



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

**MALTA**

**LEGAL REPORT**

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## **Introduction**

### ***Background information***

Malta's broadcasting landscape is mainly regulated through the Broadcasting Act (in Maltese known as "*Att dwar ix-Xandir*") (Chapter 350) of the laws of Malta and by subsidiary legislation issued under this Act. This Act was developed on the basis of the 1989 Television Without Frontier Directive and the Council of Europe Convention on Trans-frontier Television. Malta ratified the Council of Europe Convention on Trans-frontier Television in 1993 and it became a state party to the Protocol amending the European Convention on Trans-frontier Television on 1<sup>st</sup> October 2000 by automatic procedure.

To this end, the Broadcasting Act as well as all subsidiary legislation enacted under this Act is broadly in line with the Community *acquis*.

In Malta, the Broadcasting Authority is responsible for the implementation and enforcement of broadcasting legislation. The Authority is an independent constitutional body whose funding is guaranteed by law. It has been an active member of the European Broadcasting Union and of the Commonwealth Broadcasting Association for many years. The Authority is also a member of the European Institute for the Media and a founder member of the European Platform of Regulatory Authorities (EPRA).

### ***General rules relating to advertising and teleshopping***

Before delving into the more detailed rules which emanate from the Broadcasting Act and which regulate advertising and teleshopping, it may be apt to have a brief look at the general rules which concern the same.

On a general note, Article 19 of the Broadcasting Act stipulates that advertisements shall only be allowed to be inserted in the programmes broadcast by licensees and contractors of the Broadcasting Authority, provided that the provisions of the law relating to the same are complied with.

Other persons providing broadcasting services in Malta must be allowed to include advertisements and sponsorships only if the Minister responsible for Culture, after consultation with the Minister responsible for Wireless Telegraphy, has given directions to the Authority to that effect by notice in writing which sub-articles if any, or parts thereof, of this Article 19 shall have effect for such other persons.

Article 19 (2) of the Broadcasting Act makes reference to the Third Schedule of the Broadcasting Act which in turn makes provision for a ***Code for advertisements, teleshopping and sponsorships*** (hereinafter referred to as "***the Code***"). It is the duty of the Broadcasting Authority to ensure that the provisions of this Code are complied with. This third schedule may be amended or substituted from time to time.

Furthermore, on a general note, one may say that in accordance with Article 19 (3), ***the Broadcasting Authority may***, in the discharge of its general responsibility for advertisements and methods of advertising, ***impose requirements as to advertisements and methods of advertising which go beyond the requirements imposed by the Code for Advertisements, Teleshopping and Sponsorships***.

The methods of control exercisable by the Broadcasting Authority for the purpose of securing that the provisions of the Code and for the purpose of securing compliance with any additional requirements imposed by the same Authority by virtue of the powers vested in it by Article 19 (3), include a power to give directions to any person providing broadcasting services in Malta with respect to the classes and descriptions of advertisements and methods of advertising to be excluded, or to be excluded in particular circumstances, or with respect to the exclusion of a particular advertisement, or its exclusion in particular circumstances.

This essentially means that an amount of discretion is granted to the Broadcasting Authority. Therefore, *the specific rules related to hereunder can be considered as the basic rules which must be complied to, subject to the caveat, that the Authority may, as the body responsible for advertisements and methods of advertising, at any time, impose additional rules and requirements as to advertisements and methods of advertising or give additional directions.*

## I. Definitions

- Television broadcasting

The Broadcasting Act does not define the “television broadcasting”.

The Broadcasting Act contains a definition of the term “broadcast” which is in turn defined in almost identical terms to the definition of “television broadcasting” under the Directive.

“Broadcast” is thus defined as “the initial transmission by wire or over the air, including that by satellite, in unencoded or encoded form, of radio or television programmes intended for reception by the public but does not include retransmissions and communication services providing items of information or other messages on individual demand such as telecopying, electronic data banks and other similar services” (±// art. 1 a. TVWF Directive).

The above definition is thus wider:

- it encompasses the transmission of radio programmes;
- it excludes retransmissions and not merely the communication services identified in the definition of “television broadcasting” found in the Directive.

On the other hand, it fails to specifically include “the communication of programmes between undertakings with a view to their being relayed to the public”.

- Broadcaster

The Broadcasting Act does not make provision for a definition of “broadcaster”.

- Television Advertising

The Broadcasting Act does not specifically define “television advertising” but rather “advertising” which is defined in identical terms to the definition of “television advertising” found in the Directive : “any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes 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, rights and obligations, in return for payment” (// art. 1.c TVWF Directive)

- Surreptitious Advertising

The definition of “surreptitious advertising” is identical to the one found in the Directive : “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 in particular if it is done in return for payment or for similar consideration (// art. 1.d TVWF Directive)

- Sponsorship

“Sponsorship” is defined in identical terms to the definition provided for by the Directive except for the fact, that in line with the above definitions of “broadcast”, it alludes to “broadcasting activities” in general rather than to “television broadcasting activities” and to “programmes” in general rather than to “television programmes” : "any contribution made by a public or private undertaking not engaged in broadcasting activities, to the financing of programmer with a view to promoting its name, its trade mark, its image, its activities or its products" (// art. 1.e TVWF Directive)

- Teleshopping

The Broadcasting Act adopts the same definition of “teleshopping” which is found in the Directive : "direct offers broadcast to the public with a view to the supply of goods or services, including immovable property, rights and obligation , in return for payment" (// art. 1.f TVWF Directive)

- Other relevant legal definitions

The Broadcasting Act makes provision for two other definitions which might be of some importance within the context of this analysis.

It defines ”*retransmission*” as “receiving and simultaneously transmitting, irrespective of the technical means employed, complete and unchanged radio or television programme services, or important parts of such services, transmitted by broadcasters for reception by the general public”.

It also defines “*subliminal techniques*” as “the use of any technical device which, by using images of very brief duration or by any other means, exploits the possibility of conveying a message to, or otherwise influencing the minds of, members of an audience without their being aware, or fully aware, of what has been done”.

## b. Conclusions

The above definitions are more or less in line with the ones found in the TVWF Directive though in certain cases the definitions are slightly wider than the latter ones. The definition of “broadcaster” is not provided for in the Maltese Act. On the other hand, the Maltese Act makes provision for the definition of “subliminal techniques” and “retransmission”, which definitions are not found in the TVWF Directive.



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

### a. Regulations

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

Paragraph 4 of the Third Schedule provides in line with the Directive that advertising and teleshopping must be *readily distinguishable as such* (// art. 10 §1 TVWF Directive). In addition, the Code stipulates that:

- Successive advertisements and teleshopping must be recognisably separate in particular techniques.
- Advertisements and teleshopping must not be arranged or presented in such a way that any separate advertisement appears to be part of a continuous feature.
- Audible matter in advertisements and teleshopping must not be excessively noisy or strident.

(more precise than the Directive)

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

The Code maintains that advertising and teleshopping must be *kept separate* (// art. 10 §1 TVWF Directive) from the other parts of the programme service by optical **or** acoustic means. (less strict than the Directive)

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

In line with the Directive, the Code provides that isolated advertising and teleshopping spots must remain the exception (// art. 10 §2 TVWF Directive).

- Prohibition of the use of “subliminal techniques”:

The Code provides that advertising and teleshopping must not use subliminal techniques (// art. 10 §3 TVWF Directive).

- Prohibition of surreptitious advertising and teleshopping:

Article 19(6) of the Broadcasting Act lays down the general prohibition that nothing must be included in any programmes broadcast by the Broadcasting Authority or by any other person providing broadcasting services in Malta, whether in an advertisement or not, which states,

suggests or implies (or could reasonably be taken to state, suggest or imply) that any part of any programme broadcast by the Authority or any other person providing broadcasting services in Malta, as the case may be, which is not an advertisement has been supplied or suggested by any advertiser.

Furthermore, except as an advertisement, nothing must be included in any programme broadcast by the Authority or by any other person providing broadcasting services in Malta, which could reasonably be supposed to have been included in the programme in return for payment or other valuable consideration to the relevant person providing broadcasting services in Malta.

The Code reinforces the above rules through a declaration that surreptitious advertising is prohibited (// art. 10 §4 TVWF Directive). **However, contrary to what is provided for in the Directive, at no point does it make provision for a clear prohibition of surreptitious teleshopping (≠ art. 10 §4 TVWF Directive).**

It may be apt to note that what has been said above is subject to the rules regulating sponsoring which shall be discussed hereunder. Moreover, the above rule is also subject to the provision that the following matters **may be included** in any part of a programme broadcast by the Authority or by any person providing broadcasting services in Malta, which is not an advertisement i.e. their inclusion must not be construed as surreptitious advertising:

- Items designed to give publicity to the needs or objects of any association or organisation conducted for charitable or benevolent purposes;
- Reviews of literary, artistic or other publications or productions, including current entertainments;
- Items consisting of factual portrayals of doings, happenings, places or things, being items which in the opinion of the Authority are proper for inclusion by reason of their intrinsic interest or instructiveness and do not constitute an undue element of advertisement;
- Announcements of the place of any performance included in the programme, or of the name and description of the persons concerned as performers or otherwise in any such performance, announcements of the number and description of any record so included, and acknowledgements of any permission granted in respect of any such performance, persons or record; and
- Such other matters, if any, as may be prescribed by regulations made by the Authority in conjunction with the Minister responsible for culture.

