

Regulating the impacts of advertising and marketing on children's rights - a multicountry comparison.

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INTRODUCTION

The hitherto most significant piece of international law on state obligations and business responsibilities related to children’s rights is the *General Comment No. 16 (2013) of the Convention of the Rights of the Child (CRC) on State obligations regarding the impact of business on children’s rights* (hereafter referred to as “General Comment 16”), adopted in 2013 by the Committee on the Rights of the Child (hereafter referred to as “the CRC Committee”). A general comment is the Committee’s interpretation of the provisions of the Convention of the Rights of the Child (CRC). The CRC Committee was the first United Nations (UN) treaty body to outline the relationship between business and its mandating instrument, and the drafting process was characterized by a high degree of multi-stakeholder consultation (Collins, 2014). General Comment 16 specifies state obligations regarding the impact of business on children’s rights and covers business activities vis-à-vis the CRC as a whole. One can say that it provides guidance for states on how to ensure that children’s rights are not overshadowed by consideration of business interests.

Today, quite little is known about how states live up to their obligations regarding the impact of the business sector on children’s rights. General Comment 16 requires signatories to the CRC¹ to report the CRC Committee on “the challenges they face and the measures they have taken to respect, protect and fulfil children’s rights in the context of the activities and operations of business enterprises both domestically and, where appropriate, transnationally” (Committee on the Rights of the Child General Comment No.16, 86). Few countries have provided such information thus far² and there is hence a general lack of comparable country data on legislation and policy related to children’s rights and business. The exemption is data on child labour, which has been collected by the International Labour Organization (ILO) for a long time period³ and which is used by scholars to explain country differences in compliance with children’s rights norms (see e.g. von Stein, 2015).

This paper aims to assess the extent to which and how states regulate the protection of children’s rights from adverse impacts of the advertising and marketing industries. Legislation on advertising and marketing is especially interesting to study from a child rights perspective. Firstly, it is nowadays widely recognized that children are

¹ All UN member states except the United States.

² For state party reports to the CRC Committee, see:

<http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx>

<http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx>

³ <http://www.ilo.org/ipec/facts/ILOconventionsonchildlabour/lang--en/index.htm>

especially vulnerable to manipulation through advertising and marketing messages. Protection of children is codified in the (self-regulatory) International Chamber of Commerce (ICC) *Code of Advertising and Marketing Communication Practice* guidelines with respect to marketing communication addressed to children, as well as in the European Union (EU) *Audiovisual Media Services Directive*. Secondly, children today have access to media outlets that are far more difficult to monitor and legislate than traditional media channels. Children's internet use has therefore elevated research on children's rights and the mass media, in academic fields such as marketing, psychology, media and communications and childhood studies (see e.g. Livingstone and Helsper, 2006; Livingstone et al., 2015). Public health scholars as well as the World Health Organization (WHO)⁴ have also started to gather comparable country data on food advertising and marketing to children (see e.g. Harris et al., 2009; Lobstein et al., 2015) and last year United Nations Children's Fund (UNICEF) initiated a couple of different research projects concerning advertising and marketing to children⁵. Finally, a comparison of state regulation of the advertising and marketing industries provides interesting possibilities to analyse the extent to which legislators restrict companies' freedom to operate. This analysis in turn offers a basis for explaining differences and similarities in the moral, political and economic reasons behind the restrictions.

Against this background, it is remarkable that political scientists have thus far not paid an interest in this topic. While the regulation of advertising and marketing industries has been the object of political science research (see e.g. Ginosar, 2011), no study has compared different countries' legal protection of children's rights from adverse impacts of the advertising and marketing industries.

The paper proceeds in the following steps. I start with describing the analytical framework, based on the CRC, as interpreted in General Comment 16, and the EU *Audiovisual Media Services Directive*, and then continue with a presentation of the research design. Thereafter I present the empirical findings of the study in three legislative areas; general advertising and marketing legislation, broadcasting regulation, and legislation on advertising and marketing of food products that are high in fat, salt and sugar, so called "HFSS products". Finally, I provide some preliminary conclusions of the study and plans for future research.

