

The politics of product placement in the European Union: Between commercial pressures and social norms

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Abstract

Commercial competition and technological innovations such as internet broadcasting and multi-channels TV are radically changing the advertisement market worldwide. Commercial broadcasters, who were able to draw on “spot ads“ as the major source of revenue for their businesses, are now turning to “product placement” as an alternative source of revenue. Product placement is an advertising technique that aims to promote a product or a service with the commercial message embedded within the program’s script. This study explores the emergence and characteristics of a new European product placement regime that sets standards for commercial advertisements that are embedded in TV programs. The paper raises two main questions. First, what are the forces and actors that have shaped the new EU regime of product placement? And, second, what are the main characteristics of this new regime, and, in particular, to what extent does it reflect a “race to the bottom?” Our findings indicate that while most of the actors involved, directly and indirectly were private actors, the new European product placement regime reflects an effort to balance economic considerations about the viability of the industry with social norms and cultural standards. This particular balance, when compared with the approach adopted in the United States and Canada, suggests that the European integration process mitigates rather than promotes neoliberal values and commercial interests.

The Politics of Product Placement in the European Union:

Between commercial pressures and social norms

The outcomes of the ongoing struggle in Europe over the appropriate balance between commercial and material interests on the one hand, and social, cultural and moral values on the other, are reflected in the properties of numerous regulatory regimes. The institutional designs of these regimes and the regulatory outcomes vary widely, and it is only through careful consideration and in-depth analysis of various regulatory regimes that general conclusions about the politics of European liberalization and integration may be drawn. At the moment, the EU itself is still a moving target, and thus the debate about the causes and the outcomes of the process of Europeanization is still inconclusive (Leblond, 2008; Scharpf, 1996). For some, EU institutions and the process of Europeanization itself are the mirrors and obedient servants of the forces of commercialization, materialization and deregulation (Jabko, 2004). For others, EU institutions are an efficient shield against the powerful external forces of the global economy, balancing social considerations and norms against commercial pressures and business interests (Graziano, 2003; Vogel & Kagan, 2004). Proponents and opponents of the European Union expect therefore Europeanization to lead to different policy outcomes.

The aim of this paper is to explore empirical evidence that lends support to one or the other of those two conflicting interpretations of the process and outcomes of Europeanization. We investigate the regulatory controls over media advertisement in the context of technological and economic changes that made the old regulatory regime obsolete. These changes affect the regulation and re-regulation of commercial media at both the European and the member state levels, and raise concerns regarding the proper balance between material interests and social values. Specifically, we focus on the process and politics of the construction of a product placement regime in the European Union and assess the extent to which it reflects a regulatory race to the bottom or a race to the top (Vogel, 1995).¹

¹ Under a regulatory race to the bottom (“the Delaware effect”) is a reality in which there is a progressive movement of firms from countries with relatively high levels of social and economic standards (like wages, taxation and regulations) to countries with lower levels. Countries might lower their standards when they intend to be more competitive and to attract new firms to transfer their activities to its territories. The opposite phenomenon, a regulatory race to the top (“the California effect”), takes place when in a similar context of economic competition a group of countries raises standards by mutual decision or by imitating a strong regional economy (see also: Prakash & Kollman,

The issue of product placement (known in the past as “tie-ups” or “tie-in” advertising and more recently also as “product integration” or “brand placement”) brought together diverse groups of corporate interests, regulators, public intellectuals and policymakers from all over Europe. It is often framed in two different ways: product placement as a solution to broadcasters’ economic problems, and product placement as an issue of cultural and social concern.

Framed in the first way, the issue focuses on the economic aspects and presents product placement as an economic answer to the woes of TV broadcasters. From this point of view, the economic viability of the European commercial broadcasting industry largely depends on revenue from commercial advertisements that are now under threat of decline or stagnation. Advertisement revenues allowed the industry to grow from the late 1970s. Television advertising revenues during the 1980s and 1990s grew on average by 10% per year². Total revenues of EU broadcasting companies rose from EUR 44.7 billion in 1997 to 72 billion in 2000, an average annual growth rate of about 12%. The income of television companies from advertising during this period increased at an annual rate of 11.6%. (Other sources of revenue were home shopping, subscriptions, etc.) The recession of 2001–2 led to most television companies reporting huge losses, but since 2003 financial reports have shown a moderate improvement, despite a sharp decline of annual growth from about 12% to about 1.4%³. The moderate growth of advertisement revenue was accompanied by a significant increase in the number of TV channels, from 983 in 2003 to 1,763 in 2006, which required the industry to invest in more content and to reflect the growing fragmentation of viewers’ preferences⁴. Screen Digest⁵ has recently forecast an annual European growth rate of advertising revenues of 3.6% between 2008 and 2012, by when total TV advertising revenues are expected to have fallen to second place after online advertising.

2003; Spar & Yoffie, 2000).

² Carat Crystal and Bird & Bird (2002), Study on the Development of New Advertising Techniques, pp. 16–17.

³ The European Audiovisual Observatory (2005). The Financial Situation of Television Companies in the European Union (1999–2004).

⁴ Association of Commercial Television in Europe (ACT) report, available at: <http://www.acte.be> (18.4.08).

⁵ Screen Digest (2008). TV Advertising to Confront Hard Times in ‘08 and ‘09, available online at: <http://www.marketingcharts.com/television/tv-advertising-toconfront-harditime-in-08-and-09-367a>

This new reality, which challenges the financial viability of the commercial media, is accompanied by a reduction in the attractiveness of the traditional TV advertisement technique, namely, “spot ads”. Under spot ad arrangements, advertisements are broadcast to viewers in separate, clearly identified and closely monitored and regulated broadcasting blocks. These arrangements are now being challenged by four forces which are leading to changes. First, the digital revolution, which introduced hundreds of TV channels into viewers’ homes, is creating a fragmented audience divided among many niche channels. This new broadcasting reality makes it much more difficult to address the various TV audiences with the same spot advertisements (Russell & Belch, 2005; Tiwsakul & Hackly, 2005). Second, new recording machines make it possible to skip advertising spots (Schejter, 2007; Wenner, 2004). Third, the internet presents competition from a new medium that attracts advertisers’ attention and budgets. Fourth, the rising cost of the production of advertisements is of concern to advertisers (Avery & Ferraro, 2000).

These factors are driving both broadcasters and advertisers to search for new forms of TV advertising. One of the main new techniques is product placement, whereby commercial products are treated in a way that is intended to encourage consumption of a product but without allowing the viewers to differentiate between the product or the service and the program’s content. The producer or the broadcaster is paid for its acceptance of the product placement, and thus revenue from product placement represents a source of income that is complementary to spot-ad income. According to a PQMedia report⁶, global spending on TV product placement in 2006 amounted to \$2.4 billion, an increase of more than 30% on the previous year, with 34% growth forecast for 2007. The United States is the largest global market for product placement, but the report forecast accelerating growth in the European market from 2007. More specifically, according to FremantleMedia’s estimate⁷, product placement revenue of European television companies will amount to EUR 150 million by 2010.

