



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

ITALY

LEGAL REPORT

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The European Union Commission has adopted a gradual approach to the process of revising the Television Without Frontiers Directive, taking into account developments in technology and the evolution of the market. Italy is in full agreement with this approach, which allows this very sensitive issue for the European audiovisual system to be tackled with appropriate levels of consultation.

During the informal Council of Audiovisual ministers held in Siracusa on 12-14 September 2003 has expressed the need to reach a greater liberalisation of the advertising sector through the elimination of legislation that is often unnecessarily detailed and difficult to apply, while continuing to respect the principle of the recognisability of advertising messages. The current text has proved insufficiently flexible in dealing with new forms of advertising such as virtual and interactive advertising. Future regulations should take into account the new advertising techniques that will come with the migration to digital. Balanced regulations are required, which, on the one hand, ensure that television programmes and authors rights are not compromised by excessive advertising breaks, and, on the other hand, take account of current technological innovations.

Italy also hopes that the new Directive will not impose new legal restrictions, apart from the definition of general basic principles. In a continuously evolving situation dominated by technological convergence and the removal of every physical and economic barrier to the free circulation of ideas, people, capital, goods and services, Italy thinks that the path of self-regulation, based on guidelines established by a revised Television Without Frontiers Directive, is the most appropriate way of guaranteeing the coherence and reinforcement of European audiovisual policy.

In the technological development of the communication system, the move to digital transmission is a vitally important step. On the one hand, digital transmission represents the moment of convergence between television, computing and telecommunications. On the other hand, the television set becomes an efficient and convenient tool for developing interactive services, in addition to its traditional role as a medium for watching programmes. The digital standard increases the potential of television in terms both of quality and quantity. It makes additional interactive services accessible via the television set, so that even households without a computer can access services associated with the Internet. All analogue distribution and reception means will gradually be replaced by a new digital generation of systems. Furthermore, digital terrestrial distribution offers greater potential than cable or satellite for broadcasters who wish to reach a very large audience and thus continue to offer the universal service that has always characterised television as a means of mass communication. Apart from the important economic impact of the substantial investment made by operators in the sector and the increased consumer spending, digital terrestrial television is a fundamental phase in the optimum exploitation of the electronic spectrum and the process of improving computer literacy. What is more, the digital terrestrial network is inter-operable and compatible with other electronic communication networks, both fixed and mobile. This inter-operability increases the efficiency of the communication system and the number of channels available to content providers, which translates into greater choice for the end-user. DTT offers a number of advantages: the potential to regulate the audio and video quality of the transmission capacity of each channel; a reduction in electromagnetic pollution due to the low frequencies used by transmitters and the possibility of offering multimedia services, thus giving consumers access to a

range of additional features associated with a television programme by using a remote-control. But digital terrestrial television also introduces the element of interactivity, and it is this innovation that is destined to have the greatest impact. With the simple addition of a set-top box, the analogue television set is able to offer many of the features of a computer, with the added advantage that television sets are already present in almost every home. Analogue television has an extremely high penetration rate in Italy, reaching 98% of households and, due to its advertising market, representing one of the driving forces of the national economy. At the same time, the low penetration of computers represents a formidable barrier to the eEurope programme, which aims to involve all citizens in the Information Society. With the interactive digital terrestrial system, the television set could function as a universal terminal for access to the Information Society and for closing the digital divide. Aware of the current limitations of the analogue television system, which has now reached maturity, and, above all, of the considerable socio-economic benefits associated with digital terrestrial television, the Italian Parliament, Government and Communications Authority have decided to dedicate considerable attention to its development. This requires a well thought-out policy of incentives and a regulatory system which creates the legal certainty the market requires.

Article 2 *bis*, paragraph 6, of law of 20 March 2001 no. 66 (Law 66/01), sets forth that “*television broadcasting of programmes and services on terrestrial frequencies shall be exclusively carried out by digital systems within the year 2006*”, thus imposing the passage from the current analogue terrestrial broadcasting to a system based on digital technology. On the basis of Law 66/01, the Italian Communications Authority has already issued the regulations for new professional qualifications, licences for network operators and content providers, as well as measures for planning frequencies, thus delineating the current legislative framework of digital terrestrial television. The Ministry of Communications has set up a Commission for the development of DTT, with the task of supplying the necessary tools for a concrete development programme to accompany the development of DTT from now to 2006. Public experiments with DTT will also be carried out. These will be centred around interactive government services and other services for the public, using free or available frequencies. A further intervention is the current law of 3 May 2004 no. 112 on the reorganisation of the broadcasting system in the new digital context. The adoption of digital terrestrial television will be accelerated and encouraged through the definition of an adequate transitional discipline that establishes precise deadlines for the introduction of the new technologies and provides incentives for the take-up of the new reception equipment among Italian families.

I. Definitions (Article 1 Directive TVWF)

- “Television broadcasting”

means the “initial transmission by terrestrial broadcasting, wire or by any kind of satellite, in unencoded or encoded form, of television programmes intended for reception by the public. It does not include communication services operating on individual demand” - art. 2 lett. a) of Law no. 327 of 5 October 1991 “Ratifica ed esecuzione della convenzione europea sulla televisione transfrontaliera, con annesso, fatta a Strasburg il 5 maggio 1989” (“Law 327/1991”) (±// art. 1 a. TVWF Directive).

- “Broadcaster”

means “the person subject to the Italian jurisdiction who has editorial responsibility for the composition of schedules of television programmes and who transmits them or has them transmitted by third parties” - art. 1.1 b) of the resolution of the *Autorità Garante della Concorrenza e del Mercato* no. 538 of July 26, 2001 “Regolamento in materia di pubblicità radiotelevisiva e televendite” (“Res. 538/2001”; // art. 1 b. TVWF Directive).