⁴ http://www.euro.who.int/__data/assets/pdf_file/0019/191125/e96859.pdf

⁵ <http://www.unicef.org/csr/215.htm>

INTERNATIONAL LAW & ANALYTICAL FRAMEWORK

In this section international law on state obligations concerning the impact of advertising and marketing on children's rights are described briefly and then I explain how the laws have been used to formulate an analytical framework for the study. The analytical framework serves as a basis against which to analyse national regulation on advertising and marketing, as concerns children's rights.

General Comment 16

The CRC Committee has interpreted the provisions of the CRC as regards state obligations concerning the impact of advertising and marketing on children's rights in *General Comment No. 16 (2013) of the Convention of the Rights of the Child (CRC) on State obligations regarding the impact of business on children's rights* ("General Comment 16"). This document hence represents the most important piece of international law in this area.

The General Comment 16 acknowledges that the mass media industry, which includes the advertising and marketing industries, can have positive as well as negative impacts on children's rights (Committee on the Rights of the Child General Comment No.16, 58). The different risks and opportunities that the advertising and marketing industries pose to the fulfilment of children's rights are presented below.

The general principles of the CRC

General Comment 16 explains the relation between the four general principles of the CRC and state actions and decisions concerning business activities and operations in conformity with a child rights approach.

Regarding the general principle of *the best interests of the child* (CRC article 3(1)), General Comment 16 says that: "States are obliged to integrate and apply this principle in all legislative, administrative and judicial proceedings concerning business activities and operations that directly or indirectly impact on children." (Committee on the Rights of the Child General Comment No.16, 15)

The advertising and marketing industries are explicitly mentioned as regards the general principle of *the right to non-discrimination* (CRC article 2):

States should [...] take steps to create a supportive environment for business to respect the right to protection from discrimination by promoting knowledge and understanding of the right within the business sector including within the media, marketing and advertising sectors. Awareness-raising and sensitisation among business enterprises should be aimed at challenging and eradicating discriminatory attitudes towards all children, especially those in vulnerable situations (Committee on the Rights of the Child General Comment No.16, 14).

Advertising and marketing are also addressed in relation to the general principle of *the right to life, survival and development* (CRC article 6). Regarding measures for implementing article 6 with regards to the business sector, the General Comment suggests: “[..]preventive measures such as effective regulation and monitoring of advertising and marketing industries [..]” (Committee on the Rights of the Child General Comment No.16, 20). It also particularly refers to marketing of certain products that are harmful to children’s health.

The marketing to children of products such as cigarettes and alcohol as well as foods and drinks high in saturated fats, trans- fatty acids, sugar, salt or additives can have a long-term impact on their health (Committee on the Rights of the Child General Comment No.16, 19).

The General Comment’s section on the general principle of *the right of the child to be heard* (CRC article 12), does not explicitly mention the mass media, advertising or marketing industries (Committee on the Rights of the Child General Comment No.16, 21, 22, 23). This general principle is however interrelated with children's rights to information and freedom of expression, which are addressed elsewhere in the General Comment in relation to these particular industries (see below).

Legislative, regulatory and enforcement measures

General Comment 16 provides a framework for implementation, which includes legislative, regulatory and enforcement measures of relevance for advertising and marketing. The framework acknowledges the need for states to take measures to protect children from harmful information while at the same time making sure that children's right to information and freedom of expression are not violated. It reminds states of their obligations under article 17 of the CRC to encourage the mass media, including private media, to “[..]disseminate information and materials of social and cultural benefit to the child, for example regarding healthy lifestyles[..]” (Committee on the Rights of the Child General Comment No.16, 58).

The media must be regulated appropriately to protect children from harmful information, especially pornographic materials and materials that portray or reinforce violence, discrimination and sexualised images of children, while recognising children's right to information and freedom of expression. States should encourage the mass media to develop guidelines to ensure full respect for the rights of the child, including their protection from violence and from portrayals that perpetuate discrimination, in all media coverage (Committee on the Rights of the Child General Comment No.16, 58).