A second way to frame the topic of discussion is by reference to the cultural and social issues involved in product placement. Here, economic interests in general and product placement in particular are portrayed as yet another threat to social values and cultural norms. Two serious public concerns in particular have been raised. First,

⁶ Available at: <http://www.pqmedia.com/about-press-20070314-gpp.html> (9.5.08).

⁷ Cited at: <http://www.guardian.co.uk/media/2007/dec/11/advertising.television> (9.5.08)

there are concerns about undue influence. Since commercial messages are hidden and embedded within a program's script, the audience cannot always distinguish between commercial and editorial content. Therefore, Balasubramanian (1994: 29–30) refers to product placement as “hybrid message”, and Avery & Ferraro (2000: 217–18) claim that it raises “a question of deception”. Schejter (2006: 4) points out that product placement is “a message chosen by advertisers in a context designed to mislead audience about their control over the content”. That is, the viewers are potentially misled about the commercial intention of the placement. This issue is most forcefully raised in two public concerns. First, the protection of minors: because a product placement is not clearly identified as an advertisement and in many cases the product or service which is placed is identified with TV and movie stars, children are especially vulnerable to pressure to purchase the product or service. Second, the need to protect consumers against products which are harmful to health: because product placement is not defined as advertisement, manufacturers of unhealthy products, such as tobacco and high-fat food, could use this technique to promote their products.

Public concern was raised also with regard to editorial, journalistic and creative independence (Baerms, 2003; Wenner, 2004). Because a product is embedded in the program's script, the advertiser would like to adapt the script as much as possible to his or her commercial interests. On the other hand, the producer or the broadcaster would like to reduce production costs as much as possible and transfer some of the costs to the advertiser as a payment for the product placement. In this way, the advertiser can gain significant influence over a program's content

Media regulators in Europe, as in other parts of the world, have been seeking ways to mediate and assess the right and politically viable balance between these two conflicting frames of reference to the issue of product placement: on the one hand, maintaining the financial strength of the European commercial broadcasting industry; on the other, meeting social expectations for transparent non-manipulative information, and preserving creative, cultural and journalistic values⁸. In this context,

⁸ As we will demonstrate, product placement issues in Europe have so far been mainly dealt with at the European Union level. Regulators and other policy actors in the member states who were traditionally reluctant to transfer authority in this sphere to the European level found it useful to create a Europe-wide regulatory regime. Consequently they have strengthened and widened the scope of the influence of European regulators and policymakers on advertisement regimes in the member states. In this process not only were the boundaries between legitimate and illegitimate advertisement practices redrawn but so were the boundaries of the European media regime.

this paper raises two main questions. First, what are the forces and actors that have shaped the new regime for product placement at the EU level? Second, what are the main characteristics of the new regime for product placement in the EU, and, in particular, to what extent does it reflect a “race to the bottom”? In order to answer these questions we analyze the policy process in the EU and explore the dynamics of agenda setting. We base our case also on content analysis of relevant documents of European institutions published from 1989 to 2007, when the product placement regime was changed.

We argue that the new European regulatory regime for product placement reflects the efforts of European policymakers to balance the economic and the socio-cultural frames of reference. More specifically, these efforts sought to create a restrictive regime for product placement at the European level. While the EU conferred some legitimization on product placement practice in member states, it also set boundaries to this practice that are highly restrictive when compared with the parallel regimes in the United States and Canada. At the same time the new regime, while allowing member states to adopt even more restrictive regimes, sets minimum standards with which all are obliged to comply.

The first two sections of the paper discuss the notions of Europeanization and globalization as they are manifested in the broadcasting sector. Section three sets out the origins of the old product placement regime, while in sections four and five we introduce the policy process that led to the regulatory changes and the actors who influenced them. We then outline the main characteristics of the new product placement regime, and conclude with a discussion on the role of European institutions in balancing commercial and social pressures.

1. Europeanization and Multilevel Governance: Framework for Analysis

There is no one accepted meaning of the term “Europeanization”. While some use it to explain the European integration process, others use it to refer to the European Union as a new political system (George & Bache, 2001; Bache & Flinders, 2004). Olsen (2002) proposes to use the term “Europeanization” to refer more

comprehensively to processes of change, and identifies five different areas of change: in external boundaries, in developing institutions at the European level, in the penetration of national systems of governance by the centre, in exporting forms of political organization, and finally in movement toward political unification. A further conception of Europeanization focuses on the relationships between the central (the EU) and the domestic (the member state). Radaelli (2003, p. 51), for example, suggests investigating Europeanization not according to a “top-down” logic, meaning the implementation of EU policy in member states, but from an “inside-out” or “bottom-up” perspective. We will come back refer to this idea later.

When discussing Europeanization in the sense of “integration”, one has to refer to an old debate between the two rival theories of intergovernmentalism and supranationalism (which derived from neofunctionalism) (Sharpf, 2001). The main aspect that divided these two conceptions was the role and the status of the nation-state in the changing environment of integrated Europe. While the supporters of intergovernmentalism saw the nation-states and their governments as the major and the more influential political powers in the process of integration, because of their sovereignty and legitimacy (Moravcsik, 1993), the followers of supranationalism recognized the empowerment of the European supranational institutions and saw these institutions as the more influential actors in the new European arena (Stone Sweet and Sandholtz, 1997). On the other hand, the “political meaning” of Europeanization is explained and supported by several ideas, such as policy networks, historical institutionalism and multi-level governance (Jordan, 2001; Bache & Flinders, 2004). One important component of these views is the recognition that sub-national actors (regional and local authorities as well as various interest groups at the nation-state level) have transferred at least some of their political activities to the arena of the supranational European institutions. The two significant consequences of this process are, first, a new form of cooperation among sub-national actors in different nation-states, and, second, pressure from those sub-national political actors on national governments to give up some of their authority and transfer them to the supranational institutions (George & Bache, 2001). This new observation of the European political arena well describes the main element of multi-level governance, which is defined as “a system of continuous negotiation among nested governments at several territorial tiers – supranational, national, regional and local” (Marks, 1993: 392). “Multi-level”

