



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

HUNGARY

LEGAL REPORT

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TABLE OF CONTENT

INTRODUCTION	4
I. DEFINITIONS	7
• Television broadcasting	7
• Broadcaster.....	7
• Television advertising	8
• Surreptitious advertising	8
• Sponsorship	8
• Teleshopping	9
• Other relevant legal definitions.....	9
Conclusions	9
II. ADVERTISING RECOGNITION AND ADVERTISING/PROGRAMME SEPARATION (ARTICLE 10 TVWF DIRECTIVE)	10
a. Regulations.....	10
• Examination of the rules related to advertising and teleshopping spots recognition (acoustic and / or optical means)	10
• Examination of the rules related to the separation between the commercial content and the programme	10
• Examination of the rules related to the isolated advertising and teleshopping spots (allowed/prohibited; specific conditions, etc.)	10
• Prohibition of the use of "subliminal techniques"	11
• Prohibition of surreptitious advertising and teleshopping.....	11
b. Conclusion	12
III. RULES RELATED TO INSERTION OF ADVERTISING AND TEleshopping SPOTS BETWEEN AND WITHIN THE PROGRAMS (ARTICLE 11 TVWF DIRECTIVE)	13
a. Regulations	13
• Examination of the rules related to the insertion of advertising and teleshopping spots between the programmes	13
• 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)	13
• Possible prohibitions of insertion of advertising and teleshopping spots within certain types of programme	14
b. Conclusion	14
IV. QUANTITATIVE RESTRICTIONS (ARTICLE 18 TVWF DIRECTIVE).....	16
a. Regulations.....	16
• 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)	16
• Examination of the maximum daily transmission time devoted to advertising messages (15% in the TVWF Directive)	16
• Examination of the maximum daily transmission time devoted to advertising and teleshopping spots within a given clock hour (20 % in the TVWF Directive)	16
• Examination of the other possible quantitative restrictions.....	16
• Examination of the factors to take into account or not for the calculation of the advertising time	17
b. Conclusion	17

V. QUANTITATIVE RESTRICTIONS RELATED TO TELESHOPPING PROGRAMMES (ARTICLE 18BIS TVWF DIRECTIVE)	19
a. Regulations.....	19
• Examination of the minimum duration of windows devoted to teleshopping programmes (15 minutes in the TVWF Directive)	19
• Examination of the maximum number of windows (8 in the TVWF Directive).....	19
• Examination of the maximum daily duration (3 hours in the TVWF Directive)	19
b. Conclusion	19
VI. SPONSORING (ARTICLE 17 TVWF DIRECTIVE)	21
a. Regulations.....	21
• Examination of the rules related to editorial independence of the broadcaster	21
• Sponsor identification	21
• 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).....	21
• Identification of the programmes that cannot be sponsored	22
• Examination of the rules related to the content of the message (moving images, mention of the product, slogan, etc.)	22
• Examination of the maximum duration of the mention and/or maximum daily/per hour volume	23
• Examination of other rules eventually limiting the volume of sponsorship (ceiling for sponsorship profits, special tax, etc.)	23
• Examination of other relevant rules related to product placement, price mentioning during TV shows, sponsorship linked to schedule/points indication during sport broadcasts, etc.)	23
b. Conclusions	24
VII. NEW ADVERTISING TECHNIQUES	25
a. Split screens [osztott képernyő]	25
b. Interactive advertising [interaktív reklám]	25
c. Virtual advertising [Virtuális reklám]	25
d. Other new advertising techniques	25
VIII. GENERAL RULES RELATED TO ADVERTISING AND TEleshopping CONTENT (ARTICLE 12 TVWF DIRECTIVE)	26
a. Regulations.....	26
b. Conclusions	28
IX. SPECIFIC PRODUCTS AND TARGETS	29
a. Regulations.....	29
• Tobacco products	29
• Medicines	30
• Alcoholic beverages	32
• Minors	32
• Other products	34
b. Conclusions	35

Introduction

OBJECTIVE AND SCOPE OF THE STUDY

Our task is to describe the existing audiovisual regulatory and self-regulatory framework of the Hungarian regulation with reference to the areas covered by chapter IV of the TVWF Directive in order to identify the rules that are more restrictive than the TVWF Directive's provisions, specifying where appropriate, differences between types of broadcaster and, where applicable, rules regarding new forms of advertising.

The period of reference for the study is the existing audiovisual (TV) regulatory and self-regulatory framework of the Hungarian regulation with reference to the chapter IV of the TVWF Directive for the year of reference 2003.

LEGAL BACKGROUND

In Hungary, television advertising law is structured as follows: (i) the Act No. I of 1996 on television and radio ([1996. évi I. törvény a rádiózásról és televíziózásról], hereinafter: "Broadcasting Act") is the special act (*lex specialis*), in addition to that, in lack of special rules defined by the Broadcasting Act, the general rules concerning business advertising provided by (ii) the Act No. LVIII of 1997 on business advertising activities ([1997. évi LVIII. törvény a gazdasági reklámtevékenységről], hereinafter: "Advertising Act") apply.¹

With respect to misleading of costumers, Act No. LVII of 1996 on the prohibition of unfair and restrictive market practices ([1996. évi LVII törvény a tisztességtelen piaci magatartás és versenykorlátozás tilalmáról], hereinafter: "Competition Act") and the decisions of the Office of Economic Competition ([Gazdasági Versenyhivatal], hereinafter: "VJ decisions") must also be considered.

In order to protect the Hungarian language, the Act No. XCVI. of 2001 on publishing of business advertising, shop labels and other public announcement in Hungarian ([a gazdasági reklámok és az üzletfeliratok, továbbá egyes közérdekű közlemények magyar nyelvű közzétételéről szóló 2001. évi XCVI. törvény]) prescribes that in television programs of Hungarian language, the text of the advertising - slogan as well – must be published in Hungarian (exceptions are name of the undertaking and label of the product).²

The Hungarian Advertising Association³ ([Magyar Reklámszövetség]), as the professional body representing the common interest of advertisers, media owners and agencies, is established to advance commercial freedom and promote self-regulation, to collect and

¹ The scope of Broadcasting Act covers only broadcast activities performed by broadcasters settled in Hungary, in contrast to that, the scope of the Advertising Act applies for every advertising activities performed in Hungary.

² This requirement can be met even in a manner that the next to the foreign text the Hungarian translation will be published in the same way. However, if the slogan in foreign language is registered as trade mark, the provisions of this Act can be disregarded.

³ Other organizations: Hungarian Advertising Self-Regulatory Board [Önszabályozó Reklám Testület], International Advertising Association Hungarian Chapter [Reklám Világszövetség Magyar Tagozata] and Association of Advertising Agencies in Hungary [Magyarországi Reklámügynökségek Szövetsége], Hungarian Outdoor Advertising Association [Magyar Közterületi Reklámszövetség], National Advertising Board of Televisions [Televíziók Országos Reklám Tanácsa] – all organizations are signing party of the Code.

disseminate information about new advertising ideas and techniques. Its voluntary code of behavior is laid down the Hungarian Code of Advertising Ethics ([Magyar Reklámetikai Kódex], hereinafter: “Code”) which is an adaptation of rules of the International Code of Advertising Practice of the ICC, and deals with general questions of television advertising. In contrast to the Advertising Act, the scope of the Code covers public service advertising as well. However, the Hungarian Advertising Association has no legal powers; its decisions are generally accepted within and outside the Association.

Naturally, the Act No. CLV. of 1997 on Consumers’ protection provides a background to the abovementioned laws – without having any direct provisions regarding advertising. Its general rules concern labeling, user’s guide, pricing, packaging etc.

In addition to the law of 2003, the National Radio and Television Board’s ([Országos Rádió és Televízió Testület, hereinafter: “ORTT”) decisions (hereinafter: “ORTT decisions”) and court resolutions of the Hungarian Supreme Court ([Legfelsőbb Bíróság], its decision hereinafter: “BH”) interpret or complete the abovementioned laws. ORTT – among others - fulfils the supervisory and inspection responsibilities in broadcasting, in its decisions partially published gives direction to the broadcasters how to operate.

