

# **PORTUGAL**

**STUDY ON THE IMPACT  
OF ADVERTISING AND TEleshopping  
ON MINORS**

- I. INTRODUCTION**
- II. SUMMARY**
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## I. INTRODUCTION

The study on the impact of TV advertising and teleshopping on minors was carried out by International Research Associates (**INRA**) in collaboration for legal issues with the lawfirm **Bird & Bird** , for the 18 Member States of the European Union and the European Economic Area, and, for each country, in collaboration with a national law firm. For Portugal the study was carried out by the lawyers office **Jalles, Lisbon**.

The aim of the study was to identify and describe the national provisions on advertising provided in legislation, regulation and self-regulatory codes, which are applied to advertising in each State for the protection of minors. In addition, the national system for the handling of complaints was described fully, covering administrative, legal and self-regulatory measures.

For most countries it was possible to identify and to comment upon official proposals of law. In this respect, the information received from professional associations in the advertising sector was very helpful, as were the comments made by national authorities, who had been sent the the draft reports by the Directorate General Education and Culture.

Finally in each national report the consultants indicated the way in which the provisions of the TVWF Directive (unofficial consolidated version), have been implemented in national legislation concerning TV advertising and teleshopping directed at minors. Nevertheless, in view of the objectives of the Commission and to enable comparison, the reports also cover other media such as radio, press, outdoor advertising, cinema, and Internet.

The study was carried out, realised and presented using an identical layout for each of the countries studied to achieve a harmonised readable approach, and facilitate comparison .

Therefore, as well as the main definitions and general rules in the field of advertising and teleshopping directed at minors, each national report contains the regulation by sector and by media, as well as an identification of specific marketing techniques. Moreover, each national report is preceded by a summary which gives the essential characteristics of the country in question. An Excell table has been drawn up, using the same layout for each country, as well as a comparative table for the 18 States studied.

Finally a report has been drawn up on European and international regulation and self-regulation concerning advertising directed at minors.

\* \* \*

## II. SUMMARY

Portuguese legislation on audio-visual matters was last modified in 1998 to implement the TVWF Directive (Law of 30.7.1998). There are no current proposals to modify existing law or implement new restrictions.

### **1. Definitions**

The Civil Code states that a minor is a person under the age of 18 years.

There is no definition of a minor/child in specific regulation on advertising.

### **2. Regulation**

#### **a. General**

Advertising in general is regulated by the Advertising Code of 23.10.1990 (last amendment in 1998; referred to hereafter as AC). This code implemented the European Directive TVWF and the European Directive on misleading advertising, but in Portugal most of the rules of the TV-directive were extended to other fields than TV/radio.

This code states that advertising has to respect some basic principles: all advertising should be legal, clearly distinguishable as such, truthful, respecting consumers rights and human dignity, and may not incite or invoke violence, or illegal or criminal acts.

In relation to children, Art.14 lays down criteria for advertising addressed to minors to protect their psychological vulnerability (exploitation of inexperience, incitement to persuade parents, harming the physical/moral integrity, exploitation of special confidence in certain persons). This article also stipulates that minors can only be the main actors in advertising if there is a direct relation with the promoted product/service.

#### **b. Media**

Portuguese Radio and Tv (3 public broadcasts and 2 private channels) have to respect the Law of 30.7.1998 on audio-visual matters. Art.21 states that programmes which are likely to morally or physically harm children or young people, in particular by showing violent or shocking images, should be preceded by a warning in the form of a signal and may only be distributed after 22h. The Advertising Code contains specific rules for TV-advertising: Art.25 states that programmes for children with a duration of less than 30 minutes may not be interrupted.

For teleshopping and sponsoring there are no specific rules on minors and in general the rules of the European Directive TVWF apply.

There are no specific rules on advertising directed at children for press, posters, cinema or the Internet.

### **c. Specific provisions**

For some categories of products special rules apply, for example:

Art.18 AC bans all kinds of advertising for tobacco.

Art.22a AC provides special rules on advertising for cars (security, high speed, environment)

Art.22 AC aims to prevent misleading advertising for education programs

### **d. Other marketing techniques**

Specific legislation regulates door-to-door advertising and advertising by phone and fax (for ex. protection of minors against advertising for erotic or sexually oriented telephone lines/audio-textual services).

## **3. Proposals of law**

There are no current proposals for new advertising legislation or to modify the existing rules.

## **4. Self regulation**

The Portuguese self-regulatory body (Instituto Civil da Autodisciplina da Publicidade) applies the ICC codes, for example the ICC code of advertising practice (Art.14 contains principles for advertising and children). Art.13 of the national Code on Fair practices in advertising contains similar principles. Specific codes containing special rules on minors exist for alcohol and direct marketing.

## **5. Handling of complaints**

### **Authorities**

Control of the application of the AC (as well as legislation concerning direct marketing and toys) is exercised by the Institute for the Consumer. A special Commission can impose fines where the rules are breached.

Several local public authorities are competent for outdoor advertising.

Several specific administrations are competent for advertising on specific products (for example for medicines and cosmetics : National Institute for pharmacy and medicines; for food : General inspection for economic activities; Gambling/amusement : specific general inspections...)

A complainant has the choice of submitting his complaint to the administration or directly to the competent court. An appeal to the court is possible against all decisions taken by administrations.

A special court is competent for radio and TV : the High Authority for the Media (granting licences and observation and sanctioning of audio-visual legislation).

There is no information about complaints concerning advertising directed at children.

### **Self-regulation**

There are no numbers known for complaints treated by the Portuguese self-regulatory body.

**III. REPORT**

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## I. DEFINITIONS

### **Minors**

According to Article 122 of the Civil Code a minor is an individual who has not yet fully reached the age of 18 years.

### **Majority**

According to Article 123 of the Civil Code minors lack the capability of exercising their rights.

According to Article 129 of the same Code, this incapability ends when the individual reaches majority or becomes emancipated.

At the age of 18, according to Article 130 of the same Code, the individual acquires full capability to exercise his rights and becomes able to govern himself and to dispose of his wealth.

On the other hand, according to Article 132 of the Civil Code, a minor attains full emancipation through marriage, the age for marriage being fixed at 16.

However, in case of a minor younger than 18 and older than 16, who marries without the consent of his parents or tutors and/or without judicial authorisation, Article 1649 of the Civil Code, determines that the minor continues to be considered as a minor as far as the administration of his wealth is concerned until he obtains such consent and/or authorisation and/or attains the age of 18.

### **Legal entitlement to contract**

According to Article 125 of the Civil Code transactions by minors can be annulled under certain circumstances.

### **Protection of youth**

Article 69(1) of the Constitution expressly mentions the right of children to be protected.

Article 70(1) of the Constitution expressly mentions the right of youth to be protected through education, vocational training and culture, in work and social security, in acceding to the first job, in acceding to habitation, in physical education and sports and in the use of leisure time.

Normally the parents are the ones in charge of exercising the parental power over the minors and represent them in and out of court [See Article 10, 11 and 12 of the Code on Civil Procedure]. However, there are situations in which the court can determine that minors shall be put under the supervision of third persons, for instance child protection associations.

However, according to Article 68 of the Code on Criminal Procedure, a minor, older than 16, can ask the court to be considered as assistant in the procedure. On the other hand and as far as witnesses in criminal procedure are concerned minors younger than 16 cannot swear in court.

Children and adolescents in danger, i.e. children and adolescents abandoned or suffering of bad treatment are protected by Law 147/99 of 1 September 1999, approving the law for the protection of children and young people in danger. The main points are the following ones:

- a) as far as pending and future procedures in court regarding the practice by a minor aged from 12 to 16 are concerned, the judicial procedure shall be classified (or reclassified) as a procedure of promotion and protection;
- b) the existing commissions for the minors' protection will be re-organised according to provisions to be taken by a National Commission for the Protection of Children and Young People at Risk, set up by Decree-law 98/98 of 18 April 1998.

According to Article 5 of this law, children or young people are the individuals younger than 18. Individual younger than 21 may also be considered as young people for the purposes of this law provided that they requested it when they were younger than 18.

The so-called measures of promotion and protection are the following ones:

- a) support by the parents;
- b) support by a relative other than the parents;
- c) place in charge a reliable person;
- d) assist in becoming self-regulating;
- e) support by another family; and
- f) support at an institution.

The duration of these measures will be established by the court and cannot be longer than one year, being possible nevertheless to extend them until 18 months in the interest of the children or of the adolescents.

According to Article 84 of this law, the children older than 12 (or younger than 12 whenever their comprehension of the case allows it) shall be heard by the protection commission or by the judge, about the situation from which the intervention arises as far as the application, revision or cessation of such measures are concerned. Also it is compulsory that the parents in charge are heard.

Almost at the same time, Law 166/99 of 14 September 1999 has been published, approving the law for the educational tutelage. These measures, according to its Article 2, are intended to be applied to children and/or adolescents from 12 to 16 years old that have a record under criminal law. These measures are of an educational character and aim to the insertion of young people in society and can vary from the reproach until the internship at an educational school, also including the prohibition of driving, indemnity to the offended people, the

rendering of services to the community, attending of special courses, and so on. The law also disciplines certain interactivity between punishments, including imprisonment and tutelage measures.

These measures may be applicable until the age of 21. At this age it is obligatory that they cease.

### **Public sex offenses**

Articles 172 and 173 of the Penal Code expressly punishes the individuals who distribute and sell pictures, films or other recorded media representing acts of a pornographic nature or representing minors younger than 14 or influence minors younger than 14 through pornographic conversation, documentation or performance.

### **Abuse of confidence**

As far as minors are concerned, according to Article 14 of the Advertising Code, as last amended by Decree-law 275/98:

*"1. The advertising specifically addressed to minors shall always take into consideration their psychological vulnerability and should namely avoid:*

- a) to directly exhort minors, by exploiting their inexperience or credulity, to acquire a certain good or service*
- b) to directly exhort minors to persuade their parents or others to buy the products or services being advertised;*
- c) to include elements susceptible of endangering their physical or moral integrity, as well as their health or safety, namely through any sort of pornographic material or encouraging violence;*
- d) to exploit the special trust minors place in their parents, tutors or teachers.*

*Minors can only be main actors in the advertising messages where it is proven a direct relationship between them and the product or service being advertised."*

As a matter of fact, in Portugal, it is legally possible to address advertising to minors provided that this advertising respects the above mentioned principles.

In the framework of the supervision of Advertising, the Institute of Consumers has been facing many complaints recently regarding the application of this Article 14 of the Advertising Code. Most claims are related to advertising concerning vehicles, mobile telephones, but mainly in connection with Article 14(2).

## II. REGULATION

### 1. Classification by media

#### 1.1. All media

According to Article 60(2) of the Constitution, advertising shall be regulated by law. All kinds of concealed, indirect or fraudulent advertising shall be prohibited.-

According to Article 99(e) of the Constitution, one of the goals of the commercial policy shall be consumers' protection.

Law 24/96 of 31 July 1996 establishes the legal regime applicable to the consumers' protection.