A following paragraph clarifies children's vulnerability to impacts from advertising and marketing messages and calls on states to adopt regulatory measures to prevent adverse impacts on children's rights.

Children may regard marketing and advertisements that are transmitted through the media, as truthful and unbiased and can consume and use products that are harmful as a consequence. Advertising and marketing can also have a powerful influence over children's self-esteem, for example when portraying unrealistic body images. States should ensure that marketing and advertising do not have adverse impacts on children's rights by adopting appropriate regulation and encouraging business enterprises to adhere to codes of conduct and use clear and accurate product labelling and information that allow parents and children to make informed consumer decisions (Committee on the Rights of the Child General Comment No.16, 59).

The General Comment identifies digital media as a particular concern for children's rights, acknowledging that businesses can be complicit in cyber-bullying, cyber-grooming, trafficking or sexual abuse and exploitation through the internet (Committee on the Rights of the Child General Comment No.16, 60). It provides that:

States should provide children with age-appropriate information regarding web-related safety so they can manage the risks and know where to go for help. They should coordinate with the information and communication technology industry for it to develop and put in place adequate measures to protect children from violent and inappropriate material (Committee on the Rights of the Child General Comment No.16, 60).

Finally, the General Comment includes enforcement measures specifically addressing the advertising and marketing industries.

Strengthening regulatory agencies responsible for the oversight of standards relevant to children's rights such as health and safety, consumer rights, education, environment, labour and advertising and marketing so that they have sufficient powers and resources to monitor and to investigate complaints and to provide and enforce remedies for abuses of children's rights (Committee on the Rights of the Child General Comment No.16, 61).

Assessing state implementation of General Comment 16

In this study, General Comment 16 is used as a theoretical frame against which to assess and compare national legislation concerning advertising and marketing and children's rights. The focus of the study is on legislative measures. Other types of state measures mentioned in General Comment 16, such as the creation of a supportive environment for businesses, the encouragement of voluntary codes of conduct and the strengthening of regulatory and monitoring bodies are not within the scope of this study.

As seen above, General Comment 16 supports state regulation of the advertising and marketing industries as concerns children's rights. All four general principles of the CRC are relevant in this regard. The General Comment provides most detail as regards marketing and advertising of harmful and unhealthy products to children. It

identifies potential adverse impacts of certain types of products and messages on children's right to life, survival and development (CRC article 6). Moreover, it specifically raises the need to adopt measures to protect children in digital media, without violating children's right to information and freedom of expression.

In order to capture and analyse relevant advertising and marketing regulation, it is necessary to include general advertising and marketing legislation and broadcasting laws, including online broadcasting. Moreover, I have decided to look specifically at legislation related to advertising and marketing of food products that are high in fat, salt and sugar, so called "HFSS products". For each legislative area, I will assess whether children are identified as a group with particular protection needs. Then, I will also evaluate the legislation in relation to the four general principles of the CRC. Table 1 presents the analytical framework through which country legislation will be assessed.

	Legislative areas			
Variables	General advertising and marketing legislation	Advertising and marketing in broadcasting legislation	Online advertising and marketing legislation	Legislation on advertising and marketing of HFSS products
Children identified as a group with particular protection needs				
The best interests of the child				
The right to non-discrimination				
The right to life, survival and development				
The right of the child to be heard				

Table 1. Analytical framework

The European Union Audiovisual Media Services Directive (AVMSD)

The European Union regulates common standards for programming with the aim of creating a common market for audio-visual media services, under the *Audiovisual Media Services Directive* (AVMSD). This directive includes protection of minors and affects advertising and marketing law, which motivates a specific analysis of EU member states to appreciate the to which EU members have harmonized their advertising and marketing legislation as concerns children's rights.