Naturally, there are several provisions in the Hungarian regulation which provide for advertising limits and prohibitions regarding special or dangerous characteristics of the given product or services (e.g. dangerous chemical substances and products, announcement to participation in lottery win organised abroad).

It must be noted that recently, there is a review of the Broadcasting Act in Hungary in process. Independent from the future form of this review - whether to modify the Broadcasting Act or to repeal it and accept a new act –, the review of the Broadcasting Act covers two issues:

- legislature in the frame of the European organisations (European Union and Europa Council) which constitutes for Hungary legally binding consequences, analysis of the solutions applied by the European laws and review of the foreign practice;
- review of the experiences obtained from the application of the current Broadcasting Act and critics of the Act.

RELATION BETWEEN EU-LAW AND HUNGARIAN LAW REGARDING ADVERTISING

The scope of the Broadcasting Act is limited by the international obligations taken by the Hungarian Republic. The content of the Broadcasting Act – including its amendment⁴ - is based on two international legal documents:

- European Convention on Transfrontier Television (hereinafter: “Convention”)⁵
- Council Directive of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of

⁴ Act No. XX of 2002

⁵ The Convention was ratified by 25 states, the Convention was published in Hungary by the Act No. XLIX of 1998. The Protocol modifying the Convention came into effect in Hungary as of 5 December 2003 (published by Act CIII of 2003).

television broadcasting activities (89/552/EEC) modified by Council Directive 97/36/EC (hereinafter: “the TVWF Directive”). Regarding the TVWF Directive, Hungary has to implement and harmonize the provisions of the TVWF Directive prior to the accession. According to the country report of 2002, Hungary has fulfilled its harmonization duties in advertising area.

The advertising rules of the TVWF Directive and Convention can be handled as an integrate system of norms. Both international resources provide concrete solutions, detailed definitions of advertising rules in a manner that the most of their provisions can be and shall be implemented even as a translation. The freedom of the member states provides the possibility to the member states to accept stricter and more detailed rules in their advertising rules.

I. Definitions⁶

Note: The definitions below are selected and cited from the Broadcasting Act according to the definitions of the TVWF Directive.

- Television broadcasting

Program broadcasting service [műsorszolgáltatás]: the production of radio or television programs⁷ by a broadcaster intended for reception by the public, and their transmission to the receivers of the users in the form of electronic signs through any broadcast transmission⁸ and retransmission network. (Section 2. Point 30 of Broadcasting Act, ±// art. 1 a. TVWF Directive).

In addition to the broadcasting service, the Broadcasting Act uses the definition broadcast distribution⁹ and broadcast diffusion¹⁰ to define the types of transmission.¹¹

- Broadcaster

Broadcasters [műsorszolgáltatók]¹²: natural or legal person, or unincorporated business association who has editorial responsibility for the composition of schedules of programs and who transmits them or has them transmitted by third parties to the public.(Section 2. Point 31 of Broadcasting Act, // art. 1 b. TVWF Directive)

Basic legal categories of broadcasters in Hungary are the follows:

⁶ *Since the Broadcasting Act's scope covers radio broadcasting services as well, the definitions of the Broadcasting Act have broader meaning than the Directive's definitions. In addition to that, the Broadcasting Act includes a longer list of definitions ensuring a detailed and integrated definition structure used by the Broadcasting Act. (examples from the definitions)*

⁷ *Program [műsorszám]: sound or image, or the combination thereof forming a closed unit or edited into a closed unit from individual parts, which is marked out by main title individually designating the whole of the combination, - and if necessary- , by further distinctive signs, and by a communication indicating that it is coming to an end.(Section 2 Point 28 of the Broadcasting Act)*

⁸ *Broadcast transfer [műsorelosztás]: the simultaneous transmission of the signals produced by the broadcaster without any alteration, via a wire (cable) network, or via a non-diffusion radio telecommunication system, from the premises of broadcaster, or from the end point of the broadcast distribution network, by inserting a separate organization to the receiving apparatus of users who are legally authorized thereto, with the exception of the transmission of signals, with the aid of a network suitable for the connection of less than 10 reception apparatuses. (Section 2 Point 26 of the Broadcasting Act)*

⁹ *Broadcast distribution [műsorszétoztás] is the simultaneous transmission , without any alteration to the contents, of the signals produced by the broadcaster via a wire (cable) network or via surface or satellite non-diffusion system to television broadcast diffusing stations and broadcast transfer network. (Section 2 Point 29 of the Broadcasting Act)*

¹⁰ *Broadcast diffusion [műsorszórás] is a one-way radio telecommunication process effectuated with a surface or satellite system, intended for a theoretically unlimited numbers of users with suitable receiving apparatuses, for the transmission of sounds, images or signals of another nature. (Section 2 Point 32 of the Broadcasting Act)*

¹¹ The Broadcasting Act does not provide explicit for transmission via Internet, however, the Internet operates via cable, satellite or terrestrial transmission, this way the scope of the Broadcasting Act may covers it as well. Special rules are prevailing for advertising sent by internet (Act No. CVIII of 2001 on questions concerning electronical commercial services and information society [az elektronikus kereskedelmi szolgáltatások, valamint az információs társadalommal összefüggő szolgáltatások egyes kérdéseiről szóló 2001. évi CVIII. törvény]).

¹² The party who broadcast own advertising in the course of the simultaneous, unaltered transfer of broadcasts received from a foreign broadcaster in the amount of time available for utilization for advertising purposes in the broadcasts received shall not qualify as a broadcaster, in case of compliance with the advertising regulations of the Broadcasting Act.

- national public service broadcasters [közszolgálati műsorszolgáltató] (Hungarian Television, Hungarian Radio and Duna Television)¹³
- public program broadcasters [közműsorszolgáltató]¹⁴
- non-profit broadcasters [nem nyereségérdekelt műsorszolgáltató]¹⁵
- commercial broadcasters [kereskedelmi műsorszolgáltató]
- specialized broadcasters [szakosított műsorszolgáltató]¹⁶
- network broadcaster [hálózatba kapcsolódó műsorszolgáltató]¹⁷

- Television advertising

Advertising [reklám]: any form of announcement broadcast in return for payment or for similar consideration in order to promote the sale, purchase or rental of specific products (inc. immovable property), rights and obligations announced or displayed, or to promote the achievement of other goals intended by the advertiser or the broadcaster. Any spots allocated for self-promotion must be treated as advertising, apart from the preview. (Section 2 Point 41. of Broadcasting Act, art. 1 c. TVWF Directive).

However, the Advertising Act provides another definition for advertising.¹⁸

- Surreptitious advertising

Surreptitious advertising [burkolt reklám]¹⁹: a program or information provided within the program, which, under the disguise of neutral information, encourages the purchase of goods or use of services, or solicits any other business conduct (≠ art. 1 d. TVWF Directive).

- Sponsorship

Sponsoring [támogatás]: any financial contribution or any other form of contribution of a business nature made to a broadcaster by a natural or legal person or unincorporated business association not engaged in broadcasting activities or in the production of audio-visual works, to the financing of programs with a view to promoting the name, the trade mark or other distinguishing mark, the image, the activities or the products of the sponsor or another person

¹³ *Public service broadcaster: a broadcaster, the operation of which is defined in the rules of public service broadcasting, the broadcasting of public service constitutes the majority of its responsibilities, its maintenance is financed primarily from public funds, it is under social supervision, and its basic rights and obligations are established by the Broadcasting Act.*

¹⁴ *Public broadcaster: a broadcaster which, based upon its own broadcasting rules approved by the National Radio and Television Board, broadcasts public service programmes in the majority of its broadcasting.*

¹⁵ *Non-profit broadcaster: a broadcaster who/which agrees to serve national, ethnic or other minority goals, cultural aims or a disadvantaged group, or intends to serve as the public life forum of a community, provided it uses the financial profit generated by the broadcasting, as recorded separately, solely for the maintenance and development of the broadcasting.*

¹⁶ *Specialized broadcasting: broadcasting where at least to the extent of 80 percent of the daily broadcasting time is made up of the same type of programmes as undertaken by the broadcaster in a bid or announcement.*

¹⁷ *Network broadcaster: broadcaster whose broadcast or programme is disseminated in network broadcasting, and is responsible for the broadcasting.*

¹⁸ *Business advertising (definition of Advertising Act): communication facilitating the sale or use in any other way of products, services, real estate, rights or obligations (hereinafter referred to as: goods); the popularization of the name, designation or activity of an enterprise; or the familiarization of goods or identification of good).*

¹⁹ *Surreptitious advertising (definition of Advertising Act): advertising published in the form of communication suggesting seemingly neutral information.*

designated by the sponsor (Section 2 Point 44 of the Broadcasting Act, // art. 1 e. TVWF Directive).

