



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

PORTUGAL

LEGAL REPORT

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Introduction

Law 24/96 of 31 July 1996 (Portuguese Consumer's Protection Act - PCPA) states in article 7.4, as a general principle, that advertising shall be lawful, explicit, truthful and in accordance with the consumer's rights.

The PCPA also states (article 7. 5) that any clear and objective information contained in advertisement of any good, right or service makes part of any legally binding contract or deal celebrated after such advertisement.

Directive 84/450/EEC of 10 September 1984, was implemented in Portugal with the publication of the Advertising Act ("Código da Publicidade" - CP), made by Decree Law 330/90 of 23 October 1990, republished by Decree Law 275/98 of 9 September 1998 , and more recently amended by Decree Law 332/2001 of 24 December 2001.

The regulatory authority for complaints on misleading advertising, including any other complaint relating to infringements to the CP is the Consumer's Institute ("Instituto do Consumidor" - IC), without prejudice to any other administrative or police authority.

The jurisdiction for the application of fines and penalties on infringements to the CP is attributed to a special Commission consisting of the following members: a judge appointed for such purpose; the President of the ICS; and the President of the Social Communication Institute ("Instituto da Comunicação Social" - ICS).

According to article 1 of the CP, the Advertising Act is applicable, in general terms, to any kind of advertising regardless of the respective mean or support used for advertising.

The CP's rules do not apply to political or parties' advertising, which is subject to special regulation.

Regarding the television medium:

Law 31-A/98 of 14 July 1998 (TV Law) aims for the regulation of the TV business and foresees that the regulatory body for this area is the ICS. For advertising issues the regulatory entity is the Consumer's Institute ("Instituto do Consumidor" - IC).

TV law attributes to the Social Communication Authority ("Alta Autoridade para a Comunicação Social" – AACS) a special jurisdiction on specific matters such as, access to TV broadcast, including licensing, programme freedom violation, programme announcement and political advertising ("direito de antena").

Article 21.5 of TV Law, refers to the concept of emission as including any elements contained in the programmes, as well as advertising or promotion of any programmes. In addition, television advertising shall respect human dignity and shall not induce the practice of any crime, nor influence children or teenagers.

Articles 32 and 33 of TV law also contain special provisions regarding duration of advertising and tele shopping.

The jurisdiction regarding these matters is attributed to the same special Commission responsible for the application of fines and penalties on infringements to the CP.

The competences of the above-referred Social Communication Authority (“Alta Autoridade para a Comunicação Social” - AACS) are defined in Law 43/98 of 6 August 1998. According to this Law the AACS shall oversee that advertising campaigns conducted by the government or any public or administrative body are performed with impartiality.

The AACS must also appreciate, by means of its own initiative or through a complain, any behaviour, which is likely to constitute the violation of any regulation applicable to the social communication bodies.

I. Definitions (Article 1 Directive TVWF)

a. Definitions

- Television broadcasting

According to article 2(1) a) of TV Law "television broadcasting" means the organisation of program services under the form of non-permanent images and sounds by cable or over the air, or other appropriate mean, intended for reception by the public. It does not include telecommunication services only available on individual demand (±// art. 1 a. TVWF Directive).

- Broadcaster

Article 2(1) b) of TV Law defines "broadcaster" as an entity legally entrusted to the exercise of television broadcasting (≠ art. 1 b. TVWF Directive).

- Television advertising

There is no definition of "television advertising" following the TVWF Directive. Article 25 of the CP and TV Law regulate "television advertising", but no definition is provided.

- Advertising

Advertising is defined in the Advertising Code (CP) as "any form of communication made by a public or a private undertaking in connection with trade, industrial activity, business, craft or profession in order to promote, directly or indirectly: a) the commercialisation of any goods or services, b) any ideas or principles, initiatives or institutions" (±// art. 1 c. TVWF Directive).

- Sponsorship

"Sponsorship" is defined in article 24(1) of the CP in the same terms as in the TVWF Directive: any contribution made, regardless the mean used for its diffusion, by a public or private undertaking not engaged in TV broadcasting activities or in the production of audiovisual works, to the financing of TV programmes with a view to promoting its name, its trade mark, its image, its activities or its products". The only difference is a reference to "regardless the mean used by its diffusion"(± // art. 1 TVWF Directive). Sponsorship is considered as a form of advertising and is therefore submitted to the general rules thereof.

- Teleshopping

"Teleshopping" is defined in article 25-A of the CP in the same terms as in the TVWF Directive: "direct offers broadcast to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment". The TV Law (recently published Decree Law 32/2003 of 22 August) states that thematic channels of self promotion and teleshopping shall not include any other elements of the conventional programming, such as news, sports transmissions, films, series or documentary programmes (article 9(4) of TV Law). (≠ TVWF Directive)

Article 25-A(2) of the CP, states that, with the necessary adaptations and without prejudice of numbers 3 and 4, the advertising rules are applicable to teleshopping.

- Programmed duration

"Programmed duration" consists in the extent of effective transmission time excluding interruptions (advertising and others). This is important regarding the calculation of the maximum amount of advertising duration.

