



**Comparative study concerning the impact of control measures on  
the televisual advertising markets in the EU Member States and  
certain other countries**

**AUSTRIA**

**LEGAL REPORT**

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# TABLE OF CONTENT

<b>INTRODUCTION .....</b>	<b>5</b>
<b>1. DEFINITIONS .....</b>	<b>6</b>
➤ Television Broadcasting: .....	6
➤ Broadcaster: .....	6
➤ Television advertising: .....	6
➤ Surreptitious advertising: .....	7
➤ Sponsorship: .....	7
➤ Tele-shopping: .....	7
➤ Self-promotion message:.....	7
➤ Product placement / Surreptitious advertising / subliminal advertising: .....	8
➤ Conclusions.....	8
<b>2. ADVERTISING RECOGNITION AND ADVERTISING / PROGRAMME SEPARATION (ARTICLE 10 TVWF DIRECTIVE) .....</b>	<b>9</b>
a. Regulations .....	9
- Examination of the rules related to advertising and tele-shopping spots recognition .....	9
- Examination of the rules related to the separation between the commercial content and the programme.....	9
- Examination of the rules related to the isolated advertising and tele-shopping spots .....	9
- Prohibition of the use of "subliminal techniques" .....	9
- Prohibition of surreptitious adverteng and tele-shopping .....	9
b. Conclusions.....	9
<b>3. RULES RELATED TO INSERTION OF ADVERTISING AND TELE-SHOPPING SPOTS BETWEEN AND WITHIN THE PROGRAMMES (ARTICLE 11 TVWF DIRECTIVE) .....</b>	<b>10</b>
a. Regulations .....	10
- Examination of the rules related to the insertion of advertising and tele-shopping spots between the programmes .....	10
- Examination of the rules related to the insertion of advertising and tele-shopping spots within the programmes (allowed or prohibited; specific rules regarding the type of programme).....	10
- Possible prohibitions of insertion of advertising and tele-shopping spots within certain types of programme.....	11
b. Conclusions.....	11

#### **4. QUANTITATIVE RESTRICTIONS (ARTICLE 18 TVWF DIRECTIVE) ..... 13**

- a. Regulations ..... 13
  - Examination of the legal maximum percentage of daily transmission time devoted to tele-shopping and advertising spots and for other forms of advertising (20% in the TVWF Directive)..... 13
  - Examination of the maximum daily transmission time devoted to advertising messages (15% in the TVWF Directive)..... 13
  - Examination of the maximum daily transmission time devoted to advertising and tele-shopping spots within a given clock hour (20 % in the TVWF Directive)..... 14
  - Examination of the other possible quantitative restrictions ..... 14
  - Examination of the factors to take into account or not for the calculation of the advertising time .... 14
- b. Conclusions..... 14

#### **5. QUANTITATIVE RESTRICTIONS RELATED TO TELE-SHOPPING PROGRAMMES (ARTICLE 18 BIS TVWF DIRECTIVE) ..... 15**

- a. Regulations ..... 15
  - Public broadcasters ..... 15
  - Private broadcasters ..... 15
  - Examination of the minimum duration of windows devoted to tele-shopping programmes (15 minutes in the TVWF Directive) ..... 15
  - Examination of the maximum number of windows (8 in the TVWF Directive)..... 15
  - Examination of the maximum daily duration (3 hours in the TVWF Directive) ..... 15
- b. Conclusions..... 15

#### **6. SPONSORSHIP (ARTICLE 17 TVWF DIRECTIVE) ..... 16**

- a. Regulations ..... 16
  - Public broadcaster ..... 16
  - To private broadcasters ..... 16

The provisions of Article 17 of the TVWF Directive have been taken over exactly in Section 46 of the PrTV Act: ..... 16

  - Examination of the rules related to editorial independence of the broadcaster ..... 16
  - Sponsor identification ..... 16
  - Examination of the rules related to the insertion of the sponsor's name or logo within the programme (beginning/end, break bumper, during all the programme) ..... 17
  - Identification of the programmes that cannot be sponsored..... 17
  - Examination of the rules related to the content of the message ..... 17
  - Examination of the maximum duration of the mention and/or maximum daily/per hour volume .... 17
  - Examination of other rules eventually limiting the volume of sponsorship ..... 17
  - Examination of other relevant rules related to product placement, price mentioning during TV shows, sponsorship linked to schedule/points indication during sport broadcasts, etc.)..... 17
- b. Conclusions..... 18