Advertising in general, apart from the particulars pointed out for specific thematic sectors, some of which are referred to below, is mainly regulated in Portugal by the so-called Advertising Code.

The Advertising Code in force has been approved by Decree-law 330/90 of 23 October 1990, and amended by Decree-laws nrs. 74/93 of 10 March 1993, 6/95 of 17 January 1995, 61/97 of 25 March 1997, 275/98 of 9 September 1998, 51/2001 of 15 February 2001 and by Law 31-A/98 of 14 July 1998.

Some of the above mentioned amendments to the Code were aimed to implement, successively, Council Directive 89/552/EEC of 3 October 1989 on the co-ordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities (as already amended by Council Directive 97/36/EC), as well as Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the member States concerning misleading advertising (as already amended by Council Directive 97/55/EC).

Nevertheless in Portugal most of the rules of this last directive regarding advertising on minors are already applicable to fields other than television and can be considered therefore as general rules independently of the media in question (See Article 1 of the Advertising Code, according to which the Code applies to any form of advertising irrespective of the means by which it is transmitted).

In this respect and taking into consideration the broad content of Article 1 of the Advertising Code, one could be tempted to consider to include interactive and or electronic advertising, which is not yet specifically regulated in Portugal, including INTERNET. However, this does not concern teleshopping through television[]considered under Article 25-A of the Advertising

Code [See *infra*, point II.1.2.(c)], which only by analogy can be made applicable to INTERNET.

According to Article 6 of the Advertising Code, advertising shall be governed by the principles of lawful character, identifiable character<sup>(1)</sup>, truthfulness and respect for the consumer's rights.

As a consequence of the principle of lawful character, the advertising cannot, according to Article 7(2)(b)(c) of this Code, either stimulate or appeal to violence, as well as to any illegal or criminal activity, or attempt against the dignity of the human being. Particularly relevant in this framework is what Article 14 of the same Code establishes as far as minors are concerned (See *supra*, point I. Abuse of confidence).

In the meantime the legislator, taking into consideration the use of new marketing tools, has enacted other specific legislation aiming to regulate for instance the door to door advertising, as well as advertising by telephone and by telefax.

Some of the rules regarding audiotext services mainly connected with erotic and/or sexual oriented telephone lines appear to be specifically aiming to protect children and minors in general. Decree-law 175/99 of 21 May 1999 governs advertising through audiotext services, i.e. advertising maintained on fixed or mobile telephone networks, without prejudice to what is established in the Advertising Code.

As far as children are concerned, according to Article 2(3) of this Decree-law, it is prohibited to target minors younger than 16 for all types of advertising to audiotext services under any form whatsoever and irrespective of the advertising support used for such purposes. This includes for e.g. by insertions in publications, recordings, broadcastings or any other type of communication addressed specifically to them [See *infra*]. Taking into consideration the wording of the above quoted rule, Internet advertising shall be deemed as included in the content of such provision.

It is also prohibited to advertise audiotext services of erotic or sexual character through outdoor advertising supports.

## **1.2. Television (including teleshopping and TV sponsoring)**

### **1.2.1. Market structure**

State monopoly on television ended in 1989 with a constitutional amendment allowing access to television activity by public private broadcasters. Subsequently, the right to broadcast public service television was granted to RTP- Radiotevisão Portuguesa, S.A., as a public

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<sup>(1)</sup> **Identification?**



operator, while new private commercial broadcasters launched their activities covering all the Portuguese territory (initially only via terrestrial transmissions), after a licensing procedure.

In Portugal there are presently four public sector television channels with near-universal coverage, known as RTP 1, RTP 2, RTP International and RTP África, all operated by Radiotevisão Portuguesa, S.A., which launched the first television channel in Portugal in 1957. The two first channels reach almost 100 per cent of the households in national territory. The other two channels are distributed by satellite and cable and, despite the fact that their broadcasts are both received in national territory, they are aimed to international audiences: channel RTP-i is intended to target the Portuguese communities around the world as well as the other Portuguese speaking countries (Brazil and the other former colonies in Africa and in Asia), RTP África reaches the Portuguese former colonies in Africa (Angola, Cabo Verde, Guiné, Mozambique and S. Tomé e Príncipe).

Among the private commercial broadcasters that have recently emerged in the Portuguese audiovisual landscape, a particular reference should be made to two of them, bearing in mind their quality of precursors in this field:

SIC-Sociedade Independente de Comunicação, SA, which started its activities in October 1992, being the first private broadcaster to break the RTP monopoly of terrestrial transmissions; this broadcaster currently owns general-interest (“SIC”, “SIC-Gold”, “SIC-Internacional”) and thematic channels (“SIC-Notícias”), which are provided over different means of transmission;

TVI-Televisão Independente, SA, which started its activities in February 1993, after obtaining a license to broadcast the general-interest channel “TVI”; TVI channel is intended to cover all national territory and is currently distributed by terrestrial transmissions as well as by cable and satellite.

Additionally, other operators own thematic and coded TV channels (e.g. “Sport Tv”, “Canal Programação Tv Cabo”, “Tv Medicina/TV Saúde”) which are nowadays available by cable and satellite.

A substantial growing of new channels is expected in the near future over such platforms and also with the launching of digital terrestrial transmissions in the year 2002.

### **1.2.2. Provisions specifically applicable to television broadcasting as far as advertising is concerned**

Council Directive 89/552/EEC of 3 October 1989 on the co-ordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities (as already amended by Council Directive 97/36/EC) has been implemented in Portugal by Law 31-A/98, of 14 July 1998 (Television Law) and also by successive amendments to the Advertising Code.

According to Article 25 of the Advertising Code, as amended successively by Decree-law 6/95 of 17 January 1995 and by Decree-law 275/98 of 9 September 1998, television advertising can only be inserted between programmes. Children's programmes with an effective <sup>(2)</sup> duration of less than 30 minutes cannot be interrupted by advertising or teleshopping : Article 25(4) and 25-A(2).

A new Law on Television has been enacted, Law 31-A/98 of 14 July 1998

As far as minors' protection is concerned, Article 21 of Law 31-A/98 regarding the restriction of television programming, and therefore applicable to all broadcasters independently of being public or private, establishes explicitly that:

1. *“Any broadcast that violates the fundamental rights, freedoms and guarantees, attempts against the dignity of the human being or encourages ~~to~~ the practice of crimes shall not be allowed.*
2. *The broadcasts susceptible of negatively influencing the formation of the children or adolescents personality, or affecting other more vulnerable members of the public, namely through the exhibition of images particularly violent or shocking, shall be preceded by an express warning and followed by the permanent transmission of an appropriate signal and they shall only take place in a timetable after 10 p.m. .*
3. *The images to which the previous paragraph refers to can nevertheless be transmitted in any news broadcast when they are of journalistic relevance, provided that they are presented in the respect of the ethical rules of the profession and preceded by a warning about their character.*
4. *The television broadcast of works that have been classified by an age rate system for the purpose of their cinematographic or video distribution shall be preceded by the indication of the approved classification by age, and are obligatorily subject to the other requirements to which paragraph 2 refers to whenever the classification in question considers inadvisable that such works should be acceded by minors younger than 16.*
5. *For the purpose of this Law the concept of broadcast includes any elements of programmes, including advertising or extracts aiming to promote programmes.”*

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<sup>(2)</sup> According to paragraph 9 of Article 25 of the above-mentioned decree-law, the concept of “programmed” or “scheduled duration” of a programme is understood as the duration related only to the length of the programme itself, therefore excluding the time dedicated to any advertisement interruptions or others. In other words, the Portuguese regulator has understood such concepts in accordance with the so-called “*net principle*”, taking into consideration Article 3(1) of the TWF Directive, which allows Member States to provide for the «*net principle*» in this particular subject, with regard to broadcasters under their jurisdiction, and despite the opposite opinion very recently expressed by the European Court of Justice in the case C-6/98 (ARD vs. PRO Sieben Media AG).

According to Article 22 of the same Television Law, the announcement of programmes by the television broadcasters is obligatorily accompanied by a warning and an indication of the classification by age to which Article 21(2)(4) refers.

This law also regulates the so-called public service television broadcasting (See Article 5 and 42 to 48 of this Law). The concession of the public service television has been granted recently for a period of 15 years to RADIOTELEVISÃO PORTUGUESA, S.A.

This policy is also emphasised by Article 6(3) of Law 24/96 of 31 July 1996 (the so-called Law for the Consumer Protection). According to this law, educational programmes broadcast by the public service for radio and television shall include periods aiming to educate the consumer. According to Article 7(2) of the same Law, the public service for radio and television shall reserve periods for the promotion of the consumers' interests and rights.

Consumer Associations also have the so-called right to broadcasting time' in radio and television, under similar conditions as the other social partners, according to Article 18(1)(b) of Law 24/96.

On the other hand, according to Article 2(6) of Decree-law 175/99 of 21 May 1999, the broadcasting on radio and television of advertising messages audiotext services of erotic or sexual nature is only possible between 00:00 a.m. and 06:00 a.m.

Finally one shall pay attention to the fact that Article 26 of the Advertising Code concerning the amount of transmission time reserved in television for advertising, has been expressly revoked by Article 75(2) of Law 31-A/98, which means that in the future the legislator wants this specific question to be regulated by the Law of Television <sup>(3)</sup>. The Advertising Code remains therefore a general law (which common principles are also applicable in television advertising), but still contains specific provisions regarding television advertising, such as:

Article 8(2)(3) concerning the need to identification of advertising in television programmes and its separation from the other items of a programme service;

Article 9(2), prohibiting the direct and exclusive focusing, by means of a television broadcasting, of the existing advertising in any real or simulated events or situations;

Article 17(2)(3), concerning the absolute prohibition of television advertising for alcoholic beverages in a certain time-table.

Article 25 concerning the insertion of advertising in television programmes.

### **1.2.3. Teleshopping**

According to Article 25-A(1) of the Advertising Code, as amended by Decree-law 275/98, teleshopping is considered as diffusion of direct offers to the public through television

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<sup>(3)</sup> This subject is presently regulated by its articles 32 and 33 – see *infra*, Point 1.2.c)

channels with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment.

The general rules of the Advertising Code apply to teleshopping. However paragraph 4 of the above mentioned Article 25-A also contains a special mention regarding minors, establishing expressly that teleshopping shall not encourage minors to buy or to rent any goods or services.

Teleshopping for medicinal products which are subject to a marketing authorisation, as well as teleshopping for medical treatments is not permitted [See Article 25-A(3)].

According to Article 7(4) of Law 31-A/98 of 14 July 1998 (the so-called Television Law) thematic channels for self-promotion and teleshopping cannot include any conventional programming information, such as news, sport news, films, series or documentaries. For this purpose, and according to Article 7(6) self-promotion is considered as the advertising made by the television broadcaster concerning its own products, services, channels or programmes, this classification being of the competence of the High Authority for the Mass Media, under the terms of Article 7(7).