The above general rule relating to a prohibition of surreptitious advertising must also not be construed as prohibiting the inclusion of an advertisement in any programme broadcast by the Authority or by any person providing broadcasting services in Malta, by reason only of the fact that it is related in subject-matter to any part of the programme which is not an advertisement.

Furthermore, the general prohibition relating to surreptitious advertising does not apply to any programme broadcast as part of an educational broadcasting service approved by the Authority.

## **b. Conclusion**

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

As mentioned to above, the regulations found in the Broadcasting Act relating to advertising recognition and advertising/programme separation are broadly in line with the rules found in Article 10 of the TVWF Directive. The Broadcasting Act imposes a separation by optical or acoustic mean, which is the less restrictive option offered by the TVWF Directive.

However, the Malta Broadcasting Act does not make provision for a *clear prohibition* of surreptitious teleshopping and a number of exceptions as to what is not considered as surreptitious advertising can be identified ( $\neq$  TVWF Directive).

Finally, the general prohibition relating to surreptitious advertising does not apply to any programme broadcast as part of an educational broadcasting service approved by the Authority.

- Identification of specific rules not included in the Directive

Specific rules found in the Broadcasting Act, specifically in the Code, and not found in the TVWF Directive in so far as advertising recognition and advertising/programme separation are concerned are :

- Successive advertisements and teleshopping must be recognisably separate in particular techniques.
- Advertisements and teleshopping must not be arranged or presented in such a way that any separate advertisement appears to be part of a continuous feature.
- Audible matter in advertisements and teleshopping must not be excessively noisy or strident.

### 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 line with the Directive, the Code makes provision for the general rule that advertising and teleshopping must be inserted between programmes (// 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):

In line with the Directive, the Code stipulates that provided that a number of conditions are satisfied, advertising and teleshopping spots may also be inserted during programmes in such a way that the integrity and value of the programme, taking into account natural breaks in and the duration and nature of the programme, and the rights of the rights holders are not prejudiced (// art. 11 §1 TVWF Directive).

In line with the Directive, the Code also lays down the following specific rules regarding the type of programme:

- In programmes consisting of autonomous parts, or in sports programmes and similarly structured events and performances comprising intervals, advertising and teleshopping can only be inserted between the parts or in the intervals (// art. 11 §2 TVWF Directive);
  - Where programmes, other than the above, are interrupted by advertising and teleshopping spots, a period of at least 20 minutes must elapse between each successive advertising break within the programme (// art. 11 §4 TVWF Directive);
  - The transmission of audiovisual works such as feature films and films made for television (excluding series, serials, light entertainment programmes 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 scheduled duration is at least 20 minutes longer than two or more complete periods of 45 minutes (// art. 11 §3 TVWF Directive).
- Possible prohibitions of insertion of advertising and teleshopping spots within certain types of programme:

Regulation 1 (g) of the Code stipulates that advertising and teleshopping must not be inserted in any broadcast of a religious service (// art. 11 §5 TVWF Directive).

In line with the Directive, the Code prohibits the interruption of news and current affairs programmes, documentaries, religious programmes, and children's programmes, by

advertising and teleshopping, when their programmed duration is less than 30 minutes. If the programmed duration is of 30 minutes or longer, the above rules relating to the insertion of advertising and teleshopping spots within the programmes apply (// art. 11 §5 TVWF Directive).

**b. Conclusion**

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

As mentioned, the regulations found in the Broadcasting Act relating to the insertion of advertising and teleshopping spots between and within the programmes are broadly in line with the rules found in Article 11 of the TVWF Directive.

- Identification of rules not included in the Directive:

Subject to what has been said above relating to the power of the Broadcasting Authority to impose requirements as to advertisements which go beyond the requirements imposed by the Code, the rules of the Broadcasting Act broadly reflect the ones found in the Directive.

#### IV. Quantitative restrictions (Article 18 TVWF Directive)

##### a. Regulations:

Article 19 Paragraph 5 gives the power to the Broadcasting Authority to give directions to any person providing broadcasting services in Malta with respect to the time when advertisements are to be allowed. Furthermore, Article 19 paragraph 11 gives the Broadcasting Authority the power to give directions, in particular in relation to:

- The greatest amount of time to be given to advertisements in any hour or other period;
- The minimum interval which must elapse between any two periods given over to advertisements and the number of such periods to be allowed in any programme or item in a programme or in any hour or day;
- The exclusion of advertisements from a specified broadcast, and may make different provision for different parts of the day, different days of the week, and different types of programmes or for other differing circumstances.

However, the above is subject to the condition that the Broadcasting Authority cannot give directions which are not reasonably justifiable in a democratic society. In giving such directions, the Authority must also be guided by international instruments to which Malta is a party.

- 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):

In line with the Directive, the Code stipulates that the proportion of transmission time devoted to teleshopping spots, advertising spots and other forms of advertising (with the exception of teleshopping windows) must not exceed 20% of the daily transmission time (// art. 18 §1 TVWF Directive).

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

Once again the Code adopts the same legal maximum percentage found in the Directive, i.e., 15% (// 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):

Once again the Code adopts the same legal maximum percentage found in the Directive, i.e. 20% (// art. 18 §2 TVWF Directive).

- Examination of the other possible quantitative restrictions:

Subject to what has been said above, regarding the power of the Authority to give directions in relation to time allotted to advertisements etc, there are no other specific rules in the Broadcasting Act which regulate the issue.

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

In line with the Directive, for the purposes of calculating the above quantitative restrictions, advertising does not include:

- Announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes (// art. 18 §3 TVWF Directive);
- Public service announcements and charity appeals broadcast free of charge (// art. 18 §3 TVWF Directive).

#### **b. Conclusion**

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

As alluded to above, the regulations found in the Broadcasting Act relating to quantitative restrictions are broadly in line with the rules found in Article 11 of the TVWF Directive.

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

There are no specific rules which are not included and which are aimed at reducing advertising volume, except the possible particular restrictions that may be imposed by the Broadcasting Authority.

<p><b>v. Quantitative restrictions related to teleshopping programmes (Article 18 Bis TVWF Directive)</b></p>
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**a. Regulations:**

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

In line with the Directive, the Code stipulates that windows devoted to teleshopping broadcast by a channel not exclusively devoted to teleshopping must be of a minimum uninterrupted duration of 15 minutes (// Art. 18 Bis §2 TVWF Directive).

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

In line with the Directive, the Code stipulates that the maximum number of teleshopping windows per day must be eight (// art. 18 Bis §2 TVWF Directive).

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

In line with the Directive, the Code stipulates that the overall duration of teleshopping windows must not exceed 3 hours per day (// art. 18 Bis §2 TVWF Directive).

**b. Conclusion**

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

As mentioned, the regulations found in the Broadcasting Act relating to quantitative restrictions related to teleshopping programmes are broadly in line with the rules found in Article 18 Bis of the TVWF Directive.

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

There are no other specific quantitative rules relating to teleshopping windows, other than the ones found in the Directive.



## VI. Sponsoring (Article 17 TVWF Directive)

### a. Regulations

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

Article 19(7) of the Broadcasting Act allows sponsorship, in whole or in part, of any particular programme or of a series of programmes, provided that 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. This rule is reiterated in Regulation 20 (a) of the Code (// art. 17 §1 a. TVWF Directive).

- Sponsor identification

Article 19(7) of the Broadcasting Act also lays down that sponsorship must be clearly identified as such by appropriate credits. This rule is reiterated in Regulation 20(b) of the Code which provides for sponsor identification by the name or logo. The Code does not seem to contemplate identification by both name and logo as is the case in the Directive but refers to “name” and “logo” in the alternative. The Code thus took the less restrictive option offered by the Directive which imposes an identification of the sponsor by the name and/ or the logo.

- 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)

Article 19(7) also provides that appropriate credits of the sponsor must be inserted at the beginning and/or end of the programme (// art. 17 §1 b. TVWF Directive). On a less restrictive note, Regulation 20(c) of the Code stipulates that the name or logo of the sponsor must be inserted at the beginning **or** the end of the programmes.

- Identification of the programmes that cannot be sponsored

In line with the Directive, both Article 19(7) of the Broadcasting Act as well as Regulation 23 of the Code provide that news and current affairs programmes may not be sponsored (//art. 17 §4 TVWF Directive).

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

In line with the Directive, Regulation 20(c) of the Code provides that sponsored programmes 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).