<b>7. NEW ADVERTISING TECHNIQUES .....</b>	<b>19</b>
➤ Split screens .....	19
➤ Interactive advertising .....	19
➤ Virtual advertising .....	19
➤ Other new advertising technique .....	19
<b>8. GENERAL RULES RELATED TO ADVERTISING AND TELE-SHOPPING CONTENT (ARTICLE 12 TVWF DIRECTIVE) .....</b>	<b>20</b>
a. Regulations .....	20
- Public broadcaster .....	20
b. Conclusions .....	21
<b>9. SPECIFIC PRODUCTS AND TARGETS .....</b>	<b>22</b>
a. Regulations .....	22
- Tobacco .....	22
- Medicines .....	22
- Alcoholic beverages .....	22
- Minors .....	23
- Media .....	23
b. Conclusions .....	24

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## INTRODUCTION

Although in 2001 the Private Television Act<sup>1</sup> (hereinafter "the PrTV Act", replacing the Cable and Satellite Broadcasting Act) and the ORF Act<sup>2</sup> (hereinafter the "ORF Act", amending the Broadcasting Act) changed essential aspects of the basic conditions of the television sector (particularly by creating a legal basis for private terrestrial broadcasting), it may nevertheless be emphasized that the general rules of advertising contained in these laws had been in force already previously.

The TVWF Directive 97/36/EC was implemented already earlier by amending the former Broadcasting Act (with provisions on the Austrian Broadcasting Corporation, ORF) and the former Cable and Satellite Broadcasting Act (with provisions on private cable and satellite broadcasters).

Generally speaking, the rules on television advertising explained below have thus been in force for quite some time. In the course of the necessary adjustment of existing legal regulations and the creation of a legal basis for private terrestrial television – since 1 August 2001, the Private Television Act has been in force –, however, more precise provisions were adopted for public broadcasting, leading to clearer regulations on advertising. The ORF Act, for instance, which fully entered into force on 1 January 2002, provides for a clear separation of the ORF's permissible from its non-permissible activities in connection with advertising and sponsoring. For one, clear legislative decisions have been taken with regard to practices which so far have been controversial because of different legal interpretations (e.g. inserted advertising) and, for another, a separation should also be made of the funding options through advertising and sponsoring of the ORF, on the one hand, and of the private broadcasting sector, on the other. This means that the advertising possibilities for the ORF have also been legally restricted to offer private television broadcasters sufficient funding opportunities and thus better starting conditions. Even though this is no guarantee for the actual profitability of private television, it was at least intended to create an economic environment for the establishment of private broadcasting and thus a balance between public and private broadcasting within Austria's dual broadcasting system.

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<sup>1</sup> Federal Act Issuing Regulations on Private Television, Federal Gazette I N° 84/2001.

<sup>2</sup> Federal Act on the Austrian Broadcasting Corporation, Federal Gazette I N° 83/ 2001.

# TELEVISION

## 1. DEFINITIONS

All definitions of Article 1 of the TVWF Directive are, as a rule, formulated in exactly the same way as in the pertinent laws. Nevertheless, the terms “**television broadcast**” and “**broadcaster**” have been defined by the regulator in accordance with the individually applicable requirements.

### ➤ **Television Broadcasting:**

The definition of “**broadcasting**” (including radio and television) in Article 1 paragraph 1 of the Constitutional Act for the Safeguard of the Independence of Broadcasting 10 July 1974, Federal Law Gazette No. 396/1974), reads as follows:

*“Broadcasting is the transmission of all kinds of items in the form of words, sounds or images, intended for the general public and communicated by means of electrical oscillations without recourse to connecting circuits, or alternatively through or via a conductor, as also the operation of technical facilities serving this end.”* (≠ art. 1 a. TVWF Directive).

### ➤ **Broadcaster:**

In the PrTV Act, which is not applicable to the ORF, a “broadcaster” (Section 2(1) of the PrTV Act) is defined as follows:

*“ ‘broadcaster’ means the person, that – except the ORF – creates and/or composes radio or television programmes (analogue or digital) for the transmission by cable or satellite or aerial transmission and that transmits them or has them transmitted unaltered by third parties. Persons solely retransmitting programmes only are not regarded as broadcasters.”* (≠ art. 1 b. TVWF Directive).

The term "broadcaster" thus encompasses all private broadcasters of cable programmes, satellite programmes and terrestrial analogue or digital programmes. Persons who merely supply or make parts of programmes available to a broadcaster who transmits them under his responsibility are not regarded as broadcasters. In this context, the regulator in a way combined the provisions of Article 1 paragraphs a. and b. of the TVWF Directive, i.e. the definitions of “television broadcasting” and “broadcaster”.

