



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

DENMARK

LEGAL REPORT

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Introduction

The Danish rules on TV advertising and sponsoring of television programmes are set out in the Danish Radio and Television Broadcasting Act, Act no. 1052 of 17 December 2002 (the "Act") and rules issued in pursuance thereof, in particular the Danish Executive Order on Radio and Television Advertising and Programme Sponsorship, Order no. 194 of 20 March 2003 (the "Executive Order"). Guidance can also still be found in the Joint Standards from the Nordic Consumer Ombudsmen for Television Advertising of August 1991.

Advertisements and sponsoring of programmes in all types of television are subject to the Danish rules, cf. above, although advertisements may not be broadcast as part of Denmark's Radio's broadcasting activities, cf. Article 2 of the Executive Order.

According to the Danish Ministry of Culture and the Radio and Television Board, to which decisions in television advertising matters may be appealed, there is no new national legislation in the pipeline in Denmark, which may affect this study.

No cases have been decided in Denmark by the courts or on an administrative basis, which would be of significant relevance to the subject-matter of this study, the administrative decisions being decided on a regular basis by the Radio and Television Board in specific cases serving to interpret the provisions of the law. However, a general and exhaustive review of such administrative practice would fall outside the scope of this study.

I. Definitions

- Television broadcasting

Danish legislation does not provide a definition of "television broadcasting" (\neq TVWF Directive). It must be assumed that in cases of doubt, the definition contained in the Directive will most likely serve as guidance.

- Broadcaster

Danish legislation does not provide a definition of "broadcaster" (\neq TVWF Directive). It must be assumed that in cases of doubt, the definition contained in the Directive will most likely serve as guidance.

- Television advertising

Danish legislation does not provide a definition of "television advertising" (\neq TVWF Directive). It must be assumed that in cases of doubt, the definition contained in the Directive will most likely serve as guidance.

- Surreptitious advertising

Danish legislation does not provide a definition of "surreptitious advertising". It must be assumed that in cases of doubt, the definition contained in the Directive will most likely serve as guidance (// art. 1 TVWF Directive).

- Sponsorship

The Danish definition is quasi similar, although **broader**, to the definition in the Directive (Article 1). The definition in Section 79 of the Act and Article 25 of the Executive Order on sponsoring reads as follows (\pm art. 1 TVWF Directive) :

"any contribution, direct or indirect, to the financing of radio or television programs, including teletext pages, by a public or a private undertaking"] not engaged in the broadcasting or production of radio or television programs, films, phonograms, etc. with a view to promoting the name, trade mark (logo), image, activities or products of the person"

- Teleshopping

There is **no specific definition** of "teleshopping" in Danish law (\neq TVWF Directive). Teleshopping is categorised as advertising "in the form of direct offering to the viewers with the purpose of sale, purchase or rental of products or services", cf. Article 7(3) of the Executive Order, and the Danish rules on advertising apply in their entirety to teleshopping. Currently, there are no Danish broadcasters broadcasting teleshopping (only broadcasters holding foreign licences).

- And any other relevant legal definition for the analysis

Non applicable

- Conclusion

In general, the Danish regulation does not contain the same definition as the ones provided in the Directive.

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

a. Regulations

The Danish rules on advertisement recognition and advertising/programme separation are set out in the Danish Radio and Television Broadcasting Act, Act no. 1052 of 17 December 2002 (the "Act") and rules issued in pursuance thereof, in particular the Danish Executive Order on Radio and Television Advertising and Programme Sponsorship, Order no. 194 of 20 March 2003 (the "Executive Order"). Guidance can also still be found in the Joint Standards from the Nordic Consumer Ombudsmen for Television Advertising of August 1991.

- Examination of the rules related to advertising and teleshopping spots recognition

Section 72 of the Act and Article 3(1) of the Executive Order provide that advertisements must be readily recognisable as such, their content and presentation distinguishing them from editorial or programme material.

The rule providing that television advertising and teleshopping must be readily recognizable as such is repeated in the Danish rules. The Danish rules are in compliance with the rules of the Directive (// art. 10,1 TVWF Directive).

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

The beginning and end of a block of advertisements must be clearly indicated by an acoustic signal or a speaker announcement, or both, as well as an image identification, cf. Article 3(3) of the Executive Order. On teletext a clear image identification is sufficient, cf. Article 3(4) of the Executive Order.

Apart from the fact that in Denmark advertising blocks must be indicated by way of optical *as well as* acoustic means, the Danish rules are **in compliance**, (**more restrictive**), with Article 10 of the Directive (\neq art. 10 TVWF Directive).

