



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

SWEDEN

LEGAL REPORT

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Introduction

Radio- and Television Act (1996:844)

Apart from the Marketing Practices Act, advertising in radio or television is more specifically governed by the **Radio and Television Act** (*Sw: Radio och TV-lagen (1996:844)*) (6). The TV without Frontiers Directive (89/552/EEC) has mainly been implemented in Sweden through provisions in this Act.

The Radio- and Television Act, hereinafter referred to as RTL, came into force 1 December 1996. The Act contains provisions for transmissions of sound radio and TV programmes directed at the general public and intended to be received with the technical aids. There are no special provisions for digital terrestrial TV in the Radio- and TV Act, but the general provisions applicable to TV shall apply. The act only applies to broadcasters under Swedish jurisdiction.

The rules in the Act which deals with TV-advertising are stated in sec.4 and 9 chap. 6 and chap. 7 RTL under the heading “Advertising and other announcements” and are divided in two categories. One category relates to the insertion and duration of advertising and the other category to the content of the advertising.

On 1 July 1994 two new authorities were established on the radio and television field.

The Swedish Radio and TV Authority is the state licensing and supervisory authority in the media field. The authority keeps a register of all those making transmission in accordance with the Radio and TV Act. Licences are being granted for local and community radio transmissions and for temporary transmission activities. The authority also designates local cable broadcasting companies. No licence is required from the Radio and TV authority to broadcast over satellite or through cable, nevertheless the satellite- or cable-broadcasting company has to register with the authority.

The authority can decide on sanctions if certain rules governing transmission activities are not complied with. The Radio and TV authority also monitors developments in the media field.

The Swedish Broadcasting commission (SBC) is a state authority which examines radio and television programmes in Sweden. The Commission shall, on a strictly ex post facto basis, supervise the compliance of programme content with the provisions of the laws which regulate broadcasting services and the licences granted by the Government. No license is required from the Radio and TV authority to broadcast over satellite or through cable, nevertheless the satellite broadcasting company or the cable broadcasting company has to register with the authority.

The Commission's mandate covers all Swedish radio and television broadcasters which offer services to the general public, be it on a local, regional or national basis. The Commission also monitors the new digital terrestrial television channels. The Commission additionally has the task of monitoring foreign satellite transmissions to the Swedish general public, for example TV3, Kanal 5 and ZTV, which are based in the United Kingdom, and of judging whether these transmissions conform to the television directives adopted by the member states of the EU. Although the Commission has no jurisdiction over the radio and television companies based abroad, it can report its observations to the Government or the foreign authority concerned.

The regulations on which the commission bases its monitoring function are to be found in the Radio- and Television Act and the transmission licences issued by the Government to certain programme companies. The most comprehensive rules are those for SVT, SR, UR and TV4. For example, the rules require these companies to conduct their operations in an impartial and factual manner. Furthermore they must take into consideration the media's extraordinary impact. The Commission mainly acts in response to reports from the general public, but may also do so on its own initiative.

The Swedish Broadcasting commission also monitors how those who transmit radio and television programmes adhere to the rules on advertising, sponsorship and undue favouring of commercial interests.

I. Definitions (Article 1 Directive TVWF)

a. Definitions

- Television broadcasting

There is no legal definition of television broadcasting, but according to the legislative material to the enactment of the Radio and Television Act (*Radio- och TV-lagen 1996:844*) (1), hereinafter RTL, television broadcasting shall be defined according to its every day usage, that is, broadcasts that an indefinite number of people can receive simultaneously with the aid of a television receiver. All types of transmission are included, including transmission types that may appear in the future. (Government Bill 1995/96:160, *Proposition 1995/96:160*, *Radio- och TV-lag*, p. 63; ≠ art. 1 a . TVWF Directive)

- Broadcaster

There is no legal definition of broadcaster, but according to chapter 4, section 1 and chapter 1, section 1 of the Fundamental Law on Freedom of Expression (*Yttrandefrihetsgrundlagen 1991:1469*) (2), hereinafter YGL, television programmes shall have a designated responsible editor. It is the responsible editor who can be made accountable for the contents of the programme (≠ art. 1 b. TVWF Directive)

The responsible editor shall be a Swedish citizen. It may be provided in an act of law that also foreign nationals may be responsible editors. A person who is a responsible editor shall be domiciled within the Realm. No person who is a minor or a bankrupt, or for whom an administrator has been appointed under special provisions of law, may be a responsible editor (chapter 4, section 2, YGL).

- Television advertising

In the RTL (chapter 7, section 1) “advertising” is defined as commercial advertising and broadcasts that are commissioned by a third party but are not commercial advertising.

The term “advertising” shall, according to the legislative material to the enactment of the RTL, have the same meaning in the RTL as in the Marketing Practices Act (*Marknadsföringslagen 1995:450*) (3), hereinafter MFL, i.e. advertising and other measures to promote the sale of and access to products (section 3, MFL, ≠ art. 1 c. TVWF Directive).

Advertising in the traditional sense as well as self-promotion, sponsorship messages and teleshopping can normally be considered to be included in the definition of advertising for the purpose of RTL (Bill 1995/96:160, p. 109 f.).

- Surreptitious advertising

There is no legal definition of surreptitious advertising, nor is the concept of product placement legally defined (see below VII New advertising techniques; ≠ art. 1 d. TVWF Directive).

- Sponsorship

Chapter 7, section 8, RTL defines a sponsored programme as a programme which is not advertising and for which the cost has been paid for in whole or in part by a party other than the person or entity conducting broadcasting activities or producing audio visual works (≠ art. 1 e. TVWF Directive).

- Teleshopping

Chapter 7, section 5, RTL defines teleshopping as programmes in which the audience is invited to order goods or services (±// art. 1 f. TVWF Directive).