- Product Placement

There is no legal or conventional definition of "product placement". Nevertheless product placement has already occurred. The special Commission responsible for the infringements to the CP, states that product placement should be admitted within the same terms as sponsorship.

Product placement practice is still developing in Portugal and there are no particular conditions imposed on the presentation of a product or a brand within a broadcasting program, whether the producer of the product or the holder of the brand is the sponsor of the program or not. As mentioned above, the rules regarding sponsorship shall be applicable to product placement.

b. Conclusion

The definitions of Advertising, Sponsorship, Television broadcasting and Tele-shopping follow the TVWF Directive.

Portuguese legislation defines Broadcaster differently and there is no definition of Television advertising following the TVWF Directive.

Portuguese legislation defines Programmed duration and Self-promotion but there is neither specific regulation nor definition regarding Product Placement, Split screen techniques, Virtual advertising and Interactive advertising.

In general we may say that the definitions are no more restrictive than the ones contained in the TVWF 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)

The CP foresees that television advertising must be clearly recognizable and separate from other programmes by an optical or acoustic sign in the beginning and the end of the advertisements' break (// art. 10.1 TVWF Directive).

The Portuguese advertising self-regulatory body ICAP (Instituto Civil de Autodisciplina da Publicidade) has issued a Code of Advertising practice in 1991 (revised several times since then), which also refers to the identification principle. According to its article 21, advertisements should be easily distinguishable as such and separate from news or any editorial work.

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

The separating device in the beginning of the advertisements' break is required to include the word "publicidade" ("advertising"), in such a way that it should be readily identifiable (article 8; ≠ art. 10.1 TVWF Directive).

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

In accordance with article 10.2 TVWF Directive the CP states that the insertion of isolated advertising spots should remain the exception to the rule (article 25(8)). (// art. 10.2 TVWF Directive)

- Prohibition of the use of "subliminal techniques"

Subliminal advertising is defined as a kind of advertising, which may cause the receiver without realising, sensations, feelings or perceptions, regardless the technique.

The use of "subliminal techniques" is forbidden according to article 9(1) of the CP (// art. 10.3 TVWF Directive).

Article 9 of the CP forbids hidden advertising or the use of any subliminal techniques, which may transmit an advertising message that is not clearly understood as such by its receivers.

The CP also provides a specific rule concerning the prohibition of using **subliminal images** or any other dissimulating techniques in order to ensure that the viewers distinguish advertisements from programmes. Whenever there is a television transmission of an event, the existing advertisement cannot be brought into focus. Besides that, the CP explains that subliminal advertising is achieved by any technical means and brings about feelings, of which the viewer is not aware (article 9).

- Prohibition of surreptitious advertising and teleshopping

In what concerns **surreptitious advertising** we have to refer that Portuguese regulation deals with surreptitious advertising in the chapter concerning general advertising principles. The Portuguese regulation forbids surreptitious advertising (// art. 10 TVWF Directive)

b. Conclusion

We may conclude that in fact article 10 of TVWF Directive is implemented in Portugal with the following differences.

Advertising should be recognisable and separated from other programs by acoustic **and** optical means at the beginning **and** end of the broadcast which are provisions **stricter** than the Directive. It is expressly stipulated that the word "advertising" ("publicidade") shall appear.

The identification principle is considered to be one of the most important guidelines in both Portuguese advertising law and self-regulation. It may be the key to solve difficulties arising from new advertising techniques: being a general principle applicable to all types of advertising it should not be neglected.

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

According to Article 25(1) of the CP, advertisements on TV must be inserted between programmes. (// art. 11.1 TVWF Directive). However, exceptions are admitted.

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

Exceptionally, advertisements may be inserted within the programmes provided that their integrity and value, as well as the rights of any holders are not prejudiced. In order to do so, programmes' natural breaks, duration and nature should be taken into account (article 25(2) of the CP; // art. 11.1 TVWF Directive).

There is no legal definition for "natural breaks". Its meaning must be found according to the particular circumstances, namely the above-mentioned duration and nature of the programme. In case of programmes consisting of autonomous parts, advertisements may only be inserted between these parts. In sports programmes and similarly structured events and performances containing intervals, advertisements' breaks may only occur in these intervals (art. 25(5) of the CP; // art. 11 .2 TVWF Directive).

Concerning the transmission of audiovisual works such as feature films and films made for television (excluding series, serials, entertaining programmes and documentaries), article 25(7) of the CP literally reproduces article 11.3 TVWF Directive:

"Provided their programmed duration is more than 45 minutes, it may be interrupted once for each complete period of 45 minutes – a further interruption is allowed if their scheduled duration is at least 20 minutes longer than two or more complete periods of 45 minutes" (// art. 11 .3 TVWF Directive).

The CP provides the meaning of "programmed or scheduled duration" of a programme: it consists in the extent of time of its effective transmission, excluding interruptions (advertising ones, and others) – article 25(9). (≠ art. 11.3 TVWF Directive, more precise than the Directive)

Between two successive advertising breaks within the same programme (other than a programme consisting of autonomous parts or a sports programme) should lapse a period of at least 20 minutes (article 25(6) of the CP. (// article 11.4 of the TVWF Directive).