(the vertical dimension of the concept) refers to the increased interdependence of governments operating at different territorial levels, while “governance” (the horizontal dimension) denotes the growing interdependence between governments and non-governmental actors at various territorial levels (Bache & Flinders, 2004: 3). The multi-level view emphasizes the change that has occurred in the role and status of the nation-state. It recognizes that decision-making is a process that is undertaken not only by national governments at two territorial levels, namely, national and supranational, but by many kinds of actors – governmental and non-governmental – and in a multi-level environment: sub-national, national and supranational. The multi-level concept also sheds light on the fact that sub-national and/or non-state actors participate in the decision-making processes at both levels – national and supranational – and gain influence through both levels of policymaking. The name of the game in multi-level governance is dispersion of authority. As Marks and Hooghe (2004: 15) put it: “Formal authority has been dispersed from central state both up to supranational institutions and down to regional and local governments”. In this regard, Marks and Hooghe indicate that “public/private networks of diverse kinds multiplied from the local to the international level”. The concept of policy networks was originally introduced to describe the changes in power relations between state and society, in which the state has lost its dominant power in favor of non-state actors (Marin & Mayntz, 1991; Kenis & Schneider, 1991; Rhodes & Marsh, 1992). That is, the dispersion of authority has begun with the shift of power from the state to non-state actors at the national level, and then from those actors to the supranational level. One critic of the multi-level concept suggests that “just because sub-national actors bypass states and operate independently in Europe does not necessarily imply that they have the power to shape outcomes” (Jordan, 2001: 201). This criticism poses an empirical question, and therefore one of our goals in investigating the new regulatory policy regarding product placement in the EU is to introduce some empirical data in this respect, that is, to identify the actors who participated in shaping the new regulatory regime at the European level, and to answer the question whether these actors really have exerted any influence during this process.

We have described here two possible meanings of “Europeanization”: the integration view and the political view. There is a way an experience to combine these two meanings by saying that Europeanization is “the domestic adaptation to European

regional integration” (Vink & Graziano, 2006: 9). The emphasis here is on the implementation of EU policies at the domestic-national level. Therefore, Europeanization is seen as a three-step phenomenon: (1) pressures emerge for various reasons and from various kinds of actor at the domestic-national level; (2) these are translated to policy-decision processes at the supranational European level through European institutions; and (3) these policies are implemented at the domestic level. Europeanization in this sense is not just a top-down process but a bottom-up-down process. Radaelli & Pasquier (2006) argue that these three-phase processes take place not through laws created by European institutions in Brussels only, but through processes of socialization generated by growing interdependence between various actors at the European and domestic levels as well.

But in this political game there is another factor, in addition to the EU and the member state actors. In recent years it has become increasingly clear that the Europeanization of Europe cannot be understood without paying attention to the linkage between what happens at the European level and occurrences at the global level – globalization. The forces of globalization have three main dimensions: economic, sociological and political (Hennis, 2001; Graziano, 2003). A key question in this regard is whether globalization and Europeanization are the same phenomenon or whether we can distinguish between them. In other words: does the EU turn out to be an agent of globalization? There is no one answer to this question. Verdier & Breen (2001: 232), for example, argue that “Europeanization, unlike globalization, walks on two legs – market efficiency and political voluntarism. The market has decentralizing and deregulating effects, making Europeanization synonymous with globalization. In contrast, the polity has centralizing effects, distinguishing Europeanization from globalization”. Graziano (2003) arrives at a very similar conclusion when he analyzes three dimensions in which Europeanization and globalization differ fundamentally: attitudes toward the market, pattern of governance and decision-making process. He concludes: “the intensification of the political dimension of the European integration process has brought European decision-makers to integrate the EU in the world economy, but also to design new policies aimed at the protection of what is perceived as a growing European social model” (p.176). This “European social model” is one of the European shields against the negative impact of globalization. The EU, both at the European level and at the national level, uses this

shield through various social regulations (Hennis, 2001). Jabko (2004) offers another perspective, arguing that Europeanization cannot be explained as a consequence of globalization forces, which introduced the need for market efficiency and drove regulatory reform at the European level for achieving this efficiency. Rather, the rise of Europeanization (which Jabko, following Majone, refers to as “a regulatory state”) can be understood as a phenomenon of power seeking using the economic forces of globalization as a tool or an excuse. Jabko, like Graziano and Hennis, refers to the social role of the new European political entity and asks “what societal vision this new power is supposed to serve?” (p. 215). We refer later to this fundamental question.

From the economic point of view, the forces and pressures of globalization drove states to develop competitive policies, mainly involving liberalization, in order to attract investment (Humphreys, 2004). A main consequence of these competition policies is a “a race to the bottom”. This term is usually used to refer to one of globalization’s main aspects: “a progressive movement of capital and technology from countries with relatively high levels of wages, taxation and regulation to countries with relatively lower levels” (Spar & Yoffie, 2000: 36–37). The above definition refers to firms’ behavior. As for states’ behavior, they attempt to reduce the costs of doing business in their territories in order to retain existing industries and to attract new investment. One way of reducing production costs and encouraging firms to transfer their business is to minimize regulatory burdens (Hoods, 2006). But there are instances in which the race to the bottom is mitigated by supranational regulation, by national governments, or by firms themselves – this is a process of “governance from the top” (Spar & Yoffie, 2000). In some such cases, the engine behind the race to the top is non-governmental organizations (NGOs), which believe governments should not conform to multinational corporations’ preferred regulatory standards, and influence the government in this direction. In other cases, a race to the top may be achieved by economic integration. This process occurs when a state raises its regulatory standards to match those of the dominant regional economy (the California effect) (Vogel, 1995; Prakash & Kollman, 2003).

The case of the European Union is a good example of supranational-level governance that can mitigate the race-to-the-bottom syndrome and turn it into a race to the top. Vogel and Kagan (2004: 32) argue that “the European Union has been one major

mechanism driving all member states towards higher regulatory standards, partly because of the EU's strength as a transnational governance institution, and partly because of its importance as an economic market". More precisely, Humphreys (2004: 95) states that "EU actions, as intervening variables, coordinating, synchronizing, and mediating a joint European response to the independent variables – globalization pressures, international regulatory arbitrage and competition, technological change, and hegemonic pressures – that are actually driving regulatory change in the wider global political economy".

The question is whether the EU always acts as a moderating factor and as a barrier against globalization pressures or whether in some cases or sectors the EU acts only as a phase toward globalization requirements. More precisely, is the EU pushing toward a race to the bottom or to a race to the top? Scharpf (1997) suggests that the extent of the influence of EU institutions within regulatory competition is dependent on how EU capacities compare with national governments' corresponding capacities in each policy area.