- Teleshopping

Teleshopping [televíziós vásárlás]: direct offers broadcast to the public for the sale, purchase or rental of products (including immovable property), rights and obligations, or for the provisions of services, in return payment, by way of establishing direct contact with the commercial distributor or service provider (// art. 1 f. TVWF Directive).

Teleshopping also covers teleshopping window unless otherwise defined in the Broadcasting Act.

- Other relevant legal definitions

Subliminal advertising [tudatosan nem észlelhető reklám]: advertising, in the transmission of which a stimulus generated by a sound effect or light effect of lower strength than the stimulus threshold necessary for conscious perception in the psychological sense has an effect on the viewer or listener of the program, this being a consequence of the brief duration of the transmission, or for another reason.²⁰ (Section 2 Point 4 and Point 40 of the Broadcasting Act)

Teleshopping window [televíziós vásárlási műsorablak] is a spot of a minimum uninterrupted duration of broadcast by a channel not exclusively devoted to teleshopping (Section 2 Point 22 and Point 22/A. of the Broadcasting Act).

Conclusions

By comparing the definitions, it can be declared that the definitions of the TVWF Directive are implemented (sometimes word by word see definition of broadcaster, advertising) in the Broadcasting Act.

In addition, we notice the Broadcasting Act contains a lot more definitions than the TVWF Directive. In this way, the Hungarian legislation is more precise than the Directive.

²⁰ Subliminal advertising (definition of Advertising Act): advertising which, when published, due to time constraints or any other reason, influences the consumer in a psychological sense with stimuli from images, sounds or other effects of an intensity below the threshold required for conscious perception.

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

a. Regulations

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

Advertising²¹ must be broadcast describing it as such directly before and after putting it on the air and readily recognizable as such (// art. 10 §1 TVWF Directive).

Article 6 of the Code also requires the possibility of identification of advertising, regardless the presentation and the advertising medium used. If advertising appears in news, editorial material or a program, it must be published in a way that its advertising nature is unambiguous.

A commercial advertisement may also make reference to social targets, but in such case the commercial character of the advertisement must be declared.

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

Advertising must be kept quite separate from other programs by optical and/or acoustic means (// art. 10 §2 TVWF Directive).

It is a basic requirement that the receivers/viewers obtain appropriate information whether the programs they are watching are based on the sovereign program editor decision of the broadcaster, or if they show programs with paid contents.

With reference to this requirement, - in accordance with the TVWF Directive - the Broadcasting Act requires from the broadcasters to separate clearly the published advertising and teleshopping from the other programs, the paid contents from the actual editorial contents, and to indicate the advertising-characteristics in an unambiguous way.

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

As in the TVWF Directive, the Broadcasting Act requires also that the publishing of the advertising happens in blocks, and isolated advertising must remain the exception (// art. 10 §2 TVWF Directive).

²¹ The same rules apply to public service announcements, charity appeals and political advertising.

- Prohibition of the use of "subliminal techniques"

In addition to that, on the basis of the principle of clear separation, it prohibits subliminal advertising. (Section 10 Point (5) of the Broadcasting Act, // art.10 §3 TVWF Directive)

- Prohibition of surreptitious advertising and teleshopping

On the same basis, surreptitious advertising is also prohibited (// art. 10 §4 TVWF Directive).

Broadcasting Act does not acknowledge surreptitious advertising if the advertising is done in return for payment or for similar consideration.

With reference to the importance of the question, the ORTT tried to give direction interpreting surreptitious advertising:

- ORTT decision No. 247/1997. (X. 30.) With reference to the definition provided by Broadcasting Act, neutral information must be defined in order to understand the definition of surreptitious advertising. Every announcement, either in picture, in voice, or in writing is qualified as an effect of neutral information if the author or the advertiser represents it as an economic, personal or group interest - in an objective way. An economic element represented in an unjustified manner and measure compared to the relevant contents of the basic information of the whole program shall be qualified as surreptitious advertising. The surreptitious advertising can be intentional or committed by negligence.

- ORTT decision No. 258/1997: The Broadcasting Act does not acknowledge “product placement” as specific definition. However, product placement can be accepted but only in fictions to the extent of life-likeness without money transfer. It is not qualified as surreptitious advertising, if in a given advertising next to the advertised product the logo or other advertising of another product appears.

- ORTT decision No. 279/1997. (XI. 25.): In case of charity appeal [jótékonyági felhívás], the name of the publisher is allowed to appear but an unambiguous and public vote of thanks must be qualified as a surreptitious advertising. The block of advertising shall be regarded a single program, independently from the fact, how many advertisements are shown in the block (one or more).

- ORTT decision No. 280/1997. (XI. 26.): The provisions of the Broadcasting Act regarding clear separation are the most strictly applicable provisions.

- ORTT decision No. 499/2000. (VI. 13.): Broadcast of gambling drawing solely cannot be qualified as advertising; however, programs including drawing are regulated by advertising and sponsorship rules.

- ORTT decision No. 737/2000. (IX: 12.): General rule is to publish advertising in paid advertising time. Under some circumstances, there are exceptions: (i) excerpt from an advertising can be broadcast in news as an illustration or reference if the measure does not exceed the required level, (ii) it is permitted to show in entertaining programs and in documentaries highlighted excerpts from an advertisement – however, the advertising cannot be shown if the advertisement had been shown 6 weeks before the entertaining program.

Advertisement of goods or services which are on the screen immediately 30 minutes before or after the program or during the program cannot be shown.

- ORTT decision No. 853/2000. (X. 31.): Information with advertising value broadcasting in the meantime with the correct time but not indicated as advertising is surreptitious advertising.

- ORTT decision 243/2002. (I.31.): Broadcast of brochures, home pages, music records, cultural services connected to a program in the program itself cannot be qualified as surreptitious advertising. Broadcast may be only informative, it cannot encourage to purchase the given product or service. Cultural brochures, services and programs connecting to the broadcaster itself, such a self-advertising is a program which shall not be calculated to the advertising time.

b. Conclusion

The national provisions comply with the TVWF Directive.

The Broadcasting Act provides - in accordance with the TVWF Directive - for the clear separation (“tisza elkülönítés”) and readily recognizable indication of advertising by optical and/or acoustic means.

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

a. Regulations

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

Advertising is broadcast between programs (// art. 11 §1 TVWF Directive).

- 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)

However, advertising may also be inserted during programs in such a way that the integrity and value of the program, taking into account natural breaks, duration, nature of the program, rights and lawful interests of the holder of copyrights and neighboring rights are not prejudiced (// art. 11 §1 TVWF Directive).

In programs consisting of autonomous parts, or in sport programs, similarly structured events and performances containing intervals, advertisements shall only be inserted between the parts or in the intervals (// art. 11 §2 TVWF Directive).

Special rules are prevailing for **the public service broadcasters and public program broadcasters**. In these broadcastings, advertising may **only be broadcast between programs** - in combined programs only between their individual programs. In sports and other broadcasts, in which there are natural breaks, advertising may be broadcast between the parts and in the breaks. (Section 24 of the Broadcasting Act) (\neq TVWF Directive).

The transmission of feature films (excluding series, serials²², light entertainment programs²³ and documentaries), provided their programmed duration is more than 45 minutes, may be interrupted once for each complete period of 45 minutes. A further interruption is allowed if their programmed duration is at least 20 minutes longer than two or more complete periods of 45 minutes (// art.11 §3 TVWF Directive).

