



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

**GERMANY**

**LEGAL REPORT**

**Drafted by Kurt – Michael LOITZ, Attorney at law from  
KÖLN**

KOAN LAW FIRM  
100, BOULEVARD DU SOUVERAIN - 1170 BRUSSELS  
TEL. 32-2-566 90 00 FAX 32-2-566 90 10

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## **Introduction**

Broadcasting in the Federal Republic of Germany is subject to legislation of the Länder (states). Due to the transfrontier nature of broadcasting the Governors of the states usually decide on common regulations concerning broadcasting. Those Interstate Treaties receive legal force when implemented in the laws of the states. As the Treaty and the amendments thereto have been implemented in all states, the references made below refer to the Treaty (RStV) in order to avoid confusion due to different numbering in the different states laws

The media authorities (Landesmedienanstalten) are the regulatory bodies responsible for licensing and regulating terrestrial, cable and satellite commercial channels in each German state. The media authorities are empowered by the §46 RStV to draw up and enforce guidelines on television and radio advertising and sponsoring (including teleshopping) hereinafter referred to as TV-Code.

These guidelines have been modified from time to time and the latest version is dated 10 February 2000 serving to implement the latest RSTV-amendment which implemented the TVWF Directive. It is laid down in the preliminary remarks that the guidelines serve to concretize the objectives of European Regulations which oblige European broadcasters to co-operate in respecting general legal principles regarding advertising

## I. Definitions

- Television Broadcasting

The media law (Rundfunkstaatsvertrag, hereinafter the RStV) defines television broadcasting as follows

(§ 2 Abs.1 RStV):

“Broadcasting is the transmission to the public of performances of all kind in audio and video utilizing electromagnetic oscillation with or without wire or conductor. It includes performances which are transmitted encoded or which are receivable against specific payment.” (// art. 1 a TVWF Directive).

Television broadcasting in the meaning of this media law (RStV) is subject to a prior authorization granted for private broadcasters by the media authority (§ 20 RStV) of the relevant state (Land). Public broadcasting is legitimate according to the interstate treaties re. ARD (ARD-Staatsvertrag) and ZDF (ZDF-Staatsvertrag).

TV broadcasting is to be distinguished from similar services which might be also seen on TV screens like teleshopping channels, TV- text services.

Television broadcast is also to be distinguished from so called tele-services as telebanking, data-exchanges, internet applications or other pull-services (telegames, video-on-demand) (// art.1,a TVWF Directive).

- Broadcaster

Broadcaster is defined in most of the media laws of the German states (“Länder”) in a nearly identical way referring to a broadcaster as somebody broadcasting the whole or a single program under his own editorial responsibility (i.e. § 2 Abs.9 Nr.1 Nds. LRG, § 2 Abs. 9 LRG NRW, § 3 Abs. 13 RdfkG M-V, // art. 1 b. TVWF Directive).

- Television advertising

Following Article 1 c of the Directive TVWF, the German media law (§ 2 Abs.2 Nr. 5 RStV) defines advertising as follows:

“Advertising is any announcement by a natural or legal person or a collective of persons in connection with a trade, business, craft or profession which is broadcast by public or private undertaker whether in return for payment or similar consideration or as self-promotion in order to promote the supply of goods or services, including immovable goods, rights and obligations.”(// art. 1 c. TVWF Directive).

The guidelines of the **public channels** define advertising in the same way but make an exemption for self-promotion and social advertising (n°1.1 ARD-guidelines and n°1.1 ZDF guidelines / ARD- bzw. ZDF Richtlinien).

N°1 of the TV-Code<sup>1</sup> specifies that references to the own programming (i.e. program-announcements and –trailers, self-promotion) and references to auxiliary materials to programs (Begleitmaterialen) are not considered as advertising in the meaning of the TV-Code where the duration of advertising is subject to hourly and daily limitations (// art. 18.3 TVWF Directive).

- Surreptitious advertising

The media law classifies surreptitious advertising as illicit (§ 7 Abs. 6, 1.sentence RStV). The definition of surreptitious advertising is defined in Art. 2 Abs. 2 n°6 RStV as follows:

“Surreptitious advertising is the visual or verbal mention or representation of goods, services, names, trade marks or the activities of a producer of goods or a provider of services in programmes if this is intended by the broadcaster to serve advertising and might mislead the public concerning the true objective of the representation. In particular, such mention or representation is considered to be intentional for advertising objectives if it is done in return for payment or for similar considerations (// art. 1 d. TVWF Directive).

N° 9 of the private TV-Code says that the intention to serve advertising objectives may be established due to clues such as the intensity and the exclusivity of the representation.

The law makes reference to the "true objective of the representation", while the Directive hits its "nature".

- Sponsorship

According Article 1e of the Directive TVWF, the German media law defines “Sponsoring” as follows (§ 2 Abs.2 Nr.7 RStV):

“Sponsoring in the meaning of the RStV is every contribution for the direct or indirect financing of a program of a natural-, legal person (organisation) or a collective of persons other than the broadcaster or the producer of the audiovisual works in order to promote the name, trade mark, image of the person / organization or the collective of persons, their activities or performances.”(// art. 1 e. TVWF Directive).

- Teleshopping

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<sup>1</sup> TV Code refers to the rules established by the public authorities licensing and controlling private television broadcasters (Landesmedienanstalten)

Teleshopping is defined by § 2 Abs. 2 N° 8 RStV in line with the EU directive TVWF as the broadcast of direct offers to the public in the view of selling goods or services including immovable property, rights and obligations in return for payment (// art. 1 f. TVWF Directive).

Tele-shopping channels containing exclusively teleshopping offers are not required to obtain a broadcasting license such as other broadcasters offering either a wide range of editorial programmes or specific editorial programmes as sport or music programmes. "Pure" teleshopping programmes are regulated by the law on media services (MediendiensteStV).

- Self-promotion

Self promotion spots

The media law (§ 15 Abs.4 RStV for public and § 45 Abs.3 RStV for private channels) states that self-promotion is not subject to the advertising restrictions such as the maximum amount of advertising time per hour / per day.

Art. 45 section 3 RStV is, in his essential part, identical to § 15 Abs. 4 RStV and in line with Art. 18.3 of the Directive TVWF. It reads as follows:

“Announcements made by the broadcaster to its own programmes and to material, derived directly from such programmes and unpaid programme contributions in order to serve the public including calls for charity are not considered as advertising in the meaning of section 1 and 2.”

N° 15 of the media authorities' TV-Code is worded as follows:

(1) Self-promotion consists in references made by the broadcaster to the programmes he has obtained a licence for. Such references are not considered as advertising in the meaning of § 2 Abs. 2 Nr. 5 RStV.

(2) Broadcasters'- and self-promotion are not subject to regulations on advertising. They serve the relations with the viewers. They may refer to the entire TV-programme and single programmes and to persons acting in those programmes or undertakings and other events outside the programme of the broadcasters.

(3) It is not considered as self-promotion an advertising making reference to another broadcaster as a company or to his programmes and services.

(4) References to the availabilities of recordings of the broadcasters' programs on audio- or videotapes, records and similar sound- and images supports are not subject to advertising regulations.

