



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

POLAND

LEGAL REPORT

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I. Introduction

The aim of this report is to provide information on the existing audiovisual regulatory and self-regulatory framework of the national regulation in Poland with reference to the areas covered by Chapter IV of the Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, as amended by the Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 (hereinafter referred to as the “**TVWF Directive**”).

It is noticeable that besides the private broadcasters, there are two specific kinds of broadcasters provided in the Broadcasting Act, i.e. „**social broadcaster**” and “**public television**”.

“**Social broadcasters**” must not transmit advertising or teleshopping, sponsored programmes or other sponsored broadcasts. On the other hand, they are exempt from fees payable for awarding or altering the broadcasting license. In order to obtain the status of “social broadcaster” applicants should fulfill following requirements:

- a) Propagate learning and educational activities, promote charitable deeds, respect the Christian system of values, respect the universal principles of ethics, and strive to preserve national identity in the programme service;
- b) not transmit programmes or other broadcasts referred to in Article 18 Section 5 of the Broadcasting Act (i.e. programmes or other items which may threaten the physical, mental or moral development of minors) within the programme service, and
- c) not charge any fees for transmission, retransmission or reception of the programme service.

The following entities may apply to the Broadcasting Council to be granted the status of social broadcasters:

- a) an association, within the framework of implementing its statutory objectives;
- b) a foundation, within the framework of implementing its statutory objectives;
- c) a church or a religious legal person of a particular church, or a religious organization whose status is regulated by an Act of Parliament.

In case of breach by a social broadcaster of requirements specified above, the Broadcasting Council shall issue a decision revoking its status as a social broadcaster and shall impose the obligation to pay the fees for awarding or altering the license, along with legal interest charged as from the date of awarding or altering the broadcasting license.

The “**public television**” is held by the company **Telewizja Polska Spółka Akcyjna**, a 100 per cent state-owned joint-stock company, established for the purpose of producing and transmitting national programme services I, II, TV Polonia as well as regional television programme services. There are certain limitations related to possible interruption of programmes in a public television programme service by advertising or teleshopping spots (described in details below).

“National Broadcasting Council” (*Krajowa Rada Radiofonii i Telewizji*), hereinafter referred to as the **“Broadcasting Council”**, is appointed under the Polish Constitution and Broadcasting Act as a national authority responsible for matters relating to radio and television. The Broadcasting Council consists of nine members appointed by different Polish authorities: four are appointed by the Sejm, two - by the Senate (two chambers of Polish Parliament) and three - by the President of Poland. The members of the Broadcasting Council are appointed for six-year tenure. One-third of the Broadcasting Council’s composition is replaced every two years.

Since the European Commission requests the national reports to be harmonized on the same structure, the report hereby presented is based on the methodology validated by the Commission and reflects the guidelines provided by the S.D.M&C. In the following chapters it addresses: relevant definitions, rules related to advertising recognition and advertising - programme separation, insertion of advertising and teleshopping spots between and within the programmes, quantitative restrictions, sponsoring, new advertising techniques, advertising and teleshopping content and specific products and targets.

The report reflects the applicable laws as of February 20, 2004.

Please note, however, that on April 2, 2004 the Polish Parliament adopted the act amending the Polish Broadcasting Act dated December 29, 1992 (hereinafter referred to as the **“Broadcasting Act”**). The majority of aforementioned amendments to the Broadcasting Act came into force on May 1, 2004 and the remaining part shall come into force on July 1, 2004 and January 1, 2005.

I. Definitions (Article 1 Directive TVWF)

a. Definitions

- Television broadcasting

The Broadcasting Act provides no specific definition of “television broadcasting”. There are, however, definitions of „transmission” and „retransmission”, which are applicable both to television and radio broadcasting (≠ art. 1 a. TVWF Directive).

“**Transmission**” means:

- a) over-the-air transmission of a programme service for simultaneous reception by the general public (general reception system);
- b) introduction of a programme service into a cable network (collective reception system) (≠ art. 1 a. TVWF Directive).

“**Retransmission**” means the reception and simultaneous transmission of a complete and unchanged programme service transmitted by a domestic or foreign broadcaster, with an exception of programme services transmitted by way of cable network (≠ art. 1.a TVWF Directive).

- Broadcaster

“**Broadcaster**” means a person who produces or assembles programme services and transmits them or has them transmitted, in a complete and unchanged form, by other persons (≠ art. 1 b. TVWF Directive).

There are also two specific kinds of broadcasters provided in the Broadcasting Act, i.e. “**social broadcaster**” and “**public television**” (described in details in item “Other relevant definitions” below).

- Television advertising

Instead of specific definition of “television advertising”, the Broadcasting Act provides more general definition of “advertising”:

“**Advertising**” means any broadcast, originating from a person other than the broadcaster, which is intended to promote the sale or any other manner of use of products or services, to advance a cause or idea, or to bring about some other effect desired by the advertiser, and which is broadcast in return for remuneration or other form of consideration (±// art. 1 c. TVWF Directive).

- Surreptitious advertising

“**Surreptitious advertising**” means the representation, within a programme, of products, services, name, trademark or activities of an undertaking which is the producer of goods or the provider of services, if the broadcaster’s intention, caused particularly by a remuneration or receipt of other benefits, is to achieve the effect of advertising and if the general public may be misled as to the nature of such a broadcast (±// art. 1 d. TVWF Directive).