ORTT decision No. 483/1999. (X.20.): the feature films which duration time is longer than 45 minutes can be interrupted by periods of 45 minutes however, the first interruption may be not only after the first 45 minutes.

²² ORTT decision No. 1475/2002. (X. 3.) Serial is regularly broadcast individual program consisting of varying but closed numbers of parts with the same credits. In this understanding, serial is the narration of the same story in parts, and a work of independent, closed stories, which are connected by the same characters or other characteristics, a work of which episodes form a chain of the same issue.

²³ ORTT decision No. 1476/2002. (X.3.) Light entertainment program is a non-fiction program of which goal is to provide light entertainment to the public (e. g. playfully quiz show, talk show, musical entertainment programs, cabarets).

ORTT decision No. 1762/2001 (XII. 18.) and the modifying ORTT decision No. 873/2002. (V.30.): By insertion of advertising in feature films which duration do not exceed 45 minutes, summary of previous or future parts of the film if they are edited by the broadcaster are not qualified as part of the film, the duration of such films will not be longer by repeating parts broadcasted before advertising. The broadcaster does not fulfill the requirements of the Broadcasting Act if he divides a film shorter than 45 minutes in two parts, and between these two parts publishes advertising. The duration of the film is the length of the original film acquired from the copyrights owner. (\neq art. 11.3 TVWF Directive)

Within all program, there must be at least 20 minutes between the advertising broadcast, or between advertising compilations (\neq art. 11 §4 TVWF Directive).

ORTT decision No. 480/1999 and the modifying ORTT decision No. 601/2000. (VII. 12.): the broadcaster can broadcast advertising only in the natural intervals of the sport programs, however, between the intervals 20 minutes must elapse.

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

The following programs may not be interrupted or shortened by advertising:

- news and current affairs programs²⁴ when their programmed duration is less than 30 minutes; (// art. 11.5 TVWF Directive)
- those targeting minors under the age of 14 years when duration is not in excess of 30 minutes; (more precise than the TVWF Directive)
- those reporting in the events of national holidays when their programmed duration is less than 30 minutes; (\neq TVWF Directive)
- programmes with religious or church contents; (// art.11.5 TVWF Directive)
- documentaries when their programmed duration is less than 30 minutes.(// art.11.5 TVWF Directive)

Moreover, no advertising can be broadcast directly before and directly after the broadcasting of programs prepared in respect of the events of national holiday religious and church services/ceremonies.

b. Conclusion

The Broadcasting Act provides rules almost identical with Article 11 of the TVWF Directive.

The following differences can be identified:

Stricter rules apply to national public service and public program broadcasters. They cannot insert advertising broadcasts within the programmes except whether they are composed of natural breaks or autonomous parts.

²⁴ ORTT No. 1474/2002. (X. 3.): Current affair programs are programs dealing with broadcasting, analysis and evaluation of news and actual events from political point of view.

Section 17 (4) of the Broadcasting Act prohibits the interruption by advertising of the programs reporting from the events of national holidays, when their program duration is less than 30 minutes (additional prohibition). However, no distinction is made between religious service and religious programme when advertising is prohibited in any broadcast with religious or church content.

Section 17 (5) of the Broadcasting Act requires for all advertising and advertising block published within all programs that between them must elapse at least 20 minutes. Article 11 (4) of the TVWF Directive does not impose this requirement to programs consisting of autonomous parts, sport programs, similarly structure events and performances containing intervals.

Section 17 (6) of the Broadcasting Act allows to interrupt once per period of 45 minutes the transmission of feature films which programmed duration is more than 45 minutes. The period of 45 minutes is to be defined on the basis of the “*duration of the film*” and not on the basis “*scheduled duration*” used in the TVWF Directive: it means that the ORTT decides on the basis of the net duration of the films whether the films may be interrupted by advertising or not and if yes, how many times (ORTT decision No. 484/1999 (X.20.)). This way, the review of the previous or next parts of the given films and the repetition of the part of film broadcast before the advertising is not to calculate to the net duration of the film.

Considering special aspects, the Broadcasting Act makes the difference between minor of more than 14 years old and of less than 14 years old.

With reference to the abovementioned, the Hungarian law provides stricter regulations than the TVWF Directive; however, in the background of this strict legislation, there is proper intention to protect the integrity of the programs (programs on national events and feature films) and the interest of the receivers/viewers.

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)

The advertising time may reach 20 percent if it includes the spots allocated for teleshopping without the transmission time devoted to teleshopping windows (// article 18.1 TVWF Directive).

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

The proportion of transmission time devoted to conventional advertising²⁵ shall not exceed 15 percent of the daily transmission time (// art. 18 §1 TVWF Directive).

BH 2003.96: Broadcasting of television advertising cannot be longer than the measure defined by the Broadcasting Act.

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

For commercial broadcasters, in *any one hour* of transmission time, calculated in any way, the time devoted to conventional advertising may not exceed 12 minutes (i.e. 20%), not including the transmission time devoted to teleshopping windows (\pm // art. 18 §2 TVWF Directive). The Hungarian legislation seems to cover "sliding hour" versus "clock hour"

In case of national **public service broadcasters and public program broadcasters**, the duration of advertising may not exceed 6 minutes in any single hour, calculated in any way. The duration of advertising may not exceed 5 minutes per hour calculated in the average of the daily broadcasting time. (\neq art. 18 TVWF Directive)

Non-profit broadcasters may broadcast 3 minutes of advertising per hour. (\neq art. 18 TVWF Directive)

- Examination of the other possible quantitative restrictions

There are no other quantitative restrictions.

²⁵ Advertising does not include public service announcements and charity appeals broadcast free of charge. (Section 2 Point 11 and Point 16 of the Broadcasting Act)

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

One must note that, unlike the TVWF Directive, self promotion, public service announcements and charity appeal not free of charge are not excluded from the calculation of the maximum time period devoted to advertising.

However, the provisions of Points 4.1-4.2 shall not apply to teletext services if their reception area does not extend beyond the reception area of local broadcasting. (\neq art. 18.3 TVWF Directive, which is less restrictive than the TVWF Directive).

The displaying of screen texts containing advertising, other than the screen texts outside the broadcasting hours, must also be included in the duration of the advertising. (Section 24 of the Broadcasting Act). (\neq art. 18.3 TVWF Directive)

ORTT decision No. 279/1997. (XI. 25.): The advertising time does not contain the advertising title, and the previews do not burden the advertising time limits, it is an autonomous category which must be signed by channel signal or other mean.

ORTT decision No. 1472/2002. (X. 3) separates the preview²⁶ and self advertising²⁷, and declares that the self advertising – in the contrast to the previews – shall be regarded as part of the time devoted for advertising.

b. Conclusion

Regarding the quantitative restrictions, the Broadcasting Act provides rules almost identical with the TVWF Directive.

There is only one difference: the TVWF Directive defines the duration of advertising and teleshopping published “*within a given clock hour*”, in contrast to that, the Broadcasting Act orders to keep the 12 minutes from the limit of 20 percent “*in any hour of transmissions calculated in any way*”. The reasoning for this difference is that the original version of the TVWF Directive (1989) required that the proportion of the published advertising spots shall not exceed the 20 percent “*within a given one-hour period*”. In 1996, when the Broadcasting Act was accepted, the Hungarian legislator implemented rules harmonizing with the previous EU-law and decided to apply a restriction that the limit shall be realized within an hour calculated in any way. However, the TVWF Directive was modified in a way which resulted in a limit restriction in favor of broadcasters. The modification of the Broadcasting Act in order to harmonise with EU-law in 2002 did not consider the new limitation calculation. The effective provisions – although they are not harmonized with the TVWF Directive – are not in contrast to it since the member states are entitled to establish stricter law for their broadcasters.

²⁶ Previews are programs which provide information on a program, programs or its selection to be broadcast in the future (e.g. summary, date of broadcast.) Preview can be connected only to future broadcast. According to the ORTT decision No. 280/1997. (XI. 26) preview must be provided with a signal.

