



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

ESTONIA

LEGAL REPORT

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Introduction

Advertising, teleshopping and sponsorship issues are regulated by two legal acts in the Republic of Estonia: the Broadcasting Act (*Ringhäälinguseadus*) and the Advertising Act (*Reklaamiseadus*).

The Advertising Act provides for a monetary fine to ensure administrative liability for any violation of the Advertising Act.

The Broadcasting Act provides for a monetary fine to ensure administrative liability for any violation of the Broadcasting Act.

The Broadcasting Act (*Ringhäälinguseadus*) was passed on 19 May 1994 and it entered into force on 15 June 1994; amended during the period from 1994 to 2004 by 25 Acts. The most recent amendments entered into force on 8 January 2004.

The Advertising Act (*Reklaamiseadus*) was passed on 11 June 1997 and it entered into force on 1 January 1998; amended during the period from 1999 to 2002 by 7 Acts. The most recent amendments entered into force on 9 September 2002.

The rules provided for in Chapter IV of the TVWF Directive have been fully laid down in the said Acts. No other laws or lower ranking legal acts have been imposed in the Republic of Estonia in this sphere.

Keeping in mind Chapter IV of the TVWF Directive and as compared to the provisions of the Advertising Act and Broadcasting Act, the Consumer Protection Act (*Tarbijakaitseadus*) regulates offering and selling a product or service to the consumer or otherwise marketing the same by the trader in general. The Consumer Protection Act does not contain any special norms in the field covered by Chapter IV of the TVWF Directive. In relation to the relevant provisions of the Advertising Act and Broadcasting Act, the Consumer Protection Act directly provides a basis for conducting legal proceedings in case of any misdemeanours committed in the advertising business (irrespective of place and method, incl. by a broadcasting organisation).

According to the information received from the Ministry of Culture (*Kultuuriministeerium*) and Ministry of Economic Affairs and Communications (*Majandus- ja Kommunikatsiooniministeerium*), who govern this sphere of business, no legal acts ranking lower than a law have been imposed that pertain to the sphere regulated by the TVWF Directive.

Supervision

Supervision of advertising shall be exercised by the agencies designated by the Government of the Republic on the bases, pursuant to the methods, and to the extent established by the Advertising Act and other legislation.

In case of any breach of the rules of the Advertising Act or Broadcasting Act herein described that may be deemed as a matter of misdemeanour, the body to conduct extra-judicial proceedings shall be either the Consumer Protection Board (*Tarbijakaitseamet*), the Agency of Medicines (*Ravimiamet*), or the Ministry of Culture (*Kultuuriministeerium*).

There are three courts in the judicial system of the Republic of Estonia.

Decisions of the Supreme Court (*Riigikohus*) as the court of highest instance and of the Circuit Courts as the courts of second instance are publicly available via the Internet.

No practice of the Supreme Court (*Riigikohus*) of application of the rules described in this summary exists.

Only one case of administrative offence has been discussed during the period from 1998 to 2003 by a court of first instance (the Tallinn City Court – *Tallinna Linnakohus*) and a court of second instance (the Criminal College of the Tallinn Circuit Court – *Tallinna Ringkonnakohtu kriminaalkolleegium*) (Judgement of 18 February 2002 No. 2-4/72 of the Criminal College of the Tallinn Circuit Court).

**Circumstances of the above judicial dispute were briefly as follows: the Consumer Protection Board (*Tarbijakaitseamet*) drew up an administrative offence report (the current valid term instead of ‘administrative offence’ is ‘misdemeanour’) against the Estonian Television Company (*Eesti Televisioon*), pointing out that the Estonian Television Company had violated the Advertising Act by advertising on two separate days, a strong alcoholic beverage before, in the middle and after a programme that was broadcast before 9 p.m. (advertising was not prohibited for the Estonian Television Company until 1 July 2002), and requiring the Estonian Television Company to stop broadcasting that was in conflict with the Advertising Act. The Estonian Television did not meet the said precept., claiming that this was not advertising but sponsorship, as the trademark “Saaremaa vodka” did not demonstrate, explain or give an evaluation of the characteristics of a product or of a service. Both the court of first instance and the court of second instance took the position that the trademark “Saaremaa vodka” stood for a product, a strong alcoholic beverage, and did not stand for an undertaking that was a sponsor of the programme. The circumstance that the trademark did not demonstrate, explain or give an evaluation of the characteristics of a product or of a service was irrelevant according to the court’s opinion, as the definition of advertising provided for in the Advertising Act did not relate the treating of any information transmitted as advertising exclusively with demonstration, explanation or giving an evaluation of the characteristics of a product or of a service; advertising may be presented for the purpose of achievement of a desired result in any sphere.

The court fined the Estonian Television Company 80,000 Estonian kroons.

According to our information no more court disputes on advertising, teleshopping or sponsorship have taken place in Estonia.

Several precepts have been given to television organisations by the Consumer Protection Board (*Tarbijakaitseamet*), which is the institution responsible for conducting extra-judicial proceedings pertaining to violations of the Advertising Act. According to the information from the Consumer Protection Board no significant and essential violations of the Advertising Act by the television organisations have occurred during recent years.

