



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

NORWAY

LEGAL REPORT

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Introduction

The Act relating to control of marketing and contract terms and conditions 1972 (“Lov om kontroll med markedsføring 1972”, “markedsføringsloven”) is generally applicable on advertising in television programmes. This act contains provisions regarding unfair competition, such as misleading advertising, provisions to avoid discrimination of sex etc. The provisions set out in this act are applicable to all media.

Specific audiovisual regulation is set out in Act relating to broadcasting (“Lov om kringkasting 1992”, hereinafter referred to as BA) and Regulation relating to broadcasting (Forskrift om kringkasting, hereinafter referred to as R).

The organisation of the broadcasting landscape in Norway is divided between the public broadcasting company Norwegian Broadcasting Corporation, and other, private companies. The Norwegian Broadcasting Corporation is by law entitled to broadcasting activities. Other companies must apply for time limited concessions both for broadcasting and for local broadcasting (BA section 2-1). Recent cases have shown that the government has strong power when it comes to the question of renewal of concessions.

Television is in the national area dominated by the Norwegian Broadcasting Corporation and the private television company TV2. The Norwegian Broadcasting Corporation is financed by a compulsory licence fee and contribution from the authorities. The latter are mainly financed by the income from marketing and sponsors. In addition, a number of minor, local television companies and local radio stations are operating in this area.

I. Definitions (Article 1 Directive TVWF)

- Television broadcasting

"Television broadcasting" is covered by the general definition of "broadcasting", see BA section 1-1. The definition does not include the wording "the communication of programmes between undertakings with the view to their being relayed to the public" (\neq art. 1 a TVWF Directive). The definition does not make any exception regarding "... communication services providing items of information or other messages on individual demand such as telecopying, electronic data banks and other similar services" (\neq art. 1 a TVWF Directive).

- Broadcaster

"Broadcaster" is defined according to art. 1 b TVWF Directive (BA section 1-1 (3)) (\neq TVWF Directive).

- Television advertising

"Television advertising" is not specifically defined; the BA section 1-1 (4) contains a broad definition of "advertising" in general, applicable to any kind of broadcasting, and thus covering television advertising. "Advertising" or "advertisement" is in BA section 1-1 (4) defined as "any form of promotion of a product, service, cause or idea in return for payment or any other form of remuneration. 'Advertisement' or 'advertising' shall also mean any form of announcement on television whose purpose is to promote the broadcaster's own activity" (\neq TVWF Directive).

- Surreptitious advertising

"Surreptitious advertising" is not defined in the BA. (\neq TVWF Directive)

Surreptitious advertising is forbidden (See Regulation relating to broadcasting, hereinafter referred to as R, section 3-4 fourth paragraph.)

- Sponsorship

"Sponsorship" is defined in BA section 1-1 (5), though in a more general form than the definition set out in the TVWF Directive.

Sponsorship is defined in BA section 1-1 (5) as any direct or indirect contribution made to the production or transmission of one or more programmes by a natural or legal person not personally engaged in the production or broadcasting of such programmes. The definition is broader than the one given in the TVWF Directive art 1 e).

- Teleshopping

”Teleshopping” is not defined in the Act relating to broadcasting, or in the Regulation relating to broadcasting. Teleshopping is however considered as “advertising” according to the definition in BA section 1-1.

Subsequent to the Directive 97/7/EC on the protection of consumers in respect of distance contracts was passed by the European Parliament and by the Council, the Norwegian Parliament passed an act relating to distance contracts etc. (Lov om opplysningsplikt og angrerett m.v. ved fjernsalg og salg utenfor fast utsalgssted (angrerettloven)). This came into force 1 May 2001.

This regulation does not contain any definition of the teleshopping.

- Other definitions

Norwegian broadcasting legislation does not contain other relevant definitions for the analysis, such as self-promotion message, split-screen technique, product placement, virtual advertising, inevitable advertising, television programme, virtual advertising, inevitable advertising, etc.

- **Conclusion**

The definitions in the Norwegian broadcast legislation are in general formulated in more general terms compared to the Directive. It also appears that some definitions are not specifically defined, such as “television advertising”, “surreptitious advertising”, “sponsorship” and “teleshopping”. This tradition of broader definitions indicates that the definitions are at least not less restrictive than the directive.

