

**AUSTRIA**

**- SUMMARY -**

**This summary has been drafted by Bird & Bird Brussels  
on the basis of the national report**

## Television

The Austrian audiovisual legislation can be found in the Broadcasting Act and the Cable and Satellite Broadcasting Act.

We note that Austria makes a distinction between public (the ORF) and private broadcaster.

### **1. Definitions**

- Advertising is defined exactly the same as in the Directive TVWF.
- Sponsorship is defined exactly the same as in the Directive TVWF.
- Teleshopping is defined exactly the same as in the Directive TVWF.
- Other relevant definitions, such as broadcaster: *“the person, that – except the ORF – creates and/or composes radio or television programmes (analogue or digital) for the transmission by cable or satellite or aerial transmission and that transmits them or has them transmitted unaltered by third parties. Persons solely retransmitting programmes only are not regarded as broadcasters”*.

### **2. Advertising**

Advertising is allowed under the law both to the public and the private broadcasters.

#### **a) Rules on insertion in and between programmes**

##### **➤ Regarding the public broadcaster:**

Advertising can be inserted between the programmes. It is not permitted to insert advertising in the public programmes. Insertion of advertising in the programme is only allowed regarding the broadcasting of sport events and the transmission of similarly structured events and performances containing intervals.

Regarding the insertion of advertising on the ORF's thematic channels, which can be broadcasted by the ORF subsidiaries, the ORF Act contains specific provisions about it that are similar to the ones of the directive TVWF.

Furthermore as advertising-free days, the law specifies “good Friday”, the “1st of November” and the “24th of December”.

➤ **Regarding the private broadcasters**

The Broadcaster Act contains similar provisions as the one of the directive TVWF. Regarding the prohibition to insert advertising in certain programmes, the private broadcasting Act contains stricter rules than the Directive TVWF: *“Advertising and teleshopping shall not be inserted in any broadcast of a religious service, news, current affairs programmes and children’s programmes. Only news and current affairs programmes and documentaries may be interrupted by advertising provided their duration is longer than 30 minutes”*.

**b) Rules on the maximum amount of advertising**

➤ **Regarding the public broadcaster**

The ORF is allowed to broadcast advertising programmes only “inside Austria”. On the yearly average, advertising broadcasts must not exceed 5% of the daily length of programmes, deviations of not more than 20% per day is admissible.

The determination of the length of permissible television advertising is to be based on a daily transmission time of not more than 14 hours per day and per programme. This means that on the yearly average, the ORF may use a maximum of 2.92% of its transmission time for advertising on each of its two channels.

➤ **Regarding private broadcaster**

The Private TV Act contains the same provisions as the one in the Directive TVWF.

**3. Tele-shopping**

The public broadcaster (ORF) is not allowed to broadcast teleshopping in its programmes. Regarding the Austrian provisions on teleshopping, there is the same as the one mentioned in the Directive TVWF.

**4. Sponsorship**

The Austrian law allows sponsorship for both public and private broadcasters. There are no specific rules regarding the duration and the insertion in and between the programmes. Regarding the announcement, the general rules of the Directive TVWF have been taken over exactly. In addition, stricter provisions apply to the ORF, such as

the reference to the sponsor of a specific programme during the programme is not allowed. Further more the ORF Act prohibits the so-called “theme sponsoring” which means that someone who pays for the programme must not set any requirements regarding the theme on which a broadcast is based. Regarding private broadcasters, the provisions of the Directive TVWF have been taken exactly in the Private Broadcasting Act.

## **5. Product Placement - Surreptitious advertising**

The ORF Act contains a ban on product placement for the public broadcasting programmes (cinema, films, television films and television series being explicitly excluded). The ORF allows the showing of product only if it cannot be avoid during sports events and if the advertising cannot be influenced by the broadcaster. Moreover, the product placement in children’s programmes is prohibited.

## **6. New advertising techniques**

### **a) split screen techniques :**

At this stage, only the ORF uses the split screen technique for the simultaneous transmission of tv programmes and other information (e.g. stock market prices during news programmes). There are no specific regulations concerning this technique.

### **b) virtual advertising**

The ORF is using virtual advertising only on its own productions. The ORF states that virtual advertising could endanger the journalistic quality of programme if the broadcaster has not the full responsibility concerning the insertion of virtual items. As mentioned above, advertising may be inserted during natural breaks in sports events. Analogous rules are applicable to private broadcasters.

### **c) interactive advertising (digital television)**

There is no information available.

## Radio

Radio advertising is permitted on all radio broadcasters (public and private).

➤ **Regarding private radio broadcaster**

The Private Radio Act states that advertising programme must not exceed a daily maximum of 172 minutes on an annual average basis, with a maximum permissible deviation of 20%.

➤ **Regarding public radio broadcaster**

The rules for the public radio broadcaster are stricter: one nationwide radio programme must be free from advertising while the length of advertising must not exceed a daily maximum of 172 minutes on an annual basis in the second nationwide radio programme, with a maximum permissible deviation of 20% per day. Regarding the third nationwide radio programme, the average annual duration of advertising must not exceed 8% of a daily broadcasting time.

## **Internet and Mobile Phone**

The Media Act is applicable to Internet. According to this legislation, the term media comprises all means used to disseminate information and presentations with intellectual content by words, sounds or images to a large group of persons using methods of mass production or mass dissemination. Therefore, the Internet is included in this definition. Regarding the “unsolicited commercial e-mail”, Austria has an opt-in solution, which means that the user must agree from the outset that he or she consents to receive commercial e-mails. The e-mail advertising is generally prohibited in Austria is the first EU member state to issue an explicit statutory ban on unsolicited e-mail advertising.

Regarding the advertising by means of mobile telephony, the Telecommunication Act states that such advertising is considered as unfair practices if unsolicited. Unless there is a permanent business relationship between the parties or the subscriber has explicitly consented to it beforehand.

**BELGIUM**

**- SUMMARY -**

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## Television

In Belgium the audiovisual field is governed by the powers of the Communities. Each Community has established and developed its own regulatory legal framework. Consequently, in Belgium there are three distinct legal systems depending on the Community concerned: Flemish (regulation applicable: the Co-ordinated Decrees of 25 January 1995), French (regulation applicable: Decree of 17 July 1987) and German-speaking (regulation applicable: Decree of 26 April 1999).

### 1. Definitions

#### ➤ **Flemish Community**

- Advertising: the decree uses the same definition as the TVWF Directive.
- Tele-shopping: the decree uses the same definition as the TVWF Directive.
- Sponsorship: the decree uses the same definition as the TVWF Directive.
- Other relevant definitions:

#### ➤ **French Community**

- Advertising: the decree uses the same definition as the TVWF Directive, but without directly including the broadcasting of self-promotion messages as specified in the TVWF Directive.
- Tele-shopping: the decree uses the same definition as the TVWF Directive.
- Sponsorship: the decree uses the same definition as the TVWF Directive.
- Other relevant definitions:

“Non-commercial publicity”: *“any message broadcast in exchange for payment or similar reward and that combines the following conditions: a) it is broadcast for the purpose of serving the general interest, b) it is requested by a public person, of whatever form, by a non-commercial body under the control, supervision or dependence of the public authorities, by an international institution in public or private law or by a professional, social, cultural, scientific or sports organisation or association, c) it contains no indication of product trade marks or products or services nor any reference to such a trade mark, either in the form of the message or by its identification with a similar message that does include such a reference; products or services can only be presented under a generic name, d) it does not mention the name of any company or the name of any legal person other than those envisaged under b) above, and makes no reference thereto either by the form of the message, or by identification with a message that does include such a reference”*. This definition is not given either in the Directive or in the other decrees in force in the other communities.



➤ **German-speaking Community**

- Advertising: the decree uses the same definition as the TVWF Directive.
- Tele-shopping: the decree uses the same definition as the TVWF Directive.
- Sponsorship: the decree uses the same definition as the TVWF Directive.
- Other relevant definitions:

2. **Advertising**

a) **Rules on insertion between and within programmes**

➤ **Flemish Community**

All the tele-broadcasting bodies approved by the Flemish Community are authorised to broadcast messages of advertising, self-promotion or general interest, except for the public channel VRT (and its second channel Canvas) which, pursuant to the decrees, must limit itself to the dissemination of messages of general interest, self-promotion or sponsorship.

In principle, advertising is inserted between programmes. However, the decree allows the broadcasting of advertising within programmes provided that certain conditions are respected, these being identical to the ones listed in Article 11(1) of the Directive. The decree also specifies two rules banning the interruption of a programme by advertising, which are more restrictive than the Directive, namely that children's programmes must not be interrupted by advertising and advertising must not be broadcast within a 5-minute period preceding or following children's programmes.

➤ **French Community**

As regards the rules on the insertion of advertising between or within programmes, the rules in the decree are similar to those in the TVWF Directive. For the public broadcasting bodies of the French Community, advertising must not interrupt either a cinematographic work, or any work whose author wishes to preserve its integrity, or a programme sequence.

Furthermore, as regards the rules banning insertion, the French Community's decree is more restrictive than the TVWF Directive's stipulations since it is not permitted to insert advertising into television news broadcasts even when these are longer than 30 minutes.

➤ **German-speaking Community**

As regards the rules on the insertion of advertising, in principle advertising is inserted between programmes and within programmes under certain conditions (similar to the TVWF Directive). Nevertheless, the decree is more restrictive regarding the banning of insertion. In effect, Article 7 of the decree bans insertion into the following programmes,

regardless of their length: news, news magazines, documentary films, religious broadcasts, children's broadcasts and the broadcasting of religious services.

## **b) Rules on duration**

### **➤ Flemish Community**

As regards duration, the rules given in the decree are the same as those in the TVWF Directive, except for the provision that imposes a maximum of 15% of the daily broadcasting time for **advertising and tele-shopping spots**. For the regional channels, however, it is specified that the transmission time devoted to advertising must not exceed 15% of the annual broadcasting time, with a maximum of 600 hours.

### **➤ French Community**

As regards the rules relating to the transmission time devoted to television advertising, the decree stipulates the same rules as the Directive. There is, however, a particular provision limiting the transmission time, that applies to RTBF. On the one hand, the transmission time devoted to commercial publicity must not exceed an average daily duration of 6 minutes per hour of transmission. On the other hand, the daily transmission time devoted to commercial publicity on each of RTBF's channels between 7.00 p.m. and 10.00 p.m. must not exceed 21 minutes. This time may be increased to 24 minutes for up to a limit of 63 days per year at most, and that ceiling must not be reached for more than 12 days per month.

### **➤ German-speaking Community**

The rules given in the decree are similar to those in the TVWF Directive.

## **3. Tele-shopping**

### **➤ Flemish Community**

The decree distinguishes between tele-shopping broadcasts and tele-shopping channels authorised to broadcast exclusively tele-shopping programmes (to date, there is no tele-shopping channel in the Flemish Community).

As regards tele-shopping spots, the rules on duration, insertion between and within programmes, and the bans applicable are the same as those mentioned earlier for advertising.

As regards tele-shopping programmes, television channels not specialised in tele-shopping can group tele-shopping programmes together in sections under the following conditions: the sections must last at least 15 minutes without interruption (identical to the

TVWF Directive, Article 18 (a.1)), the maximum number of sections is 8 per day and their total duration must not exceed 3 hours per day (identical to the TVWF Directive, Article 18 (a.2)), they must be made identifiable as sections of tele-shopping broadcasts by suitable visual and acoustic means, and the tele-shopping sections must not be interposed between programme elements (a provision that is more restrictive than the TVWF Directive), the dissemination of tele-shopping broadcasts is banned in the immediate environment of children's programmes, i.e. within a time period of 15 minutes before or after the programme.

#### ➤ **French Community**

Let us note to start with that the government of the French Community's executive has not yet transposed all the provisions of the TVWF Directive. Thus, no provisions relate to tele-shopping channels or even spots, whose parameters are clearly set by the Directive.

The decree stipulates that the provisions related to advertising are also applicable to tele-shopping. In addition, the decree specifies (Article 26 ter, § 4, 6 and 7) that:

- the maximum number of screens reserved for tele-shopping broadcasts is set at 8 screens per day,
- the minimum duration of each screen is set at 15 minutes,
- the government may ban the broadcasting of tele-shopping programmes during certain hours and days. Moreover, tele-shopping must not exceed the duration set by the government, which is at most 3 hours,
- tele-shopping broadcasts must not be interrupted, in particular by advertising or sponsorship messages, and must be programmed in screens reserved for them to avoid any confusion with other broadcasts,
- tele-shopping programmes must make no direct or indirect reference to an identified or identifiable point of sale.

