



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

THE NETHERLANDS

LEGAL REPORT

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Introduction

Amendment of the Media Act (Mediawet)

On 31 December 2003 an amendment of the Media Act has come into force. The act has been changed in order to amend it pursuant to European obligations applicable to all providers of public and commercial TV-programmes. The amendment does this by transferring provisions from the Media Decree, an order in Council, to the Media Act. This is merely a technical exercise, some slight modifications as to content however have also been implemented. The changes in the Media Decree have come into force on 31 December 2003 as well.

The changed Media Act has brought about a regime change of the Media Authority. The amount of penalty categories has been expanded from two to three. The penalty amounts have been increased so that they better correspond to the nature and gravity of the different infringements of the Media Act as well as the developments in the media market.

In the Upper House the legislative proceeding of this proposal has given rise to objections of a constitutional law nature. Consequently, the proposal has been submitted to the Council of State to render advice. Hence, parts of the legislative proposal have not yet obtained statutory force.

The issue under discussion concerns the section of the proposal that aims at creating the possibility to implement decisions of the Council of the European Union, of the European Parliament and the Council together, or of the European Commission not by the ordinary parliamentary procedure but by way of decree.

I. Definitions (Article 1 Directive TVWF)

- Television broadcasting

‘Public broadcasting’ (MA s. 1.t)

Broadcasting by establishments which have obtained broadcasting time (...).

‘Commercial broadcasting’ (MA s. 1.x)

Broadcasting by commercial establishments.

‘Commercial broadcasting establishment’ (MA s. 1.dd)

A natural or legal person providing a programme service which falls, for the purposes of this Act, within the jurisdiction of the Netherlands with the exception of establishments which have obtained broadcasting time.

- Broadcaster

‘Television broadcaster’ (MA s. 1.d)

An electronic media service engaged in the provision and broadcasting of television programmes.

- Television advertising

‘Advertising expression’ (MA s. 1.jj new)

Advertising message, teleshop message or other expression which clearly results in the public being encouraged to buy a specific product or to use a specific service, or in public opinion being influenced in a positive manner as regards a specific business, branch of industry or institution in a way which promotes the sale of products or the use of services.

‘Advertising message’ (MA s. 1.kk new)

Message, not being a teleshop message, which is unmistakably intended to encourage the public to buy a specific product or to use specific services, or to influence public opinion in a positive manner as regards a specific undertaking, branch of industry or establishment in order to promote the sale of products or the use of services.

- Surreptitious advertising

Surreptitious advertising

The Media Act does not contain a definition of surreptitious advertising or teleshopping.

- Sponsorship

‘Sponsorship of a programme’ (MA s. 1.ll)

The provision of financial or other contributions by a government institution or private company not normally involved in broadcasting activities or in the making of audio-visual productions, towards the production or purchase of a programme for the purpose of facilitating or enabling its broadcast.

‘Sponsor’ (MA s. 1.mm)

The public or private undertaking which sponsors a programme.

‘Sponsor's contribution’ (MA s. 1.nn)

The contribution provided by a sponsor.

- Teleshopping

‘Teleshop message’ (MA s. 1.xx new)

Message in a television programme consisting of a direct offer to the public with a view to the supply of products or services for payment.

- And any other relevant legal definition for the analysis (for instance, self-promotion message, split-screen technique, product placement, virtual advertising, inevitable advertising, television programme, virtual advertising, inevitable advertising, etc.)

‘Programme service’ (MA s. 1.f)

An electronic product with visual or audio content intended to be broadcast to and to be received by the general public or a part thereof, with the exception of data services, services available only on individual demand, and other interactive services.

‘Programme’ (MA s. 1.g)

A clearly distinct and as such recognisable part of a programme service.

‘Television programme service’ (MA s. 1.h)

A programme service with visual content, with or without audio content.

Conclusion

The definitions of “Television broadcasting” en “broadcaster” in the Dutch Media Act are entirely different from the definitions included in the Directive. Also television advertising is defined in a different way and a distinction is made between an “advertising message” and an “advertising expression”. There is no definition of “surreptitious advertising” in the Dutch Media Act.

Also, sponsorship is defined in a different way and the definition does not mention expressly the intent of the sponsor to promote his name or trademark, image, activities or its products.

The definition of teleshopping does not entirely correspond to the definition given in the Directive, although it repeats the essential element of a direct offer for sale broadcast to the public.

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

a. Regulations

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

Commercial broadcasting

Section 71.f Media Act (formerly section 52c.2 Media Decree) reads:

1. Advertising messages or teleshop messages that are part of the programme of a commercial broadcasting establishment shall be recognizable as such and shall be clearly distinguishable from the other programmes by optical or acoustic means. No use is to be made of subliminal techniques.
2. Blocks of teleshop messages (...) are recognizable during the whole of the transmission as such, and by optical and acoustic means clearly separated from the other programmes.

Public broadcasting

Section 50.8 Media Act has been amended and allows now teleshop messages to be broadcast in public broadcasting, notably (only) by the Radio and Television Advertising Foundation (Dutch: Stichting Etherreclame, STER):

The Radio and Television Advertising Foundation shall use its broadcasting time to provide a programme service consisting of advertising messages and teleshop messages supplied by third parties. (...) the Radio and Television Advertising Foundation's programme service shall be recognizable as such and must be clearly discernable from the programmes of the other establishments which have obtained broadcasting time. Subliminal techniques shall not be used in the Radio and Television Advertising Foundation's programme.