2. Europeanization and the Broadcasting Sector

The broadcasting sector in European countries, as in other parts of the world, was driven toward liberalization by the forces of globalization and technological developments; and regulatory competition has also played a role. Humphreys (2004), following Scharpf, argues, in connection with the issue of single market, that the broadcasting sector in Europe is an example of high European capacity and low national capacity. But in terms of broadcasting content regulation, the opposite situation prevails: national government has high capacities and the European institutions have low capacities. That is, the EU drives the member states toward liberalization of the broadcasting sector (eliminating borders for TV productions) but the states still exercise regulatory power and influence on TV content (e.g. quotas for local productions) against the forces of globalization, US TV productions in particular. This dual regulatory situation is rooted in the basic European attitude toward the communication sector as a growing industry that can solve some economic problems, in particular the loss of jobs, and can be an engine for new capital investment (Harcourt, 2005). The two key actors shaping EU regulatory policy in the

communications sector were the European Commission and the European Court of Justice (ECJ). The legal framework of this policy was established by the Television Without Frontiers (TVWF) Directive of 1989, which paved the way for the free movement of television signals across borders, like other products. According to the TVWF Directive, a broadcaster could be regulated by the signal's country of origin but not by the country of reception. This principle was based upon several resolutions of the ECJ that had been accepted during the 1970s and 1980s. But even after the TVWF Directive became formal EU policy, member states failed to fulfill their obligation to liberalize the communication sector, and EU institutions – the Commission and the ECJ – had to intervene to promote changes in the states' national legislation: the ECJ by new rulings in specific cases, and the Commission by several direct and indirect regulatory instruments (Harcourt, 2002; 2004).

As for the liberalization of broadcasting markets, EU institutions have succeeded in bringing about significant change throughout the member states. But the EU could not show the same achievement with other important aspects of the media: there is no effective European enforcement of minimal standards for content and advertising in broadcasting, although such standards are included in the TVWF Directive. This failure of European institutions raise some concerns – which have been expressed by consumer interest groups, academics and politicians in several member states – of a race to the bottom. These concerns are connected to areas in which EU institutions are limited in their actions by the Treaties of the European Union: pluralism of the media and cultural policy. In these two fields the member states do not wish to give up their capacity to shape national policies and transfer their competencies to the European level. Therefore, EU institutions have developed indirect instruments with which to allay fears of a race to the bottom in broadcasting content: encouragement of industry self-regulation and the promotion of cooperation between national regulatory authorities and courts. One example of a self-regulatory body at the European level is the European Advertising Standards Alliance (EASA), which established a committee for cross-border advertising complaints (Harcourt, 2004; 2005). This example of self-regulation in the advertising field can be viewed from a much wider perspective: as one solution to the EU's failure to defend public interests which are not in the economic arena (Harcourt, 2005). Another way to see it is, not to blame European institutions for not defending public interests in the field of communications, but to

realize that media policy seeks to achieve a redefinition of the public interest. According to Van Cuilenburg & McQuail (2003), “the field of communication is no longer primarily viewed as an appropriate area for collective welfare policies” (p.199); instead, “the public interest is redefined to encompass economic and consumerist values” (p. 200).

How did all these developments influence regulatory policy in Europe toward the advertising practice of product placement in commercial television? In the following sections of the paper, we identify the global forces influencing the advertising sector, introduce the ways in which the EU reacted to these forces, explore the various kinds of actors that have participated in the process of adjusting the regulatory regime to the new reality, and try answering the question whether the new European PP regime is a mirror of global economic forces or a shield against them.

3. Origins of the Product Placement Regulatory Regime

The history of capitalism and the history of the advertisement industry and markets are intertwined in at least three ways. First, the development of advertising and advertisements as an industry, profession and legitimate practice is one of the major characteristics of the rise of the consumer economy and the consumer society more generally (McAllister & Mazzarella, 2000; Stole, 2000). Second, specific trajectories and types of capitalist development are expressed in different practices, orientations and structures in the advertising industry (Holden, 2004). Third, the regulation of capitalism in Europe, as elsewhere, is also the history of the regulation of advertising (Stole, 2000; Tedlow, 1981; Cunningham, 2000). Thus, we can expect that general approaches to business regulation and particularly to government intervention in the economy will be expressed and manifested also in the way and the extent to which advertising is controlled.

It should come as no surprise to scholars of European media and public policy that the state exerted strict control over broadcast advertisements in the post-war era. At that time, most European broadcasting services were owned or controlled by governments, and the license fee was the primary source of funding. Indeed, the license fee was the major funding arrangement in many European countries until the 1980s. One typical

but outstanding example is France, in which the state had a complete monopoly over the broadcasting sector until 1982. But even then, when private channels were allowed, many of the public service obligations (established by the 1986 law on the freedom of communication) were imposed on private broadcasters as well, including several obligations regarding advertising⁹. Although the first TV advertisement in France was broadcast as early as 1959¹⁰, it was forbidden to advertise certain firms and products on television, in order to protect the local press. In addition, French regulations impose several other obligations, restricting the amount of advertising and the number of breaks within a movie or program, and requiring that the advertisement be identified¹¹.

This restrictive policy on advertising was very similar to those in many other European countries, and was not radically changed even when commercial broadcasting became a dominant and growth industry in Europe in the 1980s and 1990s. The general approach was most aptly expressed by the regime that was first established at the European level at the end of the 1980s following the adoption of TVWF Directive¹². The two cornerstones of this regime were the “separation principle” and the “identification principle”, which were expressed in the TVWF Directive, article 10 (1)¹³. These demands – for the separation between editorial content and commercial messages, and for the ability to identify advertisements – are just two of several requirements regarding advertising that were included in the TVWF Directive. The other main requirements were: prohibition of the use of subliminal advertising techniques (article 10(3)) and of surreptitious advertising (article 10 (4)), prohibition of offensive or discriminatory content (article 12), prohibition of advertising tobacco products (article 13) and medicinal products and treatments which are available only on prescription (article 14), restrictions on

⁹ Unesco (2005), “Public Service Broadcasting: A Comparative Legal Survey”, pp. 29–31

¹⁰ One of the first products to be advertised was cheese (the Boursin brand). See at: <http://emotionzine.wordpress.com/new-trends/ad-tv-in-france-whats-up>

¹¹ Hans-Bredow-institut report (2004), “Media System of France”, submitted to the European Commission

¹² Council Directive 89/552/EEC, published on 3 October 1989 and amended by EC Directive 97/36/EC in June 1997

¹³ Article 10 (1): “Television advertising and teleshopping shall be readily recognizable as such and kept quite separate from other parts of the program service by optical and/or acoustic means.”

advertising alcoholic beverages (article 15), restrictions on advertisements that can cause several kinds of harm to minors (article 16), and, finally, maximum periods of time per hour and per day dedicated to advertisements (article 18). This chapter of the TVWF Directive includes some restrictions on sponsored programs as well (article 17).