For specific prohibitions, see section IX hereunder.

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

There are no specific rules regulating this issue.

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

There are no specific rules regulating 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.:

Product placement is as such regulated by Regulations 4 and 9 of the Third Schedule to the Broadcasting Act as examined above. Regulation 4 maintains that advertising and teleshopping must be readily distinguishable as such and kept quite separate from the other parts of the programme service by optical or acoustic means. Isolated advertising and teleshopping spots are the exception. Regulation 9 lays down the general rule that surreptitious advertising is prohibited.

In addition to the above rules, The Malta Broadcasting Authority has issued a set of guidelines regulating the conduct of competitions and the award of prizes on the Broadcasting Media.

The purpose of these guidelines is to provide for:

- the general conduct of competitions held on the broadcasting media whether television or radio; and
- the award of prizes to participants in those programmes carried on any means of broadcasting whereby such participants take part in competitions in any of the following ways –
  - By televoting,
  - By phone-ins,
  - By being present for the programme as a member of the studio audience, or
  - By writing (including by e-mail or fax).

## ***Definitions***

“Participant” is defined as any person who in any manner whatsoever participates in a competition held during the course of a programme on any means of broadcasting.

## ***Conduct of Competition***

In so far as conduct of competition is concerned, competitions should be conducted fairly and according to rules. Competition rules should be made known to participants and prizes should be described accurately.

The questions should preferably have a clear thematic connection with the programme in which they appear. If they refer to the products or services of the prize manufacturer or donor, they should be considered as an advertisement and the words “*Messaggi Promozzjonali*” (*Promotional message*) should appear on the screen in the case of television programmes, the broadcaster should announce the competition with the words, “*Issa nghaddu għall-kompetizzjoni li hi parti minn messagg promozzjonali*” (*Now we shall pass on to the competition which is part of a promotional message*).

## ***Mention of brand or prize donor***

Advertisers may donate prizes which may be their own products and/or services. Where editorially justified, there may be mention of the brand of prize or prize donor, which may include brief factual and/or visual references no longer than 7 seconds. Descriptions should avoid promotional statements.

## ***Responsibility of the Broadcaster***

The broadcaster on whose station a programme is transmitted during which prizes are awarded shall be directly responsible for the competition including for the award of the prizes to the winning participant.

The broadcaster must ensure that the prize-winner/s is/are announced within seven days within which the competition is concluded. The prize shall be awarded to the prize winner within one calendar month of the announcement of the prize-winner/s of the competition.

It is the responsibility of the broadcaster to ensure that the prizes as advertised during such a programme are duly delivered to the winning participant.

## ***Award of vouchers as prizes***

When the prize consists of a voucher, then the winner of that prize shall be entitled to the full value of that voucher without the need of incurring any extra expense to have benefit of the voucher.

When the prize consists of a voucher but is given in goods and/or services, the goods and/or services given shall be equivalent to the total value of the voucher.

No discount on the purchase of a product or service is allowed.

### ***Cost of call to be made known***

Where the cost of the telephone call is higher than the normal published tariff, then any promotions for the competition however so carried or advertised shall state the cost of the call. If a proportion of the cost of the call is intended for any non-profit making cause, then that proportion must also be specified.

### ***Confidentiality***

The broadcaster shall ensure that there shall be no breach of confidentiality and no participant shall be given any advantage over other participants.

### ***Long or complex rules***

Competitions shall not feature long or complex rules.

### ***What information must be provided***

Promotional material about the competitions must clearly provide information which is likely to affect a decision to participate, and shall in any case include the following:

Any closing date,

Any significant terms and conditions, including any restriction on the eligibility to participate,

An adequate and unequivocal description of prizes to be won,

How and when prize winners will be informed.

### ***Closing date***

Competitions must have a closing date, except where there are instant prize winners.

### ***Prohibition of employees etc.***

Persons who are either employees of the broadcaster, advertising agents, the competition's sponsors, or people who are directly involved in the production or presentation of the programme in which the competition is carried, or who form part of the immediate family of

such persons shall automatically be disqualified from participating in any competition carried on that station.

**b. Conclusion**

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

As mentioned to above, the rules regulating sponsorship are broadly in line with the ones found in the Directive.

- 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 such other specific rules.

## VII. **New advertising techniques**

### a. **Split screens**

- Authorisation to use this technique or not

There are no specific rules regulating this.

- Examination of the conditions of use

There are no specific rules regulating this.

- Examination of the specific rules related to insertion and volume

There are no specific rules regulating this.

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

There are no specific rules regulating this.

### b. **Interactive advertising**

- Authorisation to use this technique or not

There are no specific rules regulating this.

- Examination of the conditions of use

There are no specific rules regulating this.

- Examination of the specific rules related to insertion and volume

There are no specific rules regulating this.

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

There are no specific rules regulating this.

**c. Virtual advertising**

- Authorisation to use this technique or not

There are no specific rules regulating this.

- Examination of the conditions of use

There are no specific rules regulating this.

- Examination of the specific rules related to insertion and volume

There are no specific rules regulating this.

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

There are no specific rules regulating this.

**d. Other new advertising technique**

There are no specific rules regulating other new advertising techniques.

**b. Conclusion**

Maltese law does not make provision for specific rules regulating such new advertising techniques.

In practice, the following is the position that would be adopted by the Maltese Broadcasting Authority if, for example, during a soccer game, the broadcaster were to integrate in the image, the logo of the sponsors on the surface of the field.

The Broadcasting Authority considers this as virtual advertising. However, since there are no specific rules regulating such virtual advertising, the general rules found in the Third Schedule and examined above would apply.

Having said this, it is important to note that the Broadcasting Authority informed the authors of this report that there has been no case in practice where such virtual advertising actually took place. The same holds true for interactive advertising.

There has been one case of split screen advertising where the Broadcasting Authority proceeded to apply the general rules found in the Third Schedule to the Broadcasting Act. However, no official decision was published in this case.



## 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)

In line with the Directive, Regulation 1 of the Code provides that advertising and teleshopping must not:

- Prejudice respect for human dignity (// art. 12 a. TVWF Directive);
- Include any discrimination on grounds of race, sex or nationality (// art. 12 b. TVWF Directive);
- Be offensive to religious or political beliefs (// art. 12 c. TVWF Directive);
- Encourage behaviour prejudicial to health or to safety (// art.12 d. TVWF Directive);
- Encourage behaviour prejudicial to the protection of the environment (// art. 12 e. TVWF Directive);
- Except as authorised under a scheme of political broadcasts approved by the Broadcasting Authority, and irrespective of whether they are broadcast in return for payment or for similar consideration or otherwise, be of a political nature (≠ TVWF Directive)

- (a) It is also relevant to note that, in terms of Article 48 of the Consumer Affairs Act (known in Maltese as the “*Att dwar l-Affarijiet tal-Konsumatur*”) (Cap. 378 of the Laws of Malta), **any form of misleading<sup>1</sup> advertising is prohibited.**

Article 49 and 50 of the Consumer Affairs Act regulate “**comparative advertising**”<sup>2</sup>.

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<sup>1</sup> An advertisement is deemed to be misleading if in any way, including its presentation, it deceives or is likely to deceive the persons to whom it is addressed or whom it reaches, and if by reason of its deceptive nature, it is likely to affect their economic behaviour or is one which for those reasons, injures or is likely to injure a competitor of the person whose interests the advertisement seeks to promote. In determining whether an advertisement is misleading account is taken of all its features, and in particular of any information it may have about:

- (a) the characteristics of goods or services, including their availability, nature, execution, composition, method and date of manufacture or provision, fitness for purpose, uses, quantity, specification, geographical or commercial origin or the results to be expected from their use, or the results and material features of tests or checks carried out on the goods or services;
- (b) the price or the manner in which the price is calculated, and the conditions on which the goods are supplied or the services provided; the nature, attributes and rights of the advertiser, including his identity and assets, his qualifications and ownership of industrial, commercial or intellectual property rights or any awards and distinctions made to him.

<sup>2</sup> “Comparative advertising” is defined as any advertising which explicitly or by implication identifies a competitor or goods or services offered by a competitor. Comparative advertising shall, as far as the comparison is concerned, **be permitted** when the following conditions are met:

- i. it is not a misleading advertisement in accordance with article 48 or otherwise;
- ii. it compares goods or services meeting the same needs or intended for the same purpose;

**b. Conclusion**

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

As mentioned, the rules regulating advertising and teleshopping content are broadly in line with the ones found in the Directive.

- Identification of specific rules not included in the Directive:

A specific rule found in the Code and not found in the Directive relates to the fact that except as authorised under a scheme of political broadcasts approved by the Broadcasting Authority, and irrespective of whether they are broadcast in return for payment or for similar consideration or otherwise, advertising and teleshopping must not be of a **political** nature. Furthermore, as mentioned, the Consumer Affairs Act makes provision for the regulation of **misleading** and **comparative** advertising.