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

Commercial broadcasting

Section 71.f Media Act (formerly section 52c.2 Media Decree) reads:

1. Advertising messages or teleshopping messages that are part of the programme of a commercial broadcasting establishment shall be recognizable as such and shall be clearly distinguishable from the other programmes by optical or acoustic means. No use is to be made of subliminal techniques.

2. Blocks of teleshopping messages (...) are recognizable during the whole of the transmission as such, and by optical and acoustic means clearly separated from the other programmes.

Public broadcasting

Section 50.8 Media Act has been amended and allows now teleshop messages to be broadcast in public broadcasting, notably (only) by the Radio and Television Advertising Foundation (Dutch: Stichting Etherreclame, STER):

The Radio and Television Advertising Foundation shall use its broadcasting time to provide a programme service consisting of advertising messages and teleshop messages supplied by third parties. (...) the Radio and Television Advertising Foundation's programme service shall be recognizable as such and must be clearly discernable from the programmes of the other establishments which have obtained broadcasting time.

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

For both commercial broadcasting and public broadcasting the minimum length of blocks of messages has been changed from two minutes into one minute and a half. Isolated spots are thus prohibited.

Commercial broadcasting

Section 71.g.5 Media Act reads now:

Advertising messages in television programmes, or teleshop messages, are to be broadcast exclusively in blocks that have a length of at least 1,5 minutes, filler items included.

Public broadcasting

Section 41a.5 Media Act reads now:

Broadcasting time for television of the Radio and Television Advertising Foundation shall be scheduled with due observance of a minimum length of 1,5 minutes per block.

- Prohibition of the use of "subliminal techniques"

Commercial broadcasting

Section 71.f Media Act (formerly section 52c.2 Media Decree) reads:

1. Advertising messages or teleshop messages that are part of the programme of a commercial broadcasting establishment shall be recognizable as such and shall be clearly distinguishable from the other programmes by optical or acoustic means. No use is to be made of subliminal techniques.

Public broadcasting

Section 50.8 Media Act has been amended and allows now teleshop messages to be broadcast in public broadcasting, notably (only) by the Radio and Television Advertising Foundation (Dutch: Stichting Etherreclame, STER):

The Radio and Television Advertising Foundation shall use its broadcasting time to provide a programme service consisting of advertising messages and teleshop messages supplied by third parties. (...) the Radio and Television Advertising Foundation's programme service shall be recognizable as such and must be clearly discernable from the programmes of the other establishments which have obtained broadcasting time. Subliminal techniques shall not be used in the Radio and Television Advertising Foundation's programme.

S. 10 Dutch Advertising Code applies thus to both public and commercial broadcasters:

Advertising shall be recognizable as such by virtue of its layout, presentation, content and so forth, taking account of the public for which it is intended.

(...)

The use of subliminal techniques in audiovisual advertising is also prohibited.

- Prohibition of surreptitious advertising and teleshopping

Surreptitious advertising and teleshopping are not prohibited as such; in the system of the Media Act there are conditions for legally broadcasting commercial messages and commercial expressions. If these conditions are not met, broadcasting will be in violation of the Media Act.

b. Conclusion

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

The Dutch Media Act is more restrictive than s. 10.2 TVWF Directive in that it does not allow isolated advertising and teleshopping spots at all for both commercial and public broadcasters. Advertising messages and teleshop messages are to be broadcast in blocks with a minimum length of 1,5 minutes.

The Dutch Media Act implements the rules of Article 10 TVWF Directive, except that there are no specific provisions on surreptitious advertising. Nevertheless, surreptitious advertising is prohibited in the Netherlands since advertising is only allowed on conditions the rules on identification and insertion are observed.

- Identification of specific rules not included in the Directive

II. 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

Public broadcasting

S. 41a.1 MA reads:

The broadcasting time of the Radio and Television Advertising Foundation shall be scheduled in such a way that (...):

(c) on Sundays, the programmes of the Radio and Television Advertising Foundation do not immediately precede or follow programmes of a religious or spiritual nature, unless the establishment which has obtained broadcasting time and which is responsible for that programme has lodged no objections against such practice; (...)

- 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)

Commercial broadcasting

S. 71h MA (formerly s. 52e MD) reads as follows:

1. Programmes of commercial broadcasting establishments shall only be interrupted by advertising messages or teleshop messages if the interruption does not affect the integrity, nature or coherence of the relevant programme or infringe the rights of rights holders.
2. Programmes covering gatherings relating to religious or other beliefs shall not be interrupted by advertising messages or teleshop messages.
3. The following programmes shall be interrupted by advertising messages or teleshop messages only if they last more than thirty minutes:
 - (a) programmes consisting of news or news commentaries;
 - (b) programmes of a religious or spiritual nature other than those referred to in paragraph 2;
 - (c) programmes aimed at minors under the age of twelve;
 - (d) no dramatised documentaries.
4. Films shall be interrupted by advertising messages or teleshop messages only if they last at least forty-five minutes.
5. Without prejudice to paragraph 4, films shall not be interrupted by advertising messages or teleshop messages more frequently than once every forty-five minutes. If a film has a remaining length of more than twenty minutes after two or more full segments of forty-five minutes, the film may be interrupted once more.

S. 71i MA (formerly s. 52f MD) reads as follows:

1. Where one television programme is interrupted by more than one advertising or teleshop break, the intervals between them shall be at least twenty minutes.
2. Notwithstanding paragraph 1, television programmes consisting of a report of a sporting event, a stage performance or some other similarly structured performance or event shall only be interrupted by advertising messages or teleshop messages during natural breaks occurring in the performance or event or between separate parts of the performance or event.