The AVMSD distinguishes between “programmes which might seriously impair the physical, mental or moral development of minors, in particular programmes that involve pornography or gratuitous violence” (Article 27:1) and those “which are likely to impair” the development of minors. The first category of programmes is prohibited in television, whereas the second category can be transmitted on the condition that “minors in the area of transmission will not normally hear or see such broadcasts” (Article 27:2). As regards on-demand services, no programmes are prohibited. Instead, programmes which "might seriously impair" the development of minors may only be made available in such a way that minors will not normally hear or see them, for example through age verification systems (Article 12). There are no restrictions for programmes “which are likely to impair” the development of minors.

The directive provides more detail as regards the first category of programmes (pornography and gratuitous violence) as compared to the second category, which is entirely up to member states to interpret. I therefore expect member states to apply highly different legal interpretations of what types of advertising and marketing messages are “likely to impair the physical, mental or moral development of minors”. The most far-reaching interpretation is that *all* advertising and marketing directed to children are likely to be harmful to their development. According to a different interpretation, *some* advertising and marketing is not harmful to children.

Assessing state implementation of the AVMSD

In order to evaluate how EU countries have interpreted the AVMSD as regards what kinds of advertising and marketing are “likely to impair” the development of minors, I will look at whether EU member states allow 1) advertising in children's programmes, and 2) sponsorship logos in children's programmes.

RESEARCH DESIGN

This working paper provides descriptive statistics on advertising and marketing legislation in high- and middle-income countries. All thirty-four OECD member countries and the five OECD key partner countries⁶; Brazil, China, India, Indonesia and South Africa, are included in the analysis. The OECD members and key partners represent around 85% of the global consumer market (United Nations Statistics Division, 2013), and hence we expect the impacts of the advertising and marketing industries to be very large in this group of countries. In a future study, it would however be interesting to add countries of other income categories in order to compare legislation across income categories and geographic regions, and also in order to include more emerging markets in the analysis. For a complete list of the countries studied, please see Appendix 1.

The mapping of children's rights in national legislation on advertising and marketing covers three different legislative areas, each with a clear legal basis in General Comment 16. The first area is child protection in general advertising and marketing legislation. The second is the extent to which children are protected in broadcasting regulation. Finally, I present a mapping of legislation on HFSS products. A fourth area, online media regulation, will be included in a future iteration of this paper. In addition to the analysis of OECD members and key partners, I also provide a separate analysis of the twenty-one EU member states that are also members of the OECD (see Appendix 1).

Data has been collected from multiple primary sources. These include national and European Union legal texts, policy documents and reports as well as state reports to the CRC. In addition, semi-structured face-to-face and telephone interviews have been conducted with key officials from the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations Committee on the Rights of the Child, UNICEF, the European Commission, the International Commission of Jurists (ICJ) and the World Federation of Advertisers (WFA). A complete list of interviews is provided in Appendix 2.

⁶ <http://www.oecd.org/about/membersandpartners/>

NATIONAL REGULATIONS ON ADVERTISING AND MARKETING

The mapping of children's rights protection in national legislation on advertising and marketing covers three different legislative areas; general advertising and marketing legislation, broadcasting regulation, and advertising legislation on HFSS foods. Each legislative area is presented below. A future version of this paper will include a fourth area, online media regulation.

Children's rights in general advertising and marketing legislation

Figure 1 shows that twenty-one of the thirty-two OECD countries that have general advertising and/or marketing legislation⁷ address children in these regulations. There are however large variations in the way and degree to which children's rights are legally protected.

Firstly, there is no consistency in the way the child is defined in advertising and marketing laws, not even within the EU. Definitions range between under-ten and under-eighteen. Secondly, the scope and focus of legislation vary greatly. While some countries only restrict advertising and/or marketing of tobacco and alcohol to children, others restrict marketing and/or advertising to children in general, prohibiting direct incitements to children to buy the advertised products or incitements to children to persuade their parents or other adults to buy such products. A group of countries acknowledge the special need to protect children from exploitation of their inexperience, gullibility or vulnerability. Some restrict advertising and/or marketing, which are likely to harm the physical, mental or moral development of children, such as those depicting children in dangerous, violent situations or in situations emphasising sexuality. Some prohibit advertisements that may cause children to imitate unsafe behaviour.