Also according to Article 32 of Law 31-A/98,

*"1. On free-to-air channels with national coverage, the time reserved for advertising messages cannot exceed 15 per cent of the daily transmission time, unless it includes other forms of advertising or teleshopping messages. In this case that limit can go up to 20 per cent.*

*2. On channels with national coverage and conditioned access, the diffusion of advertising or teleshopping messages shall not exceed 10 per cent of the daily transmission time.*

*3. On thematic channels of teleshopping or of self-promotion, the period of time reserved for advertising shall not exceed 10 per cent of the daily transmission time.*

*4. The amount of transmission time reserved for advertising or teleshopping messages in each period included between two hour units <sup>(4)</sup> shall not exceed 10 to 20 per cent, depending on if it is the case of a channel with conditioned access or not.*

*5. The messages of an information content broadcasted by the television broadcasters, in connection with its own programmes and ancillary products directly derived from those programmes, as well as the blocks of teleshopping to which the following article refers to [Article 33 of the same law] are excluded of the limits predetermined under the present Article."*

As far as blocks of teleshopping are concerned, Article 33 of Law 31-A/98 establishes that:

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<sup>(4)</sup> i.e., within a given clock hour

"1. Free-to-air channels with national coverage may broadcast a maximum of eight blocks per day of teleshopping, provided that their total duration does not exceed three hours, without prejudice to what is established by the previous article.

2. The blocks of teleshopping shall be of a minimum uninterrupted duration of 15 minutes.

3. On the self-promotion channels it is prohibited to broadcast blocks of teleshopping."

#### **1.2.4. Sponsorship/Sponsoring**

Sponsorship is regulated by Article 24 of the Advertising Code, as amended by Decree-law 275/98.

According to paragraph 3 of this Article, the news, as well as television programmes of political information cannot be sponsored. On the other hand, paragraph 2 settles that natural or legal persons whose main activity is the manufacture or sale of cigarettes or any other related tobacco products cannot sponsor television programmes .

According to Article 24(4) of the Advertising Code, the sponsored programmes must be clearly identified as such by the name or the logo of the sponsor at the beginning and/or the end of the programmes, without prejudice of the cumulative inclusion of these mentions in other moments, in accordance with the rules set in Article 25 concerning insertion of television advertising. <sup>(5)</sup>

According to Article 24(5)(6) of the Advertising Code, the sponsors can not influence the contents or the scheduling of the programmes in such a way as to affect the responsibility and editorial independence of the broadcaster, nor can the sponsored programmes stimulate the acquisition or rental of goods or services of the sponsor or of any third person, especially through specific promotional references to those products or services.

As there are no specific rules regarding minors, the general rules in this respect apply.

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<sup>(5)</sup> This provision should be understood as only applicable to television programmes, since that Article 13(3) of Law 87/88, of 30 July 1988 (Radio Law) states that sponsored programmes shall be expressly identified as such *merely at their beginning and end* [the newly approved Radio Law (Law 4/2001, of 23 February 2001) contains a similar provision in its Article 44(2)].

### 1.3. Radio

#### 1.3.1. Market structure

As far as radio broadcasting is concerned, there is no monopoly for a long period. With the transformation of the public undertaking Radiodifusão Portuguesa, E.P. (RDP) in a corporation with an exclusive public share capital, the radio public service has been committed to this company. RDP currently operates three different *national* broadcasting channels: “Antena 1” (with general interest programming), “Antena 2” (dedicated to arts programmes and cultural magazines) and “Antena 3” (devoted mostly to music, news and entertainment). All these channels currently use DAB (Digital Audio Broadcasting) in their transmissions. On the other hand, *international* broadcasts aimed to Portuguese audiences abroad are assured by “RDP Internacional” (via satellite, 24 hours a day) and “RDP-África” (serving Portuguese countries in Africa and also the Greater Lisboa Area)

The Catholic Church runs a station named “Rádio Renascença”, which broadcasts *national* channels “Canal 1” (general interest) and “RFM” (since 1987), apart from “Mega FM”, a *local* radio channel aimed at the youth audience.

Privatised in 1993, “Rádio Comercial” has two *national* channels: “Rádio Comercial”, aimed predominantly at younger audiences, and “Rádio Nacional”, a general interests channel targeted to a wider audience.

Concerning *regional* radio stations, there are two stations functioning since the end of 1990: “Rádio Regional de Lisboa-Nostalgia”, which broadcasts 24 hours a day to southern Portugal ancient hit music programmes from the fifties and sixties; and “Radiopress (TSF-Press)”, which broadcasts primarily news, music and sport 24 hours a day to the north of the country.

There are still around three hundred *local* radio stations in mainland Portugal and the islands of Azores and Madeiras, as well as several *special interest* stations, the latter being awarded on the basis of an annual tendering procedure.

#### 1.3.2. Provisions specifically applicable to radio broadcasting as far as advertising is concerned

According to Article 13 of Law 87/88 the general rules of advertising are applicable <sup>(6)</sup>.

On the other hand, according to Article 5(2)(e) <sup>(7)</sup> of Law 87/88 of 30 July 1988, as last amended by Law 2/97 of 18 January 1997, concerning radio, one of the tasks of the public

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<sup>(6)</sup> The new Radio Law contains a similar principle in its Article 44.

service radio broadcasting shall be to set up educational programmes specifically addressed to children and young people with different kinds of backgrounds, professions and/or belonging to cultural minorities.

This policy is also emphasised by Article 6(3) of Law 24/96 of 31 July 1996 (the so-called Law for the Consumer Protection). According to this law, educational programmes broadcast by the public service for radio and television shall include periods aiming to educate the consumer. According to Article 7(2) of the same Law, the public service for radio and television shall reserve periods for the promotion of the consumers' interests and rights.

#### **1.4. Press**

The advertising in the press is submitted to the general rules on this matter.

According to Article 28 of Law 2/99 of 13 January 1999 (Press Law), the written advertising or in graphics and not immediately recognisable as such shall be identified by the expressions "*Publicidade*" ("*Advertising*") or "*PUB*".

On the other hand, there are specific regulations within certain fields, such as:

*a)* audiotext services: according to Article 2(5) of Decree-law 118/99 of 21 May 1999, any audio-documented service of erotic or sexual character is prohibited to advertise in the press. However, such advertising material is permitted in specialised publications or, in the other publications when this advertising does not include images and the texts used are not susceptible of affecting the most vulnerable readers;

*b)* medical treatments and medications: according to Article 19 of the Advertising Code, the advertising concerning medical treatments available only on prescription, with the exception of the advertising included in technical magazines addressed to doctors and other professional care providers, is prohibited (See also Article 3(3) of Decree-law 100/94 of 19 April 1994, as last amended by Decree-law 48/99 of 16 February 1999);

*c)* alcoholic beverages, tobacco products and pornographic material: according to Article 20 of the Advertising Code, as amended by Decree-law 275/98, advertising for alcoholic beverages, tobacco products (also completely banned for the general public) and any pornographic material is prohibited in publications targeting minors specifically.

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<sup>(7)</sup> Identical tasks were also laid down in Clause 5<sup>th</sup> (3)(e) of the Agreement on public service mission signed between RDP and the Portuguese Government in 30 June 1999. See also article 10 of the Agreement concerning RDP's limits to advertising broadcasts.

## **1.5. Posters**

Outdoor publicity consisting in the affixation of messages with a commercial purpose in public places is presently regulated by Law 97/88 of 17 August 1988, which refers to the general rules on advertising, primarily inserted in the so-called Advertising Code.

## **1.6. Cinema**

According to Article 19 of Law 350/93 of 7 October 1993, the public exhibition of a film can only take place provided that the distributor has a distribution licence for that specific film. The licence aims to establish the classification per age, as well as the obligatory warnings during the film promotion. Films and video programmes as advertising character are subject to specific rules.

## **1.7. Internet**

Although not specifically covered by law, one can nevertheless implicitly sustain the application to advertising by electronic mail of some of the Advertising Code principles, due to terms of its Article 1 [according to which the Code applies to any form of advertising irrespective of the means by which it is transmitted (see Point II, 1.1.)] and, in particular, the general precept of its Article 23 - at least until the publication of a law directly aimed to this particular field, e.g. namely through the implementation in the future of the Directive on E-commerce 2000/31/EC of 8 June 2000. <sup>(8)</sup>

## **2. Specific rules: classification by sector**

### **2.1. ALCOHOL**

#### **2.1.1. General rules**

Decree-law 170/92 of 8 August 1992, as amended by Decree-law n° 273/94 of 28 October 1994 and by Decree-law 159/97 of 24 June 1997 [which firstly implemented in Portugal Council Directive 79/112/EEC of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer (as amended several times), as well as Commission Directive 94/54/EEC of 18 November 1994 concerning the compulsory indication on the labelling of certain foodstuffs of particulars other than those provided for in Council Directive 79/112/EEC and, specifically, Council Directive 87/250/EEC of 15 April 1987 on the

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<sup>(8)</sup> Under the terms of Article 1(2) of Law 6/99, of 17 January 1999, which rules are aimed to regulate the door to door advertising, namely over postal services, direct distribution, phone and telefax [see Point V., 2.2.], its provisions are not applicable to advertising by electronic mail.



indication of alcoholic strength by volume in the labelling of alcoholic beverages for sale to the ultimate consumer] regulated in the past the alcoholic sector.

Nowadays all the above mentioned regulation has been expressly revoked by Decree-law 560/99 of 18 December 1999 which implements in domestic law Council Directive 92/41/EEC of 15 May 1992 modifying Council Directive 89/622/EEC of 13 November 1989 on the approximation of laws, regulations and administrative provisions of the Member States concerning the labelling of tobacco products [See also *infra* "Foodstuffs" under point 2.3.2.A.]. Particularly relevant in this field is Article 13 concerning the indication of the alcoholic contents.

Alcoholic beverages cannot be commercialised in the places exclusively licensed for the exploitation of amusement machines [See *infra* "Amusement machines" under point 2.8.1.], where it is only allowed for the installation of equipment adequate for the sale of non-alcoholic products or beverages under the conditions stated in Article 162(2) of Decree-law 422/89 of 2 December 1989 [See *infra* point 2.8.]

## **2.1.2. Rules on advertising**

### **A. General rules**

According to Article 17(1)(a) of the Advertising Code, the advertising for alcoholic beverages, irrespective of the means by which it is transmitted, is only allowed provided that it is not specifically addressed to minors and, in particular, does not presents them consuming such beverages.

According to Article 20 of the Advertising Code, as amended by Decree-law 275/98, this type of advertising is prohibited in educational institutions, as well as in any publications, programmes or activities targeting minors specifically.

### **B. By media**

#### **2.1.2.1. Television**

According to Article 17(2) of the Advertising Code it is prohibited to advertise alcoholic beverages on television between 7:00 a.m. and 9:30 p.m.. Taking into account the existence of different time-zones on national territory, a new amendment to Article 17 has been recently introduced by Decree-law 51/2001 of 15 February, stating that the official time hour for the purposes of paragraph 2 shall be deemed as the hour where the broadcast initially takes place.