Public broadcasting

S. 41a.1 MA reads:

The broadcasting time of the Radio and Television Advertising Foundation shall be scheduled in such a way that (...):

(c) on Sundays, the programmes of the Radio and Television Advertising Foundation do not immediately precede or follow programmes of a religious or spiritual nature, unless the establishment which has obtained broadcasting time and which is responsible for that programme has lodged no objections against such practice;

(d) any programme of another establishment which has obtained national broadcasting time will only be interrupted by Radio and Television Advertising Foundation if:

- (1) the programme to be interrupted lasts longer than one hour and a half for television (...);
- (2) the program consists of the complete report or coverage of an event;
- (3) the program contains the complete report of the event;
- (4) the interruption takes place during natural breaks occurring in the event or between separate parts;
- (5) the interruption lasts at least one minute and a half for television (...)
- (6) the establishment which has obtained broadcasting time and which is responsible for the programme has no objections to the interruption on the ground of it having an adverse effect on the integrity, the character or the coherence of the program in question;
- (7) the interruption does not harm the rights of right holders.

s. 41.a.2 MA reads:

any programme of an establishment which has obtained national broadcasting time can be interrupted at the most one time per 45 minutes for television (...) by a programme of the Radio and Television Advertising Foundation.

For the public broadcaster, there is a specific prohibition on interruption during programmes directed at children younger than 12 years old, and on interruption of programmes of a religious nature:

Programmes of a religious or spiritual nature and programmes mainly targeted at minors under the age of twelve shall not be interrupted by programmes of the Radio and Television Advertising Foundation. (s. 41.a.3 MA)

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

Commercial broadcasting

S. 71h MA (formerly s. 52e MD) reads as follows:

1. (...)
2. Programmes covering gatherings relating to religious or other beliefs shall not be interrupted by advertising messages or teleshop messages.

Public Broadcasting

S. 41a.1 MA is phrased in such a way that it indicates for public broadcasting in which types specific programmes interruption are allowed:

The broadcasting time of the Radio and Television Advertising Foundation shall be scheduled in such a way that (...):

(c) on Sundays, the programmes of the Radio and Television Advertising Foundation do not immediately precede or follow programmes of a religious or spiritual nature, unless the establishment which has obtained broadcasting time and which is responsible for that programme has lodged no objections against such practice;

(d) any programme of another establishment which has obtained national broadcasting time will only be interrupted by Radio and Television Advertising Foundation if:

- (1) the programme to be interrupted lasts longer than one hour and a half for television (...);
- (2) the program consists of the complete report or coverage of an event;
- (3) the program contains the complete report of the event;
- (4) the interruption takes place during natural breaks occurring in the event or between separate parts;
- (5) the interruption lasts at least one minute and a half for television (...)
- (6) the establishment which has obtained broadcasting time and which is responsible for the programme has no objections to the interruption on the ground of it having an adverse effect on the integrity, the character or the coherence of the program in question;
- (7) the interruption does not harm the rights of right holders.

For the public broadcaster, there is a specific prohibition on interruption during programmes directed at children younger than 12 years old, and on interruption of programmes of a religious nature:

Programmes of a religious or spiritual nature and programmes mainly targeted at minors under the age of twelve shall not be interrupted by programmes of the Radio and Television Advertising Foundation. (s. 41.a.3 MA)

b. Conclusion

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

Commercial broadcasting

The Media Act (s. 71h and 71i) is, with respect to commercial broadcasters, in conformity with article 11 TVWF Directive.

Public broadcasting

As to the interruption of programmes by advertising messages or teleshop messages the Media Act is more strict than the Directive, article 11.

Broadcasting establishments that provide programmes of a spiritual or religious nature can prevent advertising messages to be broadcast immediately preceding or following their programmes on Sundays.

There is a general prohibition on the insertion of advertising in children's programmes.

- Identification of rules not included in the Directive

The Media Act defines children as persons under the age of 12.

For Public broadcasters the types of programmes that can be interrupted by advertising and the conditions to be met are regulated in detail.

III. Quantitative restrictions (Article 18 TVWF Directive)

a. Regulations

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

Public broadcasting

S. 41a MA reads:

(1) (T)he broadcasting time of the Radio and Television Advertising Foundation shall be scheduled in such a way that:

(a) on a daily basis, the Radio and Television Advertising Foundation's broadcasting time on any programme service network never amounts to more than fifteen per cent of the total broadcasting time used on that programme service network; (...)

The Dutch Media Act permits as of 31st December 2003 the broadcasting of teleshopping messages by the Radio and Television Advertising Foundation.

S. 50.8 Media Act reads now:

The Radio and Television Advertising Foundation shall use its broadcasting time to provide a programme service consisting of advertising messages and teleshopping messages supplied by third parties. (...) Teleshopping messages that are scheduled into the program of Radio and Television Advertising Foundation shall have a length of not more than one minute each. A block (...) consists of teleshopping messages for not more than two thirds. (...)

Commercial broadcasting

There has been a technical shift of rules from the Media Decree to the Media Act. Quantitative restrictions for commercial broadcasters are to be found now in s. 71.g Media Act.

S. 71.g MA (formerly s. 52.d MD) reads:

1. (...)

2. (...)

3. No more than twenty per cent of the total length of the programme service provided by a commercial broadcasting establishment on a given day shall consist of a combination of advertising messages and teleshopping messages.

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

Public broadcasting

S. 41a MA reads:

(1) (T)he broadcasting time of the Radio and Television Advertising Foundation shall be scheduled in such a way that:

(a) on a daily basis, the Radio and Television Advertising Foundation's broadcasting time on any programme service network never amounts to more than fifteen per cent of the total broadcasting time used on that programme service network;

(b) (...)