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

a. Regulations

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

BA section 3-2 (1) is in accordance with art. 10 (1) and (2) Directive and shall be clearly separated from the ordinary programme schedule by a special acoustic and optical signal. (// art. 10.1 TVWF Directive)

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

BA section 3-2 (1) is in accordance with art. 10 (1) and (2) Directive and shall be clearly separated from the ordinary programme schedule by a special acoustic and optical signal. (// art. 10.1 TVWF Directive).

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

Isolated advertising and teleshopping spots shall remain the exception (// art. 10.2 TVWF Directive)

BA section 3-2 (1) is in accordance with art. 10 (1) and (2) Directive and shall be clearly separated from the ordinary programme schedule by a special acoustic and optical signal. (// art. 10.1 TVWF Directive)

- Prohibition of the use of "subliminal techniques"

The Norwegian broadcasting legislation does not contain provisions that prohibit the use of "subliminal techniques" (≠ art. 10.3 TVWF Directive). Such techniques may however be considered to violate the Marketing Act or other general legislation.

- Prohibition of surreptitious advertising and teleshopping

Surreptitious advertising is forbidden according BA section 3-2 (1) and R section 3-4 (3) and (4). (// art. 10.4 TVWF Directive).

The Norwegian Media Authority (Statens Medieforvaltning) has 5 November 2003 concluded that NRK's (Norwegian Broadcasting Corporation) presentation of a certain Christmas calendar was contrary to this prohibition.

b. Conclusion

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

No identified rules more or less restrictive than the TVWF Directive.

- Identification of specific rules not included in the Directive

No identified rules.

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

BA section 3-2 (1) contains the general principle in art. 11(1) TVWF Directive requiring advertising to 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)

With regard to insertion within programmes, R section 3-7 contains rules more severe than art. 11 TVWF Directive.

If a feature film or film made for television – **including** programmes and series based on fiction – is interrupted, advertisements may be broadcasted during one of the interruptions if the interruption lasts more than 20 minutes (\neq art. 11.3 TVWF Directive).

R section 3-7 (3) states that during transmissions of theatre and concert events advertisements can only be inserted in natural breaks in the event. The same applies for sports events and other programmes consisting of autonomous parts, provided the autonomous part lasts for at least 20 minutes (\pm // art. 11.2 TVWF Directive).

Other programmes (than sports events, theatre plays, concerts, feature films and films made for television) can be interrupted by advertisements if the programme lasts for 45 minutes or more, and each part of the programme lasts 20 minutes or more, cf. R section 3-7 (4) (\neq art. 11 TVWF Directive).

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

According to R section 3-7 (1) it is prohibited to insert advertising in any broadcast of religious service, news and current affairs programmes and documentaries. According to R section 3-6 (4) and an interpretation of this rule it is prohibited to insert advertising in children's programmes nor 10 minutes before and 10 minutes after the Children's programme. These rules are more severe than the TVWF Directive (\neq art. 11.5 TVWF Directive).

According to R section 3-3 advertising is prohibited on specific religious holiday (\neq TVWF Directive).

b. Conclusion

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

As described above, R section 3-6 and 3-7 contains rules more severe than the Directive, regarding the insertion of advertising within the programmes for children and the prohibition if interrupting certain programmes with advertising.

- Identification of rules not included in the Directive

No identified rules.

IV. Quantitative restrictions (Article 18 TVWF Directive)

a. Regulations

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

Teleshopping or similar offers of sales, purchases or hire of products or services directed to the viewers shall according to R section 3-1 altogether not exceed one hour of the daily transmission time, and this time is calculated in the transmission time for advertising spots. This rule is more severe than TVWF Directive art. 18 and 18a where transmission time for teleshopping comes in addition to transmission time for advertising spots.

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

BA section 3-1 (1) and R section 3-1: the transmission time for advertising spots shall not exceed 15% of the daily transmission time (// art. 18.1 TVWF Directive).

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

BA section 3-1 (1) and R section 3-1: the proportion of advertising spots and teleshopping spots within a given clock hour shall not exceed 20% (// art. 18.2 TVWF Directive).

- Examination of the other possible quantitative restriction.

Non applicable

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

When calculating the duration of advertisements, the same rules apply as stated in TVWF Directive art 18 paragraph 3, cf. BA section 3-1 (5) (// art 18.3 TVWF Directive).

b. Conclusion

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

The Norwegian regulation contains more severe rules regarding the legal maximum percentage of daily transmission time devoted to teleshopping advertising and other forms of advertising.

- 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)

No identified rules.