A beer company has already been condemned [Court of Appeal of Lisbon, 1990] for advertising alcoholic beer on the radio outside of the above-mentioned hours. On the other hand, any advertising during that period of the product in general, using expressions like "*the wine*" or "*the beer*" is also prohibited [Court of Appeal of Lisbon, 1990].

Article 20 should also be reminded in the context of advertising for alcoholic beverages, concerning television programmes targeting minors specifically.

#### **2.1.2.2. Radio**

According to Article 17(2) of the Advertising Code it is prohibited to advertise alcoholic beverages on radio between 7:00 a.m. and 9:30 p.m. (concerning the official time hour, see answer to previous question).

Article 20 should also be reminded on the context of advertising for alcoholic beverages, concerning radio programmes targeting minors specifically.

#### **2.1.2.3. Press**

According to Article 20 of the Advertising Code, as amended by Decree-law 275/98, advertising for alcoholic beverages is prohibited in publications targeting minors specifically.

#### **2.1.2.4. Posters**

The above-mentioned prohibition is applicable to posters.

#### **2.1.2.5. Cinema**

According to Article 20 of the Advertising Code, as amended by Decree-law 275/98, advertising for alcoholic beverages, is prohibited in programmes or activities targeting minors specifically (therefore including motion-pictures).

#### **2.1.2.6. Internet**

There is not yet any specific regulation.

However, taking into consideration that rules of Article 17(1) are applicable to all types of advertising, irrespective of the means by which it is transmitted, Internet advertising shall be deemed as included in this provision [see also comments to Article 1 of the Advertising Code, *supra* (Point II, 1.1. and 1.7)].

## **2.2. TOBACCO**

### **2.2.1. General rules**

Portugal has implemented already all European Directives concerning approximation of laws of the Member State concerning tobacco products.

### **2.2.2. Rules on advertising**

#### **A. General rules**

According to Article 18 of the Advertising Code, as amended by Decree-law 275/98, all types of advertising for tobacco over any supports (for its diffusion) under Portuguese jurisdiction shall be prohibited, "*without prejudice to what is established under special legislation*".

According to Article 20 of the Advertising Code, as amended by Decree-law 275/98, this type of advertising is prohibited in educational institutions, as well as in publications, programmes or activities targeting minors in particular.

Apart from this general legislation there are specific provisions regarding advertising to tobacco, i.e.. Law 22/82 of 17 August 1982 regarding the protection against tobacco addiction. This law has been regulated by Decree-law 226/83 of 27 May 1983, as amended by Decree-law 393/88 of 8 November 1988, Decree-law 287/89 of 30 August 1989, Decree-law 253/90 of 4 August 1990, Decree-law 200/91 of 29 May 1991 and Decree-law 276/92 of 12 December 1992.

On the other hand, Council Directive 89/622/EEC of 13 November 1989 on the approximation of laws, regulations and administrative provisions of the Member States concerning the labelling of tobacco products, as last amended by Council Directive 92/41/EEC of 15 May 1992, has been implemented in Portugal by that Decree-law 200/91, as well as by Decree-law 386/93 of 18 November 1993.

#### **B. By media**

According to Article 6 of Decree-law 226/83, as amended by Decree-law 393/88 of 8 November 1988,

*"1. All types of advertising for tobacco products through the advertising broadcasters with registered office in Portugal are prohibited.*

*2. For the purpose of this Decree-law, advertising is any kind of diffusion that aims to draw the attention of the members of the public for certain goods or services of a commercial character in order to promote the sales.*

*3. The rule established in paragraph 1 is not applicable to commercial information restricted to the indication of price, brand and origin shown in the showcases of the shops selling tobacco or objects of consumption directly related to their use."*

According to Article 7 of this same Decree-law, promotions placing names, brand names or other signs of a tobacco product in objects not serving directly the tobacco's use are also prohibited.

#### **2.2.2.1. Television**

As mentioned above, according to Article 6 of Decree-law 226/83, as amended by Decree-law 393/88 of 8 November 1988, "*all types of advertising for tobacco products through the advertising broadcasters with registered office in Portugal are prohibited.*"

See also Articles 18 and 20 of the Advertising Code.

#### **2.2.2.2. Radio**

As mentioned above, according to Article 6 of Decree-law 226/83, as amended by Decree-law 393/88 of 8 November 1988, "*all types of advertising for tobacco products through the advertising broadcasters with registered office in Portugal are prohibited.*"

See also Articles 18 and 20 of the Advertising Code.

#### **2.2.2.3. Press**

According to Article 20 of the Advertising Code, as amended by Decree-law 275/98, advertising to tobacco products is prohibited in publications targeting minors specifically, which is redundant as advertising for tobacco products is completely banned, apart from the advertising made inside the sales points.

See also Article 18 of the Advertising Code.

#### **2.2.2.4. Posters**

No advertising is permitted, unless the posters are inside the sales points.

#### **2.2.2.5. Cinema**

No advertising is permitted.

#### **2.2.2.6. Internet**

There is not yet any specific regulation.

See, however, comments to Article 1 of the Advertising Code, supra [Point II, 1.1. and 1.7].

### **2.3. DRUGS AND HEALTH**

#### **2.3.1. General rules**

According to Article 64(2)(b) of the Constitution, the right to health protection shall be met, among other measures, by the setting up of economic, social, cultural and environmental conditions that namely ensure the protection of childhood and youth, the supported improvement of living and working standards and by the promotion of physical, sportive culture, for instance in schools.

The State shall ensure the right to health protection through the discipline and control of production, distribution, commercialisation and use of chemical, biological and pharmaceutical products as well as other methods of treatment and diagnosis, and also by establishing policies to prevent and to treat the drug abuse [See Article 64(3)(e)(f) of the Constitution].

According to Article 5(1) of Law 24/96 of 31 July 1996 (Law for the Consumer Protection), the supply of goods or the rendering of services that under normal or foreseeable conditions, including duration, are not acceptable according to a high level of health protection and people's physical safety is prohibited.

Children are considered as one of the targets of the national health policy according to the Basic Law for Health [See Basis II(1)(c) of Law 48/90 of 24 August 1990].

#### **2.3.2. Rules on advertising**

According to Article 13(1) of the Advertising Code, advertising encouraging behaviours that are prejudicial to the consumer's health and safety, e.g. through a insufficient information about the dangerous character of the product or the particular possibility of accidents as a result of its normal utilisation shall be prohibited.

Also according to Article 13(2) of the Advertising Code, advertising shall not include, any visual presentation or description of situations where safety is not respected, unless it is done for pedagogical purposes.

These rules are to be particularly observed in case of advertising specially targeted to children or adolescents <sup>(9)</sup>, according to Article 13(3) of the Advertising Code.

On the other hand, according Article 19 of the Advertising Code, the advertising concerning medical treatment and medicinal products available only on prescription, with the exception of advertising included in technical magazines addressed to doctors and other professional care providers, shall be prohibited.

A reference should also be made in this context to Articles 14(1)(c) and 17(1)(c) and (f):

Art. 14(1)(c): «Advertising aimed specifically at minors shall always have regard to their psychological vulnerability, and shall namely avoid anything likely to endanger their physical or moral integrity, as well as their health or security...»

Art. 17(1) states that «advertising for alcoholic beverages shall only be allowed when», among other conditions, (e) «not claim that alcohol has therapeutic qualities or that it has a stimulant or a sedative effect», and (f) «not associates consumption of alcohol to enhanced physical performances».

## **A. General rules**

### **2.3.1.1. DRUGS FOR HUMAN CONSUMPTION**

#### **A. General rules**

Decree-law 100/94 of 19 April 1994, as last amended by Decree-law 48/99 of 16 February 1999, implements in Portugal Council Directive 92/28/EEC of 31 March 1992 on the advertising of medicinal products for human use.

According to Article 2 of this Decree-law, it is considered as advertising of medications when any form of communication, of information, of prospect or incentive directly or indirectly promotes its prescription, disposal, sale, acquisition or consumption.

According to Article 3(1) of the same Decree-law, the advertising with regard to medications for which no licence has been granted for the introduction of the product into the market is prohibited.

The Decree-law also makes the distinction between advertising targeting the public in general and advertising targeting professional care providers.

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<sup>(9)</sup> As well as to old aged people and disabled.

Medicinal products, available on prescription can only be advertised in technical magazines or media exclusively targeting doctors and other professional care providers [See Article 3(3) of this Decree-law]. Also free samples of medications cannot be distributed to the public for promotional purposes [See Article 5(5) of that Decree-law] and they can only be handed over to professional care providers under certain conditions [See Article 11 of that Decree-law].

According to this same Article [See Article 5(1)(e)], advertising of medication targeting the public in general cannot be addressed exclusively or primarily to children.

In general, advertising may not contain elements that are dishonest to, abuse or mislead the public, and the advertising character of the message must be obvious. Apart from that no advertising message can be primarily or exclusively addressed to children [See Article 5(1)(e) of that Decree-law].

On the other hand, Decree-law 101/94 also of 19 April 1994 implements Council Directive 92/27/EEC of 31 March 1992 on the labelling of medicinal products for human use and on package leaflets.

As far as the different requirements for the labelling of medicinal products for human use, one shall emphasise in this framework the one regarding the insertion of the expression "*Keep out of children's reach*" [See Article 4(1)(m) of Decree-law 101/94].

The informative leaflet shall include along with other information, the one regarding the effects in children [See Article 7(3)(j) of Decree-law 101/94] and, under no circumstance, can be used as an advertising tool, according to Article 7(4) of the same Decree-law.

As far as homeopathic products are concerned, Council Directive 92/73/EEC of 22 September 1992 widening the scope of Directives 65/65/EEC and 75/319/EEC on the approximation of provisions laid down by Law, Regulation or Administrative Action relating to medicinal products and laying down additional provisions on homeopathic medicinal products has been implemented in Portugal through Decree-law 94/95 of 9 May 1995. According to this Decree-law, the internal legislation enacted for medicinal products for human use is partially applied to this type of product.

Also, according to Article 22-B of the Advertising Code, as amended by Decree-law 275/98, and without prejudice to what is established by special legislation, the advertising of goods or services alleged as miraculous it is prohibited, in cases where there is no objective scientific evidence regarding the suggested properties, characteristics or effects being advertised. The announcer is in charge of carrying out this evidence. No special rules apply to minors, apart from the general ones.

Finally, according to Article 25-A(3) of the Advertising Code, the teleshopping for medicinal products which are subject to a marketing authorisation as well as teleshopping for medical treatment, shall be prohibited.

## **B. By media**

### **2.3.2.1. Television**

According to Article 19 of the Advertising Code the television advertising for medical treatments and medicinal products available only on prescription, shall be prohibited.

See also the above-mentioned Article 25-A, concerning teleshopping.

### **2.3.2.2. Radio**

See previous answer, *mutatis mutandis* applicable to radio advertising

### **2.3.2.3. Press**

According to Article 19 of the Advertising Code the press advertising to medical treatments and medications where it is obligatory to obtain by means of a prescription is prohibited.