The Dutch Media Act permits as of 31st December 2003 the broadcasting of teleshopping messages by the Radio and Television Advertising Foundation.

S. 50.8 Media Act reads now:

The Radio and Television Advertising Foundation shall use its broadcasting time to provide a programme service consisting of advertising messages and teleshopping messages supplied by third parties. (...)

Commercial broadcasting

S. 71.g MA (formerly s. 52.d MD) reads:

1. No more than fifteen per cent of the total length of the entire programme service provided by a commercial broadcasting establishment on a given day shall consist of advertising messages.

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

Public broadcasting

S. 41a MA reads:

(1) (T)he broadcasting time of the Radio and Television Advertising Foundation shall be scheduled in such a way that:

(a) (...);

(b) in any given clock hour, the Radio and Television Advertising Foundation's broadcasting time never amounts to more than twelve minutes.

Commercial broadcasting

S. 71.g MA (formerly s. 52.d MD) reads:

1-3 (...)

4. No more than twelve minutes per hour of the programme service provided by a commercial broadcasting establishment shall consist of advertising messages or teleshopping messages.

- Examination of the other possible quantitative restrictions

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

b. Conclusion

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

The Dutch Regulation with regard to public broadcasting is more restrictive than article 18 TVWF Directive proscribes. The daily maximum of teleshopping and advertising spots is limited to 15%. Teleshopping messages may have a duration of maximum 1 minute by spot. Their total in an advertising block may not exceed two thirds of the block's total duration.

The Dutch Regulation with regard to commercial broadcasting is in conformity with article 18 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)

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

a. Regulations

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

Public broadcasting

With regard to public broadcasting, teleshopping programmes are not allowed according to the Dutch Media Act.

Commercial broadcasting

S. 71.g MA (formerly s. 52.d MD) reads:

1-5 (...)

6. The programme service of a commercial broadcasting establishment shall consist of no more than eight windows of teleshopping messages per day, each window, without interruptions, shall last at least fifteen minutes and the total length shall be no more than three hours per day. (...)

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

Public broadcasting

With regard to public broadcasting, teleshopping programmes are not allowed according to the Dutch Media Act.

Commercial broadcasting

S. 71.g MA (formerly s. 52.d MD) reads:

1-5 (...)

6. The programme service of a commercial broadcasting establishment shall consist of no more than eight windows of teleshopping messages per day, each window, without interruptions, shall last at least fifteen minutes and the total length shall be no more than three hours per day. (...)

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

Public broadcasting

With regard to public broadcasting, teleshopping programmes are not allowed according to the Dutch Media Act.

Commercial broadcasting

S. 71.g MA (formerly s. 52.d MD) reads:

1-5 (...)

6. The programme service of a commercial broadcasting establishment shall consist of no more than eight windows of teleshopping messages per day, each window, without interruptions, shall last at least fifteen minutes and the total length shall be no more than three hours per day. (...)

b. Conclusion

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

Public broadcasting

With regard to public broadcasting, teleshopping programmes are not allowed according to the Dutch Media Act.

Commercial broadcasting

The regulation as to commercial broadcasting is in conformity with article 18bis TVWF Directive

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

V. Sponsoring (Article 17 TVWF Directive)

a. Regulations

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

Public broadcasting

Section 64b Media Act

1. (...) [E]stablishments which have obtained broadcasting time shall draw up a programme service statute which must in any event safeguard the editorial independence of those of their employees charged with the editorial aspects of the programmes against interference by sponsors.
2. This Section shall not apply to government agencies, religious or other spiritual organizations and political parties, which obtained broadcasting time.

Commercial broadcasting

S. 71k MA (formerly s. 52.h MD)

1. Programmes of a commercial broadcasting establishment may be sponsored only if that establishment has drawn up a programme statute which in any event protects the editorial independence of those of their employees charged with the editorial aspects of the programme services against interference by sponsors.

- Sponsor identification

Public broadcasting

S. 52b MA

1. (...) [T]he names of all the sponsors of a programme of an establishment which has obtained broadcasting time shall be mentioned either at the beginning or end of the programme in question for the information of the public.

Commercial broadcasting

S. 71k MA

1. (...)The names of all the sponsors shall be mentioned by means of a name, logo or brand either at the beginning or end of the sponsored programme for the information of the public.
2. The names of sponsors may not be presented in such a way as to meet the definition of an advertising message laid down in section 1 (kk) of the Media Act.

- 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)

Public broadcasting

S. 52b MA

1. (...) [T]he names of all the sponsors of a programme of an establishment which has obtained broadcasting time shall be mentioned either at the beginning or end of the programme in question for the information of the public.

Commercial broadcasting

S. 71k MA

1. (...)The names of all the sponsors shall be mentioned by means of a name, logo or brand either at the beginning or end of the sponsored programme for the information of the public.