This provision is more restrictive than the stipulations of the TVWF Directive.

#### ➤ **German-speaking Community**

The rules laid down are identical to those in the TVWF Directive. As for the rest, the rules on advertising are applicable.

### **4. Sponsorship**

#### ➤ **Flemish Community**

The rules in the TVWF Directive apply for sponsorship. It should be noted that a sponsorship announcement must not be made immediately (i.e. within an interval of 5 minutes) before or after children's programmes.

At the beginning and/or the end of the programme the message may mention: the sponsor's name, logo, product, product trade mark; acoustic or visual signs and animated images are permitted; the duration is set, at 5 seconds per sponsor and at most 10 seconds in all.

Furthermore, a sponsorship announcement can be made at the beginning and/or the end of part of a programme. In this case the only things that may appear (without animation and for at most 5 seconds) are the sponsor's name, the commercial name, the logo, the product and the name of the product or service.

For sports events, events structured in a similar way and presentations interrupted by a break, there may be animation in the sponsorship announcement between the independent parts or during the pauses. During sports events the sponsorship may be mentioned during the time and trade mark indication (maximum 5 seconds, animated images allowed).

In announcement spots the sponsor can be mentioned. The message can mention the sponsor's name, the logo, a product, the product's trade mark, and the message may be animated (maximum duration 5 seconds per sponsor or 10 in total).

The decree indicates that any other sponsoring message is banned.

#### ➤ **French Community**

It is explicitly stipulated that the provisions relating to advertising do not apply. Sponsorship must be announced in the credits broadcast before and after the sponsored programme, or at the beginning and end of a sequence clearly distinct from the programme itself and in the advertising trailers that promote the said programme, unless by express derogation from the government following an opinion of the advertising ethics commission. The time during which a sponsorship announcement appears must not exceed 10 seconds, with a maximum of 6 announcements per hour.

Children's broadcasts may not be sponsored on the RTBF and in subsidised public broadcasting bodies.

#### ➤ **German-speaking Community**

The rules are identical to those in the TVWF Directive.

### **5. Product placement - Surreptitious advertising**

#### ➤ **Flemish Community**

Except for inevitable publicity and the rules relating to advertising, programmes must not promote a product or service. The decree provides an exception in the case when prices

are offered to viewers, but the presentation of the product must not be accentuated by moving images, visual accents, additional mention or enlargement of the trade mark and/or logo on screen or by any supplementary acoustic mention. Consequently, it is permitted to present the trade mark, the logo, and a brief technical description of the product. No mention must be made of product price in the spots that announce the programmes.

➤ **French Community**

The decree contains a definition of surreptitious advertising identical to that given in the Directive.

The decree says nothing about product placement.

➤ **German-speaking Community**

The decree says nothing about product placement.

**6. New advertising techniques**

**a) The split screen technique**

There is no regulatory definition of the split screen technique, and in any case the technique is not used in Belgium.

**b) Interactive advertising**

There is no regulatory definition of interactive advertising, and in any case the technique is not used in Belgium.

**c) Virtual advertising**

There is no regulatory definition of virtual advertising, and in any case the technique is not used in Belgium.

## Radio

### ➤ **Flemish Community**

The radio has its own rules regarding insertion between or within programmes. When radio programmes are interrupted, a period of at least 10 minutes must pass between each consecutive break within the programme. As regards bans and maximum percentages of advertising broadcasts per day and per hour, it is appropriate to apply the rules relating to television.

### ➤ **French Community**

The decree provides that the transmission time devoted to commercial and non-commercial publicity must not exceed 12 minutes per hour. For public bodies, it is provided that the government may adopt more restrictive rules.

### ➤ **German-speaking Community**

The decree does not lay down particular restrictions regarding insertion or the duration of advertising.

## **Internet and mobile Phone**

It should be mentioned that there is a preliminary legal draft on the transposition of the e-commerce directive into Belgian law. As regards commercial communications, that draft proposes a principle of identification and transparency. Thus, the preliminary draft obliges advertising that is part of an information society service or that constitutes such a service to identify itself. More particularly, as regards the sending of advertisements by electronic mail, the same identification obligation is laid down, with an “opt-in” variant.

As regards mobile telephony, there is no specific regulation on advertising messages disseminated by this medium. Consequently, it is appropriate for the general duties specified in the law on commercial practices to be considered applicable.

**DENMARK**

**- SUMMARY -**

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## **1. Definitions**

### **➤ Advertising:**

There is no specific definition of the notion of “advertising” in the Radio and Television Broadcasting Act.

### **Sponsoring:**

The definition in the Executive Order on Radio and Television Advertising and Programme Sponsorship is quasi similar but somewhat broader to the definition in the directive TVWF. According to the Danish law, sponsoring means “*any contribution, direct or indirect, to the financing of radio or television programmes, including teletext pages, from a natural or legal person not engaged in the broadcasting or production of radio or television programmes, films, phonograms, etc. with a view to promoting the name, trade mark (logo), image, activities or products of the person*”.

### **Teleshopping:**

There is no specific definition off the notion of “teleshopping” in the Danish law. According to Danish law, teleshopping is categorised as advertising. Therefore the Danish rules on advertising apply in their entirety to teleshopping. Currently, there are no Danish broadcasters broadcasting teleshopping (only broadcasters holding foreign licences).

## **2. Advertising**

### **a) Rules on insertion in and between programmes**

Advertising must be inserted in blocks between programmes. Since Danish law does not allow the programmes to be interrupted by advertising breaks, the rules are more restrictive than the provisions contained in the directive TVWF.

## **b) Rules on the maximum amount of advertising**

Advertising may occupy a maximum of 15% of daily transmissions and a maximum of 12 minutes per hour (cfr art 6.1. of the Executive Order on Radio and Television Advertising and Programme Sponsorship). If the individual licensee is licensed to broadcast for less than one hour, the 12 minutes must be proportionately reduced. The Danish rules are more restrictive than directive TVWF.

## **3. Tele-shopping**

### **Rules on insertion in and between programmes**

The Danish law does not specify the rules on insertion. We assume teleshopping is therefore subject to the general rules on advertising.

### **Rules on the maximum amount of teleshopping**

Television advertisements, which are in the nature of direct offers to the viewers to buy, sell or rent products and services may not exceed one hour per day and, furthermore, such advertisements must be included in the 15% maximum advertising time set out above (article 6.3 of the Executive Order on Radio and Television Advertising and Programmes Sponsorship).

In addition, the Executive Order on Radio and Television Advertising and Programme Sponsorship provides that the teleshopping may not in the aggregate exceed one hour per day (article 6.3)

The Danish rules are more restrictive than articles 18 and 18a of the directive TVWF as the part of daily transmissions taken up by advertising may not exceed 15% of the total daily transmissions. The Danish law contains no special rules regarding teleshopping blocks.

## **4. Sponsoring**

Sponsoring of programme is allowed if clearly identified as such by the name and/or logo of the sponsor at the beginning and/or the end of the programmes. Such credit may not appear in the programme itself. The sponsor's name may appear as moving images containing the sponsor's name and/or trademark (logo), except for programme addressed to children. In no circumstances may the sponsor's name and/or trademark (logo) be

accompanied by a special sound background associated with the sponsor or its products. The other rules related on sponsoring are similar to the ones of the directive TVWF.

## **5. Product placement – Surreptitious advertising**

Danish law prohibits the surreptitious advertising. However, products are allowed to be included in programmes if not for marketing purposes. According to the case law and the Consumer Ombudsman, depending on the circumstances, surreptitious advertising may be characterised as contrary to good marketing practice and contrary to the provision on misleading advertising.

## **6. New advertising techniques**

### **a) Split screen technique**

Is not used in Denmark and there is no specific legislation regarding this technique.

### **b) Virtual advertising**

Is not used in Denmark and there is no specific legislation regarding this technique.

### **c) Interactive advertising.**

Is not used in Denmark and there is no specific legislation regarding this technique.

## **Radio**

Basically, the rules regarding the radio advertising are identical to the general rules of television advertising. The Danish Broadcasting Authority and communal aerial installations broadcasting programmes in areas exceeding the area of a single local radio board cannot distribute advertising. The other approved commercial radios are entitled to distribute radio advertising.

The advertising must be inserted in blocks between the programmes. Advertising may occupy a maximum of 15% of daily transmissions and a maximum of 12 minutes per hour. If the individual licensee is licensed to broadcast for less than an hour, the 12 minutes must be proportionately reduced.

## **Internet and mobile phone**

There are no special rules applying to marketing on the Internet, the main rule being that the general rules of Danish law apply.

It should be noted that, under section 6a of the Marketing Practices Act, suppliers are not allowed to make unsolicited calls via e-mail with a view to sell goods or services. The Nordic Consumer Ombudsmen issued a common position paper on how trading and marketing on the Internet should be carried out in accordance with the existing Danish regulation (the Marketing Practices Act).

There are no specific rules governing marketing via mobile phones, which means that the general rules of Danish law apply.

**SPAIN**

**- SUMMARY -**

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## Television

### 1. Definitions

- **Advertising:** The General Law on Advertising gives the same definition as the TVWF Directive and specifies that messages devoted to self-promotion are not regarded as advertising.
- **Sponsorship:** The General Law on Advertising gives a definition which is similar to the Directive's definition, but is more shaded. The difference is that the "sponsor" and the "sponsored" are regarded respectively as active and passive subjects, and the relationship established between them is contractual in nature.
- **Tele-shopping:** The General Law on Advertising gives exactly the same definition as the TVWF Directive.
- **Other relevant definitions:**  
**Indirect advertising:** any publicity which, without mentioning products directly, uses trade marks, symbols or other distinctive elements of the said products or of companies whose main or known activities comprise their production or their marketing.

### 2. Advertising

#### a) **Rules on insertion within and between programmes**

Spanish law uses the same terms as the Directive. Spanish law introduces the possibility that during sports broadcasts, retransmissions of the event can coincide on the receiver's screen with advertising or tele-shopping text messages during natural pauses in competitions (the only image permitted being the logo of the trade mark); the said messages must not occupy more than one-sixth of the area of the screen.

#### b) **Rules on duration**

Spanish law specifies the same percentages as those in the Directive. The time devoted to advertising (taking all techniques together) per hour must not exceed 17 minutes, or 12 minutes if self-promotion is excluded. This is a general limitation, although some Autonomous Communities have set lower thresholds.

### **3. Tele-shopping**

There are no specific regulations on tele-shopping channels. The broadcasting of tele-shopping spots is governed by the same rules as in the Directive. Tele-shopping and self-promotion channels are not subject to these limitations.

### **4. Sponsorship**

As a publicity insertion technique, sponsorship is subject to the same rules as all advertising on television.

### **5. Product placement – Surreptitious advertising**

There are no specific regulations, although certain techniques such as *product placement* are becoming more and more frequent in the various audiovisual media. The technique is therefore unrestricted. Only the provisions applicable to indirect advertising allow this technique to be restricted when the content of the advertising is banned (for example: indirect advertising for tobacco products or alcoholic drinks). Consequently, indirect advertising is permitted except if there is an express ban.

### **6. New advertising techniques**

#### **a) The split screen technique**

This technique is not used and there are no specific regulations concerning it in Spain.

#### **b) Virtual advertising**

Other than on two or three occasions, for test purposes, advertisements of this kind have never been broadcast in Spain. There are no specific regulations.

#### **c) Interactive advertising**

Used with some frequency, but only for sports retransmissions. There are no specific regulations, but it can be considered to be covered by Article 3 of Law 25/1994: “*Television advertising ... any form of message broadcast on behalf of a third party*”.

The legislation also refers “*to any other treatment of images*”.

#### **d) Other new advertising techniques: N/A**



## **Radio**

Apart from the application of the general standards, there are no rules that relate to radio advertising in a specific way.

## **Internet and mobile Phone**

As regards advertising on the Internet and via mobile telephony, there are no specific regulations for example such as that on “spamming”. The legislation on data protection, the right to access personal information in databases and the self-regulation measures (Robinson list) of the Spanish Direct Marketing Association may apply.