However, medical treatment and medicinal products available only on prescription can be advertised in technical magazines or information medias targeting exclusively doctors and other professional care providers [See Article 19 of the Advertising Code "in fine" as well as Article 3(3) of Decree-law 100/94 of 19 April 1994, as last amended by Decree-law 48/99 of 16 February 1999].

### **2.3.2.4. Posters**

According to Article 19 of the Advertising Code the advertising to medical treatment and medicinal products available only on prescription shall be prohibited.

### **2.3.2.5. Cinema**

According to Article 19 of the Advertising Code the advertising to medical treatment and medicinal products available only on prescription shall be prohibited.

### **2.3.2.6. Internet**

There is not yet any regulation in this field.

See, however, comments to Article 1 of the Advertising Code [Point II, 1.1 and 1.7]



## **2.3.1.2. PESTICIDES FOR NON AGRICULTURAL USE**

### **A. General rules**

Decree-law 294/88 of 24 August 1988, as amended by Decree-law Decree-law 306/90 of 27 September 1990 and by 303/91 of 16 August 1991, establishes the rules with regard to the classification, the labelling and the packaging of pesticides and additives. Some of these products may be used not only in agriculture but also in the industry or and/or have a domestic application.

According to Appendix V of that Decree-law, concerning warnings for the pesticides considered as very toxic, toxic, noxious, corrosive or irritating, one of the warnings foreseen is "*Keep out of the children's reach*".

### **B. By media**

#### **2.3.1.2.1. *Television***

General rules on advertising are applicable, as there is no specific rule in this field.

#### **2.3.1.2.2. *Radio***

General rules on advertising are applicable, as there is no specific rule in this field.

#### **2.3.1.2.3. *Press***

General rules on advertising are applicable, as there is no specific rule in this field.

#### **2.3.1.2.4. *Posters***

General rules on advertising are applicable, as there is no specific rule in this field.

#### **2.3.1.2.5. *Cinema***

General rules on advertising are applicable, as there is no specific rule in this field.

#### **2.3.1.2.6. *Internet***

There is not yet any regulation in this field.

See, however, comments to Article 1 of the Advertising Code [Point II, 1.1. and 1.7]

### **2.3.1.3. FOOD STUFFS**

#### **A. General rules**

Council Directive 79/112/EEC of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer (as last amended by Directive 97/4/EC of the European Parliament and of the Council of 27 January 1997, as well as by Commission Directive 1999/10/EC of 8 March 1999), as well as Council Directive 87/250/EEC of 15 April 1987 on the indication of alcoholic strength by volume in the labelling of alcoholic beverages for sale to the ultimate consumer, Council Directive 89/396/EEC of 14 June 1989 on indications of marks identifying the lot to which a foodstuff belongs (as already amended), and Commission Directive 94/54/EEC of 18 November 1994 (as already amended) concerning the compulsory indication of the labelling of certain foodstuffs of particulars other than those provided for in Council Directive 79/112/EEC are now implemented in Portugal by Decree-law 560/99 of 18 December 1999.

No special reference to children's protection is made.

#### **B. By media**

##### **2.3.1.3.1. *Television***

General rules on advertising are applicable, as there is no specific rule in this field. See, in particular, the wording of Article 13, paragraphs 1 and 3, supra [Point II., 2.3.2]

##### **2.3.1.3.2. *Radio***

General rules on advertising are applicable, as there is no specific rule in this field. See, in particular, the wording of Article 13, paragraphs 1 and 3, supra [Point II., 2.3.2].

##### **2.3.1.3.3. *Press***

General rules on advertising are applicable, as there is no specific rule in this field. See, in particular, the wording of Article 13, paragraphs 1 and 3, supra [Point II., 2.3.2].

##### **2.3.1.3.4. *Posters***

General rules on advertising are applicable, as there is no specific rule in this field. See, in particular, the wording of Article 13, paragraphs 1 and 3, supra [Point II., 2.3.2].

##### **2.3.1.3.5. *Cinema***

General rules on advertising are applicable, as there is no specific rule in this field. See, in particular, the wording of Article 13, paragraphs 1 and 3, supra [Point II., 2.3.2].

#### **2.3.1.3.6. Internet**

There is not yet any regulation in this field.

See, however, comments to Article 1 of the Advertising Code [Point II, 1.1. and 1.7.].

#### **2.3.1.4. COSMETICS**

##### **A. General rules**

Council Directive 76/768/EEC of 27 July 1976 on the approximation of the laws of the Member States relating to cosmetic products (as already amended by Council Directive 93/35/EEC of 14 June 1993), as well as Commission Directive 95/17/EC of 19 June 1995 laying down detailed rules for the application of Council Directive 76/768/EEC as regards the non-inclusion of one or more ingredients on the list used for the labelling of cosmetic products are now implemented in Portugal by Decree-law 296/98 of 25 September 1998 and by Decree-law 206/99 of 9 June 1999.

According to Article 11 of Decree-law 296/98, as far as advertising cosmetic and corporal hygiene products are concerned, these products are subject to the regime established by the Advertising Code, with the exception of the specific provisions stated in this Decree-law.

As far as these specific provisions are in relation to children, it is expressly stated that some warnings in the instructions for use regarding certain types of products, such as "*Keep out of children's reach*", or "*Do not use on children younger than 12*", or "*Keep out of both the children's noses and mouths*", or "*Not to be used on children younger than 3*". These rules are established in Article 7(1)(d) of Decree-law 296/98, which refers to several Appendixes of "Portaria" 1281/97 of 31 December 1997 where the correspondence between those warnings and the different ingredients are identified in detail.

##### **B. By media**

#### **2.3.1.4.1. Television**

General rules on advertising are applicable, as there is no specific rule in this field. See, in particular, the wording of Article 13, paragraphs 1 and 3, supra [Point II., 2.3.2].

#### **2.3.1.4.2. Radio**

General rules on advertising are applicable, as there is no specific rule in this field. See, in particular, the wording of Article 13, paragraphs 1 and 3, supra [Point II., 2.3.2].

#### **2.3.1.4.3. Press**

General rules on advertising are applicable, as there is no specific rule in this field. See, in particular, the wording of Article 13, paragraphs 1 and 3, supra [Point II., 2.3.2].

#### **2.3.1.4.4. Posters**

General rules on advertising are applicable, as there is no specific rule in this field. See, in particular, the wording of Article 13, paragraphs 1 and 3, supra. [Point II., 2.3.2].

#### **2.3.1.4.5. Cinema**

General rules on advertising are applicable, as there is no specific rule in this field. See, in particular, the wording of Article 13, paragraphs 1 and 3, supra [Point II., 2.3.2].

#### **2.3.1.4.6. Internet**

There is not yet any regulation in this field. See, however, comments to Article 1 of the Advertising Code [Point II., 1.1. and 1.7.]

### **2.4. VEHICLES**

#### **2.4.1. General rules**

The Road (Traffic) Code has been approved by Decree law 114/94 of 3 May 1994, as last amended by Decree-law 2/98 of 3 January 1998, and has been regulated by Decree-law 209/98 of 15 July 1998, as last amended by Decree-law 315/99 of 11 August 1999.

According to that Code, the requirements regarding the age to drive depend on the different categories of vehicles. These ages are according to Article 126 of the Code:

- 16 years : motorised bicycles and motorcycles with a cylinder not higher than 50 cm<sup>3</sup>, as well as certain agriculture vehicles (of categories I and II);
- 18 years : motorised vehicles in general, certain agriculture machines (of category III);
- 21 years : trucks. However the ones having a certificate of attendance from a course for drivers of vehicles for the transportation of goods are entitled to get the licence when they are 18.

In case the license is granted to an individual who is less than 18 years of age, parental/guardian authorisation is requested.

## **2.4.2. Rules on advertising**

### **A. General rules**

According to Article 22-A of the Advertising Code, as last amended by Decree-law 74/93 of 10 March 1993, it is prohibited advertising for automobile[ ]vehicles that include situations or suggestions related with their usage that may endanger the personal security of the user or others, that may endanger the environment or that would present situations infringing the Traffic Code, for instance excessive speed, dangerous manoeuvres, non use of the security appliances and disrespect for the road signs or for the pedestrians' security. On the other hand, Article 17(1)(f) of the same Code prohibits the association of the consumption of alcoholic beverages with the driving of vehicles.

Additionally, the wording of Article 13(1)(2) and (3) should also be reminded in this context [See point II, 2.3.2.].

### **B. By media**

#### **2.4.2.1. Television**

There is no specific rule applicable, apart from the above-mentioned Articles 13, 17(1)(f) and 22-A of the Advertising Code.

#### **2.4.2.2. Radio**

There is no specific rule applicable, apart from the above-mentioned Articles 13, 17(1)(f) and 22-A of the Advertising Code.

#### **2.4.2.3. Press**

There is no specific rule applicable, apart from the above-mentioned Articles 13, 17(1)(f) and 22-A of the Advertising Code.

#### **2.4.2.4. Posters**

There is no specific rule applicable, apart from the above-mentioned Articles 13, 17(1)(f) and 22-A of the Advertising Code.

#### **2.4.2.5. Cinema**

There is no specific rule applicable, apart from the above-mentioned Articles 13, 17(1)(f) and 22-A of the Advertising Code.

#### **2.4.2.6. Internet**

There is not yet any regulation in this field.

See, however, comments to Article 1 of the Advertising Code [Point II.,1.1. and 1.7.]

### **2.5. EDUCATION**

#### **2.5.1. General rules**

##### **2.5.1.1. ACCESS OF MINORS TO SCHOOLS**

Article 43(1)(2) of the Portuguese Constitution guarantees the freedom of learning and teaching, the State not being allowed to plan education and culture in accordance with any philosophic, aesthetic, political, ideological or religious guidelines.

Therefore State shall ensure a network of public educational institutions covering the needs of the whole population [See Article 75(1) of the Constitution], and public education shall not be confessional [See Article 43(3) of the Constitution]. On the other hand, the Constitution assures the right to set up private schools and co-operatives [See Article 43(4) of the Constitution], which shall be under the supervision of the State (See Article 75(2) of the Constitution).

However universities are considered as independent bodies from the State [See Article 76 of the Constitution]

One shall also take into consideration that a special regime of catholic schools is expressly considered under the *Concordat* concluded between Portugal and the Holy See.

On the other hand, according to Article 74(2) of the Constitution, the State shall ensure the compulsory and free basic education for all, extending progressively the gratuity to all levels of education.

According to Article 6 of Law 46/86 of 14 October 1986 establishing the general framework of the educational system, the minor is subject to schooling for a period of nine years, between 6 and 15 years of age.

The basic obligatory schooling is divided into three stages, the first one being four years, the second one two years and the third one three years. Access to professional schooling shall be provided to those who did not complete the obligatory schooling. For the individuals that are no longer of the age to attend the basic (i.e. the first stage of obligatory schooling) and secondary schooling (i.e. the second and third stages of obligatory schooling) it is not possible to attend recurrent courses for grown ups at the level of the basic schooling from the age of 15, and at the level of the secondary schooling from the age of 18. Apart from that it is considered a pre-schooling period starting at the age of 3 until the age of access to basic schooling, i.e. until the age of 6.