- Identification of the programmes that cannot be sponsored

Public broadcasting

The sponsor regime within the public broadcasting is codified in s. 52a of the Media Act. Sponsoring of programmes in public broadcasting is not allowed (par. 1), unless it concerns programmes of a cultural nature, sporting events or a report of events for charity purposes (par. 2). News programs or programmes about current affairs or political information shall not be sponsored at all, as well as programmes which are directed specifically at minors (par. 3)

“Section 52a Media Act

- 1. Programmes of establishments which have obtained broadcasting time shall not be sponsored.*
- 2. Subsection 1 shall not apply to:*
 - a. programmes of a cultural nature;*
 - b. programmes consisting of a report on or coverage of one or more sporting events or sporting competitions;*
 - c. programmes consisting of a report on or coverage of events for charity purposes.*
- 3. Programmes as referred to in subsection 2 shall not be sponsored if:*
 - a. they consist wholly or in part of news, current affairs or political information; or*
 - b. are specifically aimed at minors under the age of twelve.”*

Authorization for sponsoring of public television programmes is subject to rules which are aimed at a direct relationship (and therefore a direct responsibility) between the sponsor and the public broadcasting company. Furthermore the board of directors of the Dutch (public) Broadcasting Foundation is competent to consider the compliance of a sponsorship agreement with the common interests of Dutch public broadcasting.

Commercial broadcasting

S. 71k MA

5. Programmes of commercial broadcasting establishments which have obtained permission shall not be sponsored if they consist of news, current affairs or political information.

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

Public broadcasting

S. 52b MA

1. (...)

2. In the case of sponsored television programmes, the names of the sponsors shall appear for a maximum of five seconds. The appearance may be in the shape of a name, trade-mark, logo or image brand. In so far as this does not take place in the introductory or final credits, only a static image may be used. The appearance shall not fill the whole screen and shall be shaped in such a way that it does not fulfil the criteria of the definition of advertising messages as referred to in section 1 (kk).

Commercial broadcasting

S. 71k MA

1. (...)The names of all the sponsors shall be mentioned by means of a name, logo or brand either at the beginning or end of the sponsored programme for the information of the public.

2. The names of sponsors may not be presented in such a way as to meet the definition of an advertising message laid down in section 1 (kk) of the Media Act.

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

Public broadcasting

S. 52b MA:

1. (...)

2. In the case of sponsored television programmes, the names of the sponsors shall appear for a maximum of five seconds. (...)

Commercial broadcasting

No restrictions

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

...

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

There is no specific regulation on product placement or price mentioning in the Netherlands. Nevertheless surreptitious advertising and product placement in programmes with commercial intent is prohibited since commercial messages must comply with the rules on insertion of TV advertising or sponsorship.

- Other specific rules on sponsorship which are not foreseen in the TVWF Directive

Public broadcasting

S. 56a MA

1. Without prejudice to section 52a, subsections 1 and 3, establishments which have obtained broadcasting time may only stipulate or accept sponsorship contributions directly from the sponsor and by means of a written agreement.
2. Establishments which have obtained national broadcasting time shall send a copy of any agreement as referred to in subsection 1 to the board of directors within one week of its conclusion and, in any event, before the planned transmission date of the programme to which the agreement relates.
3. If the board of directors considers that such an agreement conflicts with the common interests of national broadcasting, and the establishment which has submitted the agreement is informed in writing of this finding by the board of directors within two weeks of it having received a copy of the agreement and, in any event, before the planned transmission date of the programme to which the agreement relates, the establishment in question shall not include the relevant programme in its programme service unless the agreement is dissolved or amended.
4. If such an agreement is amended, the provisions of subsections 2 and 3 shall apply *mutatis mutandis*.
5. If a sponsored programme has been purchased abroad and has already been broadcast as a programme service to a foreign audience, this section shall apply only in so far as the sponsorship money has been furnished to facilitate the purchase of that programme by the establishment which has obtained broadcasting time.

b. Conclusion

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

Public broadcasting

The Dutch Media Act is more restrictive with regard to sponsoring than the Directive allows. In principle sponsoring is not allowed, except for certain types of programs (s. 52a).

The Dutch Media Act demands that broadcasting establishments join the Dutch Advertising Code. Furthermore broadcasting establishments shall draw up a programme statute guaranteeing their employees editorial independence.

Programmes shall not be sponsored if they are specifically aimed at minors under the age of twelve.

Mentioning the sponsors may last for not more than five seconds, as part of the credits or as a non-moving image at beginning or end of the programme. This image may not fill the screen (s. 52b MA).

Specific rules on the content and the form of the agreement with the sponsor are imposed on public broadcasters.

Commercial broadcasting

With regard to commercial broadcasting the Dutch Media Act is in general in conformity with article 17 of the Directive.

The rules for sponsoring in Section 71k Media Act are more severe than the interpretation of the European Court of Justice of Section 17.1.b of the TV-Directive. It is not allowed to mention the sponsor(s) during the programme, unless there is a report of an event in the programme (which does not cover the whole programme) and this event only is sponsored. The sponsoring of the event can be mentioned at the beginning or at the end of the report of the event (Section 711.1 Media Act). This exception is not allowed if there is any relation between the sponsoring and tobacco products (paragraph 2). The broadcasters are not obliged to mention the sponsor(s) in an announcement of the programme.

The Dutch Media Act demands that broadcasting establishments join the Dutch Advertising Code and draw up a programme statute guaranteeing their employees editorial independence.

VI. New advertising techniques

a. Split screens

There is no specific regulation on this technique and the technique is at present not used.

b. Interactive advertising

There is no specific regulation on this technique and the technique is at present not used.

c. Virtual advertising

There is no specific regulation on this technique and the technique is at present not used.

VII. 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)

Public broadcasting and commercial broadcasting

The norms of the Directive are also implemented through other regulations than the Media Act, namely the Dutch Advertising Code.

Sections 2-6 Dutch Advertising Code

1. (...)
2. Advertising shall conform to the law, the truth and the requirements of good taste and decency.
3. Advertising shall not contravene the public interest, public order or morality.
4. Advertising shall not be gratuitously offensive or constitute a threat to mental and/or physical public health.
5. The form and content of advertising shall not undermine confidence in the advertising.
6. Without justifiable cause, advertising shall not arouse feelings of fear or superstition.