²⁷ Self-advertising: specific type of advertising in which the broadcaster popularizes itself, forms its image. In addition to that, secondary activity of the broadcaster as products produced by the broadcasters must be qualified as self advertising as well.

- In addition, those limits are different for national public service and public program broadcasters.
- Screen text must be included in the calculation of the allowed advertising time.

However, unlike the TVWF Directive, self promotion, public service announcements and charity appeal not free of charge are not excluded from the calculation of the maximum time period devoted to advertising.

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

a. Regulations

ORTT decision No.279/1997 (XI. 25) and modifying ORTT decision No. 1464/2002. (X.3):
The teleshopping shall refer – identifying the advertiser - to the premises or demonstrating room of the advertiser in order to provide possibility for the customers to examine the given products personally.

The definitions and rules regarding teleshopping are rules newly implemented by Act No XX of 2002 modifying the Broadcasting Act.

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

The minimum uninterrupted duration time of a teleshopping window is 15 minutes (// art. 18bis §1 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 (// art. 18bis §2 TVWF Directive)

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

Their overall duration may not exceed two hours per day (≠ art. 18bis §2 TVWF Directive).

b. Conclusion

The Broadcasting Act includes identical rules regarding teleshopping windows as the TVWF Directive. However, the TVWF Directive provides that the overall duration of the teleshopping windows shall not exceed 3 hours per day, while the Broadcasting Act provides only for 2 hours for the same purposes.

With this limitation, the legislator intended to avoid advertising without measure, this way the Hungarian regulation can be qualified as provision protecting the rights of the receivers/viewer and copyrights owners.

Broadcast of teleshopping by public service broadcaster between 24-05 hours shall be added to the advertising time calculated in accordance with the general rules (ORTT decision No. 357/2000. (IV.26.)).

The limits related to the maximum transmission time within one hour and to the maximum number of windows do not apply to channels exclusively devoted to teleshopping. For these channels the time to be allowed to conventional advertising within the daily transmission time is submitted to the above-mentioned general rules.

The Broadcasting Act regards teleshopping and teleshopping windows **as types of advertising**, this way the general rules concerning advertising are automatically applicable. This solution differs from the solution of the TVWF Directive which uses the definition of advertising only for conventional advertising, and it handles the teleshopping as a specific category.

VI. Sponsoring (Article 17 TVWF Directive)

The sponsoring is one of the types of commercial communication, however, it differs from the advertising principally and practically as well. While the advertising is published in order to promote the sale and purchase of a given product or service, the objective of the sponsoring is to establish a favorable image of the sponsor.

The other main difference between the advertising and sponsorship is the following: while the consideration received for the publishing of the advertisement goes to the broadcaster, the consideration provided by the sponsor appears directly in the budget of the given and sponsored programs. Therefore the emphasis during the establishment of sponsorship rules was on the integrity protection of the sponsored programs.

a. Regulations

Sponsoring is dealt with in the Broadcasting Act.

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

The content and scheduling of sponsored programs may not be influenced by the sponsor in such a way as to affect the responsibility and editorial independence of the broadcaster in respect of the programs, (Section 18 Point (3); // art. 17 §1 a. TVWF Directive).

- Sponsor identification

The sponsor of the program shall be named directly before or directly after broadcasting (±// art. 17 §1 b. TVWF Directive).

ORTT decision No. 166/1999 (IV. 28.): The identification of the sponsor can not happen in advertising among the advertising main titles.

ORTT decision No. 1473/2002. (X. 3.): The firm name of the sponsor shall be published in a readily recognizable manner with texts and/or narrated. To the sponsor's name as a possible form of contribution the general rules are applicable.

ORTT decision No. 280/1997. (XI. 26.): The sponsor of the event must be separated from the sponsor of the program, it is to examine whether the sponsor of the event is identical with the sponsor of the program. For the sponsor of the event it is to consider that during the broadcasting of the event the emphasis shall be on the event and not on the sponsor.

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

The sponsor of the program shall be named directly before or directly after broadcasting.

ORTT decision No. 280/1997. (XI. 26.): The sponsor cannot appear in the program, only directly before or after the programs

The sponsor may appear in the promotion; also its logo or emblem can be published in the previews

The name, slogan or emblem of a political party may not appear when naming the sponsor, (Section 18 Point (1), Section 19 Point (2)).

- Identification of the programmes that cannot be sponsored

News and current affairs programs may not be sponsored (Section 18. Point (5); // art. 17 § 4 TVWF Directive).

Programs in which the trade mark, distinctive logo or slogan of the sponsor of the programs appear, other than program previews, cannot be broadcast. (Section 18 Point (4))

The abovementioned provisions are not applicable to broadcasting specializing solely in facilitating the ordering of goods and services (exception news and current affairs programs).(Section 18. Point (6))

In connection with sponsorship, special rules are prevailing **regarding public service broadcaster**. The following programs may not be sponsored in public service broadcasting and public broadcasting:

- Programs with religious and church contents;
- Programs presenting or broadcasting artistic and cultural events;
- Programs presenting in the mother tongues of national and ethnic minorities, and presenting the life and culture of national and ethnic minorities;
- Programs made for groups in a seriously disadvantaged position owing to their age, physical, moral and psychological state or social circumstances. (Section 25)

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

The following may not sponsor programs:

- parties and political movements; (≠ TVWF Directive)
- enterprises which, based on their main activities, manufacture, sell wholesale, or provide services in connection with, products which cannot be advertised in accordance with the Broadcasting Act (tobacco, weapon, medicines available only prescription etc. - see Section IX.). This prohibition does not apply to sponsorship requiring the communication of the name and trade mark of an enterprise involved in respect of pharmaceutical products and therapeutic processes. (Section 19. Point (1)) (// art. 17 TVWF Directive)

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

No special provisions apply.

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

ORTT decision No. 280/1997 (XI. 26.): The Broadcasting Act does not allow the sponsorship of the whole broadcasting.

Should appear a "sponsorable" program in the combined program, such a program can be solely sponsored, the sponsor can be named directly before or directly after this program unit.

The broadcasting of cultural event or its parts can be also sponsored, but only such cultural events which are organized independently from its broadcasting. It means that cultural events which are organized by the broadcaster itself or involving a third party, only in order to transmit it among its programs are excluded from the programs that can be sponsored.

ORTT decision No. 737/2000 (IX. 12.): Advertising of products or services which are shown in the name of the sponsor cannot be broadcast 30 minutes before or after the program. The producer of the product or supplier of service cannot appear in advertising 30 minutes before or after the program.

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

Sponsored programs must not encourage or advocate the acquisition (purchase or rental) of the products or services of the sponsor or those of a third designated by the sponsor, nor shall they encourage the acquisition of such products or services, (Section 18. Point (2)) (// art 17.1.c TVWF Directive)

In the promotion, there cannot place a product which is connected to the recommended program. (ORTT decision No. 280/1997 (XI. 26.))

ORTT decision No. 258/1997: The Broadcasting Act does not acknowledge as specific definition. However, product placement can be accepted but only in fictions to the extent of life-likeness without money transfer. It is not qualified as surreptitious advertising, if in a given advertising next to the advertised product the logo or other advertising of another product appears.

ORTT decision No. 428/1998. (XI.11.) and modifying ORTT decision No. 1470/2002. (X. 3.): It contains general directives about appearance of sponsorship, prices and lottery prize. The sponsor contribution can be shown in movie form; however, it cannot include product characteristics. The limit of the appearance is that it cannot help the sale of the named or published product, it cannot promote the consumption. Lottery prize can be shown only for publishing, this does not fulfill the requirement of advertisement.

ORTT decision No. 1473/2002. (X. 3.): The sponsorship message cannot have advertising value, specially: (i) information regarding product characteristics, ingredients, price signed on the labeling – not including the trade mark and logo of the product – cannot be published in an emphasized manner, (ii) the sponsorship message cannot refer directly to the characteristics of the product, price or commercial availability, (iii) advertising or its modified part can not be published in the sponsorship message, this message through its visual and/or verbal structure cannot be able to promote actual business steps, (iv) the Act No. XCVI of 2001 on Hungarian labeling of business advertising shall be applicable.

b. Conclusions

The provisions of the Broadcasting Act regarding the sponsorship are complying with the TVWF Directive, sometimes word-by-word.