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

The CP foresees that advertising should not interrupt certain programmes. As stated in article 25(3 and 4), advertisements must not be inserted:

- Within the transmission of a religious service;
- Within news services, political broadcasts, current affairs programmes, documentaries, religious programmes and children's programmes, when their scheduled duration is less than 30 minutes (// art. 11.5 of TVWF Directive).

b. Conclusion

The national regulation and the Directive correspond.

As a general conclusion we would mention that advertising should be inserted between the programmes and it is allowed to insert advertising within the programmes provided the same exceptions as mentioned in article 11 of the TVWF Directive are verified.

Regarding the public broadcaster, there are some restrictions in terms of distribution of advertising on public broadcaster services. The restrictions are defined in each channel concession agreement.

IV. Quantitative restrictions (Article 18 TVWF Directive)

a. Regulations

The amount of advertising depends on the type of channel, as defined in the TV Law (article 36):

- 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)

If the amount of advertising includes other forms of advertising or teleshopping spots, such limit may be extended to 20% in free-to-air channels with national coverage.

The legal maximum percentage of daily transmission time devoted to teleshopping and advertising spots for national channels shall not exceed 20% (// art. 18. 1 TVWF Directive).

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

It should not exceed 15% of the daily transmission time in free-to-air channels with national coverage.

Article 36(1) of TV Law, mentions that in national channels with non-restricted access transmission time devoted to advertising messages shall not exceed 15% of the daily transmission time (// art. 18.1 TVWF Directive).

Advertising messages should not exceed 10% of the daily transmission time in encoded channels with national coverage (\neq art. 18.1 TVWF Directive, this rule is more restrictive than article 18 of TVWF Directive).

Advertising should not exceed 10% of daily transmission time in teleshopping or self-promotion thematic channels (\neq art. 18 TVWF Directive, this rule is more restrictive than article 18 of TVWF Directive).

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

The transmission time devoted to advertising and teleshopping spots within a given clock hour should not exceed 10% or 20%, depending on whether it is an encoded channel or not (this rule is more restrictive than article 18 of TVWF Directive for what concerns the channels with national coverage).

This clock hour is in general considered to be a fixed period of time starting every sharp hour. (≠ sliding hour)

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

It should be noted that are excluded for the computation of these limits:

- informative messages transmitted by television broadcasters
- messages related with their own programmes
- directly derived programmes
- sponsoring,
- public services announcements or announcements with public interest;
- humanitarian announcements transmitted for free (±// art. 18.3 TVWF Directive).

b. Conclusion

The rules of the Directive have been fully implemented.

However, stricter provisions apply to broadcasters of encoded channels or self promotion thematic channels.

The clock hour is starting at every sharp hour.

Finally, it is noticeable that sponsoring is excluded from the broadcasts taken into account for the calculation of the time limits.

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

a. Regulations

Article 37 of TV Law provides for specific rules for that free-to-air channels with national coverage.

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

Teleshopping windows must have a minimum duration of at least 15 minutes (art. 37 TV Law; // art.18 Bis. 1 TVWF Directive).

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

Article 37 of TV Law states that free-to-air channels with national coverage may transmit each day up to eight windows of teleshopping (// art. 18 Bis. 2 TVWF Directive).

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

The total duration of teleshopping windows shall not exceed the maximum daily duration of three-hours (art. 37 TV LAW; // art. 18 Bis. 2 TVWF Directive).

b. Conclusion

Article 18 Bis TVWF Directive is fully implemented in Portugal and the applicable rules are not more restrictive than the TVWF Directive.

However, only free-to-air channels with national coverage are allowed to broadcast teleshopping windows in the above mentioned conditions. General rules on advertising apply to the other broadcasters.

The specific rules not included in the Directive, but applicable to teleshopping result from the application of general advertising regulation as mentioned above.

Portuguese Consumer Protection Law (Law 24/96 of 31 July 1996 – Portuguese Consumer Protection Act – PCPA) is applicable to all media and therefore, contains rules, which apply to both advertising and teleshopping.

Article 9(4) of TV Law states that thematic channels of self promotion and teleshopping shall not include any other elements of the conventional programming such as news, sports transmissions, movies, series or documentary programmes.

VI. Sponsoring (Article 17 TVWF Directive)

a. Regulations

The general principles stated in article 6 to 13 of the CP, and the basic rules on the prohibitions and restrictions of the content of the advertisements (including the regulation of specific products, such as alcohol, tobacco, etc. (article 14 to 22-B of the CP) apply not only because they are the basic principles of advertising law but also because sponsoring is a form of advertising.

Consumer Protection Law also applies to both advertising and sponsoring.

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

According to article 24, number 5 of the CP, the content and scheduling of sponsored programmes may in no circumstances be influenced by the sponsor in such a way as to affect the responsibility and editorial independence of the broadcaster (// art. 17.1 a. TVWF Directive).

- Sponsor identification

According to article 24, 4 of the CP, sponsored programmes must be clearly identified as such by the name and/or the logo of the sponsor in the beginning and the end of the programme (// art. 17.1 b. TVWF Directive).