- “Television advertising”

means “any form of television announcement broadcast in return for payment or for similar consideration by a public or private undertaking in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, or rights and obligations, in return for payment” - art.1.1 c) of Res. 538/2001; // art. 1 c. TVWF Directive.

- “Surreptitious advertising”

means “the representation in words or pictures of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the broadcaster to serve advertising and might mislead the public as to its nature. Such representation is considered to be intentional if it is done in return for payment or for similar consideration” - art.1.1 g) of Res. 538/2001; // art. 1 d. TVWF Directive.

- “Sponsorship”

means any “contribution made by a public or private undertaking not engaged in television broadcasting activities or in the production of audio-visual works, to the financing of television programmes for the purpose of promoting its name, its trade

mark, its image, its activities or its products provided that no specific references to such activities or products are made for promotional purposes” - art. 2.1 of Decree no. 581 of 9 December 1993 “*Regolamento in materia di sponsorizzazioni di programme radiotelevisivi e offerte al pubblico*” (“Decree 581/1993”; ±// art. 1 e. TVWF Directive).

- “Teleshopping”

means “*direct television offers broadcast to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment*” - art.1.1 e) of Res. 538/2001; // art; 1 f. TVWF Directive.

From a legal point of view, teleshopping is similar to **distance sales** as it is present in programmes where the presenter, in addition to proposing the purchase of products (which, if accepted gives rise to an equal number of purchase and sale contracts) also outlines the positive features of offered products. Provisions of Decree no. 185 of 22 May 1999 (“Decree 185/1999”) on distance sales implementing the Directive no. 97/7/EC therefore apply to **teleshopping** as well as the provisions on advertisement contained in Decree 74/1992 and notably the principle that it must not be misleading.

- “Self-promotion”

means “*broadcaster’s announcements related to its programmes and collateral derivate products*” - art.1.1 g) of Res. 538/2001 (this definition is not contained in the Directive).

- “Subliminal Advertising”

means advertising consisting in films, images of very short duration which the public does not directly perceive through the sight for the brevity but through the unconscious and thus provoking stimulus which may not be rationally controlled (this definition is not contained in the Directive).

- “Product placement”

means indirect advertising performed on the basis of an agreement between the advertising operator and the broadcaster, which consists in the apparently occasional display, within a programme, of products whose trademark is shown in such a way to be clearly seen by the audience (this definition is not contained in the Directive).

- “Television promotion” (“telepromozione”)

means “*the display of products, the verbal or visual presentation of goods, name, trademark or business of a manufacturer or service provider made by the broadcaster within a program for the purpose of promoting the supply or rendering – against a consideration – of goods or services,*” - art. 1 f) Res. 538/2001 (this definition is not contained in the Directive).

- “Misleading advertising”

means “*any advertisement which, in any way whatsoever, including its presentation, misleads or is likely to mislead any natural or legal person to which it is directed or which it reaches, and which by virtue of being misleading is capable of adversely affecting their economic behaviour or, for this same reason, harms or may harm a competitor*” – art 1 b) of Decree no. 74 of 25 January 1992 (“Decree 74/1992”) implementing the directive 84/450/EEC as amended by directive 97/55/EC concerning misleading and comparative advertising.

- “Comparative advertising”

means “*any advertising which explicitly or by implication identifies a competitor or goods or services offered by a competitor; c) 'advertiser' shall mean any party which commissions an advertisement and the author of that advertisement and, in the event that it is not possible to identify either, the proprietor of the medium through which the advertisement is disseminated*” - art 1 b-bis) of Decree no. 74/1992.

- Conclusion

The Italian regulation contains similar definitions as the one of the TVWF Directive. The Italian regulation also contains some definitions that are not in the TVWF Directive such as the telepromozione and the product placement.

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

a. Regulations

In the Italian legal framework the principle of the advertising recognition has been implemented by the following law provisions:

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

Art. 8 par. 2 Law 6 August 1990 no. 223 (“Law 223/1990”): television advertising (including mini spots) must be recognizable as such and must be differentiated from other parts of the programmes by clear optical **or** acoustic means (±// art. 10.1 TVWF Directive).

Furthermore, Law 26 October 1995 n°447, the so-called framework law on the acoustic pollution provides for the prohibition for broadcasters to broadcast titles and commercials having sound-power higher than the ordinary one of programme.

Art. 13 §3 of Decree 581/1993 n. 581: television promotion must be recognizable as such and must be differentiated from the programme by **means of the caption** “messaggio promozionale” (promotional message) for its entire duration (≠ art. 10 TVWF Directive, goes further than the Directive).

Art. 3 of Res. 538/2001: advertising and teleshopping must be readily recognisable as such and kept quite separate from other parts of the programmes.

Art. 7 of the Advertising Self-Regulation Code: advertising must be recognizable as such. Advertising must be differentiated from the context in which it is introduced by **suitable means**.

Art. 10 of Decree 581/1993: transmissions for the direct sales, buying or rental of products or services to the public must be clearly recognisable as such and must be distinguishable from other programs in an area removed from every other editorial content. These transmissions must be preceded and followed by a **suitable opening and closing** (e.g. jingles, videos) which allows the public a clear perception of the type of program. Direct sales transmissions can contain commercial breaks as long as these breaks are clearly, visually or acoustically, distinguishable from the transmission itself.

Art. 4 of Decree no. 74 of January 25, 1992 (“Decree 74/1992”), implementing the Directive 84/450/EEC concerning misleading and comparative advertising: advertising must be clearly recognizable as such.

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

Art. 3 of Res. 538/2001: advertising and teleshopping must be readily recognisable as such and kept quite separate from other parts of the programmes. To achieve this, clear optical **and** acoustical means **must introduce and close the broadcasting** of the commercial (// art. 10 TVWF Directive). While the commercial is broadcast, a signal will be required to **indicate the nature of the broadcast**. It is not possible for a person to perform commercials or any kind of advertising at the same time as the program is broadcast. As a result, it is illegal to intentionally broadcast advertisements that can mislead the audience to interpret the message as anything other than advertisement (≠ art. 10 TVWF Directive).