One can notice, however, some particular rules.

Where the TVWF Directive allows for the identification of the sponsor by its name or logo, the Hungarian regulation only provides for its nomination. The insertion of the logo, trade mark or slogan is limited to the program preview.

Moreover, the Broadcasting Act provides stricter provisions regarding undertakings which may not sponsor programs (in addition to the undertakings producing tobacco products, the prohibition extends to undertakings manufacturing weapons, ammunition, explosives, medicines available on prescription.)

Stricter rules also apply to public service broadcasters which can broadcast sponsoring only for a limited list of programs.

Special rules apply for cultural events and combined programs.

It must be noted that the sponsorship messages are the most important problems today since they are often handled by the broadcasters and advertisers as a possibility of advertising not to be calculated into the advertising time.

The question of the sponsored event is similar to the question of the sponsored person, e.g. famous persons sponsored whose sponsorship agreement prescribes that before the public they have to wear the trade mark of the sponsor. This case cannot be qualified as surreptitious advertising since the contribution goes to the sponsored person and not to the broadcaster. (ORTT decision No. 280/1997 (XI. 26.))

VII. New advertising techniques

a. Split screens [osztott képernyő]

Although the Broadcasting Act does not include any definition of this new technique, there were several ORTT decisions resolved (No. 718/2002. (V.8.), 979/2002. (VI. 20.), 1407/202 (IX. 19.) and 1468/2002. (X. 3.)). These provided that until the finalization of the TVWF Directive, the split screen presence shall be tolerated in the Hungarian television broadcast if the sponsoring and advertising rules of the Broadcasting Act are not violated. The rules related to the advertising and sponsorship should be observed considering every window on the screen one by one, however the quantitative limits settled down in Section 16 (1)-(5) and 18. (4)²⁸ of the Broadcasting Act are applicable for the whole split screen, in addition to that, in cases defined by Section 17 (4)²⁹ advertising can be published on the whole screen only in accordance with Section 17 (1) of the Broadcasting Act³⁰.

b. Interactive advertising [interaktív reklám]

In Hungary, there is no definition of interactive advertising. In our understanding, interactive advertising gives consumers more control by giving them a range of choices in their experience with product information and it produces a sense that communication is more personal than traditional media advertising because it creates or stimulates a one-to-one interaction.

There is no legal authorization to use this technique, but there is no explicit prohibition either³¹. ORTT informed us that interactive advertising has no practice in Hungary.

c. Virtual advertising [Virtuális reklám]

In Hungary, there is no definition of virtual advertising. In our understanding, virtual advertising is a computer-generated advertising, logos and products that are superimposed on a live video feed or inserted into a completed movie or television show.

There is no legal authorization to use this technique, but there is no explicit prohibition either. ORTT informed us that there is no practice of virtual advertising in Hungary.

d. Other new advertising techniques

There are no other advertising techniques known.

²⁸ Program in which trade mark, distinctive logo or slogan of the sponsor of the programs appear other than program previews cannot be broadcast.

²⁹ Programs which cannot be interrupted or shortened by advertising.

³⁰ Advertising can be published/broadcast only between programs.

³¹ See footnote 13 which could be qualified as interactive advertising.

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

a. Regulations

The question is how the freedom of expression can prevail in course of business communication.

The Hungarian Constitutional Court ([Alkotmánybíróság]) has dealt with this question in its decision No. 30/1992 (V. 26.) in which the Court declared that although the business advertising enjoys the protection of freedom of expression, in case of publishing of business information, a broader state involvement can be reasonable since business advertising is not in direct connection with such basic values of freedom of expression as self expression of individual and individual's participation in democratic society.

With reference to this, the business advertising activities can be limited in broader way than other forms of expression in order to protect personal rights, consumers' rights and fair market practices; however such limitation may be qualified as constitutional if they are proportional with the objectives intended.

Sections 4-5 of the Advertising Act (*lex generalis*)

- Advertising may not be published if
 - (i) it infringes on personal rights, respect for the deceased or rights related to the protection of personal data,
 - (ii) it encourages violence or any behavior that jeopardizes personal or public safety, the environment or nature (\pm // art. 12 d. and 12 e. TVWF Directive);
 - (iii) it generates a sense of fear.
- Surreptitious or subliminal advertising may not be published.
- Advertising is prohibited for goods whose production or marketing is illegal.
- It is forbidden to publish misleading advertisements.³²
- Comparative advertising may only be published if it satisfies the conditions defined by the Advertising Act.³³ Comparative advertising.

Sections 10-12 of the Broadcasting Act (*lex specialis*):

- Beliefs of conscience and ideological convictions may not be disseminated through advertising in broadcasting;

³² For the purpose of defining a misleading advertisement, the information conveyed in the advertisement, which pertains to (i) the general characteristics of the merchandise, (ii) the price of the merchandise or to the pricing method, and to other contractual conditions of purchase, (iii) the disposition of the advertiser, such as its characteristics, the rights, wealth and/or endowments of or the awards received by the advertiser shall be taken into consideration. Information pertaining to the general characteristics of the merchandise shall be understood as any facts conveyed concerning the place of origin of the merchandise, its ingredients, safety factors, its impact on health, technical features, its environmental features and energy consumption, furthermore, its availability, date of manufacture, quantity, its suitability for a given function, the expected results from its use, the way it is controlled or tested, and any other fact regarding the application, shipping, use and maintenance of the merchandise.

³³ Comparative advertising (i) cannot be misleading, (ii) must not injure the reputation of another company or the name, merchandise, brand name and other marking of such company, (iii) must not produce confusion between the advertiser and another company or the name, merchandise, brand name and other marking of such company, (iv) must not produce any unfair advantage derived from the reputation of another company or the name, merchandise, brand name and other marking of such company, (v) must not violate the provision of Competition Act on the prohibition of imitating the merchandise of another company or the characteristics of such merchandise.

- No advertising may be published if it is offensive to religious and political beliefs (// art. 12 c. TVWF Directive);
- No advertising may be broadcast directly before and directly after the broadcasting of programs prepared in respect of the events of national holidays, religious and church services/ceremonies;
- Surreptitious and subliminal advertising may not be broadcast;
- All messages conveyed in advertising must be true, accurate and fair;
- Advertisement shall not encourage behavior prejudicial to health, to safety or to the protection of the environment (// art. 12 d. and 12 e. TVWF Directive).
- A client for the broadcasting of an advertising or any other person who has an interest in the broadcasting thereof, shall not exercise editorial influence concerning the contents of other programs;
- The internal and external staff regularly appearing in news and programs communicating current political information may not appear in advertising and political advertising, either in image, or in sound;

Section 8 of the Competition Act

- It is prohibited to mislead the consumers in the economic competition;³⁴³⁵
- It is prohibited to employ business methods restricting unjustifiably the consumer's freedom of choice. Method could be where such circumstances are created which make it substantially more difficult to assess objectively the actual worth of the goods or the offer, and to compare the goods or the offer with other goods or another offer;
- The Office of Economic Competition has a broad practice regarding misleading advertising which are able to deceive the consumers.(VJ 4/2003, VJ 5/2003, 100/2003).

Code

According to the Article 3 of the Code:

- advertising must be lawful, fair and true,
- advertising must comply with the basic principles of fair competition and generally a accepted ethical-moral requirements of the society;
- advertising cannot abuse the trust of the consumers and cannot make use of their inexperience, credulousness and ignorance;
- advertising cannot apply discrimination between nations, minorities, sex and generations (±// art. 12 b. TVWF Directive);

³⁴ The following shall in particular constitute the misleading of consumers (i) in respect of the price and material qualities of the goods (in particular, the composition and use thereof, the effect thereof on health and the environment, the handling thereof, as well as the origin, place of origin, source or manner of the purchase of the goods), untrue facts are stated or true facts are stated in a manner capable of misleading the consumer, the goods are presented with attributes of goods capable of misleading the consumer, or any other information capable of misleading the consumer is provided in respect of the material qualities of the goods; (ii) it is concealed that the goods do not satisfy the provisions of the legal rules or the usual requirements set in respect of the goods, and that the use thereof requires the implementation of conditions substantially different from the usual; (iii) information capable of misleading the consumer is provided in respect of circumstances related to the sale and distribution of the goods and influencing the consumer's decision, in particular, in respect of the method of distribution, the terms of payment, the attached gifts, the discounts granted and the chances of winning; (iv) misrepresenting a purchase as a highly advantageous bargain.