**FINLAND**

**- SUMMARY -**

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## Television

The Finish audiovisual regulation is specified in the Act on Television and Radio Operations, referred hereinafter as TVRO.

### **1. Definitions**

#### ➤ **Advertising:**

Television and Radio advertising is defined as “*any form of announcement in television and radio broadcasting in return for payment or other consideration by a public or private undertaking in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property or rights and obligations, or in order to promote its own operation*”. This definition is similar to the one of the directive TVWF.

#### ➤ **Sponsorship:**

The TVRO states the same definition as the one of the Directive TVWF.

#### ➤ **Teleshopping:**

The TVRO states the same definition as the one of the Directive TVWF.

### **2. Advertising**

#### **c) Rules on insertion in and between programmes**

The Finish regulation makes a distinction between the public and the private broadcasting. The public broadcaster may not broadcast advertising in connection with its programmes. The Council of State shall, however, have the right to grant the broadcaster, for a special reason, a programmes-specific right to broadcast advertising.

The private broadcaster may broadcast advertising.

Regarding the rules on insertion in and between programmes, the finish law provides the same provisions as the ones of the directive TVWF.

#### **d) Rules on the maximum amount of advertising**

Regarding the rules on the maximum amount of advertising, the finish law provides the same provisions as the ones of the directive TVWF. It is specified that this time limit (the same as the directive TVWF) shall not include announcements made by broadcasters in connection with its own programmes and ancillary products directly derived from those programmes nor public service announcements and charity appeals broadcast free of charge.

### **3. Tele-shopping**

#### **a) Rules on insertion in and between programmes**

The Finish rules are the same as the one of the directive TVWF.

#### **b) Rules on the maximum amount of teleshopping**

The Finish rules are the same as the one of the directive TVWF.  
There are special rules for channel exclusively devoted to teleshopping.

### **4. Sponsoring**

The finish provisions on the sponsoring are the same as the one of the directive TVWF.

### **5. Product placement – Surreptitious advertising**

N/A

## **6. New advertising techniques**

### **a) Split screen technique**

Is not used by Finish television broadcaster and there is no specific legislation regarding this technique.

### **b) Virtual advertising**

Is not used by Finish television broadcaster and there is no specific legislation regarding this technique.

### **c) Interactive advertising.**

Is not used by Finish television broadcaster and there is no specific legislation regarding this technique.

## **Radio**

Advertising on radio is subject to the same regulation as advertising on television.

## **Internet and mobile phone**

There is no specific legislation concerning advertising on the Internet. However, the Nordic, Consumer Ombudsmen have given a position paper to trading and marketing on the Internet and similar communication systems (the Nordic Consumer Ombudsmen, December 1998) containing rules on identification, information obligations, electronic conclusion of the contracts, binding communication, payment, performance and complaints procedure, e-mails, registration and processing of data, marketing directed at children and young persons, etc.

Regarding the advertising on the mobile telephone, the general law on consumer protection and the Act on the Protection of Privacy and Data Security in Telecommunications are applicable. For example, the Telecommunication Act states that telecommunications may not be used for direct marketing without the prior consent of the subscriber if the calls to the called subscriber are made by means of automated calling systems or facsimile machines unless otherwise decided by the Ministry.



**FRANCE**

**- SUMMARY -**

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## Television

### 1. Definitions

- **Advertising:** *“any form of televised message broadcast in exchange for payment or other compensation and intended either to promote the provision of goods or services, including those presented under their generic name, in the context of a commercial, industrial, crafts or free professional activity, or to secure the commercial promotion of a public or private enterprise. This definition excludes direct offers to the public for the sale, purchase or rental of products or for the provision of services in exchange for payment”*. It is evident that unlike the TVWF Directive, this definition does not include the possibility of broadcasts for self-promotion purposes by a public or private enterprise.
- **Tele-shopping:** The Decree of 9 July 2001 amending the cable television decree gives the same definition as the TVWF Directive.
- **Sponsorship:** The Decree of 27 March 1992 issued in application of the law on freedom of communication of 30 September 1986, gives the same definition as the TVWF Directive.
- **Other relevant definitions:**

### 2. Advertising

#### a) **Identification of advertising messages**

Like the Directive, the Decree of 27 March 1992 provides that advertising messages must be clearly identifiable and clearly distinguished from the rest of the programme. However, the Decree also stipulates that when the characteristics of the television service do not allow advertising to be clearly identified as such, the agreements and conditions of contract may define the conditions in which that obligation is not satisfied. The decree also provides that the sound level of the announcement of advertising sequences must not be higher than that of the rest of the programme.

#### b) **Rules on insertion within and between programmes**

##### ➤ **For private channels**

In principle, advertising messages are inserted between broadcasts. It is permitted to interrupt programmes for the insertion of advertising messages subject to certain conditions (identical to those laid down by the TVWF Directive). There are different

rules about cinema services and pay-as-you-view, which must not include advertising messages.

➤ **For public channels**

The rules on advertising breaks on public channels are in the respective conditions of contract. These allow breaks only in two types of broadcasts: sports re-transmissions that include intervals, and broadcasts put out before 8.00 p.m. and composed of autonomous parts, provided that they are not audiovisual works and that the CSA has authorised their interruption.

➤ **Breaks in audiovisual works**

The Law of 30 September 1986 provides that works may only be interrupted once, unless an exception is granted by the CSA at the broadcaster's request. The exception can only apply to works lasting longer than 2 h 30 minutes. This provision is more restrictive than that given in the TVWF Directive.

**c) Rules on the duration of advertising**

In this area France has not yet reached the level of harmonisation prescribed by the TVWF Directive.

The maximum time devoted to the broadcasting of advertising messages is determined by the agreements and conditions of contract under the conditions laid down by the Decree of 27 March 1992 as amended by the Decree of 28 December 2001. Within the meaning of these decrees, the time devoted to the broadcasting of advertising messages must not exceed 6 minutes per antenna hour as a daily average in radio-wave broadcasting and 9 minutes in cable or satellite broadcasting. In addition, it must not exceed 12 minutes in any given hour, whatever the means of transmission. However, an agreement with the CSA may provide for longer broadcasting times of advertising messages by cable or satellite, and this to the benefit of the publishers of services which, on a channel assigned to a commune, a group of communes or an association, are intended to convey information about communal, intercommunal or local life.

For services intended solely for the national territory and which cannot be received directly or indirectly in one or more other Member States, those durations may be fixed at 12 minutes per antenna hour as a daily average, and must not exceed 15 minutes in any given hour. Reference should be made to the various agreements for the duration applicable for each broadcasting body.

**3. Tele-shopping**

The Decree of 9 July 2001 regulates tele-shopping. It distinguishes between tele-shopping channels and tele-shopping broadcasts. Its provisions conform with those of

the Directive. It is just stipulated that for services that reserve at least 50% of their broadcasting time for tele-shopping broadcasting and which are not received (in)directly in any other Member State or signatory to the EEA Agreement or part of the European Convention on Cross-Border Television, the agreement between the CSA and each of the broadcasting services may reduce or increase the duration of tele-shopping broadcasts and the number of broadcasts per day specified in the decree.

#### **4. Sponsorship**

The decree reiterates the rules given in the TVWF Directive and also specifies that “*the presentation of prizes consisting of the sponsor’s products or services is permitted when the sponsorship is intended to finance a broadcast of games or competition*”.

The sponsor may be identified by name, designation, corporate name, sector of activity, trade marks, or by the image factors and distinctive signs normally associated with the sponsor such as an acronym, logotype and acoustic sign, excluding any advertising slogan and the presentation of the product itself or its packaging.

However, when the sponsorship is for the purpose of financing a games or competition broadcast, the sponsor’s products or services may be presented free of charge as prizes to those involved, provided that they are not the object of any advertising argument.

During a sponsored broadcast and in its trailers the sponsor may not be mentioned other than briefly and discreetly, in a manner limited to a reminder of his contribution, and without any means of identification other than those mentioned in point III above.

#### **5. Product placement - surreptitious advertising**

Product placement is not regulated in France. In principle this technique could be regarded as surreptitious advertising. However, it is tolerated by the CSA which distinguishes between audiovisual works over which the broadcaster does or does not have control.

#### **6. New advertising techniques**

##### **a) Split screen technique**

At present there is no specific regulation on the use of advertising by means of split screen techniques. The CSA forbids this practice.

##### **b) Virtual advertising**

To date, there is no specific legislation concerning virtual advertising in France. The CSA has stated that it considers the technique might prove interesting in certain particular cases (for example, re-transmissions of sports events in which there are advertising posters which promote alcoholic or other drinks). However, the government has not followed this up. In line with the principles that govern advertising, this technique should be likened to surreptitious advertising, which is banned.

**c) Interactive advertising**

This form of advertising is not covered by any specific regulation. It is subject to two types of rules: those that govern televised advertising and, once the viewer has decided to access the service, those that apply to remote digital communication, which is governed by other texts.

**d) Other new advertising techniques**

## **Radio**

The Law of 30 September 1986 specifies that the agreement between the CSA and the person applying for authorisation to use a terrestrial or satellite radio frequency, must fix the maximum time devoted to advertising. For local publicity messages the maximum time authorised by the Decree of 9 November 1994 is 25% of the duration of local-interest programmes, excluding the advertising, per 24-hour period. Other rules too are specified in the Decree of 9 November 1994.

## **Internet and mobile Phone**

There is no specific regulation on advertising on the Internet. However, the accepted view is that the general principles of the law are applicable.

As regards the identification of advertising on the Internet, there is as yet no specific regulation on electronic mail or other forms of publicity messages disseminated on the Internet. There is a draft law of 14 June 2001, which specifies:

- that advertising and its broadcaster must be identified;
- a principle of transparency, respectively for commercial offers and promotional competitions and games;
- the possibility of being entered on a list, if the consumer does not wish to receive such advertising.

As regards mobile telephony, to date there is no specific regulation that applies to advertising on this medium.

**GERMANY**

**- SUMMARY -**

**This summary has been drafted by Bird & Bird Brussels  
on the basis of the national report**



## **1. Definitions**

### ➤ **Broadcaster :**

Broadcaster is defined in most of the media laws of the German states (“Länder”) in a nearly identical way referring to a broadcaster as somebody broadcasting the whole or a single program under his own editorial responsibility

### ➤ **Advertising:**

“Advertising is any announcement by a natural or legal person or a collective of persons in connection with a trade, business, craft or profession which is broadcast by public or private undertaker whether in return for payment or similar consideration or as self-promotion in order to promote the supply of goods or services, including immovable goods, rights and obligations.”

### ➤ **Sponsoring : Directive (except for the words "direct or indirect financing")**

### ➤ **Tele-shopping : Directive**

### ➤ **Other relevant definitions:**

## **2. Advertising**

### **c) Rules on insertion in and between programmes**

The regulation is identical to the rules provided in the Directive. Nevertheless the rules are stricter for public broadcasters:

Television programmes longer than 45 minutes may contain advertising and teleshopping spots once; this applies also if the programme is divided. Advertising and teleshopping spots may be inserted only between the autonomous parts or in the intervals in case that the events and performances broadcasted contain intervals. The calculation of the programmes’ duration takes into account the scheduled duration.”

In exception to section 3, 1<sup>st</sup> sentence advertising and teleshopping spots may only be inserted in the intervals in case of the broadcast of sport events containing intervals.”

#### **d) Rules on the maximum amount of advertising**

For commercial broadcasters the rules of the Directive TVWF apply. For public broadcasters the rules are stricter: the total airtime for advertising on working days is limited to 20 minutes per working day on an annual average. In case that the maximum allowance has not been utilised, public broadcasters may catch up with a maximum of 5 minutes per working day. Advertising is allowed neither after 8 p.m., nor on Sundays nor on public holidays existing in all the German states.

Hourly allowance: § 15 Abs. 3 RStV rules that spot advertising within an hour must not exceed 20 %.

### **3. Tele-shopping**

Tele-shopping is not allowed for public broadcasters. The rules on teleshopping spots and teleshopping windows are identical to the rules of the Directive TVWF. Tele-shopping broadcasts of a duration of less than 15 minutes are also allowed under the rules for long advertisements (included in max. advertising time).

### **4. Sponsoring**

The reference to the sponsor may be presented with moving images. In addition to or instead of the sponsors' name, also the emblem/logo or a trademark may be inserted. The sponsor credit has to explain the sponsors connection to the sponsored program. However, no additional advertising statements concerning the sponsor, products or trademarks except an image slogan are allowed.