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

Teleshopping or similar offers of sales, purchases or hire of products or services directed to the viewers shall, according to R section 3-1, all together not exceed one hour of the daily transmission time, and this time is calculated in the transmission time for advertising spots.

a. Regulations

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

Non applicable

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

Non applicable

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

Non applicable

b. Conclusion

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

The Norwegian regulation contains rules that are more restrictive than the Directive, as the teleshopping windows are to be considered as advertising.

- 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.)

Non applicable

VI. Sponsoring (Article 17 TVWF Directive)

a. Regulations

The Norwegian Broadcasting Corporation (NRK) is subject to specific regulations for sponsorship. According to R section 3-13 (2) the NRK may only receive contributions 1) from sponsors for productions and transmissions from sports events; 2) to events when the production is fully or partially in the hands of the NRK and the programme shall be broadcasted to several countries or is of social or cultural importance; 3) to educational programmes. These restrictions do only apply to the NRK.

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

The content and form of presentation of a sponsored programme must be such as to maintain the full editorial integrity of the broadcaster (// art. 17.1. TVWF Directive).

- Sponsor identification

According to BA section 3-4 (1) information about the sponsor of a programme may be given in the form of the name, trademark or logo of the sponsor (// art. 17.1.b TVWF Directive).

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

If a programme is sponsored, information to this effect shall be given prior to and/or after the programme (// art. 17.1.a TVWF Directive).

The sponsor may not be identified in the programme, in previews of the programme or during the programme. This also applies during breaks where one may show advertisements, cf. R section 3-10 and R section 3-10 (1). This is considered to be in accordance with art. 17 TVWF Directive.

According to R section 3-10 (2) the sponsor may only be identified verbally and/or by a stationary image of the sponsor's name, trademark or logo. The identification may not be accompanied by moving images, slogans, statements or such even though this is a part of the sponsor's trademark or logo. **This provision does not have it's like in the TVWF Directive.**

- Identification of the programmes that cannot be sponsored

According to BA section 3-4 (4) news and current affair programmes may not be sponsored. **(This is in accordance with Directive art 17 §4)**. According to R section 3-11, children's programmes can not be sponsored by natural or legal persons whose objects are business activity. This provision is more severe than the TVWF Directive.

Television programmes may not be sponsored by natural or legal persons whose principal activity is to manufacture, sell or hire out products or services which it according to Norwegian law is prohibited to advertise for. Further, political parties may not sponsor broadcasting programmes, cf. BA section 3-4 (5). These provisions are more severe than Directive art 17 §2 and 3 (≠ art. 17 TVWF Directive).

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

Sponsored programmes shall not promote the purchase or rental of any of the sponsor's products or services or those of a third party, and may not contain specific promotional references to such products or services, cf. BA section 3-4 (// art. 17.1.d. TVWF Directive).

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

The identification of a sponsor may last for 10 seconds. If there are three or more sponsors to a programme the identification of the sponsors may last for 30 seconds in total, cf. R section 3-10 (3). This provision is more severe than those set out in the TVWF Directive.

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

Non applicable

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

According to R section 3-5, products and/or services may not be referred to or showed in programmes in a promotional way, except from presentation of premiums, cf. below. Product placement should also be assessed in the light of the general legislation as presented above, especially the Act relating to control of marketing and contract terms and conditions 1972. The consumer authorities may invoke product placement as unreasonable behaviour violating certain provisions in the marketing act. We have not identified any specific court decisions or interesting administrative decisions from the consumer or media authorities drawing the line between legal and illegal product placement and the like.

In programmes where premiums are used, the presentation of the premium shall be limited and not exceed what is considered as necessary information in order to provide the audience with an orientation about the premium (R section 3-12).

b. Conclusion

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

The Norwegian regulation contains rules on the maximum duration on the mention of the sponsor and a prohibition to view moving images, slogans,...

- 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.)

No identified rules.

VII. New advertising techniques

a. Split screens

- Authorisation to use this technique or not
- Examination of the conditions of use
- Examination of the specifics rules related to insertion and volume
- Existence of a prohibition to use the technique between or within certain programmes.

