.

¹⁷ Florian SAURWEIN – Michael LATZER: 'Regulatory Choice in Communications: The Case of Content-Rating Schemes in the Audiovisual Industry'. *Journal of Broadcasting & Electronic Media* 54 (2010) 464.

¹⁸ Eva LIEVENS - Jos DUMORTER – Patrick S. RYAN: The Co-Regulation of Minors in New Media: A European Approach to Co-regulation. *UC Davis Journal of Juvenile Law & Policy* 10 (2006) 146.

plication is successful, they are developing solutions in light of experiences, and informing their users about the availability of their services and possible risks. Finally, the Recommendation also warns that it is important to improve the media literacy of minors, and to take an active part by behalf of the guardians.

Examining the document deeply, the followings shall be emphasized about the effective technical solutions on different platforms.

a, In case of services broadcast on analogue cable television, it is required that the media contents of Category VI must not be available without effective technical solution aimed at preventing underages from watching them. If the analogue media service provider ensures digital channels at the same time, media contents of such category shall be delivered only in digital form, with applying an effective technical solution.

b, Recommendations related to the effective technical solutions used in case of digital cable and digital satellite television service, furthermore on IPTV and digital terrestrial television services are identical. It means that the used Set-Top-Boxes (STB) must provide a child lock function, which has a secret code being at least four numbers, that is not displayed on the screen. Its aim is to set an age limit. Other proposals are that in case of changing channels or switching off/on the STB, the system must ask the code again, moreover, the protection shall cover both the linear and non-linear programmes recorded on STB. Finally, in order to guarantee a high level of protecting underages, on-demand media services can present their contents by requiring a secret code, and the system shall exclude the user automatically in case he or she gives an incorrect code three times (but only for ten minutes, and if the STB provides possibility for this), and new code shall be given after checking subscriber's actual age.

c, Linear and non-linear services broadcasting on mobile telecommunications networks are subjected to more rigorous recommendations. Media service providers must have child lock solutions to filter – contents impairing children, if they want to provide harmful media services. This child lock solution shall be installed by using an individualized secret code, in order to limit accessing to impairing contents, and that limitation shall be ensured until the child lock is switched off. Compared with the earlier methods, it is more severe that in the case of non-linear services, media contents of Categories V and VI cannot appear in electronic programme guides, if the child lock is working.

d, Finally, in case of broadcasting television and on-demand services on the Internet, a metatag shall be provided to the source code that reflects the category of the certain content, and is recognizable with home filtering solution. Before watching a content of Category V or VI, the users' age shall be controlled, furthermore, the user shall be warned for the risks on minors and the media content shall be displayed by using optical measure being appropriate to the category of age limit.

The Media Council adopted the *Theoretical aspects of judicial practise related to the age-classification of media contents, the signals used before and during certain programmes, and the method of communication on ratings* in July 2011. It notes that the aim of the classification is to protect children and youngsters against programs, which pose a risk in the formation of such a person who is responsible for its own sake and who is able to cohabit in the society. The Recommendation notes, as the legal list of potential harms is not detailed, all programs shall be considered negative that promote such patterns of behavior, views and values that are opposed to the generally accepted norms, particularly to the constitutional fundamental values.

In connection with all six categories, the Recommendation applies a “building” approach in defining what kind of programmes can be presented in the different categories. So, it describes the contents with their processable and recommended forms that can be adequate. Applying this approach, the Media Council refers to psychological characteristics and media literacy skills of age-groups in all categories, and then outlines what media contents (what kind of genres and harmful elements) can be displayed in the certain categories, with giving examples of programmes.

The Recommendation notes that protecting minors does not mean making certain topics taboo, and draws further attention to that whole contexts and messages shall be evaluated in light of intellectual and processing capacities of minors of different age groups. So, in classification, the main requirement is adapting the theme and presentation method of media contents to the development of younger and older children. The Recommendation also notes, since all harmful contents cannot be determined and children are developing their own set of values that leads to their vulnerability, underages shall be provided with a special protection. It requires that in evaluating harmful effects on children’s physical, mental or moral development, minors’ interest shall be primary and media service providers must do it strictly. This obligation means that in case of an element including features of a higher category than others in the same programme, the higher category must be applied, furthermore, it is necessary to classify episodes of series separately because certain episodes include aggression, sexuality and fear-inducing content of different quantity.

In my opinion, as the classification is done by the media service providers themselves as a general rule, the Recommendation should play a significant role in this field, because it provides information to media service providers about potentially harmful and beneficial media contents, taking values and aims of public opinion and different social – educational, medical – institutions into account. So media service providers shall follow the proposal of the Media Council, which suggests the „test of explicating topic”. This test requires examining whether a programme includes harmful elements, how these elements are emphasized, and how the harmful content is displayed. Furthermore, it is needed to the examination of the existence of such tools that can help children in staying away from what they are watching, and in decoding, revaluing the violence, sexuality and other impairing elements of media contents. Finally, it is necessary to take visual tools, music and other sound effects into consideration, which can enhance or resolve the effects of dramaturgical turns. So the Recommendation points out that the classification of programmes depends on number, extent, quality, wording, visual and musical display, message content, understanding with or without explanation, so the overall effect of scenes on children.