³⁵ Hungary has fully implemented the EC Directives on Misleading and Comparative Advertising

- the use of natural values and historical, scientific and cultural values and monuments in advertising may not hurt their self-esteem;
- the symbols of nations may only be used in advertising within the limits of good taste primarily as a reference to the origin of products and services;
- advertising may not include elements and may not create a general effect that encourages, supports or justifies aggressive, violent or unlawful behavior, the jeopardizing of human life, health or limb, damage to the environment or the torturing of animals;
- with exception of public service advertising, an advertising may not generate fear;
- an advertising may not contest or reduce the credit of a different party or the credit of a different party's product or service, either directly or indirectly;
- an advertising may not use the name, picture, sound recording or statement of a person in an unjustified way.

BH 1994.699: Prohibited advertising which induces consumption of products prejudice health can harm the interest of the consumers.

BH 2002.465: It is prohibited to publish advertising connected with gambling, which initiate exaggerate consumption.

BH 2003.348: Advertising violating personal rights, it is not excluded to initiate a competition supervision process ex officio.

b. Conclusions

The TVWF Directive has been implemented in general, although no express reference is made to the respect for human dignity. A set of detailed rules apply to the content of advertising.

IX. Specific products and targets

a. Regulations

It should be reminded that teleshopping is considered by the Broadcasting Act as a form of advertising the general advertising rules apply to.

- Tobacco products

Advertisements popularizing and describing tobacco goods cannot be broadcast. (Section 13 Point 1 of Broadcasting Act; // art. 13 TVWF Directive).

In addition to the Broadcasting Act, the Advertising Act (Sections 12-13) repeats this prohibition in a way that it expands the prohibition to indirect advertising of tobacco products as well.³⁶

However, advertising of a product, whose name, marking or trademark is the same as that of a tobacco product shall not be deemed as advertising of a tobacco product, provided the name, marking or trademark of such product is clearly distinguishable from that of the tobacco product.

In contrast to the general prohibition of advertising broadcast of tobacco products, the GM Decree 16/2001 (VI. 25) provides for exemption of definite period of time regarding advertising of tobacco products in connection with international **motor sport** event of world standard³⁷ organized in Hungary. The exemption covers only the name and label of tobacco products produced by the manufacturer sponsoring the event or the participants shown in the area of the event, on the race cars, racers' and attendant' clothing for the period of the event, on the vehicles delivering cars for the period of entry and leave. If the name or label of the tobacco product is in the name of the event, the exemption expands to the brochures and other medium advertising the event as well.

BH 2002.82: Advertising should solely induce consumption. Any additional element in the advertising – e.g. participation in gambling and chance to win valuable things – is prohibited in case of tobacco and alcoholic products – with reference to inducement to extreme consumption.

³⁶ Indirect advertising of tobacco products shall, in particular, mean
a) when, although it does not specify a tobacco product, it is aimed at advertising a tobacco product by using any other marking or trademark that can be related to the tobacco product in question,
b) when it presents a tobacco product under the name, marking or trademark of another product,
c) when it present another product under the name, marking or trademark of a tobacco product.

³⁷ The motor sport event shall be regarded as of world standard if it was held minimum on two continents yearly before 5 years of submit of the application for exemption and in 10 countries during these five years and in the exemption period.

- Medicines

Advertisements popularizing and describing medicines available only on a doctor's prescription and therapeutic processes cannot be broadcast. (Section 13 Point 1 of Broadcasting Act; ±// art. 14 TVWF Directive).

In addition to the general prohibition defined by the Broadcasting Act, the Advertising Act provides a more detailed description of advertising possibilities.

According to the Sections 9-11 of the Advertising Act, it is forbidden to advertise any pharmaceuticals which are licensed to be dispensed only by prescription or to be used only in medical institutions for in-patients, or that are available only to medical care facilities or treatment centers, with the exception if it is deemed representation of a pharmaceutical.³⁸

The abovementioned prohibition does not apply to public service information conveyed to promote the vaccination programs licensed by the National Medical Officer's Office of State Public Health and Medical Administration [Állami Népegészségügyi és Tisztiorvosi Szolgálat Országos Tisztiorvosi Hivatala]. However, such information shall not be authorized if it identifies in any way or form the name, trademark or other marking of the vaccination. Detailed rules for the representation of pharmaceuticals are contained in separate legal regulations.³⁹

With the exception of certain preparations prohibited on the basis of separate legal regulations, pharmaceuticals intended for human health care and sold over-the-counter in pharmacies, as well as medicinal preparations not qualifying as pharmaceuticals may be advertised, if the advertising:

- clearly defines that the product advertised is a pharmaceutical or medicinal preparation not qualifying as a pharmaceutical;
- contains the name and the usual international trade name of the pharmaceutical or medicinal preparation not qualifying as a pharmaceutical;
- encourages the proper use of the pharmaceutical or medicinal preparation not qualifying as a pharmaceutical;
- introduces the pharmaceutical or medicinal preparation not qualifying as a pharmaceutical according to the recommended application defined in the course of registering or recording such pharmaceutical or medicinal preparation not qualifying as a pharmaceutical, respectively;
- contains the information necessary for the proper use of the pharmaceutical or medicinal preparation not qualifying as a pharmaceutical;
- contains an unequivocal warning of the necessity to read the patients' directions for use of the pharmaceuticals or medicinal preparation not qualifying as a pharmaceutical, as well as of any side effects of such pharmaceuticals or preparations.

However, such advertising may not contain any reference or expression which

³⁸ Representation of pharmaceuticals means the advertising or recommendation of pharmaceuticals for professional purposes, or any information relating to the composition, effect or application of such pharmaceuticals targeted exclusively at such parties entitled to prescribe or market pharmaceuticals or at persons with medical training.

³⁹ ESzCsM Decree No. 64/2003. (X.31.)

- alludes to the lack of need for, or the possibility to omit medical examination, treatment or surgical intervention;
- creates the impression that the drug or medicinal preparation not qualifying as a pharmaceutical can be applied without any side effects, or will definitely lead to recovery;
- represents pharmaceuticals or medicinal preparations not qualifying as pharmaceuticals as cosmetics or foodstuffs;
- attributes the efficacy and safe use of the pharmaceutical or medicinal preparation not qualifying as a pharmaceutical exclusively to its natural origin;
- may result in improper self-diagnosis through describing or detailing the medical problems;
- shows an alteration due to a disease or injury, or the effect of the pharmaceutical or medicinal preparation not qualifying as a pharmaceutical on the human body or any part thereof in a way which generates a sense of fear or departs from reality;
- includes the recommendation of scientists, medical experts or well-known personalities;
- creates the impression that human health will be harmed without the application of the pharmaceutical or medicinal preparation not qualifying as a pharmaceutical;
- alludes to the license to market the pharmaceutical or medicinal preparation not qualifying as a pharmaceutical.

Advertising of an over-the-counter pharmaceutical and medicinal preparation is not allowed if it contains only the registered name of the pharmaceutical in question, the name or trademark of its manufacturer (flash-back advertising). Such flash-back advertising can be published through radio or television, only as part of the same advertising package, and following the display of a pharmaceutical or medicinal preparation which satisfies the requirements above.

Advertising of pharmaceuticals may not be published if

- such pharmaceutical is not authorized to be marketed or used in Hungary;
- it contains narcotics or psychotropic materials, as defined in separate legal regulations;
- it contains pharmaceuticals for certain therapeutic areas, as defined in separate legal regulations;
- it presents a test preparation;
- it is addressed to children.