- Examination of the rules related to the isolated advertising and teleshopping spots

Danish legislation is silent on isolated advertising and teleshopping spots, leaving them to be covered by the ordinary rules referred to both above and below which provide that advertising and teleshopping are only allowed as well-defined blocks between the programmes.

Isolated advertising and teleshopping are **not allowed** under Danish law, Danish law thus being **more restrictive** than the Directive, under which isolated advertising spots are allowed, however, remaining the exception, cf. Article 10 (± art. 10 TVWF Directive).

- Prohibition of the use of "subliminal techniques"

Pursuant to Article 12 of the Executive Order, subliminal advertising techniques are not permitted. The same follows from the requirement set out in Section 72 of the Act and Article 3(1) of the Executive order requiring that advertising must be readily recognisable as such, distinguishing it from ordinary programmes in terms of content and presentation.

Danish law is in compliance with the Directive with regard to the use of subliminal techniques in connection with advertising and teleshopping. Such techniques are not allowed (// art. 10 TVWF Directive).

- Prohibition of surreptitious advertising and teleshopping

As stated above, Article 3 of the Executive Order provides that advertising must be readily recognisable as such, distinguishing it from ordinary programmes in terms of content and presentation. Surreptitious advertising would thus be contrary to this provision, including product placement for marketing purposes. Products are allowed to be included in programmes if not for marketing purposes.

The Danish rules are in compliance with the provision contained in Article 10(4) of the Directive. Surreptitious advertising and teleshopping are prohibited (// art. 10 TVWF Directive).

b. Conclusion

- Emphasis placed upon the existence of other rules more or less restrictive than the TVWF Directive

The Danish law complies with the Directive on following points :

- Advertising and teleshopping spots must be readily recognisable as such (// art. 10 TVWF Directive)
- Subliminal techniques are prohibited (// art. 10 TVWF Directive)
- Surreptitious advertising and teleshopping are prohibited (// art. 10 TVWF Directive)

The Danish law is more restrictive than the Directive on the following points :

- Advertising blocks must be indicated by way of optical as well as – not «or» – acoustic means (\neq art. 10 TVWF Directive).
- Isolated advertising and teleshopping spots are prohibited (\neq art. 10 TVWF Directive)

- Identification of specific rules not included in the Directive
 - Products are allowed to be included in programmes if not for marketing purposes
 - There are some specific rules for the teletext

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

a. Regulations

The Danish rules on insertion of advertisement and teleshopping between and within the programmes are set out in the Radio and Television Broadcasting Act, Act no. 1052 of 17 December 2002 (the "Act") and rules issued in pursuance thereof, in particular the Executive Order on Radio and Television Advertising and Programme Sponsorship, Order no. 194 of 20 March 2003 (the "Executive Order"). Guidance can also still be found in the Joint Standards from the Nordic Consumer Ombudsmen for Television Advertising of August 1991.

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

Section 73 of the Act and Article 4 of the Executive Order provide that advertisements must be placed in advertisement blocks between the programmes. This does not apply to teletext.

With respect to insertion between the programmes, Danish law is **in compliance** with the rules of the Directive (Article 11).

- 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)

Section 73(2) of the Act and Article 4(2) of the Executive Order provide that advertisement blocks may interrupt sports programmes comprising pauses or programmes which are a direct or staggered transmission of a performance or event with pauses for the audience. Insertion of such advertisement blocks must take into consideration natural breaks, the duration and nature of the programme and take place in such a way that neither the integrity, the value of the programme nor the rights of the right holders are prejudiced. Other insertion of advertisement blocks and teleshopping within programmes is not allowed.

Since interruption of programmes by advertising breaks and teleshopping is only allowed under Danish law with regard to sports programmes comprising pauses or programmes which are a direct or staggered transmission of a performance or event with pauses for the audience, the Danish rules are **more restrictive** than the provisions contained in the Directive (\neq Ar. 11 TVWF Directive).

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

Insertion of advertising and teleshopping spots *within* programmes is only allowed to the extent set out above. In addition, advertisements for alcoholic beverages, medicinal products not on prescription and dietary supplements may not be placed *in connection with* programmes directed at minors, cf. Article 6 of the Executive Order.

b. Conclusion

- Emphasis placed upon the existence of other rules more or less restrictive than the TVWF Directive

The Danish law complies with the Directive on following point :

- Rules related to the insertion of advertising and teleshopping spots between the programmes (// art. 11 TVWF Directive)

The Danish law is more restrictive than the Directive on the following point :

- Rules related to the insertion of advertising and teleshopping spots within the programmes (only allowed for natural breaks and sports programmes) (\neq art. 11 TVWF Directive). The Danish law does not contain provisions on e.g. the interruption of audiovisual works.