⁷ Of the 39 countries mapped, seven lack general advertising and marketing legislation and were hence not included in this sample.



Figure 1. General marketing and advertising laws (32 OECD members and partners)

Children's rights in broadcasting laws

Thirty-eight of the studied countries have a national broadcasting regulation. As seen in Figure 2, specific statutory provisions concerning children were found in the majority of the countries. The scope, focus and type of broadcasting restrictions however vary greatly across countries.

Most countries allow advertising in and around children's programmes or at times children or adolescents are a dominant viewing group. Several countries however restrict the amount of advertising in children's programmes (for example once for each 30 minutes). Some countries have specific restrictions for split-screen television advertising, tele-shopping or product placement in children's programmes.

A group of countries have general restrictions that apply to all types of products and services advertised or marketed to children. These laws acknowledge children's need for protection from exploitation of their inexperience or vulnerability and address the protection of children against harmful content that may impact on their physical,

mental or moral development. One such example is Slovenia's Mass Media Act, 2001 (Article 49).

(1) Advertisements that are targeted primarily at children or in which children appear may not contain scenes of violence, pornography or any other content that could damage their health or mental and physical development or otherwise have a negative effect on the impressionability of children.

(2) Advertising may not be morally or mentally prejudicial to children. Advertisements may not therefore:

- encourage children to purchase products or services by exploiting their inexperience or credulity
- encourage children to convince their parents or any other person to purchase products or services
- exploit children's special trust in parents, teachers or any other persons
- unjustifiably show children in dangerous situations;

Other countries restrict marketing and advertising of certain types of products, ranging from alcohol, pornographic material and gambling, to medicines, HFSS products (see below), sanitary protection products and condoms. A third group apply a combination of general restrictions of marketing and advertising to children and rules for specific product groups.

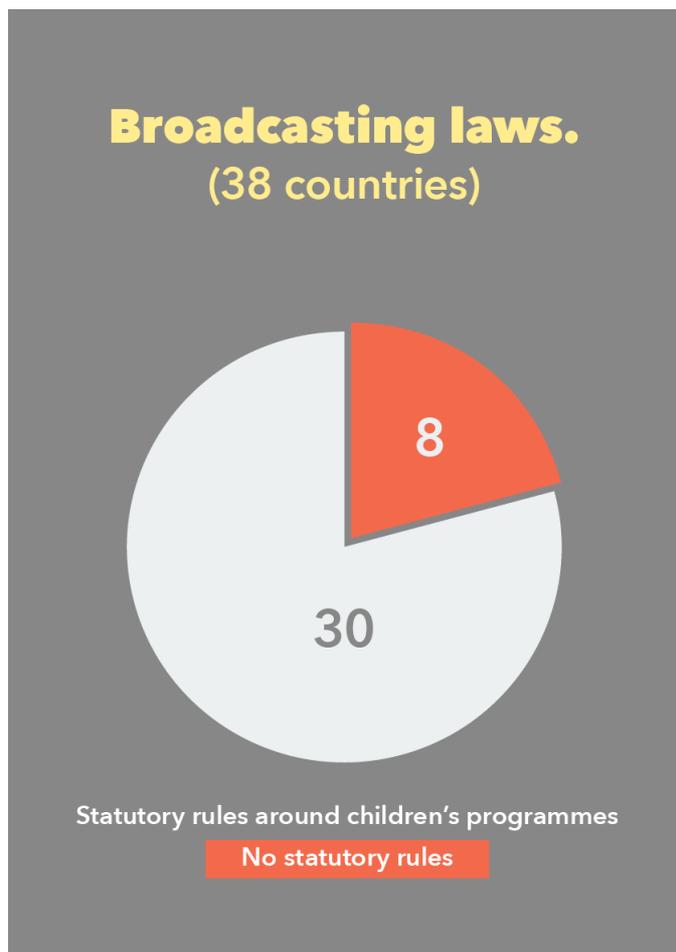


Figure 2. Broadcasting laws (38 OECD members and partners)