As can be noticed, there is no explicit reference in the TVWF Directive to the practice of product placement, either in the original 1989 version or in the amended 1997 version. Even in 2004, when the European Commission published an Interpretation Notice of the TVWF Directive regarding surreptitious advertising, which is identical with product placement, no explicit mention was made of product placement. The interpretation notice suggested “intentionality” as a criterion for prohibiting surreptitious advertising. This means that, if a product is embedded within a program in “undue prominence”, the program is seen as intentionally directed to the promotion of the product. And if this is the case, it can be interpreted as prohibited surreptitious advertising (Schejter, 2006).

This European regime for broadcast advertisements closely resembles the national regimes in many EU member states. As with the TVWF Directive, the main principles of the various states’ regimes are the separation between content and advertisements and the obligation to make the advertisement identifiable by the viewers. In Britain, for example, Rule 10.2 of the Broadcasting Code (published in May 2005 by OFCOM, the British regulator) says clearly: “Broadcasters must ensure that the advertising and program elements of a service are kept separate.”¹⁴ But, unlike the TVWF Directive, the British regulations refer directly to the practice of product placement. In OFCOM’s Broadcasting Code, there is a specific and clear-cut rule (rule 10.5) which prohibits product placement, and precisely defines product placement¹⁵.

Another example is that of Germany. Baerns (2003) indicates that the separation principle and the prohibition of product placement have been fundamental elements of

¹⁴ The same idea is included within OFCOM’s Advertising Rules, “Rules of the amount and distribution of advertising” (2005), section 3.1.

¹⁵ OFCOM’s definition of PP: “Product placement is the inclusion of, or a reference to, a product or service within a program in return for payment or other valuable considerations to the program maker or broadcaster (or any representative or associate of either).”

the German legislative frame since 1949. She mentions Article 5 of the German Constitution, the law against unfair competition, state press, media and broadcasting laws, the National Broadcasting Agreement of the German federal states, and the National Agreement on Media Services.

Other examples of regulations that impose these two basic principles of separation and identification are those of the Netherlands¹⁶, Italy¹⁷ and Denmark¹⁸. These three countries, like the UK, Germany and France mentioned before, and like other EU member states, impose large sets of restrictions on TV advertising, very similar to those of the TVWF Directive described above.

We can conclude by observing that the European TV advertising regimes, at both national and supranational levels, prohibit (directly or indirectly) the practice of product placement. The main reason is that PP stands in clear contradiction to the principle of separation and the principle of identification. The very essence of PP is that the product is embedded within the program and the viewers cannot distinguish between the program's content and the commercial message. The European regulatory regime in this respect aims to protect the public from commercial manipulation.

The situation in Europe in this regard was different from the situation in the United State or Canada. Even in the heyday of the American regulatory state, the advertising regime for commercial broadcasters was less restrictive than those in Europe. The regulation of advertising in broadcasting in the United States was limited to the obligation of the broadcaster to identify program sponsors. In 1990 the American Congress for the first time limited the total quantity of broadcast advertising during children programs (Schejter, 2006). American advertising regulation makes no direct or indirect reference to product placement. In Canada, the main regulatory restriction

¹⁶ Section 52c.1 of the Media Decree stipulates that an advertisement must be recognizable, while section 52d.5 says that advertisements must be broadcast in blocks beginning or ending with an announcement about the advertisement.

¹⁷ On 26 July 2001, AGCOM (the Italian media regulator) adapted the new regulation regarding advertisements; its main provisions concern the identification of advertisements and their separation from other parts of the program. Available at: www.agcom.it/intro.html

¹⁸ The Danish Radio and Television Broadcasting Act, Chapter 11, Article 72: "Advertisements must be clearly identifiable as such, their content and presentation distinguishing them from regular programs." Article 73: "Advertisements on television shall be transmitted only in blocks to be inserted between programs."

concerned the amount of advertising within a broadcasting hour¹⁹. The question regarding PP (or any other non-traditional advertising practice) was whether such practice should count as traditional advertising within the maximum allowed quantity of advertisement per broadcasting hour²⁰.

Now we can elaborate the developments and reasons that brought about the change in the advertising regulatory regimes in Europe toward permitting the use of PP under various restrictions.

4. The Policy Process

At the beginning of the 21st century, winds of inconvenience have started to blow throughout Europe regarding the commercial relations between broadcasters and advertisers. This inconvenience has stemmed from significant changes in the communication and broadcasting environments in many countries. The main reasons for these changes are a significant rise in the costs of producing advertisements, increasing public doubt about commercial broadcast messages, and revolutionary technological developments that have completely changed the traditional ways of consuming television services. Technological development influences the broadcasting and advertising industries in two main ways. First, it enables viewers to bring hundreds of television channels, including on-demand channels, directly into their homes, significantly fragmenting the viewers and weakening the effect of traditional spot ads. Second, new recording machines enable and encourage viewers to skip advertising spots.

All these developments have prompted advertisers to transfer a certain portion of their budgets from television to other innovative platforms such as the internet and cellular phones. One important consequence is that both broadcasters and advertisers have begun to search for new modes of television advertisements (Avery & Ferraro, 2000; Tiwsakul & Hackley, 2005; Schejter, 2006; 2007). Product placement is one of the most obvious alternatives to the traditional spot ad, because advertisers and broadcasters have been familiar with it for many years, both from its early use in the

¹⁹ Television Broadcasting Regulations, 1987.

²⁰ Circular No. 350, 1988

cinema industry (Newell, Salmon & Chang, 2006) and, later, from the early days of American television (Russell & Belch, 2005).

In a very short period of time product placement has turned out to be a separate and successful sector within the advertising industry, in the United States in particular, but in Europe and other parts of the world as well. For example, in the television season of 2003–04 the product placement industry in the United States was estimated to be worth about \$300 millions, but in 2005 the estimate had risen to more than \$940 million (Schejter, 2006). One source estimates the value of the entire industry throughout all the American media (TV, movies, CD, computer games, etc.) at \$3.4 billion (Russell & Belch, 2005). The estimates for Europe are considerably lower. According to OFCOM, if product placement is permitted, its UK market would be worth around 25 million–35 million pounds sterling after five years of deregulation (OFCEM, Consultation on product placement, 2005, section 4.14). In May 2007 the European Commission referred to an independent study that showed that global paid product placements increased by 37% in 2006; it was forecast to gain an additional 30% in 2007.

By any figure, the trend is clear: product placement, as a new source of revenue for the broadcasting industry, is an established fact. The success and popularity of product placement can be understood: the product that is placed as an integral part of the program cannot be ignored by the viewers (and there is no incentive to skip it by zapping or by recording the program), the advertisers have full control over the commercial message, and the message has credibility in the viewers' eyes as it is integrated into the editorial content. As such, it is more credible than traditional commercial content (the spot) (Balasubramanian, 1994).