### **2.5.1.2. WORK OF MINORS**

According to Article 59(2)(c) of the Portuguese Constitution, the State shall ensure special protection at work for minors, among the general conditions of working, remuneration and rest to which the workers are entitled.

In the constitutional revision of 1997 an amendment has been done to Article 69 of the Constitution, in order to insert a paragraph 3 according to which it is forbidden the work of minors during the compelled schooling years.

Therefore Article 59(2)(c) and Article 69(3) of the Portuguese Constitution shall not actually be read actually in a very literal way.

This is also emphasised by the fact that Portugal recently acceded to the Convention n° 138 of the International Labour Organisation on the minimal age to be permitted to work [See Resolution of the Assembly of the Republic 11/98 of 22 January 1998 that approves this Convention, as well as Decree of the President of Republic 11/98] which is fixed as being 18 [See Article 3 of the Convention], with the possibility for the national legislator to resolve it, for light work, for ages between 13 and 15 provided that that this work is not at risk of endangering the health or interfering with the obligatory schooling [See Article 7 of the Convention].

Portugal also recently ratified amendment to Article 43(2) of the Convention on the Rights of the Child where the age of 10 has been replaced by the age of 18, as adopted by the General Assembly of the United Nations on 20 November 1989 [See Resolution of the Assembly of Republic 12/98 of 22 January 1998 and Decree of the President of Republic 12/98].

## **2.5.2. Rules on advertising**

### **A. General rules**

According to Article 22 of the Advertising Code, as amended by Decree-law 275/98, it is obligatory that the advertising message related to courses or any other similar improvement actions expressly mentions the character of those courses accordingly with the denomination officially accepted by the relevant authorities, as well as the duration of such courses and, should it be the case, to mention "*not officially recognised*".

As far as minors are concerned, Article 20 of the Advertising Code prohibits advertising for alcoholic beverages, tobacco products and any type of pornographic material within educational institutions.

### **B. By media**

#### **2.5.2.1. Television**

There are no specific rules regarding television broadcasting.

#### **2.5.2.2. Radio**

There are no specific rules regarding radio broadcasting.

#### **2.5.2.3. Press**

There are no specific rules regarding the press, apart from Article 20 of the Advertising Code according to which the advertising for alcoholic beverages, tobacco products, as well as to any type of pornographic material is prohibited in educational institutions as well as in publications targeting specifically minors.

#### **2.5.2.4. Posters**

There are no specific rules regarding posters, apart from the above-mentioned one for the press.

#### **2.5.2.5. Cinema**

There are no specific rules regarding cinema.

#### **2.5.2.6. Internet**

There is not yet any regulation in this field.

See, however, comments to Article 1 of the Advertising Code [Point II.,1.1. and 1.7.]



## **2.6. TOYS AND OBJECTS FOR CHILDREN**

### **2.6.1. General rules**

In Portugal Council Directive 88/378/E of 3 May 1988 on the approximation of the laws of the Member States concerning the safety of toys, as last amended by Council Directive 93/68/EEC of 22 July 1993, has been implemented by Decree-law 237/92 of 27 October 1992 which governs the regime applicable to the safety of toys, as last amended by Decree-laws 139/95 of 14 June 1995 and by Decree-law 50/97 of 28 February 1997.

According to Article 2(1)(2) of Decree-law 237/92, toys are any product conceived or obviously intended to be used for playing purposes, including pyrotechnic material, used by children younger than 14. Therefore, according to Article 3(1) of the same Decree-law, the toy, when used for the purpose it was designed for or taking into consideration the foreseeable behaviour of children, endanger the user's health and safety.

According to Article 10(1) of Decree-law 237/92 the toy whose use is considered a risk for children, at the time it is launched into the market, shall be accompanied by warnings and indications in order to reduce such risks. Such warnings and indications being obligatory are stated in Appendix V to this Decree law which concerns specifically the regime applicable to toys for children under 36 months, to toboggans, to suspended child swings, to rings, to trapezes, to ropes and to similar toys assembled on porches or supports, to functional toys, to toys enclosing dangerous substances, as well as to chemical toys, to skate boards and to roller skates for children, and to aquatic toys.

Apart from these warnings and indications all types of specifications are stated in order to prevent risk of injury to children, e.g. physical and mechanical characteristics, inflammable characteristics, chemical properties, electrical characteristics, hygiene and radioactivity.

### **2.6.2. Rules on advertising**

#### **A. General rules**

According to Article 13 of Decree law 237/92 it is forbidden to advertise toys that do not have the mark CE exposed.

#### **B. By media**

##### **2.6.2.1. Television**

There are no specific rules regarding advertising through television broadcasting, apart from the rules regarding advertising targeting specifically minors. Articles 13 and 14 should be taken on a special account in this context.

#### **2.6.2.2. Radio**

There are no specific rules regarding advertising through radio broadcasting, apart from the rules regarding advertising targeting specifically minors.  
Articles 13 and 14 should be taken on a special account in this context.

#### **2.6.2.3. Press**

There are no specific rules regarding advertising in the press, apart from the rules regarding advertising targeting specifically minors.  
Articles 13 and 14 should be taken on a special account in this context.

#### **2.6.2.4. Posters**

There are no specific rules regarding advertising through posters, apart from the rules regarding advertising targeting specifically minors.  
Articles 13 and 14 should be taken on a special account in this context.

#### **2.6.2.5. Cinema**

There are no specific rules regarding advertising through motion pictures, apart from the rules regarding advertising targeting specifically minors.  
Articles 13 and 14 should be taken on a special account in this context.

#### **2.6.2.6. Internet**

There is not yet any regulation in this field.  
See, however, comments to Article 1 of the Advertising Code [Point II.,1.1. and 1.7.]

### **2.7. FINANCIAL SERVICES**

#### **2.7.1. General rules**

According to Article 102 of the Constitution, the Bank of Portugal is the national central bank of the country and is acting presently as a supervisory body. The Bank of Portugal is regulated by Law 337/90 of 30 October 1990, as last amended by Law 5/98 of 31 January 1998, and its main function is of prudential control over the other financial institutions.

As far as minors are concerned, several aspects should be emphasised:

##### **2.7.1.1. Credit including bonus for young people**

According to Article 14 of Decree-law 349/98 of 11 November 1998 concerning the legal regime of concession of credit to habitation, this regime may apply to the households that fulfil certain requirements, provided that at the date the credit is approved by the financial

institution none of the family members is aged more than 30 years or, in the case of a single person, this person is an adult not older than 30. This means, in practical terms, that financial institutions may accept applications from minors, i.e. younger than 18, but for the access to the credit in question maturity is a requirement.

### **2.7.1.2. Credit including a bonus for university students**

Decree-law 512/99 of 24 November 1999 has set up the legal regime according to which credit including a bonus can be granted to university students.

As one of the requirements to access this type of credit, the applicant must be one or two years away from achieving the last curricular year of the graduation by an institution recognised by the Ministry of Education, and taking into consideration that before university the student is obligated to complete nine years schooling, it appears rather doubtful that someone younger than 18 can accede this kind of credit, unless for the ones attending the poly-technical school that may achieve such a position before that age.

Law 113/97 of 16 September 1997 concerning the basis of financing the public university schooling set up in the meantime a scheme according to which it is possible for the students to obtain from the State scholarships directly, as well as emergency aid which is continuing a tradition in the Portuguese system.

Apart from this type of aid this Decree law also paves the way to other modes of loans with remunerated rates adjusted to the economic situation of the student and to be reimbursed after the completion of studies [See Article 26 of Decree-law 113/97].

### **2.7.2. Rules on advertising**

A. General rules

B. By media

#### **2.7.2.1. Television**

Apart from the recent measures regarding the granting of credit to consumers, there is no specific regulation, apart from the general rules on advertising.

#### **2.7.2.2. Radio**

Apart from the recent measures regarding the granting of credit to consumers, there is no specific regulation, apart from the general rules on advertising.

#### **2.7.2.3. Press**

Apart from the recent measures regarding the granting of credit to consumers, there is no specific regulation, apart from the general rules on advertising.

#### **2.7.2.4. Posters**

Apart from the recent measures regarding the granting of credit to consumers, there is no specific regulation, apart from the general rules on advertising.

#### **2.7.2.5. Cinema**

Apart from the recent measures regarding the granting of credit to consumers, there is no specific regulation, apart from the general rules on advertising.

#### **2.7.2.6. Internet**

There is not yet any regulation in this field.

See, however, comments to Article 1 of the Advertising Code [Point II.,1.1 and 1.7.]

### **2.8. LEISURE**

#### **2.8.1. General rules**

##### **2.8.1.1. PERFORMANCES OF AN ARTISTIC CHARACTER**

Decree-law 315/95 of 28 November 1995 establishes the rules for the installation and functioning of the places of public performances and amusement and establishes the legal requirements for the performances of an artistic character.

As far as these ones are concerned Article 27 of this Decree-law establishes the requirement for a previous license, which shall mention namely the age classification of the performance in question. The affixation during the performance at the venue where it takes place a copy of this license is obligatory.

Also the advertising of these performances shall be done accordingly.

##### **2.8.1.2. AMUSEMENT MACHINES**

Article 16 of the Regulation approved by Decree-law 316/95 of 28 November 1995 defines amusement machines as the machines not paying prizes in coins, cards or anything with an economic value, nor develop games whose results depend exclusively or primarily from the players' skills or that, having the characteristics above, allow the winning of objects of which the economic value does not exceed three times the amount spent by the player.

In this regard this Decree-law includes some provisions in order to protect the youth, e.g. the possibility for *Governo Civil* refusing, through a justified decision, their concession or the renewal of the exploitation license based on considerations concerning the children and youth protection, the inadmissibility of the exploitation of such machines in the neighbourhood of schools, as well as the minimal of admittance to places where the machines are installed

which is 16 years, unless the children are over 12 and are accompanied by the person or persons exercising the parental power.

According to recent Supreme Court case law [1996, 1998], electric machines like *Jurassic Gum*, a game similar to "Joker" or to "Poker", where someone introduces a coin of 100 escudos and receives a chewing gum, can only be used in casinos and authorised places, as it is a game of chance.

### **2.8.1.3. GAMBLING**

According to Article 16(2) of the Regulation approved by Decree-law 316/95 of 28 November 1995 the machines used in gambling are still governed by Decree-law 422/89 of 2 December 1989 and other regulations.

According to Article 29 of Decree-law 422/89, as last amended by Decree-law 10/95 of 19 January 1995, the access to the casinos shall not be allowed from 22 hours onwards to minors younger than 14, except in such cases where they are older than 10 and provided that they are accompanied by the person in charge of their education. However, certain places in the casino, such as those where there are the game machines of chance or the *Keno* is installed can only be accessed by individuals older than 18 [See Articles 12(3) and 36(1)(2)(a) of the same Decree-law].

Also according to Article 21 of the Advertising Code, it is prohibited any type of advertising concerning gambling activities as the essential purpose of the advertising message, with the exception of the gambling promoted by *Santa Casa da Misericórdia de Lisboa*.