Children's rights in EU members' broadcasting legislation

This section presents data on how the EU member states of the OECD family (see Appendix 1), interpret what kinds of advertising and marketing are “likely to impair the physical, mental or moral development of minors” (AVMSD, Article 27:2). As seen in Figure 3 only five EU member states prohibit advertising during children's programmes. Sweden is one of them. According to the Swedish Radio and TV Act (Sw. Radio- och tv lagen), all advertising to children under the age of twelve is strictly prohibited and advertising may not interrupt radio or TV programmes primarily directed to children below the age of twelve.

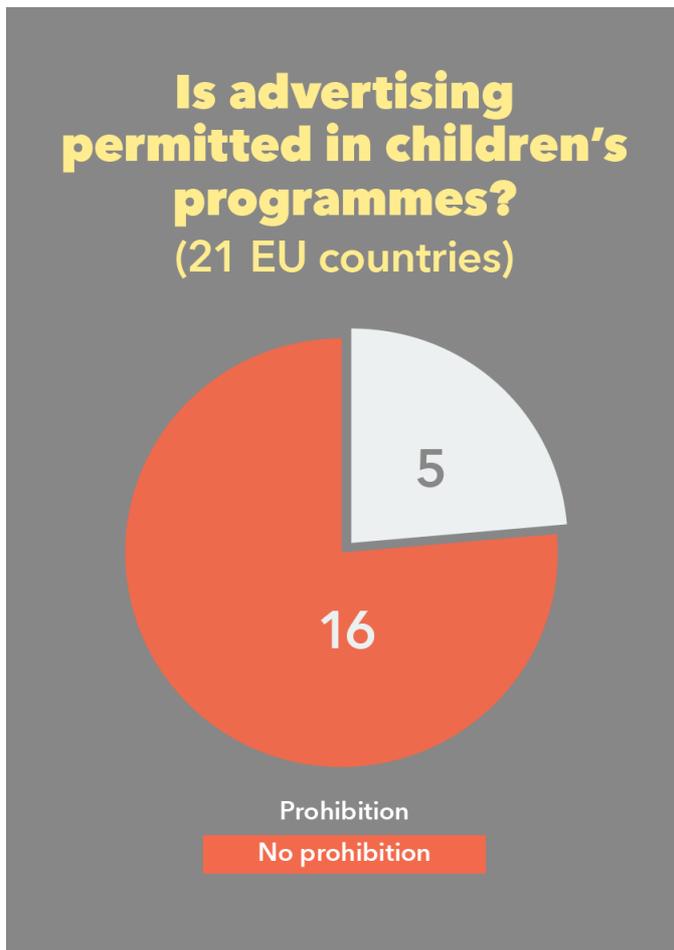


Figure 3. Advertising in children's programmes (21 EU member states)

A means to restrict the marketing of products or services to children is to regulate the use of sponsorship logos in programmes viewed by children. As seen in Figure 4, only a minority of the EU member states apply this type of restrictions. Sponsorship logos are allowed in children's programmes in three out of four countries.