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- iii. it objectively compares one or more material, relevant, verifiable and representative features of those goods and services, which features may include price;
  - iv. it does not create confusion in the market place between the advertiser and a competitor or between the advertiser's trade marks, trade names, other distinguishing marks, goods or services and those of a competitor;
  - v. it does not discredit or denigrate the trade marks, trade names, other distinguishing marks, goods, services, activities or circumstances of a competitor;
  - vi. for products with designation of origin, it relates in each case to products with the same designation;
  - vii. it does not take unfair advantage of the reputation of a trade mark, trade name or other distinguishing marks of a competitor or of the designation of origin of competing products; and
  - viii. it does not present goods or services as imitations or replicas of goods or services bearing a protected mark or trade name.

Furthermore, any comparison referring to a special offer must indicate in a clear and unequivocal way the date on which the offer ends or, where appropriate, that the special offer is subject to the availability of the goods and services, and where the special offer has not yet begun the date of the period during which the special offer shall apply. "Special offer" refers to the price of the goods or services or any other specific condition under which the goods or services will be supplied.

## IX. Specific products and targets

### a. Regulations

- Tobacco products (Articles 13 and 17 TVWF Directive):

Regulation 15 of the Code provides that all forms of advertising and teleshopping for cigarettes and other tobacco products are prohibited (// art. 13 TVWF Directive).

On a more general note, Article 19(7) of the Broadcasting Act stipulates that programmes may not be sponsored by natural or legal persons whose principal activity is the manufacture or sale of products, or the provision of services, the advertising of which is otherwise prohibited.

On a more specific note, Regulation 21 of the Code reaffirms that 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).

- Medicines (Article 14 TVWF Directive):

Advertisements for medicinal products or treatments for human use available only **on prescription** are not acceptable (art. 16 of the Code, // art. 14 TVWF Directive).

Regulation 17 provides that teleshopping for medicinal products and **teleshopping** for medical treatment is also prohibited (// art. 14.2 TVWF Directive).

However, on a somewhat conflicting note, Regulation 18 provides that advertising **and teleshopping** for all other medicines and medical treatment must be clearly distinguishable as such, honest, truthful and subject to verification, and must comply with the requirements of protection of the individual from harm ( $\neq$  art. 14.2 TVWF Directive). Thus whilst Regulation 17 seems to impose an outright ban on teleshopping for medicinal products and medical treatment, Regulation 18 seems to allow such teleshopping provided that a number of conditions are satisfied.

Article 19(7) of the Broadcasting Act stipulates that programmes may not be **sponsored** by natural or legal persons whose principal activity is the manufacture or sale of products, or the provision of services, the advertising of which is otherwise prohibited ( $\neq$  art. 17 .3 TVWF Directive).

These general rules are supplemented by Guidelines on Advertising concerning Medicines, Treatments, Health Claims, Nutrition and Dietary Supplements (known in Maltese as the “*Linji Gwida dwar Reklamar li Ghandhom X’Jaqsma mal-Medicini, Trattament, Talbiet Dwar is-Sahha u Supplimenti dwar in-Nutrizzjoni u d-Dieta*”) issued by the Broadcasting Authority and which, in the words of the Guidelines themselves, must be read in the light of the rules found in the Code and examined above.

These guidelines, which were issued on the 9<sup>th</sup> February 2001 include the following provisions:

### ***1. General requirements***

Claims about any type of product or treatment falling under these Guidelines require very close scrutiny. It is the responsibility of the broadcaster to ensure that all advertisements about any medicinal product, service, preparation or remedy, comply with all the relevant legislation.

### ***2. Express reference to Department of Health permit number***

It is the responsibility of the broadcaster to ensure that any advertisement about any medical preparation or remedy states the permit number of the Department of Public Health as required in terms of Legal Notice 85 of 1981. In the case of a television programme such permit number must be visibly shown on the screen.

### ***3. Mandatory information for medicinal products***

Advertisements for medicinal products must include the following information:

- (a) The name of the product;
- (b) The name of the active ingredient, if it contains only one;
- (c) A clear indication of what the product is for; and
- (d) Wording such as “always read the label” or “always read the leaflet” where appropriate.

The broadcaster must furthermore ensure that a medicinal product is clearly identified as being a medicinal product.

### ***Medicines and Children***

Advertisements for medicinal products and treatments must not be directed exclusively or principally at children under the age of 16 years.

### ***Avoidance of Impressions of Professional Support and Advice***

The following are not acceptable:

- (a) Presentations by doctors, nurses, midwives, dentists, pharmaceutical chemists, veterinary surgeons etc. who as a result of their professional occupation promote a particular product; or
- (b) Statements which give the impression of professional advice or recommendation by people who feature in the advertisements and who are presented as being qualified to do so.

### ***Unacceptable descriptions***

Advertisements for products which are foodstuffs or consumer products with medicinal properties are for the purposes of these guidelines considered as medicinals.

### ***Diagnosis, prescription or treatment by correspondence***

Advertisements must not contain any offer by correspondence (including by post, e-mail, internet, telephone or facsimile) to diagnose, advise, prescribe or treat.

### ***Self-Diagnosis***

Advertisements for medicinal products must not contain any material that could, by description or detailed representation of a case history, lead to erroneous self-diagnosis.

### ***Cure***

No advertisement may employ any words, phrases, or illustration which claim or imply the cure of any ailment, illness, disease, or addiction as distinct from the relief of its symptoms.

### ***Guarantee of Efficacy***

Advertisements for medicinal products must not claim or imply that the effects of taking the product are guaranteed.

### ***Side Effects***

Advertisements for medicinal products must not suggest that the effects of taking the product are unaccompanied by side-effects. However, it is acceptable to highlight the absence of a specific side-effect such as for example drowsiness.

### ***Claims of recovery***

Advertisements for medicinal products must not refer to claims of recovery in improper, alarming or misleading terms.

### ***Appeals to fear or exploitation of credulity***

No advertisement may cause those who hear or see it unwarranted anxiety, if the advertisement states or in any way implies that if they fail to respond to the advertiser's offer then they may suffer from a disease or condition of ill health. Advertisements must not falsely suggest that any product is necessary for the maintenance of health or the retention of physical or mental capacities (whether by people in general or particular groups such as the elderly) or that health could be affected by not taking the product.

### ***Encouragement of excess***

Advertisements must not imply or encourage indiscriminate, un-necessary or excessive use of any medicinal product or treatment.

### ***Exaggeration***

Advertisements must not make any exaggerated claims, in particular through the selection of testimonials or other statements which are unrepresentative of a product's effectiveness or by claiming that it possesses some special property or quality which cannot be substantiated.

### ***Dietary Supplements***

Advertisements for dietary supplements, including vitamins or minerals, must not state or imply that they are necessary to avoid dietary deficiency or that they can enhance normal good health. Subject to qualified medical advice, claims for vitamins or minerals, may be accepted where they relate to restricted, un-supplemented or low-food-energy diets, women who are planning to become pregnant, or are pregnant or lactating, growing children and some people over 50.

### ***Food Advertising***

Advertisements must not encourage or condone excessive consumption of any food. Advertisements must not disparage good dietary practice and any comparisons between foods must not discourage selection of foods such as fresh fruit and vegetables which current generally accepted dietary opinion recommends should form a greater part of average diet.

Advertisements, especially those targeted at children, must pay regard to considerations of oral health and must not encourage frequent consumption throughout the day or depict situations where it could reasonably be assumed that teeth are unlikely to be cleaned overnight after consumption.

Specific nutrition claims or health claims must be supported by sound scientific evidence and must not give a misleading impression of the nutritional or health benefits of the food as a whole.

More generalized claims or descriptions which imply nutritional or health benefits without stating the basis for them explicitly in the advertising are acceptable only if there is in fact a specific basis for them which is similarly supported by sound scientific evidence.

### ***Sanitary Towels and Tampons***

Particular care is required when scheduling advertisements for sanitary protection products. The advertisement must not contain anything likely to embarrass or undermine an individual's confidence in her own personal hygiene standards. Care shall be taken to ensure that any detailed description of the product avoids anything which might offend or embarrass listeners or viewers. No implication of, or appeal to sexual or social insecurity is acceptable. Female voice-overs are more appropriate than male ones and men should not feature prominently in such advertisements. Particular discretion is required where an advertiser wishes to communicate a product's suitability to very young women.

*Anti-Aids and Anti-drugs advertising*

Anti-AIDS and anti-drugs advertisements are only acceptable from bodies approved by the competent public health authorities.

## **Conclusion:**

The rules stipulated in the Code are in compliance with the Directive, but somehow more restrictive.