According to the information from the Ministry of Culture (*Kultuuriministeerium*), the institution responsible for supervision, it has not dealt with any violations of the provisions of the Broadcasting Act regulating advertising, teleshopping and sponsorship.

I. Definitions

- Television broadcasting

“Broadcasting” – means the transmission over the air (including by satellite) or via a cable network, in unencoded or encoded form, of radio or television programme services intended for reception by the public with commonly used receivers (Broadcasting Act Section 2) (// art. 1 TVWF Directive)

- Broadcaster

“Broadcaster” (a radio or television broadcaster) - means an undertaking, a non-profit association, foundation or legal person [this definition does not include “natural person”] in public law which has editorial responsibility for the composition of one or several programme services and which broadcasts the programmes or has broadcast them (Broadcasting Act Section 5) (± art. 1 TVWF Directive)

- Television advertising

“Advertising in broadcasting” (radio or television advertising) – means an announcement in the form of sounds, images or a collection thereof broadcast in return for a payment with the objective of achieving certain consumer behaviour in the interests of a person or a group of persons through the demonstration, explanation or evaluation of the characteristics of a product or service (Broadcasting Act Section 14 Subsection 1). The definition does not contain broadcasts for self-promotional purposes. (± art. 1 TVWF Directive)

“Advertising in general” – means an information which is made public for the purpose of increasing the sale of products or services, promoting an event or idea, or achieving other desired results in other areas and which an advertiser broadcasts for a fee or other consideration is deemed to be advertising (Advertising Act Section 2 Subsection 1) (cfr EC Directive on misleading advertising).

- Surreptitious advertising

“Surreptitious advertising” – advertising which, regardless of the manner or means of publication and, given ordinary attention by the public, is not readily recognised as advertising or is not readily separated from other information published simultaneously in the same advertising medium is deemed to be surreptitious advertising (Advertising Act Section 8 Subsection 1). (The definition is broader, more general than TVWF Directive; ± art. 1 TVWF Directive)

- Sponsorship

“Sponsorship” – means direct or indirect financial support to a programme or programme service of a broadcaster by a person [whether public or private] not engaged in the activities of the broadcaster or in the production of audiovisual work, with a view to promoting the person’s name, trade mark, reputation, activities or products (Broadcasting Act Section 20 Subsection 1) (// art. 1 TVWF Directive)

- Teleshopping

“Teleshopping” – means a special form of advertising, the objective of which is offering goods or services for sale. The forms of teleshopping are teleshopping spots and teleshopping windows (Broadcasting Act Section 14 Subsection 2). Unlike the Directive, the Estonian regulation makes the distinction between teleshopping spots and teleshopping windows in the definition itself (≠ art. 1 TVWF Directive)??

- Any other legal definitions relevant for the analysis:

“A programme” – is information broadcast as a signal during a specified period of time in the form of sound, text, images or a collection thereof which can be received with commonly used receivers (Broadcasting Act Section 4 Subsection 1)

“A programme service” – is a set of intentionally ordered programmes transmitted in specific channels or frequencies. A programme service shall have its own name, which shall be broadcast at least twice in every twenty-four hours, including at the beginning and at the end of a broadcast day (Broadcast Act Section 4 Subsection 2)

The Estonian Television Company (*Eesti Televisioon*) – is the legal person in public law who performs the functions of public television organisations on the basis of the Broadcasting Act

“Offensive advertising” – an advertisement is offensive if it is contrary to good morals and customs, calls on people to act unlawfully or to violate prevailing standards of decency, or if it contains such activities (Advertising Act Section 5 Subsection 1)

“Denigratory advertising” – advertising which directly or by implication degrades or in some other manner denigrates a person, activity, area of activity, product, service, business activity or anything else published in advertising is deemed to be denigratory (Advertising Act Section 6 Subsection 1)

- **Conclusion**

Some of the above mentioned definitions have been given the same wording in the national legislation as in the TVWF Directive (e.g. broadcasting, sponsorship).

Definitions of ‘broadcaster’ and ‘television advertising’ have been presented in different wording in the national legislation, although they are the same in their essence as the corresponding definitions laid down in the TVWF Directive.

The definition of ‘surreptitious advertising’ is much broader and more general than the one in Article 1 of TVWF Directive. This broader and more general definition of the term enables the term to be applied in practice to techniques that are not explicitly named in the Directive.

Definition of ‘teleshopping’ partly coincides with the corresponding wording in the Directive, although, in addition, the difference between teleshopping spots and teleshopping windows has also been clarified in the definition itself.

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

a. Regulations

There are differences between the types of broadcasters:

1.

The Estonian Television (*Eesti Televisioon*), as the public service broadcaster, does not broadcast advertising or teleshopping.

The Estonian Television (*Eesti Televisioon*) has the right to broadcast advertising and information concerning sponsors if such advertising and information accompany the broadcasting right to events acquired through the European Broadcasting Union (EBU) (Broadcasting Act Section 29¹ Subsection 3).

The Ministry of Culture may, on the basis of a specific reasoned request of the Broadcasting Council, permit the Estonian Television Company to broadcast advertising and information concerning sponsors in addition to the advertising and information specified in Subsection (3) of this Section, if such advertising and information accompany broadcasting rights to events which are of major importance for the society (Broadcasting Act Section 29¹ Subsection 4).