- Television programme

There is no legal definition of television programme. According to the legislative material to the enactment of the RTL, the point of reference should be how the broadcasting company chooses to present its programmes. If the broadcasting company regards a certain broadcast as a program, that is generally to be accepted. However, it is also stated that for the purpose of judging the legality of advertising broadcasts, case law from the Swedish Broadcasting Commission (*Granskningsnämnden för radio och TV*), hereinafter SBC, (see below, III Insertion of Advertising, 1.1) has to be taken into account. The SBC is together with the Consumer Ombudsman (*Konsumentombudsmannen*), hereinafter KO, the authority monitoring how broadcasters adhere to the rules on advertising in the RTL. The SBC usually takes into account a broad scope of factors such as the presentation of the transmission, specific program host, specific theme, a to the public previously known transmission time and the length of the programme.

Chapter 7, section 7, RTL stipulates that a programme that merely consists of a simple message concerning the time, weather, news etc, without the indication of the name or source is not to be regarded as a separate programme.

- Programme services

Chapter 7, section 5, RTL defines programme services as a cohesive range of programmes broadcast under a common designation.

- Pharmaceutical products

Pharmaceutical products are defined as preparations which must be approved or recognised in order to be sold in accordance with section 5 of the Medicinal Products Act (*Läkemedelslagen 1992:859*) (4) or Council Regulation (EEC) No. 2309/93 of 22 July concerning Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and the establishment of a European agency for the evaluation of medicinal products (chapter 7, section 10, RTL).

- Alcoholic beverage

An alcoholic beverage is defined as a beverage that contains more than 2.25 percentage of alcohol by volume (the Alcohol Act, *Alkohollagen 1994:1738*, chapter 1, section 3) (5) (\neq art. 15 TVWF Directive).

b. Conclusion

Unlike the TVWF Directive, the RTL does not contain a collected catalogue of definitions. Instead definitions corresponding to those given in chapter 1 of the TVWF Directive have to be gathered not only from various chapters of the RTL, but also from a number of other laws, as well as from the legislative material to the enactment of the RTL. Some concepts defined in the RTL lack definitions altogether under Swedish law. On the whole, the definitions given in the TVWF Directive are more detailed and precise than the Swedish ones.

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

a. Regulations

- Rules related to recognition of advertising and teleshopping spots

According to RTL, chapter 7, section 1, a special signature, which clearly distinguishes advertisements from other broadcasts, is to be broadcast prior to and after each advertising period. On television, this signature is to consist of both sound and vision (\pm // art. 10 §1 TVWDF Directive). On teletext selected by the viewer and during teleshopping programmes the signature must be displayed continuously, but need only be displayed in visual format.

In the case of broadcasts for which the Government issues a licence, the Government may grant an exemption from this obligation. A licence under the RTL is required to broadcast television programmes using radio waves at frequencies of less than 3 GHz (chapter 2, section 1, RTL).

The possibility for an exemption aim at advertisements for i.e. prescribed books for educational courses run by the Swedish Educational Broadcasting Company (*Utbildningsradion*), hereinafter UR. Such advertisements have been regarded as permissible also in public service channels where advertising is generally prohibited according to the terms of their licences and where it has been considered that the occurrence of a signature indicating advertising would therefore appear odd.

- Separation between the commercial content and the programme

Provisions regarding the identification of advertising are covered by section 5 MFL, which stipulates that all marketing shall be designed and presented so that the marketing purpose is evident. The party responsible for the marketing shall also be clearly indicated.

Chapter 7, section 2, RTL stipulates that in the case of advertisements that are not commercial advertising, it must be clear on whose behalf the broadcast is made.

Chapter 7, section 3, RTL stipulates that individuals who play a prominent role in programmes that primarily involve news or current affairs may not appear in advertising.

According to chapter 7, section 4 RTL, individuals or characters that play a prominent role in programmes which are primarily addressed to children under twelve years of age may not appear in commercial advertising in a television broadcast.

The KO monitors the prohibition on individuals from news or current affairs programmes and individuals or characters from children's programmes appearing in advertising.

- Isolated advertising and teleshopping spots

Chapter 7, section 6, RTL stipulates that the total advertising time of television on any given occasion may not be less than one minute after deduction of the transmission time for the special signature (\neq art. 10 §2 TVWF Directive).

- The use of subliminal techniques

There are no specific rules regarding subliminal techniques (\neq art. 10 §3 TVWF Directive).

- Prohibition of surreptitious advertising and teleshopping

Surreptitious advertising and teleshopping is prohibited through the provision in chapter 6, section 4 RTL, which stipulates that programmes that are not advertising may not promote commercial interests in an improper manner (\pm art. 10 §4 TVWF Directive).

The SBC has on many occasions found violations against the prohibition on surreptitious advertising. Wearing clothes with logotypes has been regarded as surreptitious advertising (see i.e. SB348/99, SB 356/99, SB 061/02, SB 395/02, SB 295/03), as has the mention of products in the Oprah Winfrey Show (SB345/01, SB 614/03) and in lottery programmes (SB 487/01, SB 246/02).

c. Conclusion

- Other rules more or less restrictive than the TVWF Directive

The Directive has been generally implemented, even though some prohibitions are not expressly stipulated.

Swedish rules that are more restrictive than the TVWF Directive, are, for instance, that the signature distinguishing advertisements from other broadcast has to consist of both sound and vision. Also, under Swedish law, the visual signature has to be displayed continuously on teletext selected by the viewer and during sales programmes.

The Council on Ethical Marketing (*Marknadsetiska rådet*), hereinafter MER, which was set up by, amongst others, commercial broadcasters TV3, TV4 and Channel 5 (*Kanal 5*) supervises the advertising practices of private business. The Council applies the ICC International Code of Advertising Practice. Article 12 of the Code stipulates that advertisements should be clearly distinguishable as such, whatever their form and whatever the medium used. When an advertisement appears in a medium, which contains news or editorial matter, it should be presented so that it will be readily recognisable as an advertisement.

