

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

**SUMMARIES**

## Table of contents

AUSTRIA.....	3
BELGIUM .....	6
DENMARK.....	11
FINLAND .....	15
FRANCE.....	18
GERMANY .....	22
GREECE.....	26
ICELAND .....	30
IRELAND .....	33
ITALY .....	37
LIECHTENSTEIN.....	40
LUXEMBOURG .....	42
THE NETHERLANDS .....	46
NORWAY .....	50
PORTUGAL.....	53
SPAIN.....	56
SWEDEN.....	59
UNITED KINGDOM.....	63

## AUSTRIA

Except for the modification of the audiovisual legislation in 1994 and 1999 (to implement the European Directives TVWF) there have been not been any significant modifications or proposals concerning advertising directed at minors. At present it does not seem to be a major concern of the Austrian public and the item does not figure high on the political agenda. Recently sponsoring in and of schools was the subject of an inquiry, mentioning possible negative effects, directed by the Minister of Education. The Minister decided that sufficient guarantees exist already to protect the interests of the children and their parents and that it was not necessary to intervene.

### **1. Definitions**

As the majority is fixed at fully 19 years, the Austrian legislation strictly regulates the age required for juveniles to practice certain activities. Thus, an 18 years old minor can obtain a driving licence for vehicles of class B (cars). Specific acts, as the Road Traffic Regulations (StVO) even protect minors by requiring them to have a certain age for activities as cycling (12 years), horseback riding (16 years) and roller skating (12 years).

There is no specific definition of a minor/child in legislation concerning advertising.

### **2. Regulation**

#### **a. General**

As in a number of other member states, advertising is regulated in Austria by way of an *Act against Unfair Competition*, banning all kinds of deceitful or misleading practices, which naturally include misleading advertising.

#### **b. Media**

The “Television without Frontiers” (TWF) Directive was implemented by the Broadcasting Act (RFG), regulating the public service broadcaster Austrian Broadcasting Corporation (ORF). Advertising on radio and television prejudicing respect for human dignity and fundamental rights or provoking hate because of race, gender, religion or nationality is prohibited. The RFG has been modified twice: in 1994 when Austria adhered to the EEA and in 1999 to implement the directive TWF of 1997.

The same type of rules as in the RFG can be found in the Cable and Satellite Broadcast Act (KSRG) applicable to satellite and cable TV, and in the Regional Radio Act (RRG), regulating the field of private radio broadcasting (since the end

of the ORF monopoly in the fields of radio broadcasting). The RRG specifies that the broadcast of children's programmes must not be interrupted by advertising.

The Austrian TV and the radio broadcasting regulations are characterised by the attention given to the influence of well known "public" persons. The appearance either through voice or image of presenters of news programmes and political magazines is therefore forbidden in advertising or teleshopping, (as well by the RFG, as by the KSRG, the RRG and the General Terms and Conditions of the ORF).

Regarding teleshopping, the RFG stipulates that the public service broadcaster may not distribute teleshopping. Teleshopping is specifically regulated by the KSRG (cable and satellite TV). The sponsoring is regulated by the three broadcasting laws (RFG, KSRG, and RRG ), specifying in particular that news programs and political magazines must not be sponsored programmes.

There are no specific rules on advertising directed at minors for press, cinema, Internet and posters.

### **c. Specific provisions**

Specific rules exist for certain categories of products and services.

For example advertising for tobacco and spirits is forbidden on TV.

The Tobacco Act regulates specifically and very precisely advertising for tobacco. Such advertising is not prohibited but strictly regulated: advertising for tobacco products depicting athletes or celebrities (individuals who, because of their status, their profession or their success, can be expected to enjoy public esteem), both in drawings or caricatures or giving their statements concerning smoking, is, amongst others, once more prohibited. Advertising for tobacco products by means of comics or characters appearing in comics is also prohibited.

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

Direct marketing and promotional sales activities are considered as legal techniques, subject to the rules of the Act against Unfair Competition.

## **3. Proposals of law**

There are no recent proposals of law on advertising directed at children.

## **4. Self regulation**

The Austrian Advertising Council (ÖWR) was created by the advertising industry to promote self-regulation. It established a Code in 1995, containing guidelines,

covering areas such as violence, women and children, as well as specific sectors such as alcohol, tobacco and vehicles. It covers all media.

## **5. Handling of complaints**

### **Authorities**

The administrative handling of the complaints is operated by the Broadcasting Commission (RFG). In case of infringement, the statement of the Commission will be published or broadcast.

The judicial proceedings mainly concern infringements of the Act against Unfair Competition, initiated by competitors of the infringing party.

### **Self-regulation**

Self-regulation is organised by the Advertising Council, which will examine any complaint from anyone feeling that an advertising campaign infringes the guidelines of the Council. In 1999 only one complaint was examined but the council found no reason to act. In 2000 5 complaints were submitted of which 4 were not upheld.

## BELGIUM

Belgian legislation on the audiovisual sector was last amended on 28 April 1998 for the Flemish Community, on 4 January 1999 for the French Community and on 26 April 1999 for the German-speaking Community in order to transpose the "television without frontiers" Directive. Some recent legislative proposals concerning minors relate to advertising surrounding festive occasions when the focus is primarily on children and to the possible extension of the "five minute rule".

### **1. Definitions**

Under the Civil Code, a minor is someone who has not yet reached 18 years of age.

There is no legislation on advertising which actually defines the terms "minor" and "child". However, the decree on audiovisual services in the Flemish Community contains an implicit definition of "child": children's programmes are described as "programmes aimed at children under 12".

A definition of advertising, albeit a very broad one, may be found in the Belgian Trade Practices Act of 14 July 1991 and in the decrees passed by the various language communities on the audiovisual sector.

### **2. Legislation**

#### **a. General**

The Trade Practices Act contains a section on advertising and seeks to protect consumers from advertising which is misleading as regards either the characteristics of the product/service or the identity of the advertiser.

#### **b. Media**

Each of the Belgian community decrees on the audiovisual sector contains provisions on television and radio advertising. They transpose the provisions of Article 16 of the "television without frontiers" Directive concerning advertising, sponsorship and teleshopping.

The decree for the Flemish Community goes beyond the provisions of the Directive by prohibiting the broadcasting of any promotional message immediately before or after a children's programme. The same rule applies to advertising sponsorship. Teleshopping spots may not be broadcast less than 15 minutes before or after a children's programme.

It should be noted that the provisions relating to advertising and teleshopping are applicable to commercial channels only as advertising is banned on the Flemish public network (sponsorship is allowed).

Both communities have also transposed Article 22 of the "television without frontiers" Directive. In the French Community, the Higher Council for the Audiovisual Sector (*Conseil Supérieur de l'Audiovisuel*) has introduced a system of programme descriptions. Broadcasting stations in the Flemish Community apply this system on a voluntary basis.

Except for television and radio, there is no legislation relating specifically to advertising through other media. The provisions in the decrees on the audiovisual sector, including the Flemish ban, are therefore not applicable to the press, placards, cinemas, the Internet or direct marketing (brochures, catalogues, etc.).

### **c. Specific provisions**

The Belgian authorities have introduced several specific regulations for certain categories of products and services. These frequently transpose European directives.

**Tobacco** advertising via any medium is banned. The annulment of Directive 98/43/EC of the European Parliament and of the Council of 6 July 1998 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products does not affect the Belgian law of 10 December 1997 prohibiting all tobacco advertising as this law was passed before the Directive was adopted.

Advertising for **medicines** is subject to detailed provisions (transposition of the Directive on medicines for human use by the Royal Decree of 7 April 1997). As far as minors are concerned, the royal decree contains only one specific rule prohibiting advertising in children's magazines.

As regards **alcohol**, the decrees on the audiovisual sector contain the provisions of Article 15 of the "television without frontiers" Directive. Adverts for alcoholic beverages are not regulated if they are disseminated via other media (self-regulatory codes also exist). However, advertising for alcoholic beverages over 20° proof is prohibited on the French-speaking public network.

Mention should be made of the fact that the provisions contained in the decree of the French Community of 17 July 1987 on the audiovisual sector relating to advertising and sponsorship for tobacco products, medicines and alcoholic beverages were annulled by a ruling of the Court of Arbitration of 31 October 2000 on the grounds that the French Community was not authorised to introduce provisions of this kind, as these fell within the remit of the national authorities.

With regard to **cars**, audiovisual legislation bans advertisements which promote speed (self-regulatory codes also exist).

As far as **toys** are concerned, the management contract of the Belgian National French Broadcasting Company and the Flemish code for radio and television advertising prohibit adverts on television for toys representing firearms or likely to encourage violent, racist or xenophobic behaviour. There are no specific regulations on adverts for toys if they are disseminated via other media. It should also be pointed out that violent toys or toys representing firearms are not in themselves banned and are freely available for sale.

#### **d. Other communication methods**

There are no specific regulations on other advertising methods such as direct marketing or advertising via the Internet.

### **3. Draft laws**

In the Flemish Community, the Minister for the Audiovisual Sector recently suggested that the provision prohibiting advertising five minutes before and after children's television programmes be repealed.

One of the arguments for removing the ban is that the rule is ineffective because it can be easily be circumvented by inserting a five-minute music clip between the programme and an advertisement. A Member of Parliament (De Caluwé) reacted by tabling a bill to extend the time lapse from five to 15 minutes. The author stressed that it was unacceptable to sacrifice children's interests for the sake of commercial interests. He felt that the ban was necessary as it reduced commercial pressures on children.

The Media Council, a consultative body, expressed the view that Flemish children watched foreign channels such as VT4 and some Dutch channels to which the ban did not apply, children watched programmes aimed at adults and the ban could be circumvented by inserting a musical clip between the programme and the advert.

The Council therefore issued a unanimous opinion against the De Caluwé proposal. However, no agreement was reached on the annulment of the five minute rule, which is supported by representatives of consumer associations and some experts.

The Parliament finally rejected the proposal, with the result that the five minute rule continues to apply.

In the French Community, no bills have been tabled relating to advertising for children.



At national level, parent-teacher associations have objected to the fact that adverts surrounding festive occasions when the focus is primarily on children are being broadcast increasingly earlier, which children find confusing, particularly as they try to grasp the concept of time.

At the end of 1999, three bills were tabled in order to establish a period during which advertising would be banned. The representatives of the various interested parties sitting on the Consumer Council agreed to introduce regulations to deal with the problem by adopting a series of recommendations for self-regulation, the supervision of which was to be the responsibility of the Advertising Ethics Board.

#### **4. Self-regulation**

In Belgium, the Advertising Ethics Board, a body set up by the advertising sector (advertisers, advertising media, advertising agencies), applies the International Chamber of Commerce (ICC) code and several sectoral codes. There is no general national code as the Advertising Ethics Board applies the articles of the CCI code directly. Other than Article 14 of the CCI code, there are no self-regulatory rules on advertising aimed at minors. However, reference is sometimes made to minors in the sectoral codes (such as that relating to alcohol) and, more recently, the Advertising Ethics Board has been applying the rules on advertising surrounding festive occasions when the focus is primarily on children. When examining advertising content, the Board also takes account of the legal provisions applicable in the field.

