

REGULATION AND SELF-REGULATION ON ADVERTISING DIRECTED AT MINORS -Portugal

DEFINITIONS

Child	Children or young people are the individuals younger than 18. Individuals younger than 21 may also be considered as young people for the purposes of this law provided that they requested it when they were younger than 18 (Art.5 of the Law 147/99 of 1 September 1999)
Minor	A minor is an individual who has not yet fully reached the age of 18 years. (Art. 122 civil Code)
Civilian majority	
Civilian minority	
Legal entitlement to contract	
Youth protection	Article 69(1) of the Constitution expressly mentions the right of children to be protected
Sex offences	Distribution and selling of pictures, films or other recording media representing acts of a pornographic nature or representing minors younger than 14 or influencing minors younger than 14 through pornographic conversation, documentation or performance is punished under article 172 & 173 of the Criminal code.
Moral protection	
Advertising	

LEGAL PROVISIONS

GENERAL PROVISIONS

1. In general

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

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

question (See Article 1 of the Advertising Code, according to which the Code applies to any form of advertising irrespective of the means by which it is transmitted).

or attempt against the dignity of the human being

2. Through media

TELEVISION

Principles

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

Art. 10 TVWF

Art. 11 TVWF: insertion of advertising:

Television advertising can only be inserted between programmes. Children's programmes with an effective duration of less than 30 minutes cannot be interrupted by advertising or teleshopping

Article 26 of the Advertising Code concerning the amount of transmission time reserved in television for advertising, has been expressly revoked by Article 75(2) of Law 31-A/98, which means that in the advertising), but still contains specific provisions regarding television advertising, such as

* need to identification of advertising in television programmes and its separation from the other items of a programme service

*prohibiting the direct and exclusive focusing, by means of a television broadcasting, of the existing advertising in any real or simulated events or situations

Art. 12 TVWF: human dignity

Any broadcast that violates the fundamental rights, freedoms and guarantees, attempts against the dignity of the human being or encourages to the practice of crimes shall not be allowed

Art. 13 TVWF: tobacco

all types of advertising for tobacco over any supports (for its diffusion) under Portuguese jurisdiction shall be prohibited, "without prejudice to what is established under special legislation"

Art. 14 TVWF: medicinal products

Art. 15 TVWF: alcohol

absolute prohibition of television advertising for alcoholic beverages in a certain time-table

Special protection for minors

Art. 16 TVWF: advertising & minors

Art. 22 TVWF: protection of minors and public order

The broadcasts susceptible of negatively influencing the formation of the children or adolescents personality, or affecting other more vulnerable members of the public, namely through the exhibition of images particularly violent or shocking, shall be preceded by an express warning and followed by the permanent transmission of an appropriate signal and they shall only take place in a timetable after 10 p.m

The television broadcast of works that have been classified by an age rate system for the purpose of their cinematography or video distribution shall be preceded by the indication of the approved minors younger than 16. For the purpose of this Law the concept of broadcast includes any elements of programmes, including advertising or extracts aiming to promote programmes

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

Sponsoring (Art. 17 TVWF)

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

main activity is the manufacture or sale of cigarettes or any other related tobacco products cannot sponsor television programmes

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

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

Teleshopping (Art. 19 TVWF)

for payment

The general rules of the Advertising Code apply to teleshopping

Teleshopping shall not encourage minors to buy or to rent any goods or services

Teleshopping for medicinal products which are subject to a marketing authorisation, as well as teleshopping for medical treatments is not permitted

Rules on duration of teleshopping spots and number of blocks

RADIO

According to Article 13 of Law 87/88 the general rules of advertising are applicable

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

PRINT

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

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

POSTERS

primarily inserted in the so-called Advertising Code

CINEMA

establish the classification per age, as well as the obligatory warnings during the film promotion. Films and video programmes as advertising character are subject to specific rules

INTERNET

the publication of a law directly aimed to this particular field, e.g. namely through the implementation in the future of the Directive on E-commerce 2000/31/EC of 8 June 2000