The duration of sponsor credits have to be adequately short (the amount of time necessary to clearly identify the reference of the financial relationship between broadcaster and sponsor.)

Sponsor credits have to be inserted at least at the beginning or at the end of the program. References to the sponsor within the program are allowed before and after each advertising break. A programme announcement may mention the sponsor.

Content and the scheduling of the program must not be influenced by the sponsor in such a way to affect the broadcasters responsibility and the editorial independence. Sponsored programmes must not encourage to sell, to purchase, or to rent or lease products or services of the sponsor in particular by special references. This is generally the case if:

- within the programme products or services are presented, generally recommended or described as favorable which are offered by the sponsor or a third party;

- within sport, cultural or similar programmes products, services, names, trademarks or activities on bill boards or other items may be identified, where the producer or provider is the sponsor or a third party.

According to the TV-Code (no.12 section 8) it is possible to integrate the name of a company, a product or a trade mark with the name of a programme if no undue advertising prominence is provided.

In sports programmes company names may be shown during technical information (timing).

## **5. Product Placement - Surreptitious advertising**

German media regulation contains a definition of surreptitious advertising which is identical to the Directive TVWF. Product placement is allowed when it is justified by editorial needs, otherwise it is forbidden. As for prizes in games and shows: the provider can be mentioned twice and a short optical presentation of the prize is allowed.

## **6. New advertising techniques**

### **a) Split screen techniques:**

Are allowed and expressly regulated in Germany:

According to Art. 7 Abs. 4 RStV and the common advertising guidelines of the German federal media authorities for private broadcaster, split screen (Bildschirmteilung) is permitted under the following conditions:

- advertising has clearly to be separated by optical means from the rest of the program service, and shall be identified as such by the word “advertising” displayed on the part of the screen it occupies.
- The duration of the advertisement is fully counted for the purposes of the calculating of the overall time limits to be respected by broadcasters for teleshopping spots, advertising spots and other forms of advertising, as provided for in § 45 Abs. 1 und 2 RStV
- Split screen advertising shall not appear during religious programs and programs for children and young people.

## **b) Virtual advertising**

It is permitted in accordance with the German broadcasting law (Rundfunkstaatsvertrag) since April 2000. According to Art. 7 Abs. 6 Satz 2 Rundfunkstaatsvertrag (RStV) and the common advertising guidelines of the German federal media authorities for private broadcaster (Gemeinsame Richtlinien der Landesmedienanstalten für die Werbung) virtual advertising (virtuelle Werbung) is permitted under the following conditions:

- Only already existing advertising space at the venue can be replaced by virtual advertising.
- Static advertising cannot be replaced by moving images.
- The viewer must be informed at the beginning and the end of the program - either by optical or acoustical means – that virtual advertising has been used during the program.

## **c) Interactive advertising (digital television)**

There is no specific regulation at this moment. If interactive advertising is offered in a non-broadcasting environment (ex. internet) other regulation applies. The "Mediendienstestaatsvertrag" guarantees data protection, consumer protection and protection of minors.

## **Radio**

Radio is subject to similar rules as TV. The amount of advertising is restricted on public radio (maximum 90 minutes/day).

## **Internet, Mobile Phone, Cinema**

There is no specific regulation applicable to advertising distributed on the Internet or by Mobile phone. General regulation on consumer protection applies as well as self-regulatory codes.

For cinema there are two important differences with other audio-visual media: tobacco advertising is allowed. Also there is no prohibition on product placement and surreptitious advertising.

## Internet / Mobile Phone

There is no specific regulation for advertising communicated through the internet, but there is apart from the broadcasting regulation - special regulation for media services – “Mediendienste” (information- and communication services addressed to the public transmitted by electromagnetic vibrations).

According to § 9 MDSStV, there are only three general advertising principles which apply for “Mediendienste”:

- § 9 (1) – advertising, addressed to children or young people, shall not harm their interests and shall not take advantage of their inexperience
- § 9 (2) – advertising must be clearly recognizable as such and must be clearly separated from the rest of the content. The use of subliminal techniques is forbidden
- § 9 (3) – for sponsoring in media services apply the same rules than for sponsoring in television (§ 8 RStV).

Live stream television programmes on the internet are not considered as a broadcasting service but as a "Mediendienst" and thus it falls not under the application of TV-regulation.

In addition general regulation and self-regulation on advertising and consumer protection also applies to these media.

**GREECE**

**- SUMMARY -**

**This summary has been drafted by Bird & Bird Brussels  
on the basis of the national report**



## Television

- **Advertising**: Presidential Decree No 100/2000 gives the same definition as the TVWF Directive.
- **Tele-shopping**: Presidential Decree No 100/2000 gives the same definition as the TVWF Directive.
- **Sponsorship**: Presidential Decree No 100/2000 gives the same definition as the TVWF Directive.
- **Other relevant definitions**
  - **Surreptitious advertising**: The verbal or visual presentation a) of goods, b) of services, c) of the name, trade mark or activities of a producer of goods or provider of services in programmes, when this presentation is carried out intentionally by the television broadcasting body for advertising purposes and is likely to mislead the public about the nature of such a presentation. A presentation is regarded as intentional when it is carried out for payment or a similar reward (Article 2 of Presidential Decree No 100/2000).
  - **Televisual broadcasting**: The primary broadcasting, by wireless, cable or satellite means, whether coded or not, of televised programmes intended to be received by the general public. This includes the transmission of programmes between enterprises with a view to re-broadcasting to the public. The term does not include communication services that provide, by individual request, elements of information or other facilities such as telecopier services, electronic databanks and other similar services, unless audiovisual works of any kind are transmitted with these services (Article 2, a of Presidential Decree No 100/2000). The definition in the TVWF Directive as amended in 1997 does not mention that exception (*in fine*).

## 2. **Advertising**

### a) **Rules on insertion within and between programmes**

The rules laid down in the Decree are identical to those given in the TVWF Directive (Article 11 and those following it in the Directive).

In principle, advertising is inserted between programmes. However, it can also be inserted during programmes under the same conditions as those laid down by the

Directive. A detail is provided regarding the transmission of audiovisual works such as feature films and films made for television (excluding series, serials, entertainment broadcasts and documentaries), provided that their programmed duration is longer than 45 minutes, which may be interrupted once during each section of 45 minutes. In this case the break must not last longer than 9 minutes. Another break is allowed if their programmed duration is at least 20 minutes longer than two or more complete sections of 45 minutes (Article 5(2), indent c).

#### **b) Rules on duration**

In general the decree reiterates the same rules as the TVWF Directive (the transmission time must not exceed 15% of the daily broadcasting time and the transmission time devoted to advertising spots within a given one-hour period must not exceed 12 minutes). It is stated, however, as regards those authorised to provide coded services, that the transmission time devoted to advertising must not exceed 40% of the percentage specified in the preceding paragraph. In addition, any other break in the programme for the transmission of advertising spots must not exceed 4 minutes. The times specified in this article may be exceeded if the transmission of the last advertising spot begins before the maximum time has ended and when the total duration of that spot does not exceed 30 seconds (Article 5(3) of the decree).

As regards the transmission time devoted to messages broadcast by the television broadcasting body related to its own programmes and associated products directly and indirectly derived from its programmes, and to the various activities of the television broadcasting body (self-promotion), this must not exceed 15% of the daily transmission time. In all cases the transmission time devoted to advertising spots and self-promotion messages within a given one-hour period must not exceed 20% of the maximum time (Article 5(3) of the decree).

As regards the transmission time of messages of general interest broadcast free of charge by television broadcasting bodies within or outside the time devoted to advertising: the publicity broadcasting time on a daily basis and within any one-hour period can be increased to 20% if it includes tele-shopping, provided that the volume of advertising spots does not exceed 15%.

### **3. Tele-shopping**

The windows reserved for tele-shopping broadcasts must be clearly identified as such by audiovisual means. The rules on this and on insertion between and within programmes are the same as those mentioned for advertising.

The decree also specifies that as regards the period of televised programming between 6.00 p.m. and 1.0 a.m., the total duration of tele-shopping broadcasts within any one-hour period, apart from the said windows, must not exceed 6 minutes. During the months of January, July and August this duration can be increased to 12 minutes.

Tele-shopping broadcasts must not be interrupted by advertising messages (Article 7(3) of the decree).

#### **4. Sponsorship**

Presidential Decree No 100/2000 makes the same provisions as those in the TVWF Directive concerning sponsorship.

#### **5. Product placement – Surreptitious advertising**

In principle, televised programmes cannot show products or services for promotional purposes. However, the presentation of products during a programme may be justified by the content of the programme and may be unavoidable for reasons related to its artistic value. Consequently, the presence of products within broadcasts is judged on a case by case basis having regard to the rules governing surreptitious advertising.

#### **6. New advertising techniques**

##### **a) Split screen technique**

There are no regulations on the split screen technique, which is not used in Greece. Similarly, there are no codes of good conduct on the subject, adopted by the parties concerned.

##### **b) Virtual advertising**

There are no regulations on virtual advertising. Similarly, no codes of good conduct on the subject have been adopted by the parties involved (at national level). The technique is sometimes used during broadcasts of sports events, in particular during the transmission of basket-ball matches.

##### **c) Interactive advertising**

There are no regulations on interactive advertising. Similarly, no codes of good conduct on the subject have been adopted by those involved.

## **Radio**

Law 2328/1995 stipulates expressly that the rules governing televised advertising, sponsorship and tele-shopping are applicable to radio as well.

## **Internet and mobile Phone**

In light of the definition of televisual broadcasting (see “definition” above), it follows that when audiovisual works are broadcast via the Internet, the audiovisual regulations are applicable. For other services offered on the Internet, the rules relating to radio and television services do not apply.

There are no specific regulations concerning advertising messages disseminated by mobile telephony. It should be noted that in accordance with its statutes, the National Commission of Telecommunications and Post must draw up a code on the rights of consumers concerning services offered by any means of telecommunication, including advertising messages disseminated by mobile phone.

BIRD & BIRD

**ICELAND**

**- SUMMARY -**

**This summary has been drafted by Bird & Bird Brussels  
on the basis of the national report**

## Television

TV regulation is included in the Icelandic Broadcasting Act n° 53/2000.

### 1. Definitions

- **broadcasting** : refers to any transmission of programme material within the area of Icelandic jurisdiction, whether in form of speech, music or images, that is intended for direct reception by the general public and distributed by means of electromagnetic waves, by wire or over the air, in unencoded or encoded form.
- **advertising**: any form of announcement broadcast whether in return for payment or for self-promotional purposes by the broadcaster
- **sponsoring**: any contribution made by a legal or natural person to the financing of broadcasting programmes or their distribution with a view to promoting its name, its trademark, its image, its activities or its products.
- **tele-shopping: Directive**

### 2. Advertising

#### e) Rules on insertion in and between programmes

The rules are identical to the rules in the Directive.

#### f) Rules on the maximum amount of advertising

The rules are identical to the rules in the Directive.

### 3. Tele-shopping

The rules on tele-shopping spots are the same as those applicable for advertising. The rules on tele-shopping windows are identical to the rules provided in the Directive.

#### **4. Sponsoring**

The rules are similar to the rules included in the Directive.

#### **5. Product Placement - Surreptitious advertising**

The broadcasting Act prohibits surreptitious advertising and also states that sponsored programmes should not refer to products and services of the sponsor to promote their sale.

#### **6. New advertising techniques**

In Iceland only one broadcaster is using new advertising techniques such as split screen techniques. Other advertising techniques such as interactive advertising or virtual advertising are not used at all. There exists no specific regulation for these techniques and there are no projects to adopt new regulation in this field.



## **Radio**

Regulation is partly similar to TV regulation but less detailed. For example there are no rules on maximum amount of advertising or specific restrictions on insertion of advertising.

## **Internet, Mobile Phone and Cinema**

There is no specific regulation on advertising distributed on these media. The general rules on consumer protection, advertising, data protection etc apply.

**REPUBLIC OF IRELAND**

**- SUMMARY -**

**This summary has been drafted by Bird & Bird Brussels  
on the basis of the national report**

## Television

The Irish Codes of Standards based on the Broadcasting Act of 1990 implement the TVWF Directive and were modified in 1999. There is a new legislation that deals directly with broadcast advertising, the Broadcasting Act 2001.