(5) References to books, records, videos and other publications as i.e. games and references to where they are available are not subject to advertising regulations if they explain or add something to the content of the programme.

(6) Those references may only be broadcast if related to the programme or the announcements of the individual programmes or series on the relevant day of broadcast.

(7) Other references which are not in line with those mentioned in section 2, 4, 5 and 6 are considered as advertising.

### Self-promotion channels

Paragraph 45 b RStV mentions self-promotion channels and states that the audiovisual regulations as the general principles on advertising and teleshopping are applicable referring to §§ 7,8,44 and 45a RStV. The same paragraph says that self-promotion channels may contain other advertising but insofar only within the limits of the daily and hourly restrictions on the maximum amount of advertising and teleshopping as defined in § 45 Abs. 1 and 2 RStV which are not binding to the broadcasters own self-promotion.

N° 17 section 1 of the TV-Code defines “Self-promotion channels” as separately licensed programmes where the content serves to present the image of a company to the public. Such channels do not serve primarily to promote the selling of goods and services (of the broadcaster).

- Long advertising programmes (Dauerwerbesendungen)

Paragraph 7 Abs. 5 RStV deals with this special type of advertising which is considered to be legitimate if the advertising appearance is in the foreground in a recognizable way and if the advertising is an essential part of the programme.

According to n° 8 of the TV-Code such advertisements are "programmes of at least 90 seconds where the advertising is presented in an editorial way and where the advertising appearance is in the foreground in a recognizable way and if the advertising is an essential part of the programme".

- Conclusion

In general, the definitions contained in the German regulation are the same as the one of the Directive. The German regulation is more precise than the TVWF Directive as it gives a definition of self promotion programmes and self-promotion channels. Moreover, the German regulation defines a notion unknown in the TVWF Directive i.e. the Long advertising programmes (Dauerwerbesendungen).



## II. Advertising recognition and advertising / programme separation (Art. 10 TVWF Directive)

### a. Regulations

- Examination of the rules related to advertising and teleshopping spots recognition (acoustic and / or optical means)

Advertising and teleshopping must be clearly recognizable as such (§ 7 Abs.3 RStV, // art. 10 §1 TVWF Directive).

The TV-Code for **private broadcasters** (section 6) states:

- The beginning of advertising in television must be unambiguously characterized by a visual signal (logo) and recognizable by the viewer;
- An identification of TV advertising at the end or in between advertising spots is not necessary;
- The advertising logo has to be significantly different from the station logo or those logos used for programme announcements;
- The advertising logo should for a minimum duration of 3 seconds cover the entire screen. The logo may consist of a picture or moving images;
- The logo must contain in writing the word "advertisement";
- In case that a TV-broadcaster uses for a longer period of time a non confusing logo to identify advertisements and which is not used for other objectives in the programme, the broadcaster may renounce to have the word "advertisement" integrated in the logo;
- The ongoing programme or elements of the following programme (images and/or sound) may not be a part of the advertising logo."

This TV-Code goes further than the Directive.

Concerning the **long advertising programmes** (*Dauerwerbesendungen*), a special requirement is made. They have to be announced as *Dauerwerbesendungen* ("long advertising programmes") at the beginning and during their total duration (§ 7 Abs. 5, Satz 2).

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

In television they must be separated from other programme parts by unambiguous visual means and recognizable by the viewer (±// art. 10 §1 TVWF Directive).

- Examination of the rules related to the isolated advertising and teleshopping spots (allowed/ prohibited; specific conditions, etc.)

Isolated advertising and teleshopping spots are allowed but have to be exceptional (§ 14 Abs. 2, Satz 1 RStV for public and § 44 Abs. 2, Satz 2 RStV for private channels, // art. 10 §2 TVWF Directive).

- Prohibition of the use of "subliminal techniques"

In connection with advertising and teleshopping subliminal techniques are not allowed (// art. 10 §3 TVWF Directive).

- Prohibition of surreptitious advertising and teleshopping

Surreptitious advertising and similar techniques are prohibited (§ 7 Abs.6 RStV, // art. 10 §4 TVWF Directive).

## **b. Conclusions**

The German regulation is based on the distinction between the public broadcasters and the private broadcasters.

The German media law (RStV) implements the regulation of Article 10 TVWF Directive and is **more restrictive** in the way that no alternative is granted to make advertising and teleshopping recognizable by visual and/or acoustic means. According to § 7 Abs. 3 RStV the separation has to be operated by visual means.

Taking into account the guidelines of the media authorities (Landesmedienanstalten), the German rules for private TV in their totality are far stricter than the TVWF Directive and many details are prescribed as for example the length of the logo before the start of the advertising break. Such detailed rules do not exist to the same extent for public broadcasters which have established their own guidelines<sup>2</sup>.

Whereas the EU-Directive is setting the rules for advertising recognition and programme separation in a general way applicable to all different sorts of advertising, the legal system in Germany has regulated the matter in more details and has **special rules** for some types of advertising as for example split-screen advertising, virtual advertising, long advertisements.

Moreover, the German media law enforces the **separation of editorial and advertising programmes** with the interdiction for persons to appear in TV advertising and teleshopping, who present regularly news or political programmes (§ 7 Abs.7 RStV) (see below).

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<sup>2</sup> ARD -Richtlinien für die Werbung, zur Durchführung der Trennung von Werbung und Programm und für das Sponsoring, ZDF-Richtlinien für Werbung und Sponsoring

The German TV Code for private TV says explicitly that the rules on advertising recognition and programme separation laid down in § 7 of the German media law (RStV) are not applicable for sponsoring.

### III. Rules related to insertion of advertising and teleshopping spots between and within the programmes (Article 11 TVWF Directive)

#### a. Regulations

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

The regulations in both sections, for the public and private broadcasters are identical concerning the insertion between programmes (§§ 14 Abs. 2, 1<sup>st</sup> sentence and § 44 Abs. 2, 1<sup>st</sup> sentence RStV says)

“Television advertising and teleshopping spots should be inserted between programmes...” (// art. 11 §1 TVWF Directive).

However, they may be inserted during programmes according to the rules described hereunder.

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

The regulations in both sections, for the public and private broadcasters, are nearly identical concerning the insertion within programmes. Paragraphs 14 Abs.2 and 44 Abs.2 RStV says that under certain conditions advertising and teleshopping spots may also be inserted during programmes if the integrity and the character of the programme are not affected and if the rights of right holders are not infringed (// art.11.1 TVWF Directive).

#### **Rules for public broadcasters:**

The conditions for advertising breaks in public programmes are stricter than those for private channels. Paragraphs 14 Abs. 3 and 4 RStV reads:

“(3) Television programmes **longer than 45 minutes** may contain advertising and teleshopping spots once; this applies also if the programme is divided. Advertising and teleshopping spots may be inserted only between the autonomous parts or in the intervals in case that the events and performances broadcasted contain intervals. The calculation of the programmes’ duration takes into account the scheduled duration.”(±// art. 11 §3 TVWF Directive).

(4) In exception to section 3, 1<sup>st</sup> sentence, advertising and teleshopping spots may only be inserted in the intervals in case of the broadcast of sport events containing intervals.”(±// art. 11 §2 TVWF Directive).