- Alcoholic beverages (Article 15 TVWF Directive):

Regulation 19 of the Code stipulates that advertising and teleshopping for alcoholic beverages must comply with the following criteria:

It may not be aimed specifically at minors or, in particular, depict minors *acquiring* or consuming such beverage (// art. 15 a. TVWF Directive);

- It shall not link the consumption of alcohol to enhanced physical performance or to driving (art. 15 b. TVWF Directive);
- It shall not create the impression that the consumption of alcohol contributes towards social or sexual success (// art. 15 c. TVWF Directive);
- It shall not claim that alcohol has therapeutic qualities or that it is a stimulant, or sedative, or a means of resolving personal conflicts (// art. 15 d. TVWF Directive);
- It shall not encourage immoderate consumption of alcohol or present abstinence therefrom or moderation therein in a negative light (// art. 15 e. TVWF Directive);
- It shall not place emphasis on high alcoholic content as being a positive quality of the beverages (// art. 15 f. TVWF Directive).

These general rules are completed by Guidelines on Alcoholic Drink Advertising (known in Maltese as the “*Linji Gwida Dwar Reklamar ta’ Xorb Alkoholiku*”) issued by the Broadcasting Authority and which, in the words of the Guidelines themselves, must be read in the light of the rules found in the Code and examined above. These guidelines were issued on the 9<sup>th</sup> February 2001 and apply principally to advertisements for alcoholic drinks. However, the guidelines emphasize that the incidental portrayal of alcoholic consumption in advertisements for other products and services must always be carefully considered to ensure that it does not contradict the spirit of these guidelines.

These guidelines include the following provisions:

### ***Distribution of advertisements for alcohol***

Advertisements for alcoholic drinks must not be broadcast before 7.00 p.m.

### ***Protection of young people***

Alcoholic drink advertising must not be directed at people under 18 years of age or use treatments likely to be of particular appeal to them. Advertisements for alcoholic drinks must also not include any personality whose example people under 18 years of age are likely to follow or who has a particular appeal to people under 18 years of age. Children must not be seen or heard in advertisements for alcoholic drinks.



### ***Unacceptable treatments***

Advertisements must not blatantly imply that drinking is essential to social success or acceptance or that refusal is a sign of weakness. Nor shall they blatantly imply that the successful outcome of a social occasion is dependent on the consumption of alcohol. Advertisements must also not suggest that regular solitary drinking is acceptable or that drinking is a means of resolving personal problems. Nor may advertisements imply that drinking is an essential part of daily routine or can bring about a change in mood.

Furthermore, advertisements must not suggest or imply that drinking is an essential attribute of masculinity or femininity. References to daring, toughness or bravado in association with drinking are not acceptable.

Alcoholic drinks must also not be advertised in a context of aggressive, anti-social or irresponsible behaviour. Nor may they depict or imply excessive drinking in any manner whatsoever.

Advertisements must also not offer alcohol as therapeutic, or as a stimulant, sedative, tranquilliser or source of nourishment. While they may refer to refreshment after physical performance, they must not give any impression that performance can be improved by drink. Finally, advertisements must not suggest that a drink is preferable because of its higher alcohol content or intoxicating effect and must not place undue emphasis on alcoholic strength.

### ***Safety***

Nothing in any advertisement may promote drinking while driving or whilst using potentially dangerous machinery. Alcoholic drinks must not be seen to be consumed in a working place environment.

### ***Cut-price offers, etc***

Reference to “cut-price drinks”, “happy hour drinks”, “buy two and get one free”, “money-off coupons” and similar advertisements that encourage excessive or immoderate consumption are unacceptable. Alcoholic drink retailers may however advertise price reductions for their stock.

### ***Humour***

Advertisements may employ humour but not so as to circumvent the intention of these guidelines.

### ***Non-applicability of guidelines***

These guidelines must not apply to any advertisements or promotional campaigns undertaken to dissuade the public from excessive or immoderate drinking.

## **Conclusions:**

The code contains the same rules as the Directive but is completed by other stricter rules contained in the Guidelines.

- **Minors (Article 16 TVWF Directive):**

The rules relating to minors and advertising, teleshopping, sponsorship and other advertising forms emanate from the Broadcasting Code for the Protection of Minors (known in Maltese as the “*Kodici tax-Xandir dwar il-Protezzjoni tal-Minuri*”) (Legal Notice 160 of 2000) which is a subsidiary legislation issued under the Broadcasting Act. This Code refers to minors who are **under sixteen years of age**.

In line with the Directive, LN 160 provides that advertising must not cause moral or physical detriment to minors (// art. 16 .1 TVWF Directive), and must therefore comply with the following criteria for their protection.

- (a) it shall not directly exhort minors to buy a product or a service by exploiting their inexperience or credulity (// art. 16 .1 a. TVWF Directive);
- (b) it shall not directly encourage minors to persuade their parents or others to purchase the goods or services being advertised (// art. 16 .1 b. TVWF Directive);
- (c) it shall not exploit the special trust minors place in parents, teachers or other persons (// art. 16 .1 c. TVWF Directive);
- (d) it shall not unreasonably show minors in dangerous situations (// art. 16 .1 d. TVWF Directive).

The following rules also apply to advertising in relation to minors:

### ***General rule on advertisements and minors***

Advertisements must not include any material that may result in harm to minors either physically, mentally or morally.

### ***Misleading advertising***

Advertisements addressed to the minor listener and viewer must not exaggerate or mislead about any features including the size, qualities or capabilities of products or services. A minor’s ability to distinguish between fact and fantasy will vary according to their age and individual personality. With this in mind, no unreasonable expectation should be stimulated, such as for example, with regard to the performance of toys or games by the excessive use of imaginary backgrounds or special effects.

### ***Prices***

Prices for products or services advertised to minors shall not be minimised by words such as “only” or “just”.

### ***Immaturity and credulity***

Advertisements must not take advantage of the immaturity or natural credulity of minors.

### ***Appeals to loyalty***

Advertisements must not take advantage of the sense of loyalty of minors or suggest that unless minors buy or encourage others to buy a product or service they will be failing in some duty or lacking in loyalty.

### ***Inferiority***

Advertisements must not lead minors to believe that unless they have or use the product advertised they will be inferior in some way to other minors or liable to be held in contempt or ridicule.

### ***Exhortation***

Advertisements must not directly exhort minors to buy products or services or else to ask adults to buy products or services for them.

### ***Direct response***

Advertisements must not invite minors to purchase products or services by means of a communication at a distance including mail, telephone, computer, e-mail or internet.

### ***Competitions***

References to competitions for minors are acceptable provided that any skill required is appropriate to the age of the likely participants and the values of the prizes and the chances of winning are not exaggerated. No proof of purchase must be requested from minors who wish to participate in such competitions.

### ***Free gifts***

References to “free gifts” for minors in advertisements must include all qualifying conditions, such as any time limit and how many products must be purchased, and any other relevant information.

### ***Health and hygiene***

Advertisements shall not encourage minors to eat frequently throughout the day.

### ***Confectionery and snack products***

Advertisements for confectionery and snack foods must not suggest that such products may be substituted for balanced meals.

### ***Safety***

Any situations where minors are to be seen or heard in advertisements must be carefully considered from the point of view of safety. It should be borne in mind that, in some circumstances, bad examples by adults may encourage emulation by minors. Circumstances to be avoided include the following:

- (a) minors must not be seen leaning on windows, climbing or tunnelling dangerously or playing irresponsibly in or near water;
- (b) minors must not be shown playing in the road;
- (c) minors of small stature must not be shown climbing up to high shelves or reaching up to take things from a table above their heads;
- (d) medicines, disinfectants, antiseptics and caustic or poisonous substances shall not be shown within reach of minors without close adult supervision. Nor may minors be shown using such products in any way;
- (e) minors must not be shown using matches, gas, petrol, paraffin, mechanical or mains-powered appliance which could lead to them suffering any form of injury;
- (f) advertisements must not depict toy weapons are realistic (whether in size, shape or colour) and which can be confused with real weapons.

### ***Danger***

No advertisement shall encourage minors to enter strange places or to converse with strangers.

### ***Behaviour***

Minors in advertisements must be reasonably well-mannered and well-behaved.

### ***Anti-social behaviour***

Advertisements must not encourage anti-social behaviour or depict minors behaving in anti-social manner. Vindictiveness, bullying and certain facial expressions and body movements can all be defined as anti-social.

### ***Exploitative presentation***

Advertisements must not portray minors in a sexually provocative manner.

### ***Appearances of minors***

Treatments in which minors appear naked or in a state of partial undress require particular care and discretion.

### ***Minors as presenters***

If minors are used in commercials, they shall not be used to present products or services which they could not be expected to buy themselves.

### ***Comments by minors***

Minors shall not make significant comments on characteristics or products and services about which they could not be expected to have direct knowledge.

### ***Testimonials***

Minors must not personally testify about products and services. They may, however, give spontaneous comments in which they would have an obvious natural interest.