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

Non applicable.

- Prohibition of the use of "subliminal techniques"

Art. 15 par. 9 of Law 223/1990: broadcasters may not broadcast encoded or subliminal messages (// art. 10.3. TVWF Directive); such prohibition is general and consequently it also applies to commercial (see also art. 4 par. 3 of Decree no. 74 of January 25 1992). On this regards see the decisions of the *Autorità Garante della Concorrenza e del Mercato* no. 685 of 8 February 1996 (Omega-Speedmaster)¹, no. 955 of 23 December 1996 (Tuborg)², no. 956, 23 dicembre 1996 (Pepsi-boom)³.

- Prohibition of surreptitious adverting and teleshopping

Surreptitious advertising is prohibited (// art. 10.4 TVWF Directive).

b. Conclusion

The regulation generally complies with the Directive.

Advertising should be recognisable as such and separated from the programmes by clear optical **and** acoustical means which must introduce and close the broadcasting of the

¹ In *Boll. Agcm.*, no. 6, 1996.

² In *Boll. Agcm.*, no. 49, 1996.

³ In *Boll. Agcm.*, no. 49, 1996.

commercial. While the commercial is broadcast, a signal will be required to indicate the nature of the broadcast ("messaggio promozionale").

Teleshopping must be preceded and followed by a **suitable opening and closing** (e.g. jingles, videos) which allows the public a clear perception of the type of program.

Those provisions are **more restrictive** than the Directive.

While surreptitious advertising and subliminal techniques are prohibited, no provisions are made for the prohibition of isolated advertising, which is less restrictive than the Directive.

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

a. Regulations

The relevant Italian regulations are the following:

- Art. 14 of Law 327/1991;
- Art. 3 of Law 30 no. 122 April 1998 “*Differimento di termini previsti dalla L. 31 luglio 1997, n. 249, relativi all'Autorità per le garanzie nelle comunicazioni, nonché norme in materia di programmazione e di interruzioni pubblicitarie televisive*” (“Law 122/1998”);
- Art. 4.7 of Res. 538/2001

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

Advertising and teleshopping advertisements must be inserted 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)

Advertising (including mini spots) and teleshopping advertisements may also be inserted during television programmes provided that: (a) the integrity and value of these programmes (taking into account natural breaks in and the duration and nature of the broadcasts); and (b) the interests of rights holders are not prejudiced (// art. 11.1 TVWF Directive) and (c):

1. in programmes consisting of autonomous parts, or in sports events and similarly structured events and performances containing intermissions, advertisements and teleshopping may be inserted only between distinct parts of the show or intermission (// art. 11.2 TVWF Directive);
2. in the case of broadcasting of sport events, advertisement and teleshopping may be inserted during the breaks **foreseen by the official regulation** of the sport being broadcast, or during its pauses insofar as the advertisement message does not interrupt the sport action (more precise than the Directive);
3. feature films and television movies - excluding series, serials, light entertainment programmes and documentaries - with a scheduled duration

exceeding 45 minutes may be interrupted once for each period of 45 minutes. A further interruption is authorised if their duration is at least 20 minutes longer than two or more complete periods of 45 minutes (such provision shall not apply to programs whose broadcasting rights were purchased before 28th February 1998; // art. 11.3. TVWF Directive).

4. a period of at least 20 minutes must elapse between each successive advertising or teleshopping break within the programme, if different from that mentioned above (// art. 11. 4 TVWF Directive).

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

News and current affairs programmes, as well as documentaries, religious programmes and children's programmes, may not be interrupted by advertising or teleshopping when their scheduled duration does not exceed 30 minutes (// art. 11.5 TVWF Directive).

Cartoon programmes cannot be interrupted by advertisement or teleshopping (≠ art. 11 TVWF Directive) (either if those cartoons are broadcast in specific programme or in children's programmes). This provision does not apply to cartoons produced for adults nor does it apply to full length cartoons.

b. Conclusion

The rules of the Directive have been generally implemented.

Stricter rules apply when the regulation expressly impose the broadcaster to take into account the natural brakes foreseen in the sport regulation when interrupting sport events and when the regulation provides form a prohibition of interruption of short cartoon made for children.

However, the national regulation is less restrictive when not prohibiting the interruption of religious services broadcast.

Until the implementation of the overall rules of the communication system, the above provisions (excepted those relating to cartoon programmes) are not applied to transmissions of television local broadcasters which are only broadcast within the Italian territory and which cannot be received, directly or indirectly, in one or more of the EU Member States.

The national regulation forbids interrupting "cartoon" programmes with advertising which is stricter than TVWF Directive.

IV. Quantitative restrictions (Article 18 TVWF Directive)

a. Regulations

The relevant Italian regulations are the following:

- Art. 8 paragraphs 6, 7, 8, 9, 9 bis, 9 ter, 9 quater of Law 223/1990 as amended by Law no. 483 of 17 December 1992;
 - Art. 5, 6, 12 paragraphs 2 and 3 -of D.M. 581/1993.
- 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 maximum daily transmission time devoted to advertising by **national private licence holders** is increased up to 20% of the daily broadcasting time, when such advertising includes the offers directly made to the public for the purpose of selling, purchasing or hiring products or providing services (teleshopping), without any prejudice to the daily and hourly quantitative restrictions bellow for any advertising other than teleshopping (// art. 18 TVWF Directive).

The maximum daily transmission time devoted to advertising by **local private licence holders** is increased up to 35% of the daily broadcasting time, when such advertising includes advertising other than spots, without any prejudice to the daily and hourly quantitative restrictions for spots (bellow) (\neq art. 18 TVWF Directive).