According to the Directive isolated advertising and teleshopping spots shall remain the exception. The Swedish rule, according to which the total advertising time on television on any given occasion may not be less than one minute, is somewhat more restrictive.

According to the ethical rules, editorial material shall never be designed and published in such a way that it may be mistaken for advertising (section III, 1). Consumer information programmes shall explain how the selection/comparison/testing of the products/services in the programme has been done (section III, 3). A careful examination shall be done as to whether footage from new businesses and new business premises has a journalistic value (section III, 4). Also information about the opening hours of a firm, demonstration of products etc. shall not be published as editorial material (section III, 6). When using items such as cars boats, clothes, furniture, kitchen equipment etc. for photographic purposes, names of manufacturers and retailers may not be mentioned unless there is a journalistic purpose for doing so (section III, 8).

No provision is made for the prohibition of subliminal techniques.

The rules described above serve to ensure separation between commercial content and the programme and also to prevent surreptitious advertising. The ethical rules can not be said to be more restrictive than the rules in the TVWF Directive, but they set out in greater detail how the prohibition on surreptitious advertising and the rule that commercial content shall be easily discernible set out in the TVWF Directive shall be carried out.

- Identification of rules not included in the Directive

The rules in chapter 7, sections 3 and 4, RTL, that individuals who play a prominent role in programmes that primarily involve news or current affairs and individuals or characters who play a prominent role in programmes which are primarily addressed to children under twelve years of age may not appear in advertising in a television broadcast have no equivalence in the TVWF Directive.

III. Insertion of advertising and teleshopping spots between and within the programmes (Article 11 TVWF Directive)

a. Regulations

- Insertion of advertising and teleshopping spots between the programmes

As a general rule, advertising is to be broadcast between programmes, chapter 7, section 7, RTL (// art. 11 §1 TVWF Directive). However, under certain circumstances advertising may be made within programmes (see below, Insertion of advertising and teleshopping spots within the programmes).

Case law emanating from the SBC during the past five years shows that the SBC has on numerous occasions ruled that chapter 7, section 7, RTL has been violated.

Several cases have concerned short broadcasts, generally of a duration of 1-2.5 minutes, introducing programmes that are to be broadcast within the near future or giving a summary of previous parts of a TV-series, the only purpose of which has been to enable additional advertising broadcasts (i.e. SB 102/99, 402/99, SB 91/00, SB 92/00, SB 147/00, SB 204/00, SB 284/00, SB 285/00, 321/00). In other cases the SBC has established that a short local weather forecast is not to be regarded as a separate programme (SB 458/01), and that the continual exposure of advertising signs during the broadcast of sports events violates the rule that advertising is to be broadcast between programmes only (SB 361/99).

- Insertion of advertising and teleshopping spots within the programmes

Providing the conditions set out below are fulfilled, a programme may be interrupted by advertising if this occurs in a manner that – taking into account natural transmissions and the lengths and character of the programme – does not violate the integrity and value of the programme or the rights of holders of broadcasting rights (chapter 7, section 7, RTL; // art. 11 §1 TVWF Directive).

In the case of sports programmes in which there are relatively long intermissions, or during programmes involving performances or events with intermissions for the audience, advertising may be broadcast during the intermissions.

In the case of programmes that consist of complete parts, advertising may be broadcast between parts (± // art. 11 § 2 TVWF Directive).

In the case of feature films and films made for television – with the exception of television serials, light entertainment programmes and documentary programmes – advertising may be broadcast if the scheduled broadcasting time exceeds 45 minutes. Advertising may be broadcast once for every complete period of 45 minutes. If the scheduled broadcasting time is at least 20 minutes more than two or more complete periods of 45 minutes, advertising may be broadcast a second time (// art. 11 §3 TVW Directive).

In the case of other programmes there must be an interval of at least 20 minutes between the broadcasting of advertising during the programme (chapter 7, section 7 a, RTL; // art; 11 §4 TVW Directive).

- Prohibitions of insertion of advertising and teleshopping spots within certain types of programme

According to chapter 7, section 7 b, RTL, religious services or programmes primarily addressed to children less than twelve years of age may never be interrupted by advertising (\neq art. 11.5 TVWF Directive, this provision is more restrictive than the Directive).

Programmes which primarily involve news or current affairs, documentary programmes and programmes which are of a philosophical or ideological nature may be interrupted by advertising only if the scheduled broadcasting time exceeds 30 minutes. There must be an interval of at least 20 minutes between the broadcasting of advertising. (Chapter 7, section 7 b, RTL; \pm // art. 11 §5 TVWF Directive).

The SBC did not find a violation of the RTL rules in the case SB 566/02 regarding advertising inserted in a feature film. The complaint had been lodged by the director of the film, who had also written the script. The director felt that the integrity of the film had been violated and the intellectual property rights connected to the film infringed. The director has now initiated legal proceedings in civil court, based, not on the rules in the RTL, but on the rules protecting intellectual property rights. It remains to be seen whether television advertisements inserted within programmes may be declared unlawful for reasons related to intellectual property rights.

b. Conclusion

- Other rules more or less restrictive than the TVWF Directive

The provisions of the TVWF Directive have been generally implemented.

Regarding the insertion of spots between programs consisting of separable parts, the Swedish regulation targets sports programs, "events with intermissions for the audience" and programmes that "consist of complete parts", while the Directive use the terms of " performances containing intervals", "autonomous parts", and "similarly structured events". However, the concepts can be considered has being sufficiently similar.

Prohibiting inserting advertising spot within certain programs shorter than 30 minutes, the national regulation encompasses all programmes of philosophical or ideological nature, when the Directive only deals with religious programmes.

Finally, the insertion of advertising within programmes primarily directed at children under twelve years of age is prohibited.

- Identification of specific rules not included in the Directive

According to the RTL advertising during programmes primarily addressed to children under twelve years of age is prohibited.