### ***Restriction on times of transmission***

Advertisement for the following must not be transmitted during minors' programmes or in advertisement breaks immediately before or after them:

- (a) alcoholic drinks;
- (b) matches;
- (c) medicines;
- (d) vitamins or dietary supplements;
- (e) slimming products, treatments and establishments;
- (f) adult only rated film trailers;
- (g) lotteries or similar games of chance.

### ***Teleshopping***

Teleshopping must only comply with the requirements relating to safety discussed above. Furthermore, in line with the Directive, teleshopping must not exhort minors to contract for the sale or rental of goods and services (// art. 16 §2 TVWF Directive).

### **Conclusions**

The rules comply with the Directive however, the Code refer to minors who are under 16 years of age.

- Other product/service categories subject to a specific regime: Identification of these sectors,

In Malta, a particular sector which is subject to a specific regime in so far as advertising is concerned is the **financial services and products sector**. Specific rules regulating advertising in this industry can be found throughout various laws and regulations, in particular:

- The Investment Services Act (known in Maltese as the “*Att dar Servizz ta’ Investiment*”) and guidelines issued thereunder;
- The Insurance Business Act (known in Maltese as the “*Att dwar il-Kummerc ta’ l-Assigurazzjoni*”) and directives issued thereunder and
- The Consumer Affairs Act.

Specific guidelines on advertising of financial services and products were also issued by the Broadcasting Authority on the 3<sup>rd</sup>. October 2001.

## Insurance

The **Insurance Business Act** makes provision both for a definition of “advertisement” for the purposes of this Act as well as for specific rules regulating insurance advertisements. To this end, “*advertisement*” is defined in relation to the business of insurance, as any form of advertising, whether done verbally or in writing, and includes advertising in a publication, the display of notices, signs, labels or show cards, by means of letters, circulars, prospectuses, catalogues, price-lists or other documents, by an exhibition of pictures or photographic or cinematographic films, *by way of sound broadcasting or television*, by the distribution of recordings or in any other manner. Article 48 of the Act provides that no company authorized under this Act shall issue or cause to be issued in Malta any advertisement or carry out or cause to be carried in Malta any promotional activity related to the business of insurance which misleads or indirectly or by implication is likely to mislead, or deceive any prospective policyholder, or the insurance sector in general, or the general public with respect to its assets or corporate structure or financial standing or authorization or any other material respect.

In the case of a company whose head office is in Malta, the provisions of this sub article shall also apply with respect to:

- a. An advertisement issued or caused to be issued; and
- b. A promotional activity as aforesaid carried out or caused to be carried out, from Malta or in or from a country outside Malta.

Furthermore, paragraph 2 of this same article provides that the Competent Authority<sup>3</sup> may, by an insurance directive, determine the form and content of insurance advertisements and make different provision in relation to insurance advertisements of different classes or part classes or descriptions; and the manner in which any promotional activity as aforesaid shall be carried out or caused to be carried out. This does not apply to a company if its business is restricted to reinsurance. Paragraph 4 of the same Article 48 asserts that where a company issues or causes to be issued an advertisement or carries out or causes to be carried out any promotional activity, which is in breach of or does not comply with any of the above provisions, the competent authority may issue an order directing the company.

- a. To withdraw, wholly or partly, the advertisement or promotional activity; or
- b. To amend any particular of the advertisement or promotional activity; or
- c. To do such other thing as it deems appropriate in the circumstances.

If a company refuses or fails to comply with any such order issued by the Competent Authority or refuses or fails to comply with such order within the time specified therein, then the Competent Authority has the power to enforce, at the expense of the company concerned, the order issued by it. This is without prejudice to any penalty which the company may incur.

Moreover, pursuant to Paragraph 2 of this Article 48, the Competent Authority issued Insurance Directive 14 of 1999 entitled “**Insurance Advertisements and Other Promotional Activities Directive**”. This Directive applies, on a continuing basis, to companies authorised to carry on business of insurance and to companies authorised to act as an insurance agent or an insurance manager. However, this Directive does not apply to companies if their insurance business is restricted to reinsurance or affiliated insurance.

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<sup>3</sup> The competent authority for insurance business and financial services is the Malta Financial Services Authority (MFSA).

The scope of the Directive is to determine guidelines on insurance advertisements and other promotional activities issued by the companies concerned so that policyholders' and potential policyholders' right to information which is not misleading is protected against unethical practice and insurance advertisements and other promotional activities so issued are carried out according to generally accepted ethical practice.

The Directive includes the following provisions:

### ***General rules***

It Directive makes provision for the following general advertising rules:

- Any advertisement issued by a company concerned must state that the company issuing the advertisement is a company authorized to carry on business of insurance or to act as an insurance agent or insurance manager, as the case may be, regulated by the Malta Financial Services Authority (“the authorisation statement”).
- Any advertisement issued by a company concerned which is a company incorporated with a share capital which states in the advertisement the amount of the authorised capital of the company, must also state the amount of that capital which has been subscribed and the amount thereof which has been paid up at the time the advertisement is issued.
- Every company concerned shall, when issuing an advertisement, ensure that:
  - (a) the advertisement is approved by the company’s compliance officer or alternatively by any officer formally authorised by the company to do so. Advertisements may also be approved by third parties such as lawyers on behalf of the company. Whatever practical arrangements are put in place for the approval of advertisements, the company concerned shall remain responsible; and
  - (b) it keeps a record of all advertisements issued by the company, including the date of issue, details of the publication in which the advertisement was published and evidence of approval of the advertisement.
- Where the company concerned is a company authorised to carry on business of insurance, it shall keep a record of all advertisements issued by it and a separate record of all advertisements approved by it. The words “keep a record of all advertisements” essentially mean that the company concerned is required to keep a copy of each, different kind of advertisement issued or approved by it, for a period of not less than 10 years.
- Advertisers should not unfairly attack or discredit other business or their products.
- An advertisement may not quote anything said or written by any person, or include any statement purporting to represent the views of any person, other than any official or employee of the company concerned or a close relative of any official or employee of the company concerned unless:
  - (a) the consent of that person to the inclusion on the advert of the quotation or statement representing his views has been obtained and not withdrawn;
  - (b) the quotation or statement is relevant to the subject matter of the advertisement;

- (c) the quotation or statement fairly represents the views of the person to whom the views are attributed;
- (d) the quotation or statement or its use in the advert, has not become inaccurate or misleading since it was first made or given:

Sub-paragraph (a) does not apply in any case where the quotation in question has already been published, otherwise than as part of an advert, and it is clear from the context of that earlier publication that the quotation can be used without the express consent of its originator.

### ***Guidelines governing advertisements relating to long term business and general business***

In so far as more specific rules relating to advertising are concerned, the Directive in line with the Insurance Business Act distinguishes between “***Long term business***” and “***General business***”. The classes of long term business and general business are attached as Schedules 2 and 3 of the Insurance Business Act as annexed to this report.

- When issuing an advertisement, such a company must:
  - (a) avoid taking any improper advantage of any characteristic or circumstances that may make policyholders or potential policyholders vulnerable (e.g. by exploiting their lack of experience or knowledge);
  - (b) exercise care while aiming to help policyholders or potential policyholders to fully grasp the nature of any commitment into which they may enter as a result of responding to an advert;
  
- An advertisement must be clearly identifiable as an advertisement. It ***must not contain***:
  - (a) a statement, promise or forecast which is untrue or misleading;
  - (b) a statement of fact which the company concerned does not, at the time the advertisement is issued have reasonable grounds supported by documentary evidence for believing to be true or have reasonable grounds for believing will continue to be true for so long as it remains relevant to the subject matter of the advertisement;
  - (c) a statement that may be interpreted that a company concerned is an insurer if that is not the case
  - (d) a statement of opinion held by any person (whether that person is the company concerned or any other person) which the company concerned does not, at the time the advertisement is issued, have reasonable grounds supported by documentary evidence for believing to be the honestly held opinion of that person at that time;
  - (e) a misleading statement about the policies of insurance of, or any of those policies of, or the resources of, or available to, the company concerned;
  - (f) a comparison with other types of policies of insurance unless the basis of comparison is clearly stated and the comparison is fair;
  - (g) a statement of endorsement which is used out of context without suitable explanation, or is misleading by omission.