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

In respect of the **public licence holder**, the share of transmission time devoted to advertisements must nor exceed 4% of the weekly broadcasting time.

In respect of **private national licence holders**, the share of transmission time devoted to advertisements must not exceed 15% of the daily broadcasting time (// art. 18.1 TVWF Directive).

In respect of **private local licence holders**, the share of transmission time devoted to advertisements must nor exceed 15% of the daily broadcasting time(// art. 18.1 TVWF Directive).

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

In respect of the **public licence holder**, the share of transmission time devoted to advertisements must not exceed 12% of any given clock hour. Any eventual surplus, however, not exceeding 2% during each hour, must be recovered in the successive hour (≠ art. 18.1 TVWF Directive).

In respect of **private national licence holders**, the share of transmission time devoted to advertisements must not exceed 18% of any given clock hour. Any eventual surplus, however, not exceeding 2% during each hour, must be recovered in the successive hour (≠ art. 18.1 TVWF Directive).

In respect of **private local licence holders**, the share of transmission time devoted to advertisements must not exceed 20% of any given clock hour. Any eventual surplus, however, not exceeding 2% during each hour, must be recovered in the successive hour (≠ art. 18.1 TVWF Directive).

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

Mini spots are considered as advertising and therefore must be taken into account for the calculation of the advertising time.

The following is not considered as advertising:

- a) the simple mention either visual or acoustic, in the credit titles and/or at the end of a program, of the name or trademark of the enterprise involved in the production of the program appearing as co-producers, as long as, such mention does not involve, within the program, any type of promotional communication concerning the co-producer and the enterprises represented by the same; it is intended that the co-producer of the enterprise is considered to be, although not involved in the exclusive or extensive activity of production, distribution or transmission of a radio or television program who has contributed to the financing of the radio or television program with the simple purchase of shares of the economic rights of the co-produced program, of the rights for particular formation or geographic areas of utilization, or for the participation of the relative benefits;
- b) the simple mention either visual or acoustic, in the credit titles and/or at the end of a program, of the name or trademark of the enterprises who, either by payment or gratis, have provided goods or services which have been utilized for the realization of the program itself, as long as such mention does not accompany any type of promotional communication concerning the supplier itself.

- c) the transmission of artistic, cultural, sport or in any case, entertainment or informative programs, whose object is the reproduction of events, manifestations or shows, not due to the initiative of the agent and of which the same has not purchased the rights of the broadcast and/or the transmission, although such events, manifestations or shows, result to be sponsored either directly between the organizers and one or more enterprises of which the agent has not taken part; in any case, a form of advertising is considered; in accordance with the application of art. 8 of the Law 223/1990, the mention either visual or acoustic, of the name, trademark, symbol of the activity or products of the organizers and/or the sponsors of the said events, during broadcast of radio news or television news, where such mention is repeated, not occasionally, technically not necessary, and in any case avoidable without prejudicing the regular execution of the news. This last rule is applied also in the case in which the sponsor of the event is also the sponsor of the transmission.

Self-promotion and the activity of information and of communication of government/public offices, including social messages and messages of public interest, are not calculated for the purposes of quantitative restrictions (//art . 18.3 TVWF Directive).

b. Conclusions

The rules of the regulation generally comply with the Directive. **Stricter rules** apply to public licence holders and **less restrictive** rules apply to private local licence holder which can broadcast advertising up to 35% of their daily transmission time including all form of advertising and up to 22% of the transmission time within a given clock hour. Moreover more restrictive rules apply to private national licence holder regarding the maximum transmission time within a given clock hour (18%).

Credits given to co-producers of the programmes or to suppliers is not considered as advertising as well as non intentional showing of brand name during the broadcasting of events, competitions or shows

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

a. Regulations

The relevant Italian regulation is the following: Art. 10 para. 5 and art. 12 par. 2 of Decree 581/1993

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

Teleshopping programmes can not last less than **three** consecutive minutes, including opening and closing titles (\neq art. 18bis 1 TVWF Directive).

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

Non applicable.

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

Transmission time dedicated to teleshopping programmes must not exceed **1 hour and 12 minutes** per day and 5% of the daily broadcasting time (\neq art. 18bis 2 TVWF Directive).

b. Conclusion

The national regulation is different than the Directive: minimum 3 consecutive minutes not exceeding 5% of the daily transmission time (versus a minimum of 15 minutes in the Directive) and 1 hour and 12 minutes (versus 3 hours in the Directive).

VI. Sponsoring (Article 17 TVWF Directive)

a. Regulations

The relevant Italian regulations are the following:

- Art. 9 par. 13 and 14 Law 223/1990;
- Art. 2, 3, 4, 6, 7, 8 and 9 of Decree 581/1993

Any kind of promotional method other than those described in the preceding paragraphs are to be considered advertising under the application of article 8 law n. 223 of 6 August 1990.

The limitations described hereunder shall not apply to programmes sponsored by the public administrations or public no profit bodies as well as to programmes of social interest sponsored by foundations, associations and no profit bodies.

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

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

Art. 8 par. 15 of Law 223/1990: sponsored programmes must be readily recognisable as such and indicate the sponsor's name or logo at the beginning **or** at the end of the programme [see also art. 3 lett. b) of Decree no. 581 of 9 December 1993 no. 581].

- Sponsor identification

They must be clearly identified as such (// art. 17.1 b. TVWF Directive).

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

They must indicate the sponsor's name or logo at the beginning **or** the end of the programmes (±// art. 17.1 b. TVWF Directive).

If the sponsored programme is included in a **package programme** and is identified within such programme by opening and closing signatures or, for the films and television fiction works, by credits or ending titles, the sponsor's name or logo must be indicated at the beginning **and** at the end of the single included programme and not at the beginning and at the end of the package programme. The package programme may

not include more than one sponsored programme for each entire broadcasting hour. (This precision is not included in the Directive).