### ➤ **Television advertising:**

The definition of the term „**television advertising**“ has been taken over exactly from Article 1 paragraph c of the TVWF Directive in Section 13 paragraph 1 of the ORF Act and in Section 34 paragraph 23 of the PrTV Act : *“Television advertising’ means any form of announcement broadcast whether in return for payment or for similar*

*consideration or broadcast for self-promotional purposes by a public or private undertaking in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment". (// art.1c TVWF Directive)*

➤ **Surreptitious advertising:**

The definition of the term “**surreptitious advertising**“ has been taken over exactly from Article 1 paragraph d of the TVWF Directive in Section 14 paragraph 2 of the ORF Act: *"surreptitious advertising' means the representation in words or pictures of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the broadcaster to serve advertising and might mislead the public as to its nature. Such representation is considered to be intentional in particular if it is done in return for payment or for similar consideration". (//art. 1d TVWF Directive).* Section 34 paragraph 2 of the PrTV Act only mentions that “surreptitious advertising” is not permitted.

➤ **Sponsorship:**

The definition of the term “**sponsorship**“ has been taken over exactly from Article 1 paragraph e of the TVWF Directive in Section 17 paragraph 1 of the ORF Act and in Section 46 paragraph 1 of the PrTV Act : *"sponsorship' means any contribution made by a public or private undertaking not engaged in television broadcasting activities or in the production of audio-visual works, to the financing of television programmes with a view to promoting its name, its trade mark, its image, its activities or its products. (// art. 1.e TVWF Directive).*

➤ **Tele-shopping:**

The definition of the term "**tele-shopping**" has been taken over exactly from Article 1 paragraph f of the TVWF Directive in Section 2 (23) of the PrTV Act. In the ORF Act (Section 13 paragraph 2) too, the term "tele-shopping" is used, although the provision states that the ORF is strictly prohibited from using this type of advertising. *"Tele-shopping' means direct offers broadcast to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment". (//art.1.f TVWF Directive).*

➤ **Self-promotion message:**

There is no specific definition of this term, but the section 13 paragraph 9 of the ORF Act provides a ban for the public broadcaster on so-called “cross promotion”. Consequently, the ORF is prohibited to advertise its radio programmes in its television programmes (and vice versa). This regulation does not cover neutral information about the content of specific programme elements. The background of this provision is that the regulator wanted to restrict the incomparably higher competitive advantage of the ORF over private broadcasters – due to its capacity to broadcast several television and radio programmes and to advertise them mutually. The regulation is thus to prevent unilateral distortions of competition.

The Constitutional Court declared this provision to be in line with Article 10 ECHR.<sup>3</sup>

➤ **Product placement / Surreptitious advertising / subliminal advertising:**

Section 14, paragraph 5, of the ORF Act contains a ban on product placement for the public broadcasting programmes - cinema films, television films and television series being explicitly excluded. Section 14, paragraph 6, of the ORF Act allows product placement only in so far as it cannot be avoided by the broadcasting of sports events with sports field advertising or culture events or cannot be influenced by the broadcaster. The explanatory remarks on the ORF Act specify the term “product placement” to mean “*the effective placement, in terms of advertising, of products in a broadcast*” (in return for payment). Thus, this does not include the story of a programme in a specific place or an event in a specific region (“location placement”). What is generally prohibited, however, is product placement in children’s programmes (cf. Section 14 paragraph 6 of the ORF Act).

Section 13 paragraph 4 of the ORF Act contains a ban on subliminal advertising, and Section 14 paragraph 2 of the ORF Act contains a ban on surreptitious advertising.

➤ **Conclusions:**

All definitions of Article 1 of the TVWF Directive are, as a rule, formulated in exactly the same way as in the pertinent laws. Nevertheless, the terms “**television broadcast**” and “**broadcaster**” have been defined by the regulator in accordance with the individually applicable requirements.

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<sup>3</sup> Constitutional Court, Decision B 1540/02-14, October 10, 2003



## 2. ADVERTISING RECOGNITION AND ADVERTISING / PROGRAMME SEPARATION (ARTICLE 10 TVWF DIRECTIVE)

### a. Regulations

- Examination of the rules related to advertising and tele-shopping spots recognition

Television advertising and tele-shopping shall be readily recognizable as such and kept quite separate from other parts of the programme service by optical and/or acoustic mean.(Section 38 of the PrTV Act and Section 13 paragraph 3 of the ORF Act; //art. 10.1 TVWF Directive)

- Examination of the rules related to the separation between the commercial content and the programme

Television advertising and tele-shopping shall be kept separate from other parts of the programme (Section 38 of the PrTV Act and Section 13 paragraph 3 of the ORF Act, // art. 10.1 TVWF Directive).