### **Rules for private broadcasters:**

The conditions for advertising breaks in private programmes are laid down in paragraph 44 Abs. 3 and 4 RStV:

“(3) Television programmes consisting of autonomous parts, or sport programmes and transmissions of similar structured events and performances with intervals, advertising and teleshopping spots shall only be inserted between the autonomous parts or in the intervals. In other programmes a period of at least 20 minutes should elapse between successive breaks within the programme. (// art. 11 §2 and 11 §4 TVWF Directive).

(4) Differently to section 3, 2<sup>nd</sup> sentence, the transmission of audiovisual works such as films made for cinema and for television with the exception of serials, series, light entertainment programmes and documentary films may be interrupted once for each period of 45 minutes provided that their scheduled duration is more than 45 minutes. A further interruption shall be allowed if the scheduled duration exceeds at least by 20 minutes two or more complete periods of 45 minutes.”(// art. 11 §3 TVWF Directive).

- Possible prohibitions of insertion of advertising and teleshopping spots within certain types of programme

The regulation in both sections of the media law, for the public and private broadcasters are identical concerning prohibitions to insert advertising and teleshopping spots in broadcasts of religious services (//art. 11 §5 TVWF Directive) **and** children programmes (§§ 14 Abs. 1 and § 44 Abs. 1 RStV) (≠ art. 11 §5 TVWF Directive).

Additionally, the media law in the section on **private broadcasters** restricts the insertion of advertising for some categories of programmes if the duration is less than 30 minutes. Paragraph 44 Abs. 5 RStV reads as follows:

“In television, news programmes, programmes on political current affairs, documentaries and programmes with religious content with a scheduled duration of less than 30 minutes must not be interrupted by advertising or teleshopping.” (±// art. 11 §5 TVWF Directive) except for what concerns the children's programmes..

The guidelines<sup>3</sup> for **public TV** says that several parts of one programme (for example a serial) are not considered as a uniform programme if the parts are independent episodes. The same applies if between 2 parts of a programme there is, besides advertising an additional editorial programme element with an own viewing value.

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<sup>3</sup> ZDF-Richtlinien für Werbung und Sponsoring no. 2.4, 2nd paragraph

According to this guideline the restriction on advertising breaks does not apply if between the two parts of one programme not only advertising is broadcast but in addition to that for example an editorial programme like weather forecast.

Concerning the calculation of the length of the programme both regulations in the media law (RStV) for public and private television refers to the scheduled duration (programmierte Sendezeit)<sup>4</sup>.

## **b. Conclusions**

The German media law (RStV) is nearly identical to the rules in Article 11 of the TVWF Directive.

However, the media law is more restrictive as advertising breaks are prohibited in all children's programmes even if the duration is 30 minutes or more<sup>5</sup>.

On the other side the interdiction of Article 11 section 5 in the TVWF Directive to insert advertising or teleshopping breaks in news-, documentaries, magazines on current affairs or religious programmes of less than 30 minutes is laid down **only** in the chapter on **private TV**. The general rule on **public TV** is **more restrictive** than the TVWF Directive as one advertising break is allowed once only if the programme is longer than 45 minutes. In reality, a public TV channels broadcast 2 advertising blocks between the beginning and the end of a sport programme. The argument to do so is probably that the 90 seconds news magazine broadcast in between allows doing so as the new flash creates two autonomous parts of the sport programme.

Although not specifically laid down in the media law or other regulations, split-screen advertising is not considered as an advertising break. The reason behind this is that the editorial programme continues without interruption.

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<sup>4</sup> § 14 Abs.3, last sentence RStV for the public TV and § 44 Abs. 3 and 4 RStV

<sup>5</sup> § 14 Abs. 1 RStV for public and § 44 Abs. 1 RStV for private TV

## IV. Quantitative restrictions (Article 18 TVWF Directive)

### a. Regulations

Due to the fact that public broadcasters are financed primarily by licence fees (§ 12 Abs. 1 RStV), the regulation on the duration of advertising is regulated significantly differently for public and private television broadcasters.

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

**Public broadcasters:** According to paragraph 15 Abs. 1 RStV the total airtime for advertising in ARD and ZDF on working days is limited to 20 minutes per working day (1,4 % of the daily transmission time) on an annual average<sup>6</sup>. In case that the maximum allowance has not been utilised, public broadcasters may catch up with a maximum of 5 minutes per working day (≠ art. 18 §1 TVWF Directive).

**Private broadcasters:** According to paragraph 45 Abs. 1 RStV the proportion of transmission time allocated to advertising, teleshopping spots and other forms of advertising excluding teleshopping windows in the meaning of paragraph 45 a RStV will 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)

Concerning private broadcasters, the transmission time for advertising spots will not exceed 15 % of the daily transmission time (// art. 18 §1 TVWF Directive).

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

**Public broadcasters:** paragraph 15 Abs. 3 RStV rules that spot advertising within an hour must not exceed 20 % (// art. 18 §2 TVWF Directive).

**Private broadcasters:** According to § 45 Abs. 2 RStV the proportion of advertising and teleshopping spots within an hour shall not exceed 20 % (// art. 18 §2 TVWF Directive).

In Germany the calculation of the hourly allowance is based on a full 60 minutes period (“sliding hour”, versus “clock hour”).

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<sup>6</sup> the respect of this rule is nearly impossible to be controlled whereas private broadcasters have been checked several times in the past if they respect the hourly allowance.

- Examination of the other possible quantitative restrictions

For the **public broadcasters**, advertising is allowed neither after 8 p.m., nor on Sundays nor on public holidays existing in all the German states. Other national wide public TV channels broadcast by ARD and ZDF or regional public programmes are not allowed to carry advertising (§ 15 Abs.2 RStV).

This restriction does not apply to sponsorship.

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

The media law (§ 15 Abs.4 RStV for public and § 45 Abs.3 RStV for private channels) says that self-promotion is not subject to the advertising restrictions (±// art. 18 §3 TVWF Directive).

For the purpose to calculate the hourly allowance, the rule of the "sliding hour" is practised in Germany (>< of a given "clock hour" mentioned in the Directive). The broadcaster may choose when this period starts (for example from 11.00 or 11.13 onwards).

For the purpose to calculate the daily allowance, reference is made to the daily transmission time. According to n° 14 of the TV-Code the time of the showing of a "testcard" must not be calculated within the total daily transmission time.

Concerning split-screen advertising technique, the fact that the advertisement is shown parallel to the editorial programme covering not 100 % of the TV screen but only a more or less small part thereof has no influence on the calculation of the hourly or daily advertising allowances. Split-screen advertising is calculated for 100 % advertising without considering the size of the advertisement on the screen (n° 7.3 of the TV Code for private TV and n° 6.1 of the ARD- and ZDF guidelines).

"Long advertising programmes" (Dauerwerbesendungen) are not calculated within the hourly allowance and may be broadcast in addition to the hourly allowance of a maximum of 12 minutes for "normal" advertising and teleshopping spots. "Normal" advertising spots which are broadcast during "long advertising programmes" are calculated within the daily allowance but not within the hourly allowance (practice of the media authorities).