- The *content and format* of an advertisement must not:
  - (a) be likely to be misunderstood;
  - (b) disguise the significance of any warning statement or information which the Authority may either generally or specifically require to be included;
  - (c) be presented in such a way that it is not clearly identifiable as an advertisement.
- The *format* of an advertisement must :
  - (a) when the main text appears in a minimum font size twelve, the font size of any warnings, where applicable, and authorisation statements may only be a maximum of four font sizes lower than the font size of the main text. In all cases, the font size of any warnings and authorisation statements should be relative to the size of the advert so as to be sufficiently clear and legible.
  - (b) where the footnotes are used these should be of sufficient size and prominence and easily legible;
  - (c) where an asterisk is used to add explanation, the explanatory text may appear as a footnote provided that the linkage is absolutely clear;
- Broadcast sponsorships, television and radio advertisements, must contain the following information:
  - (a) the authorisation statement of all licence holders mentioned in the advertisement; and
  - (b) any warnings on television advertisements should be visually presented in a clear and legible manner.
- An advertisement must
  - (a) identify the company concerned which issued it;
  - (b) contain the address of the company concerned which issued it;
  - (c) state the kind of business the company concerned is authorised by the Authority to carry on if the company is an insurer, or in which type of capacity the company is authorised to act if the company is an insurance agent or insurance manager;
  - (d) contain sufficient information about the policy of insurance being advertised, and about other relevant matters, to enable the reader to understand what is being offered and the risks involved, to enable him to make an informed decision.
- Any advertisement issued by a company concerned in a country outside Malta must conform with any insurance advertising law or regulations of the country where the advertisement is issued. Where in such country there are no laws or regulations which govern insurance advertisements, any advertisement issued by the company must, as far as practicable, conform with the requirements of this Directive.
- Where an advertisement is issued in a country outside Malta, if appropriate, the advertisement must state that the Malta Exchange Control Act (Cap. 233) or any rules or regulations made thereunder will apply.
- A company concerned must keep a record of any evidence to support any statement made in any advertisement which purports to be a statement of fact or opinion.

- If an advertisement includes an invitation for the reader to enter into a contract of insurance, the advertisement (and any subsequent documentation) must contain sufficient information to enable the reader to understand the product and the risks involved and to assess its suitability for him.
- Where a company concerned is an insurer authorized to carry on business of insurance through an insurance agent or insurance manager (“the agent”), if the agent issues any advertisement relating to the business carried on by the insurer, the insurer must approve the advertisement before publication, accept responsibility for it and ensure that it fulfils or complies with all the legal and regulatory requirements provided by or under the Act. The same applies in the case of an advertisement issued by an insurance manager on behalf of an enrolled company.
- Where an advertisement is issued in accordance with the above procedure, the insurer or enrolled company must ensure that the advertisement:
  - (a) identifies in same prominence both the insurer and the agent which issued it;
  - (b) contains the address of both the insurer and the agent which issued it;
  - (c) contains a statement that both the insurer and the agent are authorised under the Act;
  - (d) contains a statement that the policy is underwritten by the insurer;
  - (e) contains appropriate warnings dealing, if appropriate, with the risks associated with fluctuations in foreign exchange rates;
  - (f) contains a statement that further information will be supplied if requested.
- Where an advertisement relates to specific policy benefits and the benefits are dominated in a currency other than the Maltese lira, the advertisement must contain a warning concerning foreign exchange rates fluctuations and, if appropriate, a statement that Malta Exchange Control regulations must be observed.

***Guidelines governing advertisements relating solely to long term business***

In so far as long term business is concerned, the above guidelines must be read as one with the guidelines below:

- An advertisement relating solely to long term business must not contain -
  - (a) a statement relating to past performance unless:
    - i. the basis on which such performance is measured is clearly stated and the presentation is fair;
    - ii. it is accompanied by a warning that past performance is not necessarily a guide to future performance;
    - iii. the past performance is relevant to the company concerned or the policies offered by the company;
    - iv. the source of information is stated;
    - v. where charges are not taken into account there is a statement to that effect;
    - vi. information relating to past performance must be dated;
  - (b) a statement relating to taxation, unless it is properly qualified to show what it means in practice and to whom it applies.

- An advertisement relating to a long term business policy which gives particulars of any of the benefits payable under the policy must state which of the benefits under the contract (if any) are of fixed amounts and what those amounts are and which of them (if any) are not of fixed amounts.
- Such an advertisement may describe a benefit of a fixed amount or a minimum amount of a variable benefit as a “guaranteed” amount but, if it does so and the advertisement refers to the participation of a third party who does not guarantee the performance by the insurer of its obligations, the advertisement must not contain any matter which implies that there is such a guarantee.
- Where an advertisement relates to a long term business policy which contains an investment element then, if the investment element is guaranteed, the advertisement must indicate any matters which may affect the policyholder’s ability to benefit from it. Furthermore, the advertisement must not specify a rate of return without specifying how it is calculated.

#### ***Image advertisements issued by insurance managers***

- Any company concerned which is a company acting as an insurance manager, whether or not the company holds any appointment for so acting, may at any time issue an image advertisement. An “image advertisement” is taken to mean an advertisement which contains nothing other than any of the following:
  - (a) matter promoting public awareness of the company;
  - (b) a description of the nature of the services provided by the company;
  - (c) matter commending the company in general or in a particular service provided by the company;
  - (d) a statement that further information will be supplied if requested.

#### ***Image advertisements issued by insurance agents***

- Any company concerned which is a company acting as an insurance agent for and on behalf of any one or more insurance companies may *occasionally* issue an image advertisement. Again, an “image advertisement” here means an advertisement which contains nothing other than any of the following:
  - (a) matter promoting public awareness of the company;
  - (b) matter promoting the company in general or in a particular service provided by the company;
  - (c) a statement that further information will be supplied if requested.

#### **Insurance Intermediaries**

Section 4 of the Insurance Business Act requires any advertisement issued to conform with guidelines determined by an Insurance Intermediary Directive. To this end, advertisements issued by registered insurance sub-agents are regulated by the **Insurance Intermediaries Advertisements and other Promotional Activities Directive** (Directive 5 of 1999), though in the case of advertisements issued by a registered insurance sub-agent of the company

concerned, the company is likewise required to satisfy or comply with the requirements of the Directive examined above, that is, Directive 14 of 1999.

The scope of this Directive 5 of 1999 is to determine guidelines on insurance intermediaries advertisements and other promotional activities issued by insurance intermediaries so that clients' right to information which is not misleading is protected against unethical practice and insurance intermediaries advertisements and other promotional activities so issued are carried out according to generally accepted ethical practice. Directive 5 of 1999 applies on a continuing basis, to companies enrolled in the Brokers List and carrying on business as insurance broker (the "enrolled company") and to persons registered in the Sub-agent Company Register of any authorised company and carrying out insurance sub-agency activities for the company (the "registered insurance sub-agent"). For the purposes of this Directive, the following words are assigned the following meanings:

- (a) "**advertisement**" means an insurance intermediaries advertisement and includes a promotional activity and "advertisement issued" includes a promotional activity undertaken;
- (b) "**identity**":
  - (i) in relation to **an enrolled company**, means the registered name of the company;
  - (ii) in relation to **a registered insurance sub-agent**:
    - 1. where the sub-agent is an individual, means the full name of the individual; and
    - 2. where the sub-agent is not an individual, means the registered name of the company or undertaking or the name of the organisation;
  - (iii) in relation to **an authorised company**:
    - 1. where the company is a local company, means the registered name of the company;
    - 2. where the company is a foreign company, means the name of the company; and –
      - (aa) if the company carries on business of insurance through a branch and the business is carried on by an insurance manager, includes the name of the insurance manager;
      - (bb) if the company carries on business of insurance through an insurance agent, includes the name of the insurance agent, and, in each case, includes any other relevant particulars or material information which a person deems appropriate to add for the proper identification of the person in different circumstances or for different purposes;
- (c) "**issue**", in relation to an advertisement, includes causing or permitting an advertisement to be issued. It may be apt to note that the Directive stipulates that the

consent of the competent authority (that is, the Malta Financial Services Authority) is not required before any advertisement is issued.

### ***General rules***

- Any requirement determined by this Directive to be included in any advertisement must be shown prominently, clearly and intelligibly.
- Any advertisement issued by an enrolled company or a registered insurance sub-agent must state that the company or insurance sub-agent that has issued the advertisement is an enrolled company or insurance sub-agent regulated by the competent authority.
- Every enrolled company or registered insurance sub-agent must keep a record of all advertisements issued by the company or subagent including the date of issue and the publication in which the advertisement was published.
- Where an advertisement relates to specific policy benefits and the benefits are denominated in a currency other than the Maltese lira, the advertisement must contain a warning concerning foreign exchange rates fluctuations and, if appropriate, a statement that Maltese Exchange Control regulations must be observed.
- Advertisers should not unfairly attack or discredit other businesses or their products.
- Any person registered in the Brokers Register is prohibited from issuing any advertisement in his name or on his behalf.

### ***Guidelines governing advertisements issued by enrolled companies***

- Any statement made by or on behalf of an enrolled company when issuing an advertisement must not be misleading or unrealistic.
- Advertisements issued by or on behalf of an enrolled company must distinguish between contractual benefits, that is benefits which the contract of insurance is bound to provide, and non-contractual benefits, that is the amount of benefits which the contract might provide assuming the insurer's particular forecast is correct.
- Where advertisements include a forecast of non-contractual benefits, an enrolled company must restrict the forecast to that provided by the insurer concerned.
- An enrolled company must not issue any advertisement on behalf of any insurer. However, in exceptional circumstances, an enrolled company may issue an advertisement on behalf of an insurer provided that
  - (a) the prior approval of the Centre and the insurer is obtained in writing;
  - (b) the insurer is an authorised company; and
  - (c) the identity of the insurer and a statement that the advertisement is approved by the Malta Financial Services Authority appear in the advertisement.