#### **5. Complaints**

##### **Authorities**

In the audiovisual field, the Higher Council for the Audiovisual Sector and the Flemish Media Authority are responsible for monitoring television and radio advertising. No complaints have been received to date on advertising and children.

Administrative procedures may also be launched in the event of a breach of the Trade Practices Act or legislation on certain products (food, tobacco, medicines, etc.). There are no official figures on the number of procedures in place concerning advertising and children.

Although proceedings may also be brought before the courts in the event of a breach of the provisions of the Trade Practices law, it is extremely rare for a consumer to launch legal proceedings in this regard. Most cases relate to companies, which are often competitors.

##### **Self-regulation**

Anyone may lodge a complaint with the Advertising Ethics Board. The Board examines the advert by adopting the consumer's point of view and investigating to what extent the content of the advert complies with the relevant ethical codes and legislation. In a written and reasoned opinion addressed to the advertiser, the Board recommends whether the advert should be modified or withdrawn. Although in most cases the recommendation is accepted, where the advertiser refuses to cooperate, the Board may send a recommendation to the media recommending that the advert be withdrawn.

The figures submitted by the EASA show that the number of complaints received in 1999 about advertising and its potential impact on children was negligible.

## DENMARK

There have been few modifications to the audiovisual legislation on this matter in Denmark, apart from the implementation of the European Directive TVWF (Executive Order of 11 June 1997). In 1997 a set of specific rules on advertising directed at minors was introduced in the audiovisual legislation.

The Consumer Ombudsman formulates detailed guidelines on many aspects of advertising and commercial communication in general and has issued detailed guidelines concerning advertising directed at minors on television and through the Internet.

Recently a proposal was introduced for a ban on TV-advertising directed at children (March 2000). The ban was to be effective 5 minutes before and after children's programmes but was afterwards converted into a voluntary agreement with the only nation wide public service broadcaster (TV2).

### **1. Definitions**

According to Danish law a person under 18 years of age is a minor.

There is no definition of a minor/child in specific legislation concerning advertising and children.

Marketing is defined as any commercial action, including advertising and sponsoring.

### **2. Regulation**

#### **a. General**

Marketing and advertising activities in general are regulated by the *Danish Marketing Act*. The basic principle is that advertising must be fair and honest. There are no specific rules on minors.

In Denmark the Consumer Ombudsman is an important authority in consumer related issues. The Ombudsman negotiates with consumer organisations and relevant trade associations and issues guidelines. These guidelines can be accepted by the associations and become the basis for "orders". Such an order can be imposed on the association that accepted the guidelines.

The *Consumer Ombudsman* has issued Guidelines on the interpretation of the concept of good marketing practice in relation to children and young people. The Guidelines refer to art.14 of the *ICC* (International Chambre of Commerce) *International Code of Advertising Practice*.

It is in particular stipulated, besides the more basic provisions, that marketing may not:

exploit the inexperience or natural credulity of children  
may not harm children mentally, morally, physically  
incite to unsafe behaviour, violent behaviour  
undermine social values, for instance by conveying the impression that possession, use or consumption of a product in itself will give children or young people physical, social or psychological advantages over other children or young people the same age;  
etc.

The Guidelines also contain specific provisions in relation to marketing on the Internet aimed at children and young people.

## **b. Media**

Advertising in radio and TV is mainly regulated by the *Danish Broadcasting Act*.

Special rules protecting children and young people contained in the *Executive Order n°489 of 11 June 1997 concerning radio and Television Advertising and Programme Sponsorship* (the “Executive Order”), issued by the Ministry of Cultural Affairs, apply to television and radio commercials. The *Executive Order* implements parts of the “Television Without Frontiers” Directive.

It provides, for example, that characters, puppets etc... which are important and appear often in children’s programmes may not be shown in advertisements for products of particular interest to children. Persons connected with children’s programmes may not advertise products of particular interest to children.

Regarding teleshopping the legislation goes further than the Directive and states that a maximum of 1 hour daily is allowed.

The *Executive Order* (n°489 of 11 June 1997 concerning radio and Television Advertising and Programme Sponsorship – see above) regulate sponsoring. Advertisers selling alcoholic beverages (more than 2.8 pct. of alcohol), tobacco products, and pharmaceutical products are banned from sponsoring,

All the rules for TV advertising also apply to radio.

There are no specific provisions on advertising directed at minors for press and posters.

As for cinema, the applicable legislation states that advertising films should contain guidance on the required age for children. As regards the Internet, the Consumer Ombudsman issued specific guidelines, for example: advertising may not be directed at children to prevent children from purchasing goods.

### **c. Specific provisions**

According to the *Danish Broadcasting Act*, advertising for beverages with an alcohol content of 2.8 pct. or more on television and radio is prohibited and special rules apply to advertising for other alcoholic beverages.

Regarding tobacco, the Ministry for Health negotiated an Agreement in 1991 with the member organisations of the tobacco industry, specifying good marketing practices for the marketing of tobacco. Advertising tobacco products on television and radio is prohibited (*Danish Broadcasting Act*).

Advertising for sweets and chocolate may not suggest that they can replace a meal.

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

The *Danish Marketing Act* and the *Consumer Ombudsman's Guidelines* regulate direct marketing and promotional sale practices.

Unsolicited calls are regulated by the *Act on Certain Consumer Contracts*, as well as, since 1 June 2000, distance sales (implementing the EU Directive on the protection of consumers in respect of distance contracts).

Sponsoring for schools and sport clubs is regulated by the Guidelines adopted by the *Consumer Ombudsman*. The Guidelines laid down by the *Consumer Ombudsman* regarding school sponsoring stipulate, amongst others, that educational material may not be sponsored, that all sponsoring takes place under the responsibility and with the consent of the school direction, that parents have to be informed...etc.

## **3. Proposals for law**

Recently a proposal was introduced for a ban on TV-advertising directed at children (March 2000). The ban was to be effective 5 minutes before and after children's programmes but was afterwards converted into a voluntary agreement with the only nationwide public service broadcaster (TV2). The rules of the agreement are detailed and state for example that advertising is forbidden during 1,5 minutes before and after programs directed at children under 8, on weekends and holidays advertising directed at children under 12 is forbidden before 9.30 am.

## **4. Self regulation**

The Guidelines of the *Danish Consumer Ombudsman* are part of the regulation. However, they also include a significant element of self-regulation since the

*Consumer Ombudsman*, prior to issuing said regulation, often consults and negotiates with relevant organisations representing the interests of the sector.

ICC has issued several codes and guidelines with relevance for marketing, which are often referred to in Denmark.

The self-regulatory body competent for advertising in Denmark is the *Reklame Forum, or Advertising Forum*. The Forum applies the ICC Code, which complements the Guidelines of the *Consumer Ombudsman*.

## **5. Handling of complaints**

### **Authorities**

Regarding administrative proceedings, the *Danish Consumer Complaints Board* has jurisdiction over complaints brought by consumers relating to goods or services. The *Consumer Ombudsman* monitors the compliance with the provisions of the *Marketing Practices Act*. It may institute legal proceedings if its injunctions are breached.

Matters concerning advertisements on radio and television are controlled by the *Radio and Television Advertisements Board*, which controls compliance with the ***Danish Broadcasting Act***. Since 1987 the Board treated 7 complaints related to advertising and children.

Judicial proceedings are organised before the *Danish Courts* for breach of the *Marketing Act* or of the general provisions of Danish law. However, a consumer has the right to have a court case postponed if the case can be submitted to the *Consumer Complaints Board* or one of the approved appeal tribunals.

### **Self-regulation**

Regarding Self-regulation, the *Consumer Council* has, together with relevant organisations of the industry, established nine private appeal tribunals for complaints from consumers (for banks, travel, insurance, driving education, etc). The *Consumer Complaints Board* has approved such appeal tribunals. The orders of the appeal tribunals are binding.

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

## FINLAND

Except for the implementation of the directives TWF in the audiovisual legislation the Finnish legislation has not been modified significantly (Act on Tv and Radio which came into force on 1 January 1999) and there are not currently any proposals concerning legislation on advertising directed at children.

### **1. Definitions**

In Finland a minor is any individual who has not yet reached the age of 12.

There is no specific definition of a minor/child in specific legislation concerning advertising.

The Consumer Protection Act “marketing” covers all commercial communication, including advertising.

### **2. Regulation**

#### **a. General**

General principles on advertising are found in The Consumer Protection Act of 20.1.1978 (good practices, protection of consumer interests, health...).

Most important however is the “Finnish Consumer Ombudsman” who is in charge of the enforcement of consumer legislation. His statements are published in guidelines which are not binding but have however, an important effect, since the Ombudsman applies them as a supervising administrative authority.

The Ombudsman has published several guidelines which contain rules on advertising and children: “Children and advertising”, “Sponsorship and other marketing in schools”..etc.. In general these rules state that special attention has to be paid to the general inexperience and restricted freedom of action of children, so that advertising directed at children must be viewed with special severity. In general advertising aimed at minors (even older than 12 or 14) should take into account their inexperience and will be judged in a stricter way than advertising directed at adults.

#### **b. Media**

The Act on TV and Radio operations implemented the European Directive TVWF and contains the rules on TV advertising, teleshopping and sponsoring. TV advertising has to respect certain general principles (recognisable, separate from programs, no subliminal techniques, respect for human dignity, not harming to

the health, public safety, and environment, no discrimination). The Act implements the TVWF Directive's provisions on advertising to minors.

The Finnish audiovisual legislation on this subject does not appear to go further than the TVWF Directive.

The Consumer Ombudsman also has guidelines for TV advertising directed at children (recognisable, clearly separated from programmes, not harmful for children, no violence, no persuasion to buy a product, no interruption of programmes with a duration of less than 30 minutes, no sponsoring of children's programmes, cartoons may not be interrupted by animated advertising, advertising may not show characters of programs that are broadcasted at the same time).

In the Nordic Consumer Ombudsmen's position paper of 1991 all Nordic countries determined a common position regarding legislation on advertising (this non binding document also contains rules on advertising and children).

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

As regards the Internet, the Consumer Ombudsman issued some Guidelines, amongst which: advertising may not incite a minor to order, may not ask the minor to communicate personal information, all advertising must be clearly distinguished from other content...etc

### **c. Specific provisions**

Special legislation contains specific rules for certain products, for example :

alcohol : advertising for strong alcohol is forbidden and restricted for light alcoholic beverages ;  
tobacco : all advertising is forbidden ;  
food : references to health are not allowed;

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

Direct marketing : The Person Information Act of 22.4.1999 applies to direct marketing. The Consumer Ombudsman has also created rules on direct marketing and children and on mail order sale.

Promotional sales practices : there are guidelines on children's clubs, Dial-it services and offers of special benefits.

The Consumer Ombudsman issued guidelines concerning sponsoring in schools to avoid abuse and exploitation of children's credulity.



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

There are no current proposals in this field.