- Sponsorship

“**Sponsorship**” means a direct or indirect financing or co-financing of the production or transmission of a programme or other broadcasts by a person other than the broadcaster or producer of the programme, with a view to establishing, enhancing or promoting the name, business name, trademark or other proprietary identification of an undertaking, its activities, product or service (±// art. 1 e. TVWF Directive).

- Teleshopping

“**Teleshopping**” means any broadcast containing a direct offer of sale of products or supply of services in return for payment (±// art.1 f. TVWF Directive).

- Other relevant legal definitions

“**Programme service**” means an ordered sequence of radio or television programmes, advertising and other items, transmitted regularly by a single broadcaster.

“**Programme**” means a separate item of a radio or television programme service which is distinct in terms of its content, form, purpose or authorship.

“**Social broadcaster**” means a broadcaster that may not transmit advertising or teleshopping, sponsored programmes or other sponsored broadcast.

“**Public broadcaster**” means the broadcaster owned by the State.

b. Conclusion

Certain differences may be noticed between the definitions set forth in the Broadcasting Act and the definitions provided for in the Article 1 of the TVWF Directive.

The key reason for the above differences results from the fact that the Broadcasting Act is applicable both to television and radio broadcasting. In consequence, the Broadcasting Act provides no specific definition of the “television broadcasting”, but some more general definitions of the "transmission" and "retransmission", etc.

The Broadcasting Act recognizes two specific types of broadcasters, i.e. the “social broadcaster” and “public television”, which have no counterparts in the TVWF Directive. The status of the social broadcasters is granted by the Broadcasting Council to particular television or radio broadcasters, which comply with a number of statutory conditions regarding their business objectives. The “public television” is a hundred per cent state-controlled joint-stock company (up to early '90s the sole television broadcaster in Poland).

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

a. Regulations

- Examination of the rules related to advertising and teleshopping spots recognition

According to the Article 16 Section 1 of the Broadcasting Act, advertising must be clearly distinguishable as not originating from the broadcaster, and recognizably separated from the other items of the programme service. The above provision applies respectively to teleshopping (±// art. 10 §1 TVWF Directive).

The detailed provisions with that respect are set forth in the Regulation of The National Broadcasting Council of July 6, 2000 concerning the Principles of Advertising and Teleshopping in the Radio and Television Programme Services and Detailed Rules Regulating the Restraints on Interruption of Feature of Television Films by Advertisement or Teleshopping Spots (*Rozporządzenie Krajowej Rady Radiofonii i Telewizji z dnia 6 lipca 2000 r. w sprawie sposobu prowadzenia działalności reklamowej i telesprzedaży w programach radiowych i telewizyjnych oraz szczegółowych zasad ograniczeń w zakresie przerywania filmów fabularnych i telewizyjnych w celu nadania reklamy lub telesprzedaży*), hereinafter referred to as "Regulation concerning the Principles of Advertising and Teleshopping".

Pursuant to § 4 of this Regulation, advertisements and teleshopping must be distinguishable by optical **or** acoustic means (less restrictive than the Directive).

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

Pursuant to § 4 of this Regulation, advertisements and teleshopping must be separated from other elements of the programme service (and distinguishable) by optical or acoustic means at the beginning and at the end of the advertising or teleshopping blocks (±// art. 10 §1 TVWF Directive).

Pursuant to § 4 of the Regulation concerning the Principles of Advertising and Teleshopping, the advertising block designation must contain the word "*reklama*" (advertisement) or "*ogłoszenie*" (announcement). The teleshopping block designation must contain the word "*telesprzedaż*" (telesale) or "*telezakupy*" (teleshopping), unless teleshopping is broadcast jointly with advertisements within a block designated according to the above provisions (≠ art. 10 TVWF Directive, the Polish regulation being more restrictive).

- Examination of the rules related to the isolated advertising and teleshopping spots

Even though there is no express provision prohibiting isolated advertising, advertising and teleshopping must be broadcasted in blocks (// art. 10.1 TVWF Directive).

- Prohibition of the use of "subliminal techniques"

Pursuant to the Article 16b Section 2 point 5 and the Article 16b Section 4 of the Broadcasting Act, it is prohibited to broadcast advertising and teleshopping which are of a subliminal nature (// art. 10 §3 TVWF Directive).

- Prohibition of surreptitious advertising and teleshopping

Broadcasting of surreptitious advertising is prohibited (± // art. 10 §4 TVWF Directive). (Article 16c of the Broadcasting Act). There is no explicit prohibition regarding surreptitious teleshopping in the Broadcasting Act.

b. Conclusions

The provisions of the Article 10 of the TVWF Directive are in general similar to the Polish law. They are reflected specifically in the Art. 16 Sec. 1, Art. 16b Sec. 2 point 5, Art. 16b Sec. 4 and Art. 16c of the Broadcasting Act and § 4 of the Regulation concerning the Principles of Advertising and Teleshopping.

It should be also noticed that the rules regarding required designation of advertising and / or teleshopping block with certain words, such as “*reklama*” (advertisement), “*ogłoszenie*” (announcement), “*telesprzedaż*” (telesale) or “*telezakupy*” (teleshopping) are more detailed than the Directive.

Advertising and teleshopping must be identified as such and separated from the other programs by acoustic **or** optical means at the beginning **and** at the end of the broadcast.

Whether the regulation does not expressly states so, isolated advertising seems to be prohibited as it should appear in blocks.

Although there is no explicit prohibition of surreptitious teleshopping in the Broadcasting Act, it seems that the scope of “surreptitious advertising” definition may cover also practically all the forms of “surreptitious teleshopping”.