The new reality in the broadcasting and advertising industries, and the growing use of product placement in television programs, have raised several regulatory concerns, all stemming from the fact that product placement practice does not fit the requirements of the separation principle of the old regime. There are three main concerns. First, product placement is a “hidden but paid message” which is designed to persuade the viewers to purchase a product or a service without their being aware of it. This raises the question whether the viewers should always have the right to know when and by whom they are influenced – in this case, a commercial influence (Balasubramanian,

1994; Avery & Ferraro, 2000). Second, product placement is in a way a surreptitious commercial message that can give the viewers the wrong impression that it is editorial content with high credibility; that is, it can mislead the viewers. Third, advertisers who pay for the placement would probably try to influence the program's content in order to maximize the impact of the placement; this would reduce the responsibility and the independence of the creators, producers and broadcasters, and indirectly would damage the viewers' rights as consumers (Baerns, 2003).

In recent years, these and other concerns have been engaging the attention of regulatory authorities worldwide. In the EU, the process of rethinking product placement policy was part of a much larger process that aimed to adjust the TVWF Directive to the new conditions that the communications industry faces. The core of this process was the need to refer, in regulatory terms, to new means of communication, like the internet, cellular, TV on demand, etc. This process began in 2003 and ended in May 2007. Among other steps, it consisted of public hearings, written consultations, focus groups, special conference and a detailed proposal from the Commission for changes in the TVWF Directive, including a radical change to the product placement regime. However, this proposed change was not approved by the European Parliament, and the new product placement regime, published in December 2007 as a part of the Audio-Visual Media Services (AVMS) Directive, was much more moderate than the Commission's original version (we will refer later to the new Directive which defines the new regime). Table 1 introduces the main phases of the rethinking process in the EU, from the TVWF Directive (1989) to the new AVMS Directive (2007).

Table 1: From the TVWF Directive to the AVMS Directive

Step	Date	Activity
1	3.10.1989	Publication of the TVWF Directive (89/552/EEC)
2	June 1997	Publication of the new TVWF Directive (97/36/EC)
3	6.1.2003	Publication of the fourth report of the commission on the application of the TVWFD (COM/2002/0778 final)
4	March–July 2003	Public hearing + submission of written contributions by stakeholders

5	15.12.2003	Publication of the Communication on “The Future of European Audiovisual Policy” (COM (2003) 784 final)
6	23.4.2004	Publication of the Interpretative Communication on certain aspects of the provisions on television advertising un the TVWF Directive (C(2004) 1450)
7	Sept. 2004 Feb. 2005	Focus groups on regulation of audiovisual content, advertising and right to information
8	30-31.5.2005	Seminar at Luxemburg: the outcomes of the focus groups, discussion with member states
9	11.7.2005	Publication of six Issues Papers, summarizing the Luxemburg discussion
10	5.9.2005	Public consultation: interested parties were invited to submit their written observations on the Issues Papers
11	20-22.12.2005	Audiovisual Conference at Liverpool: “Between Culture and Commerce”
12	13.12.2005	Publication of Legislative Proposal by the Commission for the revision of the TVWF Directive
13	1-2.6.2006	Public hearing at the European Parliament on the AVMS Directive as proposed by the Commission
14	24.5.2007	Political agreement reached on common position between the Commission and the Parliament
15	29.11.2007	The European Parliament approves the common position
16	11.12.2007	Publication of the new Audiovisual Media Services Directive (AVMSD) (2007/65/EC)
17	Until 19.12.2009	Member states are expected to adopt the new directive in national legislation

In the next section we describe and analyze the actors’ types and positions on the new PP regime. Then we describe the new EU PP regime in light of the wider changes in the TV advertising regime.

5. Actors’ Types and Positions

The long and detailed revision process of EU policy toward the broadcasting sector in general, and product placement in particular, was initiated by the Commission in response to developments in the markets, to the changes in the conditions and

atmosphere of business, and to the need to meet stakeholders' demands. These motives for shaping new regime are expressed openly and clearly in the first paragraph of the AVMSD:

New technologies in the transmission of audiovisual media services call for adaptation of the regulatory framework to take account of the impact of structural change, the spread of information and communication technologies and technological developments, especially the financing of commercial broadcasting, and to ensure optimal conditions of competitiveness and legal certainty for Europe's information technologies and its media industries, as well as respect for cultural and linguistic diversity.

From the above statement it is clear that outside influences, both technological and economic, were the engine of the revision process. It is clear as well that the interests of the broadcasting sector were given priority in the shaping of the new regime, although other paragraphs of the new directive (for example, paragraph 8) refer to the need to safeguard certain public interests. For the purpose of keeping a balance between business interests and general public interests, EU institutions (as shown in Table 1) invited various stakeholders from the industry and from the general public to present their opinions on certain issues regarding the regulation of the broadcasting sector. We chose to investigate the participants in two critical steps of the revision process. First, step 10 in Table 1, in which actors submitted their views during the public consultation on September 2005, is important to the revision process because the participant stakeholders reacted to the issue papers which had been published by the Commission (step 9) before the Liverpool conference (step 11). The issue papers, the participants' comments on them, and the discussions at the conference were the foundation for the Legislative Proposal published by the Commission for the revision of the TVWF Directive. Second, step 13 in Table 1, in which actors submitted their views during the public hearing at the European Parliament on June 2006, is significant to the revision process because, following the hearing and the discussions of the Parliament's committees, the Commission changed various articles in its first proposal, including those on product placement.

Our investigation of these two public consultations aimed both to explore the identity and type of the actors and to reveal these actors' views regarding the new product placement regime. To address these two goals, we took three steps. First, we

categorized the actors in terms of their geographical scope of activity: local actors (operating in one state) and supranational/international actors (operating across borders). Second, we distinguished four types of actor: state actors (governmental departments or state regulatory authorities); public actors (religious groups or minors' protection organizations); business/commercial actors that have a direct interest in shaping the new regime (broadcasting organizations or advertising firms); and business/commercial actors that have an indirect interest in the issue of product placement (other media organizations – internet suppliers, cellular phones firms, etc. – or media professional organizations, like journalists associations). Third, we identified each actor by his or her position regarding the new product placement regime: a permissive regime (allowing the use of product placement), a restrictive regime (allowing product placement but under certain limitations), and a prohibitive regime (not allowing product placement at all). In this regard, we took into consideration actors who had expressed indirect positions toward PP as well as those who had presented direct positions. For example, any actor who did not specifically use the term “product placement” in his or her submitted document but referred to the principle of separation between editorial and commercial content was considered to have a position on the subject.