### **2.8.1.4. PORNOGRAPHY**

According to Article 2 of Decree-law 254/76<sup>10</sup> of 7 April 1976, the exhibition and sale of objects or "means" (placards, announcements, warnings, programmes, scripts, drawings, engravings, reproductions, phonograph records, photos, films and in general any printing, tools for mechanical reproduction and other objects of audio-visual communication of pornographic content is only allowed inside special places concerned with this type of business. This Decree-law has been regulated by Decree-law 647/76<sup>11</sup> of 31 July 1976.

According to these Decree laws, it is prohibited for the sale of these objects or means to or by individuals younger than 18. Those younger than 16 years that are selling these objects or means are subject to measures of criminal prevention; those aged between 16 and 18 may be subject to a prison sentence.

As far as movies are concerned there is a Commission for the classification by age. In such cases of films classified as pornographic it is prohibited for the entry of individuals younger than 18. It is also prohibited that during sessions of other films considered as non - pornographic an advertisement is being shown for pornographic films.

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<sup>10</sup> This legal provision was derogated by the Criminal Code.

<sup>11</sup> Idem.

## **2.8.2. Rules on advertising**

### A. General rules

#### **2.8.2.1. PERFORMANCES OF AN ARTISTIC CHARACTER**

According to Article 28 of Decree-law 315/95 of 28 November 1995, a copy of the license required for the performance shall be required to be affixed during the performance at the venue where it takes place, including the minimum age to attend the performance and the advertising of these performances shall be done accordingly.

#### **2.8.2.2. AMUSEMENT MACHINES**

According to Article 22 of Decree-law 316/95 of 28 November 1995 it is obligatory the affixation at the place the machine is installed of a warning including the minimum age for its utilisation.

#### **2.8.2.3. GAMBLING**

According to Article 33(1)(c) of Decree-law 422/89, as last amended by Decree-law 10/95, at the entrance of each gambling room shall be affixed a warning including information to which Article 36 refers [See *supra* point 2.8.]

According to Article 21 of the Advertising Code, it is prohibited any type of advertising concerning gambling activities, with the exception of the ones promoted by *Santa Casa da Misericórdia de Lisboa*.

#### **2.8.2.4. PORNOGRAPHY**

According to Article 20 of the Advertising Code, as amended by Decree-law 275/98, this type of advertising is prohibited in educational institutions, as well as in publications, programmes or activities targeting especially minors.

Article 14(1)(c) of the Advertising Code should also be reminded in this context [See *supra* Point I, Abuse of Confidence].

### B. By media

#### **2.8.2.4.1. *Television***

There are no specific rules regarding television advertising in this field, apart from the rules on advertising targeting specifically minors and the above mentioned prohibitions established by Articles 20 and 21 of the Advertising Code.

#### **2.8.2.4.2. Radio**

Apart from the rules already mentioned for advertising through television broadcasting which are also valid in this field, one shall take also into consideration Article 14(b) of Law 87/88 of 30 July 1988 (the so-called Radio Law), according to which the radio advertising for objects or means of a pornographic or obscene character is prohibited.

#### **2.8.2.4.3. Press**

There are no specific rules regarding advertising through the press, apart from the general rules on advertising and the advertising rules targeting specifically minors and the above mentioned prohibitions established by Articles 20 and 21 of the Advertising Code.

#### **2.8.2.4.4. Posters**

There are no specific rules regarding advertising through posters, apart from the general rules on advertising and the advertising rules targeting specifically minors and the above mentioned prohibitions established by Articles 20 and 21 of the Advertising Code.

#### **2.8.2.4.5. Cinema**

There are no specific rules regarding advertising through motion-pictures, apart from the general rules regarding advertising targeting specifically minors and the above mentioned prohibitions established by Articles 20 and 21 of the Advertising Code.

#### **2.8.2.4.6. Internet**

There is not yet any regulation in this field.  
See, however, comments to Article 1 of the Advertising Code [Point II,1.1. and 1.7.]

### **2.9. FIRE ARMS/VIOLENCE**

#### **2.9.1. General rules**

According to Article 2(1) of Law 22/97 of 27 June 1997, as last amended by Law 93-A/97 of 22 August 1997 and by Law 29/98 of 26 June 1998, the individuals in their full civil and political rights, i.e. older than 18, can be granted a licence for the use of fire arms for hunting, as well as for precision and recreation fire arms.

However, according to Article 2(2)(3) of the same law as far as precision and recreation fire arms are concerned, those licences can be conceded to minors older than 16 provided the requests are being lodged by the parents or tutors, and apart from the other general requirements.

Exceptionally, the licences regarding precision and recreation fire arms can be granted to minors older than 14 and younger than 16, as well as licences regarding fire arms for hunting

can be conceded to minors older than 16 provided the request is lodged by their legal representatives and under the condition that this legal representative accepts liability for the incorrect use of the fire arm.

## **2.9.2. Rules on advertising**

### **A. General rules**

According to Article 7(2)(b) and (c) of the Advertising Code the advertising encouraging violence or offending the dignity of the human being shall be prohibited.

Additionally, Article 14(1)(c) states that advertising aimed specifically at minors shall always take into consideration their psychological vulnerability, and shall avoid anything likely to endanger their physical or moral integrity, as well as their health or security, namely by encouraging violence.

### **B. By media**

#### **2.9.2.1. Television**

The above-mentioned general rules are applicable to television advertising [see also Article 21(1) of Television Law (Law 31-A/98, of 14 July 1998)].

#### **2.9.2.2. Radio**

The above-mentioned general rules are applicable to radio advertising [see also Article 13(1) of Radio Law (Law 87/88, of 30 July 1988)].

Article 8(3) of the Law on the radio broadcasting also emphasises that the broadcasting of programmes or messages that offend the dignity of the human being, encourage violence or are contrary to the penal law are not allowed either.

#### **2.9.2.3. Press**

The above general rules are also applicable to the press [see also Article 28(1) of Press Law (Law 2/99, of 13 January 1999)].

#### **2.9.2.4. Posters**

The above general rules are also applicable.

#### **2.9.2.5. Cinema**

The above general rules are also applicable.



### **2.9.2.6. Internet**

There is not yet any regulation in this field.

See, however, comments to Article 1 of the Advertising Code [Point II.,1.1 and 1.7.]

### **3. Proposals of law**

According to our knowledge there is no proposal of law with regard to advertising, and more specifically, to advertising targeting minors.

### III. SELF-REGULATION

#### 1. General rules

One should keep in mind that at the international level the following codes of conduct also have an impact on Portuguese operators:

- a)* The ICC International Code of Advertising Practice (edition of 1997) and in this respect particular attention shall be put in Article 14 regarding the impact of advertising on children, whose contents have also been taken into consideration by the Portuguese legislator in the above mentioned legislation;
- b)* The ICC International Code on Sponsorship (edition of 1996) and in this respect particular attention shall be put on Article 6 regarding the impact of advertising on children, whose contents have also been taken into consideration by the Portuguese legislator in the above mentioned legislation; and
- c)* The ICC Guidelines on Advertising and Marketing on the Internet and in this respect particular attention should be brought to Article 6 that stipulates special rules concerning minors' protection which are similar to those provisions mentioned in the ICC Code of Advertising Practice.

At the Portuguese level we can mention that according to Article 19 of Law 24/96 (Law for the Consumer Protection) the consumer association can negotiate with professionals or their representative organisation Codes of fair conduct, which cannot obviously be contrary to the legal provisions in force.

In Portugal and without prejudice to confirmation still to be obtained, the following codes were in force in the past:

- d)* Code of Fair Practices in Advertising (of APAP - Associação Portuguesa das Empresas de Publicidade e Comunicação). According to Article 13(1) of this Code, advertising should not exploit the natural credulity of children, as well as the lack of experience of adolescents, nor abuse of their loyalty sense. On the other hand, according to Article 13(2) the advertising targeting children and adolescents or that can influence them shall not include any statement or visual aspect that can risk provoking their mentality, morality or causing physical damage.
- e)* The Ethical Code and the Fair Practices (of Portuguese Association of Direct Mail and Sale by Correspondence), although no specific reference is being made to minors.
- f)* The ICAP - Instituto Civil da Autodisciplina da Publicidade: ICAP's Code of Practice was issued in April 1991 and revised several times since then. The Code is divided into various sections and contains chapters on decency, honesty, truthfulness, safety measures, children, and so on.

g) Recommendations of the Council for Advertising, which are no longer in use, are set up by the Advertising Code. Among the several recommendations enacted by this Council there are two specifically that concern minors, one being dated 4 March 1987 and the other one about the use of the minor's image in advertising dated 26 July 1988, which pave the way to the inclusion of their contents into the Portuguese legislation.

## IV. SPECIAL TECHNIQUES

### 1. Direct marketing

According to Article 23(1) of the Advertising Code, without prejudice to special legislation, the advertising delivered to domicile of the addressee, by mail or by any other means, shall respect several requirements aiming to respect the basic principles of advertising, e.g. the advertiser's identification.

There are no specific rules regarding minors in this special legislation.

Door to door publicity, as well as publicity by telephone and by telefax is governed by Law 6/99 of 27 January 1999, without prejudice to what is established in this matter in Article 23 of the Advertising Code.

In the meantime Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector has been implemented in Portugal by Law 69/98 of 28 October 1998. Additionally, Article 41(2) of the Regulation of Exploitation of the fixed telephone service approved by Decree-law 474/99 of 8 November 1999 establishes expressly the obligation for those providers to respect the contents of Law 69/98. Article 12 of that Law regarding the direct marketing operations using automatic telephone or fax appliances, requires the previous subscriber's consent consists therefore in an exception to the lack of legislation in the field of electronic commerce.

When measures other than the ones mentioned above are used, the user has also the right to oppose to the reception of unsolicited calls.

In any case the entities in charge of those direct marketing operations are the ones who shall be bound with such obligations.

Also Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of the individuals with regard to the processing of personal data and on free movement of such data had already been implemented in Portugal by Law 67/98 of 26 October 1998, which also has some implications as far as direct marketing is concerned.

### 2. Promotional sales practices

There is no specific regulation with impact on minors.

## V. COMPLAINTS

### 1. Self-regulation

The Instituto Civil da Autodisciplina da Publicidade (ICAP, Civil Institute of Advertising Self-Regulation) is the only self-regulatory body for advertising in Portugal. ICAP represents advertisers, advertising agencies and media.

The main tasks of ICAP are to provide pre-publication advice on campaigns and to investigate complaints in accordance with the code of practice and statute of law.

### 2. Administrative proceedings

According to Article 60(3) of the Portuguese Constitution, the associations of consumers, as well as the co-operatives of consumers are entitled, according to the law, to get support from the State and to be auditioned on the questions concerning the defence of the consumers' rights.