There is an additional rule related to advertising recognition and advertising / programme separation in the Polish law, which is not included in the TVWF Directive. The Regulation concerning the Principles of Advertising and Teleshopping provides a limitation to possible participation in advertisements of the persons appearing in specified types of programmes. According to § 6 of this Regulation, the image or voice of programme performers appearing in factual and current-affairs programmes or children's programmes in a radio or television programme service broadcast for three months or less before the transmission of an advertisement must not be used in the said advertisement (\neq art. 10 TVWF Directive).

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

a. Regulations

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

The Article 16a of the Broadcasting Act sets forth a general rule that advertising and/or teleshopping spots must be inserted between programmes and the insertion of advertising and/or teleshopping spots within the programmes is allowed only exceptionally under the conditions specified below (// art/ 11 §1 TVWF Directive).

Pursuant to § 4 of the Regulation concerning the Principles of Advertising and Teleshopping, when making a decision regarding their transmission, the broadcaster should take into consideration the nature of the programme item preceding and following the advertisements or teleshopping.

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

In each case advertising or teleshopping spots (if allowed) may be inserted within the programmes only in such a way that the integrity and value of the programme and the rights of the rights holders are not prejudiced and under further conditions specified below, taking into account the nature of the programme (// art. 11 §1 TVWF Directive).

During coverage of sport events containing mandated intervals and of other events containing intervals, and during programmes consisting of autonomous parts, advertising or teleshopping spots may only be inserted in the intervals or between the parts (// art. 11 §1 TVWF Directive).

Programmes other than those containing intervals or consisting of autonomous (mentioned above) parts may be interrupted by advertising or teleshopping spots, if a period of at least 20 minutes has elapsed between each successive break in the programme (// art. 11 §4 TVWF Directive).

Pursuant to § 9 Section 3 of the Regulation concerning the Principles of Advertising and Teleshopping, feature films and films made for television (excluding serials and light entertainment programmes) may be interrupted for the purpose of transmitting an advertisement or teleshopping block if a period of at least 20 minutes elapsed between each successive interruption of the film, provided that during the first 45 minutes they may be interrupted only once at any time (// art. 11 §3 TVWF Directive).

The above provision of § 9 Section 3 shall become null and void as from the date on which Poland joins the EU and replaced by the following principles laid down in § 9 Sections 1 and 2 of the Regulation.

From May 1, 2004 feature films and films made for television (excluding serials and light entertainment programmes) with a duration of over 45 minutes may be interrupted only once for each period of 45 minutes for the purpose of transmitting an advertisement or teleshopping block. A further interruption for the purpose of transmitting an advertisement or teleshopping block shall be allowed, if the duration of the film is at least 20 minutes longer than two or more complete periods of 45 minutes (// art. 11 §3 TVWF Directive).

However, feature films and films made for television transmitted in programme services designated only for viewers in the Republic of Poland may be interrupted for the purpose of transmitting an advertisement or teleshopping block if a period of at least 20 minutes elapsed between each successive interruption of the film (≠ art. 11 §3 TVWF Directive).

Additionally § 9 Section 4 of the Regulation concerning the Principles of Advertising and Teleshopping specifies that the duration of the film means its actual duration time.

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

Pursuant to Article 16a Sections 6 and 7 of the Broadcasting Act, the following programmes must not be interrupted by advertising or teleshopping spots:

- 1) news and current affairs programmes (≠ art. 11 §5 TVWF Directive);
- 2) programmes with a religious content (≠ art. 11 §5 TVWF Directive);
- 3) commentaries, documentaries and programmes intended for children (≠ art. 11 §5 TVWF Directive).

Programmes in a **public television programme** service must not be interrupted by advertising or teleshopping spots, with the exception of programmes consisting in the coverage of sports events containing mandated intervals and of other events containing intervals, and during programmes consisting of autonomous parts.

b. Conclusion

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

The Polish provisions are in general similar to Article 11 of the TVWF Directive, subject to the following exceptions specified below.

When deciding to insert an advertising/teleshopping blocks between two programs, the broadcaster should take the nature of the preceding and following programs into account. However, when inserting advertising /teleshopping within the programmes, the regulation does not stipulate that the broadcaster should take into account the natural breaks and the duration of the program.

There are certain differences as to the rules on allowed interruption of audiovisual works such as feature films and films made for television between the TVWF Directive and existing Polish law.

First of them consists in the conclusion that the scope of programmes, to which this regulation applies, is not exactly the same. Whereas in the TVWF Directive there is an open catalog of audiovisual works such as feature films and films made for television (subject to some explicit exclusions), its counterpart in the Polish law does not cover any other audiovisual works than feature films and films made for television (respectively subject to certain exclusions). Secondly, the provisions of § 9 Section 3 of the Regulation concerning the Principles of Advertising and Teleshopping, which continue in force until the date on which Poland joins the EU, are less restrictive than, and inconsistent with the TVWF Directive (after the first 45 minutes of the programme, it allows for its successive interruption by advertisement or teleshopping spots in 20-minute intervals). Lastly, there are two separate regimes in Poland related to allowed interruption of the said programmes by advertisement or teleshopping spots coming into force on May 1, 2004. The principle is consistent with the Directive regulation (in general, one interruption allowed for each period of 45 minutes).

However, this rule shall not apply to the feature films and films made for television transmitted in programme services designated for viewers in the Republic of Poland only. They are allowed to be interrupted by advertisement or teleshopping spots under the sole condition that a period of at least 20 minutes has elapsed between each successive interruption of the film.