Despite of this Recommendation, the false classification is a continuously existing issue in our country, because the service providers generally apply lower categories to the media contents than the ones which would be sufficient. Although they have the possibility to turn to the Media Council that “shall adopt a regulatory decision on the rating of the programme within fifteen days from having received the programme in question, for an administrative service fee”,¹⁹ this opportunity is not used in most cases. Since the incorrect classification can lead to impair children’s rights to healthy development, the accurate classification can be performed within a co-regulatory scheme that provides cooperation between legal and professional sector, in my opinion. So, the legal provision on „common” ratings should be operated in some other way. The Media Council and the services providers should perform this task together, taking the Recommendation into account, for

¹⁹ Article 9 (9).

example, in the form of an approval *ex post*. By exercising this approach, the classification could perform its significant role in field of protecting minors against harmful media contents.²⁰

National Co-regulative Initiatives

The Act CLXXXV in Chapter VI includes the general rules on co-regulation in media administration. The Article 190 states that „with a view to effective achievement of the objectives and principles set forth herein and the Press Freedom Act, facilitating voluntary observance of law and achieving a more flexible system of law enforcement in media administration, the Media Council shall cooperate with the professional self-regulatory bodies and alternative dispute resolution forums of media service providers, ancillary media service providers, publishers of press products, media service distributors and intermediary service providers”. In this respect, „the Media Council shall have the right to conclude an administrative contract with a self-regulatory body established and operating in accordance with the pertaining legislation, with a view on the shared administration of cases falling within the regulatory powers expressly specified below, as defined in the present Chapter, and the cooperative performance of tasks, related to media administration and media policy, not defined as regulatory powers under legislation, but nevertheless compliant with the provisions of this Act”. Taking this possibility into account administrative contracts have been concluded between the Media Council and the Association of Hungarian Electronic Broadcasters, and the Association of Hungarian Content Providers. These documents include Co-regulative Codes of Conduct that imply provisions related to the protection of minors.

The Code of Conduct of the Association of Hungarian Electronic Broadcasters deals with children in Article 7. First of all, it states that minors must be prevented from the Categories V-VI in on-demand media services by using technical or other solution. In case of availability on the Internet, media service providers shall assign metatags to the source code of contents that refer to the Categories V-VI, and can be recognized by home content filtering applications. Furthermore, the Code makes bindings for the media service providers who ensure that before accessing contents of such categories, a question is asked in connection with the user’s age, before accessing to the content, and at the same time and at same place it draws the user’s attention to the risks for minors. According to the Code, the aim of this requirement would be control based on the user’s age. In my opinion, a question proposed by the document such as „Are You over 18? Yes or No?” cannot perform the aim of protecting minors from impairing media contents.

The Code of Conduct of Association of Hungarian Content Providers also addresses the protection of underages in Articles 7 and 8. It includes the abovementioned requirements defined by the former Code of Conduct, but regulates on-demand services being available via IPTV, where parental control facility shall include a separate secret code setting age limit that is at least four numbered and is not displayed on the screen. Its aim is to limit access to harmful media contents for children.

In my opinion, the most effective technical solution would be a Content Access Control System which verifies user’s age on the basis of reliable data. As the UK Authority for Television on Demand states, this aim could be achieved by the confirmation of credit card ownership or other form of payment, where there is mandatory evidence that the holder is 18 or over, a reputable personal digital identity management service, which uses checks on

²⁰ LIEVENS et al., 2006. 144.

an independent and reliable database, such as the electoral roll or other comparable proof of account ownership, which effectively verifies age.²¹

Finally, it shall be mentioned that although in case of on-demand media services, minors must be prevented from only materially harmful media contents, I think non-linear media service providers should take commitments related to likely harmful contents, as well. At parents' request, effective technical solutions should be provided to control the accessing to these type of media contents. Its importance derives from the fact that in case of free availability of on-demand media services, underages may watch such programmes without parental control, and these cannot be understood or can be misunderstood by them. Since children cannot choose age-appropriate media contents to their degree of development, by ensuring limiting access to likely impairing contents could balance the need for protection and user's control over on-demand services.