Without prejudice to specific regimes (some of them mentioned below) and the specific competence of the different administrative and police authorities, the control over the compliance of the rules established by the Advertising Code is mainly of the competence of the Institute for the Consumer. The application of fines in the framework of the Advertising Code and under Article 39, is of the competence of a commission composed by the chairman of the commission mentioned in Article 52(2) of Decree-law 28/84 of 20 January 1984, the president of the Institute for the Consumer and the president of the Institute for the Media. In case additional penalties shall be applied, such as temporary interdiction to the practice of advertising activity (Article 35 of the Advertising Code), the correspondent final decision is committed to the minister in charge of the consumer protection (Article 39(3) of the Advertising code).

The same Advertising Code establishes nevertheless an exception to this competence in its Article 40 in which concerns the application of Article 19 of the same Code concerning treatments and medicaments [See *infra* point V.2.].

The handling of complaints, as well as the procedures concerning infringement of the general and specific legislation on advertising of products and/or services is very complex in Portugal. This is due to the complexity of administrative procedures. Further, because there is no consolidated legislation it is difficult sometimes to apply the law in accordance to the general procedural rules still framed in Decree-law 433/82 of 27 October 1982, as amended by Decree-law 356/89 of 17 October and by Decree-law 244/95 of 14 September 1995, as well as in Decree-law 28/84 of 20 January 1984.

One common point to all this legislation is that, in any case, it is always possible to appeal against administrative decisions taken by the different commissions in charge to judicial courts.

Below we will try to summarise the entities in charge of the application of fines.

## **2.1. Outdoor advertising**

### **2.1.1. Within the towns and villages**

The entities in charge of controlling this type of advertising within the towns and villages are the Town Halls. The procedural rules to be applied to infringements are the ones established by Decree-law 433/82 of 27 October 1982, according to Article 10 of Decree-law 97/88 of 17 August 1988.

### **2.1.2. Outside the towns and villages, along and/or in the neighbourhood of national roads**

Outside the urban agglomerates the rules for advertising along and/or in the neighbourhood of the national roads are established by Decree-law 195/98 of 24 April 1998, as last amended by Decree law 166/99 of 13 May 1999. The entities in charge of this case for controlling are the regional directorates for environment, as well as the Town Halls, without prejudice to the competence of the *Junta Autónoma das Estradas* (an entity that disappeared in the meantime and that has been replaced by another one to which this type of competence has been transferred), according to Article 6 of that law.

The application of fines is in relation to the competence of the regional director for environment or of the president of the Town Hall.

## **2.2. Door to door advertising and publicity by telephone and by telefax**

The entity in charge of supervising the application of the rules concerning door to door advertising as well as advertising by telephone and by telefax is the Institute of Consumer, according to Article 9 of Law 6/99 of 27 January 1999.

The application of fines arising from the not accomplishing those rules is, according to Article 10 of the same law, the competence of the commission to which Article 39 of the Advertising Code refers to, i.e. a commission composed by the president of the commission to which Article 52(2) of Decree-law 28/84 of 20 January 1984 refers to, who acts as chairman, by the president of the Institute for the Consumer and by the President of the Institute for the Media, without prejudice to the possibility that this commission refers the case to the minister in charge of the Consumers' Protection in case of additional penalties be applied, under the terms of Article 39(3) of the Advertising Code.

### **2.3. Tobacco products**

According to Article 4(1) of Decree-law 386/93 of 18 November 1993 the entity in charge to control the application of this Decree-law (i.e. the Decree-law that implements Council Directive 92/41/EEC), as well as according to the rules of Decree-law 226/83 of 27 May 1983, as amended, is the Directorate General for Health, which is competent to apply fines in case of infringement of rules on Health domain.

Without prejudice of the specific competence of Directorate General for Health as referred to in previous paragraph, the Comissão de Aplicação de Coimas em Matéria de Publicidade is the entity competent to apply fines in case of infringement to the Advertising Code rules on tobacco advertising – Articles 18, 34(1)(b) and 39.

As far as control of tobacco addiction and the application of fines are concerned, there is still a room for intervention of the Directorate General for Economic Activities.

### **2.4. Drugs and Health**

#### **2.4.1. Medicinal products for human use**

According to Article 12 of Decree-law 100/94 of 19 April 1994, it has been set up in the dependency of the National Institute for Pharmacy and for Medicament the National Council for Advertising of the Medicament, which is a consultative body with competence in the domain of medicinal products for human use. This National Council is composed by representatives of the Ministry of Health, of the medical and pharmaceutical professions, of the pharmaceutical industry, of the pharmacies and of the consumers.

However, in case of infringements of the rules of Decree law 100/94 it is competent the National Institute for Pharmacy and of the Medicament (the so-called INFARMED) [See Article 13 of Decree-law 100/94].

Nevertheless, Article 40 of the Advertising Code granting the competence for controlling advertising of treatments and medicinal products as established under Article 19 of the same Code to the Directorate General of Primary Health Cares, to the Directorate General of the Pharmaceutical Affairs and to the relevant services in the Autonomous Regions of Madeira and Azores, as well as for applying fines in case of infringement, has apparently never been revoked.

This circumstance in conjunction with the fact that according to Article 17 of Decree-law 100/94 the Advertising Code shall apply, as subsidiary law, may be at the origin of some misunderstandings...

Apart from the offender, the announcer may also be punishable, the advertising agency or any other entity exercising the advertising, the owner of the advertising media, as well as the concessionary [See Article 15 of Decree-law 100/94].

#### **2.4.2. Pesticides for non agricultural use**

According to Articles 13 and 14 of Decree-law 294/88 of 24 August 1988, the entity in charge of controlling the application of this Decree-law and of applying fines in case of infringement is the Directorate General for Economic Activities, with the exception of the Autonomous Regions of Madeira and Azores where the competence is granted to their own bodies.

#### **2.4.3. Food stuffs**

According to Article 27 of Decree-law 560/99 of 18 December 1999, the entity in charge of controlling its application are the Directorate General for Supervision and Control of the Quality of the Foodstuffs and the Regional Directorates for Agriculture.

As far as the application of fines in case of infringement is concerned is the Director General of the Directorate General for Supervision and Control of the Quality of the Foodstuffs.

#### **2.4.4. Cosmetics**

According to Article 20 of Decree-law 296/98 the entity in charge of controlling the application of the rules in this field is INFARMED, without prejudice to the competence legally granted to other entities.

Always without prejudice to the competence of other entities INFARMED is competent to apply fines following the procedure foreseen in Decree law 433/82 of 27 October 1982, as amended by Decree law 356/89 of 17 October 1989 and by Decree law 244/95 of 14 September 1995.

#### **2.5. Toys**

In the past and as far as toys are concerned the entity in charge of applying fines for disrespecting what is established by Decree law 237/92 of 27 October 1992 concerning toys' safety was a specific commission composed by a judge, the president of the Portuguese Institute for Quality and by the director of the National Institute for the Consumer's Protection. Decree law 50/97 of 28 February 1997, amending that Decree law, granted that competence to the commission foreseen in Article 52(2) of Decree law 28/84 of 20 January 1984.



## **2.6. Leisure**

### **2.6.1. Public performances of an artistic character**

Infringements of the rules of Decree-law 315/95 of 28 November 1995 are of the competence of Directorate General of Performances or of the relevant Town Hall.

### **2.6.2. Amusement machines**

Infringements of the rules of Decree-law 316/95 of 28 November 1995 are of the competence of the Police, the Directorate General for Gambling being the consultative and advisory board for the *Governo Civil*.

### **2.6.3. Games of chance and gambling**

Infringements of Decree-law 422/89 of 2 December 1989 are of the competence of Directorate General for Gambling.

### **2.6.4. Pornography**

According to Article 9 of Decree-law 647/76 of 31 July 1976 that regulates the Decree-law 254/76 of 7 April 1976, infringements to those Decree-laws are being held by Directorate General for Economic Activities without prejudice to the competence of the Public Prosecutor, for instance through the Judiciary Police, and the Police in general, the procedural rules to be applied being the ones foreseen in the Press Law.

On the other hand, the entity in charge of controlling audio documented services, primarily connected with erotic and/or sexual lines, according to Article 4 of Decree-law 175/99, is the Institute for Consumer. The fines resulting from infringements of this regulation are applied by the commission to which Article 39 of the Advertising Code refers to (See above).

## **2.7. Direct marketing**

The entity in charge of controlling the infringements to Law 69/98, that transposes Directive 97/66/EC of the European Parliament and the Council, of 15 December 1997, on the treatment of personal data and the protection of privacy in the telecommunications sector, is the National Commission for Data Protection, the fines being applied by the Institute of Communication of Portugal.

## **2.8. Press, radio and television**

Infringements to the Law of the Press, as well as to the Laws on Radio and Television are being handling by courts, by the High Authority for the Mass Media, as well as by administrative authorities, depending on the type of infringement.

Concerning advertising, the Institute for the Consumer is the body specially responsible for the supervision of advertising rules.

In addition, the Institute for the Media (Statutes approved by Decree-law 34/97, of 31 January 1997, amended by Declaration of Rectification 4-C/97, of 31 January 1997, and Decree-law 65/99, of 11 March 1999) is one of the entities responsible for the supervision of the accomplishment of certain advertising rules on media activity (television, press and radio), as referred to in Article 3(1)(f) of Decree-law 34/97 quoted hereinabove.

### **3. The judicial procedure**

According to Article 60(3) *in fine* of the Portuguese Constitution, the associations of consumers, as well as the co-operatives of consumers have procedural legitimacy to defend their associates, as well as their collective or diffuse interests.

The procedural rights of the consumer associations are also confirmed in Articles 13 and 17 and following of Law 24/96 (the Law for the Consumer Defence) and regulated by Law 83/95 of 31 August 1995.

The complainants have in general two alternatives: or to denounce the alleged criminal practices and/or infringement of the law to the relevant authorities, or to lodge directly an action in court. In the first case, any decision taken by an administrative authority can always be appealed to the relevant court.

### **4. The high authority for the mass media**

According to Article 39(1) of the Portuguese Constitution, a High Authority for the Mass Media shall ensure the right to information, the freedom of press, as well as the independency of the media towards the political and economic powers and also the possibility of expressing and confronting different lines of opinion and the exercise of the right to broadcasting time, the right of reply and the right of political argument. The competence of this High Authority is established by law.

According to Article 39(3) of the Constitution, the High Authority for the Mass Media shall be an independent body, composed by eleven members and including obligatorily a judge appointed by the Superior Council for the Magistrates, which chairs this High Authority, five members elected by the Parliament, a member appointed by the Government and four members representing the public opinion, the media and the cultural sector.

The High Authority for the Mass Media intervenes in the procedures for licensing radio and television activities and in the appointment and exoneration of the directors of the media belonging to the public sector [See Article 39(4)(5) of the Constitution]. This High Authority also controls the application of some of the provisions of Law 31-A/98 (the so-called Television Law), assessing the alleged infringements and applying fines, if necessary [See Television Law]. However, such abilities are specifically committed to the Institute for the Media and to the Institute for the Consumer when concerning infringements to advertising rules contained on Television Law (See Articles 21, 32, 33 and 66(1)(2)).

The functioning of the High Authority for the Mass Media is presently regulated by Law 43/98 of 6 August 1998.

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