### 1. Definitions

- **Advertising** is defined as “*any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotion purposes by a public or private undertaking in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment*”. The Codes then provides for certain exclusions from the definition of advertising.
- **Sponsorship.** There is several definition of the sponsorship. According to the BCI Codes, the sponsorship in broadcasting services shall be construed, for the time being, as any contribution made directly or indirectly by a public or private undertaking not engaged in television and/or radio broadcasting activities or in the production of audiovisual works, to the financing of television or radio programmes with a view to promoting its names, its trademark, its image, its activities or its product”. This definition is similar to the one of the Directive TVWF with the following difference: the BCI Codes refers to any contribution made directly or indirectly by an undertaking, whereas the directive simply refers to any contribution made.

On the other hand, the TRE Sponsorship Guidelines states that “Sponsorship is a relationship entered into with a broadcaster and any other organisation with the objective of promoting products, goods, interests or services for a consideration. Distinction is needed between what sponsorship is and what advertising is. Advertising is a message from a commercial or other body contained in a recognisable and separate entity, a commercial break. Sponsorship credits stand apart from commercial breaks and the minutage allowed for them”. This definition is not similar in wording to that in article 1(e) of the directive, although the substance of a relationship between broadcaster and another with a view to promoting property is similar.

- **Teleshopping** is defined similarly the same as in the Directive TVWF. The Irish definition refers to “other property”, whereas the directive is slightly more expansive in referring to “immovable property, rights and obligations”. Moreover, the directive refers to supply “in return for payment” whereas the Irish code is silent on that point.

- **Other relevant definition:**

- “**Cable system**” means a wired broadcast relay system;
- “**MMD system**” means a multipoint microwave distribution system used for the transmission of broadcasting services on a point to point basis;
- “**the Internet**” means a system commonly known by that name.

## **2. Advertising**

### **g) Rules on insertion in and between programmes**

Advertising and teleshopping material shall be inserted between the programmes. Advertising and teleshopping material may also be inserted during the programmes provided the respect of the same conditions as the ones mentioned in the Directive.

### **h) Rules on the maximum amount of advertising**

#### **➤ Regarding public broadcasting**

According to the Broadcasting Authority Act, 1960 which applies to the public broadcasters, “the total daily time fixed by the Authority for broadcasting advertisements and the distribution, determined by the Authority, of that time throughout the programmes, shall be subject to the approval of the Minister”. Currently, RTÉ and TG4 can show 6 minutes of advertising or teleshopping material per hour. However they can broadcast up to 7.5 minutes of advertising or teleshopping material per hour in peak times, provided that the daily allocation of advertising time is not exceeded.

#### **➤ Regarding independent broadcasting**

The Broadcasting Act, 2001 states that the Broadcasting Commission of Ireland shall make rules with respect to:

- The total daily time that shall be allowed for the transmission of advertising and teleshopping material on a broadcasting services, being a service which consists of a compilation of programme material supplied pursuant to a contract entered into under this Act or the Act of 1998, and
- The maximum period that shall be allowed in any given hour for the transmission of advertising and teleshopping material on such a broadcasting service or sound broadcasting services and the Commission may make different such rules with respect to different classes of broadcasting service or sound broadcasting service.

### **3. Teleshopping**

The general rules on duration of advertising and insertion of adverts within and between broadcasts also apply to teleshopping. However, it is specified that “forms of advertisements such as direct offers to the public for the sale, purchase or rental of products or for the provision of service shall not exceed one hour per day on any broadcasting service”. To date, Irish television occasionally features teleshopping spots, but as yet there are no dedicated teleshopping programmes. There is no distinction drawn between teleshopping spots and teleshopping programmes in the applicable legislation or Codes.

### **4. Sponsorship**

It is specified in the Broadcasting Act, 2001 that the Broadcasting Commission of Ireland shall prepare codes specifying standards to be complied with and rules and practices to be observed in respect of amongst other sponsorship. The Commission has as yet drawn up no such codes and rules. Thus, the current situation is that the sponsorship of broadcasting is still governed by BCI Codes made under section 4 of the 1990 Act.

The BCI provide further details on types of sponsorship. Accordingly, “sponsorship occurs where any or all of the following are present:

- Cash injection,
- Investment in kind and supply of goods, services or knowledge.

Cash injection is the provision of direct funding by a sponsor. Investment in kind is the acceptance of facilities or services from a sponsor”.

#### **RTE Sponsorship Guidelines**

“Sponsored programmes (as opposed to coverage of sponsored events) cannot include the name of the sponsor in the title of the programme.

The nature of the sponsorship must be made clear in the credits, thus;

- a) A sponsor funding part or whole of a programme should say one of the following two lines, ‘Sponsored by.....’ or ‘ In association with.....’.
- b) If a sponsor provides / makes the programme this too must be made clear, e.g. ‘Produced by.....’
- c) No credit can in anyway allow the broadcaster to abdicate its full responsibilities, e.g. ‘Brought to you by .....’.

Current advertising straplines or those used in the past three years may not be used in sponsorship credits. Nor can **credits** be subsequently used for advertising material while the sponsorship relationship is still in place. Credits may however be programme related and may also include product use.

While credits and advertising messages must be different, credits must still comply with all relevant Advertising Codes of Practice in force at the time.

Credits must not be confused with station announcements or news items thus the use of Continuity Presenters or Newsreaders is not acceptable either for visual purposes or as voiceovers.

In all cases RTÉ remains the final arbitrator on the suitability of credits”.

In comparison with the Directive, the RTÉ Sponsorship Guidelines are not based on the directive, in the same way that the BCI Codes are. Thus certain principles from the directive are echoed in the RTÉ Guidelines, but not directly referenced.

### BCI Codes

Section 19 of the BCI Codes on sponsorship provides an introduction to sponsorship, which is aspirational in tone. That section states that “editorial integrity is an essential basis for a broadcaster's output. Equally, the sponsorship of certain programmes is an attractive commercial proposition for many organisations, particularly corporate advertisers. It should be seen as a legitimate part of a broadcaster's revenue and a means of enhancing existing programmes or of making programmes which otherwise could not be included in the schedules”.

“Broadcasters should ensure that the programming responsibilities imposed by sections 18(1), 18(2), 18(1B), and Section 17 of the Broadcasting Authority Act, 1960 (inserted by Section 13 of the Broadcasting Authority (Amendment) Act, 1976) in the case of R.T.É., and Sections 9 and 18 of the Radio and Television Act, 1988, in the case of the Independent Broadcasting Contractors operating under the auspices of the Independent Radio and Television Commission<sup>1</sup>, must not be prejudiced by sponsorship”.

Section 20.1 of the BCI codes deals with the responsibilities of broadcasters. Section 20.1 states that “it is the responsibility of broadcasters to ensure that editorial integrity is not influenced by the presence of sponsorship. A sponsor:-

(i) must not be involved in the manufacture, supply or provision of a product or service which is listed as unacceptable in the Code of Standards, Practice and Prohibitions in Advertising and other forms of Commercial promotion in Broadcasting Services (Part I of the code),

(ii) must not be associated with a programme which addresses an audience to which its commercials are not permitted to appeal (e.g. alcoholic drink sponsorship of youth programmes is not permitted) or during which it would not be permitted to advertise,

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<sup>1</sup> Now known as the Broadcasting Commission of Ireland, since the Broadcasting Act, 2001.

(iii) should not have an involvement in the editorial content of the programme or appear to do so (// article 17, a of the directive).

Note: This is not intended to inhibit normal communication between a sponsor and a broadcaster”.

Section 21 of the BCI Codes deals with the general standards required of sponsored programmes. According to s21 “sponsored programmes shall meet the following requirements in addition to the more specific requirements for each programme category:

(i) 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 (// article 17, a of the directive);

(ii) they must be clearly identified as such by the name and/or logo of the sponsor at the beginning and/or end of the programmes; (In view of this identification requirement, logos would be acceptable as ‘bumper’ credits around advertising breaks during the programme) (// article 17, b of the directive + additional explanatory information).

(iii) they must not encourage the purchase or rental of the products or services of the sponsor or a third party, in particular by making special promotional references to those products or services other than in advertisements in commercial breaks (// article 17, c of the directive, the only difference being the insertion of the clarifying explanation “other than in advertisements in commercial breaks” in the Irish codes”).

Section 21.2 of the BCI Codes states “programmes may not be sponsored by natural or legal persons whose principal activity is the manufacture or sale of products, or the provision of services, the advertising of which is prohibited by the Code of Standards, Practice and Prohibitions in Advertising and other forms of Commercial Promotion in Broadcasting.

The subsidiary of a manufacturer or brand-seller of products, the advertising of which is prohibited, who uses a name or a trademark that differs completely from the manufacturers and whose activity is different from the production, distribution or provision of services in relation to such products may sponsor programmes”. These information are not included in the Directive.

Section 21.3 of the BCI Codes states “sponsorship involvement in any programme must not constitute advertising as defined in the Codes of Standards, Practice and Prohibition in Advertising and other forms of Commercial Promotions in Broadcasting Services”.

Section 23.3 of the BCI Codes states that “ special events coverage may involve the broadcaster in agreeing logistical and facilities support from commercial or Public Service bodies. In such circumstances credits and on-air acknowledgements of contributors may be permitted provided:-



- (i) acknowledgements take the form of a statement of information and are not based on copy supplied to the programme makers.
- (ii) credits are consistent with the programme style”.

In relation to sports programmes, section 23.4 of the BCI Codes states that “sponsors must be clearly identified as such by the name and/or logo of the sponsor at the beginning and/or end of programmes. Product placement by the sponsor is forbidden as is the display of advertising material “in studio” ”.

Section 23.5 of the BCI Codes states that “broadcasters must ensure that coverage of sporting events, in terms of the actual decision to cover and method of coverage is not in any way influenced by the presence of a sponsor or sponsorship.

Section 25.1 of the BCI Codes states that “presenters and other ‘on-air’ personnel must not make gratuitous reference to commercial products or services”.

Section 25.2 of the BCI Codes states that “under no circumstances shall presenters and other ‘on-air’ personnel advertise or promote during the course of a programme any products or events with which they are associated”.

Section 25.3 of the BCI Codes states that “product endorsement by programme presenters during the course of a programme is prohibited irrespective of source or purchase arrangement”.

Section 26 of the BCI Codes states that “it is not always possible in the interests of authenticity to avoid references to the names of commercial products or services or their incidental portrayal in radio and television programmes, but the practice known as ‘product placement’ is strictly forbidden”.

This material in sections 23 to 26 of the BCI Codes is not referred to in the directive. Thus the Irish codes are more detailed by the inclusion of this material limiting sponsorship of television broadcasts.

#### Regarding the rules on the duration and the insertion of the sponsorship:

- The RTE Sponsorship Guidelines states that “no sponsor’s message can appear within a TV programme.

Where commercial breaks appear within the programme the sponsor may be credited both going into and coming out of the break.

Credits at the beginning and end of a programme may be both visual and verbal but must not exceed 10 seconds in length. Where two or more sponsors are involved this may be extended to 15 seconds.

In and out of commercial breaks on television, credits may also be visual and verbal but must not exceed 7 seconds in length. On radio a verbal credit of similar duration can be given”.

- BCI Codes does not state any specific rules on the duration and insertion of sponsored programmes.

## **5. Product Placement - Surreptitious advertising**

The RTE Sponsorship Guidelines 2001 defines and prohibits product placement. The BCI codes states exactly the same principle about the practice known as product placement.

## **6. New advertising techniques**

### **a) Split screen techniques :**

There are no specific rules on this under Irish law or guidelines. This technique is not used on Irish broadcasting channels. There are no decisions or guidelines of public media authorities on this issue. No projects of regulation of self promotion currently exist.

### **b) Virtual advertising**

There are no specific rules on this under Irish law or guidelines. This technique is not used on Irish broadcasting channels. There are no decisions or guidelines of public media authorities on this issue. No projects of regulation of self promotion currently exist.

### **c) Interactive advertising**

There are no specific rules on this under Irish law or guidelines. This technique is not used on Irish broadcasting channels. There are no decisions or guidelines of public media authorities on this issue. No projects of regulation of self promotion currently exist.

## Radio

The radio legislation is the same as the law dealing with television advertising.

Section 3 of the 1990 act states that the total daily times for broadcasting advertisements should not exceed 7.5 per cent of the total daily programme transmission time and the maximum period so fixed to be given to advertisements in any one hour should not exceed five minutes<sup>2</sup>.