### **4. Self regulation**

In Finland the ICC code is applied by the Board of Business Practice of the Central Chamber of Commerce. This self-regulatory body decides on disputes between companies and also provides copy advice. Its decisions are not binding but are generally accepted.

The Finnish Direct Marketing Association is the self-regulatory body for the direct marketing sector. It has issued “fair play” rules and rules for electronic consumer trade.

### **5. Handling of complaints**

#### **Authorities**

The general supervision is carried out by the Consumer Ombudsman who gives advice and information on the correction of possible infringements. The Ombudsman acts both on his own initiative or on complaints from individuals. If no result is achieved a ban can be imposed on the infringing party (possibly combined with a penalty). If this is not accepted the case can be brought before the Market Court of Justice.

Supervision of special advertising rules in specific legislation on alcohol/food/medicines/finance is carried out by special competent national Agencies.

The Market Court of Justice can decide on cases based on provisions concerning advertising in the Consumer protection Act. The procedure is not open to private individuals who are obliged to send their complaints to the Ombudsman. District courts are competent for breach of Criminal law and can also decide on damages.

#### **Self-regulation**

The Board of Business Practice seeks to provide individual traders and companies with rapid and effective procedure to handle disputes concerning unfair trade practices.

In 1999 only 1 complaint concerned advertising directed at children (taking into account that the Board treated 9 complaints in total).

## FRANCE

French legislation on the audiovisual sector (decree of 27 March 1992) has been amended in order to transpose the "television without frontiers" Directive. None of the bills tabled recently in relation to minors have had a bearing on advertising.

### **1. Definitions**

Under the Civil Code, a minor is someone who has not yet reached 18 years of age.

There is no legislation on advertising which actually defines the terms "minor" and "child".

A definition of advertising, albeit a very broad one, may be found in Decree No 92-280 of 27 March 1992 establishing the general principles of the advertising and sponsorship system for all television channels.

### **2. Legislation**

#### **a. General**

The Consumer Code deals with advertising in general and seeks to protect consumers from misleading, unfair and indecent advertising, etc.

#### **b. Media**

The decree of 27 March 1992 establishing the general principles of the advertising and sponsorship system for all television channels contains general rules on advertising, specifically that aimed at children. Moreover, the charter of service and obligations of each television channel contain provisions on the protection of minors.

The law on the freedom of communication stipulates that the Higher Council for the Audiovisual Sector (*Conseil Supérieur de l'Audiovisuel*) should seek to ensure that the interests of children and adolescents are protected and that human dignity is respected in programmes broadcast to the public by an audiovisual communication service. The Higher Council for the Audiovisual Sector has therefore drawn up rules on the content of programmes generally.

The Higher Council for the Audiovisual Sector has also introduced a system for rating programmes according to how violent or sexually explicit they are and the extent to which they deal with sensitive subjects. Some special-interest channels are exempt from this rating system (Article 22 of the Directive).

The decree of 6 April 1987 contains provisions on advertising by private radio stations, including a provision designed to protect minors.

Adverts in the press and in publications for the youth market may not relate to publications likely to be of moral detriment to children or young people.

There are no specific provisions concerning advertising aimed at children in cinemas, on placards and on the Internet.

### **c. Specific provisions**

The French authorities have introduced several specific regulations for certain categories of products and services, although they do not always refer to minors. These frequently transpose European directives. It should be noted at the outset that some products and services - such as press publications, distribution services and literary publishing services - cannot be advertised on television or on the radio.

Direct or indirect advertising or sponsorship for **tobacco products** is prohibited, irrespective of the medium used (European Directive declared null and void).

Advertising for **medicines** is subject to detailed legislation (transposition of the Directive on medicines for human use). With regard to minors, the Public Health Code specifies that adverts for medicines cannot contain any element which is aimed exclusively or principally at children. The promotion of medicines by children is also prohibited.

Apart from the general rules applicable to any type of advertising, adverts for alcoholic beverages may only indicate the alcoholic strength, origin, designation, composition, name, etc. of the products concerned. Promotional material featuring the name of an alcoholic beverage may not be distributed to children and the placing of adverts for such products in publications for young people is prohibited. Beverages over 1.2° proof may not be advertised on television or on the radio. Adverts for beverages of this kind may be broadcast on private radio stations but only during certain time slots.

**Toys** are the subject of a law on the prevention and prosecution of sex offences and on the protection of minors in general. Hence, adverts for video cassettes aimed at those aged 12 and above may not be broadcast outwith the hours during which such films may be shown.

### **d. Other communication methods**

There is no specific legislation on direct marketing. However, self-regulatory rules on the protection of privacy and personal data exist to protect consumers

(Code of the Association of Communication Advisory Agencies, Code of the Direct Marketing Federation).

The Consumer Code contains specific rules on sales of goods for promotional purposes.

### **3. Draft laws**

Various bills have been tabled in relation to minors: bill on the use of slot machines and automatic gambling machines in cafés, bars, etc.; bill on children at risk and young offenders.

A draft decree has been introduced to replace the decrees of 1992 and 1995 and establish the system for cable and satellite broadcasting services under Article 15 of the law of 1 August 2000, which lays down the rating system introduced by the Higher Council for the Audiovisual Sector to protect children.

This draft decree also includes provisions relating specifically to teleshopping. It stipulates that teleshopping programmes must not cause children moral or physical detriment and lists a number of restrictions to this end.

A preliminary bill has been tabled which relates to the transposition of the directive on electronic commerce and includes provisions on the identification of advertising.

### **4. Self-regulation**

Self-regulation plays a very important role in the field of advertising in France. The advertising standards watchdog (*Bureau de Vérification de la Publicité*), a body responsible for self-regulation, has adopted a large number of ethical codes for advertising in various fields which often relate to minors. The codes include the following rules, for example: the obligation not to exploit the inexperience or credulousness of minors; the prevention of moral, mental or physical injury; respect for social values and parental authority; the prohibition of advertising for a product which may not be made available to children; inclusion of a safety warning.

The National Consumer Council (*Conseil National de la Consommation*) has also introduced rules which every advertiser must respect with regard to adverts in general and those aimed at minors in particular (ban on misleading advertising; clear presentation of products; inclusion of safety instructions with products, etc.).

Several associations have also established ethical codes relating to advertising aimed at minors in the following fields: Internet, alcoholic beverages, medicines, toys, Minitel and audiotel services, vehicles and video games.

## **5. Complaints**

### **Authorities**

The Higher Council for the Audiovisual Sector is responsible for monitoring the compliance of programmes (in terms of subject-matter, content and type of programming) with legislation and decisions granting authorisation. After issuing a broadcasting station with a formal notice to take appropriate action, the Higher Council for the Audiovisual Sector may take the following action: impose an injunction, reduce the period for which the broadcasting licence has been granted, levy a fine, withdraw the broadcasting licence.

The Directorate-General for Competition, Consumption and Fraud Prevention is responsible for identifying, recording and taking action against those involved in illegal economic activities. It acts on its own initiative, at the request of the Ministry of Economic Affairs or in response to a complaint from consumers or associations.

Any interested party (an association, Ministry official, trade union, consumer, etc.) may bring a court action in order to stop an advert being broadcast and obtain compensation for the damage incurred. The penalty imposed may be a fine, imprisonment, the removal of the disputed advert and the publication of the judgment.

### **Self-regulation**

The advertising standards watchdog acts on its own initiative or in response to complaints from consumer associations, the National Consumer Council or competitors who are the victims of illegal advertising. As soon as it has received a complaint, the advertising standards watchdog takes all the steps necessary to ensure compliance with the relevant legislation or rules of professional conduct. The watchdog conducts an enquiry and then informs the interested parties of the changes which should be made and, as a last resort, contacts the media to ask them to refuse to broadcast the advert. The following decisions can be taken: recommendations, reprimand, formal notice to take appropriate action, sanctions.

The number of complaints received about adverts aimed at minors is not known.

## GERMANY

The German Broadcasting Treaty (Rundfunkstaatsvertrag) was modified in order to implement the TVWF Directive (last amendment on 1 April 2000). Current proposals concern amended guidelines by the Media authorities for additional rules on time schedules for programmes rated 16+ and 18+.

### **1. Definitions**

According to the civil code, a minor or a child is a person under the age of 18. The Act on the legal protection of youth in Public uses the term “child” for a person under the age of 14 years and the term “young person” to designate a person who has attained the age of 14 and is under the age of 18.

The German self-regulatory body applies its own code inspired by the ICC code that contains references to minors.

A general definition of advertising can be found in the Broadcasting Treaty **of the “Länder”**. It is the same definition as that of the TVWF Directive. The Treaty specifies that with regard to children, advertising may not exploit their inexperience.

### **2. Regulation**

#### **a. General**

Advertising may generally not be deceitful nor misleading. In general advertising has to be correct about the characteristics, the origin, the way of manufacturing and the pricing of the product or services (Gesetz gegen den unlauteren Wettbewerb). Regarding minors advertising may especially not take undue advantage of their inexperience.

#### **b. Media**

The Broadcasting Treaty regulates the audiovisual sector. The Treaty implements the provisions of the directive TVWF (consolidated version) regarding advertising, teleshopping and sponsoring (in particular Articles 10, 11, 16 and 22). Those rules apply for both public service and commercial broadcasters. The Broadcasting Treaty foresees special schedule (time restrictions) and recognition signs for programmes that are only appropriate for minors other than 12 or 16 (between 10.00 p.m. and 6.00 a.m.) and 18 years and older (between 11.00 and 6.00 a.m.). Public service broadcasters may only broadcast advertising until 8.00 p.m. Moreover, Public service broadcasters are not allowed to broadcast advertising on Sundays and during school holidays.

Only teleshopping windows, rather than teleshopping may be broadcast by the public service broadcasters.

Regarding the commercial broadcasters, the Treaty contains rules that go beyond Article 11, alinea 5 of the TVWF Directive: programmes for children may not be interrupted by advertising or teleshopping.

In addition to the Broadcasting Treaty, the Guidelines of the Media Authorities on Advertising and Programming and Sponsoring on Television contain detailed rules in respect of advertising and teleshopping addressed to children. These Guidelines are in line with Article 16 of the TVWF Directive with however some differences (the use of the special interest of children in games is forbidden, children/young persons must not be shown as sexual objects, products that are part of the children's programmes broadcast can't be advertised before or after this programme, advertising that directly or indirectly requests children to buy the advertised product, etc.). Programmes showing permanent advertising for children are not allowed.

The same rules apply for radio programmes. There are no specific rules on advertising to minors for the press, outdoor advertising or the cinema.

However, a general provision contained in the GjS provides that publications which are likely to morally harm children or young persons must be listed.

Regarding the Internet, there is a difference between the Media Services (i.e. publication addressed to the general public that may contain advertising) and teleservices (i.e. addressed to individuals by e-mail, chat room, etc.). Both services are covered by a special act that contains provisions on the protection of children/young persons.

### **c. Specific provisions**

The Competition Act, the act on wine and the Broadcasting Treaty contain general provisions related to the advertising of **alcohol**. There are no specific rules that refer to minors on advertising for the radio, press, outdoor advertising, cinema or the Internet.