- Examination of the rules related to the isolated advertising and tele-shopping spots

Isolated advertising and tele-shopping shall remain the exception (Section 38 of the PrTV Act and Section 13 paragraph 3 of the ORF Act // art. 10.2 TVWF Directive)

- Prohibition of the use of "subliminal techniques"

Even though subliminal advertising is not defined, advertising and tele-shopping broadcasts which are below the limit of perception shall be prohibited (Section 34 paragraph 2 of the PrTV Act and Section 13 paragraph 4 and Section 14 paragraph 2 of the ORF Act; // art. 10.3 TVWF Directive).

- Prohibition of surreptitious advertising and tele-shopping

Surreptitious advertising and tele-shopping shall be prohibited (Section 34 paragraph 2 of the PrTV Act and Section 13 paragraph 4 and Section 14 paragraph 2 of the ORF Act; //art. 10.4 TVWF Directive).

### b. Conclusions

The provisions of Article 10 of the TVWF Directive have been taken over exactly in the PrTV Act and in the ORF Act.

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### 3. RULES RELATED TO INSERTION OF ADVERTISING AND TELE-SHOPPING SPOTS BETWEEN AND WITHIN THE PROGRAMMES (ARTICLE 11 TVWF DIRECTIVE)

#### a. Regulations

- Examination of the rules related to the insertion of advertising and tele-shopping spots between the programmes

The provisions of Article 11 paragraph 1 of the TVWF Directive have been taken over exactly in Section 36 paragraph 1 of the PrTV Act and Section 14 paragraph 7 of the ORF Act: "*advertising and tele-shopping shall be inserted between the programmes*

- Examination of the rules related to the insertion of advertising and tele-shopping spots within the programmes (allowed or prohibited; specific rules regarding the type of programme)

The provisions of Article 11 paragraphs 1 to 4 of the TVWF Directive can be found, for one, in Section 14 paragraph 8 of the ORF Act, making it clear for **the public broadcaster** that, as a rule, the insertion of advertising within all public programmes is not permissible. ( $\neq$  art.11 TVWF Directive).

It is only allowed within the broadcast of sports events and the transmission of similarly structured events and performances containing intervals (transmissions of theatre or concert performances). In the explanatory remarks on the ORF Act, it is pointed out that as regards the interpretation of "*similarly structured events and performances containing intervals*", it will be of importance to what extent the ORF can exert an influence on the course and the structure of the event or performance, above all, whether it may influence the timing of intervals. If there is such a possibility, this will be no "similarly structured event", such as the transmission of a soccer game where intervals take place without the ORF being able to influence the timing. ( $\neq$  art.11 TVWF Directive)

In a decision<sup>4</sup> the Federal Communication Board has defined the term "natural break" in a special case. It is not allowed for the ORF to make more or less "artificial" breaks during programmes. I.e., ORF has to focus strictly on the legal permission on insertion of advertising during its public programmes.

Section 15 of the ORF Act contains specific provisions regarding the insertion of advertising within the ORF's thematic channels which can be broadcast by the ORF subsidiaries. These regulations correspond, word-for-word, to the provisions of Article 11 paragraphs 1 to 4 of the TVWF Directive.

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<sup>4</sup> Federal Communication Board, Decision GZ 611.923/005-BKS/2003, May 15, 2003

**For private broadcasters**, the exact wording of the provisions of Article 11 paragraphs 1 to 4 of the TVWF Directive has been taken over in Section 36 paragraphs 1 to 3:

1. Provided the conditions set out in points 2 to 5 are fulfilled, advertising and tele-shopping spots may also be inserted during programmes in such a way that the integrity and value of the programmes, taking into account natural breaks in and the duration and nature of the programmes, and the rights of the rights holder are not prejudiced (// art. 11.1 TVWF Directive)
  2. In programmes consisting of autonomous parts, or in sports programmes and similarly structured events and performances containing intervals, advertising and tele-shopping spots shall only be inserted between the parts or in the intervals (// art. 11.2 TVWF Directive)
  3. The transmission of audiovisual work such as feature films and films made for television (excluding series, serials, light entertainment programmes and documentaries), provided their scheduled duration is more than 45 minutes, may be interrupted once for each period of 45 minutes. A further interruption shall be allowed if their scheduled duration is at least 20 minutes longer than 2 or more complete period of 45 minutes (// art. 11.3 TVWF Directive)
  4. Where programmes, other than those covered by paragraph 2 are interrupted by advertising or tele-shopping, a period of at least 20 minutes should elapse between each successive advertising break within the programme. (// art 11.4 TVWF Directive)
- Possible prohibitions of insertion of advertising and tele-shopping spots within certain types of programme

The provisions of Section 16 paragraph 6 of the ORF Act and of Section 36 paragraph 4 of the PrTV Act fully implement the dispositions of Article 11 §5 of the TVWF Directive.

Advertising and tele-shopping shall not be inserted in any broadcast of a religious service.