The Estonian Television (*Eesti Televisioon*) has the right to broadcast, to the extent and pursuant to the procedure established by the Broadcasting Council and free of charge, announcements of general interest concerning non-profit public events and charity events in Estonia and appeals of social character (Broadcasting Act Section 29¹ Section 6).

The above provisions for the Estonian Television Company entered into force on 1 July 2002.

2.

For other types of broadcasters, the following will apply :

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

Advertising and teleshopping shall be kept separate from other parts of the programme service and be readily recognisable in the programme service in the form of sounds, images or a collection thereof (Broadcasting Act Section 15 Subsection 1)¹ (// art. 10.1 TVWF Directive).

¹ The requirements provided for in Section 15 Subsections (3)–(6) Broadcasting act shall extend to the broadcasting of advertising and teleshopping in addition to the requirements provided for in the Advertising Act. Subsections 3–6 of Section 15 referred to lay down rules that have been specified in Articles 10, 14, 15, and 16 of the TVWF Directive.

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

The content, design and presentation of advertising shall be such that, given ordinary attention by the public, it is recognised as advertising. Advertising shall contain clearly distinguishable information concerning the advertiser. Such information shall be contained in an advertisement as text or conveyed by a trademark registered in Estonia (Advertising Act Section 3 Subsections 1 and 2). (+ art. 10 TVWF Directive)

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

Isolated advertising and teleshopping spots are allowed as exceptions (Broadcasting Act Section 16 Subsection 1). (// art. 10.2 TVWF Directive)

- Prohibition of the use of "subliminal techniques"

Television advertising and teleshopping shall not use subliminal techniques (// art. 10.3 TVWF Directive);

- Prohibition of surreptitious advertising and teleshopping

Advertising which, regardless of the manner or means of publication and, given ordinary attention by the public, is not readily recognised as advertising or is not readily separated from other information published simultaneously in the same advertising medium is deemed to be surreptitious advertising. Surreptitious advertising is prohibited (Advertising Act Section 8 Subsections 1 and 2) (// art. 10.4 TVWF Directive).

b. Conclusion

- Emphasis placed upon the existence of other rules restrictive to a greater or lesser degree than the TVWF Directive

The Broadcasting Act and Advertising Act comply with Article 10 of the TVWF Directive and have been harmonised with said Directive.

No special rules or more specific requirements have been imposed in any spheres not regulated by the Directive.

For the Estonian Television Company (*Eesti Televisioon*) advertising and teleshopping is prohibited since 1 July 2002 (See advertising and teleshopping – differences between types of broadcasters).

- Identification of specific rules not included in the Directive

Non applicable.

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

a. Regulations

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

Advertising and teleshopping spots should be placed between programmes or parts of programmes; if this is not possible, the Broadcasting Act grants options for breaking the programme for advertising and teleshopping spots (// 11, 1 TVWF Directive)

Advertising or teleshopping shall not be transmitted immediately prior to or following a broadcast of a religious service in a programme service (Broadcasting Act Section 16 Subsection 4). (≠ art. 11, 5 TVWF Directive, more restrictive)

- Examination of the rules relating to the insertion of advertising and teleshopping spots within programmes

If a television programme does not consist of autonomous parts, advertising and teleshopping spots may be inserted during the programme unless this prejudices the integrity of the programme or the interests of the holder of rights to the programme, and there shall be at least twenty minutes between each interruption (Broadcasting Act Section 16 Subsection 2) (// art. 11,4 TVWF Directive). Unlike the Directive, for the interruption, the Estonian regulation does not take into account the value of the programme, the natural breaks, the duration and the nature of the programme.

The transmission of feature films and films made for television (excluding serials, documentaries and light entertainment programmes), provided that their duration is more than 45 minutes, may be interrupted for advertising and teleshopping spots once for each period of 45 minutes. A further interruption is allowed if their duration is at least 110 minutes (Broadcasting Act Section 16 Subsection 3) (// art. 11, 3 TVWF Directive).

Unlike the Directive, the Estonian regulation does not take into account the interruption of a programme consisting of autonomous parts or sport programme (≠ Directive TVSF).

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

Advertising or teleshopping shall not be inserted in any broadcast of a religious service (Broadcasting Act Section 16 Subsection 4) (// TVWF Directive).

News and current affairs programmes, children's programmes and documentaries shall not be interrupted by advertising or teleshopping, if their duration is less than 30 minutes (Broadcasting Act Section 16 Subsection 5) (// art. 11, 5 TVWF Directive).

b. Conclusion

- Emphasis placed upon the existence of other rules restrictive to a greater or lesser degree than the TVWF Directive

Advertising or teleshopping prior to, following and within a broadcast of a religious service is prohibited, which is more restrictive than the TVWF Directive. For the rest, provisions of the Broadcasting Act comply with Article 11 of the TVWF Directive and have been passed on the basis of the said Directive, except for the following:

- There is no provision regarding the interruption of programmes consisting of autonomous parts, or in sports programmes and similarly structured events and performances containing intervals (article 11.2 Directive);
- There is no provision requiring a period of at least 20 minutes to elapse between each successive advertising break within the programme (article 11.4 Directive).