Furthermore, news, current affairs programmes, religious programmes, children's programmes, documentaries, and - additionally in comparison to the TVWF Directive - commentaries, must not be interrupted by advertising or teleshopping spots, regardless of their scheduled duration (rule more restrictive than the Directive).

- Identification of specific rules not included in the Directive

As a rule, programmes in the Polish public television (specific category of a broadcaster) programme service must not be interrupted by advertising or teleshopping spots, whereas the TVWF Directive does not envisage any special rules in that respect related to public/private status of a broadcaster.

IV. Quantitative restrictions (Article 18 TVWF Directive)

a. Regulations

It has to be noted that the daily transmission time of the programme service covers a period of 24 hours calculated as from 6.00 a.m.

- Examination of the legal maximum percentage of daily transmission time devoted to teleshopping and advertising spots and other forms of advertising

Pursuant to Article 16 Section 2 of the Broadcasting Act, the proportion of transmission time devoted to advertising and teleshopping together must not exceed 20 % of the daily transmission time, subject to provisions related to teleshopping windows (// art. 18 §1 TVWF Directive).

- Examination of the maximum daily transmission time devoted to advertising messages

Pursuant to Article 16 Section 2 of the Broadcasting Act, the proportion of transmission time devoted to advertising 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

Pursuant to Article 16 Section 2 of the Broadcasting Act, the proportion of transmission time devoted to advertising or to advertising and teleshopping together, subject to provisions related to teleshopping windows, must not exceed 12 minutes within a given clock hour (= 20%, // art. 18 §2 TVWF Directive).

The hour of transmission of the programme service should be understood to be the clock hour.

- Examination of the other possible quantitative restrictions

Another important quantitative restriction related to advertising and teleshopping is set forth in § 7 of the Regulation concerning the Principles of Advertising and Teleshopping, according to which a broadcaster must not assign to one business entity or business group more than 35% of the total annual advertising time for the advertisement of their goods and services (≠ TVWF Directive).

Paragraph 8 of the same Regulation sets forth the broadcaster's obligation to keep records of daily and hourly time of advertisement and teleshopping transmission as well as the time allotted to particular business entities. The advertisement and teleshopping records should contain the following information:

- 1) name of the product or service;
- 2) name of the contracting entity;
- 3) date of transmission;
- 4) transmission hour and duration of the advertisement and teleshopping transmission;
- 5) duration of the advertising and teleshopping block;
- 6) total duration of the advertisements in an hour;
- 7) daily programme service transmission time and daily advertising and teleshopping transmission time; and
- 8) daily number of teleshopping blocks.

The records should be retained for a period of 1 year from the end of the calendar year in which the transmission of advertising or teleshopping took place.

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

Certain principles with respect to calculation of the advertising time are set forth in the paragraphs 2, 3 and 4 Item 4 of the Regulation concerning the Principles of Advertising and Teleshopping.

All the programme items, including advertisements, teleshopping and other broadcasts defined in the Broadcasting Act, should be accounted towards the total transmission time.

If the programme service does not last a full hour, the authorized amount of advertising within a given one-hour period must be reduced accordingly.

The advertising and teleshopping block designation should not be accounted towards the advertising and teleshopping transmission time.

b. Conclusion

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

The provisions of the Article 18 of the TVWF Directive have been generally implemented to the Polish law. However, the Polish law does not contain the counterpart of Article 18 (3) of the Directive, according to which, for the purposes of quantitative restrictions, advertising does not include announcements made by the broadcaster in connection with its own programmes and ancillary products directly delivered from those programmes and public service announcements and charity appeals broadcasted free of charge, which can be deemed as more restrictive than the Directive.

- Identification of specific rules not included in the Directive

There are few specific rules related to advertisement / teleshopping quantitative restrictions in the Polish law, which are not included in the TVWF Directive. In particular, it is worth to be pointed out that pursuant to the Polish law a broadcaster must not assign to one business entity or business group more than 35% of the total annual advertising time for the advertisement of their goods and services. There are also detailed rules related to the calculation of the advertising time and retaining of the records and documentation in the Broadcasting Act, which are not included in the Directive.

V. 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)

Pursuant to the Article 16 Section 3 of the Broadcasting Act, the minimum duration of windows devoted exclusively to teleshopping equals 15 minutes (// art. 18bis §1 TVWF Directive).

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

The same regulation provides that the number of windows devoted exclusively to teleshopping may not exceed 8 (// art. 18bis §2 TVWF Directive).

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

Windows devoted exclusively to teleshopping shall not exceed 3 hours in the daily transmission time (Article 16 Section 3 of the Broadcasting Act; // art. 18bis §2 TVWF Directive).

b. Conclusion

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

The regulations of the Polish law with regard to minimum duration of windows devoted to teleshopping programmes, maximum number of windows and daily duration are fully coherent with the Article 18 Bis of the TVWF Directive.

- Identification of specific rules not included in the Directive

It might seem *prima facie* that in the Polish law exists no specific category of “channels not exclusively devoted to teleshopping”, which is referred to in the Article 18bis of the TVWF Directive. However, according to the Article 39a of the Broadcasting Act, a broadcasting license may be awarded for the transmission *via* cable networks or *via* satellite of a programme service devoted exclusively to teleshopping. The following rules do not apply to such programme services:

- 1) limitation of the admissible duration of advertising and teleshopping spots per clock hour, specified in the Article 16 Section 2 of the Broadcasting Act;
- 2) limitation of the admissible duration of windows devoted exclusively to teleshopping, specified in the Article 16 Section 3 of the Broadcasting Act;
- 3) limitations regarding the insertion of the advertising and teleshopping spots between and within the programmes, specified in the Article 16a of the Broadcasting Act.