In the 2005 consultation, 177 position papers were submitted to the European Commission, of which we analyzed 154 (the other 23 were not analyzed for technical reasons). Among these 154 papers, we identified 78 that expressed a direct or an indirect position (56 and 22 papers respectively) on product placement. Thirty-eight position papers were submitted to the 2006 hearing of the European Parliament, of which we analyzed 35 (three papers were not analyzed for technical reasons). Among these 35 papers, we identified 21 that expressed a direct or an indirect position (20 papers and one paper respectively) on the new product placement regime.

We found a difference between the Commission's consultation and the Parliament's hearing regarding the geographical scope of the actors' activity. In the 2005 Commission consultation, the actors were divided almost equally between local actors (53%) and supranational/international actors (47%). It was quite different at the 2006 Parliament hearing: the great majority of the actors were supranational/international actors (76%), and less than one quarter were local actors (24%).

As for the actors' types, we found that the vast majority of the actors, in both processes, were those who had a direct or an indirect interest in the PP regime. State actors and public actors (both represent various general public interests) in both processes were fewer in number. An interesting finding indicates that more than a half of the actors in both processes supported some sort of restrictive product placement regime. Many of them (actors with a direct interest in particular) recommended allowing the use of product placement with identification in certain ways but with no obligation on the broadcasters to separate the placement from editorial content. Some of them supported restrictions on programs' genres (news and children's programs in particular) or on product types (alcohol, tobacco products and medicines). More than one third of the actors in the 2005 consultation and more than a quarter of the actors in the 2006 hearing were in favor of the prohibitive regime (they did not support any change in the old product placement regime). On the other hand, a few of the actors in 2005 and about a quarter of the actors in 2006 supported the idea of the permissive regime (allowing the use of product placement without any limitations). A significant finding is that not one of the state actors or public actors supported the permissive regime. All the actors who supported this regime, in both processes, had a direct or an indirect interest in the issue.

Table 2 presents the actors in the 2005 Commission consultation by type and by preferred regime. Table 3 presents the actors in the 2006 Parliament hearing by type and by preferred regime.

Table 2: Actors' number and percentages by type and recommended regime

(Commission Consultation 2005)

Actor type	In favor of permissive regime	In favor of restrictive regime	In favor of prohibitive regime	All actors
State	-	1 (1 %)	8 (10%)	9 (12%)
Public interest	-	9 (12%)	7 (9%)	16 (21%)
Direct interest	3 (4%)	21 (27%)	4 (5%)	28 (36%)
Indirect interest	1 (1%)	14 (18%)	10 (13%)	25 (32%)
All actors	4 (5%)	45 (58%)	29 (37%)	78 (100%)

Table 3: Actors' number and percentages by type and recommended regime
(Parliament Hearing 2006)

Actor type	In favor of permissive regime	In favor of restrictive regime	In favor of prohibitive regime	Total actors
State	-	2 (10%)	-	2 (10%)
Public interest	-	1 (5%)	2 (10%)	3 (14%)
Direct interest	2 (10%)	6 (29%)	-	8 (30%)
Indirect interest	4 (19%)	2 (10%)	2 (10%)	8 (30%)
All actors	6 (29%)	11 (52%)	4 (19%)	21 (100%)

It is interesting that in the 2005 consultation there is a significant difference between state actors and all the other three types: eight of the nine state actors supported prohibition of product placement (one actor supported the restrictive regime). Of the public actors, more than 40% (7 out of 16) were in favor of the prohibitive regime (the others supported the restrictive regime). Among direct interest actors, only 14% (4 actors out of 28) recommended the prohibitive regime, 75% of them (21 actors) supported the restrictive regime, and 3 actors recommended the permissive regime. Of indirect interest actors, 40% (10 actors out of 25) were in favor of prohibition, 56% (14 actors) supported the restrictive regime and only 4% (one actor) the permissive regime. Table 4 presents the preferred regimes of each type of actor in the Commission consultation of 2005. We did not undertake a similar analysis of the 2006 process because of the small numbers involved.

Table 4: Preferred regimes by type of actor

(Commission Consultation 2005)

Actor type	Permissive regime	Restrictive regime	Prohibitive regime	All actors N=78
State	-	1 (11%)	8 (89%)	9
Public interest	-	9 (56%)	7 (44%)	16
Direct interest	3 (11%)	21 (75%)	4 (14%)	28
Indirect interest	1 (4%)	14 (56%)	10 (40%)	25

6. The New PP Regime: Permissive or Restrictive?

The new EU product placement regime has to be examined in the wider context of the changes in the regulation of TV advertising as a whole. As we have already indicated, the basic document defining the characteristics of the new regime is Directive 2007/65/EC, published in December 2007 (“Audio-visual Media Services Directive” – AVMS Directive). This Directive introduces a new European regulatory policy toward the broadcasting sector, including traditional television as well as on-demand audio-visual media services, and replaces the TVWF Directive. The AVMS Directive represents a new regulatory approach toward broadcasting advertising, which is quite different in certain respects from the previous one. Section 55 of the resolution of the European Parliament and of the Council that accepted the AVMS Directive explains that:

Commercial and technological developments give users increased choice and responsibility in their use of audio-visual media services. In order to remain proportionate with the goals of general interest, regulation should allow a certain degree of flexibility with regard to television broadcasting. The principle of separation should be limited to television advertising and teleshopping, product placement should be allowed under certain circumstances, unless a Member State decides otherwise, and some quantitative restrictions should be abolished.

Furthermore, section 57 explains that, because of the new technologies which enable skipping advertisements, and because of the increased number of available channels, “detailed regulation with regard to the insertion of spot advertising with the aim of protecting viewers is no longer justified”. Section 59 explains in a very similar way why the daily limitation on the amount of advertising should be abolished while the hourly limitation should be kept. These three sections reveal the European institutions’ considerations for the changes in the advertising regulatory regime:

technological and economic developments. Following these developments, three main changes were made in the European advertising regime: allowing more flexibility in implementing the separation principle which leads to restrictive permission of the use of product placement; allowing more flexibility in the limitation on the amount of advertisements; and allowing more flexibility in the restrictions on insertion of advertisement spots between programs and during a program. All other characteristics of the old EU advertising regime were retained in the new regime.

Table 5 presents these similarities and differences between the old and the new European advertising regimes. The gray lines represent the characteristics which have been changed in the new regime.