Therefore, it might be said that the Estonian regulation is less restrictive than the Directive regarding these issues.

- Identification of rules not included in the Directive

Non applicable.

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 to other forms of advertising (20% in the TVWF Directive)

The amount of advertising and teleshopping spots in the programme service of a broadcaster shall not exceed 20% of the daily transmission time of the programme service (Broadcasting Act Section 17 Subsection 1). This provision does not specify “with the exception of teleshopping windows”, but remains close to art. 18, 1 TVWF Directive) (// art. 18, 1 TVWF Directive).

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

The amount of advertising shall not exceed 15% of the daily transmission time of a programme service (Broadcasting Act Section 17 Subsection 1) (// 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)

The amount of advertising and teleshopping spots shall not exceed twelve (12) minutes per hour (Broadcasting Act Section 17 Subsection 2). (// art. 18, 2 TVWF Directive)

- Examination of the other possible quantitative restrictions

Non applicable

- Examination of the factors that should and factors that should not be taken into account for the calculation of advertising time

Advertising does not include:

- 1) announcements made by a broadcaster in connection with its own programme services and ancillary products derived therefrom;
- 2) public service announcements broadcast free of charge;
- 3) charity appeals
(Broadcasting Act Section 17 Subsection 4) (// 18, 3 TVWF Directive).

b. Conclusion

- Emphasis placed upon existence of other rules restrictive to a greater or lesser degree than the TVWF Directive

Provisions of the Broadcasting Act comply with Article 18 of the TVWF Directive and have been passed on the basis of said Directive.

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

No special rules or more specific requirements (for example special tax for advertising, ceiling for maximum annual advertising profits etc.) have been imposed in any spheres not regulated by the Directive.

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)

A teleshopping window shall be of a minimum uninterrupted duration of 15 minutes (// art. 18 bis TVWF Directive).

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

The maximum number of teleshopping windows per day shall be 8 (Broadcasting Act Section 17 Subsection 3) (// art. 18 bis TVWF Directive).

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

The overall duration of teleshopping windows shall not exceed three hours (Broadcasting Act Section 17 Subsection 3) (// art. 18 bis TVWF Directive).

b. Conclusion

- Emphasis placed upon the existence of other rules restrictive to a greater or lesser degree than the TVWF Directive

Provisions of the Broadcasting Act comply with Article 18 bis of the TVWF Directive and have been passed on the basis of said Directive.

- Identification of specific rules not included in the Directive, for instance rules aimed at the reduction of teleshopping programmes

No special rules or more specific requirements (for example special tax for advertising, ceiling for maximum annual advertising profits etc.) have been imposed in any spheres not regulated by the Directive.

VI. Sponsoring (Article 17 TVWF Directive)

DIFFERENCES BETWEEN THE TYPE OF BROADCASTERS :

Estonian public television

The Estonian Television Company (*Eesti Televisioon*) is not allowed to use sponsors in the acquisition production and transmission of their programmes and programme services (Broadcasting Act Section 29¹ Subsection 2).

The Estonian Television Company (*Eesti Televisioon*) has the right to broadcast advertising and information concerning sponsors if such advertising and information accompany the broadcasting right to events acquired through the European Broadcasting Union (EBU) (Broadcasting Act Section 29¹ Subsection 3).

The Ministry of Culture may, on the basis of a specific reasoned request of the Broadcasting Council, permit the Estonian Television (*Eesti Televisioon*) to broadcast advertising and information concerning sponsors in addition to the advertising and information specified in Subsection (3) of Section 29¹, if such advertising and information accompany the broadcasting rights to events which are of major importance to society (Broadcasting Act Section 29¹ Subsection 4).

Unless otherwise provided by the broadcasting rights specified in Subsections (3) and (4) of Section 29¹ of the Broadcasting Act, the information concerning sponsors accompanying broadcasting rights to events broadcast in the programme services of the Estonian Television Company (*Eesti Televisioon*) shall contain the names of sponsors without any logo or trademark and without any audiovisual background.

The above provisions for the Estonian Television entered into force on 1 July 2002.

Other broadcasters

a. Regulations

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

Sponsors shall not influence the content of programmes or scheduling of a programme service (Broadcasting Act Section 20 Subsection 3). Estonian law remains silent about “editorial independence” of the broadcaster. (± art. 17 TVWF Directive)

In addition to the provisions of Article 10 of the TVWF Directive, the Broadcasting Act lays down a rule under which persons who commission advertising or teleshopping shall not influence the content of programmes or scheduling of a programme service (Broadcasting Act Section 18).

- Sponsor identification

Sponsored programmes or programme services shall be clearly identified as such by the name or trade mark or both the name and the trade mark of the sponsor (...) (Broadcasting Act Section 20 Subsection 2) (// art. 17 1 b TVWF Directive).

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

Sponsored programmes or programme services shall be clearly identified as such by the name or trade mark or both the name and the trade mark of the sponsor at the beginning or end or both at the beginning and at the end of the programmes or programme services (Broadcasting Act Section 20 Subsection 2) (// art. 17 1 b TVWF Directive).