Therefore, the restrictions related to minimum and daily duration and number of windows for teleshopping broadcast should be applied only to a channel which is not exclusively devoted to teleshopping.

VI. Sponsoring (Article 17 TVWF Directive)

a. Regulations

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

The sponsor must not influence the content of the programme or any other broadcast and their scheduling in a manner which would prejudice the independence of the broadcaster (// art. 17 §1 a TVWF Directive). Sponsorship does not release the broadcaster from liability for the content of the programme (the Article 17 Section 3 of the Broadcasting Act).

- Sponsor identification

According to Article 17 Section 1 of the Broadcasting Act, sponsored programmes or other broadcasts must be identified as such by sponsor credits at their beginning or end (// art. 17 §1 b TVWF Directive).

According to the Article 17 Sections 1 in fine and 2 of the Broadcasting Act, sponsor credits may specify the sponsor's name, company name, trademark or contain some other identification of the undertaking, its activity, product or service (more precise than the Directive).

- Examination of the rules related to the insertion of the sponsor's name or logo within the programme

Further details are specified in §§ 1, 3 Item 3 and 4 of the Regulation of the National Broadcasting Council of July 6, 2000 concerning Sponsoring Programme Items and Other Broadcasts (*Rozporządzenie Krajowej Rady Radiofonii i Telewizji z dnia 6 lipca 2000 r. w sprawie sposobu sponsorowania audycji lub innych przekazów*), hereinafter referred to as "**Regulation concerning Sponsoring Programme Items**").

As a rule, the sponsor credits must not be shown during the transmission of a programme item, subject to certain exemptions (as described below).

If a programme item or other broadcast is sponsored by way of providing goods or services used for its production, the credits regarding the origin of the goods or services may be given exclusively at the end of the transmission of the programme item or another broadcast.

If a programme item or other broadcast is sponsored by way of providing services consisting in measurement of time or processing of data, the sponsor credits may be provided exclusively at the time of presenting the results, time or data processing to the extent it is justified by the purpose of presenting the said information.

In the case of sponsorship of a programme item or other broadcast by way of providing prizes for the participants of a contest, game or another form of competition, two references to the sponsor who supplied the prizes and an indication of the name of the goods or services constituting the prizes are allowed during the transmission time of the programme item or other broadcast. The prizes, referred to above, must not be products or services, the advertising of which is prohibited.

The provision is more precise than the Directive

- Identification of the programmes that cannot be sponsored

According to the Article 17 Section 7 of the Broadcasting Act, sponsorship of the following programmes is prohibited:

- 1) news, with the exception of sports and weather forecasts,
- 2) commentaries on social and political topics,
- 3) consumer and practical advice programmes,
- 4) electoral programmes or programmes directly related to electoral campaigns (\neq art. 17 §4 TVWF Directive).

This provision is stricter than the Directive

- Examination of the rules related to the content of the message

As a rule, according to the Article 17 Section 5 of the Broadcasting Act, programmes or other broadcasts must not be sponsored by:

- 1) political parties;
- 2) trade unions;
- 3) employers' organizations;
- 4) natural or legal persons whose principal activity consists in the production or sale of following products (or respectively the provision of following services):
 - a) tobacco products, tobacco accessories, products imitating tobacco products or accessories and symbols related to the use of tobacco ($//$ art. 17 §2 TVWF Directive);
 - b) alcoholic beverages, with the exception of beer, which advertisement is allowed, subject to the Article 13¹ Sections 1 and 2 of the Act of October 26, 1982 on Prevention of Alcohol Abuse (*ustawa z dnia 26 października 1982 r. o wychowaniu w trzeźwości i przeciwdziałaniu alkoholizmowi*), hereinafter referred to as the „**Act on Prevention of Alcohol Abuse**” (\neq art 17 TVWF Directive)
 - c) medical services and medicinal products available only on prescription (\neq art. 17 §3 TVW FDirective);
 - d) hazard games and mutual bets, with the exception of number games, lotteries and raffles.

However, Article 17 Section 6 of the Broadcasting Act establishes an exemption from the above principle with regard to sports events coverage. Such kind of broadcast must not be sponsored by political parties, trade unions, employers' organizations and by undertakings whose principal activity consists in the production, sale or other form of supply of tobacco products (as well as tobacco accessories, products imitating tobacco products or accessories and symbols related to the use of tobacco) and alcoholic beverages, with the exception of beer, which advertisement is allowed, subject to the Article 13¹ Sections 1 and 2 of the Act on Prevention of Alcohol Abuse.

In each case, identification of the sponsor must not contain the name, trademark or other individual identification of undertaking, activity, product or service related to tobacco products (as well as tobacco accessories, products imitating tobacco products or accessories and symbols related to the use of tobacco) or medical services and medicinal products available only on prescription.

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

According to §§ 2 and 3 Item 3 in fine of the Regulation concerning Sponsoring Programme Items, a single identification of the sponsor must not exceed 8 seconds in the case of one sponsor, 15 seconds in the case of two sponsors and 25 seconds in other cases (\neq TVWF Directive).

A sponsor credit may be included in the trailer of a programme item. The trailer of a programme item may be transmitted exclusively before the first transmission of this programme item by the broadcaster, not more than 15 times during a television programme service.