Advertising for a **tobacco** product is not forbidden, except on TV and radio. Advertising for tobacco products must respect certain criteria such as: not suggesting that the consumption of these products is not hazardous for the health, or that these products could have any good physical or psychological effect. In addition, advertising for tobacco products may not **persuade** children or young persons to smoke.

Under the Act on Drugs and healthcare, advertising for **medicinal products** that is exclusively or predominantly addressed to children under 14 years is prohibited. There are specific rules for advertising for medicine on television and

radio, but these are generally applicable and do not apply specifically to children. Regarding the other media, there are no specific rules.

With the exception of the general rules on advertising, for other sectors (such as vehicles, education, toys, and financial services), there are no specific rules on advertising to children.

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

The Broadcasting Treaty authorises the use of split screens and virtual advertising, provided certain conditions are fulfilled. There are no special references to children.

### **3. Proposals for law**

There is a proposal of amended guidelines by the Media authorities regarding youth protection that contains additional rules on time schedules for programmes rated 16+ and 18+.

### **4. Self regulation**

The German Council for Advertising (Deutscher Werberat) applies its own codes, inspired from the ICC codes. Those codes contain general rules on advertising.

Self-regulation plays an important role in television. There is the Voluntary Self-regulation which, inter alia, checks television programmes before their broadcasting (schedule and content). There are also the rules of the German Council for Advertising. This Council enacted rules on advertising and teleshopping on radio and television for alcoholic beverages and on advertising portraying or addressed to children. These rules cover the provisions of the TVWF Directive. For example: advertising for alcoholic beverage may not be addressed to minors, advertising shall not directly or indirectly exhort children to buy the advertised product.

Regarding the Internet, the Voluntary Self-regulation of Multi Media Service Providers (made up of Media association and companies) has drafted a code of practice containing rules on youth protection; there are no specific rules on advertising to children.

### **5. Handling of complaints**

#### **Authorities**

Administrative procedure



Complaints have to be addressed to the Media Authority. The authority can use the following sanctions: warning, fines, withdrawal of the broadcasting licence. The number of complaints regarding advertising and children is not available.

Judicial procedure

Criminal actions can be filed where the advertising is misleading in respect of characteristics, origin, the manufacturing methods or the calculation of the price of the product.

### **Self-regulation**

The German self regulatory body, the Deutscher Werberat, has enacted guidelines and adopted statements on advertising. Any interested person may file a complaint before the Werberat. If the Werberat finds the complaint justified, the company responsible is ordered to modify its advertising or to withdraw it.

The number of complaint regarding advertising and children in 2000 was small: 3 out of 268 (one of the 3 was withdrawn).

## GREECE

Greek legislation on the audiovisual sector (laws of 1987, 1989, 1995 and 1998) has been amended in order to transpose the "television without frontiers" Directive (amended by decrees of 1992, 1995 and 2000). None of the bills tabled recently in relation to minors have had any bearing on advertising.

### **1. Definition**

Under the Civil Code, a minor is someone who has not yet reached 18 years of age. The Penal Code, however, makes a distinction between minors (aged between 7 and 17), children (aged up to 12) and adolescents (aged between 13 and 17).

Apart from the Greek Advertising Code, Greece applies the rules and principles of the ICC code of advertising practice. A general definition of advertising can be found in law 2251/1994 on consumer protection and in presidential decree 100/2000.

### **2. Legislation**

#### **a. General**

The Consumer Protection Act contains a section on advertising and seeks, in general, to protect consumers from advertising which is misleading as to the characteristics of the product in question and which is unfair (for instance, by making the product appear attractive, particularly to children).

With regard to advertising, sponsorship and teleshopping, Greek legislation transposes the provisions of the "television without frontiers" Directive (unofficial consolidated version), particularly Articles 10 ff, Article 16, etc.

#### **b. Media**

The decree stipulates that television channels can have additional obligations imposed on them concerning advertising for products intended for minors. Products intended for minors may not be sold through teleshopping.

A decree exists which ranks television channels in different categories according to the impact they might have on minors.

The National Radio and Television Council (independent administrative authority) draws up ethical codes which are published in the Official Gazette in the form of presidential decrees and are thus legally binding (e.g. the Code of Journalistic Ethics in Radio and Television, the Code on Radio and Television

Programmes, and the Code on Radio and Television Advertising, all of which refer to minors). There are no specific rules referring to minors which relate to advertising in the press, on placards and on the Internet. As far as the cinema is concerned, a supervisory commission for cinematic films, which classifies films and trailers in different categories, has been set up at the Ministry of the Press and Media.

### **c. Specific provisions**

There are several specific regulations in Greek legislation for certain categories of products and services.

As far as alcoholic beverages are concerned, the decrees on the audiovisual sector lay down strict rules with which all adverts for alcoholic beverages must comply and stipulating that these should include a reference to minors.

Tobacco products may not be advertised in schools, youth centres and sports centres. Tobacco products may also not be advertised on radio or television, although they may be advertised in the press, on placards and on the Internet (albeit subject to certain conditions). In the cinema, adverts for tobacco products may only be shown during films for adults.

Advertising for medicines is subject to detailed provisions (transposition of the European Directive on medicines for human use). With regard to minors, there is only one specific rule stipulating that adverts cannot contain any element which is aimed exclusively or principally at children.

As far as cars are concerned, the legislation on the audiovisual sector prohibits adverts for cars which associate driving with the consumption of alcohol.

The law on consumer protection prohibits television channels from broadcasting adverts for children's toys between 7.00 am and 10.00 pm and includes an unconditional ban on adverts for war toys intended for children. In 1989, the broadcasting of all adverts aimed at children was banned; in 1991, the broadcasting of adverts for toys before 11.00 pm was prohibited and under current legislation (1994), the broadcasting of adverts for toys before 10.00 pm is banned. The Ministry of the Press and Media may also impose specific obligations on television channels concerning adverts aimed at minors.

### **d. Other communication methods**

The Consumer Protection Act authorises direct marketing (by telephone, fax or e-mail) only with the consumer's express consent. As far as other media are concerned, the advertiser may only use data relating to consumers if these are accessible to the general public and have been published legally.

## **3. Draft laws**

As the current legislation in the field is very recent, no new bills have yet been tabled with regard to advertising and its impact on minors. The National Radio and Television Council, however, plans to update the ethical codes, although no bills have yet been introduced.

#### **4. Self-regulation**

The EDEE, the Greek Association of Advertising Agencies, applies the Greek Advertising Code, which is based on the ICC code. This code contains a section relating to advertising aimed at children which mentions various obligations. These include, in particular, the obligation not to exploit the naiveness of young people nor to include components which might cause them moral, mental or physical detriment. The code also contains an important and detailed annex on advertising for products aimed directly at children or mainly used by them (e.g. adverts may not make any promises to children, the use of certain terms is subject to rules, provisions are included on safety, etc.). Within the meaning of the annex, a child is a person under 14 years of age.

Annex II of the Greek Advertising Code contains several provisions concerning tobacco advertising in relation to the protection of minors (adverts may not portray people who appear to be less than 25 years old, nor may they contain a message aimed at minors, etc.).

#### **5. Complaints**

##### **Authorities**

A complaint may be lodged with the National Radio and Television Council, which can impose the following penalties: recommendation, fine, temporary or permanent injunction and even withdrawal of the broadcasting licence by the Ministry for the Press and Media in response to an opinion of the Council. Any interested party may also submit an application for restitution where a personal right has been violated (right of reply). The person concerned may also launch a procedure for reaching an amicable agreement in order to achieve an out-of-court settlement of the disagreement between the consumer and the advertiser in accordance with the law in force and commercial uses. Any such decision is not enforceable.

Independently of administrative procedures, anyone whose interests have been harmed by advertising may launch civil or criminal proceedings (collective or individual proceedings) in order to seek an injunction, annulment or damages.

No information is available on the number of complaints received concerning the effect of advertising on minors.

##### **Self-regulation**

Two supervisory bodies are responsible for enforcing the Greek Advertising Code: the Commission of First Instance on Advertising Control and the Joint Commission of Second Instance on Advertising Control.

## ICELAND

The Icelandic Broadcast Act (n°53/2000) has not been modified in this area apart from the implementation of the European Directive. No proposals exist concerning this subject.

### **1. Definitions**

The Act on the Protection of Children and Youth states that a “minor” is an individual who has not reached the age of 18 years.

In the Broadcasting Act “advertising” is defined as “any form of message whether against payment or for self promotional purposes and aiming to promote a product or a service”.

### **2. Regulation**

#### **a. General**

The Act on Competition n° 8/1993 contains the general rules on advertising : advertising may not be incomplete, misleading or unfair to competitors or consumers, it has to be in the Icelandic language, recognisable as such and distinguished from other information.

Art.22 contains specific rules for the protection of children: advertising may not abuse their credulity, may not show dangerous acts/situations and the representation of children in advertising is submitted to certain conditions (children have to be shown in safe situations, in their natural environment or where it is necessary for the presentation of certain goods/services).

#### **b. Media**

The Radio Act 53/2000 implements the European Directive “TV without frontiers” and is applicable to public service as well as to commercial radio and TV. It contains rules on the advertising content and on interruption of programmes which are identical to the rules of the European Directive.

Children’s programs may not be interrupted by advertising, according to the provisions of this Act.

Art.14 provides that all programmes, including advertising, that could harm the physical, mental or moral development of minors are forbidden during the hours that children are usually watching. Such programmes should also be identified by a special warning (art.22 European Directive).

For teleshopping and sponsoring the rules of the European Directive apply.

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

### **c. Specific provisions**

Specific legislation regulates advertising for certain categories of products:

- alcohol : general prohibition on advertising
- tobacco : general prohibition on advertising
- leisure : the Film Inspection can classify films as unsuitable for minors under 16.

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

Direct Marketing : the general rules on advertising are applicable;

## **3. Proposals of Law**

There have been no significant modifications or proposals concerning advertising directed at minors apart from the implementation of the European Directive. At the time the report was drafted, there were no proposals for new legislation on advertising directed at children.

## **4. Self regulation**

The Society of Icelandic Advertising Agencies has issued a Code of Ethics (general rules and guidelines on the content and the form of advertisements) and also applies the advertising code of the International Chamber of Commerce.

## **5. Handling of complaints**

### **Authorities**

The Competition Council : is competent for alleged breaches of the legislation on fair competition. A special Advertising Committee decides on disputes concerning advertising regulation.

In 1998 the Council issued 15 sanctions of which 2 concerned advertising and minors, in 1999 of 10 sanctions none concerned advertising and children.

The Broadcasting Council : is competent for the supervision of commercial radio and TV concerning the conditions of their licenses and the application of audiovisual legislation.

Procedure :

The Icelandic Chamber of Commerce organizes arbitration to handle disputes concerning advertising.

The District Courts are also competent to decide on disputes concerning advertising regulation.