Programmes shall not be sponsored by persons whose principal activity is the manufacture or sale of tobacco products (Broadcasting Act Section 20 Subsection 4) (// art. 17, 2 TVWF Directive).

- Identification of programmes that cannot be sponsored

News and current affairs programmes shall not be sponsored (Broadcasting Act Section 20 Subsection 5) (// 17, 4 TVWF Directive)

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

Promotional references to products or services of a sponsor during a programme are prohibited (Broadcasting Act Section 20 Subsection 2) (// 17, 1 c TVWF Directive).

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

There are no specific provisions on this issue. Subsection 1 of Section 20 of the Broadcasting Act provides that the name or trade mark or both the name and trade mark of the sponsor shall be clearly identified at the beginning or end or both at the beginning and end of the programmes or programme services. But nothing is said about duration as such.

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

There are no rules limiting the volume of sponsorship.

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

According to Section 20 Subsection 2 of the Broadcasting Act, promotional references to products or services of a sponsor are prohibited during a programme.

There are no other specific regulations on those issues.

b. Conclusion

- Emphasis placed upon the existence of other rules more restrictive to a greater or lesser degree than the TVWF Directive

Provisions of the Broadcasting Act correspond to Article 17 of the TVWF Directive and have been passed on the basis of said Directive, while no provision targets expressly the "editorial independence" of the broadcaster.

- Identification of specific rules not included in the Directive, in particular rules aimed at the reduction of teleshopping broadcast (special tax on advertising, ceiling for maximum annual advertising profits, etc.)

Special rules have been imposed on the Estonian Television Company as the broadcaster in public law, while sponsorship of its programmes is generally prohibited, except for some exceptions (See Sponsoring – differences between types of broadcasters).

No special rules or other more specific requirements have been imposed in any spheres not regulated by the Directive.

There is no regulation that would require any special reference to the sponsor of a programme to differentiate the sponsor from an advertiser of a product or trademark. Presentation of a sponsor has so far been performed in strict compliance with provisions of the Broadcasting Act regulating sponsorship and on the bases of provisions that define placement of advertising, i.e. between programmes or parts of programmes (no disputes or precepts whatsoever on this matter have occurred in practice). A sponsor must clearly present his/her/its name or trademark or both at the beginning or end or both at the beginning and end of the programmes or programme services. (Section 16 and Section 20 of the Broadcasting Act).

VII. New advertising techniques

- **Split screens**
 - Authorisation or prohibition of the use of this technique: Non applicable
 - Examination of the conditions of use: Non applicable
 - Examination of the specifics rules relating to insertion and volume: Non applicable
 - Existence of a prohibition to use the technique between or within certain programmes: Non applicable.
- **Interactive advertising**
 - Authorisation to use this technique or not: Non applicable
 - Examination of the conditions of use: Non applicable
 - Examination of the specific rules relating to insertion and volume: Non applicable
 - Existence of a prohibition to use the technique between or within certain programmes: Non applicable
- **Virtual advertising**
 - Authorisation or prohibition of the use of this technique: Non applicable
 - Examination of the conditions of use: Non applicable
 - Examination of the specific rules relating to insertion and volume: Non applicable
 - Existence of a prohibition to use the technique between or within certain programmes: Non applicable
- **Other new advertising techniques: non existant**
- **Conclusion**

Use of such new advertising techniques has been launched, although currently we there is no extensive application of such techniques. No specific regulation exists regarding new advertising techniques. There are no relevant decisions of the national media authority. This sphere is currently not legally regulated.

A special workgroup at the Ministry of Economic Affairs and Communications has been formed, which has commenced the process of development of a new Advertising Act. The process of development of the draft Advertising Act is still in its initial stage and no draft Act has been publicised yet, and therefore we cannot give any overview of the draft. But it may be assumed that the new Act may also regulate conditions of application of new advertising methods and give relevant definitions. If necessary, it will be theoretically possible to make relevant simultaneous amendments in the Broadcasting Act when the new Advertising Act is adopted.

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

a. Regulations

- Indication of the rules relating to the content of commercial messages:

Television advertising and teleshopping shall not cause behaviour prejudicial to health or safety, or encourage behaviour prejudicial to the protection of the environment (Broadcasting Act Section 15 Subsection 4 clause 1) (//articles 12. d et e TVWF Directive).

The Advertising Act defines such terms as “offensive advertising” and “denigratory advertising”. Both offensive advertising as well as denigratory advertising are prohibited (Advertising Act Section 5 Subsection 1; Section 6 Subsection 2).

According to Advertising Act Section 5 an advertisement is offensive if it is contrary to good morals and customs, calls on people to act unlawfully or to violate prevailing standards of decency, or if it contains such activities (Subsection 1).

An advertisement is considered offensive in particular if the advertisement:

- 1) presents, incites or endorses discrimination on the grounds of nationality, race, colour, sex, age, language, origin, religion, political or other opinions, and financial or social status or other circumstances (goes further than article 12.b TVWF Directive);
- 2) calls on people to behave violently or incites violent behaviour in order to achieve an objective or in choosing the manner in which to achieve an objective;
- 3) degrades lawful behaviour or directly or indirectly justifies violation of the law as a means of achieving an objective;
- 4) plays on superstition, fear or sympathy;
- 5) contains any direct statement or visual presentation regarding a sexual act, inappropriate nudity or socially unacceptable sexual behaviour; or
- 6) presents false information concerning other persons, their products or services, or other facts.