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

As mentioned above, the name and/or logo of the sponsor must be clearly identified in the beginning and at the end of any sponsored programmes. Besides, the sponsor's name and/or logo may also be inserted during the programmes according to the television rules on advertisement insertion (above referred article 25 of the CP). (≠ TVWF Directive).

- Identification of the programmes that cannot be sponsored

The news and political information programmes may not be sponsored (// art. 17.4 TVWF Directive).

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

Article 24, 6 of the CP sets forth that sponsored programmes must not encourage the purchase or rental of the products or services of the sponsor or a third party, in particular by making specific promotional references to those products or services (// art. 17.1 c. TVWF Directive).

In what concerns sponsored programmes it may be acceptable that a product may be shown during the programme, providing there are no specific references to such goods or services during in the program.

Natural or legal people whose main activity is related to the manufacturing or selling of tobacco or derived products may not sponsor television programmes.

- 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 provision concerning duration of sponsorship activities or other detailed rules on the content of the message. Regarding the product placement, according to articles 1 and 3 of the CP if there is no promotional purpose then showing a product during a programme may not be considered as advertising and the advertising code will not be applicable.

b. Conclusion

Article 17 TVWF Directive is fully implemented in Portugal.

The sponsor's identification may also appear during the programmes to the extent the general rules of the insertion of advertising are respected, which is less restrictive than the Directive.

It is acceptable that a product may be shown during a programme without any promotional purpose. According to articles 1 and 3 of the CP if there is no promotional purpose then showing a product during a programme may not be considered as advertising and the advertising code will not be applicable.

VII. New advertising techniques

a. Split screens

Split screens advertising technique consists in the simultaneous broadcasting of editorial content and advertising content on the television screen (whether by the appearance of a window containing an advertising spot or simply by showing text advertising).

On the one hand, there is no specific (projects of) regulation, nor decisions/guidelines of public authorities on this issue. However, in response to a questionnaire addressed in 2001 to several organisations by the Standing Committee of the European Convention on Transfrontier Television, the Portuguese Institute for the Media (ICS) has expressed his views towards this practice. Briefly, the ICS has considered that split-screen advertising could not be allowed, at least at the current stage of regulation of TV advertising as established namely in the European Convention on Transfrontier Television and in the Television without Frontiers Directive. Such technique does not comply with the core principle concerning the need for clear identification of advertising as such and, in particular, its separation from the other items of a programme service. Additionally, in most cases such practice undoubtedly affects the integrity and value of the programmes.

On the other hand, national channels seldom use this technique. Nevertheless, broadcasters (mostly in news programmes) recently began to make use of this possibility through the broadcasting of a programme and the parallel scrolling of text information at the bottom of the screen. However, there is no advertising component in these circumstances.

b. Interactive advertising

Interactive television is presently on trial in Portugal. There are only a few viewers (about 3000) and transmissions have met several difficulties. As a result of that, neither problems, nor corresponding decisions/guidelines related to interactive advertising have come up yet. Again, no (projects of) regulation is known. Interactive television raises problems beyond advertising. Firstly, it is not clear that interactive television is considered as “television”, taking into account its definition (article 2 (1) a) of TV Law).

In fact, interactive television is based on a bi-directional communication act, whereas analogue television viewers are a passive audience, i.e. they are considered as a whole and are unable to take initiative. The active role of the interactive television viewers must not be ignored. For this reason interactive television does not fit in the television’s definition set forth in TV Law.

In our opinion, if TV Law is not applicable to interactive television, then interactive advertising television advertising has not to comply with the specific rules concerning the insertion of advertisements between/in programmes (article 25 of the CP), for they only apply to television advertising. However, the CP’s general principles, the identification principle as

well as the rules on personal data protection set forth in Law 67/98 of 26 October 1998 shall be respected. Otherwise, interactive advertising would be illegal.

c. Virtual advertising

Portuguese regulation does not provide a definition of virtual advertising. However, it is commonly accepted that this technique is based on electronic systems, which replace/ change/ add the advertisements spots by changing the broadcast signal. Virtual advertising creates unreal situations in existing scenarios in such a way that they are taken for real. This technique enables sponsors and advertisers to reach a wide market range. Both the special Commission and the Portuguese Courts have already decided several cases related to virtual advertising. The question is being handled in the following terms:

- Firstly, one must make sure that the so-called “virtual advertising” fits in the advertising definition stated in article 3 of the CP (usually it does, because advertising is a wide concept: it includes any type of communication in order to promote products, services, etc.)
- Secondly, it would be more accurate to qualify some cases as “virtual sponsorship” - it is necessary to classify this sort of advertising: should a special form be adopted to name it, e.g., “virtual advertising”;
- Thirdly, if the two questions above shall have an affirmative answer “in casu”, some difficulties still remain:
 - Whether related regulation exists and allows it, or not;
 - When should such type of advertising be considered illegal?
- Finally, it is advisable to verify whether this sort of advertising should be considered subliminal advertising forbidden by article 9 of the CP.

In our point of view, although there are no autonomous provisions for virtual advertising, since it is a form of communication, which complies with the requirements of article 3 of the CP, it should respect the general principles of the CP as well as its restrictions and prohibitions. As a result of that our belief is that virtual advertising would never be allowed according to the identification principle, notably the need of a suitable separating device. In fact, all the decisions concerning virtual advertising cases have come up to this conclusion: it is illegal because it violates articles 8 and 25 of the CP.

