



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

LIECHTENSTEIN

LEGAL REPORT

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Introduction

The regulatory matters regarding television are contained in the "Gesetz vom 15.11.1978 über Radio und Fernsehen" (TV and Radio Act) and in the "Verordnung vom 10.12.1991 zum Gesetz über Radio und Fernsehen" (TV and Radio Decree). Furthermore, the TV licenses can contain provisions on advertising and sponsoring matters. The Liechtenstein government is competent for advertising and sponsoring matters and thus for the licensing. The government controls the observation of the applicable rules by TV stations under its jurisdiction.

Furthermore, the "Gesetz vom 22.10.1992 gegen den unlauteren Wettbewerb" (Act against Unfair Competition) contains (as general law on consumer protection) also rules on advertising applicable to all media.

Furthermore, there is the "Gesetz vom 23.10.2003 über den liechtensteinischen Rundfunk" which is a particular Act concerning the only Liechtenstein state-owned public radio broadcaster. This public radio broadcaster is theoretically allowed to operate as TV broadcaster. This possibility has not yet been claimed. This Act also contains rules on advertising which, however, comply with the legislation mentioned above.

At the moment there is no Liechtenstein TV broadcaster actively operating programmes. At present there is one company that has a TV license under Liechtenstein law. This license is though not used at the moment.

The Liechtenstein government plans a revision of the TV and Radio Regulation. This revision is still in a conceptual phase. No paper or proposal of a new TV and Radio Regulation has yet been issued for consultation. A statement on the new TV and Radio legislation is therefore not possible.

However, it seems quite sure that the new legislation regarding TV advertising will widely take pattern from the legislation on European Community level as the present legislation already indicates.

I. Definitions

- Television broadcasting

The mentioned legislation contains an explicit legal definition only for the word "broadcasting". According to art. 2 para. 1 TV and Radio Decree broadcasting is defined in the meaning of art. 1 lit. a TVWF Directive (// art. 1 TVWF Directive): *“the initial transmission by wire or over the air, including by satellite, in unencoded or encoded form, of television programmes intended for reception by the public. It includes the communication of programmes between undertakings with a view to their being relayed to the public. It does not include communication services providing items of information or other messages on individual demand such as telecopying, electronic data banks and other similar services”*.

- Broadcaster

There is no definition of this term in the audiovisual legislation.

- Television advertising

There is no definition of this term in the audiovisual legislation.

- Surreptitious advertising

Surreptitious advertising means the remunerated presentation of goods or services of an advertising character which, however, is not identified as advertising (though the idea of the TVWF Directive is in the Liechtenstein law, it is more general than art. 1 TVWF Directive).

- Sponsorship

Sponsorship (art. 17 TV and Radio Decree) is indirectly defined as contribution made by a person or an undertaking not engaged in television broadcasting activities or in the production of audio-visual works, to the direct or indirect financing of television programmes with a view to promoting its name, its trademark or its image (// art. 1 TVWF Directive).

- Teleshopping

Teleshopping is indirectly defined as programmes containing direct offers for sale of goods or services (art. 11 TV and Radio Decree) (± art. 1 TVWF Directive).

- And any other relevant legal definition for the analysis

There is no other relevant definition.

- Conclusion

The Liechtenstein law does not contain all the definitions of the Directive. Only the definition of “surreptitious advertising”, “sponsorship”, “teleshopping” and “television advertising” are more or less similar to the one of the directive.

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)

According to article 10 and 12 TV and Radio Decree, advertising must be identified by an acoustic **or** optical warning (// art. 10 1 TVWF Directive).

The beginning and the end of TV advertising must clearly be identified (// art. 10 TVWF Directive).

Teleshopping must continuously and clearly be identified as advertising. Teleshopping is, pursuant to article 11 TV and Radio Decree, to be treated as advertising unless specific provisions apply. (// art. 10 TVWF Directive)

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

Advertising must be kept separate from other parts of the programme service (// art. 10 1 TVWF Directive).

On principle, advertising must be inserted between programmes. It has to be kept separate from the rest of the programme service (art. 23 TV and Radio Act and art. 10 TV and Radio Decree) (// art.11.1 TVWF Directive).

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

There are no rules related to the isolated advertising and teleshopping spots.