A sponsor credit may be included in the trailer of a given programme item before a repeated transmission of such a programme item only if:

- 1) the said programme item was transmitted earlier only as a not sponsored broadcast, or
- 2) the repeated transmission of the same programme item by the broadcaster takes place on the basis of a sponsorship agreement other than that on the basis of which the broadcaster transmitted the given programme item as a sponsored programme item for the last time, and provided that a year has elapsed since then.

If a programme item or other broadcast is sponsored by way of providing services consisting in measurement of time or processing of data, the sponsor credits may be provided exclusively at the time of presenting the results, time or data processing to the extent it is justified by the purpose of presenting the said information and may be transmitted no longer than for 8 seconds and its volume must not take up more than 1/16 of the television screen.

The Directive remains silent on these precisions.

- Examination of other rules eventually limiting the volume of sponsorship

There are no specific rules limiting the volume of sponsorship other than the mentioned above.

Based on the information obtained at the Broadcasting Council's office, the practice of the product placement is closely monitored but no formal decisions have been issued on this matter until the date hereof.

- Examination of other relevant rules

Sponsored programmes or other broadcasts must not encourage the purchase or other use of the products or services of the sponsor or a third party (Article 17 Section 4 of the Broadcasting Act) (// art. 17 §1.c. TVWF Directive).

According to § 5 of the Regulation concerning Sponsoring Programme Items, the broadcaster is obliged to keep records of sponsored programme items and other broadcasts and retain the records for a period of one year from the end of the calendar year in which the transmission of the programme item or other broadcast took place.

The records of sponsored programme items and other broadcasts must include the following information:

- 1) title of the programme item or designation of the other broadcast;
- 2) type of the broadcast;
- 3) transmission date;
- 4) duration and time of commencing the transmission of the programme item or other broadcast;
- 5) name of the sponsor and indication of his core business; and
- 6) number of transmitted trailers containing the sponsor credits, along with the indication of the date and hour of the transmission.

b. Conclusion

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

The Polish regulation related to sponsorship of programmes or other broadcasts is far more restrictive and detailed than the TVWF Directive.

Firstly, there is a broader group of entities which are not allowed to sponsor broadcasts. Besides the undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products (// art. 17 Section 2 of the Directive), these include political parties, trade unions, employers' organizations, as well as entities whose principal activity consists in the production or sale of certain products (or respectively the provision of certain services), i.e. alcoholic beverages (with the exception of beer, which advertisement is allowed, subject

to the separate provisions) (\neq art. 17 TVWF Directive), medical services and medicinal products (pharmaceuticals) available only on prescription and finally hazard games and mutual bets (with the exception of number games, lotteries and raffles) (\neq art. 17 TVWF Directive).

Secondly, there is a broader group of programmes which are not allowed to be sponsored pursuant to the Polish law. The restrictions related to the news and current affairs programmes ($//$ art. 17 Section 4 of the Directive) are reflected in the Article 17 Section 7 of the Broadcasting Act, and extended over commentaries on social and political topics, provided that the sponsorship of sports and weather forecasts is not prohibited (\neq art. 17§4 TVWF Directive).

Finally, the Polish law envisages more detailed regulation than the TVWF Directive related to insertion of the sponsor's name or logo within the programme. The specific principles relate to broadcasts sponsored by way of providing goods or services used for their production, consisting in measurement of time or processing of data and providing prizes for the participants of competitions (\neq art 17 TVWF Directive).

- Identification of specific rules not included in the Directive

There are certain rules envisaged in the Polish law which are not included in the TVWF Directive.

Firstly, besides the above indicated group of programmes which are not allowed to be sponsored pursuant to both the Directive and the Polish law, according to the latter - sponsorship is not allowed in relation to consumer and practical advice programmes as well as electoral programmes or programmes directly related to electoral campaigns.

Secondly, there is a specific regulation with regard to sports events coverage, which is not included in the TVWF Directive. Sports programmes must not be sponsored by certain categories of entities specified in the Article 17 Section 6 of the Broadcasting Act.

Finally, there are rules provided by the Polish law, not included in the TVWF Directive, which concern maximum duration and volume as well as maintenance the records of sponsored programme items (please see above comments on the Regulation concerning Sponsoring Programme Items).

VII. New advertising techniques (e.g. split screens, interactive advertising, virtual advertising)

No specific regulation currently exists regarding the new advertising techniques, such as split screens, interactive advertising or virtual advertising.

Based on the information obtained at the Broadcasting Council's office, the Polish broadcasters have not yet practiced the new advertising techniques (as referred to above). However, certain preliminary discussions relating to the virtual advertising during sport events have been recently held by representatives of broadcasters and the Broadcasting Council.

In the opinion presented by the Broadcasting Council, all quantitative restrictions (as well as limitations of other nature) generally applicable to advertising should also be applied to the new advertising techniques.

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

Pursuant to the Article 16b Section 3 of the Broadcasting Act, advertising (and respectively teleshopping) must not:

- 1) prejudice respect for human dignity, (// art. 12 a TVWF Directive);
- 2) include any discrimination on grounds of race, sex or nationality (// art. 12 b. TVWF Directive);
- 3) be offensive to religious or political beliefs (// art. 12 c. TVWF Directive);
- 4) prejudice the physical, mental or moral development of minors (// art. 16 TVWF Directive);
- 5) encourage behavior prejudicial to health, safety or environmental protection (// art. 12 d and 12 e TVWF Directive).