The sponsorship of television programs can be manifested exclusively during the program announcement and/or program listing which immediately precede the program itself as well as thank you messages or similar at the end of the program (e.g. billboards), including only the quotation of the name and/or logo of one or more association, different from the licensee and excluding any type of advertising slogan or presentation of the product or services of the same.

Program announcements and/or program listings (not lasting more than 8 seconds) of the programs to be broadcast by the licensee ("promos"), including only the quotation of the name and/or logo of one or more association, different from the licensee and excluding any type of advertising slogan or presentation of the product or services of the same. No more than 3 of these program announcements or listings are allowed for each program distributed by the licensee on a national level.

- Identification of the programmes that cannot be sponsored

Television news and in any case the political, economic and financial news may not be sponsored. Sponsoring of consulting programmes aimed to consumers is not admitted (more precise than the Directive).

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

They must not encourage the purchase or rental of the products or services of the sponsor or a third party, in particular by making special promotional references to those products or services (// art.17.1 c. TVWF Directive).

Television programmes may not be sponsored by natural or legal persons whose principal activity is the manufacture or sale of cigarettes and other tobacco products (// art. 17.2. TVWF Directive), the manufacture or sale of alcoholics (\neq art. 17 TVWF Directive), the manufacture or sale of medical products or the provision of medical treatment available only on prescription (\pm // art. 17.3 TVWF Directive). The turnover of the single activities shall be taken into consideration in order to determine the principal activity. It is considered as principal activity the activity prevailing with respect to each of the other activities in the national territory. This provision is more precise than the Directive.

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

If the sponsored program has a duration of less than 40 minutes, the appearance of the name or logo of the sponsor during the program is allowed only once and not lasting

more the 5 seconds. The duration of the program is calculating taking into account the opening and closing titles and any eventual intervals or advertising interruptions or any other type of interruption including technical problems. (the TVWF Directive is silent on this issue)

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

Games prizes

When sponsorship is used for financing a game show, contests or competitions, products or services of the sponsor can be given away as prizes to individuals, even demonstrating that the prize is furnished by the sponsor, but on the condition that it is done quickly, without using publicity slogans and with discretion only at the moment of delivery. The prizes (products or services) are not subject to proof of purchase by the sponsor or third party (the Directive is silent on this issue).

Product Placement

According to Italian legal theory, product placement is a form of surreptitious advertising and is therefore prohibited.

Criteria adopted to designate the "product placement" as a form of surreptitious advertising are now well-established.

Elements taken into account are, on the one hand, the nature of shots, their closeness or repetition, the readability of the trademark, the unnatural attitude of actors, and, on the other hand, fictional or artistic requirements, the occasional character of scenes, their truthfulness, and the need to characterize situations or characters.

Applying the above criteria involves subjective views and may therefore result in different conclusions. This is what happened in the procedures concerning the television serial "*Un commissario a Roma*", consisting of nine episodes co-produced by Compagnia Generale R.T. S.r.l., RAI UNO, and Editoriale la Repubblica. The elements allegedly in breach were as follows: in each episode, credits were preceded by the words "RAI UNO and Editoriale la Repubblica present ..."; episodes showed copies of the daily paper in the hands of the leading actor as well as a luminous sign in the background advertising the newspaper in night scenes. Two separate procedures concerned the elements allegedly in breach: the one before the Institute for Advertising Self-Regulation for breach of article 7 of the Code of Advertising Self-Regulation; and another one before the AGCM for conflict with Decree no. 74/1992. Both sentences qualified a number of scenes as surreptitious advertising, and expressly identified them as product placement. However, they made different remarks on the matter and reached partially different conclusions on the extent of the breach.

Indeed, the Jury⁴ ruled that there had been a breach of article 7 “Identification of Advertising” of the Code of Advertising Self-Regulation consisting in the repeated presence of the luminous sign reproducing the name of the newspaper “la Repubblica” in the background of the shots. The repeated presence was objectively regarded as a “crafty mechanism to present advertising”. On the other hand, the Jury ruled that the other shots of the newspaper in the television series were “reasonable” based on the story and character type. Such shots were legitimate “to ensure the room required for artistic expression”.

However, the conclusions of the AGCM⁵ on this issue were different. Like the Jury, it stated that the product placement was unlawful because of its lack of clearness and because it was difficult to recognize. Yet, it condemned not only the shots of the name of the newspaper like the luminous sign, but also the shots of the actual paper because it regarded them as “unnatural and crafty” and not required by the need to define the character. In this respect, the AGCM’s ruling was consistent with the opinion expressed by the Communications Authority (given under art. 7 of Decree no. 74/1992) and upheld that the association established between the daily paper “la Repubblica” and the main character of the television series – a positive protagonist played by a popular actor – could generate indirect persuasion in viewers.

b. Conclusion

The provisions of the Directive have been generally implemented, with the following differences:

1. Less restrictive than the Directive:

- sponsored programmes must be identified at the beginning or at the end of the programme;

2. More restrictive than the Directive:

- sponsoring of package programmes must be identified at the beginning and at the end of every single programmes;
- the package programme may not include more than one sponsored programme for each entire broadcasting hour;
- television programmes may not be sponsored by natural or legal persons whose principal activity is the manufacture or sale of alcoholics;
- whether the sponsored programme does not last more than 40 minutes, the appearance of the sponsor's identification is limited to 5 seconds;
- political, economic and financial news and consulting programmes aimed to consumers cannot be sponsored;
- sponsors may grant prizes to winners of games, shows or contests under the condition it is done quickly;
- product placement is prohibited as surreptitious advertising;

⁴ Jury of the Institute for Advertising Self-Regulation, no. 62, 20 April 1993, in AIDA 1993, page 694 and Jury of the Institute for Advertising Self-Regulation, no. 63, 17 May 1993, in AIDA 1993, page 725 and following.