Table 5: The EU's old and new advertising regimes

Characteristics	Old regime	New regime
Recognizability of advertisement	obligatory	obligatory
Separation between advertising and content	obligatory	spot – obligatory PP – not obligatory
Subliminal techniques	prohibited	prohibited
Surreptitious advertising	prohibited	prohibited
Interruption of program	restrictive	less restrictive
Types of product	restrictive	restrictive
Prejudice and discriminatory content	prohibited	prohibited
Protection on minors	obligatory	obligatory
Sponsored programs	restrictive	restrictive
Amount of advertisement	restrictive (daily & hourly)	hourly – restrictive daily – not restrictive
Product placement	prohibited	restrictive

As can be seen, contrary to the old regime in which product placement was totally prohibited, the new European regime opens the door to this practice, although it clearly declares that “Product placement shall be prohibited”:

By way of derogation from paragraph 1, product placement shall be admissible, unless a Member State decides otherwise, in cinematographic works, films and series made for audiovisual media services, sports programs and light entertainment programs; or

– cases where there is no payment but only provision of certain goods or services for free, such as production props and prizes, with a view to their inclusion in a program.

The derogation in the first indent shall not apply to programs for children.²¹

In fact, according to the new Directive, broadcasters and producers can use product placement as a source of revenue subject to several limitations (summarized in Table 6, which presents the main characteristics of the new regime) regarding the program’s genre (excluding news, current affairs, documentaries and programs for children). Paragraph 2 in article 3g of the new Directive lays down several conditions for implementing product placement in those types of program in which the practice is permitted: that it does not influence the responsibility and editorial independence of the media service provider, that it does not directly encourage the purchase or rental of goods or services, that it does not give undue prominence to the product, and that the viewers are clearly informed of the presence of product placement. Paragraph 3 of article 3g addresses the prohibition of product placement of tobacco products and of pharmaceutical products or medical treatments available only on prescription.

²¹AVMS Directive, article 3f, paragraphs 1–2

Table 6: The EU new product placement regime

Characteristics	Permissive regime	Restrictive regime	Prohibitive regime
Type of program	Cinematographic work, films and series, sport, light entertainment	In cases where there is no payment	Children programs
Editorial responsibility & independence			Should not be influenced by PP
Encouraging purchase			PP shall not directly encourage purchase or rental of goods/services
Product prominence			PP shall not give undue prominence to the product
Informed viewers		Programs with PP are identified at the start and the end	
Type of product			Tobacco products, medicinal products or medical treatment available on prescription

In summary, the new European regime prohibits product placement in principle, but allows it in practice under certain conditions. At the same time, the EU leaves in the hands of the member states the competences to implement the total exclusion of product placement²².

7. Conclusions

This paper has demonstrated that the new EU product placement regime is much more permissive than the old one. The old norms and rules that supported and entrenched the principle of separation between editorial and commercial content have been refined. The new regime legitimizes and allows the practice of product placement,

²² AVMS Directive, 2007, article 3f, paragraph 2

which in its very essence contradicts the separation principle, “unless a Member State decides otherwise”²³. Furthermore, the new Directive lays down a long list of limitations when product placement is allowed in a member state²⁴. The limitations refer to the four main public concerns which were raised both by scholars (e.g. Balasubramanian, 1994; Avery & Ferraro, 2000; Baerns, 2003; Wenner, 2004; Schejter, 2006; 2007) and by participants in the European process of reshaping the regime. First, protection from deceit: programs with product placement must be identified at the start and at the end. Moreover, product placement should not directly encourage the purchase of the product and should not give it undue prominence. Second, protection of minors: the new regime does not allow the use of this practice in children’s programs. Third, protection of the audience’s health: the new regime prohibits product placement of harmful products. Fourth, protection of editorial and creative independence: the content and scheduling of programs with product placement should not influence the responsibility or editorial independence of the broadcaster. All in all, the new EU regulatory regime, while embodying some liberalization, is restrictive rather than permissive and reflects an effort to balance economic interests and socio-cultural values.

Our findings indicate that, although the European institutions – the Commission in particular – played a major role in shaping the new product placement regime, dozens of actors of various types took part in this process. We have demonstrated that participation included both domestic actors (those who operate within the boundaries of a certain member state) and supranational/international actors (those who operate across national borders). Approximately one-third of the participants in this process were state or public actors, while the other two-thirds included actors with direct or indirect commercial interests in the new regime. These findings reinforce those of previous studies to the effect that under multi-level governance, such as in the European Union, there is a growing interdependence between governments and non-governmental actors at various territorial levels (Bache & Flinders, 2004), and that sub-national and/or non-state actors participate in the decision making process at both national and supranational levels (Marks & Hooghe, 2004).

²³AVMS Directive, 2007, article 2

²⁴AVMS Directive, 2007, articles 3g (2a-2d, 3)

The case presented in this study is a good example of external changes – technological and economic – which triggered changes in the European regulatory regime. On the one hand, those external changes had driven various types of relevant actor to change the regulatory regime. On the other hand, we have demonstrated that the European institutions were aware of the external changes and reacted to them as well as to the industry’s demands for changes. In doing so, EU institutions played a major role in the process, had a significant influence on its outcomes, and took into consideration interests other than those of the industry. In summary, the case of product placement displays the will and the ability of the European Union to balance commercial and social interests. In this respect, our study supports the view that Europeanization is not just an explanation for the integration process (the intergovernmentalism concept) but is a notion that reflects the European Union as a unified political system that does not hesitate to use its power over member states (the supranational concept) (George & Bache, 2001; Bache & Flinders, 2004).

The limited liberalization in the European product placement regime is not an obvious policy outcome. The same technological and economic forces have exerted an influence throughout the industrial world, but the consequences are diverse. In the United States and Canada, for example – whose media markets are as industrial and liberalized as the European – the product placement regimes are permissive, not restrictive as in the EU. This difference can be explained by the “European social model” (Graziano, 2003: 176), which is used as a shield against the forces of globalization through various mechanisms of social regulation (Hennis, 2001). Global economic influence drives local markets and their regulators toward commercialization (a race to the bottom), but the European social shield moderates this influence. The European institutions – the Commission and the Parliament, in our case – had a major role in that moderation, but it is reasonable to assume that they needed partners from the industry and from the public who preferred the restrictive regime to the permissive one. As our findings indicate, more than 50% of all actors supported the restrictive product placement regime. Furthermore, to refer to the industry’s actors (broadcasting and advertising) alone, support for the restrictive regime is higher, on the part of direct interest actors as well as indirect interest actors (75% and 56% respectively). Only 4% of these industry actors supported the

permissive regime. These findings indicate either that the industry actors took into consideration social concerns as well as commercial interests or that they identified in advance the regulators' preferred regime and realized that it would be in their own best interest to go along with it. Regardless of the explanation, the consequence is that in the European Union, unlike in the United States or Canada, there is not a complete race to the bottom in regulatory standards regarding product placement. To that extent it is justifiable to claim that the EU has indeed been a shield against commercialization.

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