IV. Quantitative restrictions (Article 18 TVWF Directive)

a. Regulations

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

There is no legal maximum percentage of daily transmission time devoted to teleshopping and advertising spots and for other forms of advertising (\neq art. 18 §1 TVWF Directive).

A local cable transmission undertaking may not transmit commercial advertising unless it is a sponsorship message (see below, VI Sponsoring, Sponsor identification).

- Maximum daily transmission time devoted to advertising messages (15% in the Directive)

The transmission time for advertising spots shall not exceed 10 % of the daily transmission time (chapter 7, section 5, RTL; \neq art. 18 §1 TVWF Directive).

The provisions regarding quantitative restrictions for advertising do not apply to teletext selected by the viewer (chapter 7, section 12, RTL).

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

Chapter 7, section 5, RTL stipulates that advertising may not be broadcast for more than eight minutes (13,33%) during an hour between each full hour. In television broadcasts, this time may be extended to a maximum of ten minutes (16,66%) during broadcasting hours between 7.00 p.m. and midnight and in strictly exceptional cases. If the broadcasting time does not involve an hour between a full hour, advertising may be broadcast for not more than 10 % of the time (\neq art. 18 §2 TVWF Directive).

Notwithstanding these provisions, programme services that are exclusively intended for programmes in which the audience is invited to order goods or services may be broadcast on television (see below V Quantitative restrictions related to teleshopping programmes).

On a number of occasions (i.e. SB 215/00 and 319/00 regarding prolonged ice-hockey games) sporting events have lasted longer than expected leading to delays in the broadcast of advertising and thus violations of the rules on maximum transmission time devoted to advertising within a given clock hour. For this reason the Swedish Government on 15 January 2004 proposed a change in the rules as of 1 May 2004.

According to the Government Bill (*Proposition 2003/2004:66, Reklamtid i TV*), in television broadcasts, advertising may be extended to a maximum of ten minutes during broadcasting hours between 7.00 p.m. and midnight. There would no longer be a stipulation that the extension of advertising from eight to ten minutes during these hours be permitted in strictly exceptional cases only.

Also, the government has proposed that the allowed time of advertising within a given clock hour could be extended if the broadcaster proves it likely that the time limits have been exceeded due to a recent event that has led to an earlier advertising broadcast having to be excluded and the broadcaster could not reasonably be expected to have taken this event into account when planning the broadcast, and if the event was beyond control of the broadcaster, and as long as the total advertising time during a full hour does not exceed twelve minutes.

- Other quantitative restrictions

There are no other quantitative restrictions.

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

Chapter 7, section 12, RTL stipulates that the provisions regarding quantitative restrictions for advertising do not apply to commercial advertising by the broadcaster for the broadcaster's own programme services (\pm // art. 18 §3 TVWF Directive).

Information about a sponsor of a television broadcast (see below VI Sponsoring, 1.2) is not to be included in the advertising time (chapter 7, section 8, RTL).

The provisions regarding quantitative restrictions for advertising do not apply to teletext selected by the viewer (chapter 7, section 12, RTL).

b. Conclusion

- Other rules more or less restrictive than the TVWF Directive

Swedish rules are formally less restrictive as there is no maximum percentage of daily transmission time and hourly transmission time devoted to advertising and teleshopping spots and for other forms of advertising. This is due to the fact that under Swedish law, teleshopping is included in the concept of “advertising” (see below V Teleshopping).

In fact, Swedish rules are more restrictive since the maximum daily transmission time devoted to advertising, which in Sweden includes teleshopping spots, is 10 % compared to 20 % in the Directive.

Swedish rules are also more restrictive in that the maximum daily transmission time devoted to advertising spots within a given clock hour is eight (13,33%) – or in strictly exceptional cases ten (16,66%) minutes – compared to twelve minutes (20 %) in the Directive.

Special rules more restrictive than the rules in the TVWF Directive apply to public service television (SVT and UR) where advertising is prohibited according to the broadcasting licenses issued by the Government. Advertising to promote programmes to be broadcast on public service channels and advertising to promote programmes and products related to broadcasts by the UR are permitted though.

It is noticeable finally that public service announcements and charity appeals broadcast free of charge are not expressly excluded from advertising.

- Identification of specific rules not included in the Directive, in particular rules aimed to the reduction of the advertising volume

Contrary to i.e. advertising in newspapers, there is no generally applicable tax on television advertising. However, according to the Law Regarding Concession Fees for Television and Radio (*Lag om koncessionsavgift på televisionens och radions område, 1992:72*), a broadcaster who has been granted a licence to broadcast nationwide analogue terrestrial TV must pay a concession fee if that broadcaster has an exclusive right to broadcast advertising in analogue terrestrial TV. In practice, the law has affected only commercial channel TV4. The law was implemented in 1992, at a time when public service channels SVT1 and SVT2 and commercial channel TV4 had a dominant position in the area of television broadcasting.

The law was implemented as an attempt at setting competition right since SVT1 and SVT2 are prohibited from broadcasting advertising. The concession fee constitutes of a fixed amount as well as a flexible amount payable in percentage of advertising revenue. A Swedish Government Official Report published in May 2003 suggests a gradual abolishment of the concession fee in view of the decision by the Swedish Government to abandon analogue terrestrial broadcasts in favour of digital terrestrial TV by 1 October 2007.

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

a. Regulations

- Minimum duration of windows devoted to teleshopping programmes

There are no specific rules as regards minimum duration of windows devoted to teleshopping programmes. The distinction between “windows” devoted to teleshopping programmes and teleshopping “spots” does not exist in the RTL (\neq art 18 Bis.1 TVWF Directive).

As regards teleshopping in programme services that are not exclusively intended for programmes in which the audience is invited to order goods or services (sales programmes), which would correspond with teleshopping “spots”, the general rules on television advertising apply.

- Maximum number of windows devoted to teleshopping programmes

There are no specific rules as regards maximum number of windows devoted to teleshopping programmes. The Swedish law does not work with the concept of “windows” devoted to teleshopping programmes (\neq art. 18 Bis .2 TVWF Directive).