Another important principle related to advertising and teleshopping content is set forth in paragraph 7 of the Regulation concerning the Principles of Advertising and Teleshopping, according to which a broadcaster must not transfer to another party the right to make a decision concerning broadcast of an advertisement or teleshopping in a manner legally binding for the broadcaster.

In order to secure its right of control in respect of the content of programme items, in particular of advertising and teleshopping, the Broadcasting Council adopted the Regulation of July 6, 2000 concerning the Methods of Recording and Preserving Programme Items, Advertisements and other Broadcasts by Broadcasters (*Rozporządzenie Krajowej Rady Radiofonii i Telewizji z dnia 6 lipca 2000 r. w sprawie sposobów utrwalania i przechowywania przez nadawców audycji, reklam i innych przekazów*), hereinafter referred to as “**Regulation concerning the Methods of Recording and Preserving Programme Items**”. This regulation provides following requirements:

The broadcaster must record and preserve programme items, advertisements and other broadcasts transmitted in the television programme service („materials”), in their entirety and without changes, in a manner which guarantees a good quality of record and ensures a fully comprehensive soundtrack and clarity of image.

The broadcaster is furthermore obliged to ensure the protection of recorded materials, particularly to safeguard these materials against access of unauthorized persons, damage or loss.

The broadcaster must preserve the materials along with a descriptive note containing the following information:

- 1) date of transmission of the materials recorded on the data carrier (year, month, date, starting hour and ending hour) and the total duration of the recorded materials;
- 2) titles of the broadcasts recorded on the data carrier and respective designations of advertisements and other broadcasts; and
- 3) designation of the standard or format of the records.

The broadcaster must preserve the recorded materials in such a manner so as to be able to present these materials upon request of the Chairman of the Broadcasting Council within 7 days from the date of such a request. The broadcaster should deliver such materials recorded on either a magnetic tape of the VHS and CC standards or on CD and DVD discs.

In addition, we should draw your attention to the provisions regarding the specific terms of consumer sale, which include certain regulations on advertising in consumer sale (Act of July 27, 2002 on the specific terms of consumer sale, Pl. *ustawa z dnia 27 lipca 2002 roku o szczególnych warunkach sprzedaży konsumenckiej*, implementing the Directive 1999/44/EC of the European Parliament and of the Council of May 25, 1999 on certain aspects of the sale of consumer goods and associated guarantees) aiming at the protection of consumers and fair competition. Under these provisions the seller's warranty is binding to the extent laid down in both the seller's warranty statement and the associated advertisements.

Under Article 16 of the Polish Unfair Competition Act dated April 16, 1993 (Pl. *ustawa z dnia 16 kwietnia 1993 roku o zwalczaniu nieuczciwej konkurencji*) the following activities, in particular, constitute acts of unfair competition in the field of advertising:

- 1) advertising in breach of the provisions of law, good practice or human dignity;
- 2) advertising misleading the customer and thus potentially influencing his decision on acquiring goods or services;
- 3) advertising appealing to feelings of customers through stimulating fear, taking advantage of superstitions or gullibility of children;
- 4) statements encouraging the acquiring of goods or services which have the appearance of neutral information;
- 5) advertising which is a material interference with the sphere of privacy, and in particular by pestering in public places bothersome to customers, sending goods which have not been ordered at the cost of the customer or abuse of technical means of information transfer;

In the assessment of the misleading advertising all its elements should be considered, in particular those concerning quantity, quality, ingredients, production methods, usefulness, applicability, repair and maintenance of advertised goods or services, and the behavior of the customer.

The Unfair Competition Act contains a specific regulation on the rules of comparative advertising. The comparative advertising is defined as “any advertising enabling directly or indirectly to recognize a competitor, or goods or services offered by a competitor”. Such comparative advertising constitutes an act of unfair competition only if it is contrary to good practice. Furthermore, the aforementioned Act resolves that the comparative advertising is deemed not to be contrary to good practice if it meets all of the following prerequisites:

- 1) it is not a misleading advertising;
- 2) in a reliable manner, verifiable on the basis of objective criteria it compares goods or services satisfying the same needs or designed for the same purpose;
- 3) in an objective manner it compares one or several important, characteristic, verifiable and typical features of such goods and services, which may also include price;
- 4) on the market, it does not result in mistakes in distinguishing between the advertiser and the competitor, or between their goods, services, trademarks, designations of enterprises or other differentiating designations;
- 5) it does not discredit the goods, services, activity, trademarks, designations of enterprises or other differentiating designations, as well as other circumstances relating to the competitor;
- 6) in relation to goods with a regional geographical designation it always applies to goods with the same designation;
- 7) it does not make a dishonest use of the repute of a trademark, designation of an enterprise, or another designation differentiating the competitor, or the regional geographical designation of the products in competition;
- 8) it does not present the goods or service as an imitation or copy of goods or service bearing a protected trademark or another differentiating designation.

b. Conclusion

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

The provisions of the Article 12 of the TVWF Directive have been exactly implemented to the Polish law. They are specifically reflected in Article 16b Section 3 of the Broadcasting Act.

- Identification of specific rules not included in the Directive

In addition, regarding the control of Broadcasting Council, detailed requirements concerning methods of recording and preserving advertisements and other broadcasts by broadcasters are set forth by the Regulation concerning the Methods of Recording and Preserving Programme Items (please see detailed comments above).

According to the principle contained in the regulations of the Polish Broadcasting Council, which is not included in the TVWF Directive, a broadcaster must not transfer to another party the right to make a decision concerning broadcasting of an advertisement or teleshopping in a manner legally binding for the broadcaster (i.e. management agreement).