Not used in Norway. A split screen between a broadcasting programme and advertising will most likely be considered as advertising inserted in a programme, and will consequently be considered as incompatible with the provisions for advertising set out in BA, i.e. section 3-1 and 3-2.

b. Interactive advertising

- Authorisation to use this technique or not
- Examination of the conditions of use
- Examination of the specifics rules related to insertion and volume
- Existence of a prohibition to use the technique between or within certain programmes

Interactive advertising is only used as a special kind of advertising during commercial breaks on television. This form of advertising is subject to the same regulation as advertising in television in general.

c. Virtual advertising

- Authorisation to use this technique or not
- Examination of the conditions of use
- Examination of the specifics rules related to insertion and volume
- Existence of a prohibition to use the technique between or within certain programmes

Virtual advertising is not specifically regulated. Any such form of advertising will be subject to the same regulation as advertising in television in general.

d. Other new advertising technique

Product placement and prize offers are included in the definition of “advertising” and “advertisements” in BA section 1-1, if it is promotion in return for payment or any other form of remuneration. In such cases the rules that apply to advertising and advertisements in television, see TELEVISION section I.A, also applies to product placements and prize offers. Product placement may also be considered as surreptitious advertising. Such advertising is prohibited, cf. R section 3-4 (4).

In addition it is stated in R section 3-5 that products and/or services can not be referred to and/or be shown in a promotional manner in broadcasting programmes. R section 3-12 gives rules on prize offers in broadcasting programmes. The presentation of the prize may not be more extensive than the information that is necessary to give the viewers an orientation about the prize. The presentation may not include information about the sponsor or of any other of the sponsor’s products.

Presentation of prizes in children’s programmes requires special caution.

Co-producing and co-financing with promotional intent will be included in the definition of “sponsorship” in BA section 1-1. There are no specific rules in addition to the general rules on sponsorship that are applicable.

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

a. Regulations

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

The Act relating to control of marketing and contract terms and conditions 1972 (“Lov om kontroll med markedsføring 1972”, ”markedsføringsloven”, hereinafter referred to as M) is generally applicable on advertising in television programmes. This act contains provisions regarding unfair competition, such as misleading advertising, provisions to avoid discrimination of sex etc. The provisions set out in this act are applicable to all media.

The BA does not contain similar provisions as art. 12 TVWF Directive (≠ art. 12 TVWF Directive) except from the general prohibition of advertising of religious or other views of life, and political ends in BA section 3-1 (3). This prohibition also applies for text-television. Other legislation, i.e. criminal law and Act relating to control of marketing and contract terms and conditions, includes general rules which also apply to TV advertising. According to BA section 3-1 (3), television advertising of view of life or political messages is prohibited. This rule is more severe than art. 12 (c) Directive.

The Norwegian Media Authority has in an administrative decision of 10 September 2003 issued a penalty against the commercial television channel TV 2 for allegedly having violated this prohibition. The case is now pending for the Norwegian Marketing Board. TV 2 argues that the decision violates the freedom of expression; cf. European Convention on Human Rights Art. 10. In another case, a local television company has filed a lawsuit against Norway, arguing that the prohibition against political messages violates the Constitution and the European Convention of Human Rights Art. 10. The Oslo City Court ruled in favour of the Norwegian authorities.

According to R section 3-2, advertising is required to be in Norwegian language or in other languages used in programmes produced by the broadcaster.

Advertisements where persons who on a regular basis appear in a news or current affair programme or weather report for a television broadcaster are taking part is not allowed to be broadcasted, cf. R section 3-8.

According to R section 3-7 (1) it is prohibited to insert advertising in any broadcast of religious service, news and current affairs programmes and documentaries. According to R section 3-6 (4) and an interpretation of this rule it is prohibited to insert advertising in children’s programmes. These rules are more severe than the TVWF Directive.

b. Conclusion

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

The rules of art. 12 TVWF Directive are not fully implemented in the Norwegian regulation.

However there is a provision that prohibits political messages

- Identification of specific rules not included in the Directive

In general, the Norwegian legislation contains provision on children that are more restrictive than the Directive.

IX. Specific products and targets

a. Regulations

- Tobacco products (Articles 13 and 17 TVWF Directive)

According to Act relating to prevention of the harmful effects of tobacco, 1973 (Lov om vern mot tobakkskader av 9. mars 1973 nr. 14) section 2, all forms of advertising of tobacco products are prohibited, not only limited to television advertising and teleshopping as set out in article 13 TVWF Directive. The same applies to pipes, cigarette paper and cigarette rollers. Tobacco products must not be included in the advertising of other goods or services, cf. section 2, (2), rule more severe than art. 13 TVWF Directive (\neq art. 13 TVWF Directive).