Sponsoring is not calculated within the limited allowances for advertising or teleshopping. N° 12.1 of the TV Code for private TV says that the restrictions on the hourly and daily allowances for advertising and teleshopping are not applicable in case of sponsoring.

Virtual advertising is not calculated within the limited allowance of advertising. The reason is that such advertisements, if legitimate, replaces only other existing advertisements (i.e. billboards during the broadcast of soccer or football games).

In exceptional cases (i.e. live broadcasts) the TV authorities (Landesmedienanstalten) tolerate if the advertising time exceeds the hourly allowance<sup>7</sup>.

It is unclear if black frames which are inserted between 2 advertising or teleshopping spots for technical reason in order to separate one spot from the next are calculated within the advertising allowances or not. TV authorities tend to calculate the whole advertising block from the beginning until the end without deducting such "technical black, blue or green" frames. These frames contain no advertising at all and last only for approximately 20-40 % of a second. However, it may well be that the total amount of these technical frames amount to more than 10 seconds during one hour. It seems to be appropriate that TV authorities tolerate if the total advertising time exceeds slightly the allowance per day or per hour.

Concerning the warning following medicine TV advertising a new amendment to the media law (RStV) will come into force in April 2004 clarifying the calculation of the legitimate advertising allowances. The new law says that the duration of such warnings will not be calculated within the advertising allowance. This clarification has been elaborated as warnings to be shown and spoken at the end of medicines TV advertising is compulsory. § 4 Abs. 5 HWG (Heilmittelwerbegesetz, law on advertising for medicines) rules that advertising in audiovisual media must be succeeded by the following text, which must be broadcast in television against a neutral background in legible characters and at the same time spoken aloud:

"For information on risks and side effects please read the package leaflet and consult your doctor or pharmacist".

## **b. Conclusion**

The regulation on private TV is almost perfectly in line with what is laid down in the TVWF Directive. However, a liberal interpretation of the Directive could allow a more generous treatment of split-screen advertising.

The regulation on the duration of advertising in public TV is more restrictive than the TVWF Directive.

Whether the self-promotion is expressly not taken in to account in the calculation of the advertising time, no provision is made for ancillary products derived from it, public service announcement or charity appeal broadcasts.

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<sup>7</sup> see the court decision OLG Zweibrücken dated June 25th, 1998, Az 1 S 100/98, ZUM-RD 1999, 230

The regulations in Germany deal with a number of special types of advertising which are not explicitly mentioned in the TVWF Directive. For example:

- Splitscreen advertising is calculated as an advertising. The provisions of article 18 on hourly and daily duration of advertising apply in full to split screen advertising.
- "Long advertising programmes" is not calculated within the hourly allowance;
- Sponsoring is not calculated within the limited allowances for advertising or teleshopping;
- Virtual advertising is not calculated within the limited allowance of advertising.

In Germany, compulsory warnings at the end of medicine advertisements in audiovisual media will soon not be calculated within the advertising allowances.

## **V. Quantitative restrictions related to teleshopping programmes (Article 18 Bis TVWF Directive)**

### **a. Regulations**

With the exception of teleshopping spots teleshopping is not allowed in public broadcasts (§ 18 RStV).

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

According to § 45 a (1) RStV teleshopping windows which are broadcast within a programme not exclusively dedicated to teleshopping need to have a minimum duration of at least 15 minutes (// art. 18 bis §1 TVWF Directive).

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

According to § 45 a (2) RStV a maximum of 8 windows per day is allowed (// art. 18 bis §2 TVWF Directive).

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

According to the same article, their total duration shall not exceed 3 hours (// art. 18 bis §2 TVWF Directive).

### **b. Conclusion**

In Germany the regulations related to teleshopping programmes in the meaning of Article 18 bis TVWF Directive are identical to those laid down in the Directive.

It should be reminded that teleshopping windows must be clearly identified in vision and sound as teleshopping windows. The TV-Code stipulates that they have to be clearly announced at the beginning in vision and sound and during the entire broadcast of the teleshopping window the identification “advertising programme” or “sales programme” has to be inserted (TV-Code n°16 section 1).

## VI. Sponsoring (Article 17 TVWF Directive)

### a. Regulations

The rules for sponsoring are laid down in the first chapter of the German media law (§ 8 RStV) applicable to both public and private television.

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

Paragraph 8 Abs. 2 RStV determinates that content and the scheduling of the programme must not be influenced by the sponsor in such a way to affect the broadcaster's responsibility and editorial independence (// art. 17 §1 a. TVWF Directive).

- Sponsor identification

Paragraph 8 Abs. 1 RStV lays down the obligation to indicate that a programme has been partly or fully financed by a sponsor (≠ TVWF Directive).

The sponsoring may be announced using the sponsor's name, the emblem/logo or a trademark (§8 abs. 1 RSTV) (// art 17.b TVWF Directive).

Sponsoring is not exempted from the regulation under paragraph 7 RStV dealing with advertising recognition and advertising / programme separation. N° 12.1 of the TV Code for private TV says that sponsoring is an independent form of financing besides advertising and that the regulation under § 7 is not applicable.

- Examination of the rules related to the insertion of the sponsor's name or logo within the programme

Sponsor credits have to be inserted at least at the beginning or at the end of the programme (// art. 17.b TVWF Directive).

References to the sponsor within the programme are allowed before and after each advertising break (TV-Code n° 12 section 5; ≠ // art. 17 §1 b TVWF Directive).

- Identification of the programmes that cannot be sponsored

News- and current affairs programmes cannot be sponsored (§ 8 Abs. 6 RStV, // art. 17 §4 TVWF Directive).

Generally, sponsoring is only allowed with reference to a programme and not programme segments. According to the TV-Code also short programmes (i.e. weather

forecast) may be sponsored. However, sponsoring of advertising is illicit as well as of long advertising and tele-shopping windows (TV-Code n°12 section 2) and of programme announcements (TV-Code n°12 section 3, last sentence). But programme announcement may contain a reference to the sponsor of the programme.

Both systems, the public and private broadcasters are authorized to carry sponsoring. The interdiction for public channels to broadcast advertising after 8 p.m. does not apply to sponsor references which may be broadcast all day notwithstanding when the sponsored program starts.

- Examination of the rules related to the content of the message (moving images, mention of the product, slogan, etc.)

Sponsoring is forbidden for those companies which principal activities are the manufacturing of cigarettes or other tobacco products (§ 8 Abs. 4 RStV, // art. 17 §2 TVWF Directive).

Sponsoring is forbidden for **medical products and medicinal treatments** available only on doctors' prescription. Companies with their principal activities in the field of manufacturing medicinal products or medical treatments may be a sponsor in order to promote the name or the image of the company but not promote for medicines or medical treatments available only on prescription (§ 8 Abs. 5 RStV, // art. 17 §3 TVWF Directive).

Paragraph 8 Abs. 3 RStV says that sponsored programmes must not encourage selling, purchasing, renting or leasing of products or services of the sponsor in particular by special references (// art.17.c TVWF Directive). The TV-Code, n° 12 section 6 precises that this is generally the case if:

- within the programme products or services are presented, generally recommended or described as favorable which are offered by the sponsor or a third party;
- within sport, cultural or similar programmes products, services, names, trademarks or activities on bill boards or other items may be identified, where the producer or provider is the sponsor or a third party.