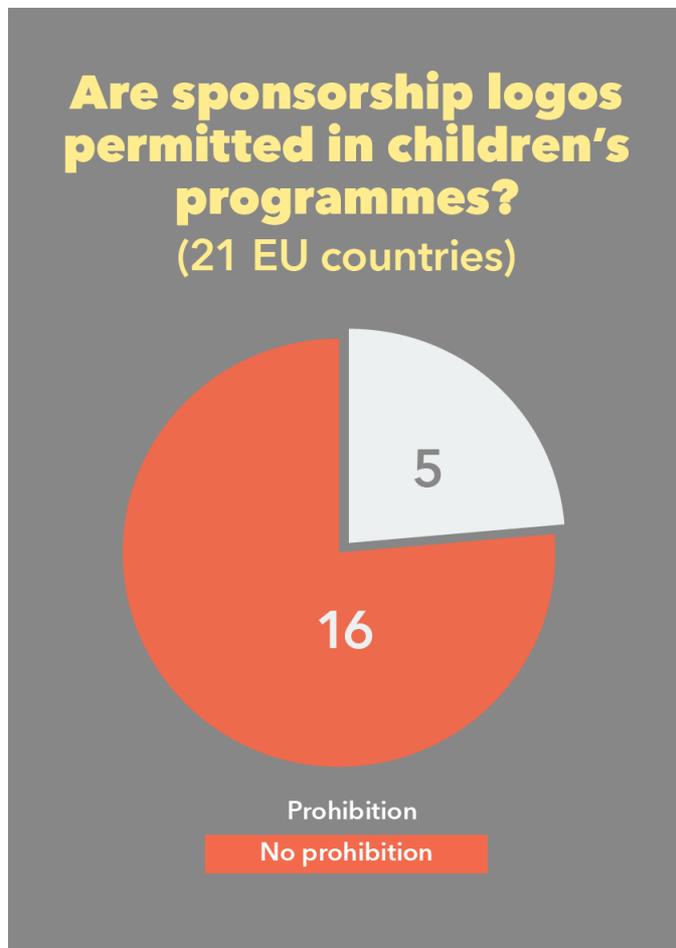


Figure 4. Sponsorship logos in children's programmes (21 EU member states)

In summary, most of the studied EU member states' legislations are based on a view that some advertising and marketing to children are *not* harmful to them. Only one country, Belgium⁸, prohibits both advertising in children's programmes and sponsorship logos in children's programmes.

⁸ Due to Belgium's federal structure each Community has its own act concerning audio-visual media services.

Advertising laws and HFSS products

Of the thirty-nine OECD member and partner countries studied, only twelve countries have some degree of regulation to reduce children and young people's exposure to marketing and advertising of food and drinks that are high in fat, salt and sugar, "HFSS products". The strictest laws prohibit all food marketing to children. Interestingly, most of these laws have been installed in recent years, from 2009 and onwards. In 2013, Mexico launched a comprehensive government strategy to address the problem of child obesity and diabetes, including a ban of food advertising to children under twelve years on television and before kids' movies in theatres. The United Kingdom has regulations for placement of HFSS product adverts around programmes aimed at children under sixteen. Other countries have instead introduced requirements for nutritional or health information in adverts of certain HFSS products. In France, for instance, TV and radio commercials for beverages with added sugar, salt or artificial sweeteners and manufactured food products must contain health messages. Yet other countries restrict marketing of HFSS products in schools.



Figure 5. Advertising laws and HFSS products (39 OECD members and partners)

Finally, it should be noted that some of the countries that lack statutory rules on marketing and advertising of HFSS products, as presented in Figure 5, have mechanisms to co-regulate publicity concerning food and non- alcoholic drinks aimed at under age children and young people. These are based on voluntary government agreements with companies, including with service providers of audio-visual commercial communication.

CONCLUSIONS

This paper has provided an overview of children's rights protection in legislation concerning advertising and marketing in thirty-nine middle- and high-income countries. Data on three legislative areas shows that laws on advertising and marketing to children vary considerably across the studied countries. While only four countries lack *any* legal protection of children from the impacts of advertising and marketing, the nature and degree of protection still vary greatly across the countries with legislation, as regards general protection of minors as well as particular restrictions on the advertising and marketing of certain products. By this we can make a general conclusion that countries differ in their interpretations of the CRC general principle of the best interests of the child as related to the impacts of advertising and marketing.