⁵ Antitrust Authority, ruling no 1291, 12 July 1993, in AIDA 1993, pages 777 and following.

- special rules apply to television promotion ("telepromozione").
Television promotion must be recognizable as such and must be differentiated from the programme by **means of the caption** "messaggio promozionale" (promotional message) for its entire duration (\neq art. 10 TVWF Directive, goes further than the Directive).
Television promotion may not be inserted during political, economic and financial news and programmes aimed to consumers (more precise than the Directive).
Television promotion must be calculated for the purposes of advertising quantitative restrictions under Chapter IV.

VII. New advertising techniques

a. Split screens

No specific Italian regulation is set forth with respect to split screens. General provisions under sections II and III of this report shall apply. Until today such technique has not been used in Italy.

b. Interactive advertising

Pursuant to article 8 of the *Autorità per le Garanzie nelle Comunicazioni* resolution no. 435/01/CONS of November 15, 2001, digital content providers must observe the provisions regulating advertising, sponsorship and teleshopping which are applicable to the television analogue terrestrial broadcasting.

Interactive advertising is also subject to the provisions set forth in Decree no. 74 of 25 January 1992 (Decree 74/1992) implementing the directive 84/450/EEC as amended by directive 97/55/EC concerning misleading and comparative advertising when the advertising is produced and diffused in Italy.

The main provisions of Decree 74/1992 are the following:

- i) Advertising must be clear, truthful and fair.
- ii) Advertising must not be misleading according to the principles set forth in Directive 84/450/EL.
- iii) Comparative advertising is permitted if the legal conditions are met.
- iv) Advertisements must be clearly recognizable as such; in particular, print advertisements must be distinguishable from other forms of non advertising communications through the use of graphical elements which are of immediate recognition.
- v) Advertisements for products that are likely to endanger consumer health and safety are deemed to be misleading when they fail to indicate this such that consumers may be induced to act without taking normal precautions or safety rules.
- vi) An advertisement that is likely to reach children and adolescents is deemed misleading if it directly or indirectly constitutes a safety hazard or takes advantage of their natural trustworthiness and lack of experience. An advertisement is also considered to be misleading if, by utilizing children or adolescents, it takes advantage of the natural feelings that adults have for the young.

There is no specific provisions on "interactive advertising" in the Italian regulation

c. Virtual advertising

Virtual advertising consists in the diffusion of messages which do not exist in the reality but which are introduced in the television broadcasting. Such technique has been

exploited in Italy by Telemontecarlo which during the football match of Uefa Cup between Lazio-Victoria Guimares on 30th September 1997 has projected at midfield the trademark of the sponsor of Lazio team.

General provisions on television advertising shall apply as far as compatible with such advertising technique.

In particular, the following provisions shall apply:

- i) The advertising must not be broadcast in a surreptitious or subliminal way and the broadcasting time must be relevant for the quantitative restrictions applicable for the advertising forms other than spots.
- ii) Television advertising must not offend human dignity or evoke racial, sexual or nationalistic discrimination. It must not offend religious convictions and ideals and incite discriminatory behaviour regarding health, security and the environment and it must not cause moral or physical detriment to minors.
- iii) Advertising of medicines and medical cures that are available only on prescription is forbidden.

The broadcasting time must be relevant for the quantitative restrictions applicable for the advertising forms other than spots (see section IV of this report).

There are no specific provisions on that matter.

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

a. Regulations

The relevant Italian regulations are the following:

- Art. 8 par. 1 of Law 223/1990

Television advertising must not

- offend human dignity (//art.12.a TVWF Directive);
- evoke racial, sexual or nationalistic discrimination (\pm art.12 b.TVWF Directive);
- offend religious convictions and ideals (\pm // art. 12 c. TVWF Directive);
- incite discriminatory behaviour regarding health, security and the environment (\pm // art; 12 d and 12 e. TVWF Directive);
- must not cause moral or physical detriment to minors.

The correctness, as an autonomous requirement of advertising, is not set forth in the TVWF Directive but it is required by Decree 74/1992 (though this characteristic is stated in the Directive 84/450/EC). Pursuant to the doctrine, advertising, even if not misleading, must be deemed as correct only when it does not prejudice the competitors' interests.

Products offered through teleshopping during television programmes must be accurately described, with no ambiguity; price, warranties and supply methods need to be specified.

Decree 185/1999⁶ on distance agreement has the aim is to protect consumers from obligations undertaken without a proper knowledge and awareness of the essential information concerning the purchased goods or services and without the time usually needed to take a decision. To achieve said purposes, Decree 185/99 states that in good time prior to the conclusion of any distance contract, the consumer has to be provided with certain information and namely:

- a) the identity of the supplier and, in the case of contracts requiring payment in advance, his address;
- b) the main characteristics of the goods or services;
- c) the price of the goods or services including all taxes;

⁶ Decree 185/99 definition of distance contract is “*means any contract concerning goods or services concluded between a supplier and a consumer under an organized distance sales or service-provision scheme run by the supplier, who, for the purpose of the contract, makes exclusive use of one or more means of distance communication up to and including the moment at which the contract is concluded*” and mean of distance communication “*any means which, without the simultaneous physical presence of the supplier and the consumer, may be used for the conclusion of a contract between those parties*” that are exactly the same definitions used in the Directive n. 7/97/ EC.

- d) delivery costs;
- e) the arrangements for payment, delivery or performance;
- f) the existence of a right of withdrawal, except in the cases referred to in Article 5 (3)⁷;
- g) the arrangements for returning the goods in case of exercise of the right of withdrawal;
- h) the cost of using the means of distance communication, where it is calculated other than at the basic rate;
- i) the period for which the offer or the price remains valid;
- l) where appropriate, the minimum duration of the contract in the case of contracts for the supply of products or services to be performed permanently or recurrently.