Furthermore, because virtual advertising has the ability to lead viewers to believe unreal situations, it may also be considered as surreptitious advertising, i.e., unconsciously assimilated, without viewers noticing its advertising intents.

In conclusion, virtual advertising would hardly be allowed - at least at the current stage of TV advertising regulation.

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

a. General regulation

1. Consumer Protection Law (Law 24/96 of 31 July 1996 - PCPA) states in article 7(4) as a general principle that advertising shall be lawful, explicit, and truthful and in accordance with the consumer's rights.

The PCPA also states (article 7(5)) that any clear and objective information contained in advertisement of any good, right or service makes part of any legally binding contract or deal celebrated after such advertisement.

According to article 1 of the CP, the Advertising Code is applicable, in general terms, to any kind of advertising regardless of the respective mean or support used for advertising.

The CP's rules do not apply to political or parties' propaganda, which are subject to special regulation.

Article 24(1) of TV Law, refers that all the elements of programmes, shall respect in what concerns its presentation and contents

- human dignity (// art. 12 a. TVWF Directive);
- fundamental rights (\neq art. 12 TVWF Directive);
- free formation of children's and teenagers personality (\neq art. 12 TVWF Directive);
- shall not, in any case, contain
 - o pornography on non conditioned free-access services;
 - o violence;
 - o or induce rage racism and xenophobia.

Thus, article 24 of the CP is clearly more restrictive than article 12 of the TVWF Directive.

b. Specific audiovisual regulation

1. Definitions

Articles 3 to 5 of the CP set forth some definitions used in advertising and advertising law principles. Thus, advertising, advertising activity, advertiser, professional, advertising agency, advertising vehicle and advertising receivers are defined in the CP.

These definitions exceed the definitions included in Directive 84/450/EEC. The CP states that announcement, for advertising purposes, may be made by any public or private undertaking (as defined in TVWF Directive).

It also states that the goal of advertising shall be, directly or indirectly, the commercialisation of any goods or services and the diffusion of any ideas or principles, initiatives or institutions.

Article 3 of the CP includes the general definition of advertising. Advertising, for this purpose, is defined as any form of communication made by a public or private undertaking in connection with trade, industrial activity, business, craft or profession in order to promote, directly or indirectly:

- a) The commercialisation of any goods or services;
- b) Any ideas or principles, initiatives or institutions;

This article also extends the concept of advertising to any kind of communication issued by the Central Administration, in order to promote, directly or indirectly, the supply of goods and services.

Article 4 of the CP defines advertising activity. According to this article, advertising activity is the whole set of operations related to the transmission of an advertising message to the receivers. It also includes any legal and technical relations between advertisers, advertising professionals, advertising agencies and any entities, which use advertising vehicles or take part in advertising operations.

2. General principles

The CP contains the general advertising principles. Article 6 of the CP states that advertising, in general, must be lawful, explicit, truthful and in accordance with the consumers rights.

According to the lawful principle (“princípio da licitude”), referred in article 7 of the CP, advertising shall not:

- a) Be offensive to institutions, national or religious symbols, or historical personalities (\neq art. 12 TVWF Directive);
- b) induce violence or any illegal activity (\pm // art. 12 d. TVWF Directive);
- c) prejudice human dignity (// art. 12 a. TVWF Directive);
- d) include any kind of discrimination on grounds of race, sex, religion, language or nationality (// art. 12 b. TVWF Directive);
- e) use people’s image or statements without permission (\neq art. 12 TVWF Directive);
- f) use obscene language or expressions (\neq art. 12 TVWF Directive);
- g) encourage behaviour prejudicial to the environment protection (// art. 12 e. TVWF Directive);

- h) include ideas of political or religious nature (// art. 12 c. TVWF Directive), as well as references to labour unions.

The lawful principle also states that the Portuguese language shall be used in advertising and that the use of foreign languages may be allowed in cases where the receivers are foreign people. However, foreign language may be exceptionally used if necessary for the purpose of achieving the advertising goals.

When transmitting any event in television or when using photographs, it is forbidden to focus directly any existing advertising.

The truthful principle is set forth in article 10 of the CP. According to this article advertising shall be truthful and shall not distort any facts. All statements regarding the origin, nature, composition, properties and purchasing conditions of advertised goods or services shall be accurate and likely to be proved before any competent authority.

The misleading advertising prohibition is stated in article 11 of the CP, which is based on article 2.2 of Directive 84/450/EEC. According to article 11 of the CP, it is forbidden any advertising, which in any way, including its presentation and because of its misleading nature deceive, or is likely to deceive, the persons to whom it is addressed, regardless of any economic damage. Advertising, which is likely to injure a competitor, is also forbidden.