### ***Guidelines governing advertisements issued by registered insurance sub-agents***

- A registered insurance sub-agent must not issue an advertisement:
  - (a) except with the consent of the company to which the business advertised relates; and
  - (b) unless the company to which the business advertised relates:
    - (i) is the company on whose register the sub-agent issuing the advertisement is registered; and
    - (ii) accepts responsibility for the material content of the advertisement.
- Every advertisement issued by a registered insurance subagent must:
  - (a) be constructed in a manner as to leave no doubt whatever that the person issuing the advertisement is a registered insurance sub-agent of the company to which the business advertised relates and is appointed by the company to carry out on behalf of the company insurance sub-agency activities forming the object of the advertisement; and
  - (b) include the identity of both the company to which the business advertised refers and the registered insurance sub-agent issuing the advertisement.
- In every advertisement issued by a registered insurance sub-agent the identity of the company to which the business advertised relates must take the same prominence in all respects as the identity of the insurance sub-agent issuing the advertisement.
- An authorised company must not give its consent to the issue of an advertisement by any registered insurance sub-agent except where the advertisement appears to the authorised company that it conforms with guidelines determined by this Directive and Insurance Directive 14 of 1999 on Insurance Advertisements and Other Promotional Activities.

### ***Image advertisements***

- Any enrolled company or registered insurance sub-agent may at any time issue an image advertisement. However, before doing so, whether directly or indirectly and whether in person or in writing, an enrolled company or a registered insurance sub-agent must disclose its identity and purpose. Again, the term “***image advertisement***” in relation to an enrolled company or a registered insurance sub-agent, is defined as an advertisement which contains nothing other than any of the following:
  - (a) matter promoting public awareness of the company or insurance sub-agent;
  - (b) a description of the nature of the services provided or the product marketed by the company or insurance sub-agent;
  - (c) matter commending the company or insurance subagent in general but not any particular service provided or product marketed by the company or insurance sub-agent;
  - (d) a statement that further information will be supplied if requested.

### ***Advertisements issued in countries outside Malta***

- Any advertisement issued by any enrolled company in any country outside Malta must conform with any insurance advertising laws or regulations of the country where the advertisement is issued.
- Where in a country outside Malta there are no laws or regulations which govern insurance advertisements, any advertisement issued by any enrolled company must, as far as practicable, conform with the requirements of this Directive.
- Where any advertisement is issued in a country outside Malta, if appropriate, the advertisement must contain a statement that the Malta Exchange Control Act (Cap 233) or any rules or regulations made thereunder must apply to the business advertised.

### ***Investment Services***

Article 11 Paragraph 1 (b) of the Investment Services Act provides that no person other than license holders, may issue or cause to be issued an investment advertisement in or from within Malta unless its contents have been approved by a licensee holder. For the purposes of this law the term “***investment advertisement***” is defined as ***any form or medium of advertising or promotional activity, other than a prospectus, the contents of which, either invites persons, or contains material calculated to induce persons:***

1. to become or offer to become participants in a collective investment scheme;
2. to subscribe for or otherwise acquire or underwrite an instrument;
3. to purchase or otherwise procure an investment service.

In terms of Article 11 Paragraph 3, the competent authority (again, the Malta Financial Services Authority) may impose such conditions, limitations and restrictions on a license holder with respect to the issue or approval of investment advertisements, as it may consider appropriate. However, an exemption from the above rules has been provided for by Investment Advertisements and Prospectus Exemption Regulations (known in Maltese as the “*Regolamenti Dwar Servizzi Ta’ Investiment (Ezenzjoni Ghal Reklami U Prospetti Ta’ Investiment*”) (LN 355 of 2002) issued under the Investment Services Act. The Malta Financial Services Authority has set out guidelines which regulate the issue of investment advertisements and promotional material. These guidelines are attached to this report.

In addition to the above specific rules dealing with advertising of particular financial services and products, the ***Guidelines on Advertising of Financial Services and Products*** (known in Maltese as the “*Linji Gwida Dwar Ir-Reklamar Ta’ Servizzi U Prodotti Finanzjarji*”) issued by ***the Broadcasting Authority*** make provision for a number of other rules. However, primarily, as the Guidelines themselves provide, it is the responsibility of both the broadcaster and of the advertiser to ensure that advertisements comply with all relevant legal regulatory requirements, in particular those required under the Investment Services Act (Cap. 370) the Insurance Business Act (Cap. 403) and the Consumers Affairs Act (Cap. 378) as examined above. In fact, these guidelines are complementary to and in addition to any legal requirements and should not be interpreted as detracting from any responsibility to comply with any requirements under any law.

### ***General requirement that such advertisements be prepared with care***

- Advertisements should be prepared with care and with the conscious aim of ensuring that the public fully understands the nature of any commitment, which may be entered into as a result of responding to such advertisements.
- Broadcasters should take account that the complexities of finance may well be beyond many of those to whom the opportunity they offer will appeal. Therefore broadcasters have a direct responsibility to ensure that in no way do any such advertisements that they may broadcast take advantage of inexperience or gullibility.

### ***Misleading Advertisements***

- Advertisements must present the financial offer or service in terms which do not mislead whether by exaggeration, omission or otherwise.

### ***Interest on savings***

- References to any return on capital or to any interest payable on savings are acceptable provided that:
  - (a) They are clearly stated and factually correct at the time of broadcast;
  - (b) Any calculations of interest or returns are not based on unstated factors such as the minimum sum required to be deposited or the minimum period of deposit;
  - (c) It is made clear whether the interest or return is gross or net of tax;
  - (d) Interest rates relating to variables (such as a bank's base rate) are so described.

### ***Insurance Premium and Cover***

- Subject to any applicable legal requirement:
  - (a) Reference to rates and conditions in connection with insurance must be accurate and must not mislead;
  - (b) When specifying rates and premium cover, there must be no misleading omission of conditions;
  - (c) In life insurance advertising, reference to specific sums assured must be accompanied by all relevant qualifying conditions such as the age and sex of the assured at the outset of the policy, period of policy and amount and number of premiums payable.

### ***Tax Benefits***

- References to income tax and other tax benefits must be properly qualified, clarifying what they mean in practice.



### ***Direct Remittance***

- Advertisements are unacceptable if in any manner whatsoever they invite the remittance of money direct to the advertiser or any other person without offering an opportunity to receive further details.

### ***Requirements to be abided by***

- Any advertisement which may lead to a consumer buying any financial product or service from which profit, interest or benefit is expected, should comply with the following requirements:
  - (a) Advertisements indicating in general terms the availability of financial opportunities are acceptable provided comprehensive explanatory material about the facilities or opportunities available is provided to the consumer, free of charge, before any contract entered into becomes finally binding.
  - (b) Advertisements which go beyond a general indication of the availability of an opportunity, in particular those inviting immediate investment or commitment, should clearly indicate
    - i. Any limitations on eligibility;
    - ii. Any charges, expenses or penalties however so described;
    - iii. The terms upon which withdrawal, if permitted, may be arranged.
  - (c) When an advertisement contains any forecast or projection, whether of a specific return or rate of return it should make clear the basis upon which that forecast or projection is made, for instance:
    - i. Whether reinvestment of income is assumed;
    - ii. Whether account has been taken of any applicable taxes
    - iii. Whether any penalties or deductions will arise on the premature realization or otherwise.
- Advertisements should make it clear that the value of investments is variable and, unless guaranteed, can go down as well as up. If the value of the investment is guaranteed, clear details should be included in the advertisement.
- Advertisements, which make reference to past performance or experience, should do so in a manner which gives a fair and representative picture and should include a warning that neither is necessarily a guide to the future.

**b. Conclusion**

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

Whilst the TVWF Directive imposes an outright ban on the teleshopping of certain medicinal products and medical treatment, Regulation 18 of the Code attached as Third Schedule to the Broadcasting Act seems to allow such teleshopping provided that a number of conditions are satisfied. This is however in direct conflict with Regulation 17 of the same Code which imposes an outright ban.

Moreover, Article 19 (7) of the Act imposes a general ban on medical products and medical treatment sponsoring, while the TVWF Directive allows the promotion of the name or the image of the undertaking through sponsoring.

Transposing the provision of the Directive, the Regulation 19 of the Code on alcoholic beverage advertising added that no advertising shall depict minors acquiring alcohol.

- Identification of specific rules not included in the Directive:

There are a number of specific rules (not included in the Directive) regulating the above specific products found both in Guidelines issued by the Broadcasting Authority as well as in Directives and Guidelines issued by the Competent Authority, in so far as financial services are concerned. In particular, the rules regulating advertising and minors are much more detailed, as alluded to above.

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