As regards teleshopping in programme services that are not exclusively intended for programmes in which the audience is invited to order goods or services (sales programmes), which would correspond with teleshopping “spots”, the general rules on television advertising apply.

- Maximum daily duration

There are no specific rules as regards maximum daily duration of teleshopping windows (\neq art. 18 Bis .1 TVWF Directive). Chapter 7, section 5, RTL simply stipulates that, notwithstanding the provisions in the RTL regarding maximum duration of advertising, programme services that are exclusively intended for programmes in which the audience is invited to order goods or services (sales programmes) may be broadcast on television.

As regards teleshopping in programme services that are not exclusively intended for programmes in which the audience is invited to order goods or services (sales programmes), which would correspond with teleshopping “spots”, the general rules on television advertising apply.

b. Conclusion

- Other rules more or less restrictive than the TVWF Directive

The rules of the Directive are not implemented in the Swedish regulation. There are no particular quantitative restrictions as regards windows devoted to teleshopping under Swedish law.

Whether teleshopping is expressly allowed, it is considered as advertising, which has to be considered as more restrictive than the Directive.

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

There are no specific rules aimed at the reduction of teleshopping programmes.

VI. Sponsoring (Article 17 TVWF Directive)

a. Regulations

- Editorial independence of the broadcaster

There are no specific rules related to editorial independence of the broadcaster (≠ art. 17 §1 a TVWF Directive).

- Sponsor identification

According to chapter 7, section 8, RTL, the identity of the sponsor or sponsors is to be stated, in an appropriate manner, at the beginning or the end of the programme, or both. A message of this nature must be constantly displayed on teletext selected by the viewer. There is no requirement for a special signature (see above, II Advertising recognition, Rules related to recognition of advertising and teleshopping spots) prior to and after such information about the identity of the sponsor or sponsors (±// art. 17 §1 b TVWF Directive).

- The insertion of the sponsor's name or logo within the programme

Sponsoring is to be regarded as advertising and thus the general rule that advertising is to be broadcast between programmes applies. The message may also be inserted during breaks. The sponsor's name or logo may not be inserted within the programme (chapter 7, sections 7 and 8, RTL and Bill 1995/96:160, p. 180; ±// art. 17 §1 b. TVWF Directive).

Slogans, address, opening hours are prohibited.

- Programmes that cannot be sponsored

Chapter 7, section 8, RTL stipulates that a programme which primarily involves news or current affairs may not be sponsored (// art. 17 §4 TVWF Directive).

- Rules related to the content of the message

There are no general rules regarding the content of a sponsor's message.

According to chapter 7, section 9, RTL, a programme may not be sponsored by any person or entity whose primary activities involve the manufacture or sale of tobacco products (// art. 17 §2 TVWF Directive).

If a pharmaceutical company sponsors television programmes, the sponsorship may only promote the company's name or reputation and may not promote products subject to prescription and medicinal treatments that are only available by prescription (chapter 7, section 10, RTL; ± // art. 17 §3 TVWF Directive).

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

There are no rules concerning the maximum duration of the mentioning of the sponsor's name or logotype and/or the maximum daily/per hour volume.

- Other rules eventually limiting the volume of sponsorship

There are no other particular rules limiting the volume of sponsorship.

- Other relevant rules

The general rule in chapter 6, section 4, RTL stipulating that programmes that are not advertising may not promote commercial interests in an improper manner applies.

b. Conclusion

- Other rules more or less restrictive than the TVWF Directive

The rules on sponsoring in the RTL alone are less restrictive than the rules in the TVWF Directive.

There are no rules related to the identification of the sponsor other than those related to advertising identification.

However, the rules in the RTL are complemented by rules on sponsoring in the RTL transmission licences granted by the government. The licences thus contain rules on **editorial independence** and content of the sponsor's message. Public service broadcasters SVT and UR may not transmit sponsored programmes where the contribution by the sponsor has been made directly available to SVT/UR or where the contribution has substantially reduced the cost of the programme in question (section 21 licence for SVT; section 18, licence for UR).

As regards SVT, sponsoring is permitted in connection with sports events and, on certain conditions, broadcasts from public gatherings or official events organised by SVT (section 21). Sponsoring of programmes mainly directed at children aged twelve or below is prohibited (section 21). The logotype of the sponsor may be used only if there is no risk that it may be interpreted as a product or service on offer by the sponsor. The sponsoring message may not be followed by music (section 22).

The other main licence holding broadcaster, TV4, may – apart from the restrictions in the RTL (i.e. that news or current affairs may not be sponsored) – sponsor all programmes except programmes mainly directed at children aged twelve or below (section 15, licence for TV4).

There is no direct equivalent in the RTL or the Swedish transmission licences to the rule in Article 17 of the TVWF Directive that the content and scheduling of sponsored programmes may in no circumstances be influenced by the sponsor in such a way as to affect the responsibility and editorial independence of the broadcaster in respect of programmes.

In case law, the SBC has ruled that a **sign with the name of the sponsor** only is not enough to fulfil the requirements of clarity of a sponsoring message according to chapter 7, section 8, RTL (SB 86/00). Nor is a sign with the name of the sponsor and the words “thanks to” permissible (SB 293/00, SB 67/00). In the case SB 748/02 concerning a sponsoring message broadcast on SVT in connection with the football World Cup 2002, the sponsoring message featured a man dressed in black sports clothes in a football goal. The logotype of the sponsor was shown on the goalpost, on the man's hand and foot and on a football. The SBC found that the sponsoring message was designed too much like an advertisement, thus contravening the rule in section 22 of the SVT transmission licence that the logotype of the sponsor may be used only if there is no risk that it may be mistaken for a product or service offered by the sponsor.