The reference to the sponsor may be presented with moving images. In addition to or instead of the sponsors' name, also the emblem/logo or a trademark may be inserted (§ 8 Abs.1 RStV).

According to n° 12 section 4 of the TV-Code the sponsor credit has to explain the sponsor's connection to the sponsored program. However, no additional advertising statements concerning the sponsor, products or trademarks are allowed except the typical slogan of the sponsor.

Although not explicitly mentioned product images and pack shots are frequently used in sponsor credits. Such presentations are in conformity with German law.

More generally the TV-Code prohibits sponsoring by those who cannot advertise according to media or other laws or which core business is with products or services for which advertising is prohibited (TV-Code n° 12 section 7- see below for specific products)

As the media law explicitly prohibits political, philosophical and religious advertising, the TV-Code forbids explicitly sponsoring for such bodies.

As §§ 284 Abs. 4, 287 Abs.2 German Criminal Law prohibits advertising for gambling and lotteries without official license, also sponsoring for such activities are illicit.

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

The duration of sponsor credits have to be adequately short (§ 8 Abs. 1). Section 4, N° 12, of the TV-Code says that the reference to the sponsor must only take the amount of time necessary to clearly identify the reference of the financial relationship between broadcaster and sponsor.

Although, there are no explicit rules on the legitimate duration for a sponsor credit the experience show that a time of 7 secondes is accepted by the TV authorities (Landesmedienanstalten) or even more if there is more than 1 sponsor of a programme.

- Examination of other rules eventually limiting the volume of sponsorship (ceiling for sponsorship profits, special tax, etc.)

No such rules in Germany.

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

Product Placement as such is neither defined in the media law nor in the TV-code issued by media authorities. The general rule is that the visual or verbal mention or representation of goods, services, names, trade marks or the representation of activities of a producer of goods or of a provider of services in the editorial

programmes by the broadcaster with advertising intentions is prohibited (prohibition of surreptitious advertising).

The TV-Code (n° 9) however states that such representations may be legitimate in some cases in particular if justified by editorial requirements. The TV-Code says:

(1) The presence of commercial products or their producers, services or their providers outside the regular advertising is no surreptitious advertising, if this happens for overwhelming reasons related to programme content / dramaturgy or in order to assure information purposes.

(2) Also in cases when the presence of products and services is legitimate, the support of advertising interests should be avoided by editorial means when possible.

The TV-Code deals with some special types of legitimate "product presence" in editorial programmes as traditionally some products or services for the editorial programmes are acquired at no or less than full costs.

#### Representation of prizes in quiz- and game shows

N° 18 of the TV-Code says that with quiz- and game shows it is legitimate to mention twice the name of the company offering the prize **and** to show the prize also with animated images in order to identify clearly the product twice during a short period of time.

Self-regulation especially on the representation of prizes in quiz- and game shows have been issued by the public channels (n° 9 of ARD/ZDF advertising guidelines) saying that the person offering the prize has to be identified, that the representation of the prize has to be restricted to what is editorially necessary and that products or services made available by the sponsor of a programme should not be represented during the sponsored programme.

#### References to providers of goods and/or services

According to n° 19.1 of the TV-Code it is legitimate to broadcast credits at the end of a programme referring to providers of goods and/or services. However, the identification of the provider has to be as decent as sponsor credits.

#### Special credits to providers of information services during sport programmes

According to n° 19.2 of the TV-Code it is legitimate during sport programmes to insert credits with the name of a company or the name of a product if there is a functional link between the information service (graphic) and the name of the company or its product.

### Names of print publications in television programmes

According to n° 20 of the TV-Code it is legitimate to represent the name of the publishing house or of its product during a television programme if no undue prominence is given to it.

### **b. Conclusions**

The German regulation is nearly identical to the provisions of the Directive.

However, the German law contains additional rules as to the content of the message, its duration and product placement.

The way sponsoring is utilised in the English language implies all kind of financial contributions including minor activities as being a sponsor for a prize in a quiz show where the sponsor's contribution does not affect the whole programme but where the sponsor interferes only in a very limited way (i.e. the presenter of a prize in a quiz show or the service provider in connection with graphic inserts).

The understanding of "sponsoring" under German legislation is more restrictive and limited to such a sponsor who supports the entire programme (head sponsor).



## VII. New advertising techniques

- Split-screen

There is no definition regarding split-screen advertising. However, § 7 Abs. 4 of the media law (RStV) states that **split-screen advertising is legitimate** if advertisement is clearly separated from the editorial programme and identified as such.

**Identification:** Such advertising must comply with the provisions on separation between editorial content and advertising laid down in article 10 of the Directive. This implies that split screen advertising must be readily recognizable as such and kept clearly separate from other parts of the programme by acoustic or optical means aimed at preventing the viewer from mistaking advertising for editorial content. With respect to the obligation of a clear identification n° 7.2 of the TV code says that this is deemed to be respected if the advertising is separated from the editorial part of the screen during the whole time by the word "advertising" (Werbung).

**Insertion:** The German Media Law (§7 Abs. 4 RStV) stipulates: *“Splitscreen advertising is legitimate if the advertisement is clearly separated from the editorial programme by optical means and identified as such. Such advertising is calculated within the duration for advertising spot according to § 15 and 45.14 section 1 and §44 section 1 RStV are applicable accordingly”*.

In practice, splitscreen advertising is utilized very differently compared to traditional advertising blocks which often last 5 minutes or even longer during prime time movies. German broadcasters use splitscreen advertising in significantly lower duration. The reason for this is that splitscreen advertising offers viewers an added value. Generally shown during sport events such as boxing fight or Formula 1 races, the viewers can follow the editorial content simultaneously to the commercial spot. However, broadcasters do not wish to frustrate viewers with long splitscreen advertising blocks especially since viewers constantly know what they could be seeing on a full screen.

The experience with media authorities (Landesmedienanstalten) is that they effectively ensure the respect of the essential principles concerning the form and the presentation of TV advertising as laid down in article 10 of the TVWF Directive. On the one hand, the national authorities ensure the respect of the fundamental principle contained in article 10 section 1 of the TVWF Directive in that advertising has to be clearly separated from the editorial programme. On the other hand, the national authorities ensure the respect of article 10 section 2 of the Directive in that isolated advertising has to be exceptional.

**Volume:** the fact that split-screen advertising is shown parallelly to the editorial programme covering not 100 % of the TV screen but only a more or less small part thereof has no influence on the calculation of the hourly or daily advertising allowances. Split-screen advertising is calculated in full for 100 % advertising without considering the size of the advertisement on the screen (n° 7.3 of the TV Code for private TV and n° 6.1 of the ARD- and ZDF guidelines).

**Prohibition:** N° 7.4 of the TV-Code says that split-screen advertising is prohibited in broadcast of religious services or during childrens' programmes.

- Interactive advertising

Considered in a primitive way, interactive advertising as TV-advertising contains a telephone number/ an e-mail or an internet-address (www...) offering additional product or service information to the viewer.