This was amended by s2 of the Broadcasting (Amendment) Act 1993 which empowers the Authority (RTE) to fix the total daily times for broadcasting advertisements, and the maximum period so fixed to be given to advertisements in any hour, subject to the approval of the Minister”.

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<sup>2</sup> Section 3 of the Broadcasting Act 1990 made specific provision for Atlantic 25 radio station. Section 3 stated “in the case of the sound broadcasting service known as ‘Atlantic 25’ operating on a longwave frequency and licensed under section 16 of the Principal Act, the total daily time for broadcasting advertisements shall not exceed 20 per cent. of daily programme transmission time and the maximum period to be given to advertisements in any one hour shall be as determined by the Authority”.

## Internet and Mobile Phone

Irish law does not currently regulate Internet advertising in terms of broadcasting, although the general law on consumer protection applicable to all media will apply to advertising on the Internet.

The European Communities (Protection of Consumers in Respect of Contracts Made by Means of Distance Communications) Regulations 2001 became law in Ireland in May 2001, implementing Directive 97/7/EC.

However, there is no specific self-regulation on advertising, sponsoring or sales offers on the Internet. Individual Internet Service Providers may choose to abide by the codes of the Advertising Standards Authority of Ireland, and request that advertisers on their service do so.

The mobile telephones in Ireland only carry advertising from the network service provider. There is no specific self-regulation on advertising, sponsoring or sales offers on mobile telephones. Individual telephone companies may choose to abide by the codes of the Advertising Standards Authority of Ireland, and request that advertisers on their service do so.

**ITALY**

**- SUMMARY -**

**This summary has been drafted by Bird & Bird Brussels  
on the basis of the national report**

## Television

### 1. Definitions

- **Advertising:** The draft Law of 6 August 1990 defines advertising as “*any televised message re-transmitted in exchange for payment or some other benefit, or for self-promotion purposes, by a public or private enterprise in the context of a commercial industrial or crafts activity or for the purpose of promoting the provision of goods or services in exchange for payment*”. This definition is identical to that of the TVWF Directive.
- **Tele-shopping:** Article 9 bis of the Law of 6 August 1990 gives the same definition as the TVWF Directive.
- **Sponsorship:** The Ministerial Decree of 9 December 1993 defines sponsorship as “*any contribution by a public or private enterprise not involved in an activity relating to television or radio, to the financing of programmes, for the purpose of promoting its name, trade mark, image, activities or products*”. This definition is identical to that of the TVWF Directive.
- **Other relevant definitions:**

### 2. Advertising

#### d) **Identification of advertising messages**

The Law of 6 August 1999 (*sic*) provides that advertising must be clearly identified by directly perceptible visual and acoustic means.

#### e) **Rules on insertion within and between programmes**

The regulations in Italy reiterate the same rules on the modes of insertion between and within programmes as the TVWF Directive. Thus, in principle advertising should be inserted between programmes. It may be inserted into them subject to respect of certain conditions identical to those of the Directive.

It is useful to note that no advertising must be introduced into animated cartoons, which is more restrictive than the TVWF Directive.

#### **f) Rules on the duration of advertising**

For information, the percentages given below include advertising screens, acoustic invitations and superimpositions, whereas promotions, citations, social campaigns, self-promotion messages, lottery spots, electoral propaganda spots and tele-shopping are not taken into account.

##### ➤ As regards public broadcasters

The broadcasting of advertising messages by a public broadcaster must not exceed 4% of the weekly programming schedule and 12% per antenna hour. Any possible excess must not exceed 2% during any hour and must be made up for during the previous or the following hour (Article 8(6) of the Law of 6 August 1990).

##### ➤ As regards private broadcasters

The broadcasting of advertising messages by a private broadcaster at national level must not exceed 15% of the daily transmission time and 18% of any hour. Any possible excess must not exceed 2% during any hour and must be made up for during the previous or the following hour (Article 8(7) of the Law of 6 August 1990).

The re-transmission of televisual advertising messages by private broadcasters for a televised broadcast on a local network must not exceed 20% of the programming time and 15% as a daily average of the total antenna time, and any exceptional excess, which must be no more than 2% during any given antenna hour, must be compensated during the preceding or the following hour.

Consequently, it emerges that the maximum daily transmission times for national televisions of the private sector are 15% and 20% for local televisions.

These percentages can be increased respectively to 20% for national broadcasters and to 35% for local broadcasters provided, however, that they do not exceed 72 minutes of advertising as a daily average. That quota includes the forms of advertising said to be “alternative”, in other words the promotional gifts sent to the public in the context of certain programmes.

### **3. Tele-shopping**

### **4. Sponsorship**

Sponsored broadcasts must be clearly identified as such and must indicate the sponsor’s name or logo at the beginning and at the end of the programme.

Sponsored programmes are regarded as advertising messages to the minimum extent of 2% of the duration of the programme itself to be included in the daily broadcasting limits Article 8(15) of the Law of 6 August 1990).

#### **5. Product placement – Surreptitious advertising**

As a reminder, Italian legislation requires advertising to be clearly identified as such. Having regard to that definition, the product placement technique is regarded as banned since it does not allow the viewer to distinguish the placement of a commercial product in the work from the work itself.

#### **6. New advertising techniques**

- **Split screen technique**
- **Virtual advertising**
- **Interactive advertising**
- **Other new advertising techniques**



## **Radio**

Article 8 of the Law of 6 August 1990 specifies the duration of advertising messages: the broadcasting of radio advertising messages by broadcasters in the private sector must not exceed, per antenna hour and respectively, 18% for a sound broadcast on a national network, 20% for a sound broadcast on a local network, and 5% for a sound broadcast on a national and local network by community broadcasters.

## **Internet and mobile Phone**

There are no specific regulations on advertising on the Internet support.

As regards mobile telephony, to date there are no specific regulations on advertising via that medium.

**GRAND DUCHY OF**  
**LUXEMBOURG**

**- SUMMARY -**

**This summary has been drafted by Bird & Bird Brussels  
on the basis of the national report**

## Television

### 1. Definitions

- **Advertising** : The Law on electronic media gives exactly the same definition as in the TVWF Directive.
- **Sponsorship**: The Law on electronic media gives exactly the same definition as in the TVWF Directive.
- **Tele-shopping**: The Law on electronic media gives exactly the same definition as in the TVWF Directive.
- **Other relevant definitions**: The Law on electronic media also defines the concepts of Luxembourg/non-Luxembourg programmes and programme transmission.
  - Luxembourg/non-Luxembourg programme: any television or sound radio programme of a broadcasting body (Luxembourgian, or one which is not covered by Article 2(3 or 4) of the Law on electronic media).
  - Programme transmission: the primary transmission, by wireless or cable and terrestrial or satellite means, whether coded or not, of a television or radio programme intended for the public. This covers the communication of programmes between enterprises with a view to re-transmission to the general public. It does not include communication services which, by individual request, provide elements of information or other facilities such as services of telecopying, electronic databanks and other similar services.

### 2. Advertising

#### a) **Rules on insertion within and between programmes**

The rules laid down by the Law on electronic media are the same as those given in the TVWF Directive (Article 11 and those following it in the Directive).

In principle, advertising is inserted between broadcasts. However, it may also be inserted within programmes under the same conditions as those stipulated by the Directive.

**b) Rules on duration**

The rules laid down by the Law on electronic media are the same as those given in the TVWF Directive (Article 18 of the Directive).

**3. Tele-shopping**

Any channel that is authorised to broadcast advertising can broadcast tele-shopping, provided that the rules on insertion and duration stipulated in the Law on electronic media and its implementing regulations are respected. The rules are identical to those in the Directive.

**4. Sponsorship**

No restriction on sponsorship is imposed in the Law on electronic media and its implementing Grand-Ducal Regulation of 5 April 2001. In addition, there are no specific regulations on the time during which the sponsor's name or logo may appear. Sponsored programme elements must be announced as such at the beginning and/or the end of the programmes.

**5. Product placement - Surreptitious advertising**

There are no specific regulations on product placement. Only the principle of the ban on surreptitious advertising is stated in the Law on electronic media.

**6. New advertising techniques**

**a) Split screen technique**

This technique is not used and there are no specific regulations pertaining to it in the Grand Duchy of Luxembourg.

**b) Virtual advertising**

This technique is not yet in use and there are no specific regulations concerning it.

**c) Interactive advertising**

This technique is not yet in use and there are no specific regulations concerning it.

**d) Other new advertising techniques**

## **Radio**

Some rules relating to television are applicable, except as regards the rules on broadcasting duration. In effect, so far as radio programmes on a broadcasting network are concerned, Article 18(3) of the Law on electronic media stipulates that these programmes must not contain advertising messages unless they do not exceed either 6 minutes per hour as a daily average or 8 minutes in any one-hour period. As regards local radio programmes, the same duration is allowed since the Grand-Ducal Regulation of 13 February 1992 sets the limits to be imposed on the volume of advertising messages that can be contained in local radio programmes (Article 1(c): “advertising messages shall not exceed a total of either 6 minutes per antenna hour as a daily average, or 8 minutes in any one-hour period”).

## **Internet and mobile Phone**

There are no specific regulations that apply to these media. The general rules on consumer protection and the electronic commerce directive (transposed by the Law of 8 September 2000) apply.

**THE NETHERLANDS**

**- SUMMARY -**

**This summary has been drafted by Bird & Bird Brussels  
on the basis of the national report**



## Television

### 1. Definitions

- **Advertising:** The Dutch Media Act makes a distinction between "advertising expression" and "advertising messages". The definition is broader and more general than the definition in the Directive TVWF.

Section 1jj and kk Media Act:

(jj) advertising expression: advertising messages or other expressions which clearly result in the public being encouraged to buy a specific product or to use a specific service, or in public opinion being influenced in a positive manner as regards a specific business, branch of industry or institution in a way which promotes the sale of products or the use of services;

(kk) advertising messages: messages which are unmistakably intended to encourage the public to buy a specific product or to use specific services, or to influence public opinion in a positive manner as regards a specific undertaking, branch of industry or establishment in order to promote the sale of products or the use of services;

- **Sponsoring :** The Dutch Media Act contains a somewhat different definition from the Directive TVWF:

Section 1 Media Act

In this Act and the provisions based upon it, the terms set out below shall have the following meanings:

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

(mm) sponsor: the public or private undertaking which sponsors a programme;

(nn) sponsor's contribution: the contribution provided by a sponsor;

- **Tele-shopping :** The definition in the Dutch Media Act is similar to the definition in the Directive.

Section 1 Media Act

In this Act and the provisions based upon it, the terms set out below shall have the following meanings:

xx. teleshop message: advertising expression in a television programme consisting of a direct offer to the public with a view to the supply of products or services for payment.

- **other relevant definitions:** The Media Act also defines "programme" and "programme service".

Section 1f Media Act

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

programme: a clearly distinct and as such recognisable part of a programme service;

## **2. Advertising**

### **a) Rules on insertion in and between programmes**

The Media Act makes a distinction between public broadcasting and commercial broadcasting.

#### **➤ Public broadcasting**

Only a few programmes can be interrupted by advertisement from the Radio and Television Advertising Foundation. This possibility has been codified in Section 41a.1 (d) Media Act with respect to (1°) programmes containing a report or a coverage from a sporting event, a stage performance or similar events or performances; (2°) programmes including a complete report of the event or performance.

The interruption has to take place during the natural breaks or between separate parts of the event or the performance and the responsible broadcaster has not made objections to the interruption because of the integrity, the character or the coherence of the programme. Specific rules regarding the timing of interruptions during the programmes are further laid down in Section 41 and the Media Decree. On the basis of Section 41a.2 Media Act, the Media Decree (Section 11.1 and 2) describes the following rules:

- the television programmes can only be interrupted once every 45 minutes (Section 11.1);
- the duration of the television programmes has to be longer than 90 minutes and the programmes must continue for 20 minutes or longer after the commercial break (Section 11.2a);
- the duration of the interruption must be 2 minutes or longer (Section 11.2b);
- the interruption must not affect the rights of the beneficiary (Section 11.2c), for example the copyright (moral rights) on a programme.

#### **➤ Commercial broadcasting**

The rules are similar to the provisions of the Directive (art.11). In the Netherlands the determination of the programme duration is done on the basis of a net-approach (the duration of the programme is determined by its length without commercial breaks or other breaks).