- Prohibition of the use of "subliminal techniques"

According to article 16 lit. f TV and Radio Decree subliminal advertising is prohibited. (// art. 10, 3 TVWF Directive)

- Prohibition of surreptitious advertising and teleshopping

Surreptitious advertising is prohibited (// art. 10, 4 TVWF Directive).

b. Conclusion

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

The Liechtenstein legislation does not contain any provisions related to the isolated advertising and teleshopping spots. The other provisions of article 10 TVWF Directive are covered by the mentioned legislation.

- Identification of specific rules not included in the Directive

Not applicable.

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

a. Regulations

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

In principle, programmes that form an entity must not be interrupted (more restrictive than art. 11, 1 TVWF Directive).

Advertising can be inserted during the intervals in case of programmes containing intervals (art. 10 and 12 TV and Radio Decree) (more general, // art. 11, 2 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)

Programmes can be interrupted by advertising only once, provided their duration is longer than 90 minutes (more restrictive than art. 11, 3 TVWF Directive).

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

There is no such rule in the audiovisual regulation.

b. Conclusion

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

The Liechtenstein legislation is more restrictive than art. 11 TVWF Directive as it only allows interruptions for programmes which are longer than 90 minutes. In principle, programmes that form an entity must not be interrupted (more restrictive than art. 11, 1 TVWF Directive).

- Identification of rules not included in the Directive

Non applicable.

IV. Quantitative restrictions (Article 18 TVWF Directive)

a. Regulations

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

The proportion of transmission time devoted to teleshopping spots, advertising spots and other forms of advertising, with the exception of teleshopping windows within the meaning of Article 18 bis, shall not exceed 20 % of the daily transmission time. (// art. 18, 1 TVWF Directive)

The overall duration of teleshopping must not exceed 1 hour per day (art. 14 TV and Radio Decree) (more restrictive than 18a, 2 TVWF Directive).

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

The transmission time for advertising spots or teleshopping shall not exceed 15 % of the daily transmission time (// art. 18, 1 TVWF Directive).

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

The duration of advertising and teleshopping spots within a given clock hour must not exceed 12 minutes (// art. 18, 2 TVWF Directive).

- Examination of the other possible quantitative restrictions

Teleshopping spots are subject to the rules applicable for advertising. It is expressly stated that teleshopping for medicines and medical treatments is prohibited. Also, encouragement of minors to contract for the sale or rental of goods and services is prohibited.

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

Advertising for charity objectives and public institutions benefits from a special treatment (art. 14 TV and Radio Decree) (// art. 18,3 TVWF Directive).

b. Conclusion

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

The Liechtenstein legislation complies with art. 18 TVWF Directive almost literally.

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

There are no specific rules which are not included in the Directive.

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

a. Regulations

A distinction is made between "Verkaufssendungen" (tele-shopping spots) and "Verkaufsprogramme" (tele-shopping windows). All provisions related to advertising shall apply to teleshopping spots and programmes.

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

There is no specific provision on that issue.

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

There is no specific provision on that issue.

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

The overall duration of teleshopping must not exceed 1 hour per day (art. 14 TV and Radio Decree) (more restrictive than 18 Bis, 2 TVWF Directive).

b. Conclusion

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

Less restrictive point : The proportion of transmission time devoted to teleshopping which is of one hour.

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

There is no specific rule aimed to reduce the proportion of teleshopping programmes.

VI. Sponsoring (Article 17 TVWF Directive)

a. Regulations

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

The TV broadcaster is exclusively responsible for the content and the scheduling of sponsored television programmes (// 17, 1 a TVWF Directive).

- Sponsor identification

Sponsors must be clearly identified as such at the beginning **and** at the end of the programme (more restrictive than article 17.1.b of the Directive as the Liechtenstein law states to be identified in the beginning AND at the end, while the Directive states “AND/OR”).

- 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)

TV broadcasters must provide information by request on contributions of sponsors. TV programmes may be fully or partly sponsored.

The names of the sponsors and their influence on the content of the sponsored programmes must be mentioned at the beginning and at the end of the programme. The name of the sponsor may be identified by its trademark or other characteristic signs. (// art. 17, 1 b TVWF Directive)

Visual or acoustic signs of a promotional character and the presentation of goods or services of the sponsor are not allowed (// article 17.1.c TVWF Directive).

- Identification of the programmes that cannot be sponsored

News programmes and programmes in connection with the exercising of political rights on a national or local basis must not be sponsored (more restrictive than 17, 4 TVWF Directive).

Television programmes may not be sponsored by persons or undertakings whose principal activity is the manufacture or sale of products for which advertising is prohibited (cf. art. 16 TV and Radio Decree) (// art. 17, 2 & art. 17, 3 TVWF Directive).