In order to determine whether advertising is misleading or not account shall be taken of all its features, namely any information concerning (article 11(2) of the CP):

- a) the characteristics of goods or services, such as their availability, nature, execution, composition, method and date of manufacture or provision, fitness for purpose, uses, quantity, specification, geographic or commercial origin or the results to be expected from their use, or the results and material features of tests or checks carried out on the goods or services;
- b) the price or the way in which the price is determined, and how the goods are supplied or the services provided;
- c) the nature, attributes and advertisers rights, such as his identity and assets, his qualifications and ownership of industrial, commercial or intellectual property rights or his awards and distinctions;
- d) any rights and duties of those to whom advertising are addressed, as well as any guarantees.

The concept of misleading advertising is also applicable to advertisements, which lead to the idea of a promotion, prize or discount without any consideration, order or raffle.

Another general principle is set forth by article 12 of the CP. According to this article, advertising, which is not in accordance with the consumer's rights is forbidden. The last general principle defined in the CP is the respect for the health and safety of the consumers. According to article 13 of the CP, advertising, which encourages behaviour prejudicial to

health and safety of the consumers, namely resulting from the lack of information regarding the danger or harmfulness of the product itself or its use is forbidden. Article 13.3 of the CP, refers that this must be specially accomplished in advertising addressed to children, teenagers, elderly and handicapped people.

3. General rules on the content of TV advertising

Testimonial advertising is set forth in article 15 of the CP. According to this article, testimonial advertising shall contain personalized, genuine and verifiable statements, related to the deponent experience or the experience of whom he represents. Impersonal testimony is allowed when it is not made by a specially qualified witness, namely when using uniforms of a specific profession.

Article 16 of the CP implements articles 2 and 3-A of Directive 84/450/CEE of 10 September 1984 as amended by Directive 97/55/EEC of 6 October, and defines comparative advertising as any advertising, which explicitly or by implication identifies a competitor, or goods or services offered by a competitor. The CP refers to the criteria of the Directive regarding comparative advertising

c. Conclusion

Article 12 of TVWF Directive is implemented in Portugal. As mentioned above, article 24(1) of TV Law and 7 of the CP are more restrictive than Article 12 of TVWF Directive.

IX. Specific products and targets

a. Regulations

- Tobacco products (Articles 13 and 17 TVWF Directive)

Article 18 of the CP establishes the general regulation regarding tobacco advertising. According to this article, unless any other specific regulation states otherwise, every form of advertising to tobacco, using any advertising medium under Portuguese jurisdiction is forbidden (// art. 13 TVWF Directive).

In addition to this general regulation, Law 22/82 of 17 August 1982 regulates the prevention of tobacco addiction and tobacco advertising.

According to article 2 of Law 22/82 any form of advertising for tobacco through any Portuguese, or Portuguese based, advertising media is forbidden (// art. 13 TVWF Directive).

Decree Law 226/83 of 27 May 1983 regulates Law 22/82. According to article 6 of Decree Law 226/83, it is expressly forbidden any form of advertising to tobacco by means of advertising in national channels and it is understood as advertising, for this purpose, any divulgation aimed to attract the public attention in order to promote its acquisition (more precise than the Directive).

Article 7 of Decree Law 226/83 states that in advertising actions, it is forbidden to place names, brands or logos of a tobacco based product in any consumption goods not directly related to the tobacco use.

An exception to the general principle of article 18 of the CP is set forth in Decree Law 52/87 of 30 January 1987. According to this Decree Law, advertising to tobacco is generally accepted in automobile sports events with international prestige. This includes, namely, sports events such as World and European cups and championships, formula 1, rallying, motorcycling, sport-cars and others. Advertising to tobacco is therefore permitted through the placement of any name, brand or logo in the equipment or clothing of the intervenient in such events and in placards where such events take place.

According to Decree Law 178/2001 of 9 June 2001, the exceptional regime defined in Decree Law 52/87 regarding advertising to tobacco in automobile or motorcycling sport events will be in force until 31 December 2005.

Articles 13 and 17 of TVWF Directive are implemented in Portugal exactly in the same terms.

- Medicines (Article 14 TVWF Directive)

The regulation of medicines advertising is set forth in the CP. In terms of self-regulation there is a code of advertising practices for pharmaceutical or medicinal products set forth by APIFARMA, which is the Portuguese Pharmaceutical Industry Association. As a general regulation in terms of advertising, article 19 of the CP stipulates that any advertisements for medical care treatment or medicines for human use available only on prescription are forbidden (// art. 14.1 TVWF Directive).

Decree Law 100/94 of 19 April 1994, as amended by Decree Law 170/98 of 25 June 1998 and by Decree Law 48/99 of 16 February 1999, which implemented Council Directive 92/28/EEC of 31 March 1992, and the new Directive implementing a code on medicine for human use, regulates the advertising of medicines for human use.

According to the definition of medicines advertising set forth in article 2 of this Decree Law, medicines advertising is considered as a form of communication, information or incentive, which directly or indirectly promotes its prescription, dispense, sale, acquisition or consumption. Thus, it is also directed to the advertising of medicine products in television with the restriction set forth in article 19 of the CP.

Article 3 of this Decree Law 100/94 establishes the general principles of advertising of medicines for human use. According to this article it is forbidden to advertise any medicines before the necessary sale authorisation is granted.

This article establishes the same conditions as in the Code of Directive.