The above information shall be provided in a clear and comprehensible manner in any way appropriate to the means of distance communication used, with due regard to the principles of good faith and fairness in commercial transactions to be evaluated making reference to the standards of protection applicable to the weakest categories of consumers.

Moreover the consumer must receive prior to the conclusion of the contract or at the latest during the performance of the contract written confirmation or confirmation in another durable medium available and accessible to him.

b. Conclusions

The Italian regulation contains provisions similar to the Directive, even though some expressions used by the Italian regulation are broader.

The so called framework law (October 1995 no. 447) on the acoustic pollution also provides for the prohibition for broadcasters to broadcast titles and commercials having sound-power higher than the ordinary one of programmes.

⁷ Art 5 (3) -Right of withdrawal- states that: “Unless the parties have agreed otherwise, the consumer may not exercise the right of withdrawal provided for in paragraphs 1 and 2 in respect of contracts:

- a) for the provision of services if performance has begun, with the consumer's agreement, before the end of the ten working day period referred to in paragraph 1,
- b) for the supply of goods or services the price of which is dependent on fluctuations in the financial market which cannot be controlled by the supplier,
- c) for the supply of goods made to the consumer's specifications or clearly personalized or which, by reason of their nature, cannot be returned or are liable to deteriorate or expire rapidly,
- d) for the supply of audio or video recordings or computer software which were unsealed by the consumer,
- e) for the supply of newspapers, periodicals and magazines,
- f) for gaming and lottery services.”

IX. Specific products and targets

a. Regulations

- Tobacco Products (Articles 13 and 17 TVWF Directive)

The relevant Italian regulations are the following:

- Art. 15 of Law 327/1991;
- Art. 1 Decree no. 425 of 30 November 1991 “*Regolamento concernente attuazione degli articoli 13, 15 e 16 della direttiva del Consiglio delle Comunità europee del 3 ottobre 1989 (89/552 CEE), relativo alla pubblicità televisiva dei prodotti del tabacco e delle bevande alcoliche ed alla tutela dei minori*” (“Decree 425/1991”);
- Art. 8 of Decree 581/1993

Advertising for tobacco products is prohibited even if it is indirectly performed by using names, trademarks, symbols or other elements proper to tobacco products or companies whose main activities consist of the production or sales of such products in all cases in which such use is suitable, for forms, modalities and means utilised, to promote the advertising of same products. This provision includes "television advertising". The Italian regulation contains similar provision as the Directive (// art. 13 TVWF Directive).

Television programmes may not be sponsored by natural or legal persons whose principal activity is the manufacture or sale of cigarettes and other tobacco products (// art. 17 TVWF Directive).

- Medicines (Articles 14 TVWF Directive)

The relevant Italian regulations are the following:

- Art. 15 of Law 327/1991;
- Art. 8 par. 5 of Law 223/1990;
- Decree no. 541 of 30 December 1992 implementing the Directive 92/28/CEE concerning the advertising of medicines for human use (“Decree 541/1992”).
- Art. 8 of Decree 581/1993;
- Art. 25 of Advertising Self-Regulation Code

Advertising for medicines and medical cures that are available only on prescription is forbidden (// art. 14.1 TVWF Directive). Advertising for other medicines and medical cures must be frank, sincere, clearly obvious and able to be checked. It must not contain harmful substance.

Medicines other than those sold by prescription can only be advertised if they fulfil all the prescriptions provided for by sanitary laws and if such advertising satisfies certain provisions as indicated in the Decree 541/1992. Those provisions are as follows:

- 1) the message must be clear and the product must be clearly recognized as a medicine ;
- 2) the advertising must include:
 - a) the denomination of the medicine and the active principles it contains;
 - b) a clear invitation to the consumer to read the directions written on the package.

Medicines advertising may not include any element which:

- 1) induces to think that the efficacy of the medicine does not have side effects or that its safety or efficacy are due to the fact that it is a natural substance;
- 2) induce to think that the efficacy of the medicine or the treatment is equal to or better than others;
- 3) induces to think that a medical consultation or surgical operation is unnecessary or induce to erroneous self diagnosis;
- 4) is exclusively or principally addressed to children or induce minors to a use of the product without appropriate supervision;
- 5) makes use of a recommendation by scientists, health professionals or persons well-known to the public, or the fact that a marketing authorization has been granted to the medicinal product or to refer a improper or misleading terms to claims of recovery;
- 6) compares the medicinal product with a foodstuff cosmetic or other consumer product;
- 7) induces to think that the medicinal or the curative treatment can improve normal good health or the effects of avoiding a product or a treatment can be prejudicial, unless this refers to vaccination campaigns;
- 8) uses in improper, misleading or appalling ways representations of changes in the human body caused by disease or injury, or the action of a medicinal product.

Decree 541/1992 has also prohibits advertising of pharmaceuticals sold only on prescription.

In any case, advertising of pharmaceuticals must be authorised by the Ministry of Health and the authorisation number must be indicated in the advertisement.

Television programmes may not be **sponsored** by natural or legal persons whose principal activity is the manufacture or sale of medical products or the provision of medical cures available only on prescription (**this provision is more restrictive than the Directive**). The turnover of the single activities shall be taken into consideration in

order to determine the principal activity. It is considered as principal activity the activity prevailing with respect to each of the other activities in the national territory.