The following programmes shall not be interrupted by advertising or tele-shopping:

- News and current affaires programmes, if duration scheduled is less than 30 minutes
- Documentaries if duration scheduled is less than 30 minutes
- Religious programmes if duration scheduled is less than 30 minutes
- Children's programmes if duration scheduled is less than 30 minutes

b. Conclusions

For **private broadcasters**, the exact wording of the provisions of Article 11 of the TVWF Directive applies.

In principle, the **ORF** is forbidden to insert advertising within its public programmes except within the broadcast of sports events and the transmission of similarly structured events and performances containing intervals. The ORF may only insert them during the thematic channels broadcast by its subsidiaries in accordance with the dispositions of the Directive.

Furthermore as advertising-free days, the law specifies “*Good Friday*”, the “*1<sup>st</sup> of November*” and the “*24<sup>th</sup> of December*” (cf. Section 13 paragraph 5 of the ORF Act).

The regulation therefore contains some stricter provisions than the TVWF Directive.

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#### 4. QUANTITATIVE RESTRICTIONS (ARTICLE 18 TVWF DIRECTIVE)

##### a. Regulations

The duration of television advertising in public broadcasting programmes is governed by Section 13 paragraph 7 of the ORF Act.

- Examination of the legal maximum percentage of daily transmission time devoted to tele-shopping and advertising spots and for other forms of advertising (20% in the TVWF Directive)

##### ➤ **Public broadcasters :**

In its two television channels, the ORF is allowed to broadcast advertising programmes only nationwide. On the yearly average, advertising broadcasts must not exceed 5% of the daily length of programmes, deviations of not more than 20 per cent per day being admissible.

The determination of the length of permissible television advertising is to be based on a daily transmission time – independent of its actual length – of not more than 14 hours per day and programme. This means that on the yearly average, the ORF may use a maximum of 2.92% of its transmission time for advertising on each of its two channels.

Moreover, it needs to be noted that in principle the “Foundation Council” (“Stiftungsrat”) determines the extent of advertising on the ORF channels upon the proposal of the Director General. Furthermore, the ORF is also subject to the provision of Article 18 paragraph 3 of the TVWF Directive (have been taken over exactly in Section 13 paragraph 5 of the ORF Act).

**To private broadcasters**, the provisions of **Section 44 of the PrTV Act** apply, which have been taken over exactly the provisions of Article 18 of the TVWF Directive regarding the duration of advertising and tele-shopping: the proportion of transmission time devoted to tele-shopping spots advertising and other forms of advertising, with the exception of tele-shopping windows, shall not exceed 20% of the daily transmission time (// art. 18.1 TVWF Directive)

- Examination of the maximum daily transmission time devoted to advertising messages (15% in the TVWF Directive)

The transmission time for advertising spots shall not exceed 15% of the daily transmission time (Section 44 of the PrTV Act; // art. 18.1 TVWF Directive)

- Examination of the maximum daily transmission time devoted to advertising and tele-shopping spots within a given clock hour (20 % in the TVWF Directive)

The proportion of advertising spots and tele-shopping spots within a given clock hour shall not exceed 20% (Section 44 of the PrTV Act; // art. 18.2 TVWF Directive)

- Examination of the other possible quantitative restrictions

Non applicable

- Examination of the factors to take into account or not for the calculation of the advertising time

In calculating the longest permissible advertising time, all announcements and closing announcements of sponsored programmes must be taken into account because of their commercial character (cf. Section 17 paragraph 5 of the ORF Act; more precise than the Directive) The national regulation does not contain the provision of art. 18. 3 of the TVWF Directive).

b. Conclusions

The provisions of the national regulation are similar to those of the Directive.

However, a distinction remains between the public broadcaster and its private competitors.

All messages having a commercial character being taken into account, the maximum daily transmission time is limited to 5% for ORF, while no limit given a clock hour is provided.

The activity of the private broadcasters is fully submitted to national provisions materially identical as those of the TVWF Directive. The national regulation is some if duration scheduled is less than 45 minutes t more precise regarding the factors to take into account for the calculation of the advertising time.

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5. QUANTITATIVE RESTRICTIONS RELATED TO TELE-SHOPPING PROGRAMMES (ARTICLE 18 BIS TVWF DIRECTIVE)

a. Regulations

- Public broadcasters

No tele-shopping allowed

- Private broadcasters

As regards the duration of tele-shopping programmes, the provisions of Article 18 and 18a of the TVWF Directive have been taken over exactly in Section 44 and of the PrTV Act (Article 18 paragraph 1 in section 44 paragraph 1, Article 18 paragraph 2 in section 44 paragraph 2, Article 18 paragraph 3 in section 44 paragraph 3, Article 18 Bis in section 44 paragraph 4).