### **Self-regulation**

Any person can submit a complaint to the Society of Icelandic Advertising Agencies in case of presumed breach of the Code of Ethics or other regulations on advertising. For a severe breach, the Ethics Committee can stop the distribution of the advertising.

There are no records kept on the number and evolution of complaints concerning advertising and minors by the self-regulatory body.



## IRELAND

The Irish Codes of Standards based on the Broadcasting Act of 1990 implement the TVWF Directive and were modified in 1999. Proposals have been made with a view to changing the system but so far no changes have been made.

### **1. Definitions**

A person attains majority in Ireland when he attains the age of 18. Before that date, the person is described as a minor (*Age of Majority Act*).

According to Common law, the current age of criminal responsibility is 7 years. However, the *Children Bill* 1999 (proposal of law on a new juvenile justice system) contains provisions to raise it to 12.

### **2. Regulation**

#### **a. General**

The Consumer Information Act regulates misleading advertisements. The Code of standards, practices and prohibitions in advertising, sponsorship and other forms of commercial promotion in broadcasting services (the “Code of standards”), issued by the Ministry for Arts, Heritage, Gaeltacht and the Islands, stipulates, as a general principle, that all broadcasting should be legal, honest, decent and truthful.

#### **b. Media**

Advertising on radio and television is also regulated by statute: the *Broadcasting Authority Act* and the *Radio and Television Act*.

The Code of Standards contains specific provisions relating to sponsorship on television and radio. These provisions go further than the Television without Frontiers Directive.

#### **c. Specific provisions**

Advertising for **alcoholic drinks** may be accepted by broadcasters, provided it complies fully with the criteria defined by the Code of standards (the advertising must not encourage drinking, can not be transmitted in or around programmes intended for young persons, etc). However, spirit based alcoholic drinks (whisky, gin, vodka, brandy, etc) are not advertised on radio or television in accordance with a voluntary code.

The Irish legislation goes further than the Television without Frontiers in this area.

The Tobacco Act stipulates that it is an offence to sell, or make available any tobacco product to a person under the age of 16 years, whether for his own use or otherwise.

The Code of standards prohibits all forms of advertising for cigarettes, cigars and other tobacco products on radio and television (in accordance with the TVWF Directive). Other forms of tobacco advertising are strictly limited.

The Tobacco Products Regulation 2000 prohibits the publication and distribution (unless exempted) of any newspaper, periodicals and magazines containing advertising for tobacco products.

Advertising for Drugs and Health products for human consumption is strictly and precisely regulated by the Medical Preparations Regulations. No medical preparation which is prescription only or is controlled may be advertised.

Advertising regarding Cosmetics, contraceptives, health and safety, food stuffs, promotion of commercial products through schools, toys, financial services, video work and films, are all strictly regulated by specific legal provisions.

#### **d. Other advertising techniques**

A self-regulatory code contains rules on Direct response and Mail ordering to protect consumers.

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

#### **The Broadcasting Bill, 1999**

This Bill, which contains provisions relating to teleshopping, is currently going through the Dail. The Bill will have passed all stages in the Parliament in March, 2001. .

The Broadcasting Commission will be able to take into account any relevant instrument made by or relevant guidelines issued by any body in which are vested functions in relation to the welfare of children. It will also be able to conduct research with respect to advertising, teleshopping material and sponsorship and other forms of commercial promotion which relate to matters likely to be of direct or indirect interest to children.

### **4. Self regulation**

The *Advertising Standards Authority for Ireland (ASAI)* is a self-regulatory body established by the advertising industry since 1981. It is committed to draw up and

implement the highest standards of advertising and sales promotion through the *Code of Advertising Standards* and the *Code of Sales Promotion Practice*. These Codes are based on the Codes established by the ICC (International Chamber of Commerce). It is a condition of membership of ASAI that a member shall not publish an advertisement that does not comply with Code requirements. The self-regulatory system complements legislative control on advertising and sales promotions.

The Code of Advertising standards requires, inter alia, honest, true and decent advertisements, which avoid sexism and stereotyping, respect vulnerable persons, do not cause fear or distress, violence or anti-social behaviour and protect privacy. The advertisers ensure that their advertisements are legal. Specific protection is provided for advertisements on health and beauty, slimming, alcoholic drinks and financial services and products. Regarding children, the Code provides rules for their protection, conforming to the “classical” protection in advertisement matters. The Code includes rules providing that advertisements should contain nothing that is likely to result in physical, mental or moral harm to children and should not exploit their loyalty.

On the European level, ASAI is a founder member of the European Advertising Standards Alliance (the Alliance), which promotes the principle of efficient national self-regulation of advertising.

## **5. Handling of complaints**

### **Authorities**

Judicial procedure

The Consumer Information Act established in 1978 the office of the Director of Consumer Affairs. The Director can request persons engaging in misleading practices to refrain from such practices, or, if necessary, institute proceedings in the High Court in relation to offences under the *Consumer Information Act*.

Administrative procedure

The Office of Ombudsman was established by the Ombudsman Act. It delineates the powers of the Ombudsman as regards the examination and investigation of complaints made to him and defines the Ombudsman’s reporting relationship with the Dail (parliament) and Seanad (Senate).

### **Self regulation**

Regarding self-regulation, the Complaint Committee of the ASAI is appointed by its board for considering and dealing with complaints submitted by the public, by a member of ASAI, by a Government department or by any other person. ASAI is not, however, a law enforcement body and complaints are not pursued if they

concern matters that should be resolved in the Courts. On the European level, the Alliance has established a cross-border complaint procedure to ensure that a complaint from a consumer anywhere in Europe can be effectively investigated and dealt with, even if the medium involved originated in another country.

A complaints procedure relating to advertisements which appear on radio or television was set out by the Broadcasting Authority Acts. The Broadcasting Complaints Commission may investigate and decide if an advertisement contravened the *Codes of standards* (see above).

Complaints on advertising and children represented in 1998 2% of the total number of complaints and 3% in 1999.

## ITALY

The Italian law on TV-broadcasting of 6 August 1990 implements the TVWF Directive (modified 8 March 1999). Current proposals concern a Bill to ban all advertising during children's programmes and all sponsoring of children's programmes.

### **1. Definitions**

According to the Civil Code, a minor or a child is an individual under the age of 18. The Criminal code distinguishes minors under 14 (who are considered as not being in full possession of their own faculties) and minors aged between 14 and 18.

The Advertising Self-regulatory Code (drafted by the IAP), based on the ICC code, is applied together with other specific codes. According to the Advertising Self-regulatory Code, a child is under 14 years old.

A definition of advertising can be found in the Legislative Decree of 25 January 1992, n°74 on advertising.

### **2. Regulation**

#### **a. General**

The Legislative Decree of 25 January 1992 on advertising contains a special article about children (Article 6). The definition of misleading advertising with respect to children is wider than the general concept of misleading advertising. This article guarantees an appropriate protection to minors.

#### **b. Media**

Italy has implemented the TVWF Directive . The Commission has launched an infringement procedure, as the national legislation (Ministerial Decree of 8 March 1999) does not implement correctly the directive 97/36/EC. Some provisions of the national legislation are more restrictive than the TVWF Directive. The audiovisual legislation prohibits interrupting cartoons by advertising. In addition, films that cannot be shown to children under 14 cannot be broadcast between 7.00 a.m. and 10.30 p.m.

The rules on distance selling apply to teleshopping. There are no specific provisions regarding minors and sponsoring.

A radio programme must not cause moral or physical detriment to minors. Publications (addressed or not to children) may not harm children. There are no specific laws related to other media concerning minors.

### **c. Specific provisions**

Regarding alcohol, the audiovisual decrees contain provisions similar to Articles 13, 15 and 16 of the TVWF Directive. The advertising of alcohol is not regulated for other media.

Advertising for tobacco products on other media is authorised provided that certain conditions are met.

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

In Italy, direct marketing and sales promotions are covered by the regulations applicable to teleshopping and sponsorship.

## **3. Proposals for law**

A Bill aiming to ban all advertising during children's programmes and all sponsoring of children's programmes has been tabled in the Senate. In addition, the Senate's Special Committee on Infancy Affairs is currently carrying out an inquiry about "minors & TV".

## **4. Self-regulation**

In Spain the self-regulatory body (the Istituto dell'Autodisciplina Pubblicitaria, IAP) has an important role. The IAP enacted the Advertising Self-regulation Code, based on the ICC code. There are various codes (from private or public bodies: concerning the Internet, alcohol, toys, drugs, etc.) that concern minors in advertising (obligation of special care for advertising addressed to children, no messages likely to harm children mentally, morally, etc.).

The IAP Self-regulatory Code also deals with advertising in schools; for example the distribution of advertising material for teaching purposes.

## **5. Handling of complaints**

### **Authorities**

Any interested person (competitor, consumer, organisation and associations, Minister of Trade & Industry, other Minister or agency, etc.) is entitled to file a complaint before the Autorita Garante della Concorrenza e del Mercato. This authority may prohibit the broadcast or order the withdrawal of the advertising, published decision or/and an amended notice (no compensation for damages may be granted). The decision is definitive, but appeal of the decision is

permitted. The number of decisions for misleading advertising is also constant (around 10 per year).

The Civil Procedural Code covers the procedure: either on merit, or a summary procedure. Any person who has a legitimate interest is allowed to file such an action.

### **Self regulation**

There are two procedures: “on the merit” in front of the Giuri and a “summary procedure” in front of the Comitato di Controllo. Those bodies can order sanctions such as the cessation of the advertising and eventually the publishing of the decision (a full publication or a part of it. No compensation for damages can be granted. The sentence of the Giuri is final and cannot be appealed (unlike the decision of the Comitato di Controllo). The number of complaints for all matters remains constant(around 5 per year).

## LIECHTENSTEIN

The Television and Radio Act implements the TVWF Directive. There are no current proposals to change the existing legislation.

### **1. Definitions**

Under the Juvenile Procedure Act, a minor is a person under the age of 18. The Children and Young persons Act uses the term “child” for a person under the age of 14 years and the term “young person” to designate a person who has attained the age of 14 and is under the age of 18.

### **2. Regulation**

#### **a. General**

In general, advertising may not be misleading, or aggressive. The consumer has to decide by himself whether he wants to buy the advertised product or not.

#### **b. Media**

The Radio and Television Act and its decree implement the TVWF Directive (consolidated version) and in particular Articles 10 etc. All advertising taking advantage of the inexperience or the credulity of minors or abusing their loyalty is prohibited. The Children and Young Persons Act also contains provisions regarding television, press, outdoor advertising and cinema: programmes, books, and video cassettes that might harm minors may not be released for publication.

#### **c. Specific Provisions**

There are no specific rules on advertising for **tobacco** products and **alcohol**. Liechtenstein law forbids minors from consuming these products.

The advertising for **medicinal products** may not be misleading. No advertising for medicinal products available on prescription is allowed on television or radio.

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

There are no specific rules on advertising regarding other marketing techniques.

### **3. Proposals**

There are no proposals to change the existing legislation.



#### **4. Self regulation**

There is no self-regulatory code regarding advertising and minors. The Media Commission is appointed to control the respect of the rules found in the Television and Radio Act.