Product placement is prohibited in accordance with the ban on surreptitious advertising (see below, section VII, Product placement). However, it is not generally prohibited **showing products** related to the sponsor of a television programme during the sponsored programme. Only promotion of commercial interests in an improper manner is prohibited (chapter 6, section 4 RTL). According to the SBC, the promotion of commercial interests is permissible if it is justified by information or entertainment reasons. The lesser the information or entertainment value, the lesser the extent to which the promotion of commercial interests is permissible, and contrary, the greater the information or entertainment value, the greater the extent to which commercial interests may be promoted. A well known sponsored Swedish lottery programme regularly shows the prizes contributed by the sponsors of the programme. Whereas generally accepted, the SBC on one occasion (SB 246/02) ruled that the exposure of the products constituted improper promotion of commercial interests. During the broadcast, the sponsors' products were exposed. Also, short films describing the products/lottery prizes were shown. The films clearly resembled the television advertising films employed for the products at the time. In another case, SB 322/03, the SBC ruled that a sponsored broadcast raising funds for Third World children contravened the prohibition in chapter 6, section 4 RTL. During the programme, the viewers could win cars contributed by the sponsor. The cars were exposed in a way that the SBC found to be unlawful.

There are rules related to editorial independence in the media's ethical code (see above, II Advertising recognition, Other rules more or less restrictive than the TVWF Directive). According to the ethical rules, broadcasters should reject ideas, information and propositions to programmes if they are connected with requirements on performances that include advertisement in any form. Also offers of **free or discounted trips for editorial staff, gifts, and other privileges should be rejected** (section III, 2). **Names should not be mentioned of companies or organisations that give or distribute prizes or in other ways participate**, for instance as sponsors or organisers of contests, parties, charity events etc., unless there is a journalistic valid purpose. As for sponsorship in the sense of the RTL and the broadcasting licences, the rules set out there apply (section III, 6).

Regarding the companies that cannot sponsor a programme, pharmaceutical companies can only promote their name or reputation.

- Specific rules not included in the Directive, in particular rules aimed to the reduction of sponsored broadcasts

There are no specific rules not included in the Directive aimed at the reduction of sponsored broadcasts.

VII. New advertising techniques

- Split screens

There are no particular rules on the authorisation to use split screen technique. The general rules on television advertising apply.

Swedish TV4 (a commercial broadcaster) uses the split screen technique, but so far not for advertising purposes. Instead, the technique has been used to broadcast sponsoring messages at the end of feature films. Also stock-exchange quotations have been given using this technique.

- Interactive advertising

There are no particular rules regarding the conditions of use of the interactive advertising technique. The general rules on television advertising apply.

- Virtual advertising

Virtual advertising is prohibited in accordance with the ban on surreptitious advertising stipulated in chapter 6, section 4, RTL and the rules on insertion of advertising in chapter 7, sections 7, 7a and 7b. This has been confirmed in case law emanating from the Swedish Broadcasting Commission.

The Commission has in two cases concerning Premier League football matches broadcast on Swedish Canal + found that virtual advertising contravenes the rules on surreptitious advertising and the rules on insertion of advertising (SB 121/02 and SB 787/02). In the case SB 121/02, concerning two football matches broadcast on 17 December 2001 and 23 January 2002, the British broadcaster had inserted virtual advertising signs for visitbritain.com and Barclaycard on either side of the goal behind the white line. The signs were visible when the players moved in the area around the goal. In one of the matches a virtual advertising sign for visitbritain.com had also been inserted in the midfield of the pitch. Regardless of the fact that Canal + could not affect the presence of the signs, the Broadcasting Commission ruled that Canal + had contravened chapter 7, section 1 (acoustic and visual signal before advertising) and section 7 (advertising to be broadcast between programmes). The circumstances were similar in the case SB 787/02.

- Product placement

Product placement advertising technique, including virtual product placement is prohibited in accordance with the ban on surreptitious advertising stipulated in chapter 6, section 4, RTL and the rules on insertion of advertising in chapter 7, sections 7, 7a and 7b.

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

a. Regulations

- Indication of the rules to the content of commercial messages

The guidelines for the content of all television broadcasts, including commercial messages, are set out in chapter 6, section 1, RTL.

There it is stipulated that a person or entity that broadcasts television or sound radio programmes under a licence issued by the Government is to ensure that the overall programme services reflect

- the fundamental concepts of a democratic society;
- the principle that all persons are of equal value;
- the freedom and dignity of the individual.

The rule in chapter 6, section 1, RTL has been enacted partly to implement Article 12 of the Directive. However, the provision in Article 12 (d) and (e) that advertising and teleshopping shall not encourage behaviour prejudicial to health or to safety and behaviour prejudicial to the protection of the environment has no equivalent in the Swedish rule (\neq art. 12 TVWF Directive).

b. Conclusion

- Existence of other rules more or less restrictive than the TVWF Directive

The RTL does not contain all the provisions of article 12 TVWF Directive.

The ICC International Code of Advertising Practice, which is applied by the MER (see above II, Advertising recognition, Other rules more or less restrictive than the TVWF Directive) and the Trades Ethical Council against Sexism in Advertising (*Näringslivets etiska råd mot könsdiskriminerande reklam*), hereinafter ERK, contains rules on advertising and teleshopping content. According to Article 4 advertisements should not condone any form of discrimination, including discrimination based upon race, national origin, religion, sex or age, nor should they in any way undermine human dignity. Advertisements should not without justifiable reason play on fear. Advertisements should not appear to condone or incite violence, or to encourage unlawful or reprehensible behaviour. Advertisements should not play on superstition.

Article 13 stipulates that advertisements should not without reason, justifiable on educational or social grounds, contain any visual presentation or any description of dangerous practices or of situations which show a disregard for safety or health.

In Article 17 it is stipulated that advertisements should not appear to approve or encourage actions which contravene the law, self-regulating codes or generally accepted standards of environmentally responsible behaviour.

The ICC rules basically correspond with the rules in the TVWF (see below, Identification of specific rules not included in the Directive, though), but on a self-regulatory basis (versus legal basis).