- Examination of the minimum duration of windows devoted to tele-shopping programmes (15 minutes in the TVWF Directive)

Windows devoted to tele-shopping broadcast by a channel not exclusively devoted to tele-shopping shall be of a minimum uninterrupted duration of 15 minutes (// art. 18bis.1 TVWF Directive)

- Examination of the maximum number of windows (8 in the TVWF Directive)

The maximum number of windows per day shall be eight (// art. 18bis.2 TVWF Directive)

- Examination of the maximum daily duration (3 hours in the TVWF Directive)

The overall duration of the tele-shopping window shall not exceed 3 hours a day (// art. 18bis.2 TVWF Directive)

b. Conclusions

As mentioned above **tele-shopping** is not allowed for the ORF.

For private broadcasters, the Austrian regulation contains identical provisions as article 18 Bis of the TVWF Directive.

Furthermore no other rules apply.

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## 6. SPONSORSHIP (ARTICLE 17 TVWF DIRECTIVE)

### a. Regulations

Basically, sponsorship is allowed under the law both to the public broadcaster ORF and private television broadcasters.

#### - Public broadcaster

Sponsoring in the ORF is governed by the requirements of Section 17 paragraph 2 of the ORF Act, which has been taken over exactly the rules of Article 17 of the TVWF Directive. (// art. 17 TVWF Directive)

In addition, stricter provisions apply to the ORF:

In Section 17 paragraph 2 subparagraph 2 (last sentence) it is stated that *“Reference to the sponsor during the programme is not allowed.”* Section 17 paragraph 7 prohibits the so-called “theme sponsoring” which means that someone who pays for the broadcast must not set any requirements regarding the theme on which a broadcast is based (*“The programming of programmes or parts of programmes based on thematic requirements of third persons who pays for the broadcast is prohibited.”*)

Moreover, the general advertising restrictions for print media also apply (cf. Section 13 paragraph 8 of the ORF Act) to the announcement and the closing announcement of sponsored broadcasts (cf. Section 17 paragraph 6 of the ORF Act).

In addition, section 17 paragraph 5 of the ORF Act defines that the time for sponsorship has to be included in the total amount of advertising.

#### - To private broadcasters

The provisions of Article 17 of the TVWF Directive have been taken over exactly in Section 46 of the PrTV Act:

#### - Examination of the rules related to editorial independence of the broadcaster

The content and scheduling of sponsored programmes may in no circumstances be influenced by the sponsor in such a way as to affect the responsibility and editorial independence of the broadcaster in respect of the programmes (// art 17.1.a TVWF Directive)

#### - Sponsor identification

The sponsor television programmes must be clearly identified as such by the name and/or logo of the sponsor (//art 17.1.b. TVWF Directive)



- Examination of the rules related to the insertion of the sponsor's name or logo within the programme (beginning/end, break bumper, during all the programme)

The name and/or logo of the sponsor must appear at the beginning and/or the end of the programmes (// art.18.1.b TVWF Directive)

- Identification of the programmes that cannot be sponsored

News and current affairs programmes may not be sponsored. (//art 17.2, 3, 4 TVWF Directive)

- Examination of the rules related to the content of the message

Television programmes may not be sponsored by undertakings whose principal activity is the manufacture or sale of cigarette and other tobacco products. Sponsorship of television programmes by undertakings whose activities include the manufacture or sale of medicinal products and medical treatment may not promote the name or the image of the undertaking but may not promote specific medicinal products or medical treatments available only on prescription (// art. 17 TVWF Directive)

- Examination of the maximum duration of the mention and/or maximum daily/per hour volume

Non applicable

- Examination of other rules eventually limiting the volume of sponsorship

Non applicable

- Examination of other relevant rules related to product placement, price mentioning during TV shows, sponsorship linked to schedule/points indication during sport broadcasts, etc.)

In general, the ORF Act contains a ban on product placement for the broadcasting programmes (cinema, films, television films and television series being explicitly excluded). The ORF Act allows product placement only if it cannot be avoided by the broadcasting of sports events or cultural events, i.e. if it cannot be influenced by the broadcaster.

In a decision of the Federal Communication Board it is stated that product placement in programmes (the ORF Act defines “product placement” only „in return for payment“) has to be “necessary” otherwise it is generally prohibited. In this context the term “necessary“ means, if the showing of products etc. is

not avoidable because of the general nature of the programme (f.e. the coverage of sports events).<sup>5</sup>  
Moreover, the product placement in children's programmes is prohibited (see page 7).

b. Conclusions

As mentioned above, the ORF has stricter provisions regarding sponsorship than Article 17 of the TVWF Directive, especially relating to the broadcaster's independence.