Teleshopping-windows or teleshopping spots are especially using this technique in order to create the possibility that viewers may immediately purchase the advertised goods or services.

Considered in a broader sense, interactive-advertising is at an early stage in Germany. However, it has been recently reported (Medien Bulletin 10.01.2002) that an offer is on the market to combine the television picture with internet applications in the way that the viewer may use the TV remote control to click on icons appearing on screen to receive additional information about products or contents. Such additional information are not regulated by the media law (RStV) and the law on media services (MediendiensteStV, see above) will be applicable with basic regulations on general advertising principles as protection on children and minors (see also the rules of the Interstate Treaty on the protection of minors in media as described in section 9.1.4).

As the viewers are free to use this link or not media authorities regulating and controlling TV broadcast seem to request that the advertising link should be clearly identified as such.

Additionally it has to be said that such interactive advertising as any advertising has to respect the general regulations applicable to all advertising which means to respect public order (especially protection of minors) and to respect the rules prohibiting misleading advertising.

- Virtual advertising

There is no legal definition on virtual advertising neither by the media law (RStV) nor by the guidelines of the TV authorities (Landesmedienanstalten). N° 2 of the regulation of the International Football Association defines virtual advertising as follows:

"Virtual Advertising refers to the manipulation by computer of authentic images, either live or delayed, and the substitution of various elements of those images with the purpose of implementing advertising messages into the signal transmitted by television or by similar current or future technologies (online, desktop-publishing, single frame, DVD), etc."

Paragraph 7 Abs. 6 of the German media law (RStV) says that virtual advertising is legitimate if:

- The use of such techniques is indicated at the beginning and at the end of the programme concerned and
- Only already existing advertising space is to be replaced.

N° 10 of the TV-Code rules that:

1. At the beginning and at the end of programmes in which virtual advertising is inserted, the viewers must be informed by optical- or audio means that the existing advertising at the place of the event has been modified later.

2. Virtual advertising may not create new advertising spaces. Static advertisements on the place of the event may not be replaced by moving pictures.

3. Virtual advertising is illegitimate if used for products or services which may not be advertised according to the media law (RStV) or other legal texts.

Virtual advertising is not calculated within the allowance of advertising. The reason is that such advertising, if legitimate replaces only other existing advertisements, i.e. billboards during the broadcast of soccer or football games.

## VIII. General rules related to advertising and teleshopping content (Article 12 TVWF Directive)

### a. Regulations:

The **Media Law** (RStV) in its first section (§§ 1-10) applies to public as well as to private broadcasters. Without any difference of their editorial or advertising nature paragraph 3 RStV says that the broadcasters:

- have to respect and to protect human dignity (±// art. 12 a. TVWF Directive);
- should contribute to strengthen the respect for life, freedom, health, beliefs and views;
- have to respect the moral and religious convictions of the population (±// art. 12 c. TVWF Directive).

Concerning the protection of children and minors paragraph 4 RStV refers to the rules<sup>8</sup> applicable for television contained in the Interstate treaty on the protection of minors in media (Jugendmedienschutz-Staatsvertrag = JMStV).

Concerning **specifically advertising**, the fundamental principle is laid down in § 7 Abs. 1, 1<sup>st</sup> sentence of the media law (RStV)

Advertising and teleshopping should not

- mislead, harm the interests of consumers;
- encourage behaviours endangering the health or safety of consumers and the protection of environment (±// art. 12 d. and e. TVWF Directive).

The corresponding guidelines in the **TV-Code** for private broadcasters say (section 3):

(1) Specific legal regulations regarding advertising, sponsoring and teleshopping for consumers' protection, environmental protection and competition regulations are applicable and the interdictions and restrictions of advertising contained therein are to be especially respected. Furthermore, the relevant guidelines regarding advertising of the German Advertising Council (Deutscher Werberat) in the 1998 version are applicable.

(2) The regulations on protection of the youth, on advertising on tobacco in the law on foods and on items of daily use (Lebensmittel- und Bedarfsgegenständegesetz) as well as the advertising restrictions for medicines and healing items in the law concerning advertising on healing items (Heilmittelwerbegesetz) are to be respected.

**Self regulation by the German Advertising Council** is in force regarding discrimination and disparagement of persons

Considering the importance of this question and proceeding from its decisions therto, the German Advertising Council refers to the following:

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<sup>8</sup> Described in details hereunder in chapter 9.1.4

Illustrations and statements in advertisements should not:

- violate the human dignity and the general dignity (±// art. 12 a. TVWF Directive);
- should not disparage or run down some persons or a group of persons
- should not give the impression that some persons or groups of persons are inferior because of their sex, their origin or their opinions or that some persons or groups of persons are treated arbitrary unequally in society, profession and family (±// art. 12 b. TVWF Directive).

In order to comply with these principles it is important that sexually provocative illustrations and words should be refrained from the portrayals of persons in advertisements.

As he is adjudicating if a violation against these principles has taken place, the German Advertising Council takes as a reference for his decision the impression an average observer would or could have. The legitimate concerns and opinions of minorities are taken into account appropriately.

## **b. Conclusions**

The level of protection in Germany is the same as under the TVWF Directive. The different fields covered by the Directive are protected in Germany as well, but in various regulations.

The different structure of the German regulations (general rules applicable for all contents notwithstanding their editorial, advertising or other nature) may be considered as an advantage insofar as the rules are automatically applicable on **sponsoring** whereas Article 12 TVWF Directive refers only to advertising and teleshopping.

Furthermore, self-regulations intervene with more detailed rules.

## IX. Specific products and targets

### a. Regulations

**Introduction:** beside the legal regulation, there are self-regulation rules

The self-regulation body which is the most famous is the German Advertising Council which is not only dealing with specific product lines but which regulates advertising in a more general sense.

This organisation has different functions. One is to act as an intermediary between the advertising industry and consumers complaining about advertising. In the year 2000, the Council has dealt with 1139 complaints and intervened in those cases when the principles of self-regulation were violated.

Another responsibility of the Council is to draw up Rules of Conduct on advertising. The Council is a member of EASA, the European Advertising Standard Alliance.

According to the Council advertisement is a necessary and indispensable instrument for commercial competition and to inform the (potential) customer and user of goods and services. Without advertisement there is no effective competition and without competition a free enterprising order is inconceivable.

Advertisement is an expression and a proof of freedom in a society and needs freedom to fulfil its function appropriately. Therefore, advertisement enjoys the constitutional protection of freedom of speech and freedom of professional training.

This freedom, however, cannot be boundless. It finds its limits in the general rights and the protection-worthy concerns of others. Among these are especially the principles for protecting the human dignity and the non-discrimination which are valid for public and social order. These principles have also to be respected in advertising.

Some of the existing Rules of Conduct issued by the German Advertising Council deal with advertising in TV and radio especially, other are applied to all form of advertising.

- Tobacco products:

Tobacco **advertising** is totally banned on television (// art 13 TVWF Directive).