International outlook: taking the Report from the Commission on Protecting children in digital world and its Working Paper²² into consideration

Developments of audiovisual media services are changing the ways how consumers use them. Today, audiovisual media contents can be reached via mobile phones or Internet, not just from TV. In addition to these new platforms, on-demand services are also spreading, and these enjoy lighter regulation approaches than the ones on television. So, regulations should keep the pace with these phenomena at the level of the European Union and in its Member States, in order to avoid harmful effects of the new media environments. Legislators, service providers and parents all shall be aware of potentially impairing influences and risks on minors, and they have to promote measures that are aimed at children's welfare.

At EU-level, the issue of protecting children in the field of audiovisual media services is addressed by the *Audiovisual Media Services Directive* presented earlier (modified Television Without Frontiers Directive that is related to television services) came into effect in 2007, that had to be implemented by the Member States until 19 December 2009. Furthermore, protecting children is the central theme of the „*Recommendation on the development of the competitiveness of the European audiovisual and information services industry by promoting national frameworks aimed at achieving a comparable and effective level of the protection of minors and human dignity*” adopted on 24 September 1998 by the Council. It concerns the content of audiovisual and information services covering all forms of delivery. It was followed by the „*Recommendation of the European Parliament and of the Council on the protection of minors and human dignity, and on the right of reply in relation to the competitiveness of the European audiovisual and online information services industry*” in the year 2006 that promotes the adoption of relevant rules for all audiovisual and online information services, focusing particularly on the Internet. So the cornerstones of children's protection are defined by the Directive, the Recommendations of 1998 and 2006,

²¹ Rules & Guidance, Statutory Rules and Non-Binding Guidance for Providers of On-Demand Programme Services (ODPS), Edition 1.1, Originally published 15 Sept 2010, Re-published 21 March 2011. 13.

²² REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS on the application of the Council Recommendation of 24 September 1998 concerning the protection of minors and human dignity and of the Recommendation of the European Parliament and of the Council of 20 December 2006 on the protection of minors and human dignity and on the right of reply in relation to the competitiveness of the European audiovisual and online information services industry-PROTECTING CHILDREN IN THE DIGITAL WORLD- /* COM/2011/0556 final */

Commission Staff Working Paper, Accompanying the document – Protecting children in the digital world – Brussels, 13.9.2011 SEC(2011) 1043 final

and the latter ones cover such online services that do not fall under the scope of the Directive.

These EU documents impose and allow Member States to bind rules and optional possibilities in order to promote children's protection against all harmful effects of the media. For example, both Recommendations suggest applying *codes of conduct* for content providers in order to take measures in providing positive and appropriate contents for minors, and keeping them away from harmful ones. The Working Paper points out that Member States should take increased attention to this proposal, and this is proven by the fact that in 18 countries, including Hungary, there have been efforts to facilitate the access of minors to suitable contents, and their protection from potentially harmful ones, moreover to make such content more visible and easier to find. For example, Germany is urging content providers to establish a „positive list” of relevant offerings, not to mention that Italy and Portugal also promote the programming of audiovisual content specifically dedicated to children by media service providers.

EU also promotes *media literacy* and awareness-raising initiatives. The Recommendation of 1998 already stressed the „need to raise awareness among parents, educators and teachers of the potential in the new services and on the means whereas they may be made safe for minors”. The Recommendation of 2006 went even further by addressing actions to improve media literacy. These documents had significant influence in the Member States, since as the Working Document suggests to all of them to develop initiatives raising media literacy and awareness, that most of them are in connection with online safety. But the wide range of audiovisual media contents of varying quality, meaning and aim shall be also well-known by children and their parents. Despite of this demand, the Working Paper does not suggest a positive picture: „universal coverage of all children and parents and consistency across schools and Member States still faces significant challenges”. These deficiencies could be solved by following the Concept of Media Education of the Slovak Republic, which was elaborated in 2009. It examines the state of education in this field, and defines the objectives, strategy and conditions for an effective media education system divided into four basic levels, according to the age groups that would be operated by a Centre of Media Education. This Concept seeks to cover the whole society, consistently being based on such defined pillars as the incorporation of media education into school curricula, a system of evaluation of media literacy, the existence of a stable public institution coordinating related issues, and participation of media in the connected activities.²³

Thirdly, *parental control measures, filtering and age verification* systems together with *rating or classification of audiovisual content* were already addressed in both Recommendations. 15 Member States altogether, including our country, consider that technical measures are generally useful in order to avoid potentially harmful contents, the Working Document points out several concerns among Member States in connection with them. In this regard, Portugal emphasises the differences between computers that are publicly accessible, where technical measures are considered useful, but on personal/family computers they are deemed rather ineffective. Furthermore, Portugal also warns that content filtering and parental control systems could give a false sense of security, as often even very young children have sufficient technical knowledge to circumvent them.²⁴

Especially in field of audiovisual media contents, we shall remember that „the technical instruments mentioned above can only promote graduated and age-appropriate access to audiovisual content on the basis of reasonable and reliable rating and classification sys-

²³ Jana MARKECHOVA: Concept of Media Education. *IRIS* 5 (2010) 27.