SPECIFIC LEGAL PROVISIONS

3.1 ALCOHOL	
3.1.1 General rules	Alcoholic beverages cannot be commercialised in the places exclusively licensed for the exploitation of amusement machines [See infra "Amusement machines" under point 2.8.1.], where it is only allowed for the installation of equipment adequate for the sale of non-alcoholic products or beverages under the conditions stated in Article 162(2) of Decree-law 422/89 of 2 December 1989
3.1.2 Advertising	
3.1.2.1 In general	consuming such beverages
3.1.2.2 Per media	
Television	has been recently introduced by Decree-law 51/2001 of 15 February, stating that the official time hour for the purposes of paragraph 2 shall be deemed as the hour where the broadcast initially takes place
Radio	It is prohibited to advertise alcoholic beverages on radio between 7:00 a.m. and 9:30 p.m
Print	Advertising for alcoholic beverages is prohibited in publications targeting minors specifically
Posters	The above-mentioned prohibition is applicable to posters
Cinema	Advertising for alcoholic beverages, is prohibited in programmes or activities targeting minors specifically (therefore including motion-pictures)
Internet	There is not yet any specific regulation. this provision
3.2 TOBACCO	
3.2.1 General Rules	
3.2.2 Advertising	
3.2.2.1 In general	All types of advertising for tobacco over any supports (for its diffusion) under Portuguese jurisdiction shall be prohibited, "without prejudice to what is established under special legislation"
3.2.2.2 Per media	
Television	
Radio	
Print	
Posters	
Cinema	
Internet	

3.3 DRUGS AND HEALTH	
3.3.1 General rules	
3.3.2 Advertising	
3.3.2.1 In general	<p>care providers, shall be prohibited</p> <p>Decree-law 100/94 of 19 April 1994, as last amended by Decree-law 48/99 of 16 February 1999, implements in Portugal Council Directive 92/28/EEC of 31 March 1992 on the advertising of medicinal products for human use</p> <p>distinction between advertising targeting the public in general and advertising targeting professional care providers: Medicinal products, available on prescription can only be advertised in technical magazines or media exclusively targeting doctors and other professional care providers</p> <p>Advertising of medication targeting the public in general cannot be addressed exclusively or primarily to children</p>
3.3.2.2 Par support	
Television	According to Article 19 of the Advertising Code the television advertising for medical treatments and medicinal products available only on prescription, shall be prohibited
Radio	According to Article 19 of the Advertising Code the radio advertising for medical treatments and medicinal products available only on prescription, shall be prohibited
Print	According to Article 19 of the Advertising Code the press advertising to medical treatments and medications where it is obligatory to obtain by means of a prescription is prohibited
	Medical treatment and medicinal products available only on prescription can be advertised in technical magazines or information media targeting exclusively doctors and other professional care providers
Posters	According to Article 19 of the Advertising Code the advertising to medical treatment and medicinal products available only on prescription shall be prohibited
Cinema	According to Article 19 of the Advertising Code the advertising to medical treatment and medicinal products available only on prescription shall be prohibited
Internet	There is not yet any regulation in this field. See, however, comments to Article 1 of the Advertising Code
3.4 VEHICLES	
3.4.1 General rules	<p>16 years: motorised bicycles and motorcycles with a cylinder not higher than 50 cm³, as well as certain agriculture vehicles</p> <p>18 years: motorised vehicles in general, certain agriculture machines</p> <p>21 years: trucks</p>

3.4.2 Advertising	According to Article 22-A of the Advertising Code, as last amended by Decree-law 74/93 of 10 March 1993, it is prohibited advertising for automobile vehicles that include situations or suggestions related
3.4.2.1 In general	the consumption of alcoholic beverages with the driving of vehicles
3.4.2.2 Per media	No specific rules
Television	
Radio	
Print	
Posters	
Cinema	
Internet	
3.5 EDUCATION	
3.5.1 General rules	The basic obligatory schooling is divided into three stages, the first one being four years, the second one two years and the third one three years
3.5.2 Advertising	
3.5.2.1 In general	According to Article 22 of the Advertising Code, as amended by Decree-law 275/98, it is obligatory that the advertising message related to courses or any other similar improvement actions expressly officially recognised As far as minors are concerned, Article 20 of the Advertising Code prohibits advertising for alcoholic beverages, tobacco products and any type of pornographic material within educational institutions
3.5.2.2 Per media	No specific rules
Television	
Radio	
Print	
Posters	
Cinema	
Internet	