According to Advertising Act denigratory advertising means advertising which directly or by implication degrades or in some other manner denigrates a person, activity, area of activity, product, service, business activity or anything else published in advertising, is deemed to be denigratory (Section 6 Subsection 1).

In general, television advertising and teleshopping shall not use the voice or image of a person who appears as an announcer in a news programme or as a presenter or commentator in programmes of current affairs and problems (Broadcasting Act Section 15 Subsection 3).

The above points are globally more specific than art. 12 of the TVWF Directive.

b. Conclusion

- Emphasis placed upon the existence of other rules restrictive to a lesser or greater degree than the TVWF Directive

As compared to the provisions of Article 12 of the Directive, the Advertising Act (Sections 5 and 6) provides for more precise regulation, particularly where it specifically defines cases encompassed by the terms offensive advertising and denigratory advertising by providing non-exhaustive lists of such cases.

To make the idea of Article 12 of the TVWF Directive more comprehensible and applicable in practice, the provisions have been further developed in Estonian legislation. These provisions must not be understood as any specific rules that are not included in the Directive but as pointing out such activities that may be deemed as prejudice to human dignity, discrimination on the grounds of race, sex or nationality, offensive to religious or political beliefs, encouragement of any behaviour that is prejudicial to health and safety, encouragement of any behaviour that is prejudicial to the protection of environment (the two latter provisions—Section 15 of the Broadcasting Act).

- Identification of specific rules not included in the Directive

A person's privacy and property Section 7 of the Advertising Act lays down the following rules : A producer of advertising shall not use visual images which portray or refer by name to any natural person without the prior permission of that person (Subsection 1).

Unless prior permission from the owner has been obtained, property shall not be used in advertising and shall not be referred to in a way likely to convey the impression of a personal endorsement (Subsection 2).

Producers of advertising shall observe the provisions of the Copyright Act in the production of advertising (Subsection 3).

The use of the design of banknotes and coins issued by the Bank of Estonia in advertising is permitted only with the prior consent of the Bank of Estonia (Subsection 4).

IX. Specific products and targets

a. Regulations

- Tobacco products (Articles 13 and 17 TVWF Directive) : Examination of the specific and/or restrictive rules relating to tobacco products (advertising, teleshopping, sponsorship and other forms of advertising)

Advertising of tobacco products is prohibited (Advertising Act Section 10 Subsection 1). The rule referred to applies to advertising of tobacco products by any method, in any form, and via any media. The rule also extends to teleshopping. The provisions of the Advertising Act shall extend to the broadcasting of advertising and teleshopping (Broadcasting Act Section 15 Subsection 2) (// art. 13 TVWF Directive)

Programmes shall not be sponsored by persons whose principal activity is the manufacture or sale of tobacco products (Broadcasting Act Section 20 Subsection 4) (// art. 13 TVWF Directive).

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

Estonian legislation contains more or less the same regulation as contained in the Directive 2001/83/CE of EU Parliament and Council of 6 november 2001 regarding the new european code on medicines for human use.

Definition: Medicinal products, proprietary medicinal products and semi-medicinal products as defined in the Medicinal Products Act (any substance intended for the prevention, diagnosis or treatment of a disease or disease symptom, for the relief of a disease condition in a human or animal, or for the restoration or correction of vital functions in a human or animal) are deemed to be medicinal products (Advertising Act Section 14 Subsection 1).

Advertising directed at persons who are qualified to prescribe medicinal products shall not be considered advertising of medicinal products as defined in this Act, for which requirements shall be prescribed by the Medicinal Products Act (Advertising Act Section 14 Subsection 2).

Advertising of medicinal products which are not registered in Estonia or which are distributed at a discount to the public or prescription medicinal products is prohibited (Advertising Act Section 14 Subsection 3).

Who is allowed to advertise: Only manufacturers of medicinal products may commission advertising of medicinal products (Advertising Act Section 14 Subsection 4).

Content: Advertising of medicinal products shall not mention the treatment of tuberculosis, sexually-transmitted diseases or any other serious infectious diseases, cancer or other terminal

diseases, chronic insomnia, diabetes or other metabolic illnesses (Advertising Act Section 14 Subsection 5).

Modalities : Advertising of a medicinal product shall:

- 1) be set out in such a way that it is clear that the message is an advertisement and that the product is a medicinal product;
- 2) be up-to-date, understandable, unambiguous, ensure the distinguishability of the medicinal product from other medicinal products and shall contain sufficient information for the correct and safe use of the medicinal product;
- 3) be in accordance with the summary of product characteristics approved by the Agency of Medicines at the time of registration;
- 4) include the name of the medicinal product, as well as the common names of the active ingredients which the medicinal product contains;
- 5) include an express, legible invitation to read carefully the instructions on the outer packaging or on the package leaflet and to consult a physician.
- 6) (Advertising Act Section 14 Subsection 6).