²⁴ Working Document, 2011. 15.

tems”²⁵ - as stressed in the Working Document. In most countries, there are legal obligations regarding the age rating and classification applied to all audiovisual contents. Altogether 15 Member States and Norway consider cross-media and/or Pan-European classification systems for media contents are helpful and feasible, it is contradicted by nine Member States which emphasize the cultural differences, and there are concerns related to their sufficiency, effectiveness, consistency and divergence, because EU and third countries show differences in the age ratings and classifications for the same content on other platforms. The varying ratings and classifications are a controversial problem. On the one hand, it can be explained by the differences in the context, technologies and cultural habits of the Member States. On the other, it may be incomprehensible for consumers if, as the UK considers, viewers are confused about what they might expect within a given media environment.²⁶ As I see, if the interested parties want to use different ratings and classification according to the platforms delivering audiovisual contents, informing parents about the meaning of the used systems is the primary task. In case of its absence, introducing greater consistency would be help – and would be useful. Beyond ratings and classifications, there are other promotional measures in regulating audiovisual media services, for example, if the law would demand *on-screen icons* for and *acoustic warnings* before potentially harmful television programmes. Generally, they are considered useful and effective, but the latter requires parental responsibility and awereness about these tools, and furthermore, carefully selected transmission time for potentially harmful programmes („watershed”).

Finally, there are other country-specific initiatives promoting children’s protection. For example, Germany and Romania use a pre-locking system, which means that viewers have to enter an at least four-digit PIN code to unlock programmes. In Germany, digital content providers can pre-lock potentially harmful programmes. In Romania, digital providers have to use a pre-lock for the transmission of over-18 content. But the on-demand audiovisual media services are also given special attention and in eight Member States, providers of such services have established systems of co-/self-regulation, which mostly include a code of conduct regarding the protection of minors. Generally, providers of on-demand audiovisual media services, in order to prevent minors from contents which might seriously impair their development, use the following methods, most of them are imposed by law: age classifications, combined with transmission time restrictions, technical access restrictions such as filtering, encryption, pre-locking/PIN codes or other age verification systems.²⁷ For example, the Italian Communication Authority adopted Regulation no. 220/11/CSP through co-regulatory procedures in July 2011, that establishes technical measures aimed at preventing minors from viewing films rated as unsuitable for them, and also adult content. The document requires audiovisual media service providers to offer a parental control feature capable of prohibiting access to certain selected content from first use and for each subsequent one. Furthermore, audiovisual media service providers are expected to raise public awareness of the function of the parental control, and to provide a description of the feature available on their websites with the adequate information on the classifications of audiovisual contents.²⁸

²⁵ Ibid. 16.

²⁶ Ibid. 18.

²⁷ Ibid. 22.

²⁸ Angela CRETA: Agcom Adopts a Regulation on Parental Control. *IRIS* 8 (2011) 23.

BAKOS ESZTER

A gyermekek megfelelő szellemi, lelki, erkölcsi és fizikai fejlődéséhez szükséges védelme az audivizuális mediaszolgáltatások területén

(Összefoglaló)

A kiskorúak védelme olyan európai és nemzeti alkotmányos követelmény, amely meghatározza más jogi és nem jogi szabályok keretét és tartalmát. Az új médiavilágban az egész társadalom köteles részt vállalni egy biztonságos audiovizuális, digitális és online környezet megteremtésében, ellenőrzéssel, kötelezettségvállalással és jogalkotással, tekintve, hogy napjainkban a mediaszolgáltatások egyre több kihívást generálnak. Ezek megoldása megfelelő intézkedéseket kíván meg a jogszabályalkotóktól és szakmai szabályozóktól, továbbá a szülőkől egyaránt. Tehát az állami szabályozást ki kell egészítenie a médiaszakma kötelezett-ségvállalásának akár az állammal együttműködve, akár önállóan.

Erre tekintettel a Tanulmány azt kívánja bemutatni, hogy a hazai jogi és szakmai szabályalkotók hogyan töreksenek a kiskorúak egészséges fejlődését megvédeni a média területén az Európai Unió minimumkövetelményei tükrében. Továbbá a Tanulmány olyan előremutató intézkedések megismertetésére is vállalkozik, amelyeket más tagállamok fogadtak el a gyermekek káros médiahatásoktól történő megóvása érdekében.

A Tanulmány úgy véli a tagállamok előremutató eszközeit figyelembe véve, hogy hazánkban szükséges lenne a tartalom-besorolásra és –klasszifikációra vonatkozó jogi rendelkezések nagyobb tisztelete, további részletesebb és speciálisabb kötelezettségvállalás különösen az on-demand mediaszolgáltatásokkal összefüggésben és a médiatudatosság előmozdítása minden korosztály számára.