MER has investigated and made statements about three complaints regarding advertising on television during 2003-2004. Two of the complaints have regarded ethnical discrimination (statement 9/03) and discrimination based on national origin (statement 11/03; discrimination of Finnish people). The MER did not find that the ethical code had been violated.

In the third case, the MER found that television advertisements made by Coca Cola (8/03) had violated Articles 4 and 14 p.2. The advertisement had been made to resemble a horror film. The MER found that the advertisement appeared to condone violence. Moreover, it was broadcast before 9 p.m. when children could be expected to be watching, thus contravening Article 14.2 (see below, IX Specific products and targets, Emphasis placed upon the existence of other rules more or less restrictive than the TVWF Directive).

- Indication of specific rules not included in the Directive

The rule in the ICC International Code of Advertising Practice that advertisements should not appear to condone or incite violence is not included in the Directive.

IX. Specific products and targets

a. Regulations

- Tobacco products (Articles 13 and 17 TVWF Directive)

Chapter 7, section 9, RTL refers to the prohibition of commercial advertising for tobacco products in the Tobacco Act (Tobakslagen 1993:581) (6); (// art.13 TVWF Directive).

Section 14 of the Tobacco Act stipulates that commercial advertising on television may not be used to market tobacco products to consumers.

According to chapter 7, section 9, RTL, a programme may not be sponsored by any person or entity whose primary activities involve the manufacture or sale of tobacco products (// art. 17 §2 TVWF Directive).

- Medicines (Article 14 TVWF Directive)

Rules regarding pharmaceutical products are set out in chapter 7, section 10, RTL. Section 10 stipulates that commercial advertising for pharmaceutical products subject to prescription and medical treatments that are only available by prescription may not be broadcast on television unless it concerns a message that a programme has been sponsored by a pharmaceutical company (// art. 14 §1 TVWF Directive).

However, if a pharmaceutical company sponsors television programmes, the sponsorship may only promote the company's name or reputation and may not promote products subject to prescription and medicinal treatments that are only available by prescription (// art. 14 §2 TVWF Directive). There are no specific rules related to teleshopping.

Sales programmes for pharmaceutical products or for medicinal treatments may not be broadcast on television.

Whereas the SBC is the authority monitoring most parts of the RTL, the rules on advertising of pharmaceutical products set out in the RTL are monitored by the KO.

- Alcoholic beverages (Article 15 TVWF Directive)

A distinction is made between alcoholic beverages containing more or less than 2,25% of alcohol.

More than 2,25%

Chapter 7, section 9, RTL refers to the prohibition of commercial advertising for alcoholic beverages in the Alcohol Act .

Chapter 4, section 10 of the Alcohol Act stipulates that commercial advertising on television may not be used to market alcoholic beverages to consumers.

According to chapter 7, section 9, RTL, a programme may not be sponsored by any person or entity whose primary activities involve the manufacture or sale of alcoholic beverages (≠ art. 15 TVWF Directive).

Less than 2,25%

Beverages containing alcohol, but less than 2.25 % per volume may be advertised on television. The Swedish Brewers' Association and the member companies have reached an agreement regarding advertising of low alcohol beer and other low alcohol drinks. These guidelines contain detailed rules concerning prohibited and permitted advertising media; format limits for advertising and detailed stipulations regarding the design of text and images in advertising. The following must be observed in order to fulfil the requirements.

Clarity

The marketing must clearly indicate that it advertises low alcohol beer, and make sure that other low alcohol drinks will not be mistaken for alcoholic drinks. In advertisements, including television advertisements, the word "lättöl" (low alcohol beer), or the product term, "Klass I" must be used at least once in a sufficiently large type size and be shown for a sufficient length of time to enable the viewer to read/interpret it easily in its entirety. If the name of the trademark is spoken or sung in an advertisement, including advertisements on television, this must be immediately followed by the word "lättöl" or "Klass I". Regarding advertisements for other low alcohol drinks, the term low alcohol drink, low alcohol cider, actual alcohol content or similar has to be added.

Content of the advertising

In order to eliminate doubt as to whether the advertising is for low alcohol beer or other low alcohol drinks, i.e. the following must be observed:

- Advertising must not be associated with alcohol consumption and its intoxicating effects. For examples of elements not permitted, see below;
- Advertising must not show situations where, according to conventional opinions, alcohol consumption should not occur.

Appendix to agreement on low alcohol beer advertising:

The following elements are prohibited in the advertising of low alcohol beer and other low alcohol drinks:

- The depiction of people who are clearly, through expression or behaviour, affected by alcohol;
- The use of words such as “beer” or other words used in such a way that they are associated with beverages stronger than low alcohol beer;
- The use of images from other situations where it is obvious that alcohol consumption takes place;
- The use of models who are or appear younger than 25 years of age (\pm // art. 15 a TVWF Directive);
- The depiction of interiors or other environments and situations which may offend the viewer;
- The expression of disparaging remarks about non-alcoholic beverages;
- The insinuation that sexual performance is enhanced by the consumption of alcohol (\pm // art. 15 c. TVWF Directive).

These rules "implement" more or less the provisions of the Directive but one must notice that it is a self-regulatory code

- Minors (Article 16 TVWF Directive)

Chapter 7, sections 4 and 7 b RTL, contains a complete ban on commercial advertising directed at children younger than twelve years (\neq art. 16 TVWF Directive).

It is stipulated that commercial advertising in a television broadcast may not be designed to attract the attention of children under twelve years of age. Also, individuals or characters that play a prominent role in programmes which are primarily addressed to children under twelve years of age may not appear in commercial advertising in a television broadcast.

The prohibition on advertising directed at children in the RTL is monitored by the KO. The KO has investigated seven cases related to the prohibition. In four of those cases (MD 1993:13, MD 1998:17, MD 2001:8 and MB 2002:31) the MD found that the advertisement in question was directed at children, contrary to the rules in the RTL.