It is prohibited to use material in advertising of medicinal products which:

- 1) contains symbols of the state or local governments;
- 2) contains references to characters from film, television, entertainment, sports or other public figures or renowned physicians or scientists, or characters from cartoon animation or three-dimensional animation;
- 3) contains complicated terminology from specialised fields or unfounded opinions or assessments of the manufacturer concerning the properties or effectiveness of the medicinal products;
- 4) gives the impression that a medical consultation or surgical operation is unnecessary, by offering a diagnosis or by other comparable means;
- 5) suggests that the effects of taking the medicine are guaranteed, are unaccompanied by side effects or are better than, or equivalent to, those of another treatment or medicinal product;
- 6) suggests that the health of the subject can be enhanced only by taking the medicine;
- 7) suggests that the health of the subject could be affected by not taking the medicine;
- 8) is directed exclusively or principally at children or young people;
- 9) suggests that the medicinal product is a foodstuff, cosmetic or other consumer product;
- 10) suggests that the efficiency or safety of the medicinal product is due to the fact that it is natural;
- 11) could, by description or detailed representation of a case history, lead to an erroneous self-diagnosis;
- 12) refers, in improper, misleading or alarming terms, to claims of recovery;
- 13) uses, in improper or misleading terms, pictorial representations of changes in the human body caused by disease or injury, or of the action of a medicinal product on the human body or parts thereof;
- 14) mentions that the medicinal product has been granted a marketing authorisation.
- 15) (Advertising Act Section 14 Subsection 7).

According to Section 14 of the Advertising Act - only health care providers who act in accordance with the Health Services Organisation Act may advertise themselves as health care providers (Subsection 1).

The advertising of health services may include only the name, working time, place of business and speciality of the health care provider, the names, specialties and academic degrees of health care professionals, and the health services provided (Subsection 2).

The advertising of health services shall include the number of the activity licence of the health care provider (Subsection 3).

Restrictions for advertising

According to Section 14 Subsection 4 of the Advertising Act only manufacturers of medicinal products are allowed to advertise medicinal products (including in television).

This provision is restricted by Section 15 Subsection 6 of the Broadcasting Act as follows: Undertakings whose activities involve the provision of medical health services or the manufacturing or sale of medicinal products shall not advertise medical treatment or specific medicinal products which are available in Estonia only on prescription (// art. 14,1 TVWF Directive).

Teleshopping

Teleshopping for medicinal products as well as teleshopping for medical treatment is prohibited. (// art. 14, 2 TVWF Directive).

Sponsorship

Undertakings whose activities involve the provision of medical health services or the manufacturing or sale of medicinal products may sponsor television programmes or programme services for the promotion of their good name or reputation (Section 15 Subsection 6 of the Broadcasting Act). See the definition of and rules for *sponsorship above, the Broadcasting Act Section 20*. (// art. 17,3 TVWF Directive)

- Alcoholic beverages (Article 15 TVWF Directive): Examination of the specific and/or restrictive rules relating to alcoholic beverages (advertising, teleshopping, sponsorship and other advertising forms)

Television advertising and teleshopping for alcoholic beverages shall not:

- 1) be aimed specifically at minors or depict minors consuming these beverages;
- 2) link the consumption of alcohol to enhanced physical performance or to driving;
- 3) create the impression that the consumption of alcohol contributes towards social or sexual success;
- 4) claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving conflicts;
- 5) encourage immoderate consumption of alcohol or present abstinence or moderation in consumption of alcohol in a negative light;
- 6) place emphasis on high alcoholic content as being a positive quality of beverages.
(Broadcasting Act Section 15 Subsection 5) (// art. 15 TVWF Directive)

Advertising of alcoholic beverages which promotes initiation of the use of alcoholic beverages or which contains a direct appeal to purchase or consume such beverages or is directed primarily at persons under the age of twenty-one (hereinafter – children or young people) is prohibited (Advertising Act Section 11 Subsection 3).

- Minors (Article 16 TVWF Directive) : Examination of the specific and/or restrictive rules relating to minors (advertising, teleshopping, sponsorship and other advertising forms)

Television advertising and teleshopping shall not cause moral or physical damage to minors and for the purposes of their protection shall therefore comply with the following requirements:

- it shall not exploit the trust minors place in their parents, teachers or other persons;
- it shall not unreasonably show minors in dangerous situations (Broadcasting Act Section 15 Subsection 4 clause 2) (// art. 16, 1 TVWF Directive)
- it shall not encourage minors to enter into contracts for the sale or commercial lease of goods or services (Broadcasting Act Section 15 Subsection 4 clause 3) (// art. 16, 2 TVWF Directive)
- Advertising shall not exploit the natural credulity or lack of experience of children (Section 9 of the Advertising Act, Subsection 1) (// art. 16, 1 a TVWF Directive).

- Other product/services categories subject to a specific regime:
Identification of these sectors, for instance food retailing or the press sector in France

Financial services

Advertising of financial services shall be understandable, unambiguous and shall ensure clear and easy understanding of all conditions of the services being offered, in particular the actual interest rate, all other service-related costs and the terms of payment (Advertising Act Section 15 Subsection 2).