To private broadcasters the provisions of Article 17 of the TVWF Directive apply word by word.

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<sup>5</sup> Federal Communication Board, Decision concerning §14 ORF Act (GZ 611.923/005-BKS/2003, 19.05.2003)

## 7. NEW ADVERTISING TECHNIQUES

### ➤ **Split screens**

The ORF and the private broadcaster “ATV plus” are using split screen techniques for the simultaneous transmission of TV programmes and other information (e.g. stock market prices during news programs). Bearing in mind that no regulations are yet existing regarding the use of split screens, broadcasters have to respect the general principles regarding TV advertising (e.g. separation of programmes and advertising). Nevertheless it should be stressed that the existing rules on insertion and duration of advertising apply to split screen techniques too, i.e., the use of split screen techniques must be fully included in the calculation of the maximum advertising time.

### ➤ **Interactive advertising**

No information available

### ➤ **Virtual advertising**

There are no regulations existing in Austria regarding virtual advertising. The ORF does not use virtual advertising in its own productions.

Under Article 14 paragraph 8 of the ORF Act, advertising may be inserted in sports programmes or similarly structured programmes only during "*natural breaks*". The financing of sports programmes by way of product placement or virtual advertising is permitted only if it is “necessary” and not avoidable for the broadcaster (see. Page 15).

Analogous rules are applicable to commercial broadcasters under Article 36 paragraph 2 of the PrTV Act.

### ➤ **Other new advertising techniques**

There is no information available concerning other new advertising techniques.

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## 8. GENERAL RULES RELATED TO ADVERTISING AND TELE-SHOPPING CONTENT (ARTICLE 12 TVWF DIRECTIVE)

### a. Regulations

#### General rules on consumer protection containing rules on advertising (misleading advertising) applicable to all media

Federal Act of 8 March 1979, providing regulations for the protection of consumers (Consumer Protection Act - KSchG) Federal Law Gazette No. 140/1979 as amended by Federal Law Gazette I No. 48/2001

Section 3 of the Consumer Protection Act provides that consumers may withdraw from a contract with entrepreneurs. Entrepreneurs are persons for whom a business room is part of the operation of an enterprise. Accordingly, a consumer may declare his withdrawal from a contract in writing if he concludes the contract in a business room which is not permanently used by the entrepreneur (a classic example is the conclusion of a contract in the consumer's apartment on the basis of a door-to-door sale) or within the framework of a trip or promotion tour or is brought into the business rooms used by the entrepreneur after being personally and individually approached in the street. The consumer may exercise his right to withdraw from the contract within one week from the conclusion of the contract without giving reasons. This period of time starts only after the entrepreneur hands over a document about the purchase. This document must contain the name and the address of the entrepreneur, the subject of the deal and a written notice about the consumer's right of withdrawal. If no appropriate document is handed over, the right of withdrawal expires as late as one month after the contract has fully been fulfilled by both parties (i.e. rendering of payment by the consumer and of service by the entrepreneur).

Federal Act against Unfair Competition – UWG, Federal Law Gazette No. 448/1984 as amended by Federal Law Gazette I No. 111/1999

The Unfair Competition Act regulates the economic competition among independent activities, setting a framework, among others, for competition and drawing a line between unrestricted rivalry and fair and service-oriented competition. The general clause of Section 1 of the Unfair Competition Act provides that an action for damages or an injunction may be brought against anyone who, in doing business, resorts to competitive practices that offend against accepted moral standards.

#### Specific rules

Basically, advertising is allowed under the law both to the **public broadcaster** ORF and private television broadcasters. As far as the concrete legal framework is concerned, however, there are considerable differences.

- Public broadcaster

The ORF Act has the aim, among others, to make a clear and transparent separation of public core tasks from other commercial activities of the ORF in order to counter any concerns under Community law regarding the ORF's funding modalities.

The general requirements for television advertising and tele-shopping to be found in the ORF Act and the PrTV Act go beyond the principles set out in Articles 12 of the TVWF Directive.

In addition to the requirements specified in Article 12 of the TVWF Directive, Section 14 paragraph 1 of the ORF Act provides that “television advertising” (as already said, the ORF is forbidden to broadcast tele-shopping programmes) on the public broadcasting programmes:

- must not contain any discrimination on grounds of “*age, disability and religion*”;
- must not “*encourage illegal practices, be misleading and harmful to the interests of the consumers.*”

**As regards private broadcasters**, the general principles set forth in Article 12 regarding “television advertising and tele-shopping” can be found in Section 37 of the PrTV Act. What is striking in this respect is that this section only provides – and this goes beyond the formulation of the TVWF Directive – that television advertising and tele-shopping:

- must not contain any discrimination on grounds of “*disability*” nor “*encourage illegal practices*”;
- must not “*be misleading and harmful to the interests of the consumers.*”  
(≠ art. 12 TVWF Directive)

## b. Conclusions

The national legislation provides for stricter rules than the Directive regarding the content of advertising and tele-shopping related to the prohibition of discrimination, encouragement of illegal practices and the protection of the consumer.