In the case KO ./ De Agostini (Svenska) Förlag AB (MD 1998:17) some important principles were established. After a preliminary ruling from the EC Court of Justice the MD ruled that the Swedish prohibition on advertising directed at children is permissible. The MD also ruled that it is possible for Swedish courts to intervene when advertising on television broadcast in Sweden does not conform to the MFL. However, it is not possible for Swedish courts to intervene when a broadcaster whose head office is situated in another EU Member State, where there is no prohibition on advertising directed at children, broadcasts such advertising in Sweden, since broadcasters for the purpose of the TVWF Directive are under the jurisdiction of the Member State in which the head office is located (TVWF Directive, Chapter II, Article 2).

Broadcasters that have been granted licenses by the Swedish government (broadcasters using the analogue terrestrial technique) have had to agree not to broadcast advertisement directed at children according to the terms of their licences. However, broadcasters using satellite and with a head office outside Sweden have been able to broadcast advertisement directed at children as well as advertisements for alcoholic beverages. One such broadcaster is Viasat Broadcasting UK Limited, hereinafter Viasat, the broadcaster behind Swedish channels TV 3, TV 8 and ZTV.

Until now, Viasat has transmitted broadcasts by satellite. However, on 29 January 2004 the government granted Viasat a licence for digital terrestrial broadcasts. According to the terms of the license, Viasat will not be allowed to broadcast advertisement directed at children, though there is still no prohibition on broadcasting advertisements for alcoholic beverages. The licensing is of interest since the Swedish Government has decided that analogue terrestrial broadcasts shall be abandoned by 1 October 2007.

ICC Code

Article 14 of the ICC International Code of Advertising Practice contains rules on advertising directed at children. The rules include stipulations such as the following.

Advertisements should not exploit the inexperience or credulity of children and young people. Advertisements should not contain any statement or visual presentation that could have the effect of harming children and young people mentally, morally or physically or of bringing them into unsafe situations or activities seriously threatening their health or security, or of encouraging them to consort with strangers or to enter strange or hazardous places.

Advertisements should not suggest that possession or use of a product alone will give the child or young person physical, social or psychological advantages over other children or young people of the same age, or that non-possession of the product would have the opposite effect.

Advertisements should not undermine the authority, responsibility, judgement or tastes of parents, taking into account the current social values. Advertisements should not include any direct appeal to children and young people to persuade their parents or other adults to buy advertised products for them.

b. Conclusion

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

The Swedish rules and the rules in the TVWF Directive correspond as regards tobacco, medicines and medical treatment.

Relevant rules in the MFL applies to marketing of medicines and beverages with an alcohol content of less than 2,25 % alcohol per volume, such as light beer on television.

Medicines

The rules are in compliance with Directive. However, no specific provision deals with teleshopping while general rules apply thereto.

The Association of the Swedish Pharmaceutical Industry (*Läkemedelsindustriföreningen*) has adopted rules based on codified laws and case law, as well as on regulations about drug information and drug advertising contained in pharmaceutical legislation and other enactments or in directives issued by government agencies, and also on non-statutory provisions, such as the ICC Code of Advertising Practice. The rules are concordant with WHO's ethical rules for marketing drugs and the IFPA and the EEPIA Codes of Pharmaceutical Marketing Practices. The rules apply to advertising on television. The rules include provisions that the drug information shall be easy to recognise as such (section 5).

Alcohol

The regulation is based on the distinction between beverages over and under 2,25% of alcohol, advertising for beverages over 2,25% being strictly prohibited.

The Directive is stricter in that it stipulates that consumption of alcohol shall not be linked to enhanced physical performance or to driving and that it shall not claim that alcohol has therapeutic qualities, is a stimulant, a sedative or a means of resolving personal conflicts.

The elements prohibited according to the Brewers' Agreement to some extent correspond with the rules regarding advertising and teleshopping for alcoholic beverages in the TVWF Directive. The rules in the agreement are stricter in that people affected by alcohol may not be shown in advertisements and in that models that are or appear younger than 25 years of age may not be used.

There is no rule in the Brewers' Agreement similar to the rule in the Directive that advertising shall not place emphasis on high alcoholic content as being a positive quality of the beverages has no equivalent. That is probably due to the fact that only low alcohol drinks can be advertised on television in Sweden.

Minors

The Swedish regulation provides for a ban on advertising directed at minors under the age of twelve, which can be considered as more restrictive than the Directive. However, some provisions of the Directive i.e. prohibition of unreasonably showing minors in dangerous situation, have a broader scope than advertising directly addressed to minors.

The ICC rules and the rules in the TVWF Directive basically correspond, though the ICC rules are in some respects more detailed.

In 2003 the MER investigated one complaint regarding breach of Article 14 of the ICC rules (see above VIII Advertising and teleshopping content, Existence of other rules more or less restrictive than the TVWF Directive).

Identification of specific rules not included in the Directive

All advertising and teleshopping, for alcoholic beverages of more than 2,25 % alcohol is prohibited.

Also, programmes may not be sponsored by anyone whose primary activities involve the manufacture or sale of alcoholic beverages (chapter 7, section 9, RTL).

The RTL contains a complete ban on advertising directed at children (chapter 7, sections 4 and 7 b, RTL). Also, individuals or characters that play a prominent role in programmes which are primarily addressed to children under twelve years of age may not appear in commercial advertising in a television broadcast (see above II Advertising recognition, Separation between the commercial content and the programme).

Broadcasts that are subject to conditions of impartiality may not include information broadcast on behalf of a third party and which are designed to win support for political or religious views, or views relating to special interests in the labour market sphere. Such information is to be regarded as advertising (RTL, chapter 6, section 5). That means political and religious advertising is prohibited in all terrestrial transmissions, as government licences granted in accordance with RTL chapter 2, section 1 (see above II Advertising recognition, Rules related to recognition of advertising and teleshopping spots) are always subject to conditions of impartiality.