According to article 4 of Decree Law 100/94, the advertising of medicine products addressed to the public, must contain specific information (// European Directive).

The entity responsible for the supervision of advertising of medicines for human use is the national pharmaceutical and medicines institute (“Instituto Nacional da Farmácia e do Medicamento” - INFARMED).

As mentioned above, in terms of self-regulation there is a code of advertising practices for pharmaceutical or medicinal products set forth by APIFARMA, which is the Portuguese Pharmaceutical Industry Association.

This code of advertising practices for pharmaceutical or medicinal products (“Código Deontológico” – CD) was approved by APIFARMA on 5 June 1995.

As a general principle, the deontological rules inserted in the CD (which is applicable to medicinal products subject to prescription or used under supervision of a health care professional), shall not prejudice the compliance with the applicable regulations and legal provisions. The CD establishes a number of principles applicable to the pharmaceutical industry, such as promotional criteria, scientific evidence, data on safety, disguised or misleading promotions, communications preceding the marketing authorisation, communications to the public and corporate procedures.

- Alcoholic beverages (Article 15 TVWF Directive)

The regulation of alcoholic beverages advertising is set forth in the CP and in terms of self regulation there is a code of alcoholic beverages advertising practice (“Código de Autodisciplina na Comunicação Comercial das Bebidas Alcoólicas”).

Article 17 of the CP establishes the general principles regarding alcoholic beverage advertising. Thus, the advertising of alcoholic beverage, regardless of the advertising medium used for such purpose, is only permitted providing it complies with the following:

- a) It may not be aimed specifically at minors and, in particular, depict minors consuming these beverages (// art. 15 a. TVWF Directive);
- b) It does not encourage excessive consumption of alcohol (// art. 15.e. TVWF Directive);
- c) It does not despise the non-consumers of alcoholic beverages (// art. 15 e. TVWF Directive);
- d) It does not suggest any form of success, social success, or any special skill as a result of its consumption (\pm // art. 15.c. there is however no specific reference to sexual success as mentioned in article 15(c) of the TVWF Directive);
- e) It does not claim that alcohol beverages have therapeutic qualities or a stimulant or sedative effect (there is no reference to television advertising to alcoholic beverages as a mean of resolving personal conflicts as in article 15 d. of the TVWF Directive);
- f) It does not link the consumption of alcohol to enhanced physical performance or to driving (// art. 15 b. TVWF Directive);
- g) It does not place emphasis on alcoholic content as being a positive quality of the beverage (// art. 15 f. TVWF Directive).

According to article 17.2 of the CP (recently amended by Decree Law 332/2001 of 24 December 2001) alcoholic beverage advertising on television (and radio) is expressly forbidden between 7.00 a.m. and 10.30 p.m. New number 4 of same article 17 of the CP forbids any association between alcoholic beverage advertising and any national symbols as identified in the Portuguese Constitution (\neq art. 15 TVWF Directive).

New numbers 5 and 6 of same article 17 of the CP, foresee that advertising of any events where minors participate, namely sports events, cultural activities or other, shall not make any, direct or indirect, reference to alcoholic beverage brands. This restriction is also applicable to the locals where such events take place (\neq art. 15 TVWF Directive).

As mentioned above, in terms of self-regulation for alcoholic beverage advertising, there is a code of alcoholic beverages advertising practice (“Código de Autodisciplina na Comunicação Comercial das Bebidas Alcoólicas” - CACCBA), adopted in July 2001.

The CACCBA was established within the alcoholic sector. For the purposes of the CACCBA, the alcoholic sector includes any activities related to the production, importation, distribution, and sale of alcoholic beverages.

Articles 1 and 2 of the CACCBA establish as general principles that alcoholic beverage advertising shall avoid the inducement to any irresponsible consumption of alcoholic beverages.

In the same line as set forth in the CP, the CACCBA also has general references regarding alcoholic beverage advertising. Thus, it shall not despise the non-consumers of alcoholic beverages (articles 3 and 4 CACCBA). It shall not suggest any form of success, social success, or any special skill as a result of its consumption (article 5 of the CACCBA). It shall also not claim that alcohol has therapeutic qualities or that it has a stimulant or sedative effect or any other benefits resulting from its consumption (article 6 and 7 of the CACCBA).

Moreover, alcoholic beverage advertising shall not suggest any recommendations made by medical professionals, except when made for pedagogic purposes. Articles 9 to 13 of the CACCBA define the so-called vulnerable receivers. Thus, alcoholic beverage advertising shall respect pregnant women, minors, elderly and handicapped people.

Articles 14 to 17 of the CACCBA regulate the so-called high-risk situations that alcoholic beverage advertising must respect. These high-risk situations include any situations where safety is not respected including driving vehicles. It also refers to any positive inducement in terms of working or physical skills resulting from the consumption of alcoholic beverages.

Articles 18 to 20 of the CACCBA include the regulation of alcoholic beverage advertising in the media. Article 18, states that in order to make the consumer take a responsible attitude towards the consumption of alcoholic beverages, any alcoholic beverage advertising in television must clearly mention the following statement: “BE RESPONSIBLE, DRINK WITH MODERATION”.