- Alcoholic (Articles 15 TVWF Directive)

The relevant Italian regulations are the following:

- Art. 15 of Law 327/1991;
- Art. 2 Decree 425/1991;
- Art. 8 of Decree 581/1993;
- Art. 22 of Advertising Self-Regulation Code

The television advertising of alcoholic beverages shall not

- a) be aimed specifically at minors or, in particular, depict minors consuming these beverages;
- b) link the consumption of alcohol to enhanced physical performance or to driving;
- c) create the impression that the consumption of alcohol contributes towards social or sexual success;
- d) claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal conflicts;
- e) encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light;
- f) place emphasis on high alcoholic content as being a positive quality of the beverages (// art. 15 TVWF Directive) (art. 2 of the Ministerial Decree 30 November 1991 n°425).

Advertising for alcoholic beverages must not contrast with the necessity of favouring the achievement of the article of consumption inspired by measurement, correctness and responsibility (art. 22 of Self Regulation Code).

In particular the product must refrain from:

- encouraging excessive and uncontrolled usage, which is therefore damaging, of alcoholic drinks;
- demonstrating situations of addiction to the product, in general, the dependency of alcohol;
- contacting or referral, also indirectly, to under aged children;
- associating the use of alcohol with the driving of a vehicle;
- persuading the public that the use of alcoholic drinks contributes to mental awareness and physical prowess and that ceasing to use the product creates a mental, physical and social inferiority;

- persuading the public not to take care in the way the product is consumed, which is necessary in relation to the personal characteristics of the consumer, depending on the individual product;
- use the percentage of alcohol present in the drink as the principle advertising indication of the product.

Television programmes may not be sponsored by natural or legal persons whose principal activity is the manufacture or sale of alcoholics (this provision is more restrictive than the Directive).

- Minors (Article 16 TVWF Directive)

The relevant Italian regulations are the following:

- Art. 8 par. 1 of Law 223/1990;
- Art. 3 of Decree 425/1991;
- Art. 15 par. 10 and 13 of Law 1990/223
- Self-Regulation Code on Television and Minors
- Art. 11 of the Advertising Self-Regulation Code

Art. 3 of the Decree 425/1991 has implemented the article 16 of the TVWF Directive providing for that television advertising, in order to prevent any moral or physical detriment to minors shall not:

- directly exhort minors to buy a product or a service by exploiting their inexperience or credulity (// art. 16.1 TVWF Directive);
- directly encourage minors to persuade their parents or others to purchase the goods or services being advertised (// art. 16.1 TVWF Directive);
- unreasonably show minors in dangerous situations (// art. 16.4 TVWF Directive).

Apart from article 16.3 TVWF Directive, the Italian regulation contains provisions identical to the Directive.

Art. 8 par. 1 of Law 223/1990 provides for that television advertisement must not cause moral or physical detriment to minors.

It is also prohibited to insert advertisements in cartoons. This latter provision is more restrictive than the provision contained in article 11 paragraph 5 of the TVWF Directive, pursuant to which "news and current affairs programmes, documentaries, religious programmes and children's programmes, when their programmed duration is less than 30 minutes shall not be interrupted by advertisements.

The transmission of programs which can be psychologically or morally harmful to minors, which contain scenes of violence or pornography or which encourage discrimination of race, sex, religion or nationality are prohibited. Such provision implements the article 22 of the TVWF Directive 89/552/CEE.

Films which are forbidden to children under age 14 cannot be broadcast either fully or partially between 7:00 a.m. and 10:30 p.m.

The following main issues are covered by the “Self Regulation Code on Television and Minors”, approved last 29 November 2002⁸:

1. time slots: (a) the slot from 7:00 pm to 10:30 pm includes programming for general viewing. In particular, considering that in this time slot, minors are likely to be watching TV in the presence of parents, television broadcasters undertake to provide prior warning of program content; (b) the “protection slot” from 4:00 pm to 7:00 pm, provides for stricter rules to apply. Alcohol, telephone/chat line services and contraceptive advertising should be avoided;
2. general broadcasting limits, in particular broadcasters undertake: (a) not to use sex or violent images unnecessary for general comprehension; (b) to establish instruments for evaluating whether movies, telefilms and other programming are suitable for minors; (c) to refrain from broadcasting programs which might have an adverse effect on minors’ development, and in particular to avoid those which display family conflict unnecessarily, and in which obscene language is used gratuitously and religious sentiments and confessions are used in a blasphemous way. Further, programming must be: of good quality and in accordance with minors’ growth and natural development; helping them improves their critical capacity to judge and use television, and encouraging them to resolve their own problems and form their own opinions. A formal commitment for broadcasters to encourage the creation of informative programs specifically for minors is also introduced.

Article 11 of the Advertising Self-Regulation Code sets forth that particular care must be taken in the advertisements aimed at children and adolescents or which they could obtain.

These advertisements must not contain anything, which could cause mental, physical or morale damage, and above all must not abuse their natural beliefs or lack of experience or of their sense of fairness.

In particular these advertisements must not create:

- violation of normal generally accepted social behaviour;
- actions or exposure to dangerous situations;
- a feeling of inferiority if not in possession of the product advertised, or make the parents feel that they are not provided properly for the child;

⁸ Pursuant to art. 10 of Gasparri Draft Law the provisions set forth in the Self Regulation Code on Television and Minors are applicable to all television broadcasters.

- a situation of making other people buy the product which is advertised.

Employment of children and adolescents in advertising campaigns must avoid abusing the natural sentiments of adults for youngsters.

b. Conclusions

- Tobacco

The national regulation complies with the provisions of the Directive.

- Medicines

The Italian regulation contains similar provision as the Directive with the following difference: it is forbidden to have programmes sponsored by a medicine product.

- Alcoholic beverages

The provisions of the Directive have been fully implemented while stricter rules apply. Moreover, sponsoring by undertakings involved in producing or sale of alcoholic beverage is not permitted.

- Minors

The Italian regulation complies with Article 16 of the Directive while stricter provisions apply.

One should note that advertising cannot interrupt cartoons for children.

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