#### **5. Handling of complaints**

##### **Authorities**

If any regulation is infringed the respective public body in charge of the enforcement may file an action before the Administrative Court.

When a civil or a criminal provision is infringed, an action can be filed before the Princely Country Court.

No information is available about complaints concerning advertising and minors.

##### **Self-regulation**

All complaints are to be filed before the Special Media Commission.

## LUXEMBOURG

Legislation on the audiovisual sector was last amended in July 1991 in order to transpose the "television without frontiers" Directive of 3 October 1989 (Law of 27 July 1991). A bill has been tabled to amend the law of July 1991 on electronic media in order to transpose the provisions of Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997.

### **1. Definitions**

Under the Civil Code, a minor is someone who has not yet reached 18 years of age.

There is no legislation on advertising which actually defines the terms "minor" and "child".

A definition of advertising, albeit a very broad one, may be found in the law of 27 November 1986 regulating some trading practices.

### **2. Legislation**

#### **a. General**

Mention should be made of the fact that, at the present time, Luxembourg has yet to transpose Directive 97/36/EC of the Parliament and of the Council of 30 June 1997 amending Directive 89/552/EEC of the Council of 3 October 1989.

The Trade Practices Act contains a section on advertising and seeks to protect consumers from advertising which is misleading as regards the product or service, or which is comparative or disparaging.

#### **b. Media**

The law on electronic media contains provisions on television and radio advertising. It transposes the provisions of the "television without frontiers" Directive 89/552/EEC concerning advertising, sponsorship and teleshopping (Article 16 and others). Except for legislation on the various sectors (tobacco, alcoholic beverages and medicines), the rules drawn up on advertising are the same for teleshopping and sponsorship.

There is no legislation relating specifically to the different media that can be used for advertising, other than radio and television.

#### **c. Specific provisions**

Apart from the general rules on advertising, the Luxembourg authorities have introduced several specific provisions for certain categories of products and services. These frequently transpose European directives.

The law of 24 March 1989 both bans and restricts **tobacco** advertising. Tobacco products may not be advertised on television, in newspapers or periodicals aimed at minors or in sports stadia, public and private sports grounds and swimming pools (unless only the product name is mentioned and is not accompanied by a text or by graphics). Moreover, advertising may not be targeted at minors. In addition, events aimed at children or minors may not be sponsored by manufacturers of tobacco products.

Advertising for **medicines** is subject to detailed provisions. Medicines available only on prescription may not be advertised on television. As regards minors, the Grand-Ducal regulation of 29 April 1983 contains only one specific rule prohibiting "advertising aimed exclusively or principally at minors under 18 years of age".

As far as **alcoholic beverages** are concerned, the law of 27 July 1991 on electronic media contains the provisions of Article 15 of the "television without frontiers" Directive: advertising for alcoholic beverages may not be aimed directly at minors. Adverts for alcoholic beverages are not regulated if they are disseminated via other media (self-regulatory codes nevertheless exist).

#### **d. Other communication methods**

There is no specific legislation referring to minors.

### **3. Bills**

A bill has been tabled to amend the law of 27 July 1991 on electronic media which transposes Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997. This will bring legislation in Luxembourg into line with European legislation as regards provisions on advertising.

### **4. Self-regulation**

The Luxembourg Commission for Ethics in Advertising implements the ICC code concerning fair practices in relation to advertising, including Article 14 on advertising aimed at children.

The Commission has also established a code of ethics in advertising intended for professionals in the field. This code establishes rules relating to advertising aimed at children. For example, adverts may not exploit the sensitivity of children, use messages likely to cause friction between children and parents who refuse to buy the product advertised and cannot include an element likely to cause injury. Any

promotional message aimed at children must also take account of the need to include relevant explanations in view of the lack of knowledge and experience of the target group. The provisions in the code are not actually binding but are instead of a dissuasive nature.

Finally, the Commission has also drawn up sectoral codes referring to minors and relating to fields such as tobacco, alcoholic beverages and medicines.

## **5. Management of complaints**

### **Authorities**

Advertising on radio and television is regulated by three bodies: the Ministry responsible for the media, the Independent Broadcasting Commission and the National Programming Council.

Moreover, the law of 27 July 1999 on electronic media sets up several bodies:

The media and audiovisual service, which deals with unlawful advertising.

The radio broadcasting commission.

The national programming council, which deals with programme content.

The consultative media commission, which delivers opinions on policy developments.

The government commissioners are responsible for monitoring companies which have a concession for broadcasting a Luxembourg radio programme or a satellite programme or for operating a Luxembourg satellite station. The commissioners monitor compliance with the rules applicable to broadcasts as derived from the "television without frontiers" Directive (compliance with rules on advertising, compliance with rules on the protection of young people, etc.) if another body is not responsible for monitoring this area.

Proceedings for an injunction may also be brought before the civil court by any interested party on the basis of a law which runs counter to the Trade Practices Act. In addition to its order for cessation of the act, the court can also apply penalties and instruct that the decision be displayed outside the advertiser's premises or in the press.

Moreover, any injured party may also bring civil proceedings before the criminal courts and demand compensation for factors constituting acts of unfair competition which undermine the individual or collective interest. Where an appeal is brought at the same time as the action for an injunction and the criminal court acquits the defendant, the action for an injunction should be terminated.

### **Self-regulation**

The Luxembourg Commission for Ethics in Advertising, a body acting on behalf of the advertising sector as a whole, is responsible for enforcing and monitoring implementation of the Public Ethics Code and legislation on fair practice in the field of commercial advertising. Any natural or legal person may submit a complaint about an advert to the Luxembourg Commission for Ethics in Advertising provided that the advert is likely to harm the public interest. The plaintiff and advertiser concerned are then informed of the decision. The Luxembourg Commission for Ethics in Advertising can also act on its own initiative. The following criteria are taken into consideration when investigating contentious advertising: the presumed influence on the public and, in particular, on bona fide consumers; advertising which clearly violate the relevant codes (in the broad sense: ICC and sectoral codes), and the laws or regulations protecting consumers.

The Luxembourg Commission for Ethics in Advertising receives an average of seven or eight complaints annually but so far none of these have concerned the effects of advertising on children.

## THE NETHERLANDS

The Dutch Media Act and Media Decree of 1987 have not changed significantly in this area apart from the implementation of the European Directive TVWF. There are no proposals to change the existing situation, which relies heavily on self-regulation. Nevertheless, a recent modification of the Media Act (2000) aims to provide for more effective protection of minors against audiovisual media products which can be considered as harmful for children (the rules had to be adopted to comply with Art.22 of the European Directive TVWF).

A number of detailed self-regulatory codes exist, together with a complaints procedure, easily accessible to consumers.

### **1. Definitions**

The Civil Code defines a “minor” as a person who has not reached the age of 18 years.

The Media Act refers to “minors” under the age of 12 years old.

The Advertising Code defines a “child” as a person under 12 years old.

A definition of “advertising” can be found in the Media Act (radio/TV), as well as a very broad definition in the self-regulatory Advertising Code (hereafter referred to as AC). In general every message intended to encourage the public to buy a product/service has to be considered as advertising.

### **2. Regulation**

#### **a. General**

In the Netherlands self-regulation has a greater importance than legislation. The Advertising Code Foundation (consumers, advertisers, media) has created an Advertising Code, divided into a general section and several specific sections.

The Code defines general principles applicable to all kinds of advertising in relation to truth, good taste and decency, public interest, health, confidence, feelings of fear, testimonials, scientific terms and data.

Art.13 prescribes special rules for advertising directed at minors ( advertising may not mislead children about the capacities or qualities of a product).

#### **b. Media**

The Media Act and Media Decree provide special rules for advertising on commercial and public service channels (clearly distinguished from programmes, broadcast time, interruption rules: for example programmes addressed to minors under the age of 12 may not be interrupted by advertising on the public service broadcaster and only if the programme lasts more than 30min for the commercial broadcasters ). The European Directive TVWF is partly implemented in the audiovisual legislation (and partly in the Advertising Code).

The AC contains specific rules for advertising on radio/TV and criteria to prevent advertising from harming minors physically or mentally.

In relation to teleshopping the AC contains criteria to protect minors.

Product placement and sponsoring is forbidden in programs directed at children under 12 years old.

The same rules apply for radio and TV.

There are no specific rules on advertising directed at minors for press, posters, cinema and the Internet. Self-regulation however contains some specific rules, for example advertising directed at children in press publications has to carry the word “advertising”.

### **c. Specific provisions**

Legislation and self-regulatory codes prescribe specific rules for advertising for certain products, for example :

alcohol : restrictions are found in self-regulatory codes, for example broadcasting of alcohol advertising is forbidden 5 minutes before or after a program that will be watched by more than 25% of minors.

tobacco : forbidden by the Tobacco Act on radio/TV+ detailed regulation in a self- regulatory code

medicines : Medicines advertising Decree (implements Regulation 92/28/EEC) and a specific self-regulatory code prohibits advertising addressed to children. TV-- --sponsoring by the pharmaceutical industry is forbidden.

health products : a specific self-regulatory code prohibits advertising directed to children

confectionery : the AC states that TV-advertising shall show a toothbrush + specific self-regulatory code aiming to protect the health of minors

leisure : the self-regulatory code on advertising for casino's and machines contains special rules for the protection of minors

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

Special self-regulatory codes exist on Box Advertising, Door-to-Door sampling and Direct response advertising. This kind of advertising may be directed to children but should not be likely to cause damage to their physical or mental health (also restrictions for medicines, tobacco and telemarketing).

Promotional sales practices are also regulated, for example a contest is allowed (even for minors) but not a game of “hazard”. Free gifts are allowed, except for some products such as alcohol, medicines...etc.

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

A recent proposal aims at the prohibition of all outdoor advertising for tobacco, which is motivated by the concern to protect minors and to prevent them from starting to smoke.

### **4. Self regulation**

Since in the field of advertising self-regulation is more important in the Netherlands than legislation, this subject is treated under **2**.

### **5. Handling of complaints**

#### **Authorities**

For misleading/unfair advertising legal proceedings in court are a possibility.

The Media Authority supervises the compliance with the Media Act and Decree but does not handle complaints.

For advertising of medicines the Inspection Board of the Foundation Code of Medicines is competent for the handling of complaints.

#### **Self-regulation**

The self-regulatory Advertising Code Committee supervises the application of the AC and is the most important institution for consumers to complain about advertising. The advantage is that this control system is easily accessible for everybody, introducing a complaint is not complicated and can be done without too many formalities, the institution is well known by the public and the procedure is quick and efficient. This is considered to have clear advantages compared to the launch of legal proceedings.

Anybody can submit a written complaint and if it is justified the Committee will recommend the advertiser to stop the distribution of the advertisement. The media can be warned and asked to stop the distribution.



In 1997 there were only two complaints relating to advertising and children, both of which were rejected. In 1998 there were 7 complaints in this field (the majority of which were rejected), in 1999 there were 6 complaints (the majority were rejected). The subject does not appear to have provoked much concern amongst consumers.