In addition to media advertising of alcoholic beverages, article 19 of the CACCBA, states that alcoholic beverage advertising shall not be used or transmitted immediately before, during breaks or immediately after any radio and television programmes especially aimed to minors.

- Minors (Article 16 TVWF Directive)

Article 16 of the TVWF Directive is also implemented in Portugal by article 14 of the CP, which states that advertising specifically directed to minors must always consider their psychological vulnerability, and, therefore, it shall not:

- a) Directly exhort minors to buy a product or a service by exploiting their inexperience or credulity (// art. 16.1 a. TVWF Directive);
- b) Directly encourage minors to persuade their parents or others to purchase the goods or services being advertised (// art. 16.1 b. TVWF Directive);

- c) Contain elements which might cause danger to minors' psychical or moral integrity, as well as to their health or safety, namely through pornography scenes or through the encouragement of violence (// art. 16.1 TVWF Directive);
- d) Exploit the special trust minors place in parents, tutors or teachers (// art.16.1 c. TVWGF Directive).

Same article also defines that minors shall only be major participants in advertising messages in which a direct relation between them and the advertised product or service exists. Other restrictions on the content of TV advertising are inserted in articles 15 and 16 of the CP.

Article 24(1) of TV Law states that every elements included in TV programs shall respect in its contents and presentation human nature dignity, the fundamental rights and the free formation of personality of children and minors and shall not, in any circumstance, contain pornography in free-access channels, violence or induce hate, racism and xenophobia (this restriction is also applicable to cable television).

According to article 24(2) of TV Law any other programs liable to influence in a negative way the personality formation of children and minors may only be transmitted between 11 p.m. and 6 a.m. and a permanent visual sign shall be inserted throughout the transmission time. The transmission of any programmes or movies classified as to only be viewed by a certain audience in terms of age shall be anticipated by a reference to the age to which such programme or movie is directed (article 24(3) of TV Law). The previously referred sign shall also be inserted. Numbers 2 and 3 of article 24 of TV Law are not applicable to conditioned access channels. These restrictions are also applicable to any other programmes including advertising, messages, trailers or any other self-promotion images (goes further than the Directive).

- Cars

The general regulation concerning cars or vehicles advertising is set forth in article 22-A of the CP. According to this article cars or vehicles advertising is forbidden when it:

- a) Contains any situation or suggestion for the use of a vehicle, which may risk the user's safety or any third parties safety;
- b) Contains any situation or suggestion for the use of a vehicle in such a way that may disturb the environment;
- c) Shows any situation of infraction to the Highway Code ("Código da Estrada"), namely suggesting exceeding the speed limits, using dangerous manoeuvres, the non-use of safety devices and the disrespect of any signals or foot travellers.

For the purpose of this article an automobile vehicle is considered as any mechanic traction vehicle capable of circulating by its own means in the public highways. There are no other specific information duties concerning car advertising, apart from second-hand cars, which have a specific regulation but not related to television. The TVWF Directive remains silent on this issue.

- Media

There is neither specific regulation nor self-regulation concerning media advertising or any other form of communication. Thus, General advertising principles contained in the CP are applicable to all media (television, radio, press, outdoors, etc.), as well as its prohibitions and restrictions related to the content of advertisement spots.

- Religions, politics and parties, social issues and groups

There is no specific regulation, nor self-regulation, concerning religions, social issues and groups. Thus, the general advertising principles contained in the CP are applicable, as well as its prohibitions and restrictions related to the content of advertisement spots. As mentioned above, political advertising or any form of advertising related to parties is not considered as advertising and, therefore, the CP is not applicable. Political advertising or any form of advertising related to parties is subject to special regulation.

b. Conclusion

- Tobacco

Advertising for tobacco is prohibited unless any other specific regulation states otherwise.

However, until December 31st 2005, the broadcast of prestigious sport events which are sponsored by tobacco brands is permitted.

- Medicines

Article 14 of TVWF Directive is fully implemented in Portugal. However, the Portuguese regulation should be considered as more restrictive because no specific provision are made for teleshopping or sponsoring to which general rules apply.

- Alcoholic beverages

Article 15 TVWF Directive is implemented in Portugal with slight differences.

The regulation is more precise and thus more restrictive.

If it does not target expressly the enhancement of sexual success, it prohibits advertising that makes a link between the consumption of alcohol and the development of any skill.

The expression "resolving personal conflicts" appearing in Article 15 d. of the TVWF Directive has not been transposed as such.

Among several other prohibitions, it is worth noticing that every television adverting for alcoholic beverages should mention the expression "*Be responsible, drink with moderation*".

Moreover, advertising for alcoholic beverage on television is expressly forbidden between 7.00 am and 10.30 am. Any sports events where minors participate may not make any reference to alcoholic beverage brands.

There are also new rules issued by the self-regulatory body (CACCCBA).

- Minors

The Portuguese regulation complies with the provision of the Directive, being somewhat more precise in certain points. It does not expressly stipulate that advertising shall not unreasonably show minors in dangerous situations. However, it can be deduce that other provisions could prevent it.

- Other categories

The Portuguese regulation provides for specific limitations on adverting related to cars, media, religions, politics and parties, social issues and groups.