## **b) Rules on the maximum amount of advertising**

### **➤ Public broadcasting**

Yearly, the Radio and Television Advertisement Foundation (STER) may use a maximum of 6,5 percent of the broadcasting time for its commercials (and the settings for the commercials) (Section 39b Media Act jo. Section 7 Media Decree).

Per period of twenty-four hours, the STER is allowed to use a maximum of 15 percent per programme service network for its commercials (Section 41a.1 (a) Media Act).

Per 60 minutes, the STER can use a maximum of 12 minutes (20 percent) for commercials (Section 41a.1 (b) Media Act). Every commercial break has to last at least 2 minutes.

### **➤ Commercial broadcasting**

The rules are identical to the Directive TVWF. Every break has to last at least 2 minutes.

## **3. Tele-shopping**

Public broadcasters are not allowed to distribute teleshopping messages. Commercial broadcasters and teleshopping channels are allowed to transmit teleshopping spots. The rules are generally the same as the rules of the Directive TVWF. Nevertheless the Media Act states that no more than 20% of the total length of an entire programme service provided by a broadcaster within a given day, shall consist of teleshopping.

## **4. Sponsoring**

### **➤ Public broadcasting**

Sponsoring of programmes is not allowed unless it concerns programmes of a cultural nature, sporting events or a report of events for charity. In these cases the sponsor has to be mentioned at the beginning and/or at the end of the programme. The message can contain: name/logo or trademark of the sponsor, it has to be static, may not fill the whole screen and cannot include an advertising message. The message can have a duration of 5 seconds maximum.

## ➤ **Commercial broadcasting**

The programmes can be sponsored and the rules are similar to the rules included in the Directive TVWF. The sponsor has to be mentioned at the beginning and/or at the end of the programme, name/logo or trademark can be mentioned but advertising messages are prohibited. There is no maximum duration.

## **5. Product Placement - Surreptitious advertising**

Dutch media law applies the principle of "undue prominence". Naming or showing products in a programme is only allowed if it fits in the context of the programme and on the condition that the presence is not accentuated.

The Dutch Media Act also contains a definition and a prohibition on surreptitious advertising which is almost identical to the one contained in the Directive TVWF, except for the fact that the condition "the advertising might mislead the public as to its nature" is not included.

## **6. New advertising techniques**

### **a) Split screen techniques :**

Are not used and there is no specific regulation in the Netherlands. The Dutch Media Authority however issued a negative advice on the use of this technique (in casu: programme content was shown during advertising). The prohibition is based on the obligation to separate advertising from programmes.

### **b) Virtual advertising**

Is not used (except for one known case) and there is no specific regulation. It is permitted to use virtual techniques on the condition all the rules on advertising are observed.

### **c) Interactive advertising (digital television)**

Is used in the Netherlands but there is no specific regulation. All the existing rules on advertising apply.

**d) Other new techniques**

**Dotwin:** this is a button that the viewer has to attach to his screen and that has to be returned to the broadcaster to win a price. It is not regulated at this moment and the Commissariaat waits for further development.

**Combination of TV and Internet :** a commercial broadcaster wanted to transmit the (commercial) streaming video content of a website. This is not accepted on the basis of current audiovisual regulation.

## **Radio**

The rules on TV -advertising also apply to radio.

## **Internet and Mobile Phone**

There is no specific regulation but general rules on consumer protection , the e-commerce Directive (implementation is proceeding), self-regulatory codes ...apply. For mobile phone the Code for telephone information services applies and has to prevent abuse for advertising purposes.

**NORWAY**

**- SUMMARY -**

**This summary has been drafted by Bird & Bird Brussels  
on the basis of the national report**



## Television

The Norwegian audiovisual legislation is the Act regarding the broadcasting of 1992.

### **1. Definitions**

#### **- Advertising:**

There is no specific definition of television advertising. There is a general definition of advertising defined as “*any form of promotion of a product, service, cause or idea in return for payment or any other form of remuneration. Any form of announcement on television whose purpose is to promote the broadcaster’s own activity is also considered as advertising*”.

#### **- Sponsoring:**

According to the Act regarding Broadcasting, sponsorship is defined as “any direct or indirect contribution made to the production or transmission of one or more programmes by a natural or legal person not personally engaged in the production or broadcasting of such programmes”. The definition is broader than the one given in the directive TVWF.

#### **- Teleshopping:**

There is no specific definition of the teleshopping. Teleshopping is however considered to be included in the general definition of advertising.

### **2. Advertising**

#### **a) Rules on insertion in and between programmes**

In general, advertising is inserted between the programmes. Advertising may however be inserted in the programmes provided the following conditions, which are stricter than the ones given in the directive TVWF.

For example, the transmission of audiovisual works such as films and films made for television (including programmes and series based on fiction), may be interrupted by advertising provided that the duration of the interruption last more than 20 minutes.

In programmes such as transmissions of theatre and concert events, advertising shall only be inserted natural breaks. The same apply for sports events and other programmes consisting of autonomous parts, provided that autonomous parts last for at least 20 minutes.

It is not allowed to insert advertising in children's programmes.

#### **b) Rules on the maximum amount of advertising**

The provisions laid down in the Norwegian Broadcasting act are the same as the ones of the directive TVWF (the transmission time for advertising spots shall not exceed 15% of the daily transmission time. The proportion of advertising spot within a given clock hour shall not exceed 20%.

### **3. Tele-shopping**

#### **➤ Rules on insertion in and between programmes**

Norwegian law does not distinguish between teleshopping spots and teleshopping programmes. Teleshopping is as such considered as advertising and will therefore respect the general rules on advertising.

#### **➤ Rules on the maximum amount of teleshopping**

There is only one provision on duration of teleshopping: teleshopping or similar offers of sales, purchases or hire of products or services directed to the viewers shall according to the Broadcasting Act altogether not exceed one hour of the daily transmission time, and this time is calculated in the transmission time for the advertising spots. This rule is stricter than the one provided in the directive TVWF where transmission time for teleshopping comes in addition to transmission time for advertising spots.

### **4. Sponsoring**

Regarding the content of the sponsoring, the Norwegian provisions are the same as the one of the directive TVWF. The sponsor may only be identified verbally and/or by a stationary image of the sponsor's name, trademark and logo. The identification may not be accompanied by moving images, slogans, statements or such event though this is a part of the sponsor's trademark or logo. This provision does not exist in the Directive TVWF.

The sponsor may not be identified in the programme, in previews of the programmes or during the programme (// article 17 of directive TVWF). The identification of a sponsor may last for 10 seconds. If there are three or more sponsors for a programme, the identification of the sponsors may last for 30 seconds in total. This provision is stricter than the ones set out in the Directive TVWF.

## **5. Product placement – Surreptitious advertising**

The Norwegian Broadcasting Act provides that products and/or services cannot be spoken of and/or shown in a promotional manner in broadcasting programmes. There are special rules for the presentation of products as a price offered in a programme.

## **6. New advertising techniques**

### **a) Split screen technique**

Is not used in Norway and there is no specific legislation regarding this technique.

### **b) Virtual advertising**

Is not used in Norway and there is no specific legislation regarding this technique.

### **c) Interactive advertising.**

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

## **Radio**

Advertising on radio is subject to the same regulation as advertising on television, except for some rules that apply only to television.

Contrary to the television regulation, it is not necessary to broadcast all the advertising in blocks between the programmes. Advertising on radio may interrupt news and current affairs and religious programmes.

## **Internet and mobile phone**

There are no specific regulations or self-regulation on advertising, sponsoring or sales offers on the Internet. The general rules will therefore apply.

There are no specific regulations or self-regulations on advertising, sponsoring or sales offers by mobile phone. Consumers may register themselves in a certain register to avoid phone calls.

**PORTUGAL**

**- SUMMARY -**

**This summary has been drafted by Bird & Bird Brussels  
on the basis of the national report**

## Television

The Portuguese audiovisual legislation can be found in the law 31-A/98 of 14 July 1998 (TV law). Portuguese legislation on audio-visual matters was last modified in 1998 to implement the TVWF Directive (Law of 30.7.1998).

We note that Portugal makes a distinction between public and private broadcasters.

### **1. Definitions**

- **Advertising** is defined 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*”.
- **Sponsorship** is defined exactly the same as in the Directive TVWF.
- **Teleshopping** is defined similarly the same as in the Directive TVWF.
- **Other relevant definition:**  
“Programmed duration”, consists in the extent of time of its effective transmission, excluding interruptions (advertising ones and others). This is important regarding the calculation of the duration of the maximum amount of advertising.

### **2. Advertising**

#### **a) Rules on insertion in and between programmes**

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.

The advertising breaks must be clearly identified as such by optical and acoustics means at the beginning and at the end of the break. The break must also mention the word “publicidade” (advertising), which is stricter than the Directive TVWF.

Advertising should be insert between the programmes. It is allowed to insert advertising in the programmes provided the respect of the same exceptions mentioned in the Directive TVWF.

## **b) Rules on the maximum amount of advertising**

The amount of advertising depends on the type of channel:

- it should not exceed 15% of the daily transmission time in national channels with non-restricted access. However, this percentage may be increased to 20% to include other forms of advertising;
- it should not exceed 10% of the daily transmission time in national channels with restricted access.

The transmission time devoted to advertising and teleshopping spots within a given one-hour period should not exceed 10% or 20%, depending on whether it is in a restricted or non-restricted access channel.

## **3. Tele-shopping**

The 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, films, series or documentary programmes.

The TV law makes a distinction between:

- Regarding the national channels with non-restricted access, the transmission time devoted to advertising messages shall not exceed 15% of the daily transmission time. Except when it includes other forms of advertising or teleshopping messages, in which case, that limit may be increased to 20% of the daily transmission time. The transmission of teleshopping programmes can be of a maximum of 8 per day, while their total duration does not exceed 3 hours. A teleshopping set must have an uninterrupted duration of, at least, 15 minutes.
- Regarding the national channels with restricted access, the transmission of advertising or teleshopping messages shall not exceed 10% of the daily transmission time.

It should be noted that for these time limit, the informative messages transmitted by television broadcasters and those related with their own programmes and directly derived programmes, as well as teleshopping spots.

## **4. Sponsorship**

The names and/or the logo of the sponsor must be clearly identified at the beginning and at the end of the programmes. Moreover, the name and/or the logo of the sponsor may also be inserted during the programmes, according to the television rules on advertising insertion (see above). There is no provision concerning duration of sponsorship activities or other detailed rules on the content of the messages.



## **5. Product Placement - Surreptitious advertising**

There is no legal, nor conventional definition of product placement. Nevertheless, product placement has already occurred. The special Commission responsible for the infringement to the Advertising Code states that product placement should be admitted within the same terms as sponsorship.

## **6. New advertising techniques**

### **a) split screen techniques :**

There is no specific (project of) regulation, nor decisions/guidelines of public authorities on this issue. National channels seldom use this technique.

### **b) virtual advertising**

Both the special Commission and the courts have already decided several cases related to virtual advertising. All decisions have come up to the same conclusion: it is illegal because it violates the identification principles.

### **c) interactive advertising**

Interactive television is currently on trial in Portugal (only a few viewers). For this reason, neither decisions, nor legislation have come up yet.

## **Radio**

Advertising on radio is subject to less severe rules on duration and insertion than television advertising. Regarding the duration, the amount of advertising shall not exceed 20% of the daily transmission time.

## **Internet and Mobile Phone**

Neither specific regulation, nor self-regulation on advertising, sponsoring or sales offers exists. The general rules of the Advertising Code apply, as the Internet is a medium of communication.

Neither specific regulation, nor self-regulation on mobile telephony advertising exists. The general rules of the Advertising Code apply.

**SWEDEN**

**- SUMMARY -**

**This summary has been drafted by Bird & Bird Brussels  
on the basis of the national report**

## Television

The Radio-and Television Act came into force on 1/12/1996 and applies to radio and TV-programmes directed at the general public.

### 1. Definitions

- **broadcaster** : is not defined
- **advertising**: advertising and other practices in the course of commercial activities which are intended to promote the sale of goods/services (a remuneration is not mentioned)
- **sponsoring** : is included in the definition of advertising
- **tele-shopping**: definition is similar to the definition in the Directive TVWF

### 2. Advertising

#### **a) Rules on insertion in and between programmes**

The rules are more severe than the rules of the Directive TVWF. Insertion of advertising is allowed in between 2 completed parts of a programme and their duration has to be 20 minutes minimum. From 01/04/2002 a system identical to the rules in the Directive will come into force. However it will remain prohibited to insert advertising in religious programmes or in programmes addressed at children below 12 years.