## NORWAY

The Norwegian Act n° 127 of 4 December 1992 relating to broadcasting was modified in order to implement the TVWF Directive (28 February 1997). Current proposals to modify the legislation relating to this issue concern programming that is potentially harmful to minors.

### **1. Definitions**

Under Section 50 of the Constitution and the Act on guardianship of persons who are legally incapable, a minor is an individual who is under 18 years.

There is no general definition of advertising but the Act on broadcasting of 4 December 1992 (section 1-1 subsection 4) defines “advertising” as any form of promotion of a product or service in return for payment or any other form of remuneration.

### **2. Regulation**

#### **a. General**

The *Marketing Control Act* of 1972 lays down the general rules concerning advertising that is meant for the Norwegian market. The provisions apply to advertising in newspapers, broadcasting, the Internet and through other media. The Act contains no specific provisions concerning marketing directed towards minors.

The Royal Ministry of Cultural Affairs stated however that Article 16 of the “Television Without Frontiers” Directive, concerning minors and advertising, will be a guideline when interpreting the *Marketing Control Act*.

#### **b. Media**

The Act relating to broadcasting includes special provisions regarding advertisements and children. These provisions generally prohibit advertisements specifically directed towards minors. However, all advertising must take into account that it may be seen or heard by children and advertisers must show particular sensitivity to the fact that children may be easily influenced..

Under this Act, broadcasting an advertisement that stars people or characters known from programmes that are directed towards children and regularly broadcast in Norway is also prohibited. There is also a general ban on advertisements 10 minutes before and after a programme meant for children.

There is no specific regulation for the Internet; the Market Control Act applies generally to advertising on the Internet.

Direct marketing is subject to the Marketing Control Act as well as the Act relating to personal data filing system.

Sponsorship is generally considered as advertising, and is therefore subject to the Marketing Control Act. The same Act applies to teleshopping.

### **c. Specific provisions**

The sale of alcoholic drinks to persons under 18 or 20 years is strictly regulated by the *Act on the sale of alcoholic beverages*. The same Act lays down a general ban on advertisements for alcoholic beverages containing more than 2,5 per cent alcohol, applying to all media.

The sale of tobacco is prohibited to persons under the age of 18 (*Act relating to the prevention of the harmful effects of tobacco*). The same Act prohibits all forms of advertising for tobacco products.

### **d. Other advertising techniques**

Direct marketing is regulated by the Marketing Control Act, as well as the Act relating to personal data filing systems. Sponsoring is regulated in the same Marketing Control Act.

## **3. Proposals of law**

There is a proposal for a law concerning programmes that may cause harm to children or youth, stating that such programmes should carry a warning by either an acoustic signal or a visual signal. Another proposal proposes the establishment of a time period during which all non-coded television programmes that may cause harm to children or youth would be banned.

A special committee has recently been set up in Norway to evaluate different measures to reduce the commercial pressure on children and youth, and to make them better aware of the commercial influence they are subject to. A report is expected by the first half of the year 2001.

## **4. Self regulation**

The Nordic Consumer Ombudsmen published together a “General attitude towards commerce and advertising on the Internet and similar communication systems”. The statements made in this document may have an impact on the interpretation of the Marketing Control Act.

Different private business associations have also created their own ethical rules that can play an important role in determining what is acceptable in relation with the general standards of the Marketing Control Act. The member companies are obligated to act in compliance with the codes.

Regarding advertising, the *Norwegian Association of Advertising Agencies* has laid down an ethics code for their activities. It includes provisions such as:  
all advertising should follow a high professional and ethical standard;  
all advertising should take into consideration the society as a whole and also the environment;  
etc.

Norway's largest IT organisation has also created a set of ethical rules concerning advertising on the Internet.

## **5. Handling of complaints**

### **Authorities**

If the same case is submitted to the *Consumer Ombudsman's Office* (established by the *Marketing Control Act*), the *Committee* will not consider the complaint until the *Ombudsman's Office* has finished its hearing. The *Consumer Ombudsman* is an independent administrative body. Appeals against the *Consumer Ombudsman's* decisions are heard by the *Market Council*. A ban on a specific television advertisement can be imposed. Violations of the Act can also be punished with fines or imprisonment of up to three months.

The general rules on judicial proceedings apply.

### **Self-regulation**

The *Norwegian Association of Advertising Agencies* has established a *Committee* that handles complaints in connection with possible violations of its rules. Anyone can file a complaint. The company in question can be sanctioned by a fine or even be expelled from the association.

There are no numbers of complaints known.

## PORTUGAL

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.

## SPAIN

The Spanish Act 25/1994 of 12 July 1994 (modified by Act 22/1999 of 7 June 1999) regulating TV-advertising has not been significantly modified in this area apart from the implementation of the European Directive TVWF. There are no current proposals to introduce changes.

### **1. Definitions**

According to the Civil Code, a minor is an individual who under the age of 18.

There are no specific provisions regarding advertising that explicitly define the concept of “minor”. The ICC codes regarding marketing and advertising do not define the concept of “minor” and refer to the national legislation related to “minors” in each country.

A definition of advertising can be found in the General Act on Advertising (34/1988, 1 November 1988).

### **2. Regulation**

#### **a. General**

Each Province sets up standards regarding advertising and programmes for children (shall not directly exhort minors to buy a product by exploiting their credulity, unreasonably showing minors in dangerous situations, etc.).

#### **b. Media**

The General Act on advertising and each Community’s legislation on advertising contains provisions regarding advertising on TV and radio. With regard to advertising, sponsoring and teleshopping, the provisions of the directive TVWF (consolidated version) are implemented (e.g. Article 16, 22, etc.). The rules regarding advertising, teleshopping and sponsoring are applicable to all channels in the same way (commercial and public service).

With the exception of TV and radio, there are no specific laws related to other media. Therefore the rules stated in the General Act on Advertising are not applicable to the press, outdoor advertising, cinema, or the Internet.

#### **c. Specific provisions**

There are various laws regarding certain categories of services or products. These usually relate to the implementation of European Directives.



The General Act on Advertising as well as the Communities' legislation contain provisions similar to Article 15 of the European Directive TVWF regarding alcohol. The General Act on Advertising is more restrictive than the Directive as it forbids advertising on TV for alcoholic beverages that contain more than 20 degrees. Regarding advertising on radio for alcoholic beverages, the act on RTVE forbids the advertisements for alcoholic beverages before 9.30 p.m.

According to the General Act on Advertising, advertising for tobacco products in premises where the selling or the consuming of tobacco products is not permitted (e.g. hospital, schools, places frequented by children and young children, etc.) is prohibited. Advertising for tobacco products is therefore allowed provided it is not addressed to children (Community legislation). However, advertising tobacco products on TV is not allowed. On radio, advertising tobacco is allowed if it is broadcast after 9.30 p.m. In some Communities (Basque Country), advertising tobacco on radio between 8.00 a.m. and 10.00 p.m. is forbidden.

According to the Royal Decree on advertising of medicine for human use, advertising medicine is only permitted for the so-called "Especialidades Farmaceuticas Publicitarias" and the medicines under prescription.

Audio-visual legislation prohibits advertising of vehicles that is based on speed or that encourages imprudent driving.

The RTVE Act on advertising forbids all advertising on TV and radio that might incite children to fight. Advertising toys is not specifically regulated if broadcast by other media.

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

Regarding promotional sales practices, there are regulations about the featuring of a famous TV star advertising a product on a children's programme and the membership of a children's club.

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

There are no proposals related to advertising and minors.

#### **4. Self-regulation**

In Spain, the Asociacion de Autocontrol de la Publicidad (AAP), made up of announcers, media, advertising agencies, applies its own general code on advertising conduct which is inspired by the ICC code. There is a special provision regarding minors. In addition to that code, there are many references to advertising addressed to minors in specific codes drafted by the private sector (e.g. television, Internet, alcohol, medicine, etc.).

#### **5. Handling of Complaints**

### **Authorities**

All complaints related to the infringement of advertising rules can be filed before the Administrative Authorities. This authority can stop the campaign and sanction the advertiser. Each Community has the competence to sanction an infringement that occurs on its territory. If the infringement covers more than one Community, the competence belongs to the Central Administration.

Judicial procedure: action for cessation or rectification of the illicit advertising

The General Act on Advertising regulates the procedure. Any person who has a legitimate interest is allowed to file such an action provided he has previously notified the advertiser.

### **Self regulation**

The “Jurado de la Publicidad”, division of the AAP, is an arbitration court whose members are chosen amongst famous lawyers and professionals from the sector.

The AAP has various tasks: to advise on campaigns, to examine advertising for compliance with the general code, to handle complaints, etc.

Any interested person (individuals, consumer union, companies, public bodies, etc.) is entitled to file a complaint before the Jurado de la Publicidad provided certain conditions are fulfilled. The resolution rendered by the Jurado can be appealed before the “Plenum” of the Jury.

In 1999 the total of complaints on children treated by the Spanish self-regulatory body represented 5% of the total number of complaints received.

## SWEDEN

Swedish legislation in respect of advertising to children bans all such advertising to children under 12 years old. The Radio and TV Act of 1996 prohibits advertising during, before and after programs directed at children. There are no current proposals to change the existing legislation.

### **1. Definitions**

Under the Swedish Parental Code, a **minor** is a person under the age of 18. A person who is younger than 18 is incapable of contracting. However, individuals over 16 are entitled to manage and control their own income.

The **Children's Ombudsman** has a general duty to supervise the observance of issues related to children and young people and to notify to the Social Welfare Board of any abuse which requires the intervention of the Social Services.

### **2. Regulation**

#### **a. General**

The EU Directive on Misleading Advertising was implemented in Sweden by the Marketing Advertising Act. The fundamental legislation in the advertising field is the Marketing Practices Act (MPA). The MPA stipulates that all marketing practices should be consistent with generally accepted marketing practices and shall otherwise be fair. Although it contains no specific rules regarding advertising directed at minors, the case law is extensive and courts are rigid when judging marketing directed to groups considered as weaker, such as minors.

#### **b. Media**

Advertising on **radio and on television** is governed by the Radio and Television Act (RTA). The RTA implements most of the Television without Frontiers Directive (TVWF) but often goes further than the European text. . Some provisions are aimed at the protection of children e.g. advertising in TV-broadcasting directed to children under 12 years of age is prohibited (chapter 7, s4). In terms of case law, the type of product or service, the design of the advertisement and the time of broadcasting are important elements for the Court to assess whether a television commercial is directed at children. This provision implements Article 16 of the TWFD although Swedish rules go further.

Advertising is also prohibited directly before or after a TV show or part of a TV show, mainly directed towards children younger than 12 years old, apart from for sponsors of the programme. This implements Article 11.5 of the TWFD.

The RTA also bans TV shows containing detailed realistic descriptions of violence or of a pornographic character. This rule implements Article 22 of the TWFD.

The Marketing Practices Act and the Radio and TV Act apply to teleshopping.

There are no specific rules applying to sponsoring with respect to minors.