Finally, it can be reminded that the use of the images or voices of characters appearing in TV programs is limited (see above the part on advertising identification).

IX. Specific products and targets

a. Regulations

- Tobacco products (Articles 13 and 17 TVWF Directive)

Pursuant to the Article 16b Section 1 Item 1 in connection with the Article 16b Section 4 of the Broadcasting Act, advertising (and respectively teleshopping) for tobacco products (// art. 13 TVWF Directive), tobacco accessories, products imitating tobacco products or accessories and symbols related to the use of tobacco is prohibited (\neq art. 13 TVWF Directive, more restrictive than the TVWF Directive).

- Medicines (Article 14 TVWF Directive)

Pursuant to the Article 16b Section 1 Item 3 in connection with the Article 16b Section 4 of the Broadcasting Act, advertising (and respectively teleshopping) for medical services and medicinal products (pharmaceuticals) available only on prescription is prohibited (\pm // art. 14 TVWF Directive).

Detailed regulation on the advertisement of medical services and pharmaceuticals is provided in the Chapter IV of the Pharmaceutical Law of September 6, 2001 (*ustawa z 6 września 2001 roku - Prawo Farmaceutyczne*).

- Alcoholic beverages (Article 15 TVWF Directive)

Pursuant to the Article 16b Section 1 Item 2 in connection with the Article 16b Section 4 of the Broadcasting Act, advertising (and respectively teleshopping) for alcoholic beverages is prohibited, with the exception of beer which advertisement is allowed, subject to the Article 13¹ Sections 1 and 2 of the Act on Prevention of Alcohol Abuse (\neq art. 15 TVWF Directive).

The above mentioned provisions of the Act on Prevention of Alcohol Abuse repeat the rule that advertising and promotion of alcoholic beverages on the territory of Poland are prohibited, with the exception of beer, which advertisement is allowed, provided that they are not aimed to minors (\pm // art. 15 a TVWF Directive) or carried on by bringing up associations related to:

- 1) social success (\pm // art. 15 c. TVWF Directive);
- 2) relaxation or rest (\pm art; 15 d. TVWF Directive);
- 3) sport,
- 4) learning, working or professional success, and
- 5) health or life success (\pm // art. 15 d. TVWF Directive).

In addition to the above, advertising and promotion of beer must not be carried on between 6.00 a.m. and 8.00 p.m. and with the participation of the minors (\neq art. 15 TVWF Directive).

- Minors (Article 16 TVWF Directive)

According to the Article 16b Section 2 Items 1 to 4, in connection with the Article 16b Section 4 of the Broadcasting Act, it is prohibited to broadcast advertising which:

- 1) directly exhort minors to purchase products or services (// art. 16 §1 a. TVWF Directive);
- 2) encourage minors to exert pressure upon their parents or other persons to persuade them to purchase the products or services being advertised (// art ;16 §1 b. TVWF Directive);
- 3) exploit the trust minors place in parents, teachers or other persons (// art. 16 §1 c. TVWF Directive);
- 4) unreasonably show minors in dangerous situations (// art. 16 §1 d. TVWF Directive).

- Other product/services categories subject to a specific regime

Pursuant to the Article 16b Section 1 Item 4 in connection with the Article 16b Section 4 of the Broadcasting Act, advertising (and respectively teleshopping) for hazard games and mutual bets, with the exception of number games, lotteries and raffles, is prohibited.

b. Conclusion

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

The regulation relating to advertising (and respectively teleshopping) of cigarettes and other **tobacco** products in the Polish law is more restrictive than the Directive, because it explicitly prohibits advertising for tobacco accessories and products imitating tobacco products or accessories as well as symbols related to the use of tobacco.

The Polish regulations on advertising of **medical** services and pharmaceuticals are generally consistent with the TVWF Directive. There is however no explicit counterpart of Article 14 Section 2 of the Directive, related to teleshopping of medicinal products which are subject to a marketing authorization within the meaning of Council Directive 65/65/EEC. On the other hand, there is a detailed regulation on the advertisement of medical services and pharmaceuticals as provided for in the Polish Pharmaceutical Law, which is applicable not only to television advertising and teleshopping.

The regulation related to **alcoholic beverages** is far more restrictive than the TVWF Directive. As a rule, advertising and teleshopping of alcoholic beverages are prohibited, with the exception of beer which advertisement is allowed, subject to the restrictions included in the Act on Prevention of Alcohol Abuse. It sets forth that advertising of beer must not be carried on between 6.00 a.m. and 8.00 p.m. and with the participation of the minors. Furthermore, it must not aim at minors or bring up specified associations. The restricting criteria in the Polish law with that regard are quite general, whereas the Directive provides in the Article 15 specific descriptions, e.g. relating to alcohol being a stimulant, a sedative or a means of resolving personal conflicts or its therapeutic qualities).

The regulation related to **minors** is more restrictive than the TVWF Directive. It prohibits to broadcast advertising which directly exhort minors to purchase products or services, regardless whether or not by exploiting their inexperience or credulity (Article 16 Section 1 (a) of the TVWF Directive compared to the Article 16b Section 2 Items 1 to 4, in connection with the Article 16b Section 4 of the Polish Broadcasting Act).

No specific provision deals with the protection of minor against teleshopping.

- Identification of specific rules not included in the Directive

Besides the above product and services categories which are subject to a specific regime, the Polish law generally prohibits advertising and teleshopping for **hazard games and mutual bets**.