It is forbidden to publish the advertisement of an over-the-counter pharmaceutical if a prescription pharmaceutical is in circulation under the same name or in the same packaging or form.

Preparations applied in veterinary therapeutics may be advertised. The detailed rules governing the advertising of such goods shall be regulated in separate legal regulations.

According to the Code, an advertising of medicines, medicinal products may not contain recommendation of health care experts and organizations. An advertising of the health care articles, medicinal foodstuffs and cosmetics may not misuse the public trust in health care experts and organizations.

ORTT decision No.1473/2002. (X.3.): Medicines available not only on doctor's prescription are allowed to be broadcast in the sponsorship messages, in contrast to that in case of

medicines available on prescription only the name and the trade mark of the producer sponsor can be shown.

- Alcoholic beverages

Advertising for alcoholic beverages

- cannot be addressed to minors and cannot show minors consuming alcohol (// art. 15 a. TVWF Directive);
- cannot be broadcast directly before and directly after programmes made for minors (\neq TVWF Directive);
- shall not link the consumption of alcohol to enhanced physical performance or to driving (// art. 15 b. TVWF Directive);
- shall not create the impression that the consumption of alcohol contributes towards social or sexual success (Section 13 Point 2 of the Broadcasting Act, // art. 15 c. TVWF Directive);
- shall not claim that alcohol has therapeutic qualities or that the consumption of alcoholic beverages is a stimulant or a sedative, or that alcoholic beverages are a means of resolving personal conflicts (// art. 15 d. TVWF Directive);
- cannot encourage the over-consumption of alcohol, and cannot show the over-consumption of alcohol in a positive light and cannot show abstaining from the consumption of alcohol in a negative light (\pm // art. 15 e. TVWF Directive);
- shall not place emphasis on high alcoholic content as being a positive quality of the beverages (// art. 15 f. TVWF Directive);
- shall not convey an impression that with the consumption of beverages with low alcohol content alcoholism can be avoided (\neq TVWF Directive);
- cannot be broadcast during the prime time, with the exception of the low alcohol-content drinks (\neq TVWF Directive);

According to the Section 12 Point (1) of Advertising Act, advertising of alcoholic beverages is prohibited immediately preceding any programs for children or juveniles, during the full duration thereof, and immediately afterwards. Alcoholic beverages may not be advertised if the advertising encourages extreme alcohol consumption.

ORTT decision No. 280/1997. (XI. 26.): alcoholic beverages of low alcohol content are products of alcoholic contents under 12%. Should the same mark have products of lower contents and higher contents, it must emphasize that the advertising is on the products of the lower content.

- Minors

Protection in Broadcasting Act (Section 14 of the Broadcasting Act)

As main rules, advertising

- shall not exploit their inexperience or credulity (// art. 16 §1 a. TVWF Directive);
- cannot directly suggest to minors to encourage their parents or other adults to buy or use toys and other goods or services (// art. 16 §1 b. TVWF Directive);

- shall not exploit the special trust minors place in parents, teachers or other persons (//art. 16 §1 c. TVWF Directive);
- shall not show minors in dangerous situations and shall not encourage violence (// art. 16 §1 d. TVWF Directive);
- cannot be misleading in respect of the actual nature and possibilities of the toy (≠ TVWF Directive).

Teleshopping advertising shall not directly encourage minors to obtain (purchase, lease) the goods or services being advertised (// art. 16 §2 TVWF Directive).

Protection in Advertising Act (Section 5 of the Advertising Act))

Advertising targeted at children or young people may not be published in if

- it may harm their physical, intellectual or moral development (// art. 16 §1 TVWF Directive), including in particular advertising which shows children or juveniles in dangerous or violent situations or in situations with sexual emphasis;
- it takes advantage of their credulity or lack of experience, it directly encourages them to motivate adults to purchase goods (// art. 16 §1 a. and b. TVWF Directive).

Tobacco products or alcoholic beverages may not be advertised if the advertising

- is targeted at children or young people,
- depicts children or people.

Protection in the Code

An advertising made for or featuring children and young people

- may not include any statement, visual appearance or sound effect that could damage them intellectually, morally and physically and make use of their credulousness, inexperience and view of world;
- may not conduce in children the feeling that if they do not purchase the goods advertised, they need to feel shame or disadvantage;
- may not damage respect that children and young people have for parents and teachers, and may not encourage disobedience against them;
- may not make any unfair use of the trust children and the young have in their parents and teachers;
- may not encourage them to seek or establish contact for any reason with persons unknown to them.

Children and young people may not feature in advertising of any products and services which are basically unsuitable for advertising. A product hazardous to health may not be advertised in any advertising aimed at children or the young, nor should children or young people feature in any such advertising.

BH 2002.247.: It is prohibited to publish advertising which could have negative impact to the physical, mental or moral developments of minors.

- Other products

Political advertising⁴⁰ (Section 11 of the Broadcasting Act)

During an election campaign, political advertising may be broadcast in accordance with the rules of the Acts on the election of Members of Parliament⁴¹, the representatives of local and regional governments and mayors, the election of minority local governments. Outside election campaigns, political advertising may be broadcast exclusively in connection with referenda already ordered to take place. In addition to that, it is forbidden to broadcast political advertising in broadcasting abroad.

ORTT decision No. 1699/2001. (XII.4) and 246/2002. (I. 31): The quantitative restrictions of the Broadcasting Act do not apply to political advertising; it means that duration of political advertising is not to calculate to the conventional advertising time, however other restriction of the Broadcasting Act (Article II. Title) are applicable.

Weapons (Section 13 of the Broadcasting Act)

Advertisements popularizing and describing weapons, ammunition, explosives cannot be broadcast.

Sexual and pornographic products (Section 5/A. of Advertising Act)

Any display of a pornographic advertisement⁴² is forbidden, with the exception of such a display on sexual goods and in sex shops. Sex goods and sex shop are defined in a separate legal regulation.

It is forbidden also to publish advertisements for sexual services⁴³, with the exception of such advertisement on sexual goods and in sex shops and to publish any advertisement that is aimed to arouse sexual interest. It is also prohibited to publish any advertising for special-rate telecommunications services that is aimed to arouse sexual interest.

The Code provides additionally for prohibition to use erotic and sexual elements in advertising for purposes not justified by the object and substance of advertising. Presentation of the human body within the limits of good taste may not be objected to.

⁴⁰ Political advertisement is a program which (i) calls upon influences (the audience), to support the participation and the success of a party or political movement, or its candidate, in the elections, or initiating a referendum, (ii) popularizes the name, activity, objectives, slogan, emblem and the image formed of a party or political movement.

⁴¹ Act No. C of 1997 which requires from the broadcasters the providing the same conditions assured to the parties or their candidates. Opinion or comments cannot be attached to a political advertising.

⁴² Pornographic advertising shall mean any display of sexuality in a gravely indecent manner, in particular, the open display of sexual intercourse or genitals.

⁴³ Advertising for sexual services mean any announcement that is aimed to promote, directly or indirectly, a sexual service. The definition of sexual services, and additional restrictions pertaining to the advertisement of such services, are laid down in a separate legal regulation.

ORTT decision No. 569/2001 (IV. 18.): the general prohibitions laid down in the Advertising Act are applicable for advertising in broadcasting as well.

b. Conclusions

The Hungarian acts and the Code correspond to the content of the TVWF Directive; however they provide for several additional products prohibition and stricter detailed limits for advertising of such products.

The prohibition of tobacco products advertising knows an exception covering the name and the logo of the manufacturer sponsoring the motor sport event defined by the law.

No distinction being made between advertising and teleshopping, the regulation on medicines advertising has to be considered as more restrictive when prohibiting any form of advertising for medicines only available on prescription.

The provisions of the TVWF Directive on advertising of alcoholic beverages have been fully implemented, while other restrictions apply: prohibition to advertise for alcoholic beverages in prime time or during children's programme, etc...

Protection of minors is granted according to the standards of the TVWF Directive with only minor differences in the wording. Other provisions are made to protect minors from advertising.

Finally, prohibitions concern various sectors as political advertising, weapons and sexual and pornographic products.

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