Is self-regulation failing children?

or

Realising children’s rights in the digital environment through self- and co-regulation: challenges & opportunities

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In complex environments legislation might not be the most appropriate instrument to achieve certain goals of public interest.
EU: Commission Communication on a European Strategy for a better internet for children

“[l]egislation will not be discarded, but preference will be given to self-regulation, which remains the most flexible framework for achieving tangible results in the area”

creation, implementation and enforcement of rules by a group of actors without involvement of external actors ("amongst themselves and for themselves")

OECD: Recommendation of the OECD Council on the protection of children online

2012
Self-regulation: benefits & drawbacks

**Benefits**
- flexibility
- expertise of actors
- ↑ compliance through peer pressure (?)

**Drawbacks**
- weak enforcement: few & mild sanctions
- private interests before public interest
- low transparency & accountability

Depends from sector to sector!
Co-regulation

A combination of non-state and state regulation in such a way that a non-state regulatory system links up with state regulation

Definition: study Hans Bredow Institut & EMR

A.o. recognition, auditing, funding, state intervention (recital14 new AVMSD)
Co-regulation: benefits & drawbacks

- Combination of the benefits of self-regulation & legislation
  - *On the one hand*, flexibility, quick amendments, expertise and involvement of the sector, and
  - *On the other hand*, more legal certainty, democratic legitimacy and more (effective) enforcement

- Particularly appropriate to realise certain goals of public interest, such as protection of minors or realising full range of children’s rights

- Must be structured carefully (within the legal framework with attention for procedural guarantees)
Self-regulatory initiatives in the EU

- **Safer Social Networking Principles for the EU** (2009)
  - Brokered by the European Commission
- **CEO Coalition for a Better Internet for Kids** (2011)
  - Endorsed by Commissioner Kroes
- **ICT (Principles) Coalition** (2012)
  - “first industry-led Europe-wide principles in the online safety arena”
- **Alliance to better protect minors online** (2017)
  - Launched Feb. 2017 by EC, to be assessed through an *independent and transparent review* after 18 months from its launch

Different constellations of companies
Similar principles: privacy, reporting tools, content classification, etc.
Substantial and valuable efforts, but …
Challenges in practice?

- Commitments made by industry are sometimes only implemented to a limited extent (e.g. SSNPs assessments; 2010 / 2011)
- In-depth and independent monitoring and evaluation is often lacking or irregular
- Procedures are opaque - at least to outsiders
- Visibility of output and tangible results remains limited
Self- and co-regulation in the AVMSD

Room for improvement:

- consumer and civil society groups were often not represented
- lack of a systematic process for implementing improvements
- no system in place which specifically monitors the scheme objectives, and indicators and targets are often missing
- few evaluation systems in place which undertook regular assessments of the scheme, its performance, possible areas for improvement, as well as its broader impact
Self- and co-regulation in the (new) AVMSD

Continuing strong emphasis on self- and co-regulation (or co- and self-regulation…)

→ important role in delivering a high level of consumer protection
Self- and co-regulation in the (new) AVMSD

AVMSD (new), Article 4a

1. Member States shall encourage the use of co-regulation and the fostering of self-regulation through codes of conduct adopted at national level in the fields coordinated by this Directive to the extent permitted by their legal systems. Those codes shall:

(a) be such that they are broadly accepted by the main stakeholders in the Member States concerned;

(b) clearly and unambiguously set out their objectives;

(c) provide for regular, transparent and independent monitoring and evaluation of the achievement of the objectives aimed at; and

(d) provide for effective enforcement including effective and proportionate sanctions.

For instance:
• Protection of minors in linear and non-linear AVMS (art. 6a)
• Protection of children on videosharing platforms (art. 28b)
Self- and co-regulation in the (new) AVMSD

AVMSD (new), Article 4a

3. Member States shall remain free to require media service providers under their jurisdiction to comply with more detailed or stricter rules in compliance with this Directive and Union law, including where their national independent regulatory authorities or bodies conclude that any code of conduct or parts thereof have proven not to be sufficiently effective. Member States shall report such rules to the Commission without undue delay.
Codes of conduct in the GDPR

- General Data Protection Regulation: personal data of children merits specific protection!
- Article 40: Codes of conduct
  - E.g. in relation to “the information provided to, and the protection of, children, and the manner in which the consent of the holders of parental responsibility over children is to be obtained”
  - Associations and other bodies ➔ prepare/amend a code of conduct ➔ submit the draft code to the supervisory authority
  - The supervisory authority shall provide an opinion on whether the draft code, amendment or extension complies with this Regulation and shall approve that draft code, amendment or extension if it finds that it provides sufficient appropriate safeguards.
Concluding remarks

– Self- and co-regulation will only gain in importance to realise children’s rights in the digital environment
Conscious that policies in this area require a combination of public and private, legal and voluntary measures, that all relevant public and private stakeholders share responsibility for ensuring the rights of the child in the digital environment, and that co-ordination of their actions is necessary;

States should create a clear and predictable legal and regulatory environment which helps businesses and other stakeholders meet their responsibility to respect the rights of the child in the digital environment throughout their operations.
Concluding remarks

- Self- and co-regulation will only gain in importance to realise children’s rights in the digital environment
  - Engagement of private actors is essential
- No *one-size-fits-all*, differentiation depending on sector and aims
- Monitoring and evaluation = crucial
- Increasingly important role for (co-)regulators (in the EU): enforcement
- Gap: participation by children in setting up self- and co-regulation