#### **b) Rules on the maximum amount of advertising**

The rules are stricter than the Directive: maximum 8 minutes of advertising in 1 hour (between 7pm and 12pm this can exceptionally be extended to 10 minutes). It is also stated that the daily proportion of advertising shall not exceed 10%.

### **3. Tele-shopping**

There are no pure tele-shopping channels in Sweden today. Broadcasters that have transmission licenses issued by the government may not transmit pure tele-shopping programmes. Other broadcasters, allowed to carry advertising, can also broadcast tele-shopping programmes. The rules on insertion of advertising in and between programmes also apply for tele-shopping.

### **4. Sponsoring**

According to Swedish law programmes are sponsored when they are wholly or partly financed by someone who is not engaged in television broadcasting or in the production of audiovisual works. The right to transmit sponsored programmes is restricted for some broadcasters (SVT, UR). Programmes can be sponsored with the exception of programmes for children and news. Short programmes such as weather forecast or traffic information cannot be sponsored. Sponsoring of trailers is also not possible.

The sponsor message must be neutral and may not be mistaken with traditional advertising. Sponsored programmes should be identified at the beginning or at the end of a programme by the name/logo or brand. Slogans, address, opening hours are prohibited. The message may also be inserted during breaks.

### **5. Product Placement - Surreptitious advertising**

Swedish law expressly prohibits surreptitious advertising. Programmes that are not advertising or tele-shopping shall not unduly favour commercial interests. The applied criterion is the rule of undue prominence (significant focus on a product while it is not justified by the content of the TV programme).

### **6. New advertising techniques**

#### **a) split screen techniques**

There are no specific rules on split screen techniques. It has been used for programme-information but also to identify a sponsor during credits.

For advertising it would probably be considered as contrary to the separation principle.

**b) virtual advertising**

There is no specific regulation. The technique has been used by 1 broadcaster and is now under examination by the Swedish Broadcasting Commission.

**c) interactive advertising (digital television)**

There exists no specific regulation. The Swedish Broadcasting Commission however examined interactive services offered on digital television. It considered some of the services as TV-programmes. In case of shopping services, TV regulation does not apply.

## **Radio**

The Radio and Television Act also applies to radio broadcasting. It contains specific rules on the amount, duration and content of advertising. Advertising can be inserted at any time during programming. There is however a prohibition to put advertising before or after a programme directed at children below the age of 12. A maximum of 8 minutes advertising per hour is allowed. The rules on sponsorship are similar to the rules for TV.



## **Internet, Mobile Phone and Cinema**

There is no specific regulation on advertising for these media: general regulation on consumer protection and advertising applies (together with self-regulatory codes).

There is no general prohibition against unrequested marketing in Swedish legislation, but the general clause on improper marketing practices can be applied: particularly intrusive methods can be banned through application of these rules. For individual direct marketing by e-mail, sms, an opt-out solution is provided.

**UNITED KINGDOM**

**- SUMMARY -**

**This summary has been drafted by Bird & Bird Brussels  
on the basis of the national report**

## **1. Definitions**

### **➤ broadcaster:**

- **advertising:** The ITC code of Advertising Standards and Practice (CASP) mentions that it applies to any item of publicity inserted in breaks or in between programmes, whether in return for payment or not, including publicity by licencees themselves.
- **Sponsoring:** The Code of Programme Sponsorship defines sponsorship in par.1.1 as follows: "a programme is deemed to be sponsored if any part of it's costs of production or transmission is met by an advertiser with a view to promoting its own or another's name, trade mark, image, activities, products or other direct or indirect commercial interest". A sponsor is defined as "any organisation or person other than the broadcaster or television producer who is sponsoring the programme in question with a view to promoting their goods or services. This definition extends to those who are otherwise supplying or funding the programme".
- **tele-shopping: Directive**

## **2. Advertising**

### **a) Rules on insertion in and between programmes**

The rules on insertion are similar to the rules provided in the Directive, but are more detailed. For example guidance is given on the use of "natural breaks" or "intervals" in programmes

The ITC rules also apply the 20 minutes principle for breaks in a programme. A shorter interval is acceptable only when the interests of the audience are better served. Also for films the rules are identical to the rules of the Directive TVWF.

Special rules apply for the terrestrial channels (3,4 and 5) : programmes of up to 20 minutes may not be interrupted; programmes up to 44 minutes may contain 1 break, 49-59 minutes: 2 breaks ....The maximum duration of a break is 3, min and 50 sec of which no more than 20 seconds can be programme promotion. A special regime applies for sporting and similarly structured events.

## **b) Rules on the maximum amount of advertising**

For terrestrial broadcasters the total amount of advertising in 1 day must not exceed 7 minutes per hour (between 6pm and 11pm the maximum is 7,5 minutes per hour and between 7am-9am: total amount of 16 minutes).

For the other services the limits provided in the Directive TVWF apply.

## **3. Tele-shopping**

The definition and the rules on teleshopping spots, programmes and channels are identical to the rules provided in the Directive TVWF.

For terrestrial services however a very strict regime is provided for teleshopping spots: these channels may run long-term advertisements, including teleshopping, but it will count towards the daily maximum (7 min/hour).

## **4. Sponsoring**

A core principle in the rules on sponsorship is the preservation of programme integrity. Also a clear distinction between advertising and sponsor credits has to be observed in order to ensure that credits are not used as a means of extending allowable advertising minutage.

Sponsors must be clearly identified at the beginning and/or end of the programme. Bumper credits (entering or leaving a commercial break) are also allowed. Credits may be oral and/or visual.

The CPS provides that there must be no sponsor credits within programmes.

**Front sponsor credits** must not be integrated within any part of the programme (title sequence is an exception from this rule, provided that the sequence does not include, nor is preceded by any part of the programme itself).

**End and bumper credits** may overlap the programme for not more than 5 seconds.

**Front credits** must not exceed 15 seconds for a single sponsor and 20 for more than one.

**Each bumper or end credit** must not be more than 10 seconds in length (even in case of multiple sponsorship).

**Front credits and, in case of their lack, end credits** must identify the sponsor and explain its connection with a programme.

The principal purpose of sponsor credits must be to create an association between the sponsor and the actual programme being sponsored.

The link between the programme and sponsor must be reflected in the sponsor's credits. Any use of the sponsor's product must help to reflect the link between sponsor and programme.

Credits must not include any extracts from advertising campaigns that have been transmitted on ITC licensed services within the last three years.

Credits must not contain any direct exhortations to purchase or rental of the sponsor's goods/services. They may not include specific references to the attributes, benefits or prices of those products/services.

Expressions that suggest the sponsor has compromised the licensee's broadcasting responsibilities are not acceptable.

A programme may also include technical information services at reduced or no charge in return for an on screen acknowledgement.

## **5. Product Placement - Surreptitious advertising**

The ITC Rules define product placement as " the inclusion of, or reference to, a product or service within a programme in return for payment or other valuable consideration to the programme maker or ITC licensee. Such technique is prohibited.

**The ITC Programme Code** prohibits undue prominence of commercial products or services in programmes. Exceptionally, reference to advertising is allowed when limited to what can clearly be justified by the editorial needs of the programme.

Where their use is clearly justified editorially, products may be acquired at no or less costs if such acquisition is clearly justified editorially. A basic text acknowledgement of max.5 seconds may be included in the end credits.

Programme support material (publications, off-air activities or theme music) is also allowed. A sponsor credit must be limited to a simple factual audio and/or visual reference (max. 15 seconds).

Advertising must not refer to the use or appearance of any product in any programme.

## **6. New advertising techniques**

### **a) split screen techniques**

There are no specific rules on split screen techniques but ITC accepts a limited form. During the advertising break, information on programmes can be given in a text banner (not animated).

### **b) virtual advertising**

In November 2000 the ITC issued guidelines concerning virtual advertising:

Rules:

1. The use of virtual advertising must be made transparent to viewers, either at the beginning or end of any broadcast using the system and explanatory credits should explain the purpose of the system.
2. Systems may not be used to place advertising additional to that which is at an event,
3. Systems may be used to replace advertising on moving objects.
4. The use of systems should not result in discernible degradation in picture quality.
5. The licensee must have the contractual right to refuse to carry an electronically altered signal.
6. The licensee must not in any way be involved in selling virtual advertising.

### **c) interactive advertising (digital television)**

In February 2001 the ITC issued a guidance note on interactive television services. A distinction is made between "dedicated interactive services" (services accessed directly (through EPG) of which the content is usually not linked to a programme) and "enhanced programme services" (advertising enhancement exists when commercial material is accessed directly or indirectly from a linear programme).

Rules:

- 1 The ITC licensee is required to retain full editorial responsibility
  - (a) for any interactive icons the licensee has caused to be present during the course of editorial programmes;
  - (b) for all editorial programme enhancements, whether on initial or subsequent enhancement screens;
  - (c) for all advertising contained on the first screen accessed after the first choice to interact; and

- (d) for all screens containing enhancements – whether advertising or editorial programming – over which they exercise control.
- 2 The status of different types of content should be transparent to the viewer.
  - 3 Advertisements appearing in conjunction with programme enhancements must
    - (a) be clearly distinguishable as advertisements; and
    - (b) be recognisably separate from all editorial content.
  - 4 Where a viewer will incur any cost through choosing to interact (eg from a telephone call), this cost must be made clear.
  - 5 No interactive icon present during the course of editorial programming may
    - (a) be commercially branded; or
    - (b) be moved or placed by the broadcaster in conjunction with any part of the editorial content, if the resulting interactivity to which it leads contains commercial information related to the editorial.
  - 6 A choice to interact is not the same as a choice to receive advertising or offers for sale. No choice to interact with editorial programming may take a viewer at the first click to a site dedicated wholly to advertising content. On the intermediate screen editorial content may be coupled with links to commercial content, but there should be a clear indication that the next click will take the viewer into advertisements or offers for sale.
  - 7 Interactive options may contain information about products related to the editorial content of a programme such as books, video or music. But these options must be treated as advertising rather than editorial material.
  - 8 Within any programme enhancement, advertising which is not specifically selected by the viewer must not predominate over programme material. (max 1/3 of screen)
  - 9 No advertisement or other commercial content contained on an enhancement may be for a product or service that could not be transmitted in and around the programme in the linear environment.

#### **d) Other new techniques**

The ITC received requests for licensing all advertising channels (a channel including property advertised for sale and a BMW channel of short narrative films featuring their cars). Licences could not be granted since these projects do not meet the criteria of self promotion or teleshopping channels.

## **Radio**

Radio is controlled and regulated by the Radio Authority. All advertising and sponsoring is submitted to the Advertising and Sponsorship Code. The rules on content of advertising and sponsoring are similar to the ITC rules. There are no detailed rules on insertion of advertising as existing for TV. There are no rules on frequency of insertions and their maximum duration.



## Internet/Mobile Phone

There is no specific regulation on advertising for these media. The self-regulatory codes of the Advertising Standards Authority apply to almost all non-broadcast media.

### Internet

There is on this moment no urgent need for specific regulation. General consumer protection regulation applies, as well as the e-commerce Directive, rules on data protection... ITC is not intervening at this moment and leaves control to self-regulatory bodies (the Internet Watch Foundation; ASA)

### Mobile phone

Data protection is ensured by the Data Protection Act 1998, the Telecommunications Regulations 1999 and 2000, and the Freedom of Information Act 2000.

**The Telecommunications Regulations 1999** allows the telecommunications service provider to use personal data for the marketing of its own services, if the subscriber has given consent. The company collecting the data is also legally required to inform the individual that the information given may be passed on to "associated companies" or "other carefully selected companies". The individual can opt out from this further use of their personal data.

Conform the **Data Protection Act 1998** the company responsible for the data is in theory allowed to sell this information to third parties, but there is a legal requirement to inform the individual of this possibility.

Conform the **Telecommunications Regulations** a person shall not use, or instigate the use of publicly available telecommunications services and a subscriber to such services shall not permit his line to be used where the called line is that of a subscriber who has previously notified the caller that such unsolicited calls should not be made.

There is also a Code of Practice elaborated and applied by the Wireless Marketing Association.