Until 1995, the Radio and Television Reviewing Committee was the supervising authority. Today it's the Consumer Agency.

The MPA applies to all forms of marketing techniques. The ICC International Code of Direct Marketing also applies to direct marketing. There is some case law on the issue of sending direct marketing to minors under 16 since below that age they are not entitled to contract.

The RTA stipulates that if a TV show is on the whole or in part sponsored, the indication of the sponsor may appear before or after the programme.

### **c. Specific provisions**

According to the Marketing of Alcoholic Beverages Act, the marketing of alcoholic beverages shall be carried out with moderation. Marketing of alcoholic beverages is banned in any TV or radio commercial. The Consumer agency has also published guidelines comprising rules such as the prohibition of marketing for alcoholic beverages in premises mainly intended for people younger than 20 years old.

Advertising for tobacco products directed to consumers in periodicals or similar publications, or in radio or TV broadcasting is generally prohibited. The Consumer Agency Guidelines stipulate that marketing actions should not encourage an individual to start using tobacco products, especially when directed toward young persons. Advertisements in premises mainly used by young people under 20, and advertisements within schools are banned.

General rules of the Marketing Practices Act apply to advertising for leisure, vehicles, toys, arms, guns and weapons, and violence.

### **3. Proposals for law**

A bill relating to indirect Tobacco Marketing proposes banning all marketing of tobacco products and all goods or services marketed under the same name and connotation as tobacco products. The modifications should be implemented by July 2001. However, this bill has been revoked as the European Court of Justice has declared the EC Directive void.

### **4. Self regulation**

The ICC International Code of Advertising Practices and in particular its Article 14 applies to advertisements addressed to minors. Regarding the Internet, the ICC Guidelines on Advertising and Marketing on the Internet contain the general principles applying to advertisers and marketers offering goods or services to children on-line.

Article 3 of the ICC International Code of Direct Marketing applies to direct marketing addressed to children.

The Swedish brewers Association adopted an Agreement for Marketing of Lighter Beer, including e.g. a ban against the use of models younger than 25 years in the commercials or marketing campaigns..

The Agreement on Marketing of toys, Games and similar to Children and Young people was adopted by the Consumer Agency, the Swedish organisation for Retailers of Toys and the Council for Children's environment. This agreement clarifies marketing rules on certain toys and games as regards children and young people.

## **5. Handling of complaints**

### **Authorities**

Proceedings regarding consumers' issues fall within the competence of the Consumers' Agency and the Consumers' Ombudsman. They act as the general supervisory authority over marketing in all sectors with a duty to intervene in cases with general consumer interest. The Consumer Ombudsman acts on his own initiative or following a complaint. Claims are filed with the Stockholm District Court as the court of first instance in all cases regarding marketing practices.

If a company contravenes the Marketing Practices Act, it may be charged a « market disruption » fine. This fine may be imposed on advertising agencies, TV or newspapers involved in the contravention in question.

The Radio and TV Reviewing Committee is responsible for the application of the Radio and TV Act. A contravention of the Act may entail a penalty such as a fine, or the prohibition to broadcast the show again or even in the case of a serious contravention, the withdrawal of the permission to broadcast. Provisions in the Radio and TV Act relating to marketing are exempted from the Reviewing Committee and are overseen by the Consumer Ombudsman.

### **Self regulation**

As regards self-regulation, the tobacco and medicinal sector both have their own boards supervising the marketing activities of their members.

In Sweden in 1998 there were no complaints relating to advertising and children, in 1999 complaints relating to children represented 7% of the total number of complaints

## UNITED KINGDOM

Pursuant to the Broadcasting Act of 1990, the ITC is empowered to draw up and enforce a code of standards in television, advertising and sponsorship. The ITC code of advertising standards and practice, the ITC rules on the amount and scheduling of advertising, the ITC code of Programme sponsorship and the ITC rules on the amount and scheduling of advertising (last edition 1998) contain detailed rules on advertising in relation to children.

The European Directive “Television without Frontiers” has been implemented in these codes.

The ITC code on Advertising Standards will be updated in the near future but there will be no significant modifications on the content of the rules concerning children.

### **1. Definitions**

Under the Children’s Act 1989 and the Family Law Reform Act, a minor or a child is a person under the age of 18. The Children and young people’s Act uses the term “child” for a person under the age of 14 years and the term “young person” to designate a person who has attained the age of 14 and is under the age of 18.

### **2. Regulation**

#### **a. General**

The Control of Misleading Advertisements Regulations 1998 implement the EEC Council Directive 84/450 and impose a duty upon the Director General of Fair Trading, the Independent Television Commission, the Radio Authority and the Welsh Authority to consider complaints made to them that an advertisement is misleading.

#### **b. Media**

General principles for **television** advertising are contained in the ITC Code of advertising standards and practice (CASP). For the purpose of this Code, children are those under the age of 15. The Code states that particular care must be taken with advertising that is likely to be seen by many children or in which children are employed. The Code covers wider issues than those covered by the Television without Frontiers directive (TWF)<sup>1</sup> such as toys and games, direct exhortation, safety, and appeals to loyalty and inferiority.

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<sup>1</sup> Directive 89/552 of 3 October 1989 and Directive 97/36 of 30 June 1997 amending Directive 89/552 on the coordination of certain provisions laid down by law, regulation or administrative action in member states concerning the pursuit of television broadcasting activities.

Concerning transmission time regulation, the CASP provides that advertisements, in which personalities that appear regularly in children's programmes, must not be transmitted before 9pm. Advertisements for merchandise based on children's programmes must not be broadcast in either of the two hours preceding or succeeding transmission of the relevant programme. Advertisements containing material that might frighten or cause distress to children must be subject to appropriate restrictions on times of transmission.

The CASP apply in full to teleshopping and to self-promotional spots, windows or channels.

The ITC Family viewing policy contains rules providing that material unsuitable for children should not be broadcast at times when large numbers of children are expected to be watching, and sets up a progressive decline throughout the evening, in which nothing should be shown that is unsuitable for children, with a time being fixed at 9.00pm

Finally, the ITC rules on the amount and scheduling of advertising contain very similar rules to the CASP rules.

With regards to **radio** advertisements, the Radio Authority Advertising and Sponsorship Code also contains similar rules to the aforementioned CASP. For the purpose of this Code children are individuals aged 15 and younger. The Code covers issues such as a clear identification of advertisements, the exclusion of advertisements from some types of programmes, misleading advertisements, protection of privacy,...

The Radio Authority Programme Code provides that when programming is specifically directed at a young audience or there is evidence of a substantial young audience care must be taken to avoid contents such as strong language, explicit news reports, « phone in » programmes which cover explicit violent or sexual topics in a frank manner, musical items with violent or sexually explicit lyrics,...For the purpose of this Code, children and young persons are those below adult age , that is under 18 years.

Other organisations provide their own rules, such as the ICSTIS (regulatory body for the premium rate telecommunications industry) supervises the content of promotional material for premium rate services. Some rules concern children's programmes defined as those, which are aimed at persons under 16 years of age.

### **c. Specific provisions**

The ITC and Radio Authority Codes generally contain stricter rules than those of the TWF directive.

### **Alcohol**



Under the ITC Rules on Amount and Scheduling of Advertising, **alcoholic drinks** containing 1.2% alcohol or more by volume may not be advertised in or adjacent to children's programmes or programmes commissioned for, principally directed at or likely to appeal particularly to audiences below the age of 18.

Drinks containing less than 1.2% alcohol by volume when presented as low or 'no-alcohol' versions of an alcoholic drink and liqueur chocolates may not be advertised in or adjacent to children's programmes.

The CASP and ITC Programme Code prevent any advertisement for alcoholic drinks to be transmitted during children's programmes or immediately before or after them.

The Radio Authority Scheduling and Advertising Code contains a specific appendix regarding alcoholic drink advertising and minors.

### **Tobacco**

Under the provisions of the ITC Programme Code, particular care is needed with programmes likely to be seen by children and young people. Smoking should not be prominently presented in programmes shown before 9.00pm (or 8.00pm on premium pay channels) as a normal and attractive activity. Exceptions may be made where there are strong editorial reasons for its inclusion or where (for example, in cinema films) it would be unreasonable or impractical to remove it (rule 5.9)

Under the Radio Authority Advertising and Sponsorship Code Advertisements for cigars and pipe tobacco must not be broadcast in or around programmes/features directed particularly at people under 18.

### **Medicinal products**

The Medicine Act 1968 and the Medicine Regulations 1994 are universally for the advertisement of **medicinal products**. These rules comply with article 15 of the TWF directive.

Regulation 91d of this act states, that no one shall issue any advertisement relating to any medicinal product containing any material directed at children. The same rule applies to radio advertisement.

ITC rules provide that medicine, vitamins and other dietary supplements may not be advertised in or adjacent to children's programmes.

### **Financial services**

It is an offence for a person, with a view to financial gain, to send a minor any document inviting him to borrow money, to obtain goods and services on credit or to apply for information on any of the above.

### **3. Proposals for law**

The ITC Code on Advertising Standards is under revision. There will be no significant modifications but some rules have to be updated.

The Radio Authority has drafted a draft proposal of revision of its Advertising and Sponsorship Code.

### **4. Self regulation**

The British Code of advertising and sales promotion (BCASP) contains the general principles of **non-broadcast advertising**. For the purpose of this Code, a child or young person is someone under the age of 16. Advertisements and promotions addressed to or featuring children should contain nothing that is likely to result in physical, mental or moral harm to the children. The Advertising Standards Authority enforces this code.

BACC ensures pre-clearance of TV advertising. Almost every British TV Channel is a member of BACC and submits its TV advertising for pre-clearance (examination of the compliance with the ITC codes).

The Broadcasting Standards Commission produces a code on Fairness and Privacy. This Code contains a special section regarding children

The Internet Watch Foundation addresses the problem of illegal material on the Internet with particular reference to child pornography.

### **5. Handling of complaints**

#### **Authorities**

The ITC licence holders must ensure that any advertising they transmit complies with the ITC Code of advertising Standards and Practice. Viewers can contact the television company or the ITC directly, who will raise the matter with the television company concerned. Final decisions are taken by the ITC's Director of Advertising and Sponsorship. If the complaint is upheld, the ITC will notify the relevant television company, and they may order the company to make changes, including the withdrawal of the advertisement in question. The ITC may also issue a formal warning to the company or even impose a fine, or in extreme cases withdraw the company's broadcasting licence.

The Radio Authority issues guidelines for listeners who wish to complain about an item. Upheld complaints are published in the Authority's quarterly bulletin,

which is sent out to the stations, to the press or to any other interested party. The Authority has also the power to issue formal warnings, request a broadcast apology, a correction, or impose a penalty. In case of misleading or offensive advertising, they can require that the advertisement concerned be immediately withdraw or amended.

### **Self-regulation**

The ASA Codes of advertising and Sales Promotion. Non broadcast advertisers bear the principal responsibility for the advertisements and promotions they produce. The sanctions vary from the withholding of services or the denial of access to space by the media, contractors and service providers.