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

Sponsored TV programmes must not encourage the purchase of the products or services of the sponsor or a third party. In particular, references to those products or services of a promotional nature are forbidden (// art. 17, 1 c TVWF Directive)

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

There is no explicit provision on such issue. Pursuant to art. 17 para 8 TV and Radio Decree the presentation of goods or services of the sponsor is not allowed in connection with sponsored programmes. There is no provision in the legislation which says that this prohibition generally applies. However, as art. 16 TV and Radio Decree prohibits subliminal and surreptitious advertising, product placement is generally forbidden.

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

There is no provision on such 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.)

As art. 16 TV and Radio Decree prohibits subliminal and surreptitious advertising, product placement is generally forbidden.

b. Conclusion

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

More restrictive:

- Visual or acoustic signs of a promotional character and the presentation of goods or services of the sponsor are not allowed;
- News programmes and programmes in connection with the exercising of political rights on a national or local basis may not be sponsored.

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

There are no specific regulations on reduction of teleshopping broadcast.

VII. New advertising techniques

The Liechtenstein legislation does not contain any provisions on new advertising techniques. Due to the fact that there has only been one TV broadcaster actively operating programmes in Liechtenstein, the National Authorities do not have any experience with such new techniques. Such techniques have not yet been exploited, nor has this subject ever been raised as an issue. Therefore, it cannot be said if the National Authorities would tolerate such techniques. This assessment is subject to future cases.

a. Split screens

- Authorisation to use this technique or not

Non applicable.

- Examination of the conditions of use

Non applicable.

- Examination of the specifics rules related to insertion and volume

Non applicable.

- Existence of a prohibition to use the technique between or within certain programmes.

Non applicable.

b. Interactive advertising

- Authorisation to use this technique or not

Non applicable.

- Examination of the conditions of use

Non applicable.

- Examination of the specifics rules related to insertion and volume

Non applicable.

- Existence of a prohibition to use the technique between or within certain programmes

Non applicable.

c. Virtual advertising

- Authorisation to use this technique or not

Non applicable.

- Examination of the conditions of use

Non applicable.

- Examination of the specifics rules related to insertion and volume

Non applicable.

- Existence of a prohibition to use the technique between or within certain programmes

Non applicable.

d. Other new advertising technique

Non applicable.

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

a. Regulations

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

Article 3 lit. a, b, c, e and f of the “Gesetz vom 22.10.1992 gegen den unlauteren Wettbewerb” (Act against Unfair Competition) bans all kinds of incorrect, unnecessary and misleading trade practices which also include advertising practices.

According to article 3 lit. h of the Act against Unfair Competition advertising must not be aggressive and should avoid influence on individuals in their decision to buy products or services (very general, ± art. 12 TVWF Directive).

This provision could be construed in the sense that product placement is forbidden. However, there is no jurisdiction on this question in Liechtenstein. As mentioned before, a product placement is forbidden under the TV and Radio Decree, the lack of clarity on the above question does not matter.

Article 3 lit. e of this Act mentions the requirements and conditions for comparative advertising.

Permanent TV presenters of the TV station must not appear in TV advertising (not in TVWF Directive)

b. Conclusion

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

The specific rules stated in article 12 of the Directive are not present in the Liechtenstein law.

- Identification of specific rules not included in the Directive

IX. Specific products and targets

a. Regulations

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

The general requirements regarding the content of advertising are contained in article 16 TV and Radio Decree. According to this article the following advertising is prohibited for tobacco (// article 13 TVWF Directive).

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

The general requirements regarding the content of advertising are contained in article 16 TV and Radio Decree. According to this article the following advertising is prohibited advertising for medicines only available on prescription and for medical treatments (// article 14 TVWF Directive).

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

The general requirements regarding the content of advertising are contained in article 16 TV and Radio Decree. According to this article the following advertising is prohibited advertising for alcohol (≠ article 15 TVWF Directive).

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

The general requirements regarding the content of advertising are contained in article 16 TV and Radio Decree. According to this article the following advertising is prohibited advertising taking advantage of the credulity or inexperience of minors or abusing their special trust (+/- // article 16 TVWF Directive).

- Other product/services categories subject to a specific regime

Non applicable.

b. Conclusion

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

The same aims as the TVWF Directive are fulfilled by Liechtenstein law, but in much more general terms.

- Identification of specific rules not included in the Directive

At last, advertising on certain holidays is also prohibited (art. 15 TV and Radio Decree).

* * *