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## 9. SPECIFIC PRODUCTS AND TARGETS

### a. Regulations

#### - Tobacco

The ban on tobacco advertising and tele-shopping is contained in Section 13 paragraph 4 of the ORF Act and in Section 39 of the PrTV Act: "*all forms of television advertising and tele-shopping for cigarettes and other tobacco products shall be prohibited*" (// art 13 TVWF Directive)

#### - Medicines

The provisions regarding medicines and medicinal products can be found in Section 16 paragraphs 1 to 3 and in Section 40 paragraphs 1 to 3 of the PrTV Act with the further stipulation – in addition to the provisions of Article 14 of the TVWF Directive – of the advertising provisions of the Medicines Act (Federal Law Gazette I No. 185/1983) of the Medicinal Products Act (Federal Law Gazette No. 657/1996) and of the advertising restrictions contained in the provisions for the exercise of health-related professions remain unaffected.

Section 41 of the PrTV Act contains a general ban on tele-shopping for "*medicines and therapeutic treatments*". (≠ art. 14 TVWF Directive). Unlike the Directive that allows advertising for medicines that are available with no prescription.

#### - Alcoholic beverages

The provisions on television advertising and tele-shopping of alcoholic beverages can be found in Section 13 paragraph 4 and Section 16 paragraph 4 of the ORF Act as well as in Section 42 of the PrTV Act: Television advertising and tele-shopping for alcoholic beverages shall comply with the following criteria:

- It may not be aimed specifically at minors or, in particular, depict minors consuming these beverages;
- It shall not link the consumption on alcohol to enhanced physical performance or to driving
- It shall not create the impression that the consumption of alcohol contributes towards social or sexual success;
- It shall not claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal conflicts;
- It shall not encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light;
- It shall not place emphasis on high alcoholic content as being a positive quality of beverages  
(// art. 15 TVWF Directive)

- Minors

The principles regarding minors defined in Article 16 of the TVWF Directive can be found in Section 16 paragraph 5 of the ORF Act and Section 43 of the PrTV Act. In this respect, the regulator has turned the requirements listed as “shall not” provisions in the TVWF Directive into stricter “*must not*” provisions for the ORF and also for private broadcasters.

Television advertising must not cause moral or physical detriment to minors, and must therefore comply with the following criteria for their protection:

- It shall not directly exhort minors to buy a product or a service by exploiting their inexperience or credulity;
- It shall not directly encourage minors to persuade their parents or others to purchase the goods / services being advertised;
- It shall not exploit the special trust minors place in parents, teachers or other persons;
- It shall not unreasonably show minors in dangerous situations

Tele-shopping must comply with the requirements referred to in paragraph 1, and in addition, shall not exhort minors to contract for the sale or rental of goods/services (// art 16 TVWF Directive)

Moreover Section 16 paragraph 6 of the ORF Act prohibits advertising before and after programmes dedicated to minors.

- Media

Section 13 paragraph 8 of the ORF Act contains a rule relating to the advertising of periodic printed works (such as daily and weekly newspapers, monthly journals) in ORF programmes.

According to this rule, such advertising may only “*refer to the title (name of the printed work) and the reporting policy but not to their content*”. Moreover, the transmission time allocated for this purpose must not exceed two minutes of overall weekly advertising time. Furthermore, it is noted that “*transmission times and the fees shall be allocated to all media owners of such printed works on equal and non-discriminatory conditions*”.

The background of this rule is that advertising in the television programmes of the ORF can, as a rule, be afforded only by financially strong, powerful print media while the financially weaker competitors cannot make use of this effective means of advertising. In order to prevent market distortions and to promote pluralism in the media sector and, of course, to strengthen the independence of the ORF, the extent of advertising time was therefore restricted for financially potent print media.

The Constitutional Court declared this provision to be in line with Article 10 ECHR.<sup>6</sup>

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<sup>6</sup> Constitutional Court, Decision G 304/01-16, June 25, 2003

b. Conclusions

The national regulation, quasi identical to the Directive presents some differences:

- The Austrian law is stricter than the Directive regarding to medicines when prohibiting tele-shopping for medicines and therapeutic treatment.
- The ORF Act also prohibits advertising before and after programmes dedicated to minors.
- The Austrian law, finally, provides for restrictions regarding the advertising in favour of the media.

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