Advertising of financial services shall not contain direct or indirect comparisons to competing services which contain information which is not directly and easily comparable (Advertising Act Section 15 Subsection 3).

Any advertisement, or any offer accessible to the public, in which a person offers consumer credit or offers to arrange consumer credit contracts and in which a rate of interest or any figures relating to the cost of the credit are indicated shall also include a statement of the annual percentage rate of charge, by means of a representative example if necessary (Advertising Act Section 15 Subsection 4).

Poisonous, flammable and otherwise dangerous products

Advertising of poisonous, flammable and otherwise dangerous products shall contain a direct reference to the potential danger of such products, conditions under which such danger may arise and necessary safety measures in the use of such products (Advertising Act Section 16 Subsection 1).

It is prohibited to advertise that a product is safe if use of the product is restricted by legislation because of danger related thereto (Advertising Act Section 16 Subsection 2).

Narcotic drugs and psychotropic substances

Advertising of narcotic drugs and psychotropic substances is prohibited (Advertising Act Section 17).

Weapons and ammunitions

Advertising of weapons or ammunition is prohibited, except in a designated sales area, exhibition, exposition or speciality publication (Advertising Act Section 18 Subsection 1).

Gambling

Advertising of gambling and casinos is prohibited except in locations where gambling is held (Advertising Act Section 19 Subsection 1).

Prostitution

Advertising of prostitution is prohibited (Advertising Act Section 20).

Food

Upon the advertising of food, it is prohibited to:

- 1) attribute such characteristics or properties to the food which the food does not possess;
 - 2) attribute special characteristics to the food when all food in the food group possesses similar characteristics;
 - 3) refer to the properties of the food which prevent, treat or cure diseases.
- (Advertising Act Section 20¹ Subsection 1 clauses 1-3).

The advertising of breast milk substitutes, including infant formulae and follow-on formulae, is prohibited (Advertising Act Section 20 Subsection 2).

b. Conclusions

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

Regulation of advertising of tobacco products, medicinal products and services, alcoholic beverages, and advertising targeted towards minors comply with Articles 13, 14, 15, 16, and 17 of the TVWF Directive.

- Identification of specific rules not included in the Directive

As compared to the Directive, besides the above products or services categories special rules have been laid down for the following products/services:

- 1) financial services
- 2) poisonous, flammable and otherwise dangerous products
- 3) narcotic drugs and psychotropic substances
- 4) weapons and ammunition
- 5) gambling
- 6) prostitution
- 7) food

Concerning alcoholic beverages:

Estonian law makes a strong distinction between strong and low-alcohol beverages:

For the purposes of the Advertising Act, alcoholic beverages with an alcohol content higher than 22 per cent by volume are strong alcoholic beverages; alcoholic beverages containing between 3 to 22 per cent alcohol by volume are low-alcohol beverages.

Restrictions on the advertising of alcoholic beverages do not extend to:

- 1) publication of the business name of a sole proprietor, commercial undertaking, or a branch of a foreign commercial undertaking, if the notice does not contain any other information;
- 2) signs used to designate the location of sole proprietors, commercial undertakings or branches of foreign commercial undertakings engaged in the production, storage or distribution of alcoholic beverages.

(Advertising Act Section 11 Subsection 4).

Advertising of strong alcoholic beverages is prohibited on television or radio between the hours of 7.00 and 21.00 (Advertising Act Section 12 Subsection 1 clause 1).

Advertising of strong alcoholic beverages shall not contain:

- 1) symbols of the state or local governments;
- 2) references to or visual images of characters from film, television, pop music, entertainment, sports or other public figures, or characters from cartoon animation or three-dimensional animation;
- 3) information, events or activities which may suggest that the consumption of strong alcoholic beverages is important for achieving positive results in certain fields.

Advertising of low-alcohol beverages is prohibited on television between the hours of 7.00 and 20.00 (Advertising Act Section 13 Subsection 1 clause 1).

Advertising of low-alcohol beverages shall not contain:

- 1) references to or visual images of characters from film, television, pop music, entertainment, sports or other public figures, or characters from cartoon animation or three-dimensional animation;
- 2) information, events or activities which may suggest that the consumption of alcoholic beverages is important for achieving positive results in certain fields.

(Advertising Act Section 13 Subsection 2).

Sponsorship

There are no special restrictions in this area, and the rules specified in Section 20 of the Broadcasting Act should be observed.

Concerning minors:

The following additional requirements [which are not mentioned in the directive] shall be observed in advertising directed principally at children:

- 1) advertising shall not suggest that possession of a product, use of a service or achievement of some other objective intended by the advertisement will give the child an advantage over other children of the same age or that the lack thereof would have the opposite effect.
- 2) advertising shall not incite children to behave or act in a manner which has or may have the effect of bringing children into unsafe conditions (this provision is in the TVWF Directive, art. 16, 1 d);
- 3) advertising shall not include any direct appeal to children to demand the product or service being advertised from other persons;

advertising shall not create feelings of inferiority in children or incite them to act in an aggressive manner (Subsection 2 clauses 1-4).

In the production of advertising directed at children and in the use of children in advertising, their unique physical and mental state resulting from their age shall be considered (Subsection 3).

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