In Germany a special law on food and products of daily use (Lebensmittel- und Bedarfsgegenständegesetz LMBG) is relevant for the prohibition of tobacco advertising in television. § 22 Abs. 1 LMBG says:

"Advertising in television and radio for cigarettes, tobacco products similar to cigarettes and tobacco products which are destined to make cigarettes by the consumer is prohibited." (// art. 13 TVWF Directive)

The requirements of advertising regulation apply in full to **teleshopping**. N° 3.2 of the TV Code says that the prohibition of tobacco advertising has to be respected.

**Sponsoring** is forbidden for those companies which principal activities are the manufacturing of cigarettes or other tobacco products (§ 8 Abs. 4 RStV, // art. 17 §2 TVWF Directive).

- Medicines:

The requirements of advertising regulation apply in full to **teleshopping**.

1. Prohibition concerning certain types of medicines addressed to persons other than health professionals.

Advertising for medicines is dealt with in a special law regulating for healing items (Heilmittelwerbegesetz, hereinafter referred to as HWG). Concerning medicines the law **prohibits** TV advertising:

- according to § 10 Abs. 1 HWG for medicines available only on prescription (// art. 14 TVWF Directive);
- according to § 10 Abs. 2 HWG for those medicines which are made to
- cure sleeplessness, psychic malfunctions or to influence the state of mind (≠ TVWF Directive).

2. Numerous restrictions concerning the content of advertising

There are numerous restrictions concerning the content of advertising applicable to all forms of advertising. According to § 11 HWG advertising for medical products, procedures, treatment methods, objects or other preparations to persons other than health professionals may not contain:

1. expertises, references, scientific or professional publications or references thereto;
2. statements that the medicinal product, procedure, treatment method, object or other preparation is recommended, tested or used by doctors, dentists, veterinarians or other health professionals;
3. the description of or reference to case histories;
4. pictorial representations of persons in the work clothing or in the process of carrying out the activities of health professionals;
5. pictorial representations
  - a) of changes in the human body or parts thereof due to disease, affliction or injury;
  - b) of the effects of a medicinal products, procedure, treatment method, object or other preparation affects the human body or part thereof
6. foreign or professional terminology insofar these have not become part of the general German vocabulary
7. statements that tend to instil or exploit fear
8. promotional speeches that include offers for the supply or acceptance of addresses



9. publications that are not identified as advertisements in clear and understandable terms
10. publications that suggest that a certain disease, affliction, injury or pathological ailment in humans can be determined through self-diagnosis and treated with the advertised medicinal products, procedures, treatment methods, objects or other preparations, as well as the corresponding instructions in audiovisual media
11. statement by third parties, especially expressions of gratitude or acknowledgment or letters of recommendation, or references to such statements
12. promotional measures that are directed exclusively or primarily at **children under 14**
13. contests, raffles or other procedures with results that are determined by chance
14. the distribution of free samples of medicinal products or of vouchers for medicinal products
15. the unsolicited distribution of free samples of other products or objects or of vouchers for other products or objects

### 3. Necessity to show a warning at the end of audiovisual media

§ 4 Abs. 5 HWG rules that advertising in audiovisual media must be succeeded by the following text, which must be broadcast in television against a neutral background in legible characters and at the same time spoken aloud:

“For information on risks and side effects please read the package leaflet and consult your doctor or pharmacist.”

### 4. Sponsoring

Sponsoring is forbidden for medical products and medicinal treatments available only on doctors' prescription. Companies with their principal activities in the field of manufacturing medicinal products or medical treatments may be a sponsor in order to promote the name or the image of the company but not promote for medicines or medical treatments available only on prescription (§ 8 Abs. 5 RStV, // art. 17 §3 TVWF Directive).

- Alcoholic beverages

The media law does not contain any specific regulation on advertising for alcoholic products. However, the general regulation prohibiting advertising impairing consumers' and especially minors health may apply in particular cases. Concerning the protection of minors the Interstate Treaty on the protection of minors in media (Jugenmedienschutz-Staatsvertrag = JMStV, in force since April 1<sup>st</sup>, 2003) contains special regulations in § 6 Abs. 5:

"Advertising for alcoholic beverages should neither address minors nor particularly appeal to minors by the way of presentation or show minors in the act of drinking."

The private TV-Code (section 3) refers to the guidelines of the German Advertising Council which are described below (Self-Regulation):

## Code of Conduct for the advertising of alcoholic beverage

"In particular, the principles set out below shall be observed in the design and conduct of advertising for alcoholic beverages and of teleshopping:

### **Abuse**

1. Consumers shall not be called upon to indulge in the abuse or the excessive consumption of alcoholic beverages, nor should such consumption be trivialized or portrayed as commendable.
2. The impression should not be conveyed that abuse is impossible because of a low alcohol content.

This does not affect the obligation to state the alcohol content on bottle labels.

### **Juveniles and Athletes ("Leistungssportler")**

3. Juveniles should not be urged to drink nor should they be portrayed as drinking, being invited to drink or inviting to drink (// art. 15 a. TVWF Directive);
4. No statements should be made in which juveniles are referred to as being insufficiently mature for the consumption of alcoholic beverages and which would thus provoke them into drinking. Nor should any statements be made to the effect that the person portrayed in the advertisement has already consumed alcoholic beverages as a juvenile.
5. No competitive sportsmen or athletes ("Leistungssportler") should be shown in the act of drinking or inviting others to drink.

### **Road Traffic and Safety**

6. The drivers of motor vehicles should not be called upon to drink nor should they be shown in the act of drinking or of being called upon to drink, nor should any other kind of association be established between drinking and driving ( $\pm$ // art. 15 b. TVWF Directive);
7. There should be no portrayal of situations in which safety regulations are violated.

### **Medical Statements**

8. No reference should be made to medical recommendations or medical reports nor should there be any portrayal of persons in the professional clothing of carrying out the duties of a member of the medical profession, the nursing profession or of the pharmaceutical trade.
9. No statements should be made that refer to the cure, relief or prevention of disease.
10. No statements should be made claiming that alcoholic beverages have the effects of a medicinal drug.

### **Disinhibition, Anxiety, Conflict**

11. No statements should be made that refer to disinhibiting effects of alcoholic beverages.
12. No statements or presentations should be made that refer to the cure or relief of conditions of anxiety.

13. No statements or presentations should be made that refer to the elimination or overcoming of psycho-social conflicts ( $\pm$ // art. 15 d. TVWF Directive);

#### **Abstinence**

14. No presentations should be made that derogate abstention in general or in special cases ( $\pm$ // art. 15 e. TVWF Directive);

#### **As following also applies to television advertising and teleshopping, taking into account the provisions of the EU Television Broadcasting Directive of 3 October 1989 (version of 30 June 1997):**

15. It should not link the consumption of alcohol to enhanced physical performance ( $\pm$ // art. 15 b. TVWF Directive);
16. It should not create the impression that the consumption of alcohol contributes towards social or sexual success // art. 15 c. TVWF Directive).

There is no specific regulation for **teleshopping** except § 6 Abs. 6 JMStV saying that the rules for protection of minors apply also for teleshopping.

- Minors:

Paragraph 6 of the Interstate Treaty on the protection of minors in media (Jugendmedienschutz-Staatsvertrag = JMStV) deals with the protection of minors in advertising and teleshopping and corresponds in its section 2 to Article 16 section 1 of TVWF directive.

Paragraph 6 JMStV reads as follows:

- (1) Advertising for censored media products<sup>9</sup> is only allowed under the same conditions that are applicable to the distribution of the media products themselves. The list of minors harming media should not be distributed or made accessible for the purpose of advertising. In advertising it should not be mentioned that a media product is or has been subject to a procedure to be included on the list according to § 18 of the law of minors' protection.
- (2) Advertising should not harm minors neither in a physical nor in psychological way; moreover, advertising should not
  - directly exhort minors to purchase by exploiting their inexperience and credulity (// art. 16 §1 a. TVWF Directive);
  - directly exhort minors to persuade their parents or others to purchase goods or services being advertised (//art. 16 §1 b. TVWF Directive);
  - exploit the special trust minors place in parents, teachers and other trust persons (// art. 16 §1 c. TVWF Directive);
  - show minors in dangerous situations without a legitimate reason ( $\pm$ // art. 16 §1 d. TVWF Directive).

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<sup>9</sup> The German text says "indizierte Angebote" which aims at media products such as films, movies, computer games totally banned from distribution or restricted in distribution for reasons of e.g. immorality, violence, criminality, racial discrimination. If totally banned from distribution, no advertising is allowed.

- (3) Advertising with a content which could harm minors' own responsibility and social development must be separated<sup>10</sup> from offers which are aimed at minors.
- (4) Advertising also addressed to minors or integrating minors as actors should neither harm the interest of minors nor exploit their inexperience.
- (5) Advertising for alcoholic beverages should not be addressed to minors neither directly nor through the way of presenting minors enjoying drinking alcohol. The same is applicable to advertising for tobacco in teledmedia.
- (6) Sections (1) - (5) are applicable to teleshopping. Moreover teleshopping should not induce minors into purchasing, renting or leasing goods or services.

Self-regulation on advertising with and for children in TV and radio issued by the German Advertising Council (Deutscher Werberat) has been laid down long before legislation. The following rules are in force today:

"In advertising with children and in advertising that is addressed specifically to children, the following principles in particular shall be observed in the design and realizing of advertising measures:

1. They should contain no statements by children about the special advantages and features of the product, that do not conform to the natural utterances of the child.
2. They should contain no direct requests for purchase or consumption addressed to children.
3. They should contain no direct requests by/and or to children to induce others to buy a product.
4. They should not exploit or abuse the special trust which children usually place in certain persons.
5. Aleatory advertising media (e.g. free raffles, prize competitions and puzzles etc.) should not mislead the potential purchaser, should not allure by the offer of excessive advantages, should not exploit gambling instincts and should not indulge in touting.
6. They should not present penal offences or other misconduct by which persons may be endangered or allow same to be published as worthy of imitation or approval.

The following additionally applies to television advertising with or specifically aimed at minors and to teleshopping, taking into account the EU Television Directive of 3 October 1989 as amended on 30 June 1997:

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<sup>10</sup> The meaning of the German wording "getrennt von Angeboten" is that such advertising is banned to appear during or around programmes for minors.

7. Juveniles shall not be directly exhorted to buy a product or service by exploiting their inexperience or credulity.
8. Juveniles shall not be directly exhorted to persuade their parents or others to purchase the goods or services being advertised.
9. The special trust juveniles place in parents, teachers and other persons shall not be exploited.
10. Juveniles shall not be shown in dangerous situations unless there is a legitimate reason for doing so."

- Other product/services categories subject to a specific regime

1. Media

There is no specific regulation on TV advertising for media.

However, the general rules and in particular those on the protection of minors apply. Therefore, advertising for films shown in cinema or promotion for films shown in television, for magazines or telephone numbers as for example those of erotic nature may be restricted to certain periods during a day in order to respect the legal principles in this field.

Furthermore, regulation exists concerning self- or cross-promotion. The relevant rules do not restrict advertising but have an impact to the question if the duration of such cross-promotion is to be calculated within the limited advertising time (20% per hour and day) or if such promotions are considered as self-promotion for which time limits do not exist.

2. Religions, politics and parties, social issues and groups

General principle

The Media law (RStV) in its first section applicable as well as for public as for private broadcasters prohibits such type of advertising. Art. 7 Abs. 8 RStV says:

**“Advertising of political, philosophical or religious kind is illicit.”**

This interdiction concerns only television and radio but not other media such as newspapers and magazines.

Exceptions

However, some exceptions are made by § 42 RStV with respect to private broadcast retransmitting all over Germany.

- a) According to section 1 of this paragraph adequate airtime has to be conceded to the protestant, catholic churches and jewish communities at their request (in return the broadcaster may claim an adequate reimbursement of his own costs).
- b) According to section 2 of the same paragraph adequate airtime has to be conceded under certain conditions to political parties before the elections for the German or European Parliament.
- c) Social advertising is allowed (Art. 7 Abs. 8, 3<sup>rd</sup> sentence).

### 3. Gambling and lotteries

Paragraphs 284 Abs. 4 and §§ 287 Abs. 2 Strafgesetzbuch (StGB - Criminal Law) prohibit advertising for gambling and lotteries without official licences. These interdictions concerns advertising in TV and all other media.

### 4. Guidelines concerning advertising for cars

Self-regulation and -control on car advertising aims at all advertising including TV. The following criteria have to be respected:

- no promotion of racing/fast driving
- no promotion of competition among drivers
- no overvaluation of technical possibilities

### 5. Guidelines concerning advertising for cars tyres

In connection with a complaint, the German Advertising Council has checked the advertisement of tyre-manufacturers for car-tyres on the market for the wet, cold and snowy season.

The following advertising-headline is considered as inadmissible by the German Advertising Council: "On the anti-aquaplaning-radials by X you are as safe as a fish in water".

The German Advertising Council shares the consideration published by the Association of the Technique Supervision Societies (MOT=TÜV) and regards the following advertising slogans as dangerous as these may induce car drivers to negligent behaviour:

- "A safe vehicle-control on snow and ice is guaranteed"
  - "Effective protection against the feared aquaplaning is assured"
  - "Hitherto not known suction on ice and a safe grip on deep snow"
- "Our tyres are the accident-brake"
- "Our tyre is a rain tyre"

In the opinion of the German Advertising Council, the positive qualities of the developments in the area of car-tyres should definitely be emphasised, but not in a way that the car-driver is tempted to forget all those driving attributes which alone promise security in rain, fog, snow or ice.

## **b. Conclusion**

German regulations contain the rules laid down by the TVWF Directive. However, more restrictive regulations are in force regarding advertising for alcohol, medicines and minors.

Regarding medicines, the German law is stricter than the Directive (advertising for medicine on TV is restricted and needs to present a warning). It merely prohibits any teleshopping for medicines.

The provisions on advertising for alcoholic beverage are implemented in general by a Code of conduct. However, no regulation deals with teleshopping and alcoholic beverages.

The German regulation provides for stricter rules regarding the protection of minors.

Moreover, advertising is banned regarding

- advertising of political, philosophical or religious kinds (TV and radio only)
- advertising for gambling and lotteries without official license.

Self-regulations restrict advertising in sectors such as cars, car tyres, and prime-rate-telephone-numbers.

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