A brand name or trade mark that is mainly familiar as a brand or mark for tobacco products may not be used in the advertising of other goods or services if the name or mark in question is used in connection with a tobacco product, cf. section 2 (3). Tobacco products may not be launched with the aid of a brand name or a trademark that is familiar as, or used as, brand or mark for other goods or services, cf. section 2 (4). Free distribution of tobacco products is prohibited, section 2 (5).

- Medicines (Article 14 TVWF Directive)

The Act relating to medicine (Lov om legemidler m.v.) contains general provisions regarding advertising for medicines, see section 19, 20 and 21. Generally, advertising of medicines shall be sober and true, section 19 (1).

According to Regulation regarding advertising of medicines (Forskrift om legemidler, FOR 1999-12-22 nr. 1559) section 13-1 to 13-6, advertising of medicines is generally allowed only for medicines which is not obtainable only on prescription. Such advertising is restricted to medicines that exclusively are recommended for sickness or symptoms of sickness that normally not require examination or treatment by professional medical expertise (more precise than the Directive). According to section 13-4, television advertising for medicines is generally prohibited (\neq art. 14 TVWF Directive). R section 13-1 to 13-7 contains a number of detailed restrictions on advertising of medicines.

- Alcoholic beverages (Article 15 TVWF Directive)

Advertising related to alcohol is generally forbidden (\neq art. 15 TVWF Directive), see Act on the sale of alcoholic beverages (Lov om omsetning av alkoholholdig drikk m.v. 2. juni 1989 nr. 27) section 9-2. It is prohibited to include alcoholic beverage products in advertisements for other goods or services. This provision is generally subject to a rather strict interpretation in favour of the authorities, and contains rules more severe than the TVWF Directive art. 15.

As an example, we refer to the decision from the Norwegian Supreme Court (Høyesterett) from 1999 (published in Norsk Retstidende 2000 page 46). A football team which was sponsored by a local brewery, and thus had the logo of the brewery on their sports clothes, were found to violate said provision, even though the brewery also produced non alcoholic drinks.

Advertising in newspapers, magazines and the like, in shop window displays or by other means, of apparatus - including parts and equipment - intended for or found to be expedient for the production or redistillation of spirit for industrial purposes, spirits for consumption or isopropanol, is prohibited, see section 9-1 (1).

It is also prohibited to encourage through books, other written material, advertisements in the press or by other means, to unlawful production or redistillation of spirit for industrial purposes etc., spirits for consumption or isopropanol, and give guidance to such production or redistillation, cf. section 9-1 (2).

Furthermore, the advertising of substances that are specially intended to be, or which are described in advertisements as being suitable as, additives to alcoholic beverages, shall be prohibited. The same applies to the advertising of raw materials, to instructions for making alcoholic beverages, to apparatus and to other items used in the production of such beverages, section 9-1(2) and 9-1 (3).

- Minors (Article 16 TVWF Directive)

The Act relating to broadcasting includes special provisions regarding advertisements and children. These provisions generally prohibit advertisements specifically directed towards minors. However, all advertising must take into account that it may be seen or heard by children and advertisers must show particular sensitivity to the fact that children may be easily influenced..

Under this Act, broadcasting an advertisement that stars people or characters known from programmes that are directed towards children and regularly broadcast in Norway is also prohibited.

TVWF Directive art. 16 is related to BA section 3-1 (2) and R section 3-6, which contains rules more severe than the TVWF Directive, as it according to Norwegian law is prohibited to broadcast advertisements as such 10 minutes before and 10 minutes after children's programmes, and also in general prohibited to broadcast advertisements that specifically target children.

R section 2-5 and 2-6 contains rules with the purpose of protecting minors from moral and physical detriment, applying the principal set out in TVWF Directive art. 16.

Programmes for children and young people may not be sponsored by companies with business purposes.

These rules are more restrictive than the TVWF Directive.

- Other product/services categories subject to a specific regime

No identified products/services categories.

b. Conclusion

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

Especially with regard to rules related to:

- Tobacco: as the ban also covers the fact that tobacco products must not be included in the advertising of other goods or services.
- Medicines: there is a general ban on television advertising for medicine.
- Alcoholic beverages: There is a general ban on television advertising for alcoholic products.
- Minors: the regulation and its interpretation forbids to insert advertising within the Children's programmes and 10 minutes before and after such programmes

- Identification of specific rules not included in the Directive

See above.