General rules on the content of advertising (Section 12 Directive) can be found in Section 1 of the Dutch Advertising Code. In this Section ‘respect for human dignity’, ‘the prohibition on discrimination on grounds of race, sex or nationality’ and the protection of ‘religious or political beliefs’ (Sections 12a, b and c Directive) are not mentioned as such. The prohibition on discrimination on grounds of race, sex or nationality’ can be found in Article 1 of the Constitution and is liable to punishment on the basis of Article 137d of the Penal Code. The DAC itself uses more vague terms, for example that advertising should be ‘in conformity with the law, the truth and requirements of good taste and decency’ (Section 2 DAC) and ‘not contravene the public interest, public order or morality’ (Section 3 DAC).

The protection of the environment (Section 12 (e) Directive) is regulated in a separate part of the DAC, the Code for environmental advertising, which actually gives a broader protection than the Directive.

The protection of minors against ‘moral or physical detriment’ (Section 16 Directive) is regulated in Section 13.2 DAC, which is a literal implementation of the Directive.

b. Conclusion

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

The Dutch Advertising Code, to which all broadcasters are obliged to adhere, protects in rather vague terms the interests mentioned in article 12 sub a) – d) Directive. Furthermore, it refers to observing Dutch law which in its turn protects these interests.

Article 12 sub e) Directive is regulated in a separate part of the DAC, the Code for environmental advertising, which gives a broader protection than the Directive.

Apart from the rules included in the Dutch Advertising Code, general consumer protection regulation (such as the rules on misleading and comparative advertising) are included in the Dutch Civil Code.

- Identification of specific rules not included in the Directive

VIII. Specific products and targets

a. Regulations

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

According to Section 13 of the TVWF-Directive all forms of television advertising for cigarettes and other tobacco products are prohibited. In accordance with this Section, all advertising on television in the Netherlands for cigarettes or other tobacco products is prohibited. This ban on tobacco advertising on television is laid down in Section 4 of the Tobacco Act. Other forms of advertising for tobacco products are submitted to the Advertising Code for Tobacco Products.

Public broadcasting

According to the ban on sponsorship by undertakings the principal activity of which is the manufacture or sale of cigarettes and other tobacco products, the Media Act declares in Section 56a.5 that public broadcasting organisations may not accept sponsorship contributions from the said undertakings. The acceptance of financial contributions by other undertakings, using tobacco trademarks and the like, so-called indirect advertising or parallel use of a tobacco trademark, is also prohibited.

Commercial broadcasting

S. 71k MA

1-3 (...)

4. Commercial broadcasting establishments shall not stipulate or accept any sponsorship contributions from persons, companies or establishments:

(a) whose main activities involve the manufacture or sale of cigarettes or other tobacco products; or

(b) that use names, logos or brands which are also used by persons, companies or establishments as referred to at (a), or which bear such a strong resemblance to any of these items as to make it reasonable to expect that the public will gain the impression that the name, logo or brand involved is also that of a person, company or establishment as referred to at (a).

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

Section 14.1 TVFW Directive prohibits any television advertising for medicinal products and medical treatment available only on prescription in the Member State within whose jurisdiction the broadcaster falls. Section 5 of the Advertising Decree on Medicines likewise prohibits all public advertising messages for medicines available only on prescription.

The prohibition to accept sponsoring from companies that produce or sell medicines or medical treatment is not laid down in the Media Act, but in (Section 5 of) the Advertising Decree on Medicines.

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

Section 15 TVWF-Directive prohibits some forms of advertising for alcoholic beverages on television. The Dutch general standards for alcohol advertisement are set down in the Code for Alcoholic Beverages (hereinafter: CAB). This code, part of the Dutch Advertising Code, applies to all media and advertising messages specifically directed at the Netherlands.

Section 15a of the Directive prohibits alcohol advertising directed at or related with minors. The Sections 14-23 of the Code for Alcoholic Beverages contain the rules for alcohol advertising and minors: advertising messages shall not be pointed to minors specifically (Section 14); the messages shall not show minors in combination with drinking alcohol (Section 20) or their idols in combination with drinking alcohol or encouraging the consumption of alcohol (Section 21) and at least will not suggest that drinking alcohol is a sign of maturity (Section 22). The Directive has been literally implemented in these Sections. There are a number of other Sections in the code which are related to advertising messages and minors. Television commercials for alcohol beverages shall not be specifically directed at minors. This means that the commercial shall not be broadcast just before, during or directly after a programme which interests minors (Section 16 CAB). Alcohol commercials are not allowed at all on the youth channels (Section 17 CAB). The promotion or sampling of alcoholic beverages cannot be pointed at minors (Section 18 and 23 CAB).

Section 14 CAB

Advertising for alcoholic beverages shall not be aimed specifically at minors.

Section 20 CAB

Advertising messages shall not show minors, or persons who appear to be minors, drinking or encouraging the consumption of alcoholic beverages.

Section 21 CAB

Advertising messages shall not show young people's idols drinking or encouraging the consumption of alcohol beverages, if their message is aimed specifically at minors.

Section 22 CAB

Advertising messages shall not suggest that the consumption of alcoholic beverages is a sign of maturity and that not drinking is a sign of immaturity.

Section 16 CAB

Advertising messages for alcoholic beverages in the form of commercials and printed advertisements shall not be placed, shown or broadcast, as the case may be: on radio and television immediately before or immediately after programmes which are intended for, or are known to be listened to or watched primarily by minors.