3.6 TOYS AND CHILDREN'S THINGS	
3.6.1 General rules	reduce such risks
3.6.2 Advertising	
3.6.2.1 In general	According to Article 13 of Decree law 237/92 it is forbidden to advertise toys that do not have the mark CE exposed
3.6.2.2 Per media	No specific rules
Television	
Radio	
Print	
Posters	
Cinema	
Internet	
3.7 FINANCIAL SERVICES	
3.7.1 General rules	of 30 October 1990, as last amended by Law 5/98 of 31 January 1998, and its main function is of prudential control over the other financial institutions
	* Credit including bonus for young people: financial institutions may accept applications from minors, i.e. younger than 18, but for the access to the credit in question maturity is a requirement
	* Credit including a bonus for university students: As one of the requirements to access this type of credit, the applicant must be one or two years away from achieving the last curricular year of the
	that someone younger than 18 can accede this kind of credit, unless for the ones attending the poly-technical school that may achieve such a position before that age
3.7.2 Advertising	No specific rules
3.7.2.1 In general	
3.7.2.2 Per media	
Television	
Radio	
Print	
Posters	
Cinema	
Internet	
3.8 LEISURE	
3.8.1 General rules	
3.8.2 Advertising	
3.8.2.1 In general	

<p>3.9.2.2 Par support</p> <ul style="list-style-type: none"> Television Radio Print Posters Cinema Internet 	
3.9 ARMS/VIOLENCE	
<p>3.9.1 General rules</p> <p>3.9.2 Advertising</p> <p>3.9.2.1 In general</p> <p>3.9.2.2 per media</p> <ul style="list-style-type: none"> Television Radio Print Posters Cinema Internet 	<p>Individuals in their full civil and political rights, i.e. older than 18, can be granted a licence for the use of fire arms for hunting, as well as for precision and recreation fire arms</p> <p>According to Article 7(2)(b) and (c) of the Advertising Code the advertising encouraging violence or offending the dignity of the human being shall be prohibited</p>
3.10 POLITICS	
<p>3.10.1 General rules</p> <p>3.10.2 Advertising</p> <p>3.10.2.1 In general</p> <p>3.10.2.2 Per media</p> <ul style="list-style-type: none"> Television Radio Print Posters Cinema Internet 	

3.11 TELECOMMUNICATIONS

3.11.1 General rules

3.11.2 Advertising

3.11.2.1 In general

3.11.2.2 Per media

Television

Radio

Print

Posters

Cinema

Internet

PROPOSALS OF LAW

No proposals

SELF-REGULATION

GENERAL RULES

Code of Fair Practices in Advertising

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

- * The ICC International Code of Advertising Practice
- * The ICC International Code on Sponsorship
- * The ICC Guidelines on Advertising and Marketing on the Internet

Advertising should not exploit the natural credulity of children, as well as the lack of experience of adolescents, nor abuse of their loyalty sense

Advertising targeting children and adolescents or that can influence them shall not include any statement or visual aspect that can risk provoking their mentality, morality or causing physical damage

Ethical Code and the Fair Practices

No specific reference is being made to minors

ICAP

The Code is divided into various sections and contains chapters on decency, honesty, truthfulness, safety measures, children

RULES PER SECTOR PER MEDIA

- ALCOHOL**
- TOBACCO**
- DRUGS/HEALTH**
- VEHICLES**
- EDUCATION**
- LEISURE**
- FINANCIAL SERVICES**

- ENTERTAINMENT**
- ARMS/VIOLENCE**
- POLITICS**
- TELECOMMUNICATIONS**
- SCHOOLS**

OTHER ADVERTISING TECHNIQUES (LEGISLATION AND SELF-REGULATION)

DIRECT MARKETING

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

There are no specific rules regarding minors in this special legislation

Code

HANDLING OF COMPLAINTS

SELF- REGULATION

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

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

ADMINISTRATIVE PROCEEDINGS

Without prejudice to specific regimes (some of them mentioned below) and the specific competence of the different administrative and police authorities, the control over the compliance of the rules established by the Advertising Code is mainly of the competence of the Institute for the Consumer

Outdoor advertising

Door to door advertising and publicity by telephone and by telefax

The entity in charge of supervising the application of the rules concerning door to door advertising as well as advertising by telephone and by telefax is the Institute of Consumer

Tobacco products

the Directorate General for Health, which is competent to apply fines in case of infringement of rules on Health domain

Drugs and Health

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

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

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

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

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

JUDICIAL PROCEDURE

case, any decision taken by an administrative authority can always be appealed to the relevant court

HIGH AUTHORITY FOR THE MASS MEDIA

ensures the right to information, the freedom of press, as well as the independence of the media towards the political and economic powers and also the possibility of expressing and confronting different lines of opinion and the exercise of the right to broadcasting time, the right of reply and the right of political argument. The competence of this High Authority is established by law

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

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