The General Comment 16 calls for states to adopt "appropriate regulation" to protect children from adverse effects of advertising and marketing. Although the General Comment does not provide any detailed account of policy or legislative text, it does specify the key principles and aspects that should be addressed in legislation. The need to regulate messages with pornographic or violent content and advertising of HFSS products finds support in General Comment 16 (see above), in line with the CRC general principle of the right to life, survival and development (CRC article 6). Many of the studied countries focus on protecting children from advertising and marketing messages with pornographic and violent content. Since 2009, an increasing number of countries have also adopted restrictions related to HFSS products, which could be the beginning of a new trend. The General Comment also addresses the potentially harmful effects of advertising and marketing on children's self-esteem. This is however only reflected in one national law, the Norwegian *Marketing Control Act*. The remaining CRC general principles addressed in General Comment 16 are much less prevalent in national legislation. For example, the General Comment's recognition of children's right to information and freedom of expression is not addressed in relation to advertising and marketing laws. Neither is the right to non-discrimination addressed in any national regulation related to advertising and marketing.

The next version of this paper will present data on legislation concerning online advertising and marketing and children's rights. Preliminary findings suggest that disparities between countries are even larger in this legislative area, compared to traditional broadcasting regulations.

How surprising are the country differences in legal protection of children's rights as concerns advertising and marketing? Not very, I would argue, for several reasons.

Firstly, the CRC provides little detail about policy and targets and hence necessitates interpretation at the national level (Fontana and Grugel, 2015). Secondly, General Comment 16 on state obligations regarding the impact of business on children's rights is a very recent piece of international law and we may therefore not expect it to have had any major influence on state measures to address the impact of business. Thirdly, the extent to which General Comment 16 will have an impact on state behaviour will largely depend on the degree to which civil society actors will use it as an accountability tool and pressure states to reform (ibid.). Thus far, civil society mobilization related to General Comment 16 has been very limited, as reflected in the lack of shadow reports to the CRC Committee on business and children's rights.

These findings call for further research on the reasons behind the differences between countries and how different legislations affect the fulfilment of children's rights. I hope that more political scientists will engage in research questions concerning how to explain national interpretations of international children's rights law, as well as about the effects of different laws for the implementation of children's rights as regards the impacts of business.

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APPENDIX 1: LIST OF COUNTRIES

Country	OECD	EU
Australia	OECD member	
Austria	OECD member	EU member
Belgium	OECD member	EU member
Brazil	OECD key partner	
Canada	OECD member	
Chile	OECD member	
China	OECD key partner	
Czech Republic	OECD member	EU member
Denmark	OECD member	EU member
Estonia	OECD member	EU member
Finland	OECD member	EU member
France	OECD member	EU member
Germany	OECD member	EU member
Greece	OECD member	EU member
Hungary	OECD member	EU member
Iceland	OECD member	
India	OECD key partner	
Indonesia	OECD key partner	
Ireland	OECD member	EU member
Israel	OECD member	
Italy	OECD member	EU member
Japan	OECD member	
Luxembourg	OECD member	EU member
Mexico	OECD member	
Netherlands	OECD member	EU member
New Zealand	OECD member	
Norway	OECD member	
Poland	OECD member	EU member
Portugal	OECD member	EU member
Slovak Republic	OECD member	EU member
Slovenia	OECD member	EU member
South Africa	OECD key partner	
South Korea	OECD member	
Spain	OECD member	EU member
Sweden	OECD member	EU member
Switzerland	OECD member	EU member
Turkey	OECD member	
United Kingdom	OECD member	EU member
United States	OECD member	

APPENDIX 2: INTERVIEWS

Telephone:

International Human Rights Specialist for *Office of the United Nations High Commissioner for Human Rights*, 21 January 2015.

Senior Advisor and Government Engagement Consultant, Corporate Social Responsibility Unit at the *United Nations Children's Fund*, 2 February 2015.

Director of Communications at *World Federation of Advertisers*, 6 October 2015.

Face-to-face:

Corporate Social Responsibility Specialist at the *United Nations Children's Fund*, Geneva, 20 May 2015.

Senior Legal Adviser, Business and Human Rights, *ICJ*, Geneva 20 May 2015.

International Human Rights Specialist for Office of the *United Nations High Commissioner for Human Rights*, Geneva, 21 May 2015.

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