According to Section 15b of the Directive, the advertisement shall not associate the consumption of alcohol with enhanced physical performance or to driving. These standards will be found in Section 27, 9 and 11 of the Code for Alcoholic Beverages. Drinking alcohol shall not be associated with driving or riding in any advertising message, unless the commercial contains a specific warning against this danger (for example an informative film) (Section 27). Drinking alcohol shall not be associated with an enhanced physical or psychological performance (Section 9). Also, advertising messages regarding the consumption of alcohol, shall not be positively associated with a performance at work (Section 11).

Section 27 CAB

Advertising messages shall not associate drinking and driving or riding. This provision does not apply if, and in so far as the advertising message contains a warning against driving or riding after consuming alcoholic beverages.

Section 9 CAB

Advertising messages shall not, in a positive way, associate drinking with physical or psychological performance.

Section 11 CAB

Advertising messages shall not, in a positive way, associate drinking with performance at work.

The advertising messages shall not suggest that the consumption of alcohol will contribute to any social or sexual success (Section 15c TV-Directive). This paragraph has been reproduced in Section 12 of the Code for Alcoholic Beverages.

Section 12 CAB

Advertising messages shall not create the impression that the consumption of alcoholic beverages can contribute to social or sexual success.

Alcohol advertisement may not claim that the consumption of alcohol has therapeutic qualities or is a stimulant, a sedative or a means of resolving personal conflicts (Section 15d Directive). The Code for Alcoholic Beverages contains the prohibition for advertising messages which associate (in a positive way) alcohol consumption with health (Section 9 CAB). The advertising messages shall not suggest that drinking alcohol is a stimulant, a sedative or a means of resolving personal conflicts (Section 7 CAB).

Section 8 CAB

Advertising messages shall not, in a positive way, link the consumption of alcoholic beverages with health.

Section 7 CAB

Advertising messages shall not suggest that drinking alcohol is a stimulant, a sedative or a means of resolving personal conflicts.

According to Section 15e of the TV-Directive television, advertising for alcohol shall not encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light. In the Netherlands, these standards are to be found in Section 1 and 2 of the Code for Alcoholic Beverages. The suggestion towards an irresponsible and immoderate consumption of alcohol is prohibited (Section 1 CAB). Besides that, the advertisement shall not give the impression of excessive alcohol consumption (Section 2 CAB).

Section 1 CAB

Since the consumption of alcoholic beverages can cause problems, restraint shall be exercised in all messages for such beverages. Any suggestion of the irresponsibility and immoderate consumption of alcohol of any kind shall therefore be avoided in such messages.

Section 2 CAB

Advertising messages shall not depict situations where the predominant impression is one of large scale and excessive alcohol consumption.

Section 15f TV-Directive contains a prohibition with regard to all advertising messages on television which place emphasis on high alcoholic content as being a positive quality of the beverages. This paragraph is codified in Section 5 of the Code for Alcoholic Beverages.

Section 5 CAB

Advertising messages shall not put emphasis on high alcoholic content as being a positive quality of the beverages. The advertising messages shall also not suggest that the risks will disappear if the alcoholic content is lower.

Section 33 CAB obliges advertisers to put educative slogans with their advertisements like warnings for excessive use of alcohol or exhortations to responsible consumption.

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

Section 15a of the Directive prohibits alcohol advertising directed at or related with minors. The Sections 14-23 of the Code for Alcoholic Beverages contain the rules for alcohol advertising and minors: advertising messages shall not be pointed to minors specifically (Section 14); the messages shall not show minors in combination with drinking alcohol (Section 20) or their idols in combination with drinking alcohol or encouraging the consumption of alcohol (Section 21) and at least will not suggest that drinking alcohol is a sign of maturity (Section 22). The Directive has been literally implemented in these Sections. There are a number of other Sections in the code which are related to advertising messages and minors. Television commercials for alcohol beverages shall not be specifically directed at minors. This means that the commercial shall not be broadcast just before, during or directly after a programme which interests minors (Section 16 CAB). Alcohol commercials are not allowed at all on the youth channels (Section 17 CAB). The promotion or sampling of alcoholic beverages cannot be pointed at minors (Section 18 and 23 CAB).

Section 14 CAB

Advertising for alcoholic beverages shall not be aimed specifically at minors.

Section 20 CAB

Advertising messages shall not show minors, or persons who appear to be minors, drinking or encouraging the consumption of alcoholic beverages.

Section 21 CAB

Advertising messages shall not show young people's idols drinking or encouraging the consumption of alcohol beverages, if their message is aimed specifically at minors.

Section 22 CAB

Advertising messages shall not suggest that the consumption of alcoholic beverages is a sign of maturity and that not drinking is a sign of immaturity.

Section 16 CAB

Advertising messages for alcoholic beverages in the form of commercials and printed advertisements shall not be placed, shown or broadcast, as the case may be: on radio and television immediately before or immediately after programmes which are intended for, or are known to be listened to or watched primarily by minors.

The Dutch Advertising Code contains a provision about advertising directed at children younger than 12 years old (Section 13). The advertising may not mislead the children in any way about the capacity and qualities of the product involved. The advertising may cause no mental or physical harm to the children and therefore it has to satisfy four criteria (Section 13 paragraph 2). Paragraph 3 of this Section contains the obligation for broadcasters to meet the requirements given in paragraph 2 and moreover, they must not encourage minors to conclude agreements for purchasing or renting products.

Section 13 DAC

1. Advertising which is manifestly aimed wholly or partly at minors – that is, children up to the age of 12 – shall contain no speech, sound or image which in any way could mislead them about the capacity and qualities of the product concerned.
2. Advertising on television shall cause no mental or physical harm to minors and for their protection, shall therefore satisfy the following criteria:
 - it shall not encourage minors to buy a particular product by taking advantage of their inexperience or credulity;
 - it shall not directly encourage minors to persuade their parents or others to buy advertised products;
 - it shall not take advantage of the special confidence which minors have in parents, teachers or others;
 - it shall not, without reason, depict minors in dangerous situations.
3. Teleshopping shall meet the requirements stipulated in and shall moreover not encourage minors to conclude agreements for purchasing or renting products.

- Other product/services categories subject to a specific regime

Cars

In the Netherlands, broadcasters are bound by norms of self-regulation regarding advertising and cars: the Code for Passenger Cars (CPC). Besides the general section of the Advertising Code, the advertising and other activities to promote the sales of new cars is submitted to this special code. The purpose of this code is to attune advertising messages to government policy on traffic safety, the environment and energy savings. All the advertising messages in this sector shall conform to the Code for Environmental Advertising as well.

Section 1 CPC

Advertising messages shall not use speed, acceleration and engine power as arguments to promote sales. Any mention of engine power shall be in kilowatts (kW).

Section 3 CPC

Advertising shall not appeal to, or elicit aggressive, environmentally-unfriendly or unsafe traffic behavior. Terms which commend the car as an environmentally-friendly product shall be avoided in advertising messages. Qualifications concerning contributions to, or the promotion of a clean environment shall under no circumstances be used in an absolute sense.

Section 4 CPC

The use of terms which commend the car as an absolutely safe product shall be avoided in advertising messages.

Environment

Code for Environmental Advertising

1. Applicability

This Code applies to all environmental claims, in other words, to all advertising messages referring implicitly or explicitly to environmental factors connected with the production, distribution, consumption or waste processing of goods, or with related services (hereinafter known collectively as 'products').

2. No Misrepresentation

Environmental claims shall contain no statements, pictures or suggestions that may mislead the consumer concerning environmental aspects of the products recommended or the contribution of the advertiser to maintaining and promoting a clean and safe environment in general.

3. Demonstrability

All environmental claims shall be demonstrably correct. The burden of proof rests on the advertiser. The more absolute the formulation of the claim, the more stringent are the requirements with respect to evidential material.

4. Constituent Parts and Aspects

Should environmental claims relate exclusively or virtually exclusively to particular constituent parts or aspects of the products recommended, this limitation shall be stated clearly.

5. Absence or Reduction of Constituent Parts

An environmental claim which relates to the absence or reduction of constituent parts that are environmentally harmful is permissible only in the following cases

- any replacement parts are less environmentally harmful
- and no wrongful assertion or suggestion is made that comparable products do possess the environmentally harmful constituent parts that are absent or reduced.

6. Comparisons

Environmental claims in which the recommended products are compared implicitly or explicitly with other products shall relate to all the relevant environmental aspects of the products compared.

7. Designations and Symbols

Environmental designations and symbols shall not be used unless the origin of the designation or symbol is clear and no confusion can arise on the meaning of the designation or symbol.

8. Scientific Works

Quotations from, and reference to scientific works shall be representative and demonstrably correct. Should the scientific works not be generally accessible, the advertiser shall submit such works on request when a complaint is handled.

9. Testimonials

Testimonials used in environmental claims shall be based on the expertise of the person or body giving them

10. Waste Processing, Collection and Recycling

Environmental claims that relate to waste collection (separate or otherwise) and/or waste processing are permissible only if the recommended method of collection or processing is sufficiently available to the target group for which the advertising claim is intended. Environmental claims which relate to the recycling of products or parts of products are permissible only if a sufficient proportion of the recommended products or parts are actually recycled.

11. Environmentally Unfriendly Behaviour

Advertising messages shall not set as an example environmentally unfriendly behaviour that is avoidable, nor shall such behaviour be encouraged.

12. Official Rules

Notwithstanding the provisions of sections 1 to 11, environmental claims are permissible if they comply with specific advertising rules issued by government authorities in connection with environmental issues.

b. Conclusion

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

Concerning sponsoring article 17, 2 and 3 TVWF Directive have been implemented in Dutch law.

Tobacco: the ban on tobacco advertising on television is laid down in s. 4 of the Tobacco Act. This implements section 13 of the Directive. Other forms of advertising for tobacco fall under the Advertising Code for Tobacco (obligatory self regulation for all broadcasters that broadcast programmes containing advertising).

Medicines: section 14 of the Directive has been implemented in Dutch law by way of section 5 of the Advertising Decree on medicines.

Alcohol: As to alcohol, the Directive has been implemented in the Code for Alcoholic Beverages (obligatory self regulation for all broadcasters that broadcast programmes containing advertising). This Code is more restrictive than the Directive.

Minors: article 13 of the general Dutch Advertising Code (obligatory self regulation for all broadcasters that broadcast programmes containing advertising), prohibits forms of advertising directed at children (younger than 12). This code is less restrictive in the sense that it applies to minors younger than 12.

Cars: the Code for Passenger Cars (obligatory self regulation for all broadcasters that broadcast programmes containing advertising), can be seen as an implementation of section 12 d) and e). In that respect it is more restrictive than the Directive.

Environment: the Code for Environmental Advertising (obligatory self regulation for all broadcasters that broadcast programmes containing advertising) is in part an implementation of art. 12 sub d) and e) Directive. In that respect it is more restrictive than the Directive.

- Identification of specific rules not included in the Directive