IV. Quantitative restrictions (Article 18 TVWF Directive)

a. Regulations

- 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)

Section 75 of the Act provides that the proportion of transmission time devoted to advertisements may not exceed 15% of daily transmission time (\neq art.18.1 TVWF Directive).

Article 7(3) of the Executive Order provides that advertisements in the form of direct offerings to the audience (teleshopping) may not exceed 1 hour per day and must be included in the allowed 15% share of daily transmission time (\neq art.18.1 TVWF Directive).

Teleshopping is interpreted as advertisements under Danish law and the maximum transmission time devoted to advertisements, teleshopping or other types of advertising may not exceed 15% of daily transmission time. The Danish rules are **more restrictive** than the provisions contained in the Directive (Article 18), the latter providing for up to 20% of daily transmission time to be devoted to teleshopping spots, advertisement spots and other types of advertising (\pm art. 18 TVWF Directive).

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

Section 75 of the Act provides that the proportion of transmission time devoted to advertisements may not exceed 15% of daily transmission time.

The maximum percentage of daily transmission time devoted to advertisement messages is 15% under Danish law. Danish law is thus **in compliance with** the rules of the Directive, although under Danish law, the 15% share of transmission time includes teleshopping and other types of advertising ($//$ art. 18 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)

Section 75 of the Act and Article 7 of the Executive Order provide that a maximum of 12 minutes per hour may be devoted to transmission of advertisements.

The maximum time of daily transmission time devoted to advertisement messages within any given clock hour is 12 minutes under Danish law. Danish law is thus **in compliance with** the rules of the Directive (// Art. 18(2) TVWF Directive).

- Examination of the other possible quantitative restrictions

Article 7 of the Executive Order provides that if individual parts of the daily transmission time allocated to the holder of a radio or television broadcasting licence are less than 1 hour, the 12 minutes per hour will be reduced proportionately for such parts.

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

In Denmark trailers and other advertising of the channel's own programmes and ancillary products directly derived from those programmes and public service announcements and charity appeals free of charge are regarded as programmes and, as such, not subject to the rules and restrictions regarding television advertising.

The Danish rules are **in compliance** with Article 18(3) of the Directive (// art. 18 (3) TVWF Directive).

b. Conclusion

- Emphasis placed upon existence of other rules more or less restrictive than the TVWF Directive

The Danish law complies with the Directive on following points :

- Maximum daily transmission time devoted to advertising messages (// art. 18 TVWF Directive)

The Danish law is more restrictive than the Directive on the following points :

- Maximum percentage of daily transmission time devoted to teleshopping and advertising spots : The share of 15 % of daily transmission time includes teleshopping spots, which means that Danish law allows less advertising than the Directive (which is 20 %) (≠ art. 18 TVWF Directive)

- Identification of specific rules not included in the Directive, in particular rules aimed to the reduction of the advertising volume (for instance, the imposition of a special tax on advertising)

The National regulation states that if individual parts of the daily transmission time is allocated to the holder of a radio or television broadcasting licence are less than 1 hour, the 20% per hour devoted to advertising and teleshopping spots within an hour will be proportionately reduced for such parts.

V. Quantitative restrictions related to teleshopping programmes (Article 18 bis TVWF Directive)

a. Regulations

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

Advertising in the form of teleshopping may not exceed 1 hour per day and must be included in the maximum transmission time for advertisements of 15% and 12 minutes per clock hour, cf. Section 75 of the Act and Article 7 of the Executive Order.

Under Danish law, teleshopping is included in the maximum devotion of transmission time to advertisements of 15% and 12 minutes per clock hour. Article 18a is **not reflected** in Danish law and Danish law is **more restrictive** than the Directive (≠ art. 18 Bis TVWF Directive).

- Examination of the maximum number of windows (8 in the TVWF Directive)
Non applicable
- Examination of the maximum daily duration (3 hours in the TVWF Directive)
Non applicable

b. Conclusion

- Emphasis placed upon the existence of other rules more or less restrictive than the TVWF Directive

The Danish law does not consider teleshopping window as such.

Consequently, the Danish law is more restrictive than the Directive on the following points :

- As teleshopping is included in the 15% share of maximum daily transmission time devoted to advertising, Danish law is more restrictive than the Directive.
- Identification of specific rules not included in the Directive, for instance rules aimed to the reduction of teleshopping programmes (special tax on advertising, ceiling for maximum annual advertising profits, etc.)

Non applicable

VI. Sponsoring (Article 17 TVWF Directive)

a. Regulations

The Danish rules on the broadcaster's editorial independence and sponsoring of programmes are set out in the Radio and Television Broadcasting Act. Act no. 1052 of 17 December 2002 (the "Act") and rules issued in pursuance thereof, in particular the Executive Order on Radio and Television Advertising and Programme Sponsorship, Order no. 194 of 20 March 2003 (the "Executive Order"). Guidance can also still be found in Joint Standards from the Nordic Consumer Ombudsmen for Television Advertising of August 1991.

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

The content and programme setting of a sponsored programme may in no event 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, cf. Section 81 of the Act and Article 27 of the Executive Order.

Danish law is **in compliance with** Article 17(1)(a) of the Directive providing for the editorial independence of the broadcaster (// art. 17 1 a TVWF Directive).

- Sponsor identification

Section 80 of the Act and Article 26 of the Executive Order provide that a sponsored programme must be clearly identified as such by appropriate credits appearing at the beginning and/or end of the programme. In teletext the sponsor's name and or trademark (logo) may appear from the pages that are sponsored.

Danish law is **in compliance with** Article 17(1)(b) of the Directive, which provides that clear identification of the sponsor must be given (// 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)

Section 80 of the Act and Article 26 of the Executive Order provide that a sponsored programme must be clearly identified as such by appropriate credits appearing at the beginning and/or end of the programme. In teletext the sponsor's name and or trademark (logo) may appear from the pages that are sponsored.

Danish law is **in compliance with** Article 17(1)(b) of the Directive, which provides that clear identification of the sponsor must be given (// art. 17, 1, b TVWF Directive). The Danish law is a little broader than the Directive using the words "appropriate credit".

- Identification of the programmes that cannot be sponsored

News and current affairs programmes may not be sponsored, cf. Section 84 of the Act and Article 30 of the Executive Order.

Danish law is **in compliance with** Article 17(4) of the Directive, which provides that news and current affairs programmes may not be sponsored (// art. 17, 4 TVWF Directive).

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

Article 26(5) of the Executive Order provides that the sponsor's name at the beginning and/or end of the programme may appear as moving images containing the sponsor's name and/or trademark (logo). **However**, this does not apply where the programme is directed especially at children, in which case the sponsor's name and/or logo is required to appear as non-moving images. The sponsor's name and/or trademark (logo) may in no event be accompanied by a special sound background associated with the sponsor or its products.

The Directive is silent on these restrictions on the content of the message and Danish law is thus **more restrictive** than the Directive in this respect. (≠ TVWF Directive)

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

The maximum duration of the presentation of the sponsor may not exceed 10 seconds. If 3 or more sponsors sponsor the programme, the maximum duration may not exceed 30 seconds. Danish law does not provide any rules on maximum daily or hourly volume.

A *similar* provision is not found in the Directive and Danish law may be **more restrictive** than the Directive in this respect (≠ TVWF Directive)

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

No specific rules aimed at the reduction of sponsoring activities, including rules invoking special tax or ceiling for maximum annual advertising profits, exist in Denmark.

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

A sponsored programme may not encourage the purchase or rental of the products or services of the sponsor or a third party, in particular by making special promotional references to those products or services, cf. Section 82 of the Act and Article 28 of the Executive Order.

Danish law is **in compliance** with Article 17, 1, c of the Directive in this respect (// TVWF Directive).

The sponsor's products may, however, appear in the sponsored programmes but their appearance is subject to the general prohibition on surreptitious advertising cf. Chapter II above and the name and trademark (logo) of the sponsor may not appear within the programme, cf. Article 26(1) of the Executive Order. To this end the Danish Radio and Television Board has, however, in declared that the Board acknowledge that in programmes showing the everyday life in Denmark, it cannot be avoided to show products (including sponsored products), which are easy recognisable or where the logo/trademark appear from the product or the packaging. When assessing whether such appearance qualify as surreptitious advertising/illegal product placement it is, however, of essence that the exposure of and/or reference to the product must not take place in a way that encourage the sale of such products, cf. Article 28(1) of the Executive Order e.g. that the product is highly praised or described in particular detail, is given a long and heavy exposure by the camera and whether the broadcaster has accepted consideration or the like for showing the product.

In connection with competitions, etc. featuring the products or services of the sponsor or others as prizes, the mention or presentation of the prizes may not be to the prejudice of any information reasonably required to carry out the competition, etc. If the programme is directed particularly at children under the age of 14, sponsored prizes may not be shown, but a neutral statement as to their nature and character must be given.

This rule is in line, and goes even further, with Article 17, 1, c of the Directive (≠ TVWF Directive)..

Sponsoring by businesses whose activities include the manufacture or sale of medicinal products may not take place in such a way that medicinal products on prescription are encouraged, cf. Article 26(2) of the Executive Order.

Danish law is **in compliance** with Article 17(3) of the Directive in this respect (// art 17.3 TVWF Directive)..

Programmes may not be sponsored by businesses whose principal activity is the manufacture or sale of tobacco and other products, which are mainly used in connection with smoking, cf. Article 29 of the Executive Order.

Danish law, providing that also sponsoring by businesses whose principal activity is the manufacture or sale of products which are mainly used *in connection with* smoking, is **more restrictive** than the Directive (≠ Art. 17.2 TVWF Directive).

Programmes may not be sponsored by employer's associations or trade unions or by political parties or religious associations, cf. Article 29(2) of the Executive Order.

Danish law, providing that employer's associations, trade unions, political parties or religious associations may not sponsor programmes, is **more restrictive** than the Directive (≠ TVWF Directive).

b. Conclusion

- Emphasis placed upon the existence of other rules more or less restrictive than the TVWF Directive

The Danish law complies with the Directive on following points :

- Rules related to editorial independence of the broadcaster (// art. 17, 1, a TVWF Directive)

- Sponsor identification rules (// art. 17, 1, b TVWF Directive)
- Rules related to the insertion of the sponsor's name or logo within the programme (// art. 17, 1, b TVWF Directive)
- Rules related to programmes that cannot be sponsored (// art. 17, 4 TVWF Directive)
- Medical industry sponsoring (// art. 17, 3 TVWF Directive)
- Tobacco industry sponsoring is prohibited (// art. 17, 2 TVWF Directive)

The Danish law is more restrictive than the Directive on the following points :

- Rules related to the content of the message (especially in case of programmes for children, the logo may not be a moving image, en never be accompanied by sound)

- Identification of specific rules not included in the Directive
 - Rules related to the maximum duration of the mention of the logo(s) and/or maximum daily/per hour volume (10 seconds / 30 seconds)
 - Rules related to competitions with prizes, and more specifically or programs directed at children under the age of 14.
 - Sponsoring by employer's associations, trade unions, political parties or religious associations is prohibited.

VII. New advertising techniques

At present, there are no television broadcasters in Denmark using new advertising techniques such as split screen techniques, interactive advertising, virtual advertising etc. Such new advertising techniques are covered by the current regulation described in this study and thus in general prohibited. There are no plans on the part of the Ministry of Culture and the Radio and Television Board to introduce any particular regulation of this area.

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

a. Regulations

- Indication of the rules related to the content of commercial messages (human dignity, discrimination, religious or political beliefs, health and safety, environment, and eventually other rules)

The following apply to the content of advertisements on television, cf. the Executive Order on Radio and Television Advertising and Programme Sponsorship, Order No. 194 of 20 March 2003, (the "Executive Order") issued in pursuance of Section 77 of the Danish Radio and Television Broadcasting Act, Act no. 1052 of 17 December 2002 (the "Act"). The below apply correspondingly to advertisements in the form of teleshopping.

Advertisements must comply with the Danish Marketing Practices Act (Consolidated Act no. 699 of 17 July 2000), which is by far the most essential act containing general rules on advertising in Denmark.

Section 1 of the Danish Marketing Practices Act reflects the overall purpose of the Act, i.e. to ensure that business activities are carried on in a proper and fair manner taking due regard to competitors and other persons carrying on a trade or business as well as consumers and the general interests of the community.

Section 1 has the following wording:

“This Act shall apply to private business activities and to similar activities undertaken by public bodies. Such activities shall be carried on in accordance with good marketing practices.”

As can be seen, the contents of the provision are described in broad terms as it has the character of a legal standard. As a result, the concept of good marketing practices is dynamic and reflects the practices considered good from time to time.

One of the elements considered when assessing the criterion of "good marketing practices" is what the private business sector considers good practice from time to time and what ethical standards of good practice the business sector itself lays down. The Danish Consumer Ombudsman issues guidelines for the interpretation and description of the concept, for example, on the basis of current legal practice. Furthermore, the ICC International Code of Advertising Practice of the International Chamber of Commerce is normative.

In addition to Section 1, the Danish Marketing Practices Act contains rules on the following matters:

- Misleading information, derogatory statements, etc. (Section 2)
- Comparative advertising (Section 2a)
- Instructions (Section 3)
- Guarantees and warranties (Section 4)
- Distinctive business marks (Section 5)
- Collateral (free additional products) (Section 6)
- Unsolicited calls to particular customers (Section 6a)
- Quantitative restrictions (Section 7)
- Trading stamps (Section 8)
- Drawing of lots and prize competitions (Section 9).

Televised advertising must comply with these general rules on advertising.

In addition to the above rules set forth in the Danish Marketing Practices Act, the Executive Order comprises the following rules regulating the content of televised advertising:

1. Lawfulness, decency, honesty, truthfulness, social responsibility, etc. - Article 8 of the Executive Order

Like any other advertisements, (radio and) television advertisements must be lawful, decent, honest and truthful and be presented with an appropriate sense of social responsibility.

Advertisements must comply with the **Danish Marketing Practices Act** and respect generally accepted ethical advertising rules.

The advertiser must be identified in the advertisement, possibly by means of trademarks or other similar business identification.

2. Employees and advertisement - Article 9 of the Executive Order

The employees of the broadcasting company appearing in the company's programmes may not appear in advertisements broadcast by that company. Similarly, no symbols or standard elements from the company's programmes may appear in the advertisements broadcast.

3. Violent behaviour, etc. - Article 10 of the Executive Order

No advertisements may incite to violent behaviour. They may not include the showing of killings, violence or physical abuse, nor may they unduly play on superstition or fear (// art. 12.d TVWF Directive).

Advertisements may not be discriminatory on grounds of race, gender, age, religion or nationality, nor may they offend any person's religious or political persuasion (// art. 12.a, b, c TVWF Directive).

Advertisements may not incite to behaviour conflicting with the need for safety in the home, at the workplace or in traffic, nor to any other dangerous or irresponsible conduct, or such that may be harmful to health or the environment. Should the use of a product require certain safety precautions, this must be stated in the advertisement (// art. 12.d, e TVWF Directive).

4. References - Article 11 of the Executive Order

Advertisements may not show or refer to persons, be it in their private or public capacity, without such persons' prior consent. The same applies to the showing of or reference to anything belonging to a person in a way, which gives the impression of a personal recommendation.

5. Subliminal methods Article 12 of the Executive Order

Advertisements using subliminal methods are prohibited.

b. Conclusion

- Emphasis placed upon the existence of other rules more or less restrictive than the TVWF Directive

Danish law is in compliance with the general requirements to the content of advertisements, including teleshopping, laid down in the Directive (Article 12). However, Danish law lays down further general requirements and is therefore more restrictive than the Directive (e.g. employees and advertisement, references,...).

- Identification of specific rules not included in the Directive (or rules going further than the rules foreseen in the Directive)
 - Principles of lawfulness, decency, honesty, truthfulness, social responsibility, etc.
 - Rules related to employees of the broadcaster appearing in advertisements
 - Danish rules related to violent behaviour are more precise and detailed than in the directive. Danish rules related to safety are more precise and detailed than in the directive.
 - Danish rules explicitly prohibit discrimination on the basis of age.
 - Danish rules stipulate that should the use of a product require certain safety precautions, this must be stated in the advertisement
 - Rules related to references made to people without these people's prior consent

IX. Specific products and targets

The Danish rules on advertisements, teleshopping, sponsorship and other advertising forms of specific products and targets are set out in the Danish Radio and Television Broadcasting Act, Act no. 1052 of 17 December 2002 (the "Act") and rules issued in pursuance thereof, in particular the Danish Executive Order on Radio and Television Advertising and Programme Sponsorship, Order no. 194 of 20 March 2003 (the "Executive Order"). Guidance can also still be found in the Joint Standards from the Nordic Consumer Ombudsmen for Television Advertising of August 1991.

The provisions in the Act and the Executive Order on advertising for specific products and targets are supplemented by the specific regulation on tobacco, medicinal products and health services, alcoholic beverages, minors etc. set out below.

a. Regulations

- Tobacco products (Articles 13 and 17, 1 TVWF Directive)

Since 1 January 2002 any kind of advertising, including teleshopping, of tobacco products and sponsoring of programmes by businesses whose principal activity is the manufacture or sale of tobacco has been prohibited as a clear general rule, cf. the Danish Act on Prohibition of Tobacco Advertising etc. (Act No. 492 of 7 June 2001)(// art 13 TVWF Directive).

Nor may products which are mainly used in connection with the smoking of tobacco be advertised or programmes sponsored by businesses whose principal activity is the manufacture and sale of other products which are mainly used in connection with smoking, cf. Sections 76 and 83 of the Act, Article 16 of the Executive Order and the Act on Prohibition of Tobacco Advertising etc.

Although there are some exceptions to the prohibition, they do not concern television advertising.

Any kind of television advertising, including teleshopping, of tobacco products or products mainly used in connection with smoking are prohibited. Sponsoring by businesses whose principal activity is the manufacture of such products is also prohibited. Accordingly, Danish law is **in conformity** with the Directive as far as advertising of tobacco and sponsoring tobacco businesses is concerned. Danish law is **more restrictive** than the Directive with respect to advertising of ancillary products and sponsoring by businesses manufacturing and selling ancillary products.

- Medicines (Article 14 TVWF Directive) : Examination of the specific and/or restrictive rules related to medical products (advertising, teleshopping, sponsorship and other advertising forms)

Section 76(2) of the Act and Article 14 of the Executive Order provide that advertisements for medicinal products and healthcare services are permitted subject to the provisions of the Danish Medicinal Products Act (Act no. 656 of 28 July 1995, as amended) and the Danish Act on Advertisement of Healthcare Services (Act no. 326 of 6 May 2003).

Medicinal Products

Section 27 of the Medicinal Products Act provides that medicinal products on prescription may not be advertised to the general public. Television advertising – including teleshopping – of medicinal products on prescription is thus prohibited (// art 14.1 TVWF Directive).

There is no specific prohibition in Danish law against teleshopping for medicinal products which are the subject of a marketing authorisation within the meaning of Council Directive 65/65/EEC of 26 January 1965. The above prohibition of television advertising of medicinal products on prescription includes teleshopping. Advertising, including teleshopping, of medicinal products not on prescription (OTC products) is permitted subject to certain restrictions (≠ art 14.2 TVWF Directive).

Sponsoring by businesses whose activities include the manufacture or sale of medicinal products may not take place in such a way as to encourage the use of medicinal products on prescription, cf. Article 26(2) of the Executive Order (// art 17.3 TVWF Directive).

Apart from the fact that Danish law permits teleshopping of medicinal products not on prescription subject to certain restrictions, Danish law is **in compliance** with the Directive (Articles 14 and 17) in this respect.

Healthcare Services

Any kind of advertisement of healthcare services on television, including teleshopping and sponsoring, is prohibited, cf. Section 2(5) of the Danish Act on Advertisement of Healthcare Services.

Danish law is **in compliance** with the Directive (// Articles 14 and 17) in this respect.

In addition, advertisements for alcoholic beverages, medicinal products not on prescription and dietary supplements may not be placed *in connection with* programmes directed at minors, cf. Article 6 of the Executive Order.

- Alcoholic beverages (Article 15 TVWF Directive)

Article 13 of the Executive Order provides the following with respect to advertisements, including teleshopping, for alcoholic beverages. Such advertisements may not:

- Be directed at minors, and especially not show minors drinking alcohol;
- Associate the consumption of alcohol with improved physical performance or driving;
- Create the impression that the consumption of alcohol promotes success in the social or sexual area;
- Suggest that alcohol has any therapeutic properties, stimulating or sedating effect, nor that it may be used to solve personal conflicts;
- Incite to excessive consumption of alcohol or present temperance or moderation in a negative light; and
- Attach particular importance to a high alcohol content as a positive quality in the beverage.

(// art 15 TVWF Directive)

Danish law is **in compliance** with the Directive, which lays down a number of requirements as to alcoholic beverage advertising. No additional requirements apply to the sponsoring of programmes by businesses manufacturing or selling alcoholic beverages. Danish law is **in compliance** with the Directive with respect to sponsoring as well.

In addition, advertisements for alcoholic beverages, medicinal products not on prescription and dietary supplements may not be placed *in connection with* programmes directed at minors, cf. Article 6 of the Executive Order.

- Minors (Article 16 TVWF Directive)

Articles 17 through 24 of the Executive Order set out a number of requirements as to the protection of minors:

Mentally or morally detrimental effect - Exploitation - Undermining

Advertisements directed at minors may not be presented in such a manner as to have a mentally or morally detrimental effect on such minors, nor may they be presented in such a manner as to exploit the natural credulity and loyalty of minors or their special confidence in parents, teachers or others. Also, they may not undermine such persons' authority and responsibility (// art 16.a, c TVWF Directive)

Dangerous situations

Advertisements may not unnecessarily show minors in dangerous situations, or encourage or incite minors to stay in or enter dangerous areas, use dangerous products or generally put themselves in dangerous situations (// art 16.d TVWF Directive).

Persuasion

Advertisements may not directly appeal to minors to persuade others to buy the advertised product, or promise them prizes as a reward for winning new purchasers (// art 16.b TVWF Directive).

Undermining of social values

Advertisements may not undermine social values, e.g. by conveying the impression that the possession, use or consumption of a product in itself will give minors physical, social or other psychological advantages over other minors, or that the failure to own, use or consume such a product may have the opposite effect. Also, advertisements may not be designed to give minors the impression that their failure to own, use or consume the relevant product will in any way make them less privileged than other minors, or expose them to contempt or ridicule (goes further than the TVWF Directive).

Misleading advertisement - Indications

- Particular care must be taken to ensure that advertisements will not mislead minors as to the size, value, type, durability or performance of the advertised product.
- Advertisements for toys must give a clear indication of the toy's actual size. Where the use or the shown or described result of the product requires an extra attachment (e.g. batteries), this must be clearly indicated. Where a product forms part of a series, this must be clearly indicated.
- Statements of price may not give minors an unrealistic idea of the value of the product, e.g. by using the word "only". No advertisement may suggest that the advertised product is easily affordable by any family.
- Advertisements must indicate the degree of skill required to use the product. Where the result of the use of the product is shown or described, the result presented in the advertisement must be reasonably achievable by an average viewer in the age group for which the product is designed.

Figures, puppets, etc.

- Figures, puppets and similar characters forming an important and regular element in the broadcasting company's programmes directed at children under the age of 14 may not appear in advertisements broadcast by that company for products of particular interest to children under the age of 14.
- Persons affiliated with the broadcasting company's programmes directed at children under the age of 14 may not appear in advertisements

broadcast by that company for products of special interest to children under the age of 14.

Advertisements for chocolate, sweets, soft drinks, snacks, etc.

- Advertisements for chocolate, sweets, soft drinks, snacks and similar products may not indicate that the product may replace regular meals.

Appearance of children in television advertisements

- Children under the age of 14 may appear in television advertisements only where such appearance is either a natural element of the depicted environment or necessary in order to explain or demonstrate the use of products associated with children.
- Children under the age of 14 may not recommend or provide testimonials endorsing products or services of any kind.

Danish law lays down a number of requirements as to the protection of minors that are additional to those set out in the Directive.
Danish law does not repeat the prohibition against encouraging minors to enter into purchase or rental contracts for products or services in connection with teleshopping, but the same result follows from an interpretation of the general restrictions on advertising directed at children.

Insertion of advertising and teleshopping spots *within* programmes is only allowed to the extent set out above (see III, A). In addition, advertisements for alcoholic beverages, medicinal products not on prescription and dietary supplements may not be placed *in connection with* programmes directed at minors, cf. Article 6 of the Executive Order.

Article 26(5) of the Executive Order provides that the sponsor's name at the beginning and/or end of the programme may appear as moving images containing the sponsor's name and/or trademark (logo). However, this does not apply where the programme is directed especially at children, in which case the sponsor's name and/or logo is required to appear as non-moving images. The sponsor's name and/or trademark (logo) may in no event be accompanied by a special sound background associated with the sponsor or its products.

The Directive is silent on these restrictions on the content of the message and Danish law is thus more restrictive than the Directive in this respect.

- Other product/services categories subject to a specific regime

Employers' organisation/ trade unions - Religious movements - Political parties

Advertisements for employers' organisations or trade unions or for religious movements or political parties are not allowed on television, cf. Section 76(3) of the Act and Article 15 of the Executive Order.

b. Conclusion

- Emphasis placed upon the existence of other rules more or less restrictive than the TVWF Directive

The Danish law complies with the Directive on following point :

- Prohibition on tobacco advertising (art. 13 and 17, 2 TVWF Directive)
 - Apart from the fact that Danish law permits teleshopping of medicinal products not on prescription subject to certain restrictions, Danish law is **in compliance** with the Directive (Articles 14 and 17) in this respect
 - Rules related to alcoholic beverages (advertising and sponsoring)
 - Rules related to minors : Mentally or morally detrimental effects, exploitation, undermining, persuasion
-
- Identification of specific rules not included in the Directive (or rules going further than the rules foreseen in the Directive)
 - Rules related to minors: the rules concerning minors in dangerous situations are more detailed in Danish law, concerning the undermining of social values, misleading advertisement and indications, specific rules related to puppets and figures, rules related to advertisement for chocolate, sweet, soft drinks and snacks, rules concerning the appearance of children in television advertisements, rules regarding the sponsoring of children's programme, etc...
 - Rules related to the advertising of employer's organisation, trade unions, religious movements and political parties, which